III MONITORING OF THE ADOPTION OF NEW LEGISLATION

In December 2009, the Parliament of the Republic of Serbia adopted a considerable number of laws, including several particularly relevant for the media sector.

1. Law on Copyright and Related Rights (”Official Gazette of the Republic of Serbia”, No. 104/2009)

The most significant change relevant for the media sector was introduced by the new Law on Copyright and Related Rights in its part pertaining to determining the Tariffs of the organization for the collective exercising of copyright and related rights. The former Law from 2004 gave the freedom to the said organizations to independently determine the Tariffs for the use of copyright and related rights. It made the users, electronic media in particular, discontented; they claimed the Tariffs to be completely inappropriate, namely that the fee requested by organizations for collective exercising of copyright and related rights was disproportional to the importance which the use of the subject matter of protection had for the users' revenues. According to the concept adopted in the new Law, the level of Tariffs shall be agreed upon in negotiations between the organization and the representative association of users and shall come in the form of a written agreement. The new Law has given the Institutions of the public broadcasting service the status of individual users that are enabled to negotiate with collective organizations and enter into special agreements in order to determine special Tariffs, applicable only to the Public Broadcasting Service.

Failing an agreement on Tariffs, the Tariff proposals shall be determined by the collective organization's management board and submitted to the Copyright and Related Rights Commission for opinion. The Commission consists of a Chairman and four members; they are appointed by the Government, at the proposal of the Director of the Intellectual Property Office, from the ranks of experienced experts that are well versed in the matter of copyright and related rights. Collective organizations and representative associations of users are entitled to propose candidates for membership in the Commission, while the Director of the Intellectual Property Office nominates the Chairman.

The Commission gives its opinion about the Tariff proposed by the collective organization's management board. The opinion is namely an assessment on whether the proposed Tariff includes those rights for which the particular organization has the license issued by the Intellectual Property Office as well as if the compensation has been determined in accordance with relevant rules prescribed by the Law. Where a negative opinion is given, the organization is obliged to repeat the negotiations with the representative association of

users or to submit a new proposal of the Tariff to the Commission for opinion. If the Commission gives a negative opinion again, it shall pass the Tariff on its own.

The most controversial novelty is the manner in which the Law regulates the setting of the Tariff and the collection of the fee for exercise of related rights of performers and producers of released phonograms (recordings on sound carriers). The Law namely stipulates that both the said fees, which are relevant for electronic media because they are also charged for broadcasting, shall be exercised only collectively. The Law also stipulates that the Tariff for both types of fees shall be determined in a unified way, in a written agreement between the Phonogram Producers Organization and the Performers Association from one side and the representative association of users from the other side. If the agreement is not reached within 60 days from the launch of the negotiations, Managing Boards of these organizations will determine the proposal of the unified Tariff on the basis of their written agreement. If these organizations failed to submit their proposal to Commission for an opinion within 90 days from the launch of negotiations, the Tariff shall be determined by Commission. Furthermore, the Law provides that the fees shall be charged to the users in a unified way, while the organization appointed by the agreement concluded between the Performers Association and the Phonogram Producers Organization shall be entitled to collect the said fees. Failing to reach such an agreement within six months of the entry into force of the Law, the Government shall determine the organization that will collect the fee at the proposal of the Minister in charge of science and technological development. The organization appointed by the Government that will collect the fee shall be authorized to retain no more than 10% of the collected proceeds as collection expenses, as well as to hand over half of the remaining collected amount, at least quarterly, to other organization.

This concept was adopted in spite of strong critics by the Phonogram Producers Organization (OFPS). Namely, according to the old law from 2004, collective protection was not mandatory. It was envisaged that such protection be charged by the producer of the released phonogram and that, if an agreement between the said producer and the performer did not stipulate otherwise, the half of the collected fee was to be handed over to the performer whose interpretation is on the phonogram. In practice, performers have typically concluded agreements with phonogram producers, to which they have assigned the right to their part of fee.

It remains to be seen how this new concept will take hold in practice.

2. Law on Classified Data (”Official Gazette of the Republic of Serbia”, No. 104/2009)

The The Law on Clasiffied Data, adopted by the Serbian Parliament on December 11 and in force since January 1, 2010, governs a single system for determining and protecting secret data, which are of interest for national and public security, defense and internal or foreign affairs of the Republic of Serbia. The Law also regulates the protection of foreign classified data, as well as the matter of access to classified data and the cessation of secrecy thereof.

Rodoljub Sabic, the Commissioner for Information of Public Importance and Personal Data Protection, in an author's text published in the daily Blic, pointed to two positive aspects of the above mentioned Law. First, Serbia obtained a single piece of legislation governing the classification of secret data. Namely, this matter was previously regulated by an array of several hundred regulations, mostly obsolete and anachronistic. A single system is important for journalists and media too, especially those practicing investigative journalism, who obtains documents labeled as "secret" since such system provides greater legal security regarding the permissibility of releasing classified data and documents in public. According to Sabic, the second good thing is that the adopted version is much better than the initially proposed one, because the amendments of the Ombudsman and the Government have remedied certain shortcomings in the previous version that have made it impossible to adopt.

The Law stipulates that data and documents that have been assigned a certain degree of secrecy pursuant to previous regulations shall retain the same type and degree of secrecy, while the executives of the authorities, whom such data and documents pertain to, shall reconsider their secrecy no later than by the end of 2011, in accordance with the provisions of the new Law. The Law, however, falls short of providing for fines where these deadlines are breached or for an automatic cessation of secrecy upon the expiry of the deadline.

3. Law on Free Access to Information of Public Importance ("Official Gazette of the Republic of Serbia", No. 120/2004, 54/2007, 104/2009)

On December 11, 2009, the Serbian Parliament adopted the Law on Amendments to the Law on Free Access to Information of Public Importance. These amendments primarily concern the protection of "whistleblowers", but also provide for a number of new misdemeanors.

The amendments stipulate that employees in the state authority that have enabled access to an information of public importance pointing to corruption, abuse of office, unreasonable management of public funds or an unlawful action or procedure of a state authority, may not be called to account for that or suffer any consequences. The Law however stipulates additional requirements. One of them is that access to the information in question may not be restricted by law. The right to access may be restricted for reasons of protection of

life, health, safety, judiciary, defense, national and public security, economic well-being of the country, threatened breach of state, official, business or other secret, whose disclosure might have serious consequences for legally protected interests which prevail the interest of accessing the information. In certain instances, this right may be restricted for reasons of protection of privacy and other personal rights. In addition, protection of whistleblowers is provided, if the whistle blowing employee had reason to believe in the authenticity of the information; if he/she has not enjoyed any benefit from allowing access to the information in question; if he/she has informed the competent person in the state authority in advance about irregularities in question, but that person failed to take measure to remedy the reported abuse.

4. Law on Bankruptcy ("Official Gazette of the Republic of Serbia", No. 104/2009)

According to the new Law, payment incapacity over an extended period of time, which is one of the reasons for bankruptcy, exists if the debtor is not able to pay its liabilities within 45 days from the due date of payment, or if it completely suspends all payments for 30 consecutive days. In the current media situation in Serbian, the new Law on Bankruptcy may be relevant for a large number of media suffering longstanding solvency problems. One of the aims of the new Law is to motivate creditors to resort to bankruptcy proceedings. Namely, statistics have shown that, in Serbia, debtors are often too late and mainly reluctant to initiate bankruptcy proceedings. Moreover, when bankruptcy is declared, there are most often no more assets to protect and hence the creditors get a meager share of their claims. The legislators wanted to improve the efficiency of bankruptcy proceedings by speeding it up and making it less expensive, while at the same time enabling creditors to receive a more substantial share of their claims.

The new Law provides for special proceedings in case of extended payment incapacity of no less than one year. The Bankruptcy Judge shall bring *ex officio* the decision on initiating preliminary bankruptcy proceedings for legal persons that are incapable of paying their debts for the above said period of time. Such preliminary bankruptcy proceedings may not be subject to an appeal. Within 60 days from the publishing of the decision on initiating preliminary bankruptcy proceedings the creditors or the bankrupted debtor have to request implementation of the bankruptcy proceedings and deposit an advance for the costs of the advertisement and notifying the creditors. If they failed to do so, bankruptcy proceedings shall be opened, the extended payment incapacity shall be ascertained, together with the lack of interest of the creditors and the bankrupted debtor for the implementation of the bankruptcy proceedings, which will finally result in the closure of the bankruptcy

proceedings. When the bankruptcy decision becomes final, the legal person shall be deleted from the register and its assets assigned to the Republic of Serbia. In the transitional and final provisions of the new Law, in view of a large number of legal persons that are incapable of payment over an extended period of time, it is stipulated that in the course of 2010 such special proceedings will be implemented in the case of companies that have ceased all payments in an uninterrupted three-year period. In the case of companies that have ceased all payments in an uninterrupted two-year period, the said proceedings will be implemented by the end of 2011.

5. Law on Misdemeanors (”Official Gazette of the Republic of Serbia”, No. 101/2005, 116/2008; 111/09)

The Amendments to the Law on Misdemeanors (in effect since January 1, 2010) have introduced a change to the provisions which determine the ranges of fines that may be pronounced for misdemeanors. For natural persons, fines range from 5.000 to 150.000 dinars; for legal persons, they range from 100.000 to 2.000.000 dinars; and finally, fines for entrepreneurs range from 10.000 to 500.000 dinars.

Even before the adoption of the latest amendments, the Law prescribe stipulated that, as an exception to the prescribed ranges of fines, special ranges may be provided for by the Law. They have to be proportionate to the amount of the damage caused or unpaid liability, to the value of goods or other item that is the subject of the misdemeanor, but not exceeding the twentyfold amount of these values, including for misdemeanors in the area of public information. We hereby remind that the Amendments to the Law on Public Information adopted in late August provide for fines amounting to up to 10 million dinars. Nevertheless, we believe that misdemeanor fines stipulated by the Law on Public Information remain disproportionate even after the adoption of the amendments to the Law on Misdemeanors.