

BULGARIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA files this Special Mention report to highlight: 1) the passage of legislation that significantly hinders the ability of right holders in music and sound recordings to operate in the market in Bulgaria, and fails to enact measures to address mounting online piracy of music; 2) the severe harm caused by online music piracy in Bulgaria, notwithstanding some remarkable enforcement efforts of the Cyber Crime Unit to shut down infringing websites; and 3) the lack of follow-on criminal prosecutions in Bulgaria following the good work of the Cyber Crime Unit.¹

Copyright Law Amendments Hinder Legitimate Music Industry in Bulgaria: On March 27, 2011 the National Assembly of Bulgaria adopted amendments to the Bulgarian Copyright and Related Rights Act. In particular, the amendments codified the following flaws: 1) an accreditation procedure for collecting societies which undermines the existing collective rights management system in Bulgaria; 2) a government-monitored tariff setting procedure under which the market value of copyright works is no longer the relevant criterion for rate setting; 3) the elimination of simulcasting and webcasting as separate uses for which rights holders were previously entitled to equitable remuneration; 4) a set of provisions that in the aggregate eliminate royalties from private copying levies, which were one of the only sources of revenue in an otherwise 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, inconsistent with best copyright industry practice. Provisions on administrative measures for combating online piracy were removed from the draft prior to passage.

These amendments have already had a negative impact on the creative community and right holders, and *post facto*, there appears to be some recognition by some Parliamentarians that at least the administrative measures for combating online piracy should not have been removed from the Bill. IIPA hopes that the ruling majority in the Parliament will move quickly to present such amendments, to improve the prospects for effective IPR enforcement in Bulgaria, curb the piracy rate, and create space for legitimate music services online. Fallout from the new law is that it has already had a detrimental effect on payments for broadcasting rights, notwithstanding that the longstanding dispute between the national collecting society and the broadcasters' association in Bulgaria was settled in April 2011.² However, due to delays with the new procedures related to registration of collecting societies, no agreements have yet to be reached for 2011, thus Bulgaria's broadcasters have been using music without payment. This must be quickly resolved.

Online Music Piracy Remains Rampant, Notwithstanding Cyber Crime Unit Actions: Numerous download sites, BitTorrent sites, Rapidshare sites and widespread peer-to-peer piracy provide illegal music to the masses in Bulgaria, making it very difficult for a legitimate online music market to develop. We note that two legitimate online music services came to Bulgaria in 2011, bringing the total number of legitimate services to nine. All of the legitimate online music services struggle to survive in a marketplace with an extremely high online piracy rate, and cannot content with notorious pirate sites like *zamunda.net* and *arenabg.com*, which still function together with the user-generated video exchange platform, *VBox7*.³

¹For more details on Bulgaria's Special 301 history, see Additional Appendix available at <http://www.iipa.com/pdf/2012SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

²The longstanding dispute between the national collecting society (PROPHON) and the Broadcasting Association (ABBRO) related to the lack of licensing agreements and payments for broadcasting rights by Bulgaria's commercial radio stations for the years 2009 and 2010 was successfully settled with a framework agreement in April 2011.

³*Zamunda.net* has been identified by the U.S. Trade Representative on its "Notorious Markets" list. See United States Trade Representative, *Out-of-Cycle Review of Notorious Markets*, December 20, 2011, at http://www.ustr.gov/webfm_send/3215. USTR cited *zamunda.net* as a BitTorrent tracker, explaining, (...continued)



The music piracy situation persists notwithstanding some laudable efforts of the Cyber Crime Unit. Thanks to the Unit, four “one-click” hosting sites (sometimes referred to as cyberlockers), *rapidadd.com*, *4storing.com*, *afasta.com* and *bgshare.com* have ceased their activities in which they were encouraging infringement of others. IIPA appreciates the work of the Cyber Crime Unit in this regard, and notes further that thanks to enforcement actions undertaken by Bulgarian law enforcement, *HD-torrents.org*, *Energy-torrent.com*, *Mamba-jamba.com*, *Danix-bg.com*, and *Torrent.danix-bg.com* have all ceased operations. Court cases continue against some of the largest pirate sites, including *zamunda.net* and *arenagb.com*. Unfortunately, while the cases continue, *zamunda.net* has seen a spike in its popularity, reportedly generating enormous revenues from advertising.

Enforcement – Raids Being Run By Cyber Crime Unit, But Prosecutors Largely Fail to Follow Up:

The Minister (and Ministry) of Interior and the Cyber Crime Unit have demonstrated the will to address the piracy situation, and have cooperated with industry in promoting more efficient IPR protection. Unfortunately, the same level of support cannot be said to exist in other organs of the Bulgarian Government. For example, while the Cyber Crime Unit conducted 28 raids in 2011, only 5 of those resulted in investigations and cases being brought to court; none of the 5 cases has reached a successful conclusion. Of the remaining raids, 6 did not even result in an investigation, and 17 preliminary investigations were terminated by prosecutors. Representatives of the courts and the Supreme Cassation Prosecution Office have indicated support for stronger criminal enforcement, but prosecutors at the district court level are resistant to change. The U.S. Government held a recent roundtable event at which inadequate criminal enforcement in Bulgaria was the main topic, and we call upon the Bulgarian Government to fully engage in this process of reform in the criminal process to drive results by using all of the tools at its disposal.

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“Although BitTorrent trackers can be used for lawful purposes, such sites can also be used to transfer allegedly infringing material, by directing users to peers who share the infringing content. USTR went on to note, “Bulgarian-based *zamunda*, currently ranked among the top six most visited sites in Bulgaria, according to *Alexa.com*, is currently the target of a noteworthy criminal prosecution.”