

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. We have dwelled on the activities of the RBA in the segment of this Report concerning the implementation of the Broadcasting Law.

1.2. In the previous Monitoring Report, we have dealt with the obligation of the RBA to call an open competition for the issuance of broadcasting licenses at the moment where there are available/vacant radio frequencies. Back then, in the context of the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala was stripped off its license, we had pointed to certain inconsistencies regarding the application of Article 49, paragraph 2 of the Broadcasting Law. More specifically, although the Law stipulates that an open competition must be called when, under the Radio Frequencies Allocation Plan, there is a possibility to issue new broadcasting licenses in case when the licenses of the existing broadcasters are revoked, it seems that the RBA is acting arbitrarily: sometimes it calls an open competition and sometimes it doesn't. Apart from the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala had its license revoked, at the present time there is another competition, called in 2012, for the issuance of broadcasting licenses for one regional TV channel in Belgrade, one regional TV channel in the region of Novi Pazar, Tutin and Sjenica and one for the region of Kraljevo, Cacak, Pozega, Gornji Milanovac, Arilje, Sevojno, Ivanjica and Kosjeric. The same competition was called for a number of radio broadcasting licenses, mainly with local coverage. Although the last deadline for submitting the required documentation expired back on December 25, 2012, the RBA not only failed to allocate the licenses, but it also didn't publish the list of complete and timely submitted applications. Under Article 53, paragraph 2) point 2 of the Broadcasting Law, the RBA must, within 7 days from the expiration of the application deadline, release the list of all applicants that have submitted complete and timely applications. Publishing the list is extremely important, since it constitutes the start of the time limits for the issuance of licenses. The Law namely says that the decision on the full-fledged broadcasting license (defined by the Broadcasting Law as a

broadcasting license and one or several licenses for radio stations – transmitters) must be issued no later than within 90 days from the publishing of the list of applicants to the open competition. In the concrete case, the RBA is five months late, which points to a serious lack of capacity to simultaneously conduct several competitions: the said competition was the second one called in 2012, opened before the previous one had even expired. The first competition from 2013 ended in March 2013. By calling the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala had its license revoked, the Agency again created a situation with two simultaneous competition proceedings. This standstill could be settled either by simplifying competition procedures, or by substantially capacity building of the Agency to deal with an increased workload.

1.3. In late May, the RBA informed a great number of broadcasters that they hadn't entered into an agreement with the Organization of Phonogram Producers of Serbia (OFPS). The broadcasters were warned that the OFPS had informed the RBA about the absence of contracts signed with specific broadcasters. The RBA reminded of its competence, under the Broadcasting Law, to make sure that all broadcasters adhere to copyright and related rights regulations, warning that non-compliance with these regulations constitutes grounds for punitive measures to be pronounced by the Agency. Finally, the latter says that broadcasting music, without having entered into the required contract with OFPS, constitutes unauthorized usage of an object protected by the related right.

Under Article 9, paragraph 2 of the Broadcasting Law, the RBA performs tasks related to taking measures in the field of broadcasting, with the aim of enforcing copyright and related rights regulations. Unfortunately, for several years now, the RBA has been unable to recognize its place and role in the copyright and related rights protection system. This is the second time the OFPS addresses the RBA, in an attempt to put pressure on the broadcasters and realize certain objectives. In the previous case, in late 2010 and early 2011, the OFPS complained that the RBA hasn't been receiving the filled-in daily broadcasting logs, with a record of broadcasted phonogram. The RBA forwarded the complaints to the prosecutor's offices, which have conducted dozens of proceedings against stations for corporate offenses. In these proceedings, some stations were severely fined; however, the OFPS was later proven to have based its claims on unlawful general acts, which it later had to amend, at the orders of the Intellectual Property Office. This time, the OFPS objected that the stations didn't renew their annual contracts with them, although these contracts are tacitly renewed even when not signed again each year. The RBA again forwarded OFPS's complaints to the stations, instead of rejecting them as unfounded. In the light of this case, it is evident that the place and role of the RBA in the system of protection

of copyright and related rights, must dwelled on, if not immediately, then in the scope of the consultations that ought to be conducted about the new Broadcasting Development Strategy (the previous one practically expired this year). Furthermore, the capacity of the agencies for discharging this competence, entrusted by the Broadcasting Law and the Law on Special Competences for Effective Protection of Intellectual Property, ought to be substantially increased.

STATE AUTHORITIES

2. Special Prosecutor's Office for Organized Crime

In May 2013, the Special Prosecutor's Office for Organized Crime indicted 18 persons of scamming more than 160.000 people from Serbia, the region and the diaspora by organizing telephone quizzes and astrology programs, while making more than 500 million dinars (slightly less than five million euros) of fraudulent profit in the process. Charges were pressed against the owner and director of the companies "Fonlider", incorporated in Serbia, Germany, Montenegro and Republika Srpska and RTV „Duga“, MHC d.o.o and MHC „Telekomunikacije“, as well as other companies and their employees. They are all charged of the criminal offense of association for the purpose of committing criminal offenses. This group is suspected of organizing and broadcasting radio and television quizzes (in the period from January 1, 2009 to November 27, 2012), where viewers/listeners were offered prizes in money/goods for correct answers to simple questions. The citizens would call the studio on added-value telephone numbers, resulting in a special tariff of 0,5-2 euros per minute. In the course of the quizzes, the citizens that called radio and TV stations or sent SMS messages through the aforementioned numbers, were not switched on the air. They were kept on hold all the time, in order to increase the costs of the calls. Not a single prize in goods or money was ever paid off in the scope of the quizzes. In order to create a semblance of regularity, member of the aforementioned group had been switched on the air, which were tasked with calling from normal landlines, while some of them were actually present in the studio, impersonating quiz participants. Astrology programs were organized in a similar way. Members of the group, their relatives and friends had been switched on the air, while the calls of genuine viewers and listeners, were kept on hold.

The broadcaster RTV Duga, which is mentioned in the Prosecutor's Office press release, is nowhere to be found in the Public Media Register or the Licenses Register of the RBA. The website of RTV Duga says that the program is aired via satellite (GlobeCast World TV for the

USA, Eutelsat W2 for Europe) and in Serbia also through cable systems and satellite DTH distribution. The question is whether, in relation to the aforementioned scams (astrology shows and quizzes), the RBA could have reacted earlier and take the necessary measures? The latter particularly in view of the recent decision of the RBA Council to temporarily revoke the broadcasting license of Radio Fokus, for failing to publicly state the prices of specially-tariffed SMS messages. Under Article 13 of the Broadcasting Law, the RBA is authorized to monitor the work of broadcasters. Article 68, paragraph 1, point 6) of the same Law stipulates that the broadcasters shall be obligated to refrain from broadcasting programs taking advantage of the gullibility of the viewers or listeners. Furthermore, back in 2007, the Council passed a recommendation for broadcasters to refrain from airing programs based on fortune telling, horoscope interpretation and similar non-categorizable content. Hence, there is no doubt that the RBA could have reacted had the above been the case of a licensed broadcaster. However, RTV Duga doesn't exist in RBA's Licenses Register. From the press release of the Special Prosecutor's Office for Organized Crime, one is unable to clearly see the full technological chain of airing the controversial programs. What is clear is that the studio was in Belgrade, although the program was aired by satellite (GlobeCast World TV and Eutelsat W2), but not where the satellite uplink was located. The provisions of the Broadcasting Law concerning the issuance of satellite broadcasting licenses are difficult to apply in practice. Specifically, they stipulate that the request for the issuance of a license must be submitted by the satellite station operator. There is no clear definition as to what is a satellite station operator, since in theory it could be the operator of the satellite uplink, the owner of the satellite or the operator of the DTH satellite platform. The Law even contains a provision under which, for programs that may be received through free (uncoded) satellite broadcasting on the territory of the Republic of Serbia, the licenses must not be acquired at all. In theory, if the satellite uplink operator is not obligated to obtain a license for sending a signal to the satellite, the satellite broadcasting of such a signal, if not be encoded, would be exempted of the license regime in Serbia. A similar situation would exist if the signal from the studio in Serbia was sent to the uplink outside of Serbia. The press release of the Special Prosecutor's Office for Organized Crime only shows the extent to which the Broadcasting Law is obsolete, devoid of concepts that would provide answers for various situations, including the above-described fraudulent quizzes and satellite-aired astrology programs. Serbia lacks clear rules, modeled upon those contained in the ratified European Convention on Cross-border Television, with linkage points based on which such cases, including broadcasters the license of which wasn't issued in Serbia, would fall under the jurisdiction of domestic authorities (in this case, the RBA), on the basis of the fact (for example) that the given broadcaster was incorporated in Serbia, where its head office is located, the studio and the bulk of the employees, as well as its uplink.