

## **IV MONITORING OF ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

### **REGULATORY BODIES**

#### **1. REPUBLIC BROADCASTING AGENCY (RBA)**

Certain RBA activities have already been dealt with in Section II concerning the implementation of existing laws (see subsection 2 – Broadcasting Law).

a) On October 6, 2009, the Republic Broadcasting Agency (RBA) posted on its website the Announcement of the Nova TV management to cable operators on the territory of the Republic of Serbia (available only in Serbian), whereby they publicly announced their decision to ban the rebroadcasting of the program of Nova TV on the territory of the Republic of Serbia, effective IMMEDIATELY! Namely, the management of the Croatian television station Nova TV banned the rebroadcasting of its program outside of Croatia, both by cable and satellite transmission, with the goal of protecting copyrights applying exclusively to the territory of Croatia.

Shortly thereafter, the RBA started “thinking out loud” on the topic of regulating broadcasting by cable and satellite. The public reacted with concern when the top RBA people announced the possibility of removing the programs of TV stations from the region (from Croatia - HRT1 and HRT2, RTL; from Bosnia-Herzegovina – BN i OBN and from Montenegro – TV Atlas) from the cable program in Serbia. The reason was, according to the RBA, to address the issue of unresolved copyrights of these broadcasters for the territory of Serbia. The agency has announced the passing of Rules to regulate that matter for November. In their view, there is no transitional solution and content for which there are no copyrights must be removed. However, the programs of the said stations will not be cancelled, but a large chunk of the program of certain stations will nonetheless be inaccessible for Serbian viewers, the RBA said. If the measure is implemented, as of mid-December, Serbian citizens will not be able to watch sports events, series and films aired by televisions from the region. Channels such as „Explorer”, „National Geography” „Discovery”, „History” and the like shall remain on the air during the entire program, because these broadcasters possess so-called Pan European rights. The Draft Rules have been announced for November, after which they will be submitted for public debate and likely be adopted in December.

Pursuant to the Broadcasting Law, the RBA issues licenses for cable and satellite broadcasting, except for foreign programs that may be received by the means of non-coded satellite broadcasting. In practice this did not happen, because of the absence of Rules that

would regulate this matter comprehensively. The announced adoption of the Rules raises the question of the proper regulation of cable broadcasting, which should not violate the provisions of the European Convention on Cross-Border Television – ratified by our country – and the current Law on Copyright and Related Rights. The Convention guarantees freedom of reception and non-restriction of broadcasting of programs that are in compliance with it. The assumption is that all programs licensed in CE member countries are in compliance with the Convention. According to the Law on Copyright and Related Rights, more specifically Article 28, Paragraph 6, which has been applied as of January 1, 2007, in the case of cable rebroadcasting, protection is exercised only collectively. Serbia is yet to set up a collective organization for exercising the rights of videogram producers or the authors of cinematographic and television works, which creates vicious circle hard to brake out of in this moment.

b) In its annual progress report for Serbia in 2009, the European Commission has acknowledged progress in the area of transparency, accountability and efficiency of the Republic Broadcasting Agency. On October 20, 2009, the RBA website posted a press release containing excerpts from the report of the European Commission.

The report stresses that, as of 2008, all decisions of the Agency are posted on the internet; that in December 2008, the RBA Council issued 63 radio and TV broadcasting licenses on the local level and in the area of the city of Belgrade. After the completion of the last competition, a total of 467 radio and TV broadcasting licenses will be issued.

It was particularly stressed that the Agency had opened a new branch for supervision and analysis in Novi Sad and that similar branches were planned in Nis and Kragujevac. It was concluded that the Agency's capacities have been boosted with the procurement of new equipment enabling a more effective oversight of the activities of broadcasters.

## **2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)**

a) On October 26, RATEL posted on its website an announcement on the periods for drawing up technical documentation and issuance of licenses for radio stations, pertaining to broadcasters that, according to RBA decisions, have been issued broadcasting licenses for regional and local areas. The applicant that has been assigned a radio frequency is required to submit to RATEL by the November 23<sup>rd</sup> all the necessary technical documentation and RATEL shall issue radio station licenses by January 11, 2010. Where there are shortcomings, if such shortcomings are not remedied, the license will not be issued. You can see the entire announcement [here](#) (available only in Serbian)

Pursuant to Article 82 of the Law on Telecommunications and Article 39 of the Broadcasting Law, RATEL issues licenses for one or several radio stations, which is an integral part of the broadcasting license. The issuance of the license requires the application to be in compliance

with the radio frequency assignment plan and for other conditions to be met, as stipulates by the Law on Telecommunications and other regulations covering this area.

b) At its session on October 10, 2009, RATEL's Managing Board passed several decisions on extending the deadline for putting into operation of radio stations for those broadcasters that have filed a request for an extension in the legally prescribed 15-day period before the expiry of the deadline, providing at the same time justified reasons for such extension, according to the estimation of the Agency.

At the same session, a decision on remedying irregularities was passed, ordering the "Radio S" radio station to deal with the cause of harmful interferences affecting other broadcasters within 3 days. RATEL has established that the said radio station is creating harmful interference by failing to comply with the conditions of its license, unauthorized emission and deviation. Because of this, RATEL has set a deadline for Radio S to remedy this irregularity; failing to do so will be a ground for launching the process to revoke station's license.

At RATEL's Managing Board session held on October 10<sup>th</sup>, a decision was passed approving the request of RTV Pink for an extension of the period for putting into operation of 78 radio stations, but also several decisions barring the operation of radio stations possessing a broadcasting license, for unauthorized utilization of links in the 370-396 MHz range or for unauthorized use of frequency. These decisions are final and may be subject only to administrative court proceedings.

Although RATEL has, in the observed period, proceeded in accordance with its powers in passing the said decisions, the absence of an organized action for preventing illegal broadcasters to operate, which increasingly emerge in Serbia is worrying. There is a lack of harmony between the strict adherence to the law in the case of legal broadcasters – that are subject to excessively stringent conditions – while on the other hand, there is a total ineffectiveness when dealing with serious problems making it impossible for such broadcasters to exercise their rights and generate profit in the manner and to the extent of which the state and both regulatory bodies are obliged to guarantee.

To the knowledge of the monitoring team, the Government did not approve RATEL's draft decision on reducing the fees for broadcasters in 2009 for formal reasons. Therefore, RATEL could help legal broadcasters in overcoming the financial crisis by setting reasonable deadlines and reducing requests to a realistic level, appropriate for the existing situation.

## STATE BODIES

### 3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

In this period, on October 6, the Parliament commenced its Second Sitting in 2009.

a) The First Session of the Second Sitting lasted from October 6 to October 26, 2009, and it was especially interesting for the media sector. One of the items on the agenda was the election of the members of the RBA Council from the list of candidates submitted by the media associations. The Culture and Information Committee submitted on July 27 the said list to the Parliament as legitimate. It contained two names: Gordana Susa, the candidate of NUNS and NDNV and Milan Becejic, the candidate of UNS. Such list received the support of both ANEM and APRES. On voting day, October 26, the Parliament did not elect any of these two candidates from the list for membership in the RBA Council.

Pursuant to Article 105 of the Serbian Constitution, the Parliament shall, by a majority of votes of all MPs, exercise its electoral powers. Candidate Gordana Susa received 120 votes, while Milan Becejic obtained one vote. Susa needed six more votes to be elected in the RBA Council. The MPs have thus shown a total lack of respect for the choice of media associations, preventing them to have at least one representative in the sectoral regulatory body. The agony over the election of the media sector representative in the RBA Council was hence prolonged: the process started late last year and its outcome remains uncertain. We remind that the term of office of two members of the Council, of which one is elected at the proposal of the media and culture sectors and the other at the proposal of the civil sector, expired back on February 17 and since then RBA Council is acting in incomplete composition. According to Article 24, paragraph 9 of the Broadcasting Law, if no candidate from a list receives the sufficient number of votes, the election shall be made from a new list of candidates that the authorized proposers are required to submit no later than within 15 days from the day of election of candidates from the previous list.

b) The Second Session of the Parliament's Second Sitting of began on October 26. On the agenda were three laws not strictly related to the media, but that would nevertheless substantially change the legal framework for the operation thereof. These are the Law on Amendments to the Law on Free Access to Information and the Law on Classified Data, which are very important for the exercise of media freedom. The Law on Copyright and Related Rights will significantly affect the position of broadcasters. Namely, instead of the collective organizations deciding themselves about the level of their tariffs – which has been the case so far – the tariffs will be determined in negotiations with the broadcasters. The session is still underway. The final text of the adopted laws will determine to what extent these regulations will have a positive or negative effect on the media.

The agenda of this Session also includes the list of candidates for membership in the RBA Council from the ranks of domestic non-governmental organizations and citizens associations, as well as the list of candidates for membership in the Program Committee of the Broadcasting Institution of Serbia. More about both lists, under c.1.

c) **The Culture and Information Committee of the Parliament** held three sessions in October.

c.1. At the first session on October 19, the Committee laid down a joint list of 19 candidates for membership of Serbian Broadcasting Institution's Program Committee and submitted it to Parliament, with a proposal for urgent consideration.

The Program Committee of the Broadcasting Institution of Serbia has 19 members elected by Parliament, of which - seven MPs and twelve proposed by the RBA from the ranks of professional associations, scientific institutions, religious communities, citizens' associations, NGOs, etc. The RBA Council passed the decision on the appointment of 12 candidates back on the 3<sup>rd</sup> of June. Pursuant to Article 92 of the Broadcasting Law, the Program Committee represents the interests of all viewers and listeners and it also deliberates on the realization of the program concept of the Broadcasting Institution of Serbia, making suggestions and proposals to the General Manager and the Managing Board. The mandate of previous members of the Program Committee expired on the 25<sup>th</sup> of May.

At the same session, the Committee determined the list of two candidates for membership in the RBA Council from the ranks of NGOs and citizens' associations and putting forward it to Parliament, with a proposal for urgent consideration. The list included candidates Goran Pekovic and Milovan Vitezovic.

The Committee has thus, for the first time, resorted to the powers vested in it by the Amendments to the Broadcasting Law from May 2009. Namely, where a list for membership in the RBA Council has more than two candidates, the Committee may choose two candidates it will propose to the Parliament. It is known that this proposer (NGOs and citizens' associations) has retained six candidates after the additional period for adjusting the list. The Committee therefore interviewed all six candidates on September 4 and made the decision a month and a half later, choosing, without clearly established criteria, the candidates that do not enjoy the support of the largest and most prominent representatives of the civil sector. Reacting on such a decision, a group of nearly 30 non-government organizations submitted on the 27<sup>th</sup> of October to the Committee a request for cancellation of such a decision, saying it has made a charade of the election process. By the day when this Report was completed (October 31<sup>st</sup>), there were no reactions by the Committee to the said request. Such action of the Committee is a dangerous precedent that might reoccur in the case of proposers from the

media and culture sectors, if these sectors propose more than two candidates in the repeated procedure.

c.2. At the remaining two sessions held in the observed period, the Committee has reviewed the draft legislation that was on the agenda of the Second Session of the Parliament's Second Sitting. On October 27, the Parliament considered and accepted in principle the Draft Law on Amendments to the Law on Free Access to Information of Public Importance, which provides for a transfer of the supervision over the application of this Law from the Ministry of Culture to the Ministry for State Administration and Local Self-Government within six months of coming into force. On October 30, the Committee also considered the Draft Law on Copyright and Related Rights, also on the agenda of the current session of the Parliament.

#### **4. THE MINISTRY OF CULTURE**

a) The observed period saw the beginning of the application of the controversial Law on Amendments to the Public Information Law, with the passing of the Rules on the Keeping of the Public Media Register, which came into force on October 14. This topic was elaborated on in more detail in Section II of this report dealing with the implementation of legislation, under subparagraph 1 – Law on Public Information.

b) The previous report outlined the results of the competition for the co-financing of projects in the area of information, announced on September 21<sup>st</sup>. The Ministry was late by more than a month with signing the contracts with the applicants whose projects were endorsed. According to many opinions, the contracts were signed in October only after media associations had publicly criticized the Ministry and the Government at an ANEM press conference on October 21<sup>st</sup>. More about the said press conference, [here](#).

c) In the last report, we have indicated that on September 1, 2009, the Ministry of Culture called a competition for the co-financing of projects/programs of electronic media from Kosovo and Metohija in the total amount of 8 million dinars. Although it was supposed to publish the results of the competition on October 15 on its website, the Ministry failed to do so by the day this report was completed (October 31<sup>st</sup>).

In view of the difficult situation of the Serbian media in Kosovo and Metohija, we consider that such delay with the decision is not good. Furthermore, it is not good that there is no any official information on Ministry's web site regarding the reasons for the delay and the new date when the results will be announced.



d) On October 16, 2009, the Delegation of the European Commission to the Republic of Serbia held in Belgrade Media Center a presentation of Project “*European Integration Media Fund*”, funded by EU funds, through the IPA 2008 instrument. The total value of EU contributions is 3 million EUR (there is no co-financing by the Ministry of Culture). The goal of the project is to boost the capacity of local, regional and national media for reporting about all aspects of the European integration process.

This project – applied by the Ministry of Culture for obtaining IPA funds – comprises two components:

1. **Training for journalists and management (value 1.200.000 EUR);** the tendering procedure is underway for the selection of a company/consortium that is to implement this part of the project. The European Commission shall sign a service contract with them.

2. **Grant for media production (value 1.800.000 EUR of EU funds + 330.000 – total participation of companies to receive the grants).** Grants ranging from 20.000-100.000 EUR are intended for local, regional and national print and electronic media in Serbia for reporting about various aspects of the European integration process. The Delegation of the European Commission in Serbia has called on October 8 a competition for the financing of media production with the aim of better understanding the process of European integration and the European Union. The deadline for application is December 11, 2009. The documents and the necessary information about the competition may be downloaded from the website of the [Delegation of the European Commission in Belgrade](#).

The efforts of the Ministry of Culture are praiseworthy in obtaining the EU support for this project, which has secured substantial funds to help the media in Serbia. It is particularly important that the said project has allocated significant funds for the education and training of journalists and the management of media, which will definitively increase the level of professionalism and quality of the work of media professionals.

e) In the observed period, the work on the Media Sector Development Strategy remained at a standstill. The working group has not been set up and the Government didn't say whether it accepted the request of the media sector that – as the mainstay of this task – the Government should be the guarantor of the seriousness and the significance of whole undertaking, which may not be accomplished by one sole ministry. It remains to be seen whether the working group will be established at all, what will be its tasks, what will be the period for drawing up the Strategy and how will be addressed the many concepts that affect media, but are contained in regulations from other domains, and in contradiction with media legislation.

The Government's stand will also determine the readiness of the media sector to participate in this challenging task, which suffers from a lack of clear motive and determination of the authorities to assume responsibilities and duties entailed by this process.