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. The Republic Broadcasting Agency (RBA) initiated a procedure against TV B92 and TV Prva over the broadcasting of the commercial of the Serbian State Lottery (SSL), which alluded, in the opinion of the Agency, to group sex. “According to the Advertising Law, a complaint shall be filed against a broadcaster for economic offense and misdemeanor if, after considering their explanation, we determine that the law has indeed been breached. Most importantly, the outrageous content must not be aired again and for that we need the consensus of the members of the Council”, said Goran Karadzic, the Deputy Chairman of the RBA Council.

The Advertising Law stipulates that the RBA shall supervise the enforcement of the Law’s provisions governing advertising on television and radio and set forth detailed rules on advertising and sponsorship on radio and television. In our previous reports, we have written about one of the key problems of oversight – the fact that the RBA has never adopted detailed rules on advertising on radio and television. The Advertising Law says that an advertisement may not contain statements or visual depictions causing, in the circumstances of a given context, indecent associations, especially with regard to the content of the advertisement, the manner and means of advertising, the sensitivity of the persons whom it was addressed to, as well as the type of advertiser, activities, product or services that are being advertised. In the concrete case, there is no “visual depiction” causing an association that may be considered indecent. There is, however, a statement that may be understood as an invitation to group sex. Considering that sexual allusions are a common occurrence and are frequently resorted to in marketing, the question is how will the RBA and/or the courts (if complaints result in legal proceedings) decide if the advertisement in question is indecent or not in the given context, especially with regard to the content of the advertisement, the manner and means of advertising, the sensitivity of the persons whom it was addressed to, as well as the type of advertiser, activities, product or services advertised, namely in the concrete case the services of online football betting. The concern is that the RBA and the courts do not have proper mechanisms to have an objective

assessment of decency or indecency, as evidenced by the fact that this is the first time since the adoption of the Advertising Law that such an issue emerged with regard to television advertising. It was never brought up in relation to much more explicit “visual depictions” causing indecent associations, e.g. for ice cream advertising. It is therefore necessary for the RBA to finally adopt detailed rules on advertising and sponsorship on radio and television, in order to avoid arbitration proceedings, or even proceedings under the pressure of various power groups. It seems that the complaints over the aforementioned advertisement should be considered in a wider context of games of chance regulation. Namely, since the adoption of Games of Chance Law in 2004, the right to organize online games of chance in Serbia belongs to the State Lottery, which – with prior consent of the Government – may hire operators to organize such games. These rules were somewhat liberalized by the new Games of Chance Law from 2011. Until recently, at the expense of the budget and at the cost of considerable outflow of money from Serbia, the State Lottery did not use its monopolistic right to organize online games of chance. The project in cooperation with one of the largest international online betting operators Sportingbet, which was advertized in the controversial commercial, was an attempt by the State Lottery to penetrate the online betting market. Accordingly, the reactions to the controversial commercial might be observed, in the context of insufficiently clear regulation of television and radio advertising, as an attempt of the competition to make the TV stations, through pressure on the RBA, to renounce from advertising the service, which would, in turn, affect the level of usage thereof.

2. The Press Council

Between September 2011 and late June 2012, the Complaints Commission of the Press Council received 25 complaints on texts published in print media. At a press conference held on June 28, the Commission said to have reached a decision in 14 cases, 4 cases were pending, while the rest were ruled to be ineligible. Of the cases that were solved, a decision was passed in four, establishing that the Journalists’ Code of Conduct (JCC) was violated (all cases involved the daily newspaper “Press”). In the remaining cases, the Commission found that the JCC was not breached. Of the 14 complaints that were ultimately ruled upon, four were filed against “Vecernje Novosti” and “Press”, three against “Politika” and one against “Nin”, “Blic” and “Vreme”. Four complaints that are pending were filed against “Blic”, “Press”, “Alo!” and “Vecernje Novosti”.

The same day, on June 28, the Commission passed another two decisions. In the first case, acting upon the complaint filed by the poet Blagoja Bakovic, the Commission found that by publishing the texts “The Director Likes the Book about Nole Inviting People to Bet”, “When I Grow up, I Will Bet on Nole” and “Children, Bet All Your Money on Nole” did not violate the provisions of the JCC. Meanwhile, one member of the Commission was of the opinion that the JCC was nonetheless violated by the publishing of sensationalist headlines, which did not correspond to the content of the texts. In the other case initiated by the Editor of the anti-corruption portal “Whistle” Vladimir Radomirovic, the Commission found that “Vecernje Novosti” had breached the JCC in the text “Development Bank of Vojvodina Keeps Quiet about Dirty Money!?” published on June 13, 2012 in the online edition and on June 14 in the print edition. The Commission says that the daily neglected the obligation of the journalists and editors to respect copyright and cite a source when reproducing a piece of information from another source. What may particularly contribute to furthering the reputation of the Commission is the fact that both decisions were passed on June 28, less than one-month from the release date of the contested texts. Within that time, an “ordinary” court of law would not even had scheduled the first hearing, let alone held it. Therefore, in view of the swiftness of the procedure, the Complaints Commission of the Press Council becomes a much more favorable option than the courts for those seeking moral satisfaction.

STATE AUTHORITIES

3. *The Ministry of Culture, Media and Information Society*

In last month’s Monitoring Report, we wrote about the Ministry of Culture, Media and Information Society being late in announcing the results of the open competition for the co-financing of media projects in 2012. Namely, five open competitions were called as early as back on November 1, 2012, while the deadline for submitting the applications expired on December 1, 2011. It was only after a joint press release on May 4 by media and journalists’ associations, demanding from the Ministry to reveal the outcome of the competition that the Ministry passed and released on May 8 the decision on the allocation of funds for three out of the five calls. For the remaining two calls for co-financing of projects – programs in the area of public information on ethnic minority languages – the decisions on the allocation of funds were passed on May 15 and posted on the Ministry’s website on May 18, only to be withdrawn after two hours, without any explanation whatsoever. In June, however, a completely new decision was released, allegedly passed on June 19 and containing completely different results of the open competition.

More specifically, as much as 11 applicants, who received almost 6 million dinars under the May 15 decision that was abruptly removed from the Ministry's website, found themselves on the list of applicants that were denied funds. Meanwhile, 25 applications which, under the May 15 decision did not receive any funds, were now allocated (with the decision dated June 19) slightly more than 6 million dinars. Moreover, in one case, the applicant that was on the list of beneficiaries in both decisions received under the new decision almost half a million dinars more than under the old one. The Ministry has failed to provide any explanation whatsoever as to what actually happened and hence the gap between the two decisions that were released.

4. Commissioner for Information of Public Importance and Personal Data Protection

On June 4, the Commissioner for Information of Public Importance and Personal Data Protection confirmed in a press release that he had commenced, through authorized persons, oversight of the enforcement of the Law on Personal Data Protection in the operations of mobile operators in Serbia. The Commissioner called it a large-scale endeavor, which started in March and is still underway. Finally, he said he would inform the competent authorities and the general public about the results once the operation was completed. Oversight involves all mobile operators, as well as land line operators with wireless access. What oversight aims at finding is not traditional eavesdropping, but rather illicit access to stored communication data, so-called call logs, i.e. who has communicated with whom, by which means, when, for how long and from where. The Commissioner believes that data processing too falls under the constitutional guarantee of inviolability of communications, which is also the position of the Constitutional Court, as evidenced by the recent decision on the unconstitutionality of certain provisions of the Law on Military-Security Agency and the Military-Intelligence Agency. Even before the oversight was completed, the Commissioner was able to reveal that the number of cases, where data was accessed without a court order, was quite high.

The Law on Electronic Communications stipulates that the operators are required to store electronic communications data concerning the source and destination of the communication, the start thereof, duration and completion, the type of communication, the equipment used, as well as the location of the mobile equipment used. This data shall be stored for the purposes of a potential investigation, uncovering of criminal offenses and ultimately criminal proceedings, in accordance with the law governing criminal proceedings, as well as for the purpose of protecting national and public security of the Republic of Serbia, in accordance with the laws regulating the activities of security agencies of the Republic of Serbia and the operations of internal affairs

authorities. Since under the laws, regulating the activities of security agencies, decisions are also passed by the directors of these services and not only the court, as provided for by the Constitution, the Commissioner also passed initiatives in the past to assess the constitutionality of both the Law on Electronic Communications and the laws directly pertaining the work of security services. This issue is extremely important for journalists and the media due to the fact that access to stored data renders the protection of journalist sources futile. Namely, according to the Public Information Law, a journalist shall not be required to divulge his sources, unless the information received from the said sources pertain to a criminal offence or a perpetrator, of a felony subject to a prison sentence of no less than five years. Uncontrolled or loosely controlled access to stored data/call logs with information as to who has the journalist communicated with, by which means, when, for how long and from where, would mean that the right of that journalist to protect his/her source will remain just on paper, easy to circumvent in practice. The dramatic consequences this may have for freedom of expression are self-evident.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. Serbian Music Authors' Organization – Sokoj

The new tariff of fees charged by Sokoj for exploiting music works in radio and television stations, which came into force in early 2012 (determined by the Sokoj managing board, since the negotiations with ANEM as the representative association of users, failed to produce an agreement), entails a drastic and multiple increase of the amount of minimum fees for the usage of music works. Since the new tariff was criticized by the public, Sokoj started a fresh round of negotiations with ANEM, this time about the discounts on the minimum fees. During the course of the negotiations, Sokoj did not issue any invoices to the stations. In late June, however, the stations started receiving the invoices for January and February, calculated with lesser discounts than those that were negotiated about, although the talks were still underway, without any of the parties announcing to have suspended them. ANEM called on the Intellectual Property Office to oversee the work of Sokoj and determine why the issued invoices did not factor in the discounts that were already approved by Sokoj's managing board (as ANEM has learned).

Under the new Sokoj tariff, the average amount of the fees due by radio and television stations, (which are determined as a percentage of the revenues of each particular station) has gone up

by 6.67% for television and 16.67% for radio. However, this is not the biggest problem associated with the new tariff. The increase is much higher with the minimum fees currently being paid by three quarters of all radio and television stations in Serbia. While under the previous tariff, the minimum fee for the exploitation of music works on television amounted to 9.000 dinars per month, according to the new tariff, TV stations ought to pay between 15.400 and 66.000 dinars, depending on the population and the level of economic development in the coverage zone. This constitutes an increase of between 71.11% and up to 633.33%, which is as much as 352.22% in average. It is even worse for radio stations, since the minimum fee, instead of the hitherto 6.300 dinars per months, skyrocketed to between 15.400 and 66.000 dinars, which amounts to an increase of between 144.44% and 947.62%, or 546.03% in average! According to the information received by ANEM during the talks, Sokoj's managing board accepted, as early as back on May 10, the discounts to the minimum fee of up to 45%. It also accepted that such discounts did not exclude the 10% discount for timely payment (already provided for by the tariff) or the coefficients depending on the level of economic development of the particular region where the station is located. Sokoj's managing board confirmed that these discounts would be cumulative up to the total amount of 75% of the actual fee tariff. However, instead of being able to accumulate various discounts up to the minimum level of 5.500 dinars per month, with the late-June invoices issued by Sokoj, stations in small towns in poor regions in the south or east of Serbia were charged 15.400 dinars (which could be reduced to 12.320 dinars if the fee is paid promptly). It seems that the Intellectual Property Office will have to find out how and why Sokoj charged higher fees than those approved by its own managing board, as well as what is the outcome of the five-months-long negotiations about the discounts to the minimum fees determined by the tariff.