

#### **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)***

1.1. The Activities of the RBA have been partly elaborated in the section concerning the implementation of the Broadcasting Law.

1.2. At a session held on February 3, the RBA Council passed a decision to request from RATEL to enact a decision declaring the cable operator SBB an “electronic communications network operator for the distribution and broadcasting of media content”, which is required to air certain television programs, at the local level in Novi Sad and Kikinda. In this way, a procedure was opened in order to settle the current disputes between SBB and certain local television stations in these two towns, especially TV Kanal 9 in Novi Sad and VK Televizija in Kikinda. Namely, these two stations have publicly protested over the decision of the dominant cable operator in their respective towns to exclude them from its cable offer. Last year, RATEL published an analysis of the retail media content distribution market, showing that media content distribution services in Serbia were offered by 81 registered operators, of which 76 cable operators, 2 IPTV operators and 3 DTH operators. At that, 7 largest operators constitute more than 85% of the market, of which more than 50% has been steadily occupied for years by SBB. In line with the above, RATEL passed a decision determining SBB to be an operator with major market strength on this market. According to that decision, SBB has been prohibited from charging excessive fees, denying other operators from entering the market or restricting competition by charging excessive or dumping fees, giving unjustified preference to certain end users, obtaining RATEL’s approval to the forming and change of service fees in the case of the connection thereof, the control of individual tariffs and cost-based prices, namely establishing the price on the basis of prices charged on comparable markets. However, this failed to solve the problem existing on the other side, since there were complaints over SBB’s alleged practice of entering into distribution contracts under different conditions for

different television stations/content providers. That has resulted in a situation that certain operators holding local or regional terrestrial broadcasting license have practically been excluded from the cable program, which is worrying in communities with a high degree of cable penetration (typically urban environments that are the most attractive for advertisers). Such situation has led to a dispute in Novi Sad, where the court ordered SBB twice to restore Kanal 9 program in its cable offer. RBA's decision gives hope that the problem could be solved by imposing the dominant operator the so-called must carry obligation. Namely, pursuant to Article 101 of the Law on Electronic Communications, RATEL is entitled, at the request of the RBA, to determine the communications network operator for the distribution and broadcasting media content, which is required to broadcast one or several radio or television channels, at national, provincial, regional or local level, when:

- A substantial number of end users is using the electronic communications network of that operator as the sole or primary channel for receiving media content; and
- This is necessary in order to realize clearly determined objectives of national interest, which is to be determined by an authority responsible for broadcasting, in compliance with the principles of proportionality and transparency.

In the concrete case, RBA's request represents a first step towards introducing a must carry solution that will encompass, on the territory of Novi Sad, Kanal 9 television, TV Delta, TV Mozaik and Novosadska TV, and in the Kikinda area VK TV and TV Rubin. RATEL is soon expected to analyze the number of users utilizing SBB's electronic communications network as the sole or primary means of receiving media content and accordingly introduce the proper must carry solutions.

## **2. *Republic Agency for Electronic Communications (RATEL)***

The activities of the Republic Agency for Electronic Communications were elaborated on in the part concerning the digitalization process.

## STATE AUTHORITIES

### 3. *Ministry of Culture, Media and Information Society*

In an interview for the daily “Danas” dated January 31, 2012, the Minister for Culture, Media and Information Society Predrag Markovic said that the Action Plan accompanying the Media Strategy was being implemented as planned and that the Law on Electronic Media, which is expected to replace the current Broadcasting Law, is already in the works. Markovic noted that the process of setting up a working group for drafting a new Public Information Law will soon be completed, as well as that an additional working group will be created to work on the new Public Broadcasting Services Law. The Minister also confirmed that an initiative has been addressed to several ministries with the aim of considering the possible amendments to the Law from their field of competence, in line with the goals of the Strategy. Furthermore, in his words, commissions will soon be set up in order to review the applications for the open competitions for the co-financing of media content. However, despite the Minister’s optimism, the impression is that the communication channels set up between media associations during the work on the Media Strategy have been undermined, since both media and journalists’ associations have learned about the formation of the working group from newspaper interviews, instead of being informed directly. This does not help confidence in the transparency of the process of drafting regulations, whose adoption was announced in the Action Plan accompanying the Media Strategy. It is namely not clear enough what will be the priorities of the Government in making the amendments to the laws, since the Media Strategy is not always clear as to these amendments. Moreover, the question remains what will be the fate of the draft laws, if they are produced prior to the appointment of a new government, in a situation where such new government would involve changes in the ruling coalition, since the opposition was not involved in the work on the Media Strategy and was not consulted in any way whatsoever, which could point to its ambitions and plans in that respect.

### 5. *Copyright and Related Rights Commission*

In its Opinion dated December 5, 2011, the Copyright and Related Rights Commission found that the proposed tariff for the fees, charged by the Organization of Music Authors of Serbia (SOKOJ) for

the airing of music works on radio and TV stations, included all rights for which SOKOJ held a license issued by the Intellectual Property Office. The same Opinion said that such tariff was determined in accordance with the rules on setting the tariff prescribed by the Law on Copyright and Related Rights. The above has put an end to the tariff dispute between the Association of Independent Electronic Media (ANEM) and SOKOJ on the tariff. SOKOJ's new tariff was published in the Official Gazette and has been practically implemented since early January. The tariff involves fees ranging from 2.20% to 4.20% from television revenues and from 2.50% to 4.50% from radio revenues. Broadcasters were unhappy with the previous tariff, but the new tariff is cheaper merely for TV stations whose content contains less than 10% of music. ANEM announced it would press charges in order to prove before a court of law that the aforementioned Commission's Opinion was not founded upon the law.

In late January, however, ANEM announced that the Administrative Court of Serbia had passed a decision rejecting its claim against the Copyright and Related Rights Commission as inadmissible. ANEM announced it would address SOKOJ with a proposal to renew the negotiations about the fee tariffs, but that it would also press new charges in order to have the tariff revoked, with a proposal for a temporary measure, so as to postpone the implementation of the tariff until the court reached the final decision. Almost at the same time came, an attempt by the government to directly interfere in the regulation of the fee amounts. The Government adopted new draft amendments to the Law on Copyright and Related Rights, which would drastically restrict the tariff of fees for public communication. This measure has rightfully been dubbed an electoral trick of the government in order to gain popularity. It was also unrealistic, on the eve of the elections, to expect this proposal to be reviewed by the Parliament. Nonetheless, it is also true that the collective organizations have themselves contributed to such reaction by the state, which has opened a new problem, putting at stake the very survival of the system of collective protection of copyright and related rights in Serbia and the protection thereof from excessive government interference. In early February, ANEM announced that the talks with SOKOJ were renewed, while SOKOJ ceased to charge fees under the new tariff. Meanwhile, the Copyright and Related Rights Commission remained silent (we remind it was precisely the Commission that caused the whole problem with its controversial opinion invoking not the law, but the "standards for determining the tariff, which are generally recognized internationally and are based on the principles and recommendations of the World Intellectual Property Organization and CISAC"), without quoting these standards and recommendations. We remind that a tariff dispute is still going on before the Commission, between



ANEM, as the representative association of broadcasters and OFPS, the collective organization for the protection of phonogram producers' related rights. From the above, it stems that the problems of collective protection of copyright and related rights in Serbia persist, constituting a severe burden on the media scene.