

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 activities of the Republic Broadcasting Agency have been partly covered in the section about the enforcement of the Broadcasting Law.

1.2. In its General Binding Instructions about reporting in the election campaign, the RBA have introduced more stringent requirements of the media related to the monitoring of their work. For instance, starting from the day when the elections are called, until the completion of the election process, television stations are required to submit to the RBA the footage of their entire program aired in the previous week. At the same time, as in every election campaign, the number of petitions submitted to the RBA in relation to the content of television program is on the rise, the petitions being mainly lodged by political parties participating in the elections. Hence, the United Regions of Serbia (URS) have objected that the media are tolerating the abuse of the office of President for the purpose of furthering the interests of the President's political party. URS claims that on March 18, Boris Tadic officially visited a family and its farm in the status of President of the Republic. According to URS, Tadic also officially visited the Fiat car plant in Kragujevac. URS says the media allowed that the footage shot during these two official visits be aired as part of the election program of the list of the Democratic Party "A Choice for a Better Life – Boris Tadic". The Serbian Progressive Party (SNS) has also filed a petition, claiming that "lists in the campaign do not enjoy the same treatment in news programs". Meanwhile, the RBA announced it would discuss at the Agency's Council the election video of URS containing the seals of famous international companies. URS has used the seal of the Italian company Fiat, which came to Serbia partly due to the efforts of the URS leader, when he was a minister in the Serbian Government. The controversial video also contains the seals of Benetton and other companies. A member of the RBA Council, Professor Goran Pekovic said that the above represented a case of violation of the Advertising Law, since the viewers might get the impression that the aforementioned companies supported the campaign. A press release was issued on March 26, after the RBA Council meeting, claiming that no broadcaster had violated the RBA's General Binding Instruction while reporting about the work of state authorities.

Responding to the objections of URS and SNS that the DS and Boris Tadic were misusing the office of the President of the Republic for electoral ends, the RBA said that all broadcasters “during the election campaign, as well as before the elections are called, shall be free to follow the work of state authorities and their representatives”. In relation to the objection concerning the use of the seals of certain international companies in the URS election videos, the Council has demanded additional documentation to be submitted in order to show if these companies consented with use of their seals for such purpose.

2. Republic Agency for Electronic Communications (RATEL)

2.1 The activities of the Republic Agency for Electronic Communications shall be partly elaborated on in the section concerning the digitalization process.

2.2. Acting at the request of the RBA dated February 3, the Director of RATEL passed two decisions concerning the dominant cable operator SBB on March 5. According to these decisions and pursuant to Article 101 of the Law on Electronic Communications, SBB was ordered to include in its cable offer in Novi Sad the programs of the following stations: “Kanal 9”, “Delta”, “Mozaik” and “Novosadska TV”, as well as “VK” and “Rubin” in the town of Kikinda. We remind that pursuant to said Article 101, RATEL is authorized, at the request of the RBA, to prescribe to an operator of the electronic communication network for the distribution and broadcasting of media content, the obligation to air certain television channels. In addition to the request of the RBA, which is, while making such request, obligated to comply with the principles of proportionality and transparency and to assess the necessity to air certain channels for the purpose of realizing certain specific goals relevant for the public interest, an extra requirement is needed: the a substantial number of end users uses the electronic communication network of that operator as the sole or primary channel for receiving media content. In the procedure of passing the decision, RATEL assessed the circumstance that SBB is a the cable operator with the largest number of subscribers in Novi Sad, namely that it is the sole cable operator in Kikinda, which status makes the agency’s decisions more than reasonable. In our previous report, we have described the reasons that made the RBA submit the request for such decisions to be passed in the first place. “Kanal 9”, which has pressed charges against SBB for having switched off its program from SBB’s cable offer in July 2011, announced on March 16 that their signal was once again available to the viewers in Novi Sad, as well as that there was no need to forcibly reinstate their program in the cable network, since SBB had complied with RATEL’s decisions and the order of the Commercial Court in Novi Sad.

2.3. On March 14, RATEL announced that after a joint operation of the Anti-High Tech Crime Department of the Service for Combating Organized Crime of the Criminal Police Administration of the Serbian Police Ministry, the RBA and RATEL's Control Department, the radio program of Radio Raka Esinger from Lazarevac was switched off. That station topped the list of unauthorized users of the radio-television spectrum that RATEL used to publish on regular basis. Radio Raka Esinger remained on the air for years in spite of not having a proper license. RBA's statement also said that criminal charges had been pressed against the perpetrators, without giving any details.

3. *The Press Council*

On March 29, the Press Council adopted a decision establishing that the daily "Press" had violated the Serbian journalists' Code of Ethics in a text released on March 2 in the print edition and on the website of that newspaper. The text in question, entitled "Mengele from Oxford: Doctors Now Allowed to Kill Children", was found by the Press Council to have violated the provisions prescribing that the journalist ought to "respect and protect the rights and dignity of children, victims of crime, disabled persons and other vulnerable groups", as well as to "do everything in their power to avoid discrimination based on gender, age, sexual orientation, language, religion, political and other opinion and ethnic and social background". The complaint in the concrete case was filed by the Gay-Lesbian Info Center, which claimed that the controversial text had put on equal footing gay marriages and the right of same sex parents to adopt children with pedophilia and the killing of children with disabilities. The Complaints Commission found that the text was discriminating against a particularly vulnerable minority and that journalists should be aware of the danger of discrimination that may be propagated by the media. The decision was adopted by a majority of votes, since two members of the Commission – Ljiljana Smajlovic, the President of the Journalists' Association of Serbia and Bozo Prelevic, attorney at law – were of the opinion that the text did not violate the Code of Ethics, namely that the author of the text had no intention of discriminating against the gay population. In his opinion, it was merely a poorly written text putting in the same context completely unrelated issues. Otherwise, of the nine decisions passed by the Complaints Commission of the Press Council to date, this is the third one establishing that the daily "Press" has breached the Code of Ethics. In the previous three decisions, the Commission found that "Press" had breached the right to privacy and the fundamental principle of the Code concerning the accuracy of reporting, by presenting a value judgment of its editorial staff as a material fact. "Press" hence became a newspaper against which the biggest number of complaints has been validated by the Complaints Commission. Furthermore, a decision is pending about another complaint filed

against “Press”, which was submitted by the National Bank of Serbia over “biased and malicious” writing of that newspaper.

STATE AUTHORITIES

4. *Ministry of Culture, Media and Information Society*

In spite of the statement made by Predrag Markovic, the Minister of Culture, Media and Information Society in late January, when he said that the implementation of the Action Plan accompanying the Media Strategy was going as planned, the Ministry has not released any news in relation to that Plan for nearly two months. Off the record, we have learned that the working groups have been established and that the draft of the new laws are in the works. Meanwhile, the Government has passed certain decisions that are totally contrary to the concepts promoted by the Media Strategy. For instance, in late March, the Government approved an interest-free loan to the state news agency Tanjug in the amount of 17.5 million dinars, for reporting about the election campaign and election day on May 6, namely for “expenditures related to reporting and purchase of equipment in order to secure adequate reporting and video and photo coverage of the campaign and election day”. The loan was approved only three days after Tanjug had asked for it and under the contract, it must repay it by December 31. At the same time, it remains unknown if any analysis of other news agencies’ plans for reporting on profit basis about the election campaign and election day has been made. Money from the budget is allocated each year for funding the state news agency – more than 200 million dinars in 2011. We remind that the Media Strategy stipulates that the state will, in keeping with the strategic commitment to withdraw from media ownership, conduct a transformation of the ownership of Tanjug. The Strategy also foresees that, even before the said transformation, Serbia will provide for a regulatory framework for an equal position of all news agencies. This end is in line with competition protection and state aid allocation rules, with the state being required to secure that Tanjug is not brought in a more favorable position than its competitors. The decision to grant an interest-free loan to Tanjug, which was obviously unopposed by the Ministry of Culture, Media and Information Society, could be interpreted as giving up yet another segment of the Media Strategy.

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

In late March, the Commissioner for Information of Public Importance and Personal Data Protection submitted to the Parliament a report on the enforcement of the Law on Free Access to Information of Public Importance in 2011. Pursuant to this Law, the same report was furnished to the President, Ombudsman and the Government of the Republic of Serbia. The Commissioner said in the report that the number of citizens addressing him in order to have their rights protected was on the rise: in 2011, there were about 40% more such cases than in 2010 and two and a half times more than in 2009. He stressed such trend to be a confirmation of the growing confidence of the citizens in the institution of the Commissioner, but also a warning pointing to the many problems burdening the fulfillment of the right both to access to information of public importance and to have one's personal rights protected. In his estimate, the situation in two different fields of his competence is different. In the domain of freedom of access to information of public importance, the state of affairs is getting better by the year and this process is, the Commissioner said, pretty much irreversible, needing only to be improved and sustained. He believes it is particularly important to direct the efforts at the affirmation of modern concepts of right to access to information, as well as that the authorities need to release as much information as possible about their work proactively, without particular request. In the field of personal data protection, the Commissioner believes the situation to be different and worse, due to three negative facts. The first is the fact that the Commissioner's staff is undermanned, which is consequence of the Government's reluctance to secure his institution with the adequate premises to work. Secondly, the Government and other state authorities have failed to comply with their commitments prescribed by the Law on Personal Data Protection, which has had utterly negative effects. The third problem, according to the Commissioner, is the inadequate attitude of the competent authorities towards non-compliance with the aforementioned Law. In 2011, no misdemeanor proceedings were instituted for breach of the Law on Free Access to Information of Public Importance, although there were cases where it was appropriate to do so. Furthermore, not a single case where the Commissioner has filed misdemeanor and criminal charges for violation of the said Law has resulted in a final court verdict. The Commissioner therefore believes that the attitude of the state and society towards privacy and personal data protection in particular must be thoroughly changed.

A particular concern in the field of personal data protection is the fact that the Government is yet to pass an Action Plan for the enforcement of the Personal Data Protection Strategy, containing defined activities, deliverables, assignment holders and deadlines, although the deadline for the adoption of such a Plan expired on November 20, 2010. Moreover, the Government has failed to

regulate the archiving and protection of particularly sensitive data, although it was mandated to do so by May 4, 2009. Likewise, some of the existing regulations need to be amended, for they are not aligned with the relevant international documents: the existing Law on Personal Data Protection, which is not fully synchronized with binding international acts or the Serbian Constitution. What is of particular relevance for the media is the part of this Law concerning the processing of personal data by journalists and the media. These provisions are not clear enough and result in cases where journalists, especially investigative ones, face criminal proceedings, with their journalistic work being treated as unauthorized processing of personal data.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. The Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Collective Realization of Performers' Rights (PI)

On March 21, the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the collective realization of performers' rights (PI) announced that in 2012, they would not be charging the fee for the public communication of phonograms and interpretations recorded on these phonograms in small craft shops. Namely, these shops will enjoy a 100% discount from the fee provided for by the tariff. Additionally, OFPS and PI said that they had also proposed to the Commission for the Protection of Copyright and Related Rights adjustments to the tariff of fees charged to bars and restaurants, shopping malls, stores and supermarkets, gas stations, hotels, fairs, casinos and betting shops. The aim is to take into account the size of the city or municipality where the facility is situated. OFPS and PI said they have proposed these measures due to the crisis. They have failed, however, to propose similar measures for the media, in terms of fees for the broadcasting of phonograms and interpretations contained thereon. Accordingly, the media will continue to pay fees under the tariff from 2009 – 3.5% from the total income for commercial radio stations and 1-2% for commercial television stations, whereas the minimum fee for radio stations shall be 7.200 dinars and 9.000 dinars for TV stations. The impression is that the fee charged to broadcasters are the last thing the collective organizations are willing to give up. It seems they are sympathetic with the problems of betting shops and casinos due to the crisis, but not with those of radio and TV stations. Meanwhile, since the tariff negotiations between OFPS and PI, on one side, and ANEM, as the representative broadcasters association, on the other, did not bear fruit, the new tariff proposed by the former two organizations is still before the Commission, which is supposed to make a decision about it.