

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

1.1. On October 6-9, 2010, the RBA was the host of the 32nd meeting of the European Platform of Regulatory Agencies (EPRA) in Belgrade. The EPRA consists of 52 regulatory agencies in the sphere of electronic media from 47 European countries. The EPRA meeting in Belgrade is one of two such symposiums held each year. The topics discussed related to digitalization, advertising in media and EU regulations concerning broadcasting. The meeting was opened by the Culture Minister Nebojsa Bradic and the President of the RBA Council, Vicar Bishop of Jegar, HE Porfirije. The plenary session dedicated to the regulation of advertising dealt particularly with the challenges this field shall face in the future, such as the defining of legitimate product placement, preserving editorial independence from advertisers and sponsors, as well as keeping different regulatory regimes on various content distribution platforms, with advertising being strictly regulated on classical television and softly regulated on Video on Demand (VOD) or mostly unregulated (Internet). The second plenary session dealt with various models of regulation and issuance of licenses for digital terrestrial television broadcasting in Europe. In addition to plenary sessions, working groups were organized to deal with product placement, the integration of the Internet in classical television sets and evaluation of the content of the public broadcasting service.

1.2. Although the Culture and Information Committee of the Serbian Parliament unanimously laid down the list of the Conference of Universities as the authorized proposer for the appointment of the member of the RBA Council, which includes Natasa Gospic and Goran Petrovic and which had to be furnished to the Parliament for approval. However, the Parliament has not voted about the list yet. We hereby remind that a position in the RBA Council – to be occupied by a candidate from the list proposed by the Conference of Universities – became vacant with the death of Professor Svetozar Stojanovic last May. According to the Broadcasting Law, the Parliament was obliged to elect a new Council member within 30 days from having received the list. Since it is obvious Parliament indeed received the list prior to September 30,

when it was discussed in the Culture and Information Committee, the MPs have again exceeded the time limit provided for by the Broadcasting Law for the appointment of the RBA Council.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

2.1. The Management Board of the Republic Agency for Electronic Communications (RATEL) unanimously elected Milan Jankovic, PhD to the position of Director. The term of office of the Director is five years and the Jankovic was elected on an open competition. Milan Jankovic was the Executive Director of RATEL in 2006. In keeping with the Law on Electronic Communications adopted this year, the Director of RATEL shall be responsible of the lawfulness of the Agency's operations, represent the Agency, manage its activities and business, prepare and enforce the decisions of the Managing Board, decide upon the rights, obligations and responsibilities of Agency employees, ensure the transparency of the work of the Agency and perform other duties provided for by Law and the Agency's Statute. The Law on Electronic Communications stipulates that the Director of the Agency shall decide upon the rights and obligations of operators and users of electronic communications.

2.2. In October, RATEL launched public consultations about the drafts of Rules on the amount of the fee for performing electronic communications related activities, the Rules on the amount of the fee for the use of radio frequencies and the Rules on the forms of the requests for issuing single licenses for the use of radio frequencies. The said Rules are relevant for radio and TV stations, particularly in the wake of the impending digitalization. The difference compared to currently applicable rules, especially the Rules on the amount of the fee for the use of radio frequencies, is that the level of economic development of the municipality covered by the coverage zone of the radio network is not anymore one of the criteria for determining the amount of the fee. The latter is the consequence of allignment with Article 31 of the Law on Electronic Communications, according to which the amount of the fee for the use of a radio frequency shall be associated solely to the type of service provided by the use of the allotted radio frequency, namely the purpose for which the allotted radio frequencies are used, and where appropriate, to the number of inhabitants in the coverage zone, according to the official data of the relevant statistics agency. From the practical standpoint, if the Rules are adopted as proposed, the fee that the broadcasting media will pay for using the frequencies shall remain at the present level in the more advanced regions, while it will be raised in underdeveloped areas.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

October has seen four sessions of the Second Regular Sitting of the Parliament of Serbia in 2010, but the MPs did not discuss any laws of relevance for the media sector. The 27th session of the Culture and Information Committee of the Parliament was also held in October. However, members of the Committee only discussed a draft law from the field of culture and did not deal with any issues from the sphere of information.

4. THE MINISTRY OF CULTURE

4.1. On October 7, 2010, Culture Minister Nebojsa Bradic said in an interview for the International Radio Serbia, that the making of the Draft Media Strategy was underway and that it would be introduced to the general public in early November, after which there would be a public debate and adoption of the Strategy by the end of the year. “We are not starting to write new laws or determining what kind of media will exist in Serbia. We are rather defining the main courses of development of the media sphere and creating the conditions for free and unhindered media development. I believe that this is at the core of our efforts and I am convinced that, in the coming period, we will define the public interest as one of the main postulates the media, state and society should adhere to. On the other hand, we shall determine the obligations, place in society and role of the state in protecting the public interest, as well as in regulating the media sphere, and we shall protect freedom of speech, freedom of the reporters and the journalist profession”, Bradic replied when asked about the innovations that would be delivered by the Media Strategy. The Minister also announced that the Ministry would, after the production of the Strategy, turn towards the conforming of the media regulations to the principles contained in that document. The Draft Media Strategy, which Bradic announced to be introduced to the public in early November, was not released by the time this Report was completed.

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of phonogram producers' related rights

5.1. On August 23, 2010, the first consultation meeting of employees and representatives of the OFPS was held in Jarmenovci. The invitation was extended to all legal representatives (attorneys) of that Organization, all controllers in the field, the representatives of each sector/department of the organizations, as well as to the representatives of the Intellectual Property Office. The meeting saw the setting up of a commission for the preparation of the consultation meeting of employees and representatives of OFPS, consisting of one representative each of the Legal Affairs Department, the Independent Control and Records Department, controllers in the field and OFPS legal representatives. The aim of the four-strong Commission was to achieve a higher level of mutual collaboration of the representatives (attorneys and controllers) and employees of OFPS, in order to more easily ponder and resolve the problems of the Organization.

Communication and introducing uniform practices in the actions of the Organization's representatives is important both for the media and the users, particularly since the OFPS has in the previous period pressed charges against them on several occasions over alleged breaches of the Law on Copyright and Related Rights. Therefore it would be most useful to include the users in the consultations, in order to avoid the already many misunderstandings, which are leading to numerous costly legal cases.

5.2. According to information obtained by the authors of this Report, which hasn't been confirmed on the websites of the organizations for the collective realization of Related rights or the one of the Intellectual Property Office, the Office has put forward certain objections to the business cooperation agreement between the PI and OFPS, signed on June 21, 2010, which we have mentioned in our previous reports. Namely, according to the Law on Copyright and Related Rights, the fee charged by phonogram producers for broadcasting and rebroadcasting of phonograms, public communication of phonograms and public communication of phonograms that are broadcast, as well as the performers' fee for broadcasting and rebroadcasting a performance from a recording issued on a sound carrier and public communication of a recording issued on a sound carrier, shall be charged from the user as a single fee. The single fee

shall be collected by one organization, determined by the agreement concluded between the organization of performers and the organization of phonogram producers. The said agreement requires these organizations to determine the amount of the costs of collection of the single fee and the frequency of the disbursement of part thereof to the other organization. According to the information obtained by the authors of this Report, the above mentioned objection of the Office was that the agreement, entered into between PI and OFPS, was not entirely conformed with the Law on Copyright and Related Rights.

6. PI – Organization for the collective realization of performers' rights

6.1. On October 23, 2010, PI – Organization for the collective realization of performers' rights held an extraordinary session of its Assembly. According to the agenda of the session, the organization was to pass a decision about the adoption of amendments to the Rules on the protection of performers' rights and the allocation of performers' fees. The minutes or report from the Assembly's session are not available to the public, but the session has seen the adoption of the amendments to the Statute in the form of a consolidated text thereof posted on the Organization's website.

7. SOKOJ – the collective organization for the protection of copyrights of music authors

7.1. Acting *ex officio* and in the scope of its powers provided for by the Law on Copyright and Related Rights to oversee the activity of the collective organization and ascertain if it is working in accordance with the issued license and the Law, the Intellectual Property Office identified in late September certain irregularities in the work of SOKOJ and ordered that measures be taken to remedy these irregularities. The time limits for implementing these measures expired in October and it remains unknown if SOKOJ has complied with them and how. The identified irregularities and the said measures mostly pertain to the allocation of author fees for 2008. The fact that the Intellectual Property Office is increasingly focusing, in its oversight of the work of collective organizations, on the issue of allocation, will have its repercussions both on the media as users – since it brings to light the question of informing the organizations by the media, as users of musical author works, phonograms and interpretations, about the name of the protected object, frequency and scope of exploitation, as well as about other circumstances that are relevant for calculating the fees that are paid under the tariff. The above will also affect the

subject of the allocation of the funds collected. Namely, the failure to furnish or delay in furnishing data about the name of the protected object, frequency and scope of exploitation, as well as about other circumstances that are relevant for calculating the fee, according to the provisions of the Law on Copyright and Related Rights, is provided for by the said Law as an economic offense punishable by fines ranging from 100.000 to 3.000.000 RSD for a legal person – in our case the media, as a user – and between 50.000 and 200.000 RSD for the responsible person in the media. The latter, depending on the circumstances, could be the Director or Editor in charge for making the programming timetables containing data about broadcast musical author works, phonograms and interpretations.