

The Ministry of Culture and Media

Vlajkovicева 3,

Belgrade

SEPARATE OPINION OF THE MEDIA COALITION ABOUT THE WORKING VERSION  
OF THE DRAFT LAW ON PUBLIC INFORMATION AND MEDIA

Dear Sirs,

The Media Coalition, consisting of ANEM, NUNS, UNS, NDNV and Local Press, has analyzed in detail the working version of the Draft Law on Public Information and Media (hereinafter: the Draft Law). The Media Coalition hereby wishes, through its representatives in the Working Group for preparing the Draft Law on Public Information and Media, to put forward its proposals regarding the wording of certain articles of the Draft Law before the latter is tabled for public discussion. We wish to emphasize that these objections will not be the only ones, namely that the Media Coalition will take an active part in the public discussion so as to try to improve the final text of the Draft Law.

The separate opinions per specific articles.

**Article 8**, reading:

Public service broadcasting institutions and other media operating in line with the principles governing public service broadcasters, shall be particularly obligated to report about phenomena, events and persons in a timely and unbiased manner; to enable the expression of all views and opinions present in the community; to promote, in a spirit of tolerance, a debate about all topics of interest for the public; to produce diverse program content, as well as to strive for the highest level of service quality.

Should read:

**Public service broadcasting institutions, media established for the purpose of providing information in the ethnic minority languages, media established for the purpose of providing information to the population on the territory of the Autonomous Province of**

**Kosovo and Metohija, as well as media established by universities for the purpose of providing information to and training of students**, shall be particularly obligated to report about phenomena, events and persons in a timely and unbiased manner; to enable the expression of all views and opinions present in the community; to promote, in a spirit of tolerance, a debate about all topics of interest for the public; to produce diverse program content; as well as to strive for the highest level of service quality.

**Explanation:**

We believe it is necessary to explain what falls in the category of “other media operating in line with the principles governing public service broadcasters”, bearing in mind the position of the Media Strategy that the state may neither directly nor indirectly be the owner of media, namely that the only media that are financed from public funds are public service broadcasters (RTV and RTS), while the remaining three types of media (for ethnic minorities, for providing information to the population on the territory of the Autonomous Province of Kosovo and Metohija, as well as media established by universities for the purpose of training students) are merely exceptions from the general rule, which ought to be interpreted narrowly. Consequently, they need to be itemized in this Article.

**Article 20, Paragraph 4, reading:**

(4) A participant in the open competition referred to in Article 16, Paragraph 2, which has in the respective calendar year already used funds intended for project co-financing in the field of public information, may participate in the open competition referred to in Article 16, Paragraph 1 of this Law only one more time in that year, namely with a proposal for the co-financing of the same project in an amount not exceeding 20% of the project cost.

Should be amended so as to read:

(4) A participant in the open competition referred to in Article 16, Paragraph 2, which has in the respective calendar year already used funds intended for project co-financing in the field of public information, may participate in the open competition referred to in Article 16, Paragraph 1 of this Law only one more time in that year, namely with a proposal for the co-financing of the same project in an amount not exceeding 20% of the project cost **and up to the maximum amount determined by the open competition.**

**Explanation:**

Paragraph 4 must provide for two restrictive criteria (just like in Paragraph 3 of the same Article), stating:

- 1) The percentage limit relative to the overall project cost (20%); and
- 2) The limitation of the maximum amount up to the amount determined by the open competition.

It is possible to envision that the value (cost) of the project that is the subject of the open competition is substantial and that even the foreseen 20% exceed the amount determined by the open competition. Therefore a two-fold restriction needs to be imposed, just like in Paragraph 3 of this Article, particularly since the *ratio legis* of this provision is to limit the possibility for repeated use of the funds for project financing.

**Article 21**, reading:

The applications to the open competition referred to in Article 16, Paragraph 1 of this Law shall be evaluated relative to the extent to which the proposed project activities are suitable for the realization of the public interest in the field of public information, in accordance with Article 13 of this Law, whether the project activities contain the measures for improving the public information system referred to in Article 14 of this Law, as well as relative to the adherence of the participant in the open competition (applicant) to professional and ethic media standards.

Should be amended so as to read:

The applications to the open competition referred to in Article 16, Paragraph 1 of this Law shall be evaluated relative to the extent to which the proposed project activities are suitable for the realization of the public interest in the field of public information, in accordance with Article 13 of this Law, whether the project activities contain the measures for improving the public information system referred to Article 14 of this Law, **as well as based on the commitment of the applicant to professional ethical standards, which is documented by accepting the competences of self-regulating bodies ruling on complaints against breaches of such standards; by taking part in standardized systems for the independent verification of circulation, namely by acting in accordance with the decisions of the independent electronic media regulatory body.**

**Explanation:**

We believe that the criterion of “professional and ethic media standards” ought to be defined more closely in the Law itself, in order to avoid possible provisional and unequal practice in enforcing this provision of the Law. However, it is not sufficient to leave the proposed wording. Therefore, that criterion should be developed so as to contain three important elements, namely:

- 1) Acceptance of the competence of self-regulatory bodies – for print media,
- 2) Acceptance of the system of independent verification of circulation – for print media, and
- 3) Acting in accordance with RBA decisions – for electronic media.

The essence of this provision is the respect of ethical and professional standards, but the criterion proposed by the Working Group seems to be insufficiently elaborated.

**Article 26**, reading:

A public authority in Serbia, namely a territorial autonomy or local self-government unit competent for public information affairs shall regulate more closely the conditions and the procedure of providing for and allocating the funds referred to in Article 16, Paragraph 1 of this Law, as well as the application forms for the open competition.

A way should be elaborated to ensure a uniform practice by the means of this Law in implementing the procedure of allocating the project funds.

**Explanation:**

We believe that the said rules on implementing the open competition need to be uniform, irrespective of the level of the public authority allocating the funds, particularly with the purpose of avoiding uneven application of rules on public competitions relative to different levels of government. Article 26 must contain the same rules and not leave too much space to various levels of government to conduct the open competitions in differing ways. Most importantly, a uniform procedure for implementing the open competitions needs to be maintained. The latter especially bearing in mind that each level of government may elaborate the criteria for participating in the competitions and interpret differently the already broadly set criteria.

Article 31, reading:

- (1) The publisher shall be entitled to determine and implement the program concept of media.
- (2) The entitlement referred to in Paragraph 1 of this Article is in legal circulation.

Should be amended so as to read:

**The publisher of the media may transfer the right of disposition onto the media.**

**Explanation:**

The essence of this proposal was to clearly state that the right to a media outlet may be transferred. The members of the Working Group explained that a media outlet was not a legal person and did not possess anything but the editorial and program concept, which was why such wording was needed.

Even after the explanation of the replaced wording (instead of the term “media organization” the term “media publisher” will be used), this provision, in its present form, will remain unclear for those that will be applying it.

**Article 52**, reading:

(1) Cases of excessive concentration referred to in Articles 50 and 51 of this Law shall be settled by the republic authority competent for the protection of competition, in a procedure foreseen by the Law governing the protection of competition.

(2) When deciding about the questions referred to in Paragraph 1 of this Article, the republic authority competent for the protection of competition shall perform a sectorial analysis of the media market and directly connected markets, in cooperation with scientific and research institutions, where appropriate and at least once in a period of three years.

A new paragraph should be added, between Paragraphs 1 and 2, which will read:

(1) Cases of excessive concentration referred to in Articles 50 and 51 of this Law shall be settled by the republic authority competent for the protection of competition, in a procedure foreseen by the Law governing the protection of competition.

**(1a) The regulatory body competent for audio and audiovisual media services, in accordance with the law governing audio and audiovisual media services, may also revoke the competences for the provision of audio and audiovisual services in a case of concentration, where the obligation of reporting the concentration to the republic authority competent for the protection of competition, in a procedure foreseen by the law governing protection of competition, did not exist, namely where the republic authority competent for the protection of competition, in a procedure foreseen by the law governing protection of competition, passed a conclusion rejecting the complaint about the concentration.**

(2) When deciding about the issues referred to in Paragraph 1 of this Article, the republic authority competent for the protection of competition shall perform a sectorial analysis of the media market and directly connected markets, in cooperation with scientific and research institutions, where appropriate and at least once in a period of three years.

### **Explanation:**

The essence of the proposal is to maintain the RBA's authority to revoke a license in the case of an obvious concentration, where the Competition Protection Commission does not want to initiate proceedings because the companies that are acquired and sold have an annual turnover of less than 20 million Euros. In Serbia, 99% of the media have an annual turnover of less than 20 million Euros (especially small radio stations) and if everything is left solely to the Commission to decide, one person could end up buying all radio stations in Serbia, since that even jointly they are unable to reach the 20 million threshold.

### **Article 53, reading:**

(1) The media must have a responsible editor.

(2) The editor-in-chief has the capacity of responsible editor of that media.

(3) The responsible editor for a particular issue, column or program unit shall be accountable for the content he/she edits.

(4) A person enjoying immunity may not be a responsible editor.

(5) Residence on the territory of the Republic of Serbia shall be a prerequisite for appointment to the position of responsible editor.

Should be amended so as to delete Paragraph 3.

**Explanation:**

The Media Coalition has requested the deletion of that paragraph because of the common practice of appointing certain persons for responsible editors solely for the purpose of meeting formal requirements. Hence, the responsibility has to be shifted onto the editor-in-chief only, who will at the same time be the responsible editor. This is particularly the case at the local level.

**Article 91, reading:**

(1) The person whose right or interest has been violated by an untrue, incomplete or inaccurately conveyed information, may request the information from the party it has originated from (hereinafter: the source of information) to retract such information as untrue, incomplete or inaccurately reported and from the responsible editor to publish such retraction.

(2) The source of information may request from the responsible editor to publish the retraction of his/her untrue, incomplete or inaccurately conveyed information.

(3) The source of information shall be the person specified as such.

(4) If the source of information is not specified and may not be identified, the request referred to in paragraph 1 of this Article shall be lodged against the responsible editor.

(5) The injured party may request that the source of information, namely the responsible editor, to declare the released information as untrue, incomplete or inaccurately reported, to rectify or amend it, to publicly state he/she does not possess proof for the stated claims, to state that he/she has subsequently found out about the information's inaccuracy, incompleteness or inaccurate conveyance, to state that he/she does not stand by their claim anymore, that he/she distances him/herself from the content of the information or make other statements necessary to violate the injured right.

(6) Litigation proceedings for releasing the retraction will debate the untruthfulness, incompleteness or inaccuracy of the conveyance of the information and whether the information in question has violated the right or interest of the plaintiff.

**Should be deleted.**

**Explanation:**

We believe this institute to be redundant. Particularly questionable is this wording of the article, because it enables anyone to be entitled to request a retraction (especially having in mind that there is an option to respond to the information). This institute totally ignores the basic legal principle, as well as the provisions of the journalists' code of ethics that the journalist, namely a responsible editor, shall check the veracity of information with due journalistic care and if he/she learns that the information is untrue or incomplete, he/she shall acknowledge it in reporting about an event or person (realizing the function of the retraction). It seems that such a concept will cause major problems in practice and significantly affect the course of investigative research and reporting.

Article 154, Paragraph 5, reading:

(5) Articles 15-26 of this Law shall be enforced as of January 1, 2014, based on the principle of full market equality of media organizations and general legislative rules on state aid and protection of competition, as well as provisions of concluded and transposed international agreements.

Should be amended so as to read:

**(5) The financing of media publishers referred to in Paragraph 1 of this Article from public revenues after January 1, 2014 shall be prohibited, unless in line with the provisions of articles 15-26 of this Law.**

**Explanation:**

We believe that the wording of the Working Group is vague and that the terms "principles of full market equality" and "general legislative rules state aid and protection of competition" may be subject to divergent interpretation. Therefore, it should be clearly stated that, as of January 1, 2014, there will be no more financing from the budget but strictly project financing under articles 15-26 of this Law.