

The Impact of the EU Audiovisual Media Services (AVMS) Directive on Freedom of Speech in the Post-Communist Democracies of Central and South Eastern Europe

Report for Serbia

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Introduction

The new EU Audiovisual Media Services (AVMS) Directive introduces a new regulatory framework for the rapidly changing media scene in Europe. The changes that the new AVMS Directive introduces are recognized in its name – it widens its scope from broadcasting to all existing audiovisual services. As a response to the rapid technological convergence of media services and changes in media users' behavior, the new Directive introduces a “legal regime governing emerging on-demand services, necessary, in order to avoid distortions of competition, to improve legal certainty, help complete the internal market and facilitate the emergence of a single information area, to apply to all audiovisual media services, both linear and non-linear, at least a basic tier of coordinated rules.”¹

Traditional linear media are no longer considered the only area subject to regulation since citizens and consumers increasingly use new production, transmission and reception platforms. Television/video content is available on mobile phone screens; cell phones are used for searching the web and mailing; and on-demand video with time shifted viewing is on the increase, as well as number of interactive services. As Vivian Reding, Member of the European Commission responsible for Information Society and Media, stated, changes in recent years and convergence of the electronic communication networks, led the media sector to reform, and create a conceptual bond between the questions of regulation of content and rules regarding its infrastructure.²

The Directive is subject to intensive public debate in EU member countries and candidate countries, with the main concerns related to its implementation and implications, potential interference with Internet development and competition distortion, and whether the distinction between linear and non-linear media is clear enough.³

In Serbia, the media market, ITC development and media legislation as well as its implementation are far behind major European media sector trends. Potential implications of the AVMS Directive and its future application have not been debated yet.

¹ Available at

http://ec.europa.eu/avpolicy/docs/reg/modernisation/proposal_2005/avmsd_cons_may07_en.pdf.

² Viviane Reding, Member of the European Commission responsible for Information Society and Media, *Le nouveau contexte des médias audiovisuels – tendances et enjeux publics* [The new context for audiovisual media - tendencies and issues for the public], at an international conference commemorating 10 years of the Belgian French Community's Audiovisual High Council, Brussels, September 21, 2007.

³ James Purnell MP, United Kingdom Minister for Creative Industries & Tourism, speaking at a Foreign Policy Centre seminar on the Television without Frontiers Directive, available at <http://fpc.org.uk/fsblob/677.pdf>.

1. Traditional media regulation for linear media services in Serbia

Several fundamental laws regulate the media and broadcasting sphere in Serbia: the Broadcasting Act (adopted in 2002); the Public Information Act (adopted in 2003); the Telecommunications Act (adopted in 2003); and the Advertising Act (2005). The Law on Preventing Media Ownership Concentration is currently being drafted by the Ministry of Culture with the assistance of domestic and international media experts, and is expected to be the subject of a public debate during 2008.

The **Broadcasting Act** introduced a number of European models and values: a broadcasting model, which for the first time recognized the existence of public and commercial broadcasters in the market; an independent regulatory body (the Republican Broadcasting Agency) with wide competencies; a system of licensing for commercial broadcasters; compulsory program standards and general regulations for the broadcasting sector. It proclaims several basic principles as a guarantee of freedom of media and expression – freedom, professionalism and independence of broadcasters, rational spectrum usage as a limited resource, application of international norms in this sector and full affirmation of citizens' rights and freedoms, especially freedom of expression and pluralism of opinion.⁴

Content provisions of the Broadcasting Act envisage that broadcasters should not broadcast programs which could harm physically, mentally, or morally the development of youths: programs which feature themes such as pornography, violence, drug abuse or any kind of criminal behavior.⁵ The independent regulator is obliged to pay special attention to protect minors, monitor hate speech and ensure programs for minorities.

The **Public Information Act** gives general provisions on media freedom and journalistic independence, proclaims freedom of speech, regulates the means of establishing and distributing media outlets, and establishes the rights and obligations of journalists, defines editorial responsibility, right to reply and judicial procedures regarding breaches of these rights.

The **Telecommunication Act** deals exclusively with technical aspects of spectrum usage. According to international legal standards this act regulates the telecommunication sector: establishing the Republic Telecommunication Agency (RATEL); provides a legal basis for monopoly impediment; determines procedures for granting licenses for telecommunication purposes; controls the licence fees process under free market conditions; regulates leases for utilizing communication lines; determines rights and obligations for telecommunication operators; regulates radio and international communication, with the exception of articles envisaged by other media laws and all other issues of importance for telecommunication development in Republic of Serbia. The new Ministry for Telecommunication and Information Society was created in May 2007 and it is given the authority by law to strategically regulate the telecommunication sector.

The main provisions of the Convention on Transfrontier Television of the Council of Europe (TWF) and a number of CoE recommendations for the media sphere are included in existing legal texts, mostly by provisions of Broadcasting Act and Public Information Act. However, Serbia is one of the last European countries that will ratify the

⁴ Article 3 of the Broadcasting Act, Official Gazette of the Republic of Serbia, no. 42/2002.

⁵ Article 68 of the Broadcasting Act, Official Gazette of the Republic of Serbia, no. 42/2002.

Council of Europe TWF Convention, as this process has yet to be completed (expected by the end of 2008). Being late with ratifying the TWF Convention, already being amended by Council of Europe bodies in relation to new AVMS Directive, reflects the tremendous delay in contemporary media developments in Serbia. Considering the slow progress of Serbia with regard to the EU integration process (it is not a candidate country and it has yet to sign the Stabilisation and Association Agreement with the EU), adjustment of the regulatory framework in line with new EU AVMS Directive for Serbia is still an issue for the future.

2. Non-linear services in Serbia-access, content and regulation

Traditional regulations in force in Serbia do not recognize the convergence of traditional media (radio and TV) and new media (mobile phones and the Internet). Public authorities are slow in recognizing the importance, both economic and social, of participation in the global network of information. Additionally, the Serbian market is very slow in adopting new communication technologies.

The Serbian media market is very slow in introducing new services and offers, as new media and technologies have low rates of penetration. Traditional broadcasting media are still more influential, both in terms of audience impact and market success. According to 2007 figures, less than half of population, 41%, owns a computer⁶ with 30% using the Internet on a regular basis, whereas three quarters of population owns a mobile phone. Serbia still lags behind not only developed European countries, but also new European member states in the region. 74% of Internet users still access through a slow and expensive dial-up connection. Other types of access are far less used – broadband cable modem is used by 15% of users, WAP and GPRS services are used by 16% while ADSL has 15% of users.⁷ These numbers appear to be low compared to analogue broadcasting with almost the entire population, 98%, with a TV set.⁸ Out of 2.5 million television households, it is estimated that around 30% has some form of multi-channel television access, mostly analogue cable television.⁹

Digital TV has already made a serious penetration into the European market. However, Serbia lags far behind. Digital terrestrial television has not yet been launched. The public service broadcaster, Radio Television of Serbia, is transmitting DTT trial signals. The platform, however, has no program and no audience, while other commercial broadcasters have not shown any interest in offering this service to an audience. Serbia Broadband – SBB, a cable and Internet company – was, in 2006, the first commercial operator to introduce satellite digital broadcasting in Serbia. The platform has around 50,000 subscribers.

With regard to electronic communications and information technologies, VoIP, WiMax, DTT, CDMA and triple-play will be introduced to the market during 2008.¹⁰ 3G mobile phone services are available in the market, with some 30,000 users at the beginning of 2007. The liberalization and development of the telecommunication sector is one of the priorities.

Only article 11 of the Public Information Act, among other linear media (newspapers, radio, television) recognizes Internet and online editions of traditional media as public media. Other articles of this Act relate to and specifically mention only

⁶ Number includes both PCs and laptops.

⁷ Statistical Office of the Republic of Serbia and Strategic Marketing and Media Research Institute, 2007.

⁸ Statistical Office of the Republic of Serbia and Strategic Marketing and Media Research Institute, 2007.

⁹ *Ibid.*

¹⁰ Available at http://www.b92.net/tehnopolis/internet.php?nav_id=277055, accessed January 24, 2008.

traditional media outlets. There is no other mention of the Internet in this or any other media law in Serbia.

Digitalization, as one of the most important tasks which should be carried out by 2012, is mentioned only in one of the provisions of the Broadcasting Development Strategy.¹¹ This document, designed by RBA and adopted by the Parliament, envisages the future development of broadcasting. The text covers the period till 2013, and yet, it fails to provide comprehensive regulation or policy framework for new broadcasting technologies, as it deals with digitalization in only a couple of provisions. The existing Law recognizes the necessity to regulate digital broadcasting by a new law or by amending the existing one and that application of digital terrestrial broadcasting should follow after the preparation of the program and adoption of the national plan for transition to digital broadcasting.¹² By the end of 2007, relevant ministries in charge of media – the Ministry of Culture and Ministry of Telecommunication and Information Society, along with independent agencies, RBA and RATEL – have formed an intersectoral working group to start on strategy plans for the digital switchover. The plans are expected to be publicly announced in 2008.

The Ministry for Telecommunication and Information Society, formed in May 2007 and RATEL, are given the authority by law to strategically regulate the telecommunication sector. So far, the Ministry has introduced a strategically important document, a Strategy for the development of telecommunications in the Republic of Serbia from 2006 to 2010 – adopted by the Government in November 2006. The Strategy foresees the improvement of ICT in the Republic of Serbia following the aims of eEurope+ Directive and regional agreement SEE Agenda+. However, the objectives in the Strategy and the Action Plan are not accompanied by any deadlines for their fulfilment. When judging the progress of implementation of European standards in the field of information society services, Serbia shows a moderate advancement in this area, as stated in 2007 European Commission progress report on Serbia.¹³ Serbia still has to adopt new laws on information society regulating e-government, e-commerce, and the protection of personal data. The role of IT in the government's communication and services to citizens (e-government) is limited at present.

With regard to concerns that content-based regulations could be misinterpreted by governments and that freedom of speech could be restricted under the stamp of the new AVMS Directive, Serbia demonstrates a lack of any Internet content-related regulation. Most of the regulation is left to the market itself and to the editors and Internet providers. Furthermore, content-related regulation of the traditional media in Serbia is generally inefficient. Pornographic front-pages are daily published in Serbian newspapers and magazines, names of minors involved or suspected for crimes are revealed, hatred incitement statements are published, thus breaking several laws: the Broadcasting Act, the Public Information Act and the Advertising Act. Provisions in the Broadcasting Act are not specific with regard of penal procedure for violation of these articles.¹⁴

On the other hand, self regulation of global Internet content providers proves to be efficient. Only recently, in January 2008, the public was shocked by a YouTube video clip: amateur footage of the burning and vandalized bakery *Violeta* in downtown Novi Sad, owned by the Albanian, Binaj Vebi. The footage shows the bakery being smashed by three men while being accompanied by the hymn of Serbia “Good of Justice”.

¹¹ Broadcasting Development Strategy, Official Gazette of the Republic of Serbia, no. 42/2002.

¹² Broadcasting Development Strategy, Official Gazette of the Republic of Serbia, no. 42/2002, Article 7.

¹³ Available at http://ec.europa.eu/enlargement/key_documents/reports_nov_2007_en.htm.

¹⁴ Public debate on Media Laws held at Media Center, December 18, 2007

Following the public reaction, YouTube withdrew the footage justifying it in accordance with its terms of use.

So far there have been no cases of content-related regulation abuse or censorship by the Serbian government and regulatory bodies. Moreover, the lack of any content-related regulation remains a serious issue for the Serbian media scene. It is realistic to expect that Internet services will not be abused by the government and there are no serious indications for potential censorship. On the contrary, any new regulatory texts run the risk of not being implemented at all due to lack of expertise and institutional capacity of regulatory authorities. Editor Dejan Restak of the *b92.net* website, one of the most visited news web sites in the region,¹⁵ says that no direct government censorship has occurred since Milosevic's rule ended in October 2000. Other kinds of subversive influence over media, such as commercial pressure and large companies refusing to advertise in media outlets are characteristic of the Serbian media market. He pointed out that *B92* has its own internal rules and that "laws should regulate extreme cases of violation of content standards" but that other content-related regulation of the Internet could be counterproductive and that borderline cases should be referred to co- and self-regulation.

Self-regulation for Internet providers does not exist in the form of an Internet providers' joint agreement or codex on basic rules of content-related regulation, but only in the form of terms-of-use rules for each individual site, which leaves the content-related regulation of Internet sites for each site editor's professional assessment.

3. Implementation

Even though the media market and a respectable legal framework are rather behind European trends and standards, the cause for greatest concern in Serbia today and in the future is implementation of these laws. Adopting laws and implementing them in accordance with European values and standards has proved to be rather difficult in a society where democracy is still unstable and fragile, submissive to influences and pressures.

Authorities are slow in giving up on media ownership and have repeatedly demonstrated unwillingness to resolve some longstanding issues. Inefficiency of the Serbian legislative has caused serious delays in the process of establishing a public service broadcaster and independent regulatory authorities in the field of broadcasting and telecommunications. Since it was established, the new regulatory authority, the Broadcasting Agency of the Republic of Serbia (RBA) has caused controversy and disputes. Instead of becoming a symbol of the transfer of power over broadcasting from political bodies to an independent regulator and cornerstone of the broadcasting reform in Serbia, because of the long-lasting political confrontations over procedural and personal issues, the Council's record of limited independence was irreparably damaged. RBA's decisions, primarily the allocation of national, regional and local frequencies has continued to provoke debates and controversy. Awarded licensees did not receive a precise set of programming requirements for which they were granted licenses, leaving domestic media production poor with low quality programming.¹⁶

In its 2007 progress report on Serbia, the European Commission expressed particular concern for the audiovisual sector, stating that the situation of the Broadcasting Agency in Serbia, allocation of national, regional and local frequencies and decisions made by the Agency regarding the Public Broadcasting Service remain a

¹⁵ *B92* homepage available at <http://www.b92.net/indexs.phtml>, accessed on June 4, 2007.

¹⁶ Professional magazine *Republika*, no. 388–389, September 2006.

cause for concern. According to this report, preparations in the area of information society and media are at an early stage and further efforts are needed to meet European standards while the capacity of the regulatory bodies remains below strength.¹⁷

The example of establishment of the independent regulatory body planned in line with European standards but implemented according to local reading of those standards (with clear political and financial influences) gives ground for concerns that future regulation of non-linear media sphere will be done in the same manner. If done so, there is concern that it could be used for political influences and would potentially slow down and obstruct free development of this already underdeveloped sector.

4. Public debates

Public debates on media laws and regulations are held on a regular basis, supported and organized by the Ministry of Culture, media and journalists' associations, non-governmental organizations, international foundations, the Council of Europe and other European Union bodies. Due to concerns regarding implementation of existing laws, public debates are still primarily concerned with improving the existing legislation and most of all, providing the means for full implementation of these laws.

During one of the recent public debates¹⁸ on media legislation in Serbia held on December 18, media and legal experts, university professors, media and publishers associations' representatives debated on the need for changes of media laws and improvement of their implementation and efficiency. Only in a few brief statements, participants stated the need for introducing legislation for digital television and new technologies development. Opinions were diverse and the subject of digitalization and new media technologies regulation is still to be debated. Rade Veljanovski, Professor of Journalism at the Faculty of Political Science, and member of the working group for drafting of the Broadcasting Act, stated that Serbia will have to adopt a law on media and digital technology and in his opinion it would be more recommendable to pass a new law instead of amending the existing laws. Sasa Mirkovic, representative of Association of Independent Electronic Media-ANEM and B92 said that "New aims for new reforms will enable pluralism in media content and technological improvement as well as the stabil position of the Serbian publishing industry and further improvement of the media's role in democratic society to provide information the public has the right to know."

In an interview given answering the questions of this report, Marija Ćosić, media adviser for the Ministry of Culture stated that up to now, there have been no public debates dealing directly with the AVMS Directive and its respectable implementation. Regarding the issue of how amending the Television Without Frontiers Directive will influence the Serbian media scene, she pointed out that the question of implementing the AVMS Directive in one or more phases has yet to be debated in media circles.

5. Recommendations

5.1 Reinforcing the implementation of existing media laws

Countries in transition, such as Serbia, need to reinforce existing laws in order to achieve European standards in the media field. Simultaneously, it is expected that the regulating mechanism would be an effective way of ensuring freedom of information,

¹⁷ Available at http://ec.europa.eu/enlargement/key_documents/reports_nov_2007_en.htm.

¹⁸ Organized by Konrad Adenauer Stiftung Foundation and Center for Support of Democratic Initiatives [Centar za podršku demokratskim inicijativama-CPDI].

free flow of information, diversity of opinion and media pluralism. Respect of the existing laws should be a solid ground before introducing new and improved regulations.

5.2 Implementing EU media regulation standards

Serbia, being a member state of the Council of Europe and one step from signing the Stabilization and Association Agreement with the European Union, has to make great efforts in establishing a timely, modern, transparent and justified framework for further media development. Being a SEE state, Serbia still has time to make positive steps and adjust national regulations according to new European regulations such as the AVMS Directive.

5.3 Enhancement of the ITC services in the market

New entrants and investments in the ICT sector could introduce new services and offers and thus, enhance competitiveness – diversity of content and platforms, better quality and lower prices for the consumers. Government should introduce measures to promote competition and development of the sector, by further liberalization of the telecommunication market and by introducing and enforcing a clear set of competition rules.

5.4 New media – access and content

New media, the Internet and ICT still have low rates of penetration. Therefore, developing the infrastructure and introduction of new services, universal access to Internet and active participation in informational society is highly important. Without access there is no new and creative content. Simultaneously, consumers should be properly educated in order to use new technologies in full capacity. Existing public funding including a subscription fee given to Public Service Broadcasters should be used for developing more quality content for new media platforms.

5.5 Moderate regulation of the non-linear sector

As most of the non-linear services are not yet available in the national market, any regulation regarding these services would be premature. It is recommended that these services should be regulated with a “light touch”, as future overregulation could potentially be used for political influences and could slow down and obstruct free development of this underdeveloped sector.

5.6 Reinforcement of mechanisms of co-regulation and self-regulation

All interested stakeholders should enhance the creation of self-regulatory organizations. Associations of Internet providers, content providers, journalist, independent productions, etc., should set basic rules on content-related regulations. Allegedly harmful content, as defined by national laws and European treaties, should be sanctioned according to joint codex. Other types of content should be left to editorial assessment.

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