**QUESTIONNAIRE ON THE IMPACT OF ADVERTISING AND MARKETING PRACTICES ON THE ENJOYMENT OF CULTURAL RIGHTS**

1. ***Has your country adopted specific regulations on advertising and marketing methods and contents aimed at protecting human rights? If so, please specify the content of such regulation. Does the regulation apply both to off-line and on-line advertising?***

“Before we start answering this question, it is necessary to give an overview of constitutional set up and legislative solutions applicable in Bosnia and Herzegovina in order to shed more light to the current events taking place in Bosnia and Herzegovina.

Pursuant to Article I/3 of the Constitution of Bosnia and Herzegovina, Bosnia and Herzegovina is composed of two entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska. Special role in Bosnia and Herzegovina has Brčko District of Bosnia and Herzegovina which is, according to Amendment I to the Constitution of Bosnia and Herzegovina, defined as a joint ownership (condominium) of the entities as a self-government unit with its own institutions, laws and regulations. Not going into more details about the constitutional structure of Bosnia and Herzegovina, we must point out that it consists of multiple levels of the authority as it will be clearer from the answers that follow.

We must also mention that the Entity of Federation of Bosnia and Herzegovina consists of 10 cantons with its own powers and functions. It is important to add that Bosnia and Herzegovina Bosnia and Herzegovina is a signatory of the European Charter of Local Self-Government of the Council of Europe pursuant to which and based on the entity legislation on self-government principles the local self-government units enjoy certain powers, among others, the public areas arrangement and use.

With regard to the issue of advertizing and marketing methods used, we can state the following:

Regulatory framework for the providers of audio-visual media services and media services involving radio in Bosnia and Herzegovina, which govern the basic principles of advertizing, sponsorship and teleshopping is the Commercial Communications Codex published in the Official Gazette of Bosnia and Herzegovina. The Codex is applied to the audio-visual and media services of radio and other services on request. In charge of implementation of the said Codex is the Communications Regulatory Agency established pursuant to the Law on Communications of Bosnia and Herzegovina. In addition to that, there are some by-laws governing certain areas of advertizing such as the Rulebook on Methods of Advertizing of Medicines and Medical Devices adopted by the Ministry of Civil Affairs of Bosnia and Herzegovina.

The entities have also, in accordance with its powers, adopted legislation governing the unauthorized advertizing. For instance, the Entity of the Republic of Srpska adopted such a piece of legislation in 2012, while similar law is still in parliamentary procedure in the Entity of the Federation of Bosnia and Herzegovina.

With regard to the issue of human rights protection, we must emphasize that the Constitution of Bosnia and Herzegovina in its Annex I lists as much as 15 international mechanisms for the protection of human rights and fundamental freedoms which are directly applicable in Bosnia and Herzegovina. For that reason, legislation of Bosnia and Herzegovina foresees several mechanisms for human rights protection.

The fact that currently legislation explicitly addressing and focusing on human rights in the field of marketing in Bosnia and Herzegovina is missing does not mean that this segment is not covered by other legislation, especially taking into account the anti-discrimination law and other regulations focused to the protection of human rights.

Also, the fact that we had not registered cases indicating to the violation of law in the field of marketing (in sense that some marketing campaigns would constitute a violation of the law) in Bosnia and Herzegovina in the past, must primarily be attributed to the fact that Bosnia and Herzegovina is a country which is still recovering after the war, and that the authorities in Bosnia and Herzegovina have not yet solved the problems of refugees and displaced persons, demining and the like. The economy of Bosnia and Herzegovina is still below the pre-war levels, and is affected by the transition to a free market economy, and the loss of markets in now independent countries, which once formed part of ex. SFRY. For these reasons, and for the fact that a large number of people living in poverty, Bosnia and Herzegovina is not a marketing' 'target” for some Western European countries. For this reason, the marketing campaigns in Bosnia and Herzegovina are not similar to those in richer countries.

Of course, it could be expected that after the recovery of the economy and rise of living standard of citizens, the increase the purchasing power of the citizens to take place and in this case, the Institution of the Ombudsman will pay special attention to the fields of marketing and advertising from the aspect of human rights protection.”

1. ***Please indicate whether specific categories of the population are protected by such regulation, such as children, women, minorities and indigenous peoples.***

“As mentioned, Bosnia and Herzegovina has developed legislation related to the fundamental rights protection, and institutions established to this end.

Law on Prohibition of Discrimination in Bosnia and Herzegovina which placed the Human Rights Ombudsman of Bosnia and Herzegovina as a central institution for the implementation of this Law is a mechanism enabling the citizens to address the Ombudsman in case they think that they were subject to different treatment. This piece of legislation along with some others create basis for the protection of certain categories of citizens.

The rights of the children, that is, the juveniles, among other things, are protected by a series of regulations governing the use of their data and reproduction of image and sound in public, to mention only some details.

With regard to minorities and indigenous peoples, we must point out that the legislation of Bosnia and Herzegovina does not recognize the notion of indigenous peoples.

In its Preamble, the Constitution of Bosnia and Herzegovina mentions constituent peoples, that is, Bosniaks, Croats and Serbs, as well as Other citizens of Bosnia and Herzegovina. Others include members of national minorities. The Constitution of BiH itself does not list the minorities, but other legislation mention 17 national minorities as follows: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenia’s, Slovaks, Slovenians, Turks and Ukrainians. It is worth mentioning that most of the surveys conducted so far (which were rather partial) indicate no differences between neither constituent peoples nor constituent peoples and others when it comes to standard of living, income and purchasing power. The only exception here is Roma who live below the poverty threshold, and with very low income of no income at all. For that reason there are no marketing campaigns targeting some particular group among the above mentioned.”

1. ***Is advertising covered by the general provisions on freedom of expression and/or does your country differentiate between commercial speech and non-commercial speech? Do specific regulations distinguish between advertising and other contents, and if so, which are the criteria used to make this distinction?***

“All the regulations in Bosnia and Herzegovina are in line with freedom of expression standards prescribed by Article II/3.h) of the Constitution of BiH and Article 10 of European Convention for the Protection of Human Rights and Fundamental Freedoms. Legislation of Bosnia and Herzegovina does not recognize the difference between the commercial and non-commercial speech. Distinction between advertizing and other contents are made in laws and by-laws governing this area based on strictly defined criteria.”

1. ***Please provide a brief summary of any important decisions relating to advertising/ marketing/ sponsoring and human rights adopted by judicial authorities in your country over the last ten years.***

“We have to underline that since the end of the war the judiciary in BiH, both regular and extraordinary courts in Bosnia and Herzegovina, brought several very important decisions relating to the field of human rights, but due to low level of implementation of court decisions and under-developed marketing practice in BiH, we are not in position to highlight court decisions involving marketing and human rights. Several procedures related to the advertising that were in contravention of certain principles was registered, for instance, members of certain chambers (which gather particular professions and regulate the activities and actions of their members, such chambers are not considered to be the authorities, but are registered in accordance with the Law) that had published advertisements not in accordance with the internal acts of these bodies.”

1. ***Which authority (governmental and/or self-regulatory body) monitors the advertising sector? Are specific mechanisms in place to receive complaints from citizens on advertising methods and content?***

“The Communications Regulatory Agency of Bosnia and Herzegovina (CRA BiH) is responsible for the regulation of the broadcasting and advertizing sector in BiH, and any natural or legal person may lodge a complaint which is to be dealt with *ex officio* by the Agency. Bosnia and Herzegovina is currently no regulatory body which deals with monitoring the advertising sector. However, in the past few years, presence of many international agencies engaged in marketing is becoming increasingly visible in Bosnia and Herzegovina. We hope that they will follow the practice existing in their countries of origin and that such a body will be established soon.”

1. ***Has your country adopted legislation on certain advertising or marketing practices such as neuromarketing or behavioural targeting? What challenges have been encountered in doing so?***

“As we have already mentioned, on the entity level there is legislation in place, or is in process of adoption, governing the issues involving unauthorized advertizing. It should be emphasized that Bosnia and Herzegovina is in the process of association to the European Union and that its legislation needs to be harmonized with EU regulations.

In addition to that, Article 3 of General Principles of commercial communications within the Commercial Communications Codex issues by the CRA BiH provides that commercial communications would not use techniques of neuromarketing. The Codex prohibits the use of concealed or misleading commercial communications.

1. ***Is the use of private data for commercial purposes regulated in your country? If so, please describe briefly such regulation.***

“In accordance with European directives, Bosnia and Herzegovina has adopted Law on Personal Data Protection governing the methods of gathering, registration and use of personal data, maintaining of databases and the like.

A special Personal Data Protection Agency was established in order to implement this Law, and this Agency can perform inspection oversight, and issue decisions in administrative proceedings. So far, the Agency issued decisions on deletion of personal data collected for commercial purposes, in contravention of the provisions of the Law on Personal Data Protection.”

1. ***Does your country have regulations on marketing research standards? How is this sector regulated in particular for marketing research involving human beings?***

“Bosnia and Herzegovina currently does not have explicit legislation governing the marketing research, and its standards and methodologies. Once in place, it would have to be in accordance with the Constitution and laws of Bosnia and Herzegovina so that it cannot be in violation of human rights and human dignity. In Bosnia and Herzegovina marketing researches use survey methods, in addition to audience measurement and so-called ‘people-meter‘methods”

1. ***Please describe rules regulating outdoor advertising including the use of billboards or screens in your country. Have enforcement mechanisms been established in this respect? Please indicate whether other forms of communication, such as public interest messages and artistic creation, can also be displayed outdoors, including on billboards and screens, and how these are regulated.***

“With regard to regulations related to the advertizing in the streets, or highways, the entities, in accordance with its powers, have regulated this matter by legislation governing the roads and traffic and a number of by-laws (statutes, rulebooks) prescribed conditions, technical specifications, the bodies responsible for removal of the adverts, procedures to be applies and the like. Other forms of expression in public space are governed by a set of laws governing spatial planning, public land use, etc., as well as the laws governing this matter. Regarding the use of public space, this matter is partially regulated also by the local self-government bodies.”

1. ***Does national legislation regulate advertising, sponsoring and commercial practices in public and private schools (including on school buses and within the school’s immediate surroundings)? Do companies engaging in sponsorship of schools enjoy a tax deduction?***

“A number of laws governing the field of education is currently in place in Bosnia and Herzegovina. It also involves the advertising and sponsorship thereof. It should be pointed out that special school busses are not present in BiH (except in some private schools) and public transportation is commonly used to transport children. These are busses of public carriers which do not serve that purpose exclusively, in addition to other public transportation means.With regard to the question of whether the companies engaged in sponsorship of schools enjoy a tax deduction, such companies can address the relevant authorities and ask for tax deduction, while the competent tax authorities shold examine this issue.”

1. ***Does national legislation regulate advertising in Universities as well as cooperation between research institutes / universities and business, in particular regarding research sponsorship?***

“National legislation regulates the work of the universities, as well as all higher education institutions, and it also involves advertizing and cooperation with the business sector. Unfortunately, due to the low level of economic activity in the country, there are no specific regulations that would govern sponsorship of research activities and institutions, but when and if this becomes more frequent it could be expected that legislation specifically regulating this area be put in place.”

1. ***Are there specific measures such as inter alia, tax incentives to encourage private sponsorship of artistic creation? Please provide a brief description of these measures. Is the private sponsorship for cultural institutions receiving public funding regulated and if so please provide details. Do such regulations also apply to monuments and national heritage buildings?***

“Regarding the tax system in BiH it must be said that BiH system is consisted of direct and indirect taxes, and the competences are divided: in accordance with the Constitution of Bosnia and Herzegovina, the area of ​​indirect taxation is transferred to the state, while the area of regulation and collection of direct taxes is in jurisdictions of entities and the District Brčko of Bosnia and Herzegovina. Thus, direct taxes, namely income tax, corporate income tax and property tax revenue of the entities and the District of Brčko of Bosnia and Herzegovina. Regarding indirect taxes or value-added tax are not provided tax breaks in larger above categories.

Regarding direct taxation, the following conditions can bring tax benefits:

The Republic of Srpska (RS), in accordance with its Law on Income Tax, established the legal framework for the taxation of legal entities in the RS and foreign legal persons who earn income at Rs. In accordance with the Law on Personal Income Tax income, taxation of natural persons is determined. Legislation pertaining to the RS and whose application is under the jurisdiction of the Tax Administration of the RS, provide tax relief as the fact that it is a legal entity or individual sponsor of artistic creation, school or some form of activities related to education, as a legal entity and a natural person - entrepreneur who is the sponsor of an artistic creation, school or some form of activities related to education, in calculating the tax base as well as tax exemptions recognized expenses from the sponsorship in the amount of 2 % of total revenue.

n the Federation of Bosnia and Herzegovina , in accordance with the Law on Income Tax, is provided for that the payment of tax on gain does not apply to the Central Bank of Bosnia and Herzegovina, the body of the Federation, cantonal and local self-governance, Federation, cantonal and local institutions, institutions, religious organizations, political parties, trade unions, chambers, associations , art associations, firefighters’ associations, tourist agencies, sport clubs and associations, foundations, associations, charitable organizations, etc. based on: revenue from the budget or public funding, sponsorship or donations in cash or in kind, interest dividends, membership fees, income from the sale or transfer of assets other than assets that are used or have been used to perform such activities. According to the regulations of the Law on Income Tax are tax deductible expenses include: donations for charitable, cultural, educational, scientific or sporting purposes (except for professional sports) to 3 % of total tax revenue in the period; sponsorship - up to 2 % of total revenue in tax period. Regulations on the Implementation of the Law on Income Tax stipulates that the expenditure on the basis of sponsorship imply expenditures on behalf of support for the organization and maintenance of various events and other similar events that are not directly related to business payers, with or without treatment in the form of advertising names, activities, products and services of the sponsor.

According to the Law on Personal Income Tax revenues that are not considered as income are: winning, and winning prize in cash, goods and/or rights of demonstrated knowledge, quiz and other similar competitions and awards for outstanding achievements in the field of education, culture, science, etc. awarding authorities to mark important dates.

The legislation in FBiH stipulates that income tax is not payable to: income from awards to members of the Academy of Sciences and Arts of Bosnia and Herzegovina and awards for technical and technological innovations; monthly income from scholarships to students in regular education, and most the amount of 75 % of the average net salary per person employed in the Federation, and according to the latest information published by the competent authority for statistics, revenues realized by students and student through school and university student cooperatives during the calendar year, and, similarly, according to the latest information published by the competent authority for statistics, awards to students and students who won competitions within the education system and organized school and university competitions to heights of up to two average net salary in FBiH.

When income taxation of natural persons engaged in independent activity, among others (crafts and trades activities or similar activities), tax deductible expenses include: sponsorship of up to 1% of revenue in the previous year, in order to support scientific, entertainment and sport activities that are carried out within the Federation, donations amounting to 0.5% of revenue in the previous year given in goods, items or money paid into a bank account, in the cultural, educational, scientific, medical, humanitarian, sports and religious purposes, associations and other entities whose activities are performed in accordance with special regulations. Exceptionally, donations above the prescribed amount is entirely recognized, provided that the data according to the decisions of the competent ministries on the implementation and funding of specific programs and actions for the purpose of general public interest, but not for the regular activities of donations recipient (gifts).

Persons who as scientists, artists, experts, journalists and other persons within the occasional self-employment, copyright incomes, expenses are recognized at the height of 30 % to revenue or the actual amount.

In most cantons in FBiH there are not prescribed exemptions for non-profit organizations engaged in educational activities or artistic creativity when paying property taxes except in Zenica-Doboj Canton, where property taxes are not paid for education, health, pension, scientific, cultural, religious and humanitarian institutions or association of citizens if office space used to conduct registered activities. Una-Sana Canton stipulates exemption from property tax, inter alia, to education, health, pension, scientific, cultural, religious and humanitarian and sports associations, organizations and institutions. The Posavina Canton property taxes are not paid by the institution in the field of education, health, culture, religion, sports, and fire protection.

Regulations covering tax policy in Brčko provides for a tax break where a legal entity or natural person sponsor school or some form of activities related to education or the sponsor of artistic creativity. Law on Income Tax in Brčko regulates that the legal entity, when calculating the tax base to income deducted expenses from donations to public institutions and donations for charitable, cultural program, educational, scientific and sporting purposes in the amount of 3 % and expenses from sponsorship of up to 2 % of total revenue in the tax year. The Law on Income Tax of Brčko regulates that natural person can deduct expenses of business income from sponsorships in the amount of 1% of revenue in the tax period, if the latter support scientific, entertainment and sporting activities that are carried out in the District, and on the basis of donations amounting to 0.5% of revenue in the tax period, given goods, items or money paid into a bank account, cultural, educational, scientific, health, humanitarian, sports and religious purposes , associations and other entities, the activities of which are performed in accordance with special regulations.

Regarding the question related to the sponsorship of cultural institutions, national monuments and the like, there are regulations governing this field, varying on the level of government in Bosnia and Herzegovina. Of course, taking into account the intended use of these facilities, programs offered and the like.”

**THE HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA**

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