

## 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 also elaborated on the activities of the RBA in the section of this Report concerning the implementation of the Broadcasting Law.

1.2. On September 13, 2013, at the same session where it rejected the complaints of “Kopernikus cable network” d.o.o. from Nis and “Nova.rs Television” d.o.o. from Belgrade against the decision not to allocate the license for broadcasting the program on the national frequency left vacant after the shutting down of TV Avala, the RBA Council decided to reject as unfounded the petition by “Ringier Axel Springer”, the publisher of the daily “Blic” (related to the content of the program of TV Pink). From the short press release posted on the RBA’s website, it is not possible to deduce to what the petition pertained. According to the Broadcasting Law, any natural or legal person may file the petition, if they believe that the programs of radio and TV stations offend or threaten their personal interests or the interest of the public. We remind that the RBA Council has initiated somewhat earlier *ex officio* proceedings (which were joined to the proceedings conducted under the petition filed by Dragan Djilas, the President of the Democratic Party) against TV Pink, due to that station’s repeated attacks against Veselin Simonovic, the Editor-in-Chief of “Blic”. In these proceedings, TV Pink was issued a warning. It remains unclear if that last decision to reject the petition concerns the same matter over which the RBA rejected the petition for formal reasons, since it was deciding about the incident *ex officio* or if it was something else. The opacity in the work of the RBA and the failure to publish the detailed reasons, for which the concrete petition was rejected, leaves room for speculation, especially because the penalty for repeated injuries after a warning may be the temporary suspension of the broadcasting license for a 30-day period. In that sense, the transparency of the regulator’s work should be improved by making the explanations of its decisions public.

#### 2. REPUBLIC ELECTRONIC COMMUNICATIONS AGENCY (RATEL)

RATEL has installed a remotely controlled receiver on Rudnik Mountain, which will allow direct and instant insight in the utilization of the broadcasting spectrum in the central part of Serbia. According

to the press release published on September 18, the main purpose of the receiver is investigating and averting potential interference in the reception of stations of the airmobile and air radio-navigation service, but also uncovering unauthorized use of the radio-frequency spectrum. Until now, the problems with unauthorized use of the radio-frequency spectrum, however, were not (at least not primarily) caused by deficiencies in uncovering pirate broadcasters. They were rooted in the complicated, slow and unclear procedures, as well as in poor cooperation between various authorities with competences in this field. The receiver on Rudnik will perhaps help uncover the pirates earlier, but it will not facilitate RATEL's decision on shutting down the pirate transmitters. A particular problem is the fact that, because of RATEL's slow issuance of licenses for additional coverage (licenses which, under the Broadcasting Law, are issued to licensed media in areas that are not sufficiently covered by the signal for various reason), as well as due to tolerating the fact that RTS has never licensed all its transmitters. Meanwhile, for those that were licensed, the RTS returned the licenses in order to avoid paying the required fees. This has created a paradoxical situation where the biggest pirate is, in fact, the RTS, closely followed by commercial broadcasters that have not been issued licenses for additional coverage.

### **3. THE COMPLAINTS COMMISSION OF THE PRESS COUNCIL**

The Complaints Commission of the Press Council was deciding in August on ten complaints proceedings. In eight of them, the Commission found that the Journalist Code of Ethics had been violated. Even if we disregard the fact that in four of the ten cases, one and the same person submitted complaints against various newspapers, the sheer number of cases ruled upon by the Commission shows that this body has continued to build the position of a relevant self-regulator, enjoying the confidence of those that are unhappy with the way print media, including Internet portals, report about them.

Out of the cases ruled upon by the Complaints Commission in August, particularly noteworthy is that of "Ringier Axel Springer" vs. the daily "Informer" and Ana Radmilovic vs. "Nova srpska politička misao" (New Serbian Political Thought). The first case has shown how the orchestrated campaign against the company "Ringier Axel Springer" and the daily "Blic" moved from television to the daily press after the reaction of the RBA and the warning issued to Pink Television. The daily "Informer" continued in the footsteps of TV Pink, in the period between August 9 and August 17. "Informer" released two texts every day in average, typically without any arguments or proof. The texts claimed that RBA's warning to TV Pink amounted to censorship, while "Blic" was qualified as "holy cows", "the mafia" and was accused of being a "stinking newspaper" that had "stolen millions". Some Serbian media definitively serve as a mechanism for defamation. In the case of electronic media, the

regulator has effective mechanisms at its disposal for suppressing such phenomena, since it is authorized to go as far as to revoke the broadcasting license in the case of repeated violations. The self-regulatory body, such as the Press Council, does not dispose of such mechanisms. If the RBA continues doing its job thoroughly penalizing the offenders, it is expected that unacceptable content will move from the airwaves to Internet portals or newspapers, which will, in turn, constitute a new challenge for the Complaints Commission.

The case of Ana Radmilovic against “Nova srpska politička misao” is interesting for various reasons. It namely shows that the Press Council or the courts do not have a clear position about whether comments, as user-generated content on a media website, constitute part of the concept of the media or not. In the concrete case, Ana Radmilovic wrote a text for “Nova srpska politička misao”, which drew a barrage of offensive comments on that website. The Editor-in-Chief of portal Djordje Vukadinovic also wrote a comment. Vukadinovic distanced himself from the text, trying to “protect” the author. However, Vukadinovic quoted the improper comments, including those that were deleted by the moderator. The author tried to respond, but the editor did not publish her reply. “I think it is really terrible to be unprotected not only from the commentators, but also from the editor himself”, Ana Radmilovic wrote in her complaint. The Complaints Commission found that, by posting the readers’ comments and that of the editor-in-chief on Radmilovic’s text “On Poverty of Language and Mind”, “Nova srpska politička misao” violated the Code of Ethics in the part concerning the obligation of journalists to oppose everyone promoting any kind of discrimination or hate speech, as well as to do everything in their power to avoid discrimination based on race, gender, age, sexual orientation, language, religion, political or other opinion and ethnic or social background. However, the problem here is the interpretation, under which readers’ comments are considered a media publication, while an Internet portal is viewed as a publisher responsible for content. In this way, the responsibility of media is extended not only to editorial content, but also to user-generated content. The Serbian courts take a similar position. For instance, in recent verdict against Radio 021, the Higher Court and the Appellate Court in Novi Sad fined that station by ordering it to pay damages not in the relation to the content of news published on that Radio’s website, but in relation to the user comment on that news. It seems, however, that such interpretation about user-generated content unconditionally being part of the concept of media, namely of “public information” and, ultimately, editorial responsibility, represents a disproportionate restriction of freedom of information, which is in disaccord with the applicable regulations in Serbia. Namely, posting a comment on a website rather constitutes an information society service (in terms of the Law on E-Trade) than public information in terms of the Law on Public Information. Namely, under Article 3, paragraph 1, subparagraph 3) of the Law on E-Trade, an information society service is a service provided remotely, for a fee, by the means of electronic equipment for the storage of data, at the personal request of the user. In the concrete case, all elements of the concept of information society service

are fulfilled, including the fee, which is, under the business model embraced by most media internet portals in Serbia, not charged directly from the users, but indirectly, from advertisers. That is why it seems that, in such cases, one should start from the provision of Article 16 of the Law on E-Trade about the exclusion of responsibility of the provider of the information society service, namely Article 20, paragraph 1 of the Law on E-Trade, which expressly stipulates that, in providing the service, the service provider is not required to review the data he has stored, conveyed or made available, or to investigate the circumstances that would point to illicit actions by the service beneficiary. While the Complaints Commission may be given a free pass for considering user-generated content on media websites with editorial content (since the Commission, in decision-making, is not bound by other material law standards apart from the provisions of the Code), the same approach by the courts, which are obligated to rule in accordance with the Law – in his case the Law on E-Trade – is utterly problematic and hardly acceptable.

## STATE AUTHORITIES

### 4. MINISTRY OF CULTURE AND MEDIA

As early as back on August 9, the Independent Journalists' Association of Serbia (NUNS) sent a request for access to information of public interest to the Ministry of Culture and Media. NUNS requested to know who had made the Draft Law on Public Service Broadcasters, which was posted by the Ministry on its website. The consensus is that the Draft in question differed from the one produced by the working group of the Ministry for drafting media laws and far worse than the latter. Hence, it is logical to ask who in Serbia writes the Draft Law on Public Service Broadcasters outside of the working group established by the decision of the competent minister. In mid-August, the Ministry of Culture and Media decide to set up a new working group for making the Draft, which practically means that the Draft posted on the website has been abandoned, just like the version elaborated by the previous working group. The job of the new working group was to consult no less than four draft versions produced in the last few years and try to consolidate them, i.e. to find the best solutions. The Ministry waited until September to respond to NUNS' request to disclose the identity of the authors of the controversial Draft that was available on the Ministry's website from August 7 to August 23. The response signed by the Assistant Minister Dragan Kolarevic said that he had written the Draft himself, together with Zeljko Poznanovic, Advisor in the Information Sector. It also said that there was no decision by the Minister Bratislav Petkovic to set up a working group for drafting the text of the Law. In the response, Kolarevic said that the previously established working group for drafting media laws had not finished its work on the Draft Law on Electronic Media and Public Service Broadcasters. The new Minister of Culture Ivan Tasovac presented its plan and

program of activities to the Serbian Parliament's Culture and Media Committee on September 10. He highlighted transparency as one of the priorities in passing the Law. By the end of September, Dragan Kolarevic, who was practically the proponent of "opacity in passing the law", since he wrote it without the decision of the Minister and together with the aforementioned advisor in the Information Sector and perhaps other unidentified people, had not been dismissed yet from his assistant minister position.

## 5. THE COMMISSION FOR THE INVESTIGATION OF DEATHS OF JOURNALISTS

After a session held on September 5 in its extended composition, including the Director of the Military Security Agency (VBA) Svetko Kovac and the Special Prosecutor Milko Radisavljevic (and also with the attendance of the leaders of investigative teams formed by the Director of the Security Intelligence Agency (BIA) and the Director of the Police), the Government's Commission for the Investigation of Murders of Journalists said that it had come in the possession of an increasing number of relevant evidence about the assassins and the instigators in relation to the case of the murder of "Novosti" correspondent Milan Panic, as well as that the investigation had obtained an increasing number of elements reinforcing the credibility of the future indictment. The Chairman of the Commission Veran Matic said that the "progress made by the investigative teams requires a wider participation of the competent institutions, in order to come in the possession of facts necessary for raising an indictment, prosecuting and sentencing the perpetrators and the persons that ordered the assassination". Matic confirmed that the biggest progress had been made in the case of Milan Pantic. In his words, new paths have been opened in the investigation of the murder of Slavko Curuvija, "in order to prove the very convincing facts about the assassins and the persons that ordered the killing so that an indictment may be raised." In the case of Dada Vujasinovic, the Commission is expecting the response of the FBI, which was asked to help in this case with its laboratory and experts. The investigation in that case has continued to interrogate persons who have not previously been questioned.

We remind that the Commission for the Investigation of Murders of Journalists was established in early February, with the aim of investing additional efforts in investigating the reasons why the perpetrators and those who stand behind the murderers of Dada Vujasinovic, Slavko Curuvija and Milan Pantic have not yet been identified. The mandate of the Commission was subsequently extended to the case of the killing of RTS employees in the bombing of 1999. Dada Vujasinovic was killed on April 8, 1994; Slavko Curuvija was slain on April 11, 1999 and Milan Pantic on June 11, 2001. The assassins and the persons that commissioned the murders have remained unknown to this day and nobody has ever been brought to justice in relation to these crimes.