

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

BULGARIA

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that Bulgaria be added to the Special 301 Watch List in 2003. Resurging problems with the production and ongoing problems with the importation of pirated optical disc (OD) media, along with persistent ineffective enforcement, require heightened bilateral attention. Bulgaria last appeared on a USTR Special 301 list in 1998, after the conclusion of a Section 301 trade investigation.

Overview of key problems: Piracy, especially optical media piracy, has returned massively to Bulgaria, after a brief absence in the late 1990s. Legal reforms adopted in the 1990s to regulate the production and distribution of optical disc media worked well then to halt the exportation of pirated OD product, but, over time, loopholes and shortcomings were revealed and conveniently used by the illegal manufacturing companies. Recent deregulatory zeal by the Bulgarian government in 2002 jeopardized some of the existing CD regulatory regime elements. High-level international intervention was necessary to avoid the total abolition of certain elements. In addition, Bulgaria's CD plant licensing system is currently up for renewal, and efforts are underway to implement a new optical media licensing system. Large-scale manufacturing may reappear for the following reasons: the 2002 deregulation of the decree on the importation of polycarbonate and stampers used in the manufacture of optical discs; the negative attitude of certain elements in the Bulgarian government with respect to the regulation of optical media production; and law enforcement's failure to properly supervise ongoing OD manufacturing activities. There are now five plants operating in Bulgaria: CHSL, TOT (Sofia), Media Sys, Optical Storage (Stara Zagora), Silver First (Plovdiv). Additionally, there is one plant (formerly Unison) in Botevgrad, and one (formerly DZU) in Stara Zagora, both believed to be non-operational and without licenses.

The markets in Bulgaria are still swamped with pirated product and Bulgaria's overall enforcement system continues to be dramatically ineffective. Estimated 2002 trade losses due to piracy amounted to \$39.4 million. There is relatively good cooperation between the industries and the tax police on anti-piracy actions; in fact, the level of raiding activity and market inspections increased in the end of 2002 and early 2003. The industries look for continued cooperation with law enforcement. MPAA notes that BullAct, the local anti-piracy organization for the audiovisual industry, has a very active program against video piracy and optical disc piracy and enjoys excellent cooperation from law enforcement authorities. In other instances, the national police, however, fails to cooperate at critical moments. A serious bottleneck remains at the prosecutorial level; cases are not moving forward, and as a result, there is little chance for the judiciary to issue sentences. Furthermore, for those few cases which do reach final judgment, the sentences are not deterrent, are usually suspended, and involve low fines. The courts also continue to have difficulties in expeditiously issuing injunctive orders and sufficient damages in civil copyright infringement cases. Bulgaria's 1993 Copyright Law has been amended several times, most recently in mid-2002. However, the copyright industries report that troubling provisions remain in the law. As a result, Bulgaria's implementation of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (of which it is a member) may not be fully adequate to meet the needs of the industries in the Internet age.

Actions which the Bulgarian government should take in 2003

Enforcement

- Review and effectively enforce its regime regarding title verification, CD plant licensing and polycarbonate tracking. While measures in place appear to be more than adequate to prevent piracy, they are in fact seriously flawed and have been shown to be so over the last two years. To the extent that elements are going to be amended and/or enhanced, the expert input of the copyright industries on developing a comprehensive optical disc regulatory regime is imperative;
- High-level government officials should instruct the enforcement agencies, including the national police, to make piracy a priority and to set goals for tough anti-piracy sanctions. They should also recognize that organized crime elements are involved in piratical activities and, consequently, instruct the National Service for Combating Organized Crime to significantly step up their actions against crime syndicates involved in copyright theft;
- Increase enforcement actions against those selling and distributing infringing copyrighted products in the streets, in retail stores and in markets throughout the country and effectively enforce in all major cities in Bulgaria the local decrees prohibiting street sales of copyrighted products, such as CDs and cassettes;
- Improve judicial issuance of adequate civil remedies in business software cases, including the issuance of *ex parte* civil searches, damages, and injunctive relief;
- Focus police enforcement action on larger software end-user targets;
- Improve border enforcement to halt the importation of piratical products, especially optical media products;
- Provide the tax authorities with the competence and mandate to seize infringing copyrighted products and impose administrative sanctions (fines);
- Instruct law enforcement bodies, judiciary and courts not to return pirated goods to the market, but to destroy these goods as a rule.

Law reform and decrees

- Amend the criminal procedural code, introducing presumption of rights ownership for criminal infringement cases, and allowing rightholders or their representative organizations to assist in preparing expert opinion reports concerning infringement of their intellectual property rights.
- Instruct the judiciary and the courts to accept affidavits from rightholders as sufficient proof for their identification. At present, rightholders are required to present a bulk of documents which are very difficult and sometimes impossible to obtain as they are unknown to foreign legal systems (in most cases rights of international companies are affected);
- Increase criminal sanctions in the Penal Code for copyright infringement up to deterrent levels;
- Encourage the issuance and implementation of a decree which would require that federal, state and municipal government agencies procure and use only legitimate business software programs;
- Consult with rightholders for any reform related to the optical disc regulatory regime.

BULGARIA
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2002¹

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	3.0	20%	3.0	20%	3.0	25%	4.0	25%	4.0	35%
Records & Music	7.2	83%	3.0	65%	NA	NA	NA	NA	125.0	90%
Business Software Applications ²	7.0	72%	8.3	75%	8.1	78%	9.1	80%	10.7	93%
Entertainment Software	21.9	91%	NA	84%	NA	NA	NA	NA	66.5	99%
Books	0.3	NA	0.3	NA	NA	NA	NA	NA	0.5	NA
TOTALS	39.4		14.6		8.1		NA		207.7	

Two bilateral agreements affecting IPR: In April 1991, the U.S. and Bulgaria signed a bilateral trade agreement, under which Bulgaria agreed to provide “adequate and effective protection and enforcement” for copyrights and other intellectual property. That bilateral provided clear and explicit enforcement obligations for Bulgaria to adopt, including procedures and remedies against copyright infringement, and a commitment to join the Geneva Phonograms Convention by the end of 1992.³ In April 1995, the U.S. and Bulgaria exchanged letters in which Bulgaria promised to accede to the Geneva Phonograms Convention “on a priority basis” and to protect U.S. sound recordings published in the last 50 years; to establish a title verification system to prevent piracy of compact discs, laser discs, CD-ROMs and videos; and to enact deterrent criminal penalties, applicable to a broad range of infringements, including inflation-adjusted fines and mandatory destruction of pirate product.

The second bilateral agreement—the 1995 Title Verification Agreement—provided for specific enforcement obligations on the part of the Bulgarian government to implement plant licensing and title verification systems. In April 1996, the Bulgarian government passed Decree

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and estimated piracy losses is described in the IIPA’s 2003 Special 301 submission, which is posted on the IIPA website at www.iipa.com/pdf/2003spec301methodology.pdf.

² BSA’s estimated piracy losses and levels for 2002 are preliminary, and will be finalized in mid-2003. In IIPA’s February 2002 Special 301 filing, BSA’s 2001 estimates of \$9.4 million at 81% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA’s trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA’s trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

³ Bulgaria adopted a new copyright law effective August 1, 1993, but the law was deficient, compared with the bilateral obligations. Neither it nor the Bulgarian penal code authorized the imposition of significant criminal sanctions such as imprisonment of copyright pirates or appropriate confiscation provisions; and it failed to protect foreign sound recordings, thus rendering Bulgaria ineligible to join the Geneva Phonograms Convention as it had promised.

87/96 (the Title Verification Decree/TVD). This decree provides for a verification procedure in regard to the reproduction and distribution (including exportation) rights of sound and video recordings, as well as for an obligatory registration at the Ministry of Culture's Copyright Department of all applications for the manufacturing of sound and video carriers containing protected material. The TVD was further amended in 1997 to explicitly cover the registration of CD-ROM manufacturing. However, the adopted measures proved insufficient in reducing the illegal manufacturing of pirated optical media. As a result, amendments to the TVD were passed by the Bulgarian government and new plant licensing procedures of operation were introduced in 1998. Later, the decree was once again amended to cover not only the licensing of CD manufacturers, but also those who manufacture matrices/stampers for CD production. Also in 1998, the Council of Ministers adopted more amendments to Decree 87/96 to stop all CD production at each plant until such plants could be licensed under new procedures of operation. (A more detailed explanation of this system appears at the end of this report.) By not providing effective enforcement against piracy, Bulgaria is in breach of its two bilateral agreements with the United States.

GSP, WTO and the EU: Bulgaria also participates in the U.S. trade program, the Generalized System of Preferences (GSP), which contains a criterion that eligible countries must provide "adequate and effective" IPR protection to U.S. copyright owners.⁴ Bulgaria joined the World Trade Organization (WTO) in 1996 and is currently obligated to have implemented both the letter and the spirit (performance) of the TRIPS Agreement. The European Commission too has identified problems with inadequate copyright enforcement in Bulgaria and called on that government to intensify measures to combat piracy and counterfeiting, strengthen border controls, and improve coordination between enforcement bodies.⁵

COPYRIGHT PIRACY IN BULGARIA

Optical Media Developments

Optical media piracy has been growing in Bulgaria during the last years, a tendency which continued during 2002. Indeed, the domestic market is flooded with pirate optical discs. Finished discs are mass-imported from other countries and the growing CD-R piracy (every second pirate disc sold is now believed to be a CD-R) is allegedly a domestic duplication problem.

Between 1994 and 1998, the principal piracy problem in Bulgaria was the escalating pirate production and export of copyrighted material—principally sound recordings and computer software—on compact disks. By March 1998, CD manufacturing capacity had grown from a few million to almost 70 million units per annum. The introduction of the TVD plant licensing system in February 1998 had a significant impact on the situation in Bulgaria and its main export markets. As a result, pirate production was limited, CD plants were put under surveillance by economic police officers, and the main offending plant (UNISON, Botevgrad) was closed.

⁴ For the first 11 months of 2002, \$26 million worth of Bulgarian goods (or 8.1% of Bulgaria's total imports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 39.9% increase over the same time period last year. For more detailed information on the history of Bulgaria under Special 301 review, see appendices D and E of this submission.

⁵ To access the European Commission's October 2002 annual report on EU enlargement and Bulgaria, go to <http://www.euractiv.com/cgi-bin/cgint.exe/?1100=1&204&OIDN=1504033>.

Plant capacity: There are now five plants operating in Bulgaria: CHSL, TOT (Sofia), Media Sys, Optical Storage (Stara Zagora), Silver First (Plovdiv). Additionally, there is one plant (formerly Unison) in Botevgrad, and one (formerly DZU) in Stara Zagora, both believed to remain non-operational and are without license. This totals five operational lines plus four non-operational lines, giving an operational capacity of 31 million, and a potential of 46 million, should the lines believed to be non-operational be included. Media Sys has mastering facilities. Inoperative mastering equipment is believed to exist in Stara Zagora with the former DZU plant.

HEMUS GROUP Ltd is a production line which appeared mid-2001 and was licensed in October 2001. This license was revoked in September 2002, following an earlier raid at the end of July. After that the line was swiftly sold to another company (TOT 2002), the new company immediately applied for a production license and was granted one in December 2002.

Seizures: The recording industry reports seizures of 136,792 pirate CDs, CD-Rs and MCs in 2002, which contrasts with unconfirmed official reports from the Chief of the Copyright and Neighboring Rights Directorate in the Ministry of Culture,⁶ suggesting Bulgarian enforcement authorities seized between 250,000 and 300,000 pirated CDs in 2002. The Directorate is in the process of drafting two copyright ordinances which are expected to be adopted by April 2003; one involves the licensing and distribution of CDs and CD matrices, and the second involves the use of legal software by the state and municipal authorities. IFPI and local BSA representative are closely involved in this.

Piracy levels remain high, and Internet piracy is on the rise.

The piracy of U.S. sound recordings and music remains unacceptably high in Bulgaria even with the significant progress made in 1998. Until mid-1998, Bulgarian-made pirate CDs (an estimated 90% of the output of Bulgarian plants) were being exported with impunity worldwide. From 1998, Bulgaria became an import market swamped with illegal CDs from Ukraine, Russia and Montenegro, and later Serbia. In addition, there is a large and fast growing pirate CD-R market. This phenomenon has been exacerbated by the fact that the sole CD-R plant that was operating in Stara Zagora has now been added to in 2002 by another in Plovdiv. The likelihood of blank CD-R production moving straight into the pirate chain of unauthorized burning and distribution is greatly increased. In addition, Bulgarian licensing regulations do not oblige CD-R production to use SID codes. As indicated above, the Bulgarian mastering facility, which left the country having been involved in the production and export of illegal masters, could re-enter the country under (purportedly) different ownership. Piracy of foreign sound recordings remained unacceptably high in 2002 with 83% of all foreign sound recording sold being illegal copies. The overall piracy level in Bulgaria for all repertoire is 66%. Estimated trade losses to U.S. companies due to recording piracy in Bulgaria is placed at \$7.2 million in 2002.

The Motion Picture Association of America (MPAA) reports that the most significant problem facing its industry in Bulgaria is the threat posed by pirate digital media, with piracy levels of 20-25%. Although videocassette piracy still exists (8-10% piracy levels), pirate optical discs and the Internet have overshadowed its impact. Unfortunately, it is expected that this trend will continue. Internet cafes are growing in popularity, serving as the conduit for an increase of movies burned onto CD-ROMs. Consumers use high-speed access to download films and burn them onto discs. The cafes also serve as centers to rip and copy DVDs. The distribution of films through informal networks and chatrooms has made the Internet one of the most popular methods for distribution of

⁶ Bulgarian News Agency, "Authorities Seize 250,000-300,000 Pirate CDs in 2002," January 10, 2003.

pirate product in Bulgaria. In addition to the Internet, pirate product enters the country in the form of illegal VCDs and DVDs. These discs are professionally pressed in Russia or the Far East and are affecting the legitimate home entertainment and theatrical markets. Shipments that have been stopped in transit to neighboring countries of Turkey, Romania, and Yugoslavia indicate that the country is being used as a transshipment point. Videocassette piracy still exists in the form of back-to-back copying of new titles and of pre-release titles sourced from pirate VCDs and DVDs. Most stores that engage in videocassette piracy are small outlets dispersed throughout the country. MPAA believes that there are currently no large, illegal duplicators of pirate optical discs or videocassettes in Bulgaria. Due to the efforts of BullACT, the local anti-piracy organization, and the enactment of a 1998 Radio and Television Law providing for the licensing of broadcasters and cable operators, the level of television piracy has fallen dramatically. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Bulgaria are estimated to be approximately \$3 million in 2002, with an overall piracy rate of 20%.

For the entertainment software industry, market stalls and regular retail outlets selling pirate videogame products remain a key problem. Internet piracy is growing and Internet burn operations are increasing too. Piracy of entertainment software products are occurring increasingly through Internet café operations. There are over a thousand Internet cafes in Bulgaria, only about 300-400 of which use licensed entertainment software products. In many cases, the cafes allow their customers to burn illegal downloads off “warez” (a term meaning illegal software) sites, for a fee. Newspaper advertisements also flaunt CD burning of game software. The Interactive Digital Software Association (IDSA) reports that most of the industrially produced pirate CD-ROMs (silver discs) of PC games and games for the PlayStation® are being imported from Russia. There also appear to be silver discs of PlayStation2® products coming in from Serbia. Doing business and anti-piracy activities can be quite dangerous; one local distributor of legitimate product was attacked in mid-2002 in a calculated manner, possibly by persons involved with organized crime. IDSA estimates that the overall value of pirated entertainment software products present in Bulgaria was \$21.9 million in 2002, with an estimated piracy level of 91%.⁷

Software piracy remains pervasive throughout Bulgaria, and criminal enforcement is wholly inadequate. The Business Software Alliance (BSA) estimates losses to U.S. producers of business applications at \$7.0 million for 2002, with a piracy rate of 72%. All the CD production facilities in Bulgaria have the capability to produce high quality (silver disc) CD-ROMs loaded either with unauthorized compilations of pirate copies of business applications and entertainment software or single company counterfeit programs. The local market cannot absorb more than a small quantity of this product, and nearly all of it is exported. In the past, pirate software compilations from Bulgaria have been seized in Russia and elsewhere in Central and Eastern Europe. Material has also been found in Western European markets, such as Germany, Belgium and the U.K. In addition, the domestic software market is flooded with illegal CD-ROMs, both silver and gold, containing a full range of different business software applications published. The illegal production of optical media containing business software is only a part of the problem. The definition of software piracy also extends to the widespread use of unlicensed software in both the corporate and private sectors (end-user piracy). In addition, the distribution of illegal software copies on the hard disks of sold computers is still a common practice among Bulgarian resellers (HDL/hard disk loading piracy). Finally, the Internet is increasingly used for the distribution of illegal software (Internet/online piracy). Although BSA continues to experience very good cooperation overall from the police, the lack of actual prosecutions and court decisions has kept the piracy rate at an

⁷ IDSA has revised its methodology for deriving the value of pirate videogame products in-country and is able to report 2002 estimates.

unacceptably high level. As a result, within the last three years, out of over 122 criminal prosecutions filed, only four have reached settlement and not a single one has produced a court sentence. The others, despite BSA's efforts, are not likely to be brought to court in the foreseeable future.

The book publishing industry indicates that Bulgaria, like other Eastern European countries, has experienced pirating of American books, especially popular fiction and textbooks, for years. Estimated trade losses due to book piracy for 2002 continue to be are \$300,000.

COPYRIGHT ENFORCEMENT IN BULGARIA

In summary, the key elements for effective action are: (1) increased vigilance by the Ministry of Interior in enforcing the plant licensing decrees; (2) effective implementation of title verification; (3) the application of raw material (polycarbonate) monitoring both at the plants and by customs officials, in compliance with the decree of March 1998; (4) effective, expeditious criminal prosecutions and the imposition of deterrent penalties for all forms of piracy; and (5) implementation of effective anti-corruption measures within the enforcement authorities and the judiciary; and (6) more active and regular involvement of policy forces in cooperation with rightsholders to conduct targeted raids throughout the country.

Interagency Coordination

Inter-Ministerial Council (1997): In 1997, an Inter-Ministerial Council for the Protection of Copyright and Neighboring Rights was organized to better coordinate and direct Bulgaria's anti-piracy enforcement efforts (Decree No. 120/1997). The Council, headed by the Deputy Prime Minister, is broadly based and includes the Secretary of the Interior, the Deputy Ministers of Foreign Affairs, Industry, and Foreign Trade, the Chief of the Customs Service, and representatives from the Chief Prosecutor's Office, National Investigation Agency, Directorate of the National Police and National Security Service. Despite the high expectations of the IP industries, the council has failed to achieve the goal it was established to obtain. In the past four years of operation, none of its motions have brought any concrete results; its sessions have not been attended by the designated top officials; and its lack of cooperation with IP industry representatives has prevented it from fighting the Bulgarian piracy problem. Additional agencies also concerned with IPR protection, in one way or another, include: the National Radio and Television Council, the Ministry of Culture, the Ministry of the Interior, the Ministry of Finance, the Ministry of Justice and European Legal Integration, the Ministry of Education and Science, the Ministry of Public Health, and the General Tax Administration Directorate.

The Inter-Ministerial Council for the Protection of Copyright and Neighboring Rights was abolished in July 2002 by decree, when the Council of Ministers repealed the 1997 decree. In November 2002, a new council was formed with an ordinance issued by the Minister of Culture. The new council includes representatives from the Ministry of Culture, the Ministry of Economy, the Ministry of Interior and the Customs Service. Unfortunately, once again this body does not include representatives of the copyright industries. This new group has not even held a meeting yet.

Task force (2001): Although the Council for Protection of Copyright and Neighboring Rights established a task force to fight software crimes and offenses in June 2001 to increase the efficiency of the prosecution of software crimes, the task force met for only two sessions in 2001

without any result whatsoever. The new government was supposed to pass a decree designating the new members of the council and the task force. However, this Task Force was also dismissed and no new initiatives for its re-establishment have been undertaken by the new council.

The Ministry of Finance's General Tax Directorate recently joined the anti-piracy fight in Bulgaria.

Title Verification and CD Plant Licensing

In 1996, Bulgaria adopted a title verification system in 1996 to crack down on illegal production (Decree 87/96). The decree was amended in April 1997 to include the registration of CD-ROM manufacturing (even though it was limited to manufacturing, not distribution, orders). The 1998 amendments introduced a plant licensing system was introduced, and provided that only plants with a production license are allowed actually to start CD production after having obtained the necessary license from the Ministry of Economy. In March 1998, the Ministry of Interior was quite successful in implementing the TVD plant licensing system.⁸ Effective in July 1998, Decree 87/96 was further amended to regulate stampers under the same procedures (licensing and title verification), which combined with regulations on raw material imports, should improve the regulation of the plants if properly enforced.

Current licensed CD plants: The plant licenses are issued by the Minister of Economy upon a motivated proposal made by a special Licensing Commission composed of equal number of representatives from the Ministry of Culture, the Ministry of Interior and the Ministry of Economy. (The Ministry of Industry does not exist separately any more). The plant surveillance system is supposed to be undertaken by economic police within the Ministry of Interior and its units. Here is a summary regarding the current known CD plants in Bulgaria:

- The state-owned DZU plant in Stara Zagora, with an estimated capacity of 7.4 million discs per year, has been sold to the Hungarian company VIDEOTON. One of the two production lines is inoperable the other is not licensed and does not operate. There is one mastering facility – not licensed and not operational.
- CHSL plant in Sofia has moved from the premises belonging to the state recording company (Balkanton) to its own premises in Sofia. It has one licensed production line, operational, with an annual capacity of about 3.7 million disks.
- UNISON CDM in Botevgrad with two lines and an estimated capacity of 7.4 million discs per year is not licensed and not operational.
- TOT 2002 in Sofia is a production line with a capacity of 5.2 million disks annually, and is licensed and operational.
- OPTICAL STORAGE is a CD-R production line operating in Stara Zagora, with a production capacity of about 7.7 million CDs or blank CD-Rs annually.
- SILVER FIRST is a CD-R production line operating in Plovdiv, with a production capacity of about 7.7 million CDs or blank CD-Rs annually.
- MEDIA SYS is a newly established DVD plant operating in Stara Zagora. Its DVD production line has a maximum annual capacity of about 4.4 million units. There is one mastering facility, which is also licensed and operational.

⁸ At that time, the 5 Bulgarian CD plants were temporarily closed, pending compliance with the licensing regulations. In early 1999, there were 5 known CD production facilities in Bulgaria that had been licensed since March 1998. Those licensed plants had a total of 11 CD production lines (7 mono-lines and 2 twin-lines) with a potential annual production capacity of over 40 million units.

The estimated overall production capacity for the country, therefore, is approximately 31.5 million discs, with a further potential of 15 million discs should inoperative equipment be licensed.

Plant licensing and surveillance of licensed facilities alone cannot stop plants from illegal production. Plant licensing will only work if combined with effective title verification, general application of SID-codes, polycarbonate (raw material) monitoring, deterrent criminal prosecutions of individuals engaged in commercial piracy, seizures and distribution of equipment used in the course of pirate activity. The government needs to give the Ministry of Culture additional means to carry out proper title verification and post-production controls. This should be made as high a priority as plant surveillance, so that product is not “licensed” without any serious investigation into the ownership of the copyright as required by the TVD and its title verification regulations. Plants which take advantage of the lax title verification system should be permanently closed, and parties presenting fake licenses should be prosecuted. The Bulgarian government needs to work closely with the industries to make the title verification system one that is efficient and effective.

Long-suspected concerns about weaknesses in the checks and control measures of the current system were proven to be well-founded by the cases of Kyralfa mastering plant (potentially unauthorized mastering to a massive scale), and the discovery of illegal production by, and subsequent closure of, the HEMUS plant. The liability of key personalities of both these plants has not been pursued by the authorities. Indeed, in the case of HEMUS, key personalities, along with the plant equipment, have simply moved into the newly created TOT 2002.

Of continued concern is that a licensed manufacturer is able to hold as many moulds—including non-coded moulds—as they wish, since it effectively is the production of non-coded discs that constitutes an infringement. In the absence of an obligation on the plant to declare and submit moulds for examination, and of regular, proactive checks, a plant can undertake illegal production. (Two examples of the need for proactive and regular checks: in 2001 it was established during a visit to Hemus by IFPI representatives that the plant had been producing discs with a non-coded mold, thereby by-passing the requirement in a manner which would allow them to produce both coded and non-coded discs with the same mold; at the end of 2001 a batch of mastering substrates being exported by the Kyralfa mastering facility were uncovered by customs. These substrates had been involved in the mastering of unauthorized material, and their being in Kyralfa’s possession should have been identified by the security measures in place.)

Deregulatory zeal in 2002 jeopardized the various OD-related decrees: In mid-2002, copyright sectors representatives, joined by U.S. government and EU officials, expressed opposition to Bulgaria’s attempts to rescind and/or reconfigure some of the key decrees which regulate optical disc production in Bulgaria. To the best of our knowledge, here is the current state of play:

- The CD plant licensing regime (Title Verification Decree No. 87/96) will not be abolished, nor will it be converted to a registration system. Obtaining this result was a major victory.
- The importation of optical disc grade polycarbonate and stampers, which used to be regulated by Decree 233/2000, seems to have been caught up in deregulatory zeal. Despite strong protests from the U.S. government, a decision by the Council of Ministers on November 14, 2002 abolished this system. Fortunately, such a registration schedule is now included in Section 7 (Articles 39-41) of the new draft OD plant licensing and title verification decree, and, if adopted by the Council of Ministers, will reactivate this registration of

polycarbonate and stampers. The obligation to register the importation of optical disc grade polycarbonates and stampers is an essential element for the accurate and effective enforcement of an optical disc law.

- The draft “Act on the Limitations of the Administrative Regulations and Administrative Control over Business Activities” was submitted to the Parliament on December 9, 2002. There is no information that it has passed first voting in the plenary session. The draft act provides that the activities listed in its Appendix 1 are subject to licensing, and manufacturing of CDs and stampers was included in that appendix, at the very last moment.

The 2002 Amendments to the Copyright Law provide for obligatory licensing of CD manufacturers. The terms for such licensing, as well as the conditions for the production and distribution of CDs and other carriers embodying subject matter of copyright and neighboring rights, are to be outlined by the Council of Ministers. In November 2002 the drafting of a new decree began. The leading ministry is the Ministry of Culture. Representatives of the copyright industries (BAMP, BullAct and BSA) took part in the preparation of the Draft. On February 7, 2003, the draft decree was sent to the other ministries for consideration. The Ministry of Culture reportedly will submit the draft to the Council of Ministers by the end of February 2003.

Criminal Enforcement in Bulgaria

Police Actions: Good Cooperation, Some Problems

The Bulgarian police are generally cooperative. Police districts with the Sofia region (especially those under the direction of the Sofia Directoria of the Ministry of Interior) remain reluctant to aggressively pursue anti-piracy actions; those actions which they do take are ineffective. However, the police systematically refuse to focus their enforcement efforts on larger targets and only agree to raid small companies and, in case of software, computer game clubs or Internet cafés. The slow and ineffective criminal procedure, the many instances of corruption among both executive authorities and the judiciary establishment, as well as the lack of knowledge and experience in the field of computer software and IT crimes lead to groundless delays in police investigations and court proceedings. In the area of music piracy it is the unacceptable delays in the expert reports that have to be prepared by the Ministry of Culture that cause a huge backlog in prosecution cases.

The recording industry reports that, in 2002, the competent authorities in Bulgaria carried out 729 checks at 2274 points, including wholesale and retail points, storage places, production premises (recording facilities), as well as vehicles (during checks at the customs), during which they seized a total of 136,792 pirate CDs, CD-Rs and MCs. Over 90 of those raids have been carried out together with BAMP/IFPI Sofia. Some 79,810 optical discs and tapes with music, films, entertainment and business software were seized in these actions.

The motion picture industry reports that, despite high crime rates and Bulgaria’s challenging transition to a free market economy, BullACT’s activities against piracy remain strong. BullACT (the local anti-piracy organization) continues to maintain a high level of activities against videocassette and optical disc piracy and enjoys excellent cooperation from law enforcement authorities. In 2002, BullACT, in cooperation with local law enforcement, conducted 672 investigations and 501 raids. These actions resulted in the seizure of over 10,635 pirate optical discs and 5,628 pirate videocassettes, representing a dramatic increase over total seizures in 2001.

The percentage of rental piracy product is now about 20%, and more video stores than ever before are stocking only legal product. BullACT has also begun to see home production of CD-Rs containing movies. Cable piracy substantially decreased in 2001. Continuing cooperation between the police and BullACT gives reason to believe that the Bulgarian authorities will continue to take the enforcement measures needed in the fight against piracy

BSA rejuvenated its enforcement program in Bulgaria in September 1999. At that time the software piracy rate in Bulgaria was over 90%. The software industry's enforcement activities have been focused against companies using illegal software in their daily business as well as distribution of software by resellers and hard disk loading and software crimes committed on the Internet. From 1999 till the end of 2002, the police, with the substantial assistance of the BSA, have conducted 123 raids. Of these, there is one prosecutor's denial to initiate a criminal trial and of the remaining 122 criminal proceedings initiated, 21 have been abandoned by the prosecutors, 95 are pending at the preliminary investigation stage, two have reached court stage but are not decided yet, four have been completed with a settlement and none has been completed with a verdict. The ongoing good cooperation between the police and the BSA still gives hope that Bulgaria will make progress in the fight against software crimes, start prioritizing larger targets, and improve the collecting and preserving of valuable evidence during raids.

BSA also reports that as a consequence of a joint initiative by the IP industry, the Bulgarian Parliament voted amendments to the Tax Procedure Code in April 2002 pursuant to which tax authorities are now entitled to review the software licensing status of companies being audited for compliance with tax laws. Unfortunately, the amendments failed to authorize tax inspectors to impose administrative penalties, although the software industry is working with the Ministry of Finance to change the law in this respect.

Entertainment software companies report that there has been little police cooperation with their enforcement efforts, unlike the efforts which appear to have been extended to the other industries. It remains difficult for entertainment software companies to undertake their own investigations into the syndicates that operate in the country given the dangers they face absent police backing. In fact, one entertainment software company reports that one of its local distributors was physically attacked, though fortunately, he did not suffer grave harm. This mid-2002 attack appears to have been a well-calculated hit, possibly involving organized crime elements intended to pressure the company into dropping its anti-piracy program in Bulgaria.

Prosecutions and judicial sentencing are ineffective and non-deterrent.

MPAA reports that there has been little improvement in the Bulgarian court system since 2001. Court cases can still take up to three years to complete, but overall the length of time has been decreasing. While convictions for copyright offenses are quite common, judges have been reluctant to impose deterrent penalties. It is important that judges recognize the seriousness of these offenses and begin to impose jail time in serious cases involving repeat offenders. MPA reports that no defendant has received an actual jail sentence. Every criminal case seems to result in a suspended sentence being imposed as part of the probationary period.

BSA reports that, despite the active enforcement by police, the Bulgarian prosecutors and judges undermine software infringement prosecutions through perverse decisions and motions by returning critical evidence, such as seized computers and hard drives, to defendants, or refusing to accept such items as evidence, although properly seized. In a number of cases, prosecutions have been abandoned altogether without any apparent cause. As an illustration, out of 122 software

criminal prosecutions initiated, only four have been completed with a settlement and none have reached a criminal verdict. The four settlements acknowledge that the offenders are guilty for having committed software crimes but the criminal fines imposed are quite insufficient, amounting to a maximum of 700 leva per person (about US\$350) and confiscation and destruction of the illegal software. (Under the Bulgarian penal law a settlement between the prosecutor and the defense approved by the court is considered a final verdict.)

The recording industry reports that in 2002, of the 400 raids conducted, the police instituted 110 inquiry cases to investigate alleged criminal offences under Article 172a of the Criminal Code. The police sent 75 police enquiry cases to different prosecutors' offices, recommending these to be filed in court for criminal offences (these include both cases instituted in 2002 and cases from previous years). Only 22 persons were reported to be convicted for criminal offenses under Article 172a of the Criminal Code. However, as the prosecution and court system lacks any transparency, the number of convictions could actually be higher.

Unwarranted Delays in Criminal Actions; Problem with Expert Reports

Criminal enforcement actions which could deter piracy are not being used effectively. BSA, MPA, and the RIAA report unwarranted delays in criminal enforcement actions, in large part because of the time it takes to move a case from the police, through the magistrate investigator, and on to the prosecutor's office to the court. During this time, seized pirate product may deteriorate (creating evidentiary problems if seized materials are no longer in their original condition) and caseloads can become unmanageable.

Although the Penal Proceedings Code provides for relatively short terms within which the investigation should be completed (the longest period could be nine months),⁹ cases are usually delayed for a much longer time due to the incompetence, corruption and underestimation of the importance of the prosecution of IP crimes. It is important that this process be made quicker and that the courts start imposing stiffer penalties. It is reported that the cause of the delay is usually the investigation provided for in the Bulgarian law. There are many reasons for delay, including imperfections in the procedural legislation, the low priority given to IPR cases, the inexperience of police and magistrate investigators, and a heavy workload on the part of investigative services. After the initial "check" stage of the criminal proceedings, the second stage (preliminary investigation/decision to prosecute phase) also requires an expert opinion including a description of each copyrighted work that has been pirated. The only body authorized to provide such opinions is the Copyright Department of the Ministry of Culture, which lacks the resources and staff to move cases to the court stage. One proposed solution to the resources shortage would be to permit copyright owners to assist in the preparation of the expert report, but if the Penal Proceedings Code is not respectively amended, prosecutors and judges will not accept such opinions as valid evidence. The requirement necessitating an expert opinion for each pirated work is unworkable, inefficient, unduly burdensome and too expensive. Besides these problems, the Penal Proceedings Code contains a number of gaps and other discrepancies that create prerequisites for prosecutors and courts to drop cases on procedural grounds. This law should be amended to provide for a fast, uncomplicated and smooth development of the IPR cases that would lead to sentences having the adequate deterring effect.

⁹ Under the Bulgarian criminal law, an investigation is supposed to be completed in two months, although the regional prosecutor may prolong the term for an additional four months (and a general prosecutor in very rare instances for three additional months).

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS IN BULGARIA: 2002			
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	SOUND RECORDINGS
Number of Raids conducted	501		729
By Police		38	400
By Customs			6
Number of cases commenced	79	38	75
Number of defendants convicted (including guilty pleas)	62		22
Acquittals and Dismissals	0		N/a
Number of Cases Pending	29	38	N/a
Total number of cases resulting in jail time	0		
Suspended Prison Terms			
Maximum 6 months			
Over 6 months			
Over 1 year			
Total Suspended Prison Terms			
Prison Terms Served (not suspended)			
Maximum 6 months			
Over 6 months			
Over 1 year			
Total Prison Terms Served (not suspended)			
Number of cases resulting in criminal fines	62		
Up to \$1,000			
\$1,000 to \$5,000			
Over \$5,000			
Total amount of fines levied			

Civil Cases

IDSA reports that one of its member companies has some civil cases pending in Bulgaria, using a cease-and-desist campaign. Civil claims are filed within the criminal proceedings initiated after police raids. BSA reports several distinct problems with civil litigation in Bulgaria.

The Bulgarian judiciary is notoriously slow and the procedures are to a great extent formalized. Judges are rather inexperienced in adjudication of IPR cases and prefer to drop them on procedural grounds rather than further move the hearings.

CIVIL COPYRIGHT ENFORCEMENT STATISTICS IN BULGARIA: 2002		
ACTIONS	BUSINESS APPLICATIONS SOFTWARE	ENTERTAINMENT SOFTWARE
Number of civil raids conducted	0	NA
Post-Search Action		
Cases Pending		
Cases Dropped		
Cases Settled or Adjudicated		
Value of loss as determined by rightholder (\$USD)*	\$718,873 **	
Settlement/Judgment Amount (\$USD)	8,218	

Note: The civil claims are filed within the criminal proceedings initiated upon police/BSA raids. 21 civil claims have been filed within the respective criminal proceedings.

Border Measures

Although the 2000 amendments to the copyright law introduced TRIPS border control measures to the Bulgarian legal system, problems remain in implementation. Industry representatives report that the legislation delegated to implement these provisions, namely the Decree on the Implementation of the Border Control, failed to establish a fast and effective procedure for preventing the movement of infringing goods across the national borders. The decree contains grave discrepancies compared with the TRIPS and the Copyright Law provisions, which in practice makes border control unenforceable.¹⁰

The Bulgarian market is being flooded with imports from Russia and Serbia and Montenegro. Therefore, border controls must also be significantly improved. An import license should only be granted after proper inspection of the optical discs in question. In addition, the Ministry of Culture should not automatically issue export licenses in connection with production permits. The draft of the new Decree on CD plant licensing provides for registration of import and export deals with the Ministry of Culture. A certificate must be issued in each particular case, so that customs can clear the shipment

COPYRIGHT LAW AND RELATED ISSUES

1993 Law on Copyright and Neighboring Rights, as Amended

On August 1, 1993, Bulgaria's Law on Copyright and Neighboring Rights entered into force, replacing its antiquated 1951 copyright law. Four years after it promised the U.S. it would do so, Bulgaria adhered to the Geneva Phonograms Convention (in September 1995), thus affording protection to U.S. sound recordings. Further amendments to the copyright law were made in 1994, 1998, 2000 and 2002.

Copyright Law amendments (1998): On a positive note, amendments to the copyright law which were adopted in January 14, 1998 increased administrative fines imposed by the Ministry of Culture tenfold. However, these 1998 amendments also contained two serious problems: (1) They require the placement of holograms on blank audio and video tapes, CDs and CD-ROMs; and (2) they change the procedures for confiscation of infringing copies. These problems were resolved by the 2000 amendments.

Copyright Law amendments (2000): Further amendments to the Bulgarian copyright law were accomplished in 2000, apparently as part of Bulgaria's efforts to comply with European Union Directives and TRIPS. Industry reports indicate that these amendments provided for a longer term of copyright protection, a new communication right, provisional measures, and border control measures. In addition, these amendments provide administrative sanctions for tampering with rights management information and for the manufacturing and distribution of decoding devices without the consent of the copyright holder. Amendments also were made which prohibiting circumvention devices and the possession of pirate product.

The amendments to the Copyright Act in 2000 were aimed to amend the national legislation to the requirements of the two WIPO Treaties. In addition to the amendments enumerated in the

¹⁰ IIPA does not have the text of this decree on border control measures.

above paragraph the following rightholders were granted the right to claim additional damages calculated on the basis of the revenue from the infringing act, the value of the infringing goods at retail price (of the legitimate copy), or pre-established damages instead of compensation.

Ratified WIPO treaties: Bulgaria deposited its instruments of accession to both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty in March 2001. It was one of the original 30 countries which put these two important treaties into force in 2002.

Copyright Law amendments (2002): As IIPA reported in our 2002 Special 301 report, Bulgarian officials created a government-industry working group in 2001 to assist in the drafting of amendments to legislation so that Bulgaria would be in compliance with the EU's directives on copyright, e-commerce, and conditional access. Amendments to the Bulgarian Copyright Act were passed on July 25, 2002; these entered into effect on January 1, 2003. IIPA is informed by our industry colleagues that the amendments achieved the following, for example: a new chapter on database protection was inserted; the definition of the distribution right was revised; revisions/refinements were made to existing exceptions to protection; criminal sanctions for violations involving technological measures of protection were added; and the reprographic levy was introduced with the 2000 amendments to the copyright law, but some amendments with regard to the collection and distribution of the reprographic levy and the blank tape levy were made in 2002. Additional amendments were made to the provisions involving transfers of rights and the administration of collecting societies.

Local industry colleagues report that one of the most important amendments to the Copyright Act in 2002 was the introduction of national exhaustion of the distribution right. Together with the exclusive right to authorize the importation and exportation of copies of works, sound recordings, etc. recognized in favor of all categories of right owners, national exhaustion leads to the prohibition of "parallel imports." The definition of the "distribution right" was revised accordingly to exclude importation and exportation (now separate exclusive rights). Another amendment affects the way to define the term of protection of sound recordings. The term remains 50 years, but is calculated in conformity with provisions of the EU Directive on copyright. Administrative penal sanctions (fines) for violations involving technological measures of protections were added. The amendments provide that the Copyright Act requires obligatory licensing of CD manufacturers, and the terms for such will be outlined by the Council of Ministers (see discussion below on OD regulations).

Unfortunately, local industry reports indicate that not all the 2002 amendments were positive ones. Troubling provisions include: a mandatory fall-back/return of exclusive rights to authors and performers after ten years; contractual arrangements for the transfers of rights which exceed ten years in duration are considered void; an exception from the importation and exportation right for amounts of less than commercial quantities; the scope of the "making available right" extends to "an unlimited number of people" instead of a more clearly defined and limited "public"; the scope of the right of communication to the public for producers of sound recordings is only a right of remuneration; the three-step TRIPS Article 13 for limitations contains only two of the steps; fines provided under administrative and criminal sanctions are too low and not deterrent; the new provisions on technological protection measures and rights management information appear to lead only to administrative and criminal sanctions, there is no civil liability, and all are subject to a "primarily designed test" (thus limiting its usefulness); and the term of protection for sound recordings remained at only the TRIPS *minima* level.

According local experts, another troubling problem is the maximum duration of agreements

for the transfer of rights, which was originally introduced in the 1993 Copyright Law. Proposals to eliminate this transfer provision were made twice (in 2000 and 2002), but were not accepted. In addition, with regard to the scope of the “making available right,” the expression “unlimited number of people” is the most adequate translation of the word “public” within the meaning of the “making available” right in the Bulgarian language. It is not correct that the right of “communication to the public” for producers of sound recordings is only a right of remuneration. Producers have the exclusive right to authorize any communication to the public of their sound recordings by wire or wireless means. Unfortunately, “communication to the public” is difficult to translate directly into Bulgarian. However, confusion may arise from a provision in the law according to which remuneration collected for public performance and broadcasting of phonograms is split equally between performers and producers.

Title Verification Decree (1996, as Amended)

The discussion above described the recent Bulgarian efforts to deregulate aspects of the system implemented years ago to regulate the production and distribution of optical media products. To summarize the current law, Bulgaria’s Title Verification Decree (Decree No. 87/96) was amended in 1997 to install the plant licensing system, and again in July 1998 (by Decree No. 162/98) to regulate stampers under the same licensing and title verification procedures. As an overview, the TVD (as amended) requires the following:

- **Title verification system.** The current system contains three levels of verification with the Copyright Department of the Ministry of Culture.
 1. The first level of verification requires the obligatory registration of the rights for reproduction and distribution of sound and video recordings. Each person (physical or legal entity) who has acquired such rights should file an application for registration together with a copy of the license agreement under which the rights have been granted or copies of the contracts with the authors and the performers whose works and performances are embodied in the sound or video recordings. Sound and video recordings cannot be reproduced and distributed in any form prior to registration. This system for verification does not apply to software, only to sound recording and audiovisual works (video recordings).
 2. The second level of verification requires the obligatory registration of all orders for manufacturing of matrices (stampers), recorded CDs and other sound and video carriers embodying subject matter of copyright and neighboring rights, including software. Under this registration system, the manufacturer should obligatorily submit an application for verification of the legitimacy of the order to the copyright department. The application should be accompanied by a copy of the contract for placing the order, information on the titles, and a copy of the plant license. Again, the plants are not allowed to manufacture any units prior to receiving permission from the Ministry of Culture.
 3. The third level of verification requires the obligatory registration of all facilities for manufacturing of sound and video carriers embodying subject matter of copyright and neighboring rights excluding the CD manufacturing facilities, which are subject to licensing under the plant licensing system.
- **Plant licensing system.** This system provides that each CD and/or stamper manufacturer should obtain a government license to operate as such. The license is granted by order of the Minister of Economy upon approval of an inter-ministerial licensing committee including

representatives of the Ministry of Culture, Ministry of the Interior and the Ministry of Economy. The application for obtaining such license should be accompanied by documents for the company's incorporation, tax registration, the Ministry of Culture's certificate for the installation of SID code, etc. The CD or stamper manufacturing license is valid for one year and cannot be extended.

Polycarbonate Monitoring and SID Codes

In 1998, Bulgaria adopted legislation to monitor the trafficking of polycarbonate, the material used to make compact discs.

Decree 271/98 amended 1977 legislation regarding export and import-related trade policies. The monitoring of the trafficking of polycarbonate was established with Decree 493/1997, in force from January 1, 1998 till December 31, 1998. Appendix 1 provided that subject to registration are *imports* of polycarbonates and stampers and *exports* of computer software and CD-ROMs as well as audio and video carriers. Decree 271/98 (in force from January 1, 1999 till December 31, 2000) amended the 1998 legislation and provided for registration only of imports of polycarbonates and stampers. In case of import of polycarbonates, the agreement with the final consignee was required. In case of import of stampers, registration under the Title Verification Decree of the reproduction and distribution rights in the works which might be reproduced from the stamper was required. Decree 233/2000 (in force from January 1, 2001) replaced the 1998 legislation without alterations to the established registration regime. Industry representatives had reported that it was not possible for an individual to place a direct order for polycarbonate for delivery to Bulgaria. Those who place legitimate orders have their shipments examined by customs officials and must show their required permit from the Ministry of Economy's Trade Division. As discussed above, however, the registration system was abolished by the Council of Ministers with amendments to Decree 233/2000 in November 2002 (the registration of imports was deleted).

The various local copyright industries question whether the polycarbonate import is being analyzed alongside—and cross-referenced with—declared production levels. It is also important that the re-sale or movement of imported polycarbonate within Bulgaria must be tracked carefully in order to counteract illegal production.

Registration of the import of optical grade polycarbonate and matrices for CD manufacturing is included in the new draft decree on OD plant licensing and TV system. However, it is possible that before the final voting of the decree by the Council of Ministers, or during the voting sessions, these provisions could be deleted. To prevent this very negative outcome, it is crucial that the Bulgarian government understand the importance of this keeping this registration regime.

Revisions to Optical Media Regime

The 2002 Amendments to the Copyright Law provide for obligatory licensing of CD manufacturers, as well as the terms and conditions for the production and distribution of CDs and other carriers containing subject matter of copyright and neighboring rights, to be outlined by the Council of Ministers. In November 2002, the drafting of a new decree began, with the Ministry of Culture in the lead. On February 7, 2003, the Draft has been sent to the other ministries for pre-consideration. We understand that the Ministry of Culture will submit the Draft to the Council of Ministers by the end of February 2003.

The global copyright community has agreed that the key elements of an effective optical disc law include the following 11 points. This list contains the absolute minimum for effective OD regulations. It is imperative that Bulgarian government officials work closely with the copyright industries in developing these regulations. Key elements include:

- 1) Licensing of facilities: Centralized licensing (for a fixed, renewable term, no longer than three years) of manufacturing of optical discs and "production parts" (including "stampers" and "masters"), including requirements like production must take place only at the licensed premises, a license only be granted to one who has obtained "manufacturer's code" (e.g., SID Code) for optical discs and production parts, the licensee must take measures to verify that customers have copyright/trademark authorization of the relevant right holders, etc. The implementation of and final responsibility for the registration and licensing of CD plants and related activities under the CD plant and TV decree should be brought under the jurisdiction of one single agency. The Bulgarian Ministry of Culture with its specific expertise in this matter is in an ideal position to carry out this task.
- 2) Licensing of export/import of materials: centralized licensing of export of optical discs, and import/export of production parts (including "stampers" and "masters"), raw materials or manufacturing equipment (an automatic licensing regime consistent with WTO requirements).
- 3) Requirement to apply manufacturer's code: Requirement to adapt manufacturing equipment or optical disc molds to apply appropriate manufacturer's code, and to cause each optical disc and production part to be marked with manufacturer's code, and prohibitions on various fraudulent/illegal acts with respect to manufacturer's codes (including making, possessing or adapting an optical disc mould for forging manufacturer's code; altering, gouging or scouring a manufacturer's code on or from a mold or any disc; selling a production part not marked with manufacturer's code, etc.).
- 4) License record keeping requirements: Requirement to keep various records, for example, machinery and raw materials, orders received, quantity of raw materials, exemplars of each optical disc title manufactured, etc.
- 5) Registration requirement for commercial optical disc duplication: Requirement that commercial establishments that record copyrighted materials onto recordable optical discs for purposes of sale or other commercial dealings register with the government prior to engaging in such "commercial optical disc duplication," giving the names and addresses of the responsible persons and the address of the premises at which the duplication takes place.
- 6) Plenary inspection authority: Possibility of inspection, without notice, at any time, to examine licensed or registered premises; prohibition on obstructing raid; possibility of forcible entry; possibility for right holder organization to assist; etc.
- 7) Search and seizure authority: Plenary authority to: enter and search any place, vessel, aircraft or vehicle; seize, remove, detain or seal contraband or other evidence of a violation of the law; forcibly enter when necessary; prohibit the removal of seal applied; etc.

- 8) Government record-keeping requirements: Maintenance of a register of applications filed and production licenses granted, available for public inspection; maintenance of a record of all inspection actions made publicly available; etc.
- 9) Criminal penalties for violations: Violation of any significant aspect of the regime is subject to criminal sanctions, including individual liability (fines and/or imprisonment).
- 10) Possibility of withholding, suspending, or revoking a license for prior copyright infringement, fraud in the application process, or violation of the Optical Disc Law.
- 11) Possibility of closure of a plant.

The copyright industries look forward to working with Bulgarian authorities to draft, implement and enforce comprehensive optical disc regulations.

Government Software Asset Management

A new stage of the Government Software Asset Management Decree developments was reached with the 2002 amendments to the Copyright Law whereby a new Article 71a was introduced and required that the Council of Ministers should pass such a decree. A working group to finalize the draft decree was called and its first session was held on February 3, 2003. The next session of the working group is expected February 10–14, 2003, and the draft is scheduled to be completed by then. The working group draft government software asset management decree will be circulated by the Ministry of Culture among other ministries for consultations, and upon completion of this procedure, it will be submitted to the Council of Ministers. The consideration and voting of the draft by the Council of Ministers is expected in April to early May. BSA strongly commends the many great steps taken by the Bulgarian government in 2002 to ensure legal software use through out the state administration by legalizing their desktop software use. IIPA encourages the government to continue down the path towards implementation of effective software asset management practices and to work closely with the private sector in doing so.

Criminal Code

The fine levels for copyright piracy were established in the 1995 penal legislation. In 1997, the fines provided for in the Penal Code were increased by amendment to Article 172(a), so that the fines for a first offense range from a minimum of \$552 (1000 BGL) to a maximum of \$1,658 (3000 BGL), and for a second offense from a \$1,658 (3000 BGL) minimum to a \$2,763 (5000 BGL) maximum. The fines for administrative remedies (provided for in the 1993 copyright act) were also too low: about \$12 to \$112 for a first offense, \$56 to \$280 for a second offense. These were amended (in January 1998), raising the administrative fines to \$1,105 (2000 BGL) for a first infringement, and to \$2,763 (5000 BGL) for a second infringement. Although these amendments are improvements, the penalty levels are still too low to act as deterrents to commercial crimes. IIPA acknowledges that a major impediment to the imposition of criminal penalties was eliminated in 1997, when the element of proof that an infringer committed a crime with a “commercial purpose” was deleted from Article 172(a).