

IV MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. *Republic Broadcasting Agency (RBA)*

At a session held on September 5, the Council of the Republic Broadcasting Agency (RBA) initiated the procedure of early revoking of the licenses of 35 broadcasters that have been in default as to the payment of the broadcasting fee for a longer period of time. We remind that, according to Article 61 of the Broadcasting Law, the license shall cease to be valid prior to its term when, among other things, the operator fails to pay the broadcasting fee in spite of receiving a written notice. The Law stipulates that the RBA will pass a decision to revoke the license in an objective and unbiased procedure, during which the operator must be allowed to pronounce himself about the relevant facts. The broadcaster's representative shall be entitled to attend the Council session, where the revoking of the license is to be discussed, and to present his defense orally. The decision of the Council on revoking the license shall be passed by a two-thirds majority of the votes of the overall number of Council members and it shall be explained and justified. The broadcaster, whose license has been revoked, shall be entitled to lodge an objection to the Council within eight days after passing the decision. If he is dissatisfied with the ensuing decision, he shall be entitled to initiate an administrative procedure. Otherwise, the broadcasting fee itself shall be paid for the obtained broadcasting right and the payment shall be made to the bank account of the RBA. The amount of the fee shall be determined by the RBA, with the consent of the Government of the Republic of Serbia, on the basis of the number of inhabitants in the region covered by the broadcaster in question and depending on the origin and type of content. The economic crisis has created the situation where many broadcasters cannot afford to pay the fee anymore. However, even prior to the downturn, media and journalists' associations and especially ANEM have repeatedly highlighted the fact that the amounts of the fees have not been determined according to their purpose, which should be covering regulation costs. The total amounts of unpaid fees, especially prior to the crisis, far exceeded the actual regulation costs, while the surplus was channeled in the budget, instead of having the fees reduced or the surplus allocated for media projects of public importance.

2. *Republic Agency for Electronic Communications (Ratel)*

On September 11, the Republic Electronic Communications Agency (RATEL) released the current list of a total of 35 pirate broadcasters, including one practically national network with ten transmitters. The 35 broadcasters include two television stations and 33 radio stations. The worst situation persists in Novi Sad, where there are up to 9 radio stations in the city itself and a couple of them in the vicinity. Meanwhile, the media have reported that in Valjevo, RATEL performed the control together with the local police, in the local TV stations “Mars” and “Valjevo kronik”, which have been broadcasting illicitly for quite some time. Criminal charges were pressed with the Valjevo Prosecutor against the responsible persons in the two stations, for having allegedly committed the criminal offense of unauthorized performance of activity provided for in Article 353 of the Criminal Code. The Criminal Code namely stipulates that the persons engaged in unauthorized performance of activity, which requires, under the Law or other regulations passed in accordance with the Law, a license issued by the competent authorities, shall be subject to a fine or a two-year prison term. According to media reports from Zrenjanin, the persons authorized to enforce the decisions of the RBA Council were prevented in enforcing the decision prohibiting the local KTV to broadcast. The said persons were physically stopped by a group of citizens (led by the owner of KTV Dana Radic) that said to be “viewers of the station”. The RBA previously established that KTV was broadcasting on the 32th UHF channel and it claimed that the station had never been issued a broadcasting license for that channel, namely that the open competition for the latter had not yet been called. The events from Zrenjanin show that the competent authorities in Serbia are yet to find a single mechanism and procedure to effectively enforce their decisions and remove pirate broadcasters from the air.

STATE AUTHORITIES

3. *The Ministry of Culture and Media*

Opening the regional conference on media freedom in Southeast Europe, held in Belgrade on September 21-22, the Culture Minister Bratislav Petkovic announced that the Media Strategy would be redefined and that the state would seek to gradually withdraw from the ownership in media, as well as to ensure the transparency of ownership. He said that the priorities of his ministry would be to boost and consolidate the existing public service broadcasters RTS and RTV, as well as to address the issue of their financing in a sustainable and durable manner.

Petkovic said that the issue of financing ought to be dealt with by next spring; in the meantime, RTS would have to be bailed out from the budget.

We remind that we have repeatedly pointed to the shortcomings of the Media Strategy in these Reports. These shortcomings are uncontested and the Strategy itself was typically described in the public as a compromise that did not make anyone completely happy, but nonetheless managed to highlight the long delayed issue of reforms in this domain. In that sense, if the announced redefining of the Media Strategy will remedy the aforementioned shortcomings, such as its part pertaining to the setting up of regional public service broadcasters or the other, pertaining to preventing unlawful concentration of media ownership, the aims of the Ministry should be commended. Unfortunately, the Ministry has embarked on this journey in an utterly non-transparent manner, without any contacts and communication with media and journalists' associations in the period covered by this Report and this is a cause of major concern.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *The Organization of Musical Authors of Serbia – Sokoј*

4.1. In a statement released on September 12, Sokoј informed the public that cooperation protocols with the representative associations of users – the Employers Union, the Information Activities Union and ANEM, as the representative association of broadcasters, were signed. Sokoј said that the protocols are the final phase of long-term efforts to adjust the amount of author fees to the economic reality in Serbia, without compromising the system of collective protection of music copyrights. The protocols are the outcome of months-long negotiations and they are expected to come into force on the eighth day after they are published in the Official Gazette of the Republic of Serbia. The Protocol entered into with ANEM was published in the Official Gazette no. 92 dated September 26, 2012. Meanwhile, ANEM announced that the Protocol had brought substantial discounts and benefits for the payment of the 2012 minimum fees for the exploitation of music authors' works and that it had settled the issue of outstanding debts from the previous period. Sokoј had previously (on the basis of the opinion of the Copyright and Related Rights Commission from December last year) passed a tariff that came into force on December 31, 2011, involving dramatic increases of the minimum fees. The aforementioned Protocol introduced discounts on minimum fees, amounting in certain cases to up to 75% of the applicable tariff. It also involves the possibility to repay debts in several installments, as well as to have the interest (or part thereof, if the broadcaster was taken to court) written off. In

addition to ANEM members, the aforementioned discounts and benefits will be available to all other radio and TV stations, provided they have a valid agreement with Sokoje that they have been submitting lists of broadcast musical works on regular basis, as well as if they have been observing the payment terms provided for by the Protocol. For bills concerning the March-June period, the said terms will be no less than 60 days, namely 15 days for the bills to be issued by Sokoje after that. According to the Protocol, all radio and TV stations that are paying the minimum fee will pay only 50% of the fee for the period March 1 – December 31, 2012, regardless if they have unsettled debts. The 50% discount on the minimum fee shall be applied over the regional discounts where the latter are already in force, in keeping with the applicable tariff. This practically means that the overall discounts will amount to 65% in Eastern and Southern Serbia, 60% in Western and Central Serbia, 55% in Vojvodina and 50% in Belgrade, Novi Sad and tourism centers. Civil society broadcasters, which enjoy a tariff-provided 50% discount compared to the usual minimum fee, will be allowed to cumulate the discounts provided for by the tariff and the Protocol, until the overall discount reaches 75%. In addition, for the first time, the Protocol is putting on equal footing (with the possibility to use the discount) stations from local, ethnically mixed regions (broadcasting most of their content on one or several minority languages) with civil society stations. Sokoje will approve that convenience on the basis of proof issued by the RBA. Outstanding and unsettled debts may be paid in several installments, interest-free, by March 31, 2013, on the basis of an agreement that each station will enter into with Sokoje. The outstanding debts that have already been claimed and collected (settled) in Court plus the associated legal costs will be paid in the same period, whereas Sokoje will write-off 50% of the interest on these amounts. For the pro-forma invoices already issued by Sokoje under the new tariff for January and February 2012, a new term will be determined for the stations to make the payments with a 20% discount. Additionally, the Protocol says that, in September and October, Sokoje will provide all interested stations free training for using the online portal for submitting lists of broadcast musical works. ANEM and Sokoje will oversee and evaluate the functionality of the portal and, depending on the objective possibility of the majority of stations to use it effectively, they will jointly set the date as of when the submission of lists of broadcast musical works via the portal will become a requirement for enjoying the discount. Simultaneously, ANEM and Sokoje will start analyzing the effects of the Protocol's implementation as of this autumn, so as to come to a new agreement that would pertain to the tariffs in 2013. The negotiations that preceded the signature of the Protocol were also mediated by the Intellectual Property Office. The Protocol constitutes a compromise between the tariff of fees (which was adopted at Sokoje's proposal and which came into force after the Copyright and Related Rights Commission approved it) and economic reality. It sends a very clear message that, under the tariff that was approved by the Copyright and Related Rights Commission, the lowest amounts of the fees for exploiting the objects of protection from Sokoje's

repertoire (the minimum fees) were so unrealistic that that it was necessary to introduce additional discounts of up to 75%, in order for the tariff to be applied. An even better solution (than the Protocol introducing discounts) would have been to set a brand new, more appropriate tariff, but the Protocol might prove to be the first step in that direction.

4.2. The Commercial Appellate Court in Belgrade rejected as unfounded the appeal filed by Sokoje against the verdict of the Commercial Court in Subotica, in the dispute between Sokoje and the public company Radio Subotica. The dispute concerned the revenues included in the base for calculating the fee paid by Radio Subotica to Sokoje. The Appellate Court upheld the verdict of the first-instance court, under which the base for calculating the fee paid to Sokoje did not include the revenues of Radio Subotica, or the subsidies and donations paid for the production of news program in Serbian, Hungarian and Croatian language by the municipality of Subotica as the founder of the public company. "Radio Subotica has been claiming from the start that the subsidy obtained from the municipality is completely unrelated to music and that receiving it has nothing to do with the music repertoire of the station," said Toni Bedalov, the Director of Radio Subotica. He stressed that this fact was confirmed by the town of Subotica, because "under the contract between the local government and the radio, the town will only subsidize the production of news program in three languages. Sokoje refused for years to acknowledge that and we are happy that the Court has confirmed our position to be right".

The issue of the base for calculating the fees has constituted a point of contention between Sokoje and the broadcasters for years. Several trials were held with different outcomes and different verdicts. In that respect, we want to make the following clarifications. The Law on Copyright and Related Rights stipulates that, for broadcasting, the tariff shall be typically determined as a percentage of the revenues gained by the user in the activity involving the use of the protected object (i.e. music). The problem arises in the situation when the operator has multiple sources of income apart from broadcasting. The situation is clear when the broadcaster, for example, makes money from renting office space. Logically, the part of the revenues from the rent does not constitute "revenues gained by the user from the activity involving the use of the protected object". Nonetheless, sometimes the difference is not that obvious, although it actually exists. For example, the revenues of a broadcaster that has produced and aired radio/TV program, which were gained from commercials aired in the course of that program, shall definitely be counted in the base. The question remains, however, what happens if that broadcaster has ceded that same content to another broadcaster, namely will the revenues gained from licensing the said content be counted in the base or not? Namely, the activity involving the use of the protected object is broadcasting and not production. This is evidenced by the fact that independent production

companies, which do not have their own television or radio channels (but merely produce and sell content) are not paying any broadcasting fees. If, in our case, the broadcaster would sell program (content) to another broadcaster and if the revenues from such licensing would constitute part of the fee base, then the broadcasters' program on the market would be burdened by costs not incurred by independent productions. These are all matters that have not been conclusively settled and that are still the source of disagreements and dilemmas in the relationship between broadcasters and collective organizations. Subsidies and donations are merely part of the problem. It seems that the delimitation line in our case should be the grounds on which the subsidies have been awarded. If they have been awarded for content broadcasting, they should be made part of the base, regardless of the fact that music is not used in a concrete program. If the subsidies have been awarded only for production, the situation could be interpreted differently. It seems that it would not be too difficult to make the distinction by checking how the funds were allocated in the first place. If an open competition was called with the participation of independent production companies and a radio station was allocated the funds because it had the best offer, it seems that it would constitute grounds not to count the concrete subsidy or donation in the base. However, if the funds were allocated to the radio station precisely because it was able to air the program in addition to producing it, namely if the independent production companies were not eligible to compete, since they did not have their own channels, then it seems that the subsidy/donation in question should definitely be counted in the broadcasting revenues of the concrete station. In any case, the decision of the Commercial Court in Subotica and the Commercial Appellate Court in Belgrade shall apply to the concrete dispute only and may not automatically apply to all outstanding disputes. It is therefore important to consider introducing more specific regulations which would enable the distinction between the revenues counted in the fee base and those that will not be counted as a part of it.