

BULGARIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the U.S. Government should actively monitor developments in Bulgaria during 2011 with respect to the issues discussed in this Special Mention report.

Executive Summary:¹ The recording industry, in particular, reports that the enforcement situation in Bulgaria has rapidly worsened in recent years. According to the Recording Industry Association of America (RIAA), numerous download pirate sites, Bit Torrent sites, Rapidshare sites and widespread peer-to-peer piracy in Bulgaria, make it virtually impossible for a legal online music market to develop. There are currently seven existing legal music services available in Bulgaria, which have been struggling to survive in a marketplace with an online piracy rate of 99%. In short, the enforcement authorities are not making sufficient efforts to create a viable place for legal online music services to get established. The music industry reports good cooperation with the Cyber Crime Unit within the Enforcement Directorate (called the “Counteraction to Organized and Serious Crime” and previously known as the General Directorate to Combat Organized Crime). However, the actions of this unit alone cannot significantly reduce the availability of infringing music services. Rather, it will take the concerted efforts of the other competent enforcement authorities to achieve some success: namely, the Ministry of Culture and the Council on Electronic Media. Unfortunately, to date, these authorities have not been using their administrative enforcement powers to assist rights holders with enforcement, even when infringements have been brought to their attention.

In addition to online streaming and downloading piracy, there is widespread broadcast piracy. The Government of Bulgaria has taken little action against, and in so doing signals tacit approval for, broadcast piracy which is pervasive – the piracy rate is estimated to be 95%. This persists even as Bulgarian law (and European Union directives) require licenses for the commercial use of sound recordings on broadcast and cable television programs. This out-of-control situation has persisted for almost two years now, and represents a profound failure of the rule of law in Bulgaria.

In addition to this alarming enforcement situation, there are troubling legislative reforms being considered. The Bulgarian Parliament is set to vote on a bill to amend the existing Copyright and Related Rights Act which, if adopted, could have a devastating impact on the recorded music market in Bulgaria. In particular, the bill's many flaws include: (1) an accreditation procedure for collecting societies which would undermine the existing collective rights management system in Bulgaria; (2) a government-monitored tariff setting procedure under which the market value of copyright works would no longer be the relevant criterion for rate setting; (3) the proposed elimination of simulcasting and webcasting as separate uses for which rights holders are entitled (currently) to equitable remuneration; (4) a set of provisions that in the aggregate would all but eliminate royalties from private copying levies -- one of the only current sources of revenue in the difficult Bulgarian music marketplace; and (5) a failure to repeal existing law which limits the freedom to enter into contracts for more than five years, which is inconsistent with traditional copyright industry practice. Last, the only positive elements of the draft amendments, including particular provisions on administrative measures for combating online piracy, were removed from the proposed amendments. In short, the amendments are moving forward in the face of widespread opposition on a range of issues, and from a large coalition of local and international rights holders, and without consideration of international (and European Union) copyright laws and practices.

¹For more details on Bulgaria's Special 301 history, see IIPA's “History” appendix to this filing at <http://www.iipa.com/rbc/2011/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.

