

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

### BULGARIA

**Special 301 Recommendation:** IIPA recommends that Bulgaria remain on the Watch List for 2007.

## **EXECUTIVE SUMMARY**

During 2006, internet piracy in Bulgaria became an alarming issue, no longer a distant second to the longstanding problem of physical (hard goods) piracy. In addition to Internet and mobile piracy, the massive burning of copyrighted materials on CD- and DVD-Rs remains a key element of a landscape still dominated by piracy. Indeed, these illegal discs are still easily available in all major cities, and the influence of organized crime elements remains notorious. One of the main reasons for continued high levels of piracy, however, are the prosecutors and the courts, who in practice consistently fail to treat copyright offences as serious crimes. Unjustified delays permeate the process, and the whole system lacks transparency. Only recently have senior Bulgarian prosecutors shown a welcomed willingness to improve this situation. During 2006 the interagency council on IPR met regularly and provided a platform for the private sector and the authorities to work together and achieve progress in addressing Bulgaria's various anti-piracy enforcement issues. The Ministry of Culture has been increasingly active in supporting the copyright sector in its fight against piracy.

## **PRIORITY ACTIONS IN 2007**

### **Enforcement**

- Take more actions against Internet piracy, especially ISPs and LANs facilitating illegal traffic in copyright materials in the online environment. Increase resources for the Cyber-Crime Unit.
- Ensure the Optical Disc Law provides that manufacturing of discs infringing copyright/neighbouring rights automatically leads to a revocation of the license, and step-up regular plant inspections.
- Increase *ex officio* enforcement actions against retail piracy, and in support of local decrees banning street sales of copyrighted products especially in Black Sea and other tourist resorts.
- Continue to strengthen the judiciary, continue training prosecutors, including investigative magistrates and judges on IPR and give priority to IPR infringement cases.
- Improve judicial issuance of adequate civil remedies in business software cases, including the issuance of *ex parte* civil searches, damages, and injunctive relief.
- Continue to improve border enforcement to halt the importation and exportation of piratical products.
- Give tax authorities the power to seize infringing copyrighted products and impose administrative sanctions (fines).
- Take administrative action against all users of recorded music that fail to pay royalties.
- Support country-wide pro-copyright education and anti-piracy awareness campaigns.

## Legislation

- Adopt a new Law on border measures for protection of IPRs to replace the Council of Ministers' Ordinance thus providing a law which would directly implement EC Regulation 1383/2003. At present, the current Bulgarian regulation is not fully enforceable.
- Ban street sales of cultural and copyrighted products nationwide, and enforce these bans.
- Introduce legal protection for artists' names against unauthorized use by mobile and Internet operators.

<b>BULGARIA</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <b>(in millions of U.S. dollars)</b> <b>and Levels of Piracy: 2002-2006<sup>1</sup></b>										
INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Sound Recordings & Musical Compositions <sup>2</sup>	7.0	75%	7.0	80%	6.5	75%	7.0	80%	7.2	83%
Business Software <sup>3</sup>	24.0	69%	21.0	71%	18.0	71%	16.0	71%	6.2	68%
Entertainment Software <sup>4</sup>	NA	NA	21.0	81%	NA	50%	NA	NA	21.9	91%
Motion Pictures <sup>5</sup>	NA	NA	8.0	NA	4.0	35%	4.0	25%	3.0	20%
Books	NA	NA	NA	NA	NA	NA	0.3	NA	0.3	NA
<b>TOTALS</b>	<b>31.0</b>		<b>57.0</b>		<b>28.5</b>		<b>27.3</b>		<b>38.6</b>	

On January 1, 2007, Bulgaria joined the European Union. Judicial issues and IPR issues were part of its accession negotiations. When the Commission confirmed Bulgaria's accession, it noted progress on key issues, which included Bulgaria's fight against corruption, improving judicial reform and prosecuting organized crime.<sup>6</sup> As part of the U.S.-Bulgaria engagement over the last

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at [www.iipa.com/pdf/2007spec301methodology.pdf](http://www.iipa.com/pdf/2007spec301methodology.pdf). For information on the history of Bulgaria under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>2</sup> The recording industry reports that physical piracy has decreased. However, Internet and mobile piracy have increased dramatically. As a result, the consolidated percentage figure is down slightly, but losses, due to a weaker US\$, the relatively substantial impact of Internet and mobile piracy and a contracted legitimate market have kept the estimated loss figure at the same level as in 2005.

<sup>3</sup> BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Bulgaria, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

<sup>4</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

<sup>5</sup> MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

<sup>6</sup> Press Release IP/06/1257 of the European Commission, 26 September 2006, "Commission confirms Bulgaria's and Romania's EU accession on 1 January 2007, completed by a rigorous package of accompanying measures," link at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1257&format=HTML&aged=0&language=EN&guiLanguage=en>.

decade, several trade tools have contained IPR components, such as Special 301<sup>7</sup> and the Generalized System of Preferences (GSP)<sup>8</sup> trade program (as an EU member, Bulgaria has been graduated from the GSP program). Bulgaria also has three bilateral agreements with the U.S. which contain IPR obligations.<sup>9</sup>

## **COPYRIGHT PIRACY IN BULGARIA**

**Internet Piracy:** The introduction of high-speed cable Internet resulted in a favorable environment for a substantial increase in illegal online distribution and use of computer programs, music, films, and entertainment software. This increasing piracy, from large Internet exchange sites that are well-recognized worldwide, to local private networks that use SMS messaging for commercial payment of unauthorized downloads, threaten the legal film market. These pirate products are accessed via Internet clubs and cafés (the number of Internet cafes has noticeably decreased but there are no reliable data available on the current number), as well as through more than 200 so-called local area networks (LANs) in neighborhoods across the country. LAN members pay a monthly subscription free for access to a local server storing unlicensed software and other information resources. The problem lies with tracking down servers containing pirate product as well as with smaller ISPs and Internet clubs that have their own networks closed to outside access and that cannot be investigated centrally. Bulgaria also has approximately 3,000–4,000 Internet cafés, perhaps more, which often serve as centers for consumers to rip and copy DVDs and CDs, and trade files of copyrighted materials.

The 2006 trend in Internet piracy has been a massive migration from offering access to illegal content in the free hosting area towards peer-to-peer file sharing. Copyrighted material can still be downloaded from certain sites hosted on servers managed or controlled by some of the local ISPs, but torrent trackers prevail in the illegal Internet distribution. In such an environment the role of the “warez” sites has significantly diminished and the majority of such sites appear to be hosted on servers located abroad.

Despite some encouraging signs from certain Government bodies, a consistent enforcement approach against all forms of Internet and mobile piracy has not yet materialized. For example, the Cyber-Crime Unit needs the full support of the Chief Prosecutor and the Minister of Justice in order to effectively proceed against increasing Internet piracy. Some important steps were taken in 2006 to overcome the growing problem of Internet piracy. For example:

- In 2006 a major structural reform took place in the Ministry of Interior. As a result, the former National Services to Combat Organized Crime were renamed to General Directorate to Combat Organized Crime (GDCOC) and the former sector Intellectual property rights, trade marks,

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<sup>7</sup> For more details on Bulgaria's Special 301 history, see Appendix D (<http://www.iipa.com/pdf/2006SPEC301USTRHISTORY.pdf>) as well as Appendix E (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission. Previous IIPA Special 301 filings on Bulgaria are posted at <http://www.iipa.com/countryreports.html>.

<sup>8</sup> During the first 11 months of 2006, \$55.9 million worth of Bulgarian goods (or 13.2% of Bulgaria's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 22.9% increase over the same period in 2005.

<sup>9</sup> First, 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. Second, in 1994, a Bilateral Investment Treaty (BIT) between the U.S. and Bulgaria took effect; the BIT contains a broad provision on national treatment. Third, in letters exchanged between the U.S. and Bulgaria in April 1995, Bulgaria made a number of commitments, notably 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.

computer crimes and hazard was renamed to Cyber Crime Unit and restructured to address all computer related crimes including Internet piracy.

- Throughout the year the chief officers of the Unit went through a consistent training program on the investigation of cyber crimes. Nevertheless the administrative capacity of the Unit is still insufficient and its officers need further training. In order to increase the efficiency of the Unit's work adequate technical equipment should be provided and sufficient budget to outsource technical assistance and expertise must be ensured.
- In terms of methodological guidance in investigating cyber crimes a series of trainings in association with the ABA/CEELI and the private sector were conducted and completed with the publication of the "Investigation of Computer Crimes" manual to serve as a desk book for police officers and police investigators.
- Within the IPR industries' Internet Strategy launched in 2005 a number of meetings between the industries, the Cyber Crime Unit of the GDCOC and the major local ISPs were conducted and agreements for exchange of information and assistance – reached.<sup>10</sup>
- The Internet piracy issue was the top priority subject of discussions at sessions of the Ministry of Culture's Council for Protection of IPRs with the participation of the enforcement agencies, representatives of the judiciary, the Bulgarian Telecommunication Agency and the industries.
- In order to ensure the full support of the Chief Prosecutor, to effectively proceed against the increasing Internet piracy, the issue was raised and discussed in all meetings with the Chief Prosecutor and his team at the Supreme Cassation Prosecutor's Office. A Deputy Chief prosecutor in charge of IPR was appointed and experts were allocated to closely monitor the respective cases.
- Last but not least, some major Internet raids were conducted against infringers who illegally made available over the Internet a huge volume of copyrighted material – music, films and software. Criminal investigations against the offenders were initiated.

Taking into consideration the above positive developments, what is still needed to improve the Internet piracy situation in Bulgaria is consistent and intensive enforcement and prosecution of all types of Internet offenses. Some ISPs recently have started to cooperate with the local industry group and have deleted the information that the industry identified. Disappointingly, there are many cases where pirates have returned to a former site. Right now the public still has a complete sense of impunity, especially when up-loading and down-loading illegal music files on the Internet.

The BSA reports that the business software industry has been conducting an intense local Notice-and-Take-Down Letter program successfully requesting the ISPs to delete illegal content hosted on their servers.

**Optical Disc Piracy in Bulgaria:** OD piracy is really focused on burning. It is estimated that around 70% of all optical disc piracy in Bulgaria involves illegally burned CD-Rs. Large-scale burning activity of CD-Rs does continue in underground workshops. OD piracy of business software has decreased in the recent years, largely due to the increase of Internet-based piracy. Still pirate ODs of business software – primarily burned CD-Rs – can be obtained on the local market.

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<sup>10</sup> The GDCOC Cyber Crime Unit is a material participant in the IP industries' Internet strategy launched in early 2005. This strategy provides for involvement of the right holders' organizations, major local ISPs and the GDCOC in conducting a number of Internet anti-piracy initiatives: (i) identification of alleged offenders on behalf of the film, music and software industries; (ii) a local notice-and-take-down campaign; (iii) issuance of police protocols of warning and instructions to ISPs knowingly hosting infringing material; (iv) police raids against LANs as well as against Internet customers uploading illegal content; (v) joint enforcement PR. This strategy, however, needs the support of both enforcement agencies and the judiciary in order to be successful.

Bulgaria's OD plant licensing system is not watertight. The legitimacy, in particular, of foreign orders for OD manufacturing is not properly verified by the authorities. The main priority at this stage is to ensure that infringement of copyright and neighboring rights is, as such, regarded as a breach of the licensing rules under the optical disc licensing law and automatically leads to a withdrawal of the manufacturing license, even when the discs carry the SID Code. Such a measure should be urgently introduced. The relevant law enforcement authorities should carry out regular surprise inspections at all plants and report back to, amongst others, the Ministry of Culture and interested rightholders groups.

**Local plant capacity:** Bulgaria has nine optical disc plants with thirteen lines, for a capacity of 45.5 million discs per year. The number of optical media plants and production lines in Bulgaria far exceeds legitimate demand, and continues to rise. There are now nine plants operating in Bulgaria: CHSL, Media Plant, TOT 2002, Euro Silver Group, Crystal Ton, Media Sys, Optical Storage, Silver First, and Alexander Group (alternatively called East European Authoring and Encoding Centre). The legitimate demand for optical discs in Bulgaria (all formats) is far below 10 million copies per year. A significant part of the orders come from abroad. "Media Systems," for example, manufactured 14 million DVDs during 2006. However, as indicated before, foreign orders are not properly verified by the authorities when licenses are granted. This seriously increases the risk of illegal production for export.

**Organized Crime:** The connection between organized crime and OD piracy in Bulgaria is no secret. Even the National Police report that there are five major organized crime groups in Bulgaria, and they share the markets for illegal businesses (like piracy, prostitution, contraband and drugs). This is especially the case at the Black Sea resorts and the mountain ski resorts. The undeniable fact that organized crime elements are involved in piracy makes it very dangerous for the private sector to take anti-piracy actions in those areas. The private sector has urged the relevant authorities to definitively clamp down on the organized groups controlling the illegal trade at some of the most blatant pirate hotspots, such as "Sunny Beach" at the Black Sea. Furthermore, many Internet cafés seem to be heavily controlled by organized crime. However, Bulgaria's proposed action plan to tackle the problem does not include any initiative aimed at dismantling these groups and dealing with the root of the problem.

**Music and Sound Recordings:** The piracy of U.S. sound recordings and music remains high in Bulgaria; the overall level of music piracy is estimated over 60%, and the piracy of foreign repertoire albeit lower than in 2005 thanks to a much improved effort by the Government and certain authorities, still stands at an unacceptably high 75%. The pirate business in 2006 was dominated by illegal music burnt on CD-Rs and massive Internet and mobile piracy. Like in many other economic sectors in Bulgaria, part of the pirate trade is run by organized criminal syndicates. Streets and markets, especially at the seaside resorts, are full of pirated music CD-Rs. Estimated trade losses to U.S. companies due to physical and digital music piracy in Bulgaria is estimated at \$7.0 million in 2006.

**Entertainment Software:** The Entertainment Software Association (ESA) reports that piracy affecting its member companies remained a major problem in 2006. Pirated entertainment software products are openly sold on the streets, even in Sofia and other large cities such as Plovdiv and Varna, and also remain readily available at flea markets and via the Internet. While factory-replicated pirated discs continue to enter the country from Russia, Turkey and Asia, the pirate market for optical disc products is now predominantly burned product. Piracy of cartridge-based entertainment software products is also of concern with pirate and counterfeit product still being shipped into Bulgaria, and also widely available at informal retail outlets. The entertainment software industry reports a continuing problem of piracy at Internet cafés, of the 3,000–4,000 cafés, only 50% are licensed by

entertainment software publishers. There has been a significant growth in Internet piracy, particularly for downloading pirated game software.

**Business Software Piracy:** Piracy of business software remains widespread. BSA's 2006 preliminary estimates show the piracy rate for business software at 69%, inflicting losses to U.S. companies estimated at \$24.0 million. Efforts by the criminal enforcement agencies are undercut by shortcomings in prosecution and punishment. The Business Software Alliance (BSA) reports that there is widespread use of unlicensed software in the corporate sector (end-user piracy), especially in small and medium enterprises. The illegal practice by computer system builders of distributing pre-installed unlicensed software (Hard-disk Loading or HDL piracy) continues to be a problem in 2006. The software industry has seen a change in HDL tactics: in order to avoid liability, system builders offer installation of unlicensed software outside the premises where the purchase is made (e.g. at the customer's home), or customers are required to sign false declarations that the software installed on the PCs belongs to them and the system builder has performed the mere technical act of installation without any criminal intent. BSA also reports an increase in use of the Internet for distribution of illegal software. Internet piracy has become a major threat to legitimate software businesses in Bulgaria. BSA continues to acknowledge the steps taken by the Bulgarian Government to ensure legal software use throughout the state administration. The Government has adhered to its commitment to legalizing the desktop software in use in the state agencies and throughout the educational system, and in this way has sent an extremely positive message to the private sector. Indeed, certain categories of software use appear to be entirely legalized among Government users.

**Audiovisual Piracy:** The Motion Picture Association (MPA) reports that Internet piracy has become a major threat to the legitimate film market in Bulgaria. Although law enforcement officials, such as the Cyber-Crime Unit of the Organized Crime Division, are willing to take action, the lack of upper-level government support for enforcement may indicate that local political interests are involved. In addition, locally produced DVD-R and CD-R discs are increasing in the market, distributed by street vendors, via mail order, and by Internet auctions. There are some factory-replicated counterfeit discs still being imported from Russia, Ukraine and China for export to other European markets (Chinese imports typically contain only Chinese, Spanish and French subtitles), but local burning is the predominant problem. BullACT, the local motion picture anti-piracy operation (of which MPA is a member) reports Internet cafés are serving as the conduit for the increase in burned discs. Consumers use high-speed access to download films and burn them onto CD-Rs and DVD-Rs. The cafés also serve as centers to rip and copy DVDs and to trade film files. The distribution of films through informal networks and chatrooms has made the Internet one of the most popular methods for distribution of pirate product. MPA's local licensees believe their business is significantly down.

**Book Piracy:** Association of American Publishers (AAP) reports that American books, especially popular fiction and textbooks, continue to be pirated in Bulgaria.

## **COPYRIGHT ENFORCEMENT IN BULGARIA**

**Overview:** Cooperation between right holder organizations and police authorities is at a satisfactory level, and for some industries, has continued to improve throughout 2006. For example, all police stations have received instructions to act against piracy – though a lack of human resources and competing priorities do not always permit such action. In 2006, a change to Article 172a of the Criminal Code finally covered the possession of pirated materials. The main reason for continued high levels of piracy, however, are the judiciary and the courts, who in practice consistently fail to treat copyright offenses as serious crimes. In particular, Investigating Magistrates are lacking

initiative and constitute an endemic delaying factor in the criminal investigation and prosecution process. In addition, unjustified delays continue to permeate the process. Very few of the cases that eventually reach final judgment do not produce deterrent sentences; and the whole system lacks transparency. Outmoded and cumbersome proof requirements, including demands for expert opinions on infringement that only one understaffed and under-equipped government office (Copyright Office of the Ministry of Culture) is allowed to provide, continue to typify the obstacles to effective judicial enforcement of copyright.

During 2006 -- especially after the election of the new chief prosecutor -- significant progress was made on improving relations with prosecutors. In October 2006, the Chief Prosecutor to the National Police distributed to all regional police stations guidelines on the criminal prosecution of IPR crimes under Article 172a of the Criminal Code. The Minister of Justice is more sensitive to this problem, and the CyberCrime Unit is better funded. All police stations have received instructions from the Minister of Justice to act against piracy, but human resources and competing priorities do not always allow such action.

In late 2005, the Bulgarian Government established a new inter-agency council on IPR to include deputy ministers. Including more senior officials in this council is important because the prior inter-agency body was not very effective.<sup>11</sup> During 2006 the Council met regularly and, under the leadership of Deputy Minister Kileva, has provided a welcome platform for the private sector and the authorities to work together in achieving progress in addressing Bulgaria's various anti-piracy enforcement issues. For the first time in Bulgaria, an inter-agency body has managed to address specific problems and produce tangible results.

**Internet enforcement:** The Cybercrime Unit of the GDCOC has begun taking actions. In addition, a joint initiative of the local groups of the IP industries (IFPI, MPA and BSA) together with GDCOC is under way with an aim is to work out a comprehensive database of the torrent trackers, the companies behind them, the ISPs they use, as well as any other information that might be helpful to the investigation. The data thus collected will be analyzed and a file will be prepared and sent to the Chief Prosecutor (Supreme Cassation Prosecutor's Office) for an opinion and instructions for further action.

Here are a few examples of Internet actions in 2006. In February 2006, the Cybercrime Unit of the GDCOC conducted operations in the towns of Veliko Tarnovo, Gorna Oriahovica and Liaskovec. These led to the discovery of the largest two servers in Northern Bulgaria that were making protected material available for download to an unlimited number of users. The servers contained five terabytes of pirate music, movies and software - content equal to 7,000 compact discs. Charges were pressed against a 26-year old individual from Liaskovec.

In April 2006, the first raid against P2P file sharing was conducted. Three of the most active uploaders of illegal software, music and movies in Bulgaria were arrested by the Cybercrime Unit of the GDCOC. They had allegedly uploaded and made available to the public 22 terabytes of infringing files over the past year. A computer with a 500 gigabyte hard drive and discs containing more than 15 terabytes of illegal content were found and seized during a house search. Charges have been brought against these three suspects.

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<sup>11</sup> In November 2002, an Inter-Ministerial Council for the Protection of Copyright and Neighboring Rights was formed by an ordinance issued by the Minister of Culture. The council was organized to better coordinate and direct Bulgaria's anti-piracy enforcement efforts. It was headed by the Director of the Copyright Department in the Ministry of Culture and included representatives of several ministries and of various law enforcement agencies, including the Customs Service, National Police, National Service for Combating Organized Crime (NSCOC), and other agencies. However, this Council rarely invited participation from the private sector.

In May 2006, officers of the Cybercrime Unit of the GDCOC and Sofia Investigation Services arrested another two individuals – an administrator and a system operator of an illegal website. A computer system with a 500 gigabyte hard drive, a router computer system, laptop, three hard discs and over 200 recorded CD-Rs were seized from their homes, which had been turned into a control center for the biggest illegal file exchange in Bulgaria. These two people were arrested and charged. A bail of EUR 5,000 was set for the three defendants. In this particular case the defendants were using a high-speed optical internet service which enabled them to download from foreign sites materials that require large amounts of bandwidth, such as business software applications and the latest films and music, and distribute them to Bulgarian Internet users. It was ascertained that one suspect alone had uploaded over 112TB of suspected infringing content. Criminal investigations against all of the above offenders were initiated for Internet piracy under Article 172a of the Penal Code. The investigations are still ongoing, and none have yet reached the courts.

In addition, administrative cases and some small police raids mainly against Internet clubs and cyber cafes or street pirate OD resellers were initiated and conducted *ex officio* either by the Ministry of Culture's Copyright Office Inspectorate, the tax authorities or economic police. In many instances, prosecution of software cases has been delayed by the inability of the Ministry of Culture's software experts to prepare their expert reports in a timely manner (see discussion below).

**Street piracy in tourist areas:** Interestingly, widespread Internet piracy has affected street pirates who dealt in piratical hard goods. Street piracy remains prevalent, particularly in the tourist resorts. One possibility of addressing this problem would be to introduce local regulations banning streets sales of copyrighted products. .

**Police cooperation is good, but significant problems remain.** The motion picture industry reports that in 2006, BullACT continued to work numerous cases and enjoyed excellent cooperation from the law enforcement authorities. Through the third quarter of 2006, BullACT conducted 49 raids on street vendors, 29 raids on labs/distributors, and 34 actions against internet sites. Over 35,200 pirate optical discs and 71 burners were seized. Police did not take any *ex officio* actions, all actions required rightsholders' involvement. As in the case of prior years, these raids have had a positive impact, but this was diluted by the lack of follow-up in terms of prosecutions and deterrent sentencing.

The recording industry reports that on 20 and 21 January 2006, officers from DNSP and National Revenue Agency (former General Tax Directorate) carried out an operation in Sofia, Vidin, Rousse, Plovdiv and Bourgas. 15 targets were checked, 7 of which were in Sofia. Seizures totalled 13,000 DVDs, DVD-Rs, CDs and CD-Rs, 4 computer configurations, 5 printers, 22 burners and a scanner. Five preliminary investigations were instituted. The Tax Administration made reports on the discovered infringements and the seized materials. However, one year later, the private sector still has no information concerning the results of the police investigation, possible indictments or sanctions issued by the Tax Administration. Enforcement actions of this nature will only have lasting effect if they are followed by tough and swift prosecution/sentencing, which has not been happening and remains the main problem in Bulgaria today.

During 2006, BAMP took part in 61 raids, 59 of which were successful. During these raids enforcement authorities seized 51,653 units of CD-R and DVD-R with music, movies, entertainment and business software; 35 computer systems with 28 burners, 20 servers, used in the course of Internet piracy, 12 printers and 2 scanners. The recording industry understands that 15 cases have been handled by the national investigation agency. In addition, BAMP reported for 2006 about 4 preliminary investigations, 38 examinations carried out by the police, 2 indictments under Article

172a of the Penal Code, 9 statements of infringement drawn up by the Tax Administration. However, the recording industry has not received concrete information about penalties handed down and imposed against persons convicted of intellectual property crimes in Bulgaria in 2006 .

BSA conducts an intensive enforcement program in Bulgaria. BSA makes every effort to assist the investigation, speed up the process and appeal adverse decisions by investigators, prosecutors and judges. BSA stresses that effective enforcement is impossible without direct, unimpeded cooperation between the state authorities and the right holders. In this respect, BSA is making every effort to establish good working relations with the Ministry of Interior and its specialized agencies, with the Ministry of Culture and its Copyright and Neighboring Rights Directorate, and with the bodies within the Prosecutor's Office and the judiciary. 2006 marked some very positive developments in these relationships which created a favorable environment for improving IPR enforcement. Over the long term, however, Bulgarian authorities must implement the law consistently in order to realize a noticeable drop in piracy.

BSA enjoys good cooperation with the police and investigation services, especially with the Cybercrime Unit of the General Directorate to Combat Organized Crime (GDCOC) which has resulted in steady and intensive police enforcement against all types of software crime throughout the years. However the police enforcement agencies still lack the administrative capacity, qualified and trained personnel and adequate technical equipment and support that are necessary to investigate IPR-related crimes – especially cybercrimes. Another obstacle that hinders more active and efficient work on behalf of the police is the shortage of funds for outsourcing specialized technical assistance and forensic expertise.

In addition, the Ministry of Interior launched a program in 2002 in which the police started issuing protocols of warning to legal entities suspected of using unlicensed software. This program has produced notable results in raising awareness; many companies have legalized their software assets. In 2006 alone, BSA sent some 642 notifications to the police for issuance of warning and instruction. Feedback on the targeted companies' compliance with the protocols is necessary to measure the effectiveness of the program. The lack of such feedback to the right holders is one of the major shortcomings of the program. To bridge this gap, in 2005 BSA and the National Police Directorate reached an agreement whereby a computerized center for information exchange would be set up, and BSA would provide the necessary IT training for the police officers in charge. Due to the delay in the structural reforms within the Ministry of Interior, this initiative was not launched in 2006 as initially scheduled, and is now postponed until some time in 2007.

**Prosecutions, court procedures and judicial sentencing remain ineffective.** Again in 2006, the bottleneck in prosecutions (few investigations completed and brought to court, many delays) and judicial sentencing (non-deterrent penalties) continued. This means that the practical deterrent impact of all the raids is undercut.

**Delays from police to prosecutors:** The recording industry reports that the predominant delay factor it has experienced involves the investigative magistrates. Prosecutors are now more interested and slightly more pro-active in certain cases. However, investigative magistrates are and continue to be the bottleneck. In fact, the European Union has called for an urgent reform of this highly counter-productive system involving the investigative magistrates.

Generally speaking, unwarranted delays dominate criminal enforcement actions, in large part because of the time it takes to move a case from the police, through the police investigator, and on through the prosecutor's office to the court. Although the Penal Proceedings Code provides for relatively short terms within which the investigation should be completed, cases are usually delayed

for a much longer time due to incompetence, competing priorities, corruption, and/or heavy workload. While these delays persist, seized pirate product may deteriorate (creating evidentiary problems if seized materials are no longer in the custody of the investigation bodies or in their original condition) and caseloads can become unmanageable.

**Difficulties in pursuing prosecutions:** Most prosecutors and particularly judges still fail to appreciate the seriousness of IP crimes. Recently, senior Bulgarian prosecutors have shown a welcome and much-needed willingness to improve this situation. But it will take much longer before the general approach and practices reflect this new attitude on a regional level.

The IP industries were the driving force for setting up a working group with experts from the Supreme Cassation Prosecutor's Office for developing unified procedural practices for prosecutors in the investigation and prosecution of IPR-related crimes. The methodology is to be circulated among the regional prosecutors' offices as mandatory instructions aimed at avoiding in the future contradictory practices and motions which are observed currently. This project is expected to be completed in the first half of 2007. Along the same lines, throughout 2006 prosecutors from the Supreme Cassation Prosecutor's Office and the regional offices were intensively involved in a training program on investigation and prosecution of IPR crimes organized by the U.S. Justice Department resident in Sofia and assisted by the local IP industries. This program continues in 2007 and is expected to bring about change of attitude, unification of the practices and overall improvement of the judicial enforcement of IPR. Another positive development is the fact that a Deputy-Chief Prosecutor in charge of IPR was appointed to supervise the work of the regional prosecutors and address complaints against wrongful prosecutors' motions.

Despite the positive developments it is observed that regional prosecutors are still refusing to prosecute software crimes and consider them serious offences. Prosecutors have returned critical evidence to defendants, such as seized computers and hard-drives, or have refused to allow such items into evidence even though it has been properly seized. In a number of cases, prosecutions have been abandoned altogether without cause. Still there is no registry of prosecutors specialized in prosecuting IP and digital crimes, cases which clearly require specific knowledge, skills and experience. The prosecutors working on software crimes are often in charge of all classes of economic offenses and devote very little time to IPR matters. Frequently, those prosecutors who have attended specialized training in the field subsequently do not appear in the courtroom. As a matter of practice, one prosecutor is in charge of the preliminary investigation of a software case; a different prosecutor brings the indictment to court and pleads during the court hearings. Furthermore, the same prosecutor rarely appears at two consecutive court hearings. Since prosecutors in charge change frequently and seemingly without reason, they lack knowledge of the facts and evidence in the case. This results in poorly drafted indictments, weak or unsubstantiated arguments, unpersuasive pleadings and a significant number of abandoned or lost cases.

BSA reports that the work of the Bulgarian judiciary remains a problem. Despite the positive developments within the Supreme Cassation Prosecutor's Office in 2006, the new management's approach has not yet reached the regional level where the IPR crimes are actually investigated and prosecuted. There are still prosecutors offices and regional courts which (i) are not willing to address and pursue software crimes; (ii) lack uniform procedural practices; (iii) lack knowledge and experience in copyright infringements resulting in dropping cases without valid grounds, slow and overly formalized procedures and inadequate and non-deterrent judgments.

BSA reports that it was very difficult to maintain proper and comprehensive statistic charts on enforcement as until recently Bulgarian enforcement agencies, prosecutors and courts did not provide feedback to the right owners on the development of the software cases. With the latest

amendments to the Penal Procedure Code of April 29, 2006, however, the investigative bodies were obliged to furnish the investigation materials to the injured party before sending them to the prosecutor, thus giving the right holders the opportunity to keep better track of cases including those initiated *ex officio*. Relatively good track is kept on the police and border enforcement as those actions are usually conducted with the substantial assistance of the BSA or upon a BSA notification or lead. In 2006, BSA initiated or assisted in conducting 5 end-user raids, 7 hard-disc-loader raids, 2 OD reseller raids and 13 Internet raids amounting to a total of 27 police enforcement actions upon which criminal investigations were initiated against 30 alleged offenders.

Upon completion of the preliminary investigation of the criminal trial the case is brought to court where at the first court hearing the injured party (the right holder) is entitled to file for consideration a civil claim for compensation of damages. Unfortunately no more than 20% of such attempted claims are allowed by the court, thus precluding the right holder from supporting the indictment and tracking the further development of the case as a party. Despite this obstacle, BSA can report that four cases have been completed with verdicts in 2006 (one final, one appealed and two plea bargains). Unfortunately neither the number of verdicts, nor the punishment (low fines) can produce deterrence and prevention.

**Burdensome expert reports:** A longstanding issue which continued in 2006 involved the problems and delays are caused by the need for expert reports in criminal proceedings. After the initial “check” stage of criminal proceedings, the next stage (preliminary investigation/decision to prosecute phase) 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 Criminal Procedures Code is not 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.

**Non-deterrent sentencing:** Bulgarian courts fail to impose deterrent penalties in criminal cases. Due to the endemic lack of transparency of the court system, it is unknown, even to the Ministry of the Interior and the police, what the nature of sentences was, but suspended sentences appear to be the norm. For example, there is no information showing any person actually serving a prison term for music piracy. It is important that judges in Bulgaria finally recognize the seriousness of these offenses and begin to take swifter action and impose jail time in serious cases involving repeat offenders. BSA reported that in 2006, only four cases were completed with a verdict. Compared with the size of the damages to the right holders, the low fines imposed on the offenders are clearly not deterrent sanctions.

**Border measures need strengthening.** Border controls must be significantly improved in particular now that Bulgaria has become part of the external borders of the EU Common Market .The Bulgarian market, albeit to a lesser extent than before, is still facing ongoing pirate imports from Russia, and Ukraine, as well as transshipment of pirate CDs from Ukraine and Russia to the Balkans, Greece and Turkey. 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; a certificate must be issued in each particular case, so that customs can clear the shipment. .

## **COPYRIGHT LAW AND RELATED ISSUES IN BULGARIA**

**Law on Copyright and Neighboring Rights (1993, as amended):** The copyright industries were generally pleased with the refinements made in 2005 (in effect as of January 2006) to the existing Copyright Law. To review, Bulgaria's Law on Copyright and Neighboring Rights entered into force on August 1, 1993. Further amendments to the copyright law were made in 1994, 1998, 2000, 2002 and 2005. Bulgaria deposited its instruments of accession to both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty in March 2001. The 2002 amendments, which entered into effect on January 1, 2003 and were aimed at implemented various EU directives, contained several improvements, including a requirement for obligatory licensing of CD manufacturers to be outlined by the Council of Ministers. However, the 2002 amendments included several troubling provisions and left significant gaps, including shortfalls in proper implementation of the WIPO Treaties. The 2005 amendments aimed at fixing existing shortcomings in advance of EU accession. Overall, the copyright industries believe these 2005 amendments represent good progress. Amendments included issues such as: expanding the scope of civil remedies; revising the scope of provisions on criminal and administrative sanctions, seizures and damages; and amending existing provisions on resale royalties, transmissions by satellite, and rental and lending rights. There are, however, continuing concerns about several issues:

**Optical Disc Law of 2005:** The Bulgarian Parliament adopted the Law on Administrative Control for the Manufacture and Distribution of Optical Discs in September 2005 (this law replaced the Title Verification Decree under which the OD plants had been licensed.) Before and at the time of its passage, the copyright industries identified several shortcomings in the OD Law.<sup>12</sup>

The key concern remains the effective and improved enforcement of the current law. The OD law should remain in place (albeit with the clarification about license revocation) and its enforcement should be improved. Specifically, clarification is needed to the effect that manufacturing of discs infringing copyright and neighboring rights automatically leads to a revocation of the license. Such infringement should be regarded as a breach of the licensing rules and should lead to a withdrawal of the manufacturing license, even when the discs carry the SID Code. If the Bulgarian Optical Disc Law does not foresee such a measure, it should be urgently introduced.

Simply put, the Bulgarian Government must enforce the OD law. The Ministry of Culture and Tourism is in charge of issuing the various registrations. The National Service for Combating Organized Crime (NSCOC) is involved in enforcing control over OD manufacturing, insofar as it is member of the licensing committee. The recording industry notes that that currently there is no evidence of illegal CD production of pirate music and the OD system seems to be effective enough to keep the existing OD plants from producing music discs. However, this situation may be different for movies on DVD and videogames. One plant in particular seems to be "untouchable" from OD enforcement and reportedly churns out millions of DVDs and exports huge quantities.

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<sup>12</sup> Unfortunately, the law failed to introduce effective enforcement rules which industry believed to be essential to ensure compliance. For example: (1) The law does not require the control bodies to conduct inspections on a regular basis and upon receiving complaint from right holders; (2) During the inspections, the powers granted to the relevant authorities are too narrow to enable meaningful control. For example, control bodies are not granted the powers to seize documents during inspections, resulting in limited possibilities to collect evidence crucial for future prosecution and further investigations; (3) The law omits a reference to the participation of experts during inspections conducted by the control bodies. (4) The law now contains an obligation for imported optical discs with content to contain an SID Code or comparable identification code. It has always been the industry position that such obligations seriously hinder the import of legitimate product while adding nothing to the fight against cross-border trade in pirate product (which is predominantly smuggled in). Imported stampers, however, should be subject to an SID Code requirement.

**Criminal Code:** In August 2006, the Bulgarian Parliament adopted substantial changes to Article 172a.<sup>13</sup> Industries indicate it is fair to say that many of the copyright sector's recommendations, including criminalization of possession of infringing goods and minimum penalties, were adopted. However, this change does not cover the requested formal basis for participation by right holders in criminal trials in the capacity of "injured party."

**Criminal Procedure Code:** Although a new Criminal Procedure Code was adopted, we reiterate that further reforms are needed to:

- (1) introduce a presumption of rights ownership in criminal infringement cases;
- (2) allow rights holders or their representative organizations to assist in preparing expert opinion reports concerning infringement of their IP rights;
- (3) improve existing procedures to reflect the specifics of the digital environment with regard to the investigation and prosecution of Internet-related crimes;
- (4) provide for criminal liability of the managers of entities where IP crimes are committed;
- (5) re-establish the option for rights holders to file civil claims at any stage of the criminal trial; and
- (6) refine the definition of "injured party" in the criminal.

## **IPR TRAINING AND PUBLIC AWARENESS**

Several trainings are held every year, often in coordination with other industries and some in coordination with the U.S. Embassy. For example, on October 16-17, 2006, a seminar sponsored by USAID and the Bulgarian National Institute of Justice was held in Sofia, and attended by judges, prosecutors and police officers.

On behalf of the film industry, BullACT conducts regular training seminars for judges, police officers, Copyright Department inspectors and Customs officers. It has also pressed the Chief Secretary of the Ministry of Interior and the Rector of the Police Academy for the formal inclusion of lectures on IP crime in police training courses, and continues to have BullACT investigators deliver regular presentations at the Police Academy.

BSA has participated in all conferences and seminars organized by local or international governmental or non-governmental organizations, thus providing consistent training and information on software issues to the targeted groups. BSA organized or participated in the following training events: (1) In early June 2006 a training seminar for public prosecutors took place which in early

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<sup>13</sup> Article 172a of the Criminal Code now reads:

(1) Any person who records, reproduces, distributes, broadcasts or transmits or otherwise uses another person's subject matter of copyright or neighboring rights, or copies thereof, without the consent of the right owner required by law, shall be punished by imprisonment up to five years and a fine up to five thousand leva.

(2) Any person who without the consent required by law, holds in possession physical copies containing other person's subject matter of copyright or neighboring rights amounting to a value in large size, or holds in possession matrices for replication of such physical copies, shall be punished by imprisonment from two to five years and a fine from two thousand to five thousand leva.

(3) In case the offense under paragraph (1) and (2) is repeated or considerable damage has been incurred, the punishment shall be imprisonment from one to six years and a fine from three thousand to ten thousand leva.

(4) (*New*) In case the offence under paragraph (2) is in particularly large scale, the punishment shall be imprisonment from two to eight years and a fine from ten thousand to fifty thousand leva.

(5) (*Former paragraph 4*) For minor cases the perpetrator shall be punished under the administrative procedure in compliance with the Copyright and Neighboring Rights Act.

(6) (*Former paragraph 5*) The object of the crime shall be forfeited in favor of the state, notwithstanding whose property it is and shall be destroyed.

November was followed by the first module (covering the Plovdiv appellate prosecutors' office region) of follow-up events on a regional scale. Additional 4 modules to cover the remaining appellate regions are envisaged to take place in the first half of 2007. (2) At the end of June 2006, a U.S. Justice Department-funded IPR enforcement training for police and investigators was organized in cooperation with U.S. Federal Bureau of Investigation (FBI) and BSA, and was held in Sofia at the Academy of the Ministry of Interior. (3) Another training event on the investigation and prosecution of IPR crimes involving prosecutors and judges was included in the agenda of the National Institute for Justice (the magistrate training center) and held in cooperation with BSA in mid-October in Sofia. (4) In mid-November 2006, BSA participated in a training conference organized by the International Development Law Organization (IDLO) dedicated to the protection of copyright and neighboring rights, including computer software.

The recording industry reports that in 2006 there were a series of training activities with the support and financial aid of the U.S. Embassy. In June 2006, a seminar on criminal prosecution of IPR crimes took place with participation of representatives of the Prosecutor's Office, the Patent Department, the Culture Ministry and representatives of the District Police Agency. The U.S. Embassy has financed five similar seminars in which the participants are from the Appeal Prosecutor's offices. These seminars show a growing interest of the prosecutors in IPR crimes and lead to a useful dialogue with the judiciary.