



Report on ANEM round table Draft of the New Advertising Law

The Ministry of Trade and Services has recently released its draft of the new Advertising Law, subject to a public discussion until December 24, 2010. With the belief that the Advertising Law is extremely important for the media sector, ANEM organized a round table on that topic in Belgrade's Media Center on December 15. The aim was to contribute to better awareness about this issue and greater participation of colleagues and partners from the media, as well as from other stakeholders, in the scope of the public debate about the draft of the said Law. The round table was attended by about 50 representatives of the competent authorities (Ministry of Trade and Services, RBA), media associations (ANEM, IJAS (NUNS), JAS (UNS), Media Association), marketing agencies (McCann Erickson, Alma Quattro, A-media), the media (Prva TV, RTS, RTV, RTV Pink, RTV B92, Tanjug, Radio Kikinda, TV Cacak, Army Info Forum, Radio Paracin, City radio from Nis, Radio 021 from Novi Sad, RTV Kraljevo, TV Smederevo, Radio Pozega, Bulgarian National Radio, the Taboo magazine, Blic, Danas), the academic community and international organizations, as well as the donor community (USAID, IREX, Norwegian People's Aid-SEE, Council of Europe, OSCE, EU Delegation). In attendance was also the representative of the Ministry of Trade and Services who has worked on the draft Law (Vera Despotovic, Advisor) and several members of the working group tasked with producing the working version of the Advertising Law.

The keynote speakers in the introductory part of the round table were ANEM President Sasa Mirkovic, ANEM Coordinator Jasna Milanovic and the ANEM attorney at law Slobodan Kremenjak.

ANEM Coordinator Jasna Milanovic briefly informed the participants on the activities of the working group that was expected to produce the working version of the Advertising Law. Milanovic said that the group was set up back in December 2009 and that, after a successful beginning of the work, establishment of sub-groups and some initial materials that were not commented by the working group, it was faced in May with an impossible task: to complete its mission within two weeks. Not a single joint meeting has been organized since. Like many other members of the working group, ANEM believed that the activities on the Advertising Law were postponed due to the work on the Media Strategy. However, on December 6, the Ministry of Trade and Services released its own version of the Draft Law, without proper participation of the working group. Jasna Milanovic stressed that the position of ANEM was that the Draft ought to be returned for review and released only after the Media Strategy was passed.

ANEM Attorney at law Slobodan Kremenjak reminded participants of the reasons for passing a new Advertising Law. The current Law from 2005 allows for the possibility of different interpretations and serious problems in the implementation thereof have repeatedly arisen. Those who are subject to the current Law, as well as those who are in charge of monitoring its implementation, deem it restrictive; from period of adoption of the current Law, the European legal framework the Advertising Law is invoking has been changed. Kremenjak went on presenting ANEM's main objections to the Draft Law, which concern the way it was brought into line with the current European legal framework and national regulations. He said that problems might arise in the implementation of the future Law if certain problematic provisions of the Draft are not amended. The difference in the meaning of certain terms laid down in the Audiovisual Media Services Directive were not sufficiently

taken into account when making the Draft Law, relative to the definitions from the former European legal framework (Convention on Transfrontier Television). This has, in turn, led to a problem with the definition of terms used in this Draft Law. The Directive is namely broader than the Convention, for it encompasses a wider range of audiovisual media service – both classic TV and non-linear services (video on demand). Unlike the Directive, the Draft stops short of dealing with non-linear services. On the other hand, the Draft includes the radio, which is not dealt with by the Directive. Had the Directive been applied more consistently, we would have seen the liberalization of the rules concerning the radio, which is not the case with this Draft. Also, the definition of audiovisual commercial communication from the Directive includes the recommending of goods, services or image of a person engaged in a commercial activity; in the Draft, that part of the definition – commercial activity – has been removed, which could potentially lead to advertising for public good or advertising for a positive social cause being treated the same as commercial advertising. Kremenjak said that, although it was good that the authors of the Draft had gone a step further in invoking European documents – although Serbia was not obliged to apply to those documents as a non-EU country – such decision required a deeper and more responsible analysis. Such analysis has not been carried out in making the Draft Law, where certain concepts from the EC document interpreting the European Convention on Transfrontier Television have been wrongly introduced. In addition to inconsistent application of European regulations, the Draft is also marred with issues concerning the synchronization with the existing laws, as well as with current strategic reforms in the media sector. This, in turn, compromises the potential implementation of the future Media Sector Development Strategy. The Draft has namely further liberalized (relative to the existing Law) certain forms of advertising on the public service broadcasters, starting with product placement, crawls, commercial programs, commercial packages, split screen, interactive advertising, etc that do not even exist in the current Law, although during the present discussion on the Media Strategy stakeholders have debated about how to introduce additional restrictions to advertising on the public service broadcasting (PSB).

In an active discussion that followed, various opinions, remarks and suggestions related to the Draft Advertising Law could have been heard:

Goran Pekovic, member of the RBA Council and member of the working group for making the Draft Advertising Law said that not a single member of the working group endorsed the proposed Draft Law. The integral text of the Draft Law has failed to reconcile the working versions of the parts written by certain members of the working group. Moreover, some articles written by members of the working group were altered, which had changed their fundamental meaning. Pekovic said that the RBA would object to the section about audiovisual media communications and try to rectify the segments that the Ministry – due to poor knowledge of media-related matters – tried to change. The RBA also objected the fact that such Advertising Law mostly pertained to the media and not to advertising. Also, the largest part of the Draft stems not from documents regulating advertising in Europe, but from ones governing the business of broadcast media (Directive on Audiovisual Media Services). Goran Pekovic proposed the Draft Law to be amended completely so as to be transformed into a “light” and concise law regulating advertising. In his words, it should omit broadcast media, namely the conveyors of electronic messages, which should be regulated by other laws. Pekovic believes that the activity of the public service broadcasting should not be regulated by the Advertising Law, for the basic model of operation of the PSB is governed by the Broadcasting Law. He also agreed that the role of the PSB is not to participate in the “commercial game”. Otherwise, the players on the market would be put in an uneven position. Pekovic stressed that the commercial media ought to enjoy a bigger commercial space than the one of the PSB.

Branislav Novcic, President of the Media Association and member of the working group for making the Draft Advertising Law agreed with most of Pekovic’s comments, but said he believed that the media, as conveyors of electronic messages, should

be part of this Law. Novcic also said that all players mentioned in the Law ought to have equal conditions for growth and development and that nobody should enjoy a preferential position. His main objections were that such a Draft Law inconsistently applied to European standards and did not correspond to market needs, while at the same time giving the PSB a privileged role. Novcic added that the Draft Law was neglecting the sphere pertaining to the business of marketing agencies; it was also not in line with the digitalization plan and was not addressing the sphere of new media. ASMEDI believes that such Law must be thoroughly changed and that it should not, in the present form, undergo public discussion, for it is not conformed to European standards or market and development needs.

Vladimir Ceh, NEO Communications and member of the working group for making the Draft Advertising Law, voiced his dissatisfaction with the fact that the Draft Law had been released without the knowledge of the members of the working group. He said that the Law, in spite of needing further adjustments, contained some good concepts (better treatment of radio than in the previous Law), particularly because it regulated for the first time certain areas, such as comparative advertising. The advertising of spirits has also been liberalized. Ceh's objections pertain to the definition of certain terms in the Draft (e.g. the definition of certain terms in several places in the Draft, the absence of certain terms, etc.). He also believes that the section of the Draft concerning protection (of consumers) from advertising needs improvements and that political advertising should be banned, except in electoral campaigns.

Rade Veljanovski, Professor at the Faculty of Political Sciences said that the making of the Draft without the knowledge of the members of the working group was reminiscent of the way in which the controversial Law on the Amendments to the Public Information Law had been passed. Veljanovski believes that the Draft should be further adjusted with European regulations. Although the Directive stresses that the PSB should work on its self-sustainability, it should not involve liberalized advertising on the PSB and this Draft is making this liberalization possible. Apart from the areas concerning the rights and obligations of advertisers and of electronic messages, the Law should, in Veljanovski's opinion, focus more on the public interest (especially regarding political advertising and the advertising of spirits). Veljanovski believes that the Ministry should prolong the public discussion procedure and provide for a more active role of experts from the areas addressed by the Law. The Ministry should also work more closely with other competent ministries, for the Law deals with many spheres that are not directly linked to the area of competence of the Ministry of Trade and Services.

Milivoje Calija, RTV B92 Marketing Director noted that a Law that should have solely dealt with commercial advertising was giving a privileged status to the PSB. He said that opening the door to the spirits industry did not represent, in spite of what many believed, such large of a financial boost for the media and that public interest in this domain should be taken into account.

Ceda Rajacic, Army Info Forum believes that the Draft Law neglects small media, new media and social networks.

Zlatan Begovic from RTS, public service broadcaster, said that the PSB needed substantial financial resources to produce quality programming, especially bearing in mind the low collection rate of the TV fee. He said that digitalization entailed enormous costs for the broadcasting industry as a whole. Therefore it is important to ensure the appropriate financial means so that the PSB and other commercial television and radio stations may tackle this new task – digital programming and interactive content.

Zoran Andjelkovic, Radio S, estimated that this Draft was better than the existing Law, which, in turn, did not necessarily mean it was good. Radio is addressed separately from television, which helps radio stations to survive. In Andjelkovic's words, the Law should also

regulate new media. State media must not be privileged over commercial media, which is currently the case. He also stressed that the Directive was a collection of instructions based on which the Law was made, rather than a source for merely copying articles of the Law.

Vera Despotovic, Advisor at the Ministry of Trade and Services and member of the working group for making the Draft Advertising Law also participated in the discussion. She thanked ANEM for organizing the round table and providing everyone the opportunity to hear opinions about the Draft Law from people who weren't until then included in the public consultations thereof. Despotovic said that, in cooperation with the European Integration Office of the Government of the Republic of Serbia, her Ministry was working on assessing the conformity of the Draft to the relevant European directives – not just the Directive on Audiovisual Media Services, but also ones concerning to misleading and comparative advertising, dishonest trading practices, tobacco advertising and several directives pertaining to electronic communications and remote trade. She indicated that the Draft had been sent to other competent ministries for opinion and that certain objections had already arrived, which concerned the issues of political advertising and advertising of spirits, over which the provisions of the Draft would be revised. Despotovic stressed that the Ministry was ready to take into consideration various opinions and interests and invited the participants in the round table to send their comments to the Ministry in the duration of the public debate on the Draft Law. She said that the final deadline for submitting these comments and suggestions was December 24, 2010.

Voicing different comments on the content of the Draft Law, the participants agreed that serious changes were needed to the current text in order to avoid problems in the enforcement of the Law and to justify the reason for adopting it in the first place. Furthermore, in view of the way the Ministry has involved the members of the working group in the process of working on the Draft Law, namely the fact that the Draft Law was released without prior consultation with the said members and since many questions related to the Draft Law's content remained controversial, the Ministry was called to continue working on the Draft Law in a more transparent way and by involving more actively the experts for specific areas dealt with by the Law.