



# **LEGAL MONITORING OF THE SERBIAN MEDIA SCENE**

Report for May 2014





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*The contents of this Report are the sole responsibility of the authors and do not necessarily reflect the views of the Civil Rights Defenders.*



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## **A. INTRODUCTION – SERBIAN MEDIA SCENE IN THE PERIOD JANUARY – APRIL 2014**

### **General assessment of the state of media freedoms and most important developments impacting the media landscape in the period January – April 2014**

The general impression is that the degree of realization of media freedoms has fallen markedly in the first four months of this year. The already present problem of self-censorship has become increasingly ubiquitous, while there are occasional cases of overt pressure against the media. Attacks on journalists haven't stopped, on the contrary – they have intensified. Media related laws are yet to be passed, the privatization of the media awaits the adoption of the law, and the digital switchover hasn't entered in its final phase yet, while the media market is still stagnating.

Although there were signs that the media laws would be adopted before the EU screening in May, it didn't happen. The snap parliamentary elections held in March 2014 have once again postponed this process indefinitely. At the constitutive session of the Serbian Parliament on the 27<sup>th</sup> of April, the then Prime Minister Designate, now Prime Minister Aleksandar Vucic, said in the presentation of the new cabinet's program that the media laws would be adopted by the end of the summer. In the period covered by this Introduction, no specific date could be discerned and according to the latest available information, the draft media laws are still being adjusted with the competent European Commission directorates.

In early February 2014, video content depicting in a satirical way the emergency rescue of people from the blizzard near the village of Feketic, with the participation of the then First Prime Minister Aleksandar Vucic, were removed from YouTube. The controversial clips used in the background are from the report of the national television (RTS) about the rescue, accompanied by a satirical text. The clips were promptly removed on the grounds of multiple notifications on alleged copyright violations, under YouTube rules. The applicant of the notification was, in most cases, a private company from Austria – KVZ Music, which has an office in Serbia. According to the information found on their website, the company is involved in global digital distribution of music, music videos and melodies, as well as in providing customer services (record labels and performers). In relation to the removal of the said clips, an official of the municipal committee of the Serbian Progressive Party (SNS) tweeted, in response to a question by another Tweeter user about how they are able to remove the clips involving Vucic (the then First Prime Minister), responded "The mind rules, but a large number of people is useful too". This was interpreted as a sign that the ruling party was behind removal of the controversial clips. Furthermore, the role of the RTS in that case has never been completely elucidated. The report of the national television was used in the background by the author of the satirical clip and KVZ allegedly reacted on behalf of RTS, as an authorized agent. Reacting to this case, SHARE Defense, part of the SHARE Foundation involved in protecting the

rights of the citizens on electronic communication networks, demanded from RTS to explain its role in the removal of satirical clips, as well as its relationship with a private Austrian company. RTS' response didn't clarify whether the RTS asked KVZ to remove the clip or if KVZ acted on its own<sup>1</sup>. Journalist and media associations condemned the removal of the clips, while SHARE filed criminal charges for the felony prescribed in Article 149 of the Criminal Code – obstruction of the printing and dissemination of printed items and broadcasting. To this day, the outcome of these criminal charges remains unknown, or if any actions have been taken at all/if the prosecutor will opt for initiating criminal proceedings against the responsible persons in KVZ. Particularly significant for this case is the fact that the mechanism, which is aimed at protecting copyright, was used for the removal of satirical content, although under the current Law on Copyright and Related Rights, a processed copyrighted work (in the case of a parody and cartoon/caricature and if such processing doesn't create or may not create confusion as to the source of the work), is allowed and free. Interestingly enough, in the same period other commercial content (such as domestic RTS-produced series) were not removed from the Internet for copyright violations, while it has been done with a satirical clip containing a report of the national television about the rescue of people from a blizzard, with the participation of the then Deputy Prime Minister.

Also related to the “Feketic” affair, Tanjug's journalist Jasminka Kocijan claimed she was a victim of mobbing after she wrote on her Facebook profile that she had learned that Red Cross teams were unable to access the snow-covered cars until the filming of the rescue operation, involving the then First Prime Minister, was finished. Kocijan said that, after her Facebook post, she was denied annual leave and transferred to a different work position. The Red Cross rebuffed the claim that their crews had to delay their rescue operation in order for the filming of the First Prime Minister to finish. There is currently no information about whether Kocijan's mobbing claims are being investigated or dealt with in any other manner, as she had announced.

April saw the formal (unsuccessful) completion of the repeated open competition for the allocation of the TV broadcasting license on the territory of the Republic of Serbia. The RBA Council first decided in March not to issue any licenses and rejected the objections of the candidates to such decision in April. ANEM pointed several times to the formal and material shortcomings of the competition, claiming that the insistence on calling the competition by invoking Article 49 of the Broadcasting Law has threatened and delayed the digital switchover. The second calling of the competition, according to ANEM, after a compromise was reached related to the use of the frequencies for digitalization, has brought into question the suitability of the remaining frequencies (that were to be allocated to the future broadcaster) for ensuring full national coverage. Furthermore, the same candidates applied to both competitions and they were found twice to have not met the criteria prescribed by the Broadcasting Law (hence neither of the candidates received

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<sup>1</sup> More on: <http://www.shareconference.net/sh/defense/vase-pravo-da-vam-uklonimo-snimak>

the required majority of the RBA Council members). On the eve of passing the decision about the above mentioned objections, the RBA was exposed to strong pressure by one of the candidates, which waged an overt campaign (on its television channel and in other media) during the objections procedure, with the aim of arm-twisting the independent regulator to change its decision and allocate the license. The RBA did not bow to pressure and remained consistent in its decision.

Also in April, the Constitutional Court of the Republic of Serbia passed a decision related to ANEM's initiative for assessing the constitutionality of the provisions of the Law on the Film Industry. In that decision, the Court found that the said provisions were not in accordance with the Constitution. We remind that on May 30, ANEM submitted an initiative to the Constitutional Court for the assessment of the constitutionality of the provisions of Article 19, paragraph 1, subparagraphs 3 and 4 of the Law on the Film Industry, which provisions stipulate that the funds for the development of the film industry shall be provided (among other sources) by allocating a portion of fees collected by the Republic Broadcasting Agency (RBA) (20%) and the Republic Agency for Electronic Communications (RATEL) (10%) from broadcasters and telecommunication operators. ANEM claimed that the enforcement of these provisions, which undermined the system of financing of regulatory broadcasting and electronic media bodies, may harm both the functioning of the media and the work of regulatory bodies, and hence the overall operation of the broadcasting and electronic communications sector in Serbia. In its initiative, ANEM presented its reasons for believing why the disputed provisions were in direct contravention of the Constitution, the applicable regulations in the area of broadcasting and the Media Strategy, as well as of the relevant European regulations. The Association proposed the Constitutional Court to establish if these provisions of the Law on the Film Industry are in disagreement with the Constitution. Among other things, ANEM invoked the applicable international standard of human and minority rights in the domain of the protection of freedom of expression defined by the Recommendation of the Committee of Ministers of the Council of Europe no. 23 from 2000 about the independence and the functions of regulatory bodies for the broadcasting sector. Pursuant to the said Recommendation, funding is the key element of the regulatory bodies' independence and it should be regulated by law, according to a clearly defined plan. The same Recommendation goes on saying that public authorities will not use their competences related to financing in such a way that would undermine the independence of regulatory bodies, as well as that the financing mechanisms for regulatory bodies must not be subject to anyone's ad hoc decisions. With its decision finding that the contested provisions were not in accordance with the Constitution, the Constitutional Court practically confirmed ANEM's allegations that the arbitrary meddling in the funds intended for the financing of regulatory bodies is tantamount to undermining their independence.

The decision on the unconstitutionality of the provisions of the Law on the Film Industry ensued after a decision by the Constitutional Court passed in January, also on the initiative of a group of

petitioners, including ANEM. The Court then found that certain provisions of the Law on the National Councils of Ethnic Minorities were unconstitutional, including those providing for the possibility of assigning founding rights in state-owned media in minority languages to national councils. Based on its prior decision that the Republic and the autonomous province (or local self-government unit) may not be founders of public media, and on the provisions of the new Law on Public Enterprises according to which neither the Republic, nor the autonomous province or local self-government may be founders of media, the Constitutional Court found it was legally and constitutionally impossible, by the Law on the National Councils of Ethnic Minorities, to provide for the assignment of founding rights to the national councils. However, the Court emphasized that the established unconstitutionality of the above mentioned provisions does not preclude the hitherto transfer of founding rights in several public media. Furthermore, starting from the specific statutory position of the Public Broadcasting Service (PBS), the practice of the ECHR and international standards in the area of freedom of media, the Constitutional Court found that the powers of the National Councils, provided for by the Law on the National Councils of Ethnic Minorities, in relation to participating in decision-making about the elections of the body of the republic and provincial PBS, were not in compliance with the Constitution. These provisions provided that the national councils will give their opinion in the procedure of appointing the members of the managing board, programming board and the managing director of the PBS of Serbia and the PBS of Vojvodina, if these institutions broadcast in the language of the respective ethnic minority; they will set the criteria for the choice of editor-in-chief of the program in the minority language in the PBS institution and propose to the managing board of the PBS the appointment of the responsible editor of the program in the minority language among the shortlisted candidates.

The month of April saw a new case where the Complaints Commission of the Press Council failed to come to a decision in the complaints procedure. It was the complaint by Vesna Pesic, Nikola Tomic, Vesna Malisic, Tamara Spaic, Branka Mihajlovic, Branka Prpa and Vukasin Obradovic against the daily "Politika", in relation of the text "The Third Bullet of Branka Prpa", published on April 8, 2014. The text accuses a circle of people of discrediting, for political reasons, the investigation of the assassination of Slavko Curuvija. The claimants said that the text violated the provisions of the Serbian Journalists' Code of Conduct, which concern the truthfulness of reporting, responsibility and independence of journalists and the culture and ethics of the public word. At issue was the part of the text concerning Branka Prpa and privacy provisions. "Politika" defended itself claiming that the plaintiffs "have failed to contest a single fact presented in the text or the accuracy of the statements and quotes the author has built his conclusions and value judgments on", but rather his personal opinion and views. The majority of the members of the Commission were of the opinion that provisions of the Code concerning the responsibility and independence of journalists and the culture and ethics of the public word had been violated, especially in the part about cherishing the culture and ethics of the public word and those about truthfulness of reporting. Under the latter provisions, journalists may not publish unfounded accusations and slander and must respect the

dignity and integrity of the people they write about. The Commission was split on the part concerning the respect of privacy; some members believed that one's privacy may not be violated by quoting things that had already been published. Three members of the Commissions accepted the position of "Politika" that the author of the text voiced his opinion and value judgments and not the facts the accuracy of which may be contested. Hence, there may not be any violation of the above mentioned Code of Ethics. While there was a two-thirds majority, no decision was passed, since the second condition provided by the Rules of Procedure of the Commission – requiring that such majority must include at least one representative of each of the four founders of the Council and no less than one representative of the public – was not fulfilled. Since the two-thirds majority did not include representatives of the Association of Journalists of Serbia (UNS), the decision could not have been passed. Unfortunately, the Complaints Commission of the Press Council thereby demonstrated that, in spite of all positive steps it initiated in the previous period, it remained incapable of handling cases where the plaintiffs included the President of one of the four founders of the Council (Vukasin Obradovic, the President of NUNS), with the complaint being lodged against the media outlet the responsible editor of which is the president of the second of the four founders of the Council (Ljiljana Smajlovic, the President of UNS). We can only hope that this case will not discredit the concept of self-regulation in the media sector.

During the first four months of 2014, a significant leap forward was made in the collaboration between the representative broadcasters' association with the collective organizations for the protection of copyright and related rights (SOKOJ, OFPS and PI). First, an agreement was reached about the tariff between OFPS and PI and ANEM; a Protocol with SOKOJ was also signed. After lengthy negotiations, ANEM (as the representative association of broadcasters – users of copyrighted music works) reached with SOKOJ an arrangement about a Cooperation Protocol. Under that Protocol, substantial discounts and benefits for broadcasters were provided from the existing tariffs, in relation to paying the minimum fee for the use of copyrighted music works. These discounts and benefits will be used under equal conditions by all radio and TV stations paying the minimum fee. The Protocol also regulates the issue of defraying the debt from the previous period. On the other hand, upon agreeing that the existing tariff is onerous, ANEM and SOKOJ agreed upon (under the same Protocol) the formation of a joint expert commission, which will prepare the conditions for the start of new tariff negotiations.

In February, ANEM reached with OFPS and PI an agreement on the single tariff for the fees for broadcasting phonograms and interpretations recorded on them. This has marked the successful completion of the negotiations that were conducted since October 2013, as well as the introduction of a new tariff for the first time since 2009. That tariff changed the system of calculating the base (hence the base includes solely the broadcasting revenues), the amounts of the fees are determined as a percentage of the broadcasting revenue so as to factor in the specific features of radio and

television. The above takes into account the significance of the exploitation of the objects of protection of copyright-related rights for the revenues of the broadcaster. Discounts were also introduced, as well as the right to deduct certain marketing costs from the base for calculating the fee.

## **B. SERBIAN MEDIA SCENE IN MAY 2014**

### **I FREEDOM OF EXPRESSION**

In the period covered by this Report – May 2014 – there were several cases pointing to possible violations of freedom of expression.

#### **1. Threats and pressures**

1.1. Unknown attackers have broken the windshield on the car of Dragana Zecevic, the correspondent of "Vecernje Novosti" from Kosovo and Metohija, which was parked in front of her family house in Kursumlija. The incident has been reported to the police, which has carried out an on-site inquest and is currently looking for the perpetrators. While Zecevic was reluctant to point any fingers, she said the attack is a warning and called on the police to elucidate the matter as soon as possible.

The journalists in Kursumlija reporting for Belgrade-based media have often been targeted by threats and verbal attacks in the past. In the past few years, many of them have had their cars vandalized, without anyone ever being held to account. Such incidents may objectively intimidate them and obstruct their work and are as such in direct contravention to the Law on Public Information, which says that it is prohibited to put any kind of physical or other pressure on public media and their staff, which influence might obstruct their work.

1.2. Journalist Srdjan Skoro has been removed from the position of news editor of the daily "Vecernje Novosti", twelve days after he had criticized, in the morning news of the national television (RTS), the appointment of certain ministers. In relation to Skoro's claims on RTS, the ruling Serbian Progressive Party (SNS) issued a press release the same day, saying that the public service broadcaster serves as an "outlet for the vilification of Aleksandar Vucic". Skoro claims that, after his appearance on RTS, he received a call from the Director and Editor-in-Chief of "Novosti" Ratko Dmitrovic. According to Skoro, Dmitrovic told him he had received several telephone calls in

relation to Skoro's interview on RTS and asked him what exactly had happened. Skoro also says Dmitrovic told him that "Novosti" are not an opposition newspaper and that he must watch what he says. The journalist was subsequently handed over a decision about his reassignment to a different workplace, with no accompanying explanation. Dmitrovic has said that he dismissed Skoro because he was dissatisfied with his work and that the dismissal and reassignment had nothing to do with the criticism uttered against the Prime Minister and several ministers on RTS. The Prime Minister Aleksandar Vucic, on the other hand, called the press release issued by his political party after Skoro's interview "ridiculous", saying he supports critical thinking.

Pursuant to the provisions of the Law on Public Information, public information in Serbia shall be free and in the interest of the public. Article 31 of that Law says that a journalist may not be laid off, have his salary reduced or his position in his media outlet worsened, due to a personal opinion expressed outside of his public media outlet, in the form of a personal view. Article 2 of the Law on Public Information stipulates that it is prohibited to directly or indirectly restrict freedom of public information, especially by misusing authority or rights, or in any other way that may restrict the free flow of ideas, information or opinions. Particularly significant in the case of Srdjan Skoro is the fact that the state, while not being the majority owner of Novosti, practically runs that media company. Namely, the majority owner, businessman Milan Beko, has already admitted to control more than 62% of the shares of Novosti through his various affiliates. After that admission, the Securities Commission restricted Beko's voting rights related to his shares. Consequently, Beko possesses only 25% of the voting rights, the threshold after which he was required to issue a binding offer for the takeover of the remaining shares (which he didn't do). Hence, the state, which directly owns 29,5% of the shares and indirectly even more (since the state pension fund owns more than 7% of the shares of Novosti), ended up being able to control the media outlets published by Novosti, among which the most prominent is the daily "Vecernje Novosti".

1.3. Part of the employees of Radio Subotica, including the editor-in-chief, have accused the Acting Director of that media Ljubisa Stepanovic, of mobbing and threatening the journalists. In a press released they claimed Stefanovic constantly interferes with the work of the Serbian language department, humiliating the journalists, summoning them for "interrogations", threatening them with layoffs, telling them what they should and should not put on the air, which has led to an atmosphere that almost culminated with a brawl between the Director and certain journalists. The employees claim that the Acting Editor-in-Chief of that radio station Ljiljana Elek complained several times about Stepanovic's behaviour to the Mayor of Subotica Jene Magajic and member of the City Council in charge of public information Oto Bush, but was told that Stepanovic had been appointed as part of a political coalition arrangement. Stepanovic was appointed Acting Director on February 20, with the backing of the Socialist Party of Serbia. The press release denouncing Stepanovic was signed by seven of the twelve journalists of the Serbian language department of

Radio Subotica, as well as some from the Hungarian and Croatian language departments. The Hungarian language department distanced itself from the allegations.

Under the Law on Mobbing, all kinds of harassment at work and in relation to work are prohibited. Harassment is defined as any form of repeated active or passive behaviour towards and employee or a group of employees, with the goal of or tantamount to violating their dignity, reputation, personal or professional integrity, health, position of the employee or such behaviour that causes fear or creates a hostile, humiliating or degrading environment, deteriorates working conditions or isolates the employee, causing him to resign from his job or terminate his employment contract or other arrangement. Notwithstanding whether there was or was not mobbing in the above described case, the trend of worsening treatment of journalists by their employers is ubiquitous. Particularly worrying is the absence of systemic mechanisms to protect journalists from pressure coming from the owners - the local government in the case of Radio Subotica, since the latter is a non-privatized local media. In spite of publicly supporting the withdrawal of the state from media ownership, the state keeps using the latter for satisfying the appetite of the members of various coalitions at various levels of government. Political appointments to positions in public media financed from the budget, which media are supposed to act in the interest of the citizens, transforms these media into marketing departments of the ruling political oligarchy. It comes as no surprise the latter is often achieved by pressure and mobbing.

1.4. Nenad Tomic, journalist and editor of the online news portal Ruma, is one of the persons against whom criminal charges were brought for causing panic. On Friday, May 16, Tomic released a text entitled "Dam on Borkovac Breached", saying that "according to off-the-record information, the dam on the Borkovac Lake has been breached but it isn't anything serious." The controversial text also said that Ruma would be left without water by 3 PM, but that the director of the public water management company couldn't be reached for comment. The text went on saying that the President of the Municipality of Ruma Dragan Panic had said that the situation on the dam was under control and that there was no reason for panic. Criminal charges were brought against Nenad Tomic over that text and he was interviewed by the police. He has said that the authorities in Ruma used the emergency as an excuse to apprehend him for allegedly spreading panic and misinformation online. Tomic stressed that he had tried to check the accuracy of the information, but that the president of the municipality Panic was unavailable for comment as usual. Only five minutes after the text about the breach of the dam was published online, Tomic says, Panic rebutted the claim on his official website and filed criminal charges against the author. According to Tomic, the real reason for the criminal charges and the interview by the police was his previous comments about Aleksandar Martinovic, the President of the Council of the Municipality of Ruma.

The journalist Nenad Tomic is not the only one that was apprehended by the police for allegedly causing panic during the floods that hit Serbia. Other cases are analysed in the part of this Report about the monitoring of the work of the state authorities, more precisely the work of the Prosecutor's Office for Cyber Crime. What makes Tomic's case specific is the fact that he is the only editor of a media outlet to which it has happened. Causing panic and unrest is indeed a criminal offense provided for by the Criminal Code (defined as causing panic or seriously undermining the public order or obstructing the enforcement of the decisions passed by state authorities or organizations discharging public authority, by communicating or spreading false news or claims). A qualified form of that criminal offense exists where the false news or claims are communicated or disseminated through public media or similar means or at a public gathering. The key questions in the context of Tomic's case are the following: how the Prosecutor will prove the existence of premeditation (if it comes to a trial at all), namely the awareness of the defendants that what they have communicated or disseminated was a lie, namely if panic had existed at all or could have been created in the concrete case, as well as the relationship between the responsibility for communicating or disseminating false information or the claims and rights of the editor and journalist to be mistaken. Namely, the journalist and the editor are not entitled to depart from the standard of due journalist care. More specifically, in every case, before publishing/releasing information containing data about a certain event, phenomenon or person, they must verify its origin, accuracy and completeness with the attention appropriate in the given context. In the concrete case, if the local authorities and public agencies did not do their job and weren't available to the media and editors for checking the origin, accuracy and completeness of the information in question, the question is what degree of due journalist care would the court consider appropriate in the given circumstances.

## **2. Legal proceedings**

2.1. Three persons - a municipal official from Becej, his wife and brother in law, have sued the founder of the MojBecej.rs website, the Becej Youth Association (BYA), claiming non-financial damages for anguish suffered due to information released on the said website. They claim 1.200,000 dinars in damages. Namely, the website of the BYA reported that criminal charges for embezzlement had been filed against the former director of the public company "Vodokanal" Slobodan Mitrovic. Mitrovic requested from the BYA to publish a response on the website (which they did), in which response he rebutted claims about this responsibility and pointed his finger to other persons. Tamara Ivanisevic, mentioned in Mitrovic's rebuttal, also requested her response to be published (and it was). Finally, Mitrovic again requested his second rebuttal to be published, this time a response to Tamara Ivanisevic's claims from her own response (and his second rebuttal was published). The essence of all the responses published was the denial of their own responsibility and pointing to that of others. The war of responses between Mitrovic and Ivanisevic was, in turn,

responded to by the municipal official, his wife and brother in law. In the concrete case, the reason was Mitrovic's response, but Mitrovic himself wasn't sued - only the founder of the website had legal charges brought against him.

The key assumption here is that the response, namely the rebuttal, contained inaccurate information, which the journalists and the editor failed to double check with due care appropriate to the circumstances. It goes without saying that the journalist and the editor are required to double check the origin, accuracy and completeness of information about a specific event, phenomenon or person, prior to releasing it. Furthermore, according to the Law, the person, whose rights and interests might be harmed by such information (in this case the former Director of the public company "Vodokanal" Slobodan Mitrovic), was entitled to demand from the responsible editor to publish a response free of charge, in which response that person would have claimed that the information in question was inaccurate, incomplete or wrongly conveyed. What may be questionable in this case is the balance between the duty to double check information to be published and the obligation to publish a rebuttal. Namely, the responsible editor is not required to publish a response, if due to the content thereof its publication may result in civil liability towards third parties. In practice, editors are often unwilling to weigh if the content of the response might or might not lead to such an outcome. At the same time, the failure to publish a response is very likely to cause civil liability towards the person whose response is not published. Even worse, no clear criteria have been established in the case law of Serbian courts (although the Law on Public Information has been in force for more than a decade) based on which media editors could decide which degree of civil liability towards third parties in each concrete case suffices to justify a decision not to publish a rebuttal. The trial against the BYA should be watched closely for any response the court could provide as to the disputed issues related to the grounds for refusing to publish a rebuttal.

## **II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS**

### **1. Law on Public Information**

1.1. The implementation of the Law on Public Information has been elaborated on in the segment about freedom of information.

## 2. Broadcasting Law

In late May, the RBA Council held a session to review a petition related to the participation of the convicted criminal Kristijan Golubovic in the programs of almost all national commercial broadcasters. Specifically, Golubovic was featured in the shows "Ami Dži šou" and "Teška reč" on TV Pink, "Bulevar" on TV B92, "Eksploziv" on TV Prva, and "Goli život" aired on TV Hepi. The Council Found that nothing in these shows has violated the Law and the Broadcasters' Code of Conduct (BCC), stressing it has made its decision also factoring in the provisions of the Constitution concerning freedom of expression, the Law on the Ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the Law on Accountability for Human Rights Violations, as well as the provisions of the AVMS Directive (prescribing that the regulator may not diverge from the principle of free flow of information and ideas and independence of broadcasting organizations, which constitutes the very foundation of their broadcasting policy.

Invoking documents concerning the protection of the right to freedom of expression, as the base for the decisions of the RBA, is something to be commended. Any restriction of the right to freedom of expression, under the Constitution, must be prescribed by the Law and must be necessary for the protection of a legitimate interest, such as the rights and reputations of others, preserving the authority and impartiality of a court of law, protection of public health, morality of a democratic society and national security of the Republic of Serbia (Article 46, paragraph 2). In this concrete case, the legitimate interest for restricting freedom of expression could be the protection of minors from content that may harm their intellectual, physical and moral development. By adopting the said decision, the Council took the position that the mere presence of persons convicted of multiple criminal offenses in the shows of electronic media need not automatically mean promoting crime and violating provisions of the Law or the BCC concerning threats to the moral development of minors. The Council said that the matter of re-socialization of persons convicted of criminal offenses was one of particular social interest and that comparative practice shows such cases to be examined in the media, albeit in a carefully chosen context, in compliance with all professional standards and avoiding any promotion of crime (which is clearly labeled as a phenomenon lethal for society and the individual). In these terms, the RBA Council warned that the media editors failed to present this topic in the appropriate context and that the sole motive for inviting Golubovic to their show was raising the ratings and making profit. The RBA Council requested from the broadcasters to carefully choose who they will invite to their shows and to base these decisions only on the guests' competence with the goal of avoiding having people from show business or the criminal underground shaping public opinion with their views on serious social topics. The good news is that the decision of the RBA has confirmed that the Agency may pronounce measures against broadcasters only if there are legal grounds for it, while the presence of persons convicted of felonies isn't automatically a violation of the Law, namely that the context in which that person is

presented matters the most. It remained questionable, however, if the context, in which Kristijan Golubovic was presented in at least some of the shows he participated in, could have harmed the intellectual, physical and moral development of minors. It seems that there could have existed a more nuanced and balanced approach, relative to various contexts of the appearance of Golubovic on different TV stations.

### **III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS**

In the period covered by this Report there was no legislative activity related to the adoption of laws relevant for the media sector. The drafts of the new Law on Public Information and Media and the new Law on Electronic Media, as it was already indicated in the introduction to this Report, are still being adjusted in consultation with the competent directorates of the European Commission. The draft of the new Law on Public Broadcasting Services, in the part concerning funding, is still being internally consolidated, especially with the Ministry of Finance.

### **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)**

In the period covered by this Report, the RBA Council was very active, especially during the state of emergency caused by the floods, as well as during the national mourning days declared by the Government of the Republic of Serbia on May 21-23.

1.1. The RBA Council passed a decision in May, recommending the Government to repeal the broadcasting fees for broadcasters from flooded areas, in accordance with Article 66 of the Broadcasting Law. At the same time, the RBA called RATEL and collective organizations for the protection of copyright and related rights to do the same and relieve these broadcasters from paying the fee for the broadcasting station, namely of the fees for exploiting the object of protection from the repertoire of collective organizations. This initiative is undoubtedly commendable, since the broadcasting infrastructure and offices of many broadcasters were destroyed in the floods, while the local media were very active in reporting about the situation in the flooded areas,

including 24h coverage about the floods. Nonetheless, no list of such stations was made public by the time this Report was released and the criteria used for relieving them from paying taxes remain unknown. The geographic location in the flooded areas is certainly a crucial criterion, but must not be the only one. Namely, many local stations, although not directly affected by the floods, have sent their crews and reported from the field in neighboring local communities and the RBA Council should take into account that fact and provide to such broadcasters at least some relief related to the payment of the fee.

1.2. On national mourning day for the victims of the floods, in accordance with the Law on Observing National Mourning Day on the Territory of Serbia, the RBA Council informed broadcasting stations on the ways they should operate for the duration of the mourning day. RBA's notice concerned the obligation to refrain from airing humoristic, folk and other entertainment programs, including films and series (excluding documentary ones), as well as to adjust the overall programming on these days. The notification said the RBA was authorized, under the abovementioned Law, to monitor the broadcasters during the observance of national mourning day, as well as that the Agency would not pass separate, individual decisions. Such public notification served as an excuse to cable operators to exclude almost all foreign channels from their offer during the days of mourning, whereas the decision which foreign channel was or wasn't appropriate was at the discretion of the operator. Such decision by the cable operators caused an uproar among professionals, social network users and independent institutions (the Commissioner), since it was completely unlawful and constituted (regardless of the intention) an attempt of private censorship. Soon after the temporary switch-off of foreign channels from the program of cable operators, the RBA Council reacted, issuing a press release (after an extraordinary session) saying "it had not passed any decision restricting or recommending cable operators in Serbia to exclude channels aired from abroad", as well as that it "understands and respects the decision of most cable operators, probably made under the personal sense of collective grief and not under the Law." Unfortunately, with its "diplomatic" press release, the RBA Council stopped short of condemning an act that may be qualified as unlawful denial of the right to information and yet another attack on the right to freedom of expression.

The Constitution of the Republic of Serbia guarantees freedom of opinion and expression, as well as freedom to request, receive and communicate information and idea by the means of speech, writing, pictures or in other ways. Such freedom of expression may be lawfully restricted, the Constitution says, if necessary for the purpose of protecting the rights and reputation of others, preserving the authority and impartiality of courts of law and protecting public health, morality in a democratic society and the national security of the Republic of Serbia (Article 46). The Constitution also says that there must be no censorship in the Republic of Serbia, while the competent court of law may prevent the dissemination of information and ideas by the means of public media only if such a

measure is necessary in order to thwarting calls for violent subversion of the constitutional order, warmongering or inciting to violence or promoting racial, ethnic or religious hatred stirring up discrimination, hostility or violence (Article 50, paragraph 3). Under Article 2 of the Law on Public Information, public information may not be subject to censorship and “it is prohibited to directly or indirectly restrict freedom of public information, especially by abusing government or private authority, by misusing rights, influence or control over means of printing or distribution of public media or broadcasting equipment and radio frequencies, or in any way suitable to hamper the free circulation of ideas, information and opinions”. Article 149 of the Criminal Code of the Republic of Serbia provides for the criminal offense of Preventing the Printing and Dissemination of Print Items and Broadcasting, which, among other things, concerns the unauthorized hampering or obstruction of radio and television broadcasting. In addition, the Law on the Ratification of the Convention of Crossborder Television prescribes that the signatory states must ensure freedom of expression and information in accordance with Article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms, as well as to guarantee freedom of reception, namely that they will not, on their respective territories, restrict the rebroadcasting of programming services that are in line with the provisions of that Convention (Article 4).

In order to lawfully restrict freedom of expression, there must be legal grounds for it. Adjusting the programming schedule to the requirements of national mourning day is provided for by the Law on the Observance of National Mourning Day on the Territory of the Republic of Serbia, Article 6, paragraph 1 of which says that “broadcasting organizations for informing the public on the territory of the Republic of Serbia shall be obligated to do the following in their programs, including programming for abroad, on national mourning day: air the decision on declaring the national mourning day and the program for marking the same, which decision is adopted by the competent authority of the Republic of Serbia or a body appointed by that authority; inform the public about remembrance events organized on national mourning day by the competent authorities of the Republic of Serbia or bodies appointed by such authorities; instead of humoristic, folk and other entertainment programs including popular and folk music, they will air music and programs more appropriate for the day of mourning; they will adjust a detailed programming schedule during the day of mourning”. Such restriction is in line with the Constitution, since it is prescribed by the Law and serves a legitimate purpose, in the concrete case to pay respects to the victims of a calamity. In addition, this case didn’t involve a total switch-off of the channels, but merely adjusting the programming schedule. Moreover, that obligation may, under the law and in the given context, apply only to television and radio broadcasters. Cable operators are electronic communication operators that constitute, in accordance with Article 4, subparagraphs 10) and 30) of the Law on Electronic Communications, persons performing or are authorized to perform the activity of electronic communications, which involves the provision of services by the means of electronic communication. The latter involves “entirely or predominantly the transfer of signal through electronic communication networks”, including “the services of distribution and broadcasting of

media content, but not the services of provision of media content or exercising editorial control of media content transferred through electronic communication networks and services". It is clear that the broadcasters have illegitimately assumed the role of editors, although their only obligation is to enable unhindered transfer of data without any influence on the content thereof. With their actions (which they justified by invoking the decision of the RBA), the cable operators have temporarily engaged in private censorship and violated the constitutionally guaranteed right to free reception of information. Such an act also constitutes the provisions of at least two laws and one convention and there are also grounds for criminal responsibility. Unfortunately, the only authority that reacted decisively and on time was the Commissioner for Information of Public Importance and Personal Data Protection, who called the cable operators to restore the switched-off channels. The competent ministry stopped short of condemning this attempt of private censorship, while the RBA missed the opportunity, with its lukewarm press release, to send a clear message to the operators that such behavior is intolerable. There was no reaction from the public prosecutor either, in spite of his swift reactions in other cases of alleged abuse of the right to freedom of expression.

## **STATE BODIES**

### **2. The Parliament of the Republic of Serbia**

On Thursday, May 29, the parliamentary committees for finance, budget and control of public funds expenditures, public administration and local self-government, respectively, were supposed to review, at a joint session, the Report about the Activities of the Anti-Corruption Agency in 2013. Due to a lack of quorum, namely the absence of the members of the Judiciary Committee, the Report was not discussed. At the same session and independently from the Finance Committee, the Judiciary Committee was supposed to also review the Annual Report of the Ombudsman, as well as the Report of the Commissioner for Information of Public Importance and Personal Data Protection. The independent institutions were practically ignored only a day after the Ombudsman announced that 19 people from his expert department had to be laid off, since the Parliament did not approve their further employment. Zoran Babic, the President of the Parliamentary Committee for Administration, Budget, Term of Office and Immunity related Affairs, stated that the request of the Ombudsman for the extension of the employment of his associates would be considered. Babic added, however, that he would personally initiate the adoption of a law which would align the salaries of the managers and representatives of all regulatory and independent bodies.

The threat to limit the salaries of employees in regulatory and independent bodies may definitely constitute putting pressure on their independence. A call to align the salaries of the employees in all regulatory and independent bodies shows a complete lack of understanding of the function and role of these bodies, their different ways of funding, as well as of the different responsibilities and

complexity of the affairs carried out by their “managers and representatives”. It should at least be clear that a body subject to ad hoc decisions by the executive or legislative branch may not be independent and hence may not discharge its function independently. On the other hand, the strengthening of independent and regulatory institutions is a prerequisite for the further democratization of Serbia. These bodies need to have their capacities strengthened and not weakened. The particularly pertains to bodies ignored by the parliamentary committees for finances and the judiciary, respectively, the Ombudsman, the Commissioner for Information of Public Importance and the Anti-Corruption Agency.

### **3. The Ombudsman**

In March 2014, the Ombudsman presented the Annual Report for 2013, which he compiles and furnishes every year to the Parliament. The Report, to be decided upon Parliament in May, contains findings and recommendations related to the respect and observance of human rights. In his Report, the Ombudsman emphasized two phenomena: the control of the media through pressure mechanisms on one hand and the “tabloidization” of the state in the form of leakage of confidential information and the transfer of institutional processes to politically suitable tabloids on the other. Concerning the control of media, the Ombudsman said it was difficult to confirm and to prove; he stressed that claims about pressure and influence on the media coming from political and government circles of power (such as telephone calls after which TV shows are cancelled, texts withdrawn from newspapers, journalists being silenced and editorial policies and focuses being abruptly changed) are coming from journalist circles. The said phenomena lead to no less than self-censorship, which the Ombudsman claims to be ubiquitous in the Serbian media. The problem of the tabloidization of the state was recognized by the Ombudsman as a phenomenon characterized by having confidential information, such as information about current investigations, personal data, data about circumstances from personal life, which may be obtained only by systemic and deep invasion of privacy, as well as data bases kept by certain government authorities, appearing on regular basis in always the same media. At the same time, proceedings to determine the sources of such information, to which proceedings only authorized persons may resort to (with the goal of punishing persons for disclosing official secrets and other criminal offenses) haven’t been initiated. Information that is being leaked is typically selective, incomplete and systemically targeted against certain persons; releasing such information violates not only the right to privacy, but also the presumption of innocence of the targeted persons, as well as their political career. In his Report, the Ombudsman itemized the specific achievements and shortcomings related to the realization of media freedoms. The achievements are modest and consist of the prepared drafts of new media laws and the formation of an independent commission for investigating cases of murdered journalists. On the other hand, the Report stressed that deficiencies in media regulations result in an insufficient degree of transparency of ownership; it reminds that the privatization has not been

completed, although it is mandatory by the Law; the existing models of privatization do not work and new ones haven't been found; no adequate model for the realization of the right to information in minority languages has been found (the Report particularly criticizes the possibility of national councils being entitled to establish media), while the bodies controlling the enforcement of the Law on Public Information are not carrying out their function fully and on time.

The phenomena emphasized by the Ombudsman are deeply concerning. The parts of the report pointing to pressure against media ought to be observed in the context of the claims contained in other sources, for example in the European Commission Progress Report for 2013. The latter also claims that threats and violence against journalists still represents a major cause of self-censorship. Furthermore, on May 27, the OSCE Representative for Media Freedoms Dunja Mijatovic expressed concerns over the censorship of internet content in Serbia and called on the authorities to cherish uncensored debate about issues of public interests. The OSCE press release was issued in relation to news about certain websites and online content being blocked for their criticism of the government, causing major upheaval in Serbia, including a sharp rebuttal by the Prime Minister Aleksandar Vucic. While such pressure is difficult to prove, as the Ombudsman claims, or does not exist, as claimed by the executive branch, it seems that fertile ground has been created for self-censorship and that the latter is on the rise, which is bad news. The second problem identified by the Ombudsman and also recognized in the EC Progress Report for 2013 comes in the form of targeted media campaigns based on anonymous sources or information that has "leaked". Such campaigns, the Report says, undermine the confidence in judicial institutions, violate personal data protection laws and breach the presumption of innocence. The other problems mentioned by the Ombudsman, such as insufficient transparency of ownership, unfinished privatization and the unsustainability of the existing privatization model, inadequate models for the realization of the right to information in minority languages, attacks against journalists, inadequate oversight of the enforcement of the Law on Public Information, are the consequence of the obsolete media regulations, mediocre capacities of the bodies that are supposed to oversee compliance and the years-long delay in implementing media reforms, all phenomena we have been pointing on multiple occasions in these reports.

#### **4. Commissioner for Free Access to Information of Public Importance and Personal Data Protection**

Notwithstanding all the positive developments in Serbia in the area of free access to information of public importance, there are still certain issues related to the exercise of that right. The annual report of the Commissioner for Free Access to Information of Public Importance and Personal Data Protection, detailing the implementation of the laws in his area of competence, has shown that media representatives and journalists complained in 2013 to the Commissioner more often over denied information due to, on one hand, the increased number of requests and, on the other hand,

the unwillingness of the authorities to allow free access to information. The Report says public authorities typically explain their unwillingness to allow access by invoking secrecy reasons, protection of privacy, by claiming they are not subject to the relevant law or contesting the applicant's request. The Report concludes that the main obstacle for a consistent enforcement of the Law on Free Access to Information is the non-functioning of the mechanisms that are not under the control of the Commissioner, but that of the executive branch, but particularly due to the fact that, in spite of clearly defined obligations, the Government has failed to secure the enforcement of the Commissioner's decisions. Furthermore, the Ministry of Justice and State Administration has failed (for the third year in a row) to prosecute a single among numerous perpetrators of violations of the relevant legislation. The Commissioner claims that all these facts combined are tantamount to an open call to breach the Law and a practice that must be promptly reversed.

Access to information of public importance has proven to be the key instrument for the development of investigative journalism, bearing in mind the traditional "isolationism" of the authorities, i.e. their unwillingness to proactively and even without request make available information of public interest. Article 51 of the Constitution of the Republic of Serbia says that everybody shall be entitled to receive timely information about matters of public interest, which means that the media are obligated to provide timely and complete information to the citizens. If such information is denied to them, the media are unable to fulfill their constitutional obligation. Therefore, the degree of the realization of the right to free access to information of public importance is indicative for the development of media freedoms in general.

## **5. Prosecutor's Office for High-Tech Crime**

Apart from causing invaluable loss of life and material damage, the floods that hit Serbia last May also brought serious problems related to freedom of expression online. Many websites, typically those that were critical of the government's reaction in an emergency, were continuously targeted by hackers (such as the Teleprompter internet portal, the Druga strana blog and later the website of Pescanik). Furthermore, the blog of Vreme's journalist Dragan Todorovic was withdrawn from the Blic website; the blog contained a text by Novica Milic, a professor of the Media and Communications Faculty of the Singidunum University in Belgrade, itself including a fictitious resignation of the Prime Minister Aleksandar Vucic. The above incidents have understandably been interpreted as systemic pressure against critical media. Meanwhile, it seems that the Prosecutor's Office for High-Tech Crime failed to react adequately to the hacking attacks on websites. It reacted only after the attacks on the website of Pescanik, which happened after they released, on June 1<sup>st</sup>, a text by Ugljesa Grusic, a Senior Lecturer from the Nottingham University, Branislav Radeljic, Associate Professor of the University of East London and Slobodan Tomic, a Doctoral Student of the London School of Economics and Political Sciences, accusing the Minister of Interior Nebojsa

Stefanovic of plagiarizing his PhD dissertation. This case will be elaborated on in the next report. While the above mentioned hacking attacks didn't attract the attention of the High-Tech Crime Prosecutor, the latter did react to comments posted on social networks about the number of casualties in the floods. Several people were indicted of the criminal offense of attempting to cause panic and unrest. The investigative judge ordered three people to be placed in custody for 30 days, but these solutions were appealed against and ultimately repealed. In each of these cases, at issue were the comments posted either on social networks or under specific news segments online, which comments claimed official information about the number of dead to be false and that the actual numbers were much higher.

The hacking attacks on websites are nothing new in Serbia. Pescanik's website filed back in January 2009 the first criminal charges in relation to a so-called Denial of Service (DOS) attack. The latter involves a coordinated attempt by an individual or group to overload the resources of a server, so that ordinary users may not reach it. Unfortunately, although the case of Pescanik from January 2009 wasn't the only DOS attack against media websites, hitherto investigations weren't successful and nobody was indicted. Meanwhile, charges for the criminal offense of causing panic and unrest are something new. The Criminal Code defines it as causing panic or seriously undermining the public order or obstructing the enforcement of the decisions passed by state authorities or organizations discharging public authority, by communicating or spreading false news or claims. A qualified form of that criminal offense exists where the false news or claims are communicated or disseminated through public media or by similar means or at a public gathering. The basic form of that felony is subject to between three months and three years in prison and a fine, while the qualified form is punishable by between six months and five years in jail. It will be interesting to see how the Prosecutor will substantiate the existence of premeditation, namely the awareness of the defendants that what they have communicated and disseminated was a lie. Furthermore, taking into account the emergency situation caused by the unprecedented floods, as well as the fact that, notwithstanding the frequency of such information communicated by state bodies, there were no cases of significant undermining of public order or a threat of it, or obstructing the enforcement of the decisions passed by state authorities or organizations discharging public authority, it is pertinent to ask where are the limits of panic if it has existed or could have happened, caused by the flood as the objectively existing calamity, as well as what effect could individual comments on social networks or media websites in general have generated on the objectively existing situation. On the negative side, in all three above described cases the defendants were to be placed in custody. The fact that the decisions on custody were repealed upon appeal is good news, but the question remains as to what extent the fact custody was ordered by the Prosecutor had caused self-censorship, stifling public debate about even objectively unquestionable information, leading to the absence of criticism.

## V THE DIGITALIZATION PROCESS

In the month of May, the public company “Broadcasting Technology and Links” (BTL) announced that, owing to the extension of the initial digital broadcasting network, about 90% of the citizens of Serbia will be able to receive digital television, subject to possessing the proper set top box device (STB). The network has been extended with the installation of a digital transmitter on the Deli Jovan mountain, covering most of eastern Serbia. BTL went on saying that from Deli Jovan, the citizens would be able to watch the program of the public service broadcaster (RTS), as well as that of national commercial broadcasters and two regional stations (Studio B and Belle Amie) and RTS’ HD channel. The RBA announced on May 13 that, together with BTL, it had secured the technical and formal possibilities for the regional broadcasters to join the extended digital network. On that occasion, the RBA organized a meeting, where the regional broadcasters were informed with the legal and technical aspects of the digital switchover, as well as with the opportunity to join the initial network. The system functions by having the regional broadcasters submit a request to the RBA to be allowed to broadcast in the digital network, after which BTL issues the technical approval.

The extension of the initial network is most definitely good news, because it provides a large number of households with the technical capacities to receive digital signal and try out the amenities of digital television. However, the public is yet to hear what is a “proper device”, necessary for receiving the signal, since with a STB, there will be no reception of the digital signal if the TV sets do not support the DVBT2 standard. Furthermore, since there are many STBs on the market that support the old standard (DVBT), the citizens need to be made aware of that in order to avoid wasting their money. The competent ministry should urgently adopt a specification of STBs, as well as rules for marking STBs and TV sets. This would enable the citizens to get to know if these devices support the DVBT2 standard or not. Finally, as the Digital Switchover Strategy only says that the simulcast through the initial testing network will be available solely on programs to be determined by the Ministry of Trade and Telecommunications (in cooperation with the Ministry of Culture and the RBA), while the Rules of the Digital Switchover stop short of detailing the procedures (saying that the simultaneous broadcasting of analog and digital signal will be carried out in accordance with the Strategy), the question arises as to what are the legal grounds for the RBA and BTL to decide about someone’s right to join or not to immediately join the digital network? At some point, the initial network will most certainly evolve into a final one; it is also undisputed that all broadcasters holding valid licenses will be guaranteed access to the multiplex under equal, objective and non-discriminatory conditions. It’s also unquestionably better to have the access to the initial digital network decided upon by an independent regulatory body than the Ministry. However, the mere fact that the procedures under which decisions are taken are not regulated in detail, fails to guarantee full legal security. Even more important than the matter of access to the digital network in this early stage (in which relatively few citizens have the technical conditions for

receiving the signal) is the question about the fee to be charged by the ETV and BTL to the broadcasters for distribution and broadcasting, after the expiration of the free trial period during the simulcast. The broadcasters will be in the position to make a decision if they want to join the multiplex after June 2014 only on the basis of complete information about the conditions of distribution; they might opt for an alternative type of TV signal distribution (cable, DTH satellite distribution, IPTV) that would be cheaper. Unfortunately, they still don't have such complete information or any hint as to when they might get it. Consequently, the technical achievements noticeable in the digitalization process are not enough for a positive evaluation of the process as a whole. Regulatory documents, such as the Switchover Plan, are also late, as well as the awareness campaign and the implementation of the aid scheme for the vulnerable population, with the goal of purchasing equipment for receiving digital signal. Bearing in mind that the July 17, 2015 deadline is nearing (as the date for full switchover), the state will have to address a series of problems urgently and simultaneously, with an uncertain outcome.

## **VI THE PRIVATIZATION PROCESS**

The privatization of state owned media is still awaiting the adoption of a set of new media laws and there have been no activities in this domain and none should be realistically expected before that.

## **VII CONCLUSION**

The impression about the situation in May resembled that of the first four months of the year. Attacks on journalists and their property continued, without the perpetrators being identified. Editors are being dismissed, for what many believe to be political reasons. The mere perception of dismissals, pressure and even arrests for allegedly spreading panic during the disastrous floods, as being politically motivated, results (regardless of whether it is accurate or not) in a rise of self-censorship in the media, drawing us into a vicious circle with no end in sight. The seriousness of the situation is reflected in the Annual Report of the Ombudsman for 2013, as well as the 2013 Progress Report of the European Commission and the press release by OSCE Freedom of Media representative Dunja Mijatovic from May 27. The very vocal critics of that press release in Serbia have disregarded the obvious: even had there not been censorship and pressure, there is plenty of fertile ground for self-censorship, which is far more difficult to tackle. The fact that the new media laws still aren't adopted after all the work that's being done to draft them, makes the situation even worse. Add to that the increasing number of complaints submitted by journalists and media to the Commissioner for Free Access to Information of Public Importance, caused, among other factors, by

the unwillingness of public authorities to allow free access to information and there are very few encouraging accomplishments. One of these is perhaps the extension of the initial network for the broadcasting of the digital television signal, which actually covers 90% of the Serbian population. This could mean that the (at least technical) preconditions for a successful switchover are there. What remains a key precondition for successfully going forward is the definitive adoption of a set of new media laws, which have been in the pipeline since the adoption of the Media Strategy in 2011.