

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)*

1.1. At a session of the RBA Council held on July 19, four decisions were passed about the revoking of broadcasting licenses prior to the expiration of their term. In all four cases, the licenses were revoked due to unpaid broadcasting fees. Radio Djerdap from Kladovo, Radio Ekos from Vlasotince, Radio 013 FM from Plandiste and Radio Vrsac from Vrsac were stripped off their licenses. The Council also revoked cable-broadcasting licenses from TV Kanal D in SBB's cable network and from a cable operator from Novi Sad, as well as for cable broadcasting of the program of TOP SHOP TV.

The number of broadcasters in Serbia, for years perceived as excessive and disproportionate to the situation on the poorly developed advertising market, has continued to shrink, as a consequence of the inability of the stations to pay their dues. Unfortunately, although media associations have been warning for years that the state should react by introducing incentives that would help the media market to consolidate so as to safeguard media pluralism in Serbia, the Serbian media (especially local media) are being decimated due to the years long crisis, resulted in an even more crippled media landscape. The fact is that nine months have passed since the adoption of the Media Strategy and nothing has been done to safeguard endangered local media. What's more, the RBA itself has failed to take measures it had at its disposal (e.g. to stimulate more effectively socially acceptable content on television and radio). This warrants a prompt review of the extent to which the concepts contained in the Media Strategy are sustainable in the backdrop of the continued disappearance of impoverished media.

2. *Republic Electronic Communications Agency (RATEL)*

2.1. In early July, the Republic Electronic Communications Agency (RATEL) released the annual review of the telecommunications market in the Republic of Serbia for the year 2011. The

part concerning the distribution of media content says that the market in 2011 has not changed dramatically when it comes to structure and transmission technology. In 2011, 82 operators were registered in Serbia for media content distribution, which provided their services through the following telecommunications networks: cable networks (coaxial, hybrid and optical) – 76 operators; through public landline telephone network – 3 IPTV operators and through satellite network (Direct to Home) – 3 operators. SBB has remained the largest operator in Serbia, with more than 50% of the market share, while, out of the 82 registered operators, seven of the largest (SBB, PTT, Telekom Srbija, Kopernikus, I.KOM, Digi SAT and Radijus Vektor) jointly account for about 88% of the market (as per the number of subscribers), whereas Telekom Srbija has posted the highest annual growth rate in the IPTV segment. The total number of subscribers to the service of media content distribution has continued the growth trend from previous years and amounted to slightly more than 1.3 million in 2011, which is by 6.7% more than in 2010. Penetration is 53% of the total number of households. Of the aforementioned 1.3 million households, about one million are cable subscribers, up to 210 thousand satellite DTH and around 120 thousand IPTV subscribers. The operators' revenue has increased too – by 16% compared to the previous year – and amounted to about 10.3 billion dinars. RATEL explained the revenue growth was the result of the increased number of subscribers, the introduction of extra services and higher prices. RATEL also said in the market review that the investment rate had also grown, as well as that there was a “noticeable improvement of the quality of provided services and attitude towards end-users”. In its analysis of the data and year-to-year comparison, RATEL concluded that the media content distribution market is yet to attain full maturity and that it was expected to develop intensively in the immediate future. RATEL observed a much quicker growth of the number of IPTV subscribers compared to the number of KDS subscribers. The agency's conclusion is that, in the coming period, we may expect a change of the overall media content distribution market, namely that the potentially high number of IPTV subscribers will put competitive pressure on KDS operators, which will contribute to quality-oriented market development and result in much better quality, greater content diversity and reduction of service fees.

Concerning terrestrial broadcasting, particularly interesting is the part of the report pertaining to pirate broadcasters. RATEL says that as of December 31, 2011, there were 47 pirate broadcasters on the air – four TV and 43 radio stations. Looking at the list, it may be inferred that the worst situation with pirates exists in Novi Sad, where as much as nine pirate radio stations were identified. RATEL continued to update pirate lists in the course of the year and hence the July list includes a total of 51 pirate broadcasters, of which 11 transmitters broadcast the program of Radio Fokus, a national station that continued to operate even after it had its

license revoked due to unpaid fees. The fact that a pirate network with up to eleven transmitters continues to exist in Serbia (in Vranje, on Fruska Gora, in Krusevac, Vrsac, New Belgrade, Valjevo, Kragujevac, Pirot, Sevojno and in the surroundings of Trstenik) is evidence of the utter lack of preparedness or incapacity of the system to fight radio piracy.

3. *The Press Council*

At a session held on July 26, the Press Council's Commission for Complaints unanimously decided that the daily "Blic", in the text "Psychiatric Patient Commits Suicide", published on June 23, 2012, violated the Journalists' Code of Conduct, more specifically the provisions stipulating that journalists are required to "respect the privacy, dignity and integrity of the persons they write about", namely to "avoid speculation and conveyance of personal views in reporting about accidents and tragedies involving fatalities or heavy losses affecting the material or other interests of the citizens". In the aforementioned case, a complaint against the text published in "Blic" was filed by the mother of the person that committed suicide. She said that her son was branded in the article as psychiatric patient, whereas he was in reality a military war invalid. She also stressed that his privacy and that of the family was violated by the publication of his name and reference to the town he lived in and said that no journalist had ever tried to obtain any information from the family or check the veracity of the facts mentioned in the text. The opinion that the deceased was a "psychiatric patient" was expressed by the Superintendent of the Police in Krusevac, citing the findings of his subordinates. The same text (a news brief first released by the "Tanjug" news agency) was published in several other media, which are not under the Press Council's scope of authority. The Commission found that, pursuant of the Code of Conduct, even if the competent authorities released data falling under the private domain of the perpetrator or the victim, the media ought not to convey that information. "A mistake made by state authorities does not automatically imply that the media are allowed to violate the ethical standards of their profession", the Code says. Consequently, the members of the Commission estimated that the fact that the information originated from the Superintendent of the Police might not be an excuse. Furthermore, the Commission found that, also under the provisions of the Code, each media was responsible for the news agency briefs it released. Accordingly, "Blic" was found responsible for violating the Code, regardless of having merely conveyed Tanjug's news brief. It is not known whether the family of the deceased pressed charges against the news agency or other media that passed on the controversial information. It is, however, highly likely that the court might rule differently than the Complaints Commission, since the Public Information Law expressly stipulates that a media outlet may not be held accountable for damages if it has

faithfully conveyed an untrue or incomplete piece of information originating from a competent state authority.

STATE AUTHORITIES

4. *The Government of the Republic of Serbia*

The new Government of the Republic of Serbia was elected at a parliamentary session held on July 27. It consists of the coalition made up by the Serbian Progressive Party, Socialist Party of Serbia, United Regions of Serbia, as well as the Socialdemocrat Party of Serbia and the Party of Democratic Action. As we said in the section of this Report concerning the monitoring of the process of adoption of new laws (more specifically the new Law on Ministries), as opposed to the previous government, the new one does not have a single ministry covering both the media and electronic communications, since the latter have been entrusted to the Trade Ministry. The new Culture and Media Minister is Bratislav Petkovic, theatre director and writer, the founder and owner of the "Automobile Museum" and the "Modern Garage" Theatre. Electronic communications (relevant for broadcast media, since they cover media content distribution networks) have been entrusted to Rasim Ljajic, the Deputy Prime Minister and Minister of Foreign and Domestic Trade and Telecommunications. Ljajic headed the Ministry of Labor and Social Policy in the previous government. It remains to be seen who will be the competent state secretaries and assistant ministers.

5. *Commissioner for Information of Public Importance and Personal Data Protection*

On July 4, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic announced that activities on drawing up a draft of the Law on Protection of Whistleblowers had started. Sabic said that the protection of whistleblowers was one of the crucial presumptions for success in combatting corruption. The Commissioner reminded that, in Resolution 1729 (2010) dated April 29, 2010, the CoE Parliamentary Assembly called on all member countries to review their relevant regulations so as to ensure adequate protection of whistleblowers. The Commissioner expects that in the following one-year period it will be possible to produce a good model of the Law on Protection of Whistleblowers, as a result of the efforts of the relevant national and international experts, a serious analysis of international and comparative law concepts and the organization of an international expert gathering on the topic

of whistleblowers' protection. The Law would then be put on public discussion and ultimately tabled to the Government and Parliament for adoption.

Comprehensive regulation of whistleblowers' protection is relevant for the media sector too, since it also involves the issue of protection of journalists' sources. In addition to comprehensiveness, Resolution 1729 (2010) of the CoE Parliamentary Assembly requires a broad definition of the concept of a whistleblower, so as to include all persons who have, in good faith, decided to blow the whistle on various forms of illicit behavior, including human rights violations threatening the life, health or other legitimate interests of the citizens, not only by public authorities (including the military and secret services), but also by private companies. The regulation of the protection of whistleblowers must involve labor law related issues, so as to protect them adequately from unfair dismissal and mobbing at the working place; it should involve criminal and criminal proceedings law related issues, in order to protect whistleblowers from criminal prosecution for libel, breach of official or company secrecy, as well as to protect witnesses. Finally, regulation involves media right related issues, particularly concerning the protection of journalists' sources, as well as specific anti-corruption measures, modelled upon those contained in the CoE Civil Law Convention on Corruption (ETS No. 174). Serbia ratified the Convention in 2007 by passing the Law on Ratifying the Civil Law Convention on Corruption (Official Gazette of the Republic of Serbia - International Treaties, No. 102/2007). We have mentioned, in the part of this Report concerning the implementation of the Law on Personal Data Protection and the Law on Electronic Communications, the extent to which it is important to have this project of the Commissioner to succeed, particularly in terms of protecting freedom of expression. There we have pointed to the fact that in Serbia, the right of journalists to protect their sources is respected only declaratively, while in reality, it is easily circumvented, by breaching the secrecy of journalist communications.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. *Serbian Music Authors' Organization - SOKOJ*

After ANEM addressed the Intellectual Property Office with a request for supervision of the work of SOKOJ, in order to determine why invoiced amounts that did not include discounts (that were already approved by SOKOJ's managing board, as ANEM has learned), the Office scheduled

a new meeting between SOKOJ and ANEM representatives for July 17. We remind that the new tariff of the fees charged by SOKOJ for the exploitation of music works on radio and television came into force in early 2012. That tariff was determined by SOKOJ's managing board, since the negotiations with ANEM, as the representative association of users, had not yielded any results. The said tariff involves a drastic increase of the amount of minimum fees for the exploitation of music works. SOKOJ and ANEM engaged in new negotiations, this time about the discounts to the tariff-determined amount of the minimum fee. Then, in late June, the stations started receiving invoices for January and February, involving lesser discounts than those that were negotiated. At a meeting in the Intellectual Property Office, SOKOJ had proposed greater discounts for the invoicing period starting from March 2012, than those included in the already issued invoices for January and February. In a concrete example, the discounts would mean that a radio station located in a town of 100 thousand inhabitants in Eastern or Southern Serbia would have to pay a fee for the exploitation of music works on radio in the amount of 11.550 dinars per month, instead of the 23.100,00 charged under the applicable tariff. The final agreement on the discounts is expected to be signed in August.