

The Media Sector Reform Group, which is made up of the representatives of The Independent Association of Journalists in Serbia (NUNS), Association of Independent Electronic Media (ANEM), and Association of independent local printed media "Local Press", advocates addenda to the Advertising Law (published in "The Official Gazette of the Republic of Serbia", No. 79/2005), according to the enclosed proposal, with the aim to rectify certain inconsistencies in the existing text of the Advertising Law, and with the aim to provide for a favourable treatment of the advertising campaigns and messages of the non-profit organizations that promote charity and humanitarian activities.

In the existing text of the Advertising Law, Article 14 contains a definition of TV advertising in its Paragraph 1, while its Paragraph 2 reads that the following items:

- Information on programmes' contents that is to be broadcast over the following seven days, including advertising of certain programmes from their programming schemes;
- Statements of public services and advertisements of non-profit organizations promoting charity and humanitarian activities, as well as their appeals or invitations to join a charity or humanitarian activity, and
- Broadcasting of ID logo of a TV programme.

will be considered as TV advertising and will be broadcast free of charge.

While the definition from the Paragraph 1 is not disputable, Paragraph 2 leads to some serious problems in practical application of the Advertising Law, which can be described as follows:

1) In 2006, after the public tender procedure for issuing broadcasting licences in Republic of Serbia, the total of five commercial television networks were allocated national coverage broadcasting licences. According to the Broadcasting Law, the public service television broadcasts television programme with national coverage in two more networks. Broadcasters that broadcast their programmes in the abovementioned seven networks are competing in this market for the commercial profit that was estimated at approximately 85 millions of Euros in 2007. As a comparison, the neighbouring Croatia has only two commercial networks with national coverage

and two public service networks, while the total commercial profit that these broadcasters compete to share by broadcasting their programmes in the aforementioned four networks in their market, is, according to some independent estimates, and in spite of the fact that Croatia has approximately one half of Serbian population, four times bigger than the profit broadcasters can share among themselves in Serbia. Such unfavourable market conditions, coupled with the prescribed maximum duration of the TV advertising slot (broadcasters are allowed to broadcast a maximum of 12 minutes of advertisements within an hour of their airtime for commercial televisions, while the same maximum time that can be dedicated to advertising per hour of airtime amounts to only 6 minutes for public service broadcasters), result in a situation in which each second of the permitted advertising time slot becomes precious for broadcasters, that is, it makes it absolutely necessary for them to exploit each second of these slots to the fullest for commercial purposes.

Since according to Article 14, Paragraph 2 of the Advertising Law, advertisements of the non-profit organizations promoting charity and humanitarian activities, as well as their appeals and invitations to join a charity or humanitarian activity that are broadcast free of charge (public service advertising) are also considered to be TV advertising, and are accordingly making up a part of the maximum allowed time slot for advertisements broadcasting, the non-profit organizations are forced to compete with some highly profitable industries and advertisers such as banks, breweries, pharmaceutical companies and their likes to advertise their own charity and humanitarian activities. With the existing definition contained in the Article 14, Paragraph 2 of the Advertising Law, the state institutions objectively limits the public service advertising, instead of aiding and encouraging charity work and non-for-profit activities that are conducted in the best interest of the general public.

The legislator was fully aware of the problems created by such a treatment, and they wrote Article 86 of the Advertising Law envisaging that advertising of activities and measures of public interest, or of interest for the majority of citizens, or for a minority social group, and inter alia, advertising of humanitarian activities aimed at protection and improvement of health, as well as appeals for help for those who are directly endangered, if broadcast free of charge, cannot be considered as a part of the legally prescribed limited time slot dedicated to TV advertising, but only in those cases where the advertisers in question are state institutions and organizations, institutions of territorial autonomy and local governments.

We are positively convinced that such a solution is not a good one. There is not a single logical rationale to treat humanitarian activities and calls for help to the directly endangered persons differently in cases where these are advertised by the state from the cases where these are advertised by an independent non-profit organization. There is no rational justification to place administrative and financial obstacles to benefaction for one reason alone, i.e. only because the benefactor is not the state, but a non-for-profit organization as an institution of private law.

We would thus like to remind that non-profit organizations in the past organized and/or took part in numerous activities for the benefit of different categories of population, from refugees, pensioners, deprived, domestic violence victims and human trafficking victims, and so on.

Potential abuse cases that have been proposed in the addenda to this Law, which are primarily making room for potential dissemination of indirect political propaganda through advertising messages of non-profit organizations with clearly defined agenda, can be prevented by a new Paragraph 4 of the same Article 14 of the Advertising Law, that would envisage, as suggested in the enclosed proposal document, that such a non-profit organization's advertisement cannot be used to advertise, directly or indirectly, any political organization nor any politician, nor any other organization that was founded by a state institution, political party or politician.

We would especially like to point out that the suggested amendment is needed also because of the necessity of harmonization of domestic legislation with the EU legislation, with the Directive 89/552/EEC (Television Without Frontiers Directive), the amendment and addenda to the Directive 2007/65/EC from December 11<sup>th</sup>, 2007 (Audiovisual Media Services Directive). According to the Directive and related documents, the definition of television advertising (Article 1, Paragraph 1, Item (i) as of now refers only to the paid advertising in relation to commerce, business operations, trade or profession in order to promote acquisition of goods and services (including movables, rights and obligations), and in that way it clearly excludes television advertising messages of non-profit organizations for charity and humanitarian campaigns and other activities aimed at raising awareness of social problems or aimed at resolving or pointing to such problems, as well as pleas and calls for participation in such activities by those non-profit organizations.

2) General obligations of the broadcasters in relation to the programmes' contents, as prescribed by the Broadcasting Law include, inter alia, the obligation to provide for free, complete and timely information for citizens as a form of contributing to improvement of citizens' overall culture and knowledge. The fact that the Advertising Law treats information on programmes' contents and programmes' announcements as TV advertising in such a rigid manner, presents a tangible obstacle for broadcasters to meet their legal obligations. Programmes' announcements do not have an advertising, but informative function and purpose, and these should thus not be calculated as a part of the legally prescribed limited time slot for TV advertising.

Potential abuse could be prevented by the proposed addenda of the Advertising Law with the introduction of a new Paragraph 3 of the same Article, which would envisage, as stated in the enclosed proposal document, that an advertisement containing information on programme content or programme announcement will nonetheless be treated as TV advertising if it directly or indirectly advertises the name, logo, trade mark or service mark, or image of the sponsor of the programme, or of certain parts (shows) of that programme.

We would also like to point out to the fact that, in line with all abovementioned, the proposed amendment is also necessary from the aspect of harmonization of domestic legislation with the EU legislation, and especially with the Directive 89/552/EEC (Television Without Frontiers Directive), with amendments and addenda to the Directive 2007/65/EC of December 11<sup>th</sup>, 2007 (Audiovisual Media Services Directive). According to the Article 18, Paragraph 12 of the Directive announcements about the content of one's own programmes is not counted as a part of the duration of television advertising slot.

3) Broadcasting of identification logo for a television programme is an obligation prescribed by Article 69 of the Broadcasting Law ("The Official Gazette of the Republic of Serbia", No. 42/2002, No. 97/2004, No. 76/2005, No. 79/2005, No. 62/2006, No. 85/2006, No. 86/2006). The aforementioned provision envisages that the name, logo, or an identification symbol of the broadcaster has to be constantly broadcast while their programmes are broadcast in the air. Similarly, the Public Information Law ("The Official Gazette of the Republic of Serbia", No. 43/2003, No. 61/2005), reads that the identification logo of a TV programme is in fact an *impresa* (Article 27, Paragraph 4 of the Public Information Law), which, in line with the provision stated in the Article 28, Paragraph 5 of the Public Information Law should be broadcast continuously during the airtime.

Such an unacceptable treatment of the TV programme logo broadcasting and considering it a form of TV advertising result in a situation in which respecting one's legal obligations according to the Broadcasting Law and the Public Information Law makes the broadcasters violate the Advertising Law. Namely, this Law prescribes maximum duration of TV advertising – commercial televisions are allowed to broadcast the maximum of 12 minutes of advertisements within an hour of airtime, while the public service broadcasters are allowed to broadcast the a maximum of 6 minutes of advertisements within an hour of their airtime. If broadcasting ID logo of a TV programme should be regarded as TV advertisement, and according to the Article 14, Paragraph 2 of the Advertising Law it is a form of advertising, then Serbian broadcasters are, by continuously broadcasting these logos in line with the Broadcasting Law and also with the Public Information Law, continuously violating Article 108, Paragraph 1, Item 3 of the Advertising Law, and should be fined for doing so with a fine ranging from 100,000 to 1,000,000 dinars for legal entities, and with a fine ranging from 20,000 to 50,000 dinars for the person with the mandate to authorise it within such a legal entity.

We are kindly asking you to support and endorse this proposal and to make your contribution in order that it finds its way into the parliamentary procedure.

#### *ACT ON AMENDMENTS AND ADENDA TO THE ADVERTISING LAW*

##### Article 1.

The Advertising Law (as published in "The Official Gazette of the Republic of Serbia", No. 79/2005), and its Article 14, Paragraph 2 will be changed to read as follows:

"The following will not be considered TV advertising :

1) Television advertising with self-promoting purposes that inform the viewers on the contents of the programmes that will be broadcast in the following seven days, including advertising of certain programmes from the programming scheme;

2) statements of public services and advertising messages of non-profit organizations to promote charity and humanitarian activities, as well as their appeals and invitations to join a charity or humanitarian activity that they realize free of charge (public service advertising);

3) broadcasting of identification logos of TV programmes."

Following the Paragraph 2, a new Paragraph 3 and Paragraph 4 will be added, which read as follows:

"Name, logo, trade mark or service mark or image of the sponsor of the programme or of certain parts of the programme will be considered TV advertising for self-promoting purposes as stated in the Paragraph 2, Point 1., of this Article, which is used to advertise them directly or indirectly. Advertising message from Paragraph 2., Item 2. of this Article cannot directly nor indirectly advertise any political organization nor any politician, nor any other organization founded by any state institution, political party, or a politician."

The former Paragraph 3, becomes Paragraph 5.

## Article 2.

Article 23 will be changed to read as follows:

Provisions of the Article 14, Article 16, Article 18, Article 19 and Article 20 of this Law will be accordingly applied on radio advertising.

Article 3.

This Law will take effect eight days after it has been published in "The Official Gazette of the Republic of Serbia".