

# BULGARIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Bulgaria be placed on the Watch List in 2013.<sup>1</sup>

**Executive Summary:** Widespread online piracy continues to wreak havoc on the market for legitimate sales of many creative works in Bulgaria. Unfortunately, enforcement against Internet piracy is not adequate to slow these trends. Prosecution and judicial treatment of copyright crimes lack the capacity or attention to bring cases developed by the Cyber Crime Unit at the General Directorate to deterrent decisions. The first case against the notorious torrent tracker arenabg.com, based on a raid in 2006, was terminated in 2012 with an administrative fine amounting to 1000 BNG (equal to approximately 682 USD), while another symbolic case brought against the torrent tracker zamunda.net, based on the raid in 2007, is still languishing in the courts. The popular video streaming service VBox7.com provides hosting services to hundreds of thousands of sound and video recordings without authorization, but goes without ultimate action by Bulgaria's authorities. Rights holders in music and sound recordings are further weakened by amendments to Bulgaria's copyright law that significantly hinder their ability to operate in the market in Bulgaria, in particular in the absence of legislative or cooperative measures to address mounting online piracy of music. Online piracy is also detrimental for the film and TV program distributors. Notwithstanding these problems, the software industry has seen some positive progress against software piracy over the past year.

### PRIORITY RECOMMENDED ACTIONS FOR BULGARIA IN 2013

- Revisit proposals to adopt new provisions on administrative measures for combating online piracy.
- Take the necessary steps to close torrent trackers zamunda.net and arenabg.com, setting a strong example for other infringers.
- Establish a dedicated IPR enforcement agency to coordinate the various entities involved in IPR protection and enforcement.
- Increase public-private cooperation within prosecutors' offices and improve timely prosecutorial attention to copyright crimes.
- Complete an updated Manual for Uniform Prosecutors' Practices in Investigating and Prosecuting IPR Crimes for circulation by the Attorney General as mandatory instructions to district and regional prosecutors.
- Modify the 2011 amendments to the copyright law to counteract the incorrect presumption among the Bulgarian public that rights holders are fairly compensated for pirated downloads and other uses, and to resume the now inoperable collective management of simulcasting, webcasting, private copy, and performance remuneration rights in Bulgaria.

### THE NATURE OF PIRACY IN BULGARIA

Numerous download sites, BitTorrent sites, Rapidshare sites, online storage servers, streaming 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. In 2012, there were only ten legitimate online music services in Bulgaria, and with

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<sup>1</sup> For more details on Bulgaria's Special 301 history, see IIPA's "History" appendix to this filing, at <http://www.iipa.com/pdf/2013SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. To read IIPA's cover letter to this Special 301 submission, go to <http://www.iipa.com/pdf/2013SPEC301COVERLETTER.pdf>.



insignificant market share, as all of the legitimate online music services struggle to survive in a marketplace with an extremely high online piracy rate, and cannot contend with the multiple different pirate services, most notably notorious pirate sites like *zamunda.net* and *arenabg.com*, which still function together with the user-generated video exchange platform, *VBox7*.<sup>2</sup> By 2012, the registered and legitimate online film and TV services totaled only 16, insufficient to meet the demand of the Bulgarian audience, which then turns to pirated content.

The music and film piracy situation persists notwithstanding some laudable efforts of the Cyber Crime Unit. Thanks to the Unit, in 2012 five torrent trackers hosted in Bulgaria (*data-bg.org*, *filebox1.com*, *unhide-torrents.com*, *elit-bg.com* and *p2pb.com*) have ceased their activities in which they were encouraging large-scale copyright infringement. 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, over 50 sites hosting protected video and audio content and offering streaming in real time have ceased operations, most of them having been created based on ready-for-use free forms located abroad such as *ovo.bg* and *alle.bg*. Court cases continue against some of the largest pirate sites, including *zamunda.net* and *arenabg.com*. Unfortunately, while the cases continue, *zamunda.net* has seen a spike in its popularity, reportedly generating enormous revenues from advertising.

Public awareness efforts are sorely needed to demonstrate the importance of intellectual property protection for the development of creativity and innovation, and for economic growth. In late 2012, local organizations, including the MLC - PROPHON, the broadcasters' association ABBRO, the authors' society MUSICAUTOR, and the Bulgarian Association of Music Producers (BAMP), engaged in a fruitful collaboration for a public awareness campaign, with the support of the U.S. Embassy in Sofia and in partnership with the Ministry of Culture and the Municipality of Sofia. In addition, in 2012, the largest private TV channel, (bTV) in partnership with 35 T, radio stations, film distributors, anti-piracy organizations, and authors' societies, launched an educational campaign on the importance of intellectual property – *fairplay.bg*. Two video clips featuring a popular Bulgarian singer and actor have been broadcast, though much work remains. There is a dire need for the Government of Bulgaria to provide high-level political support for long-term public sector programs, emphasizing the social and economic importance of intellectual property rights and countering populist messages in favor of piracy.

## **COPYRIGHT ENFORCEMENT IN BULGARIA**

The software industry reports marked improvements in Bulgarian law enforcement actions in 2012. BSA | The Software Alliance (BSA) notes that in the past year, the Ministry of Culture has taken regular administrative enforcement measures and engaged in good collaboration with the private sector, despite their very limited human resources. The Ministry of Interior (and particularly the Ministry's Cyber Crime Unit at the General Directorate to Combat Organized Crime) likewise, has taken on regular criminal enforcement actions in software cases and collaborated well with the private sector, despite resource challenges of its own.

Moreover, the Bulgarian government has agreed to a software legalization initiative, which started in late 2012 and will continue through 2013. The planned Government-led public awareness campaign informing commercial entities about the various risks related to software piracy was led by the Ministry of Culture (MoC) and the Ministry of Interior (Moi) and was approved and launched by the government in due course. A direct mail campaign by the government was signed by both Ministries without any objections or impediments. This legalisation campaign is scheduled to be carried out in two waves – the first one started in December 2012 and the second one

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<sup>2</sup>*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](http://www.ustr.gov/webfm_send/3215). USTR cited *zamunda.net* as a BitTorrent tracker, explaining, "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."

will take place in February 2013. This direct mailing campaign will reach approximately 21,000 private companies with no government or other public ownership.

BSA's most recent statistics show that the software piracy rate in Bulgaria declined to 64% in 2011, down from 68% in 2007.<sup>3</sup>

For many other members of the copyright sector, serious enforcement challenges persist in Bulgaria. The criminal prosecution of IPR crimes is a lingering weak link in Bulgaria's judicial system. The Minister (and Ministry) of Interior and the Cyber Crime Unit have demonstrated the will to address the piracy situation, and have cooperated with the 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. Representatives of the courts and the Supreme Cassation Prosecution Office (SCPO) have indicated support for stronger criminal enforcement, but prosecutors at the district court level are resistant to change. Cooperation between the private sector and the SCPO should be encouraged to address a chronic problem among prosecutors of wrongfully terminating or refusing to initiate criminal proceedings for IPR offences. In 2012, the Cyber Crime Unit conducted 14 raids, and 18 preliminary criminal procedures have been started, but there is no effective feedback about their further development, since all the preliminary criminal investigations are stuck in the regional prosecutors' offices and many of them are often terminated or suspended by the prosecutors before reaching the court phase. Often the rights holders are not even informed of the developments of those proceedings. A long-term supervision program is needed to monitor and analyze the work of particular prosecutors, observe the grounds for such motions and provide institutional guidelines and methodological support on how to investigate and prosecute IPR crimes.

The new Attorney General's Office should be encouraged to maintain a sustained dialogue with the private sector, with ongoing high-level support of the SCPO, in keeping with existing good practices of public-private cooperation. The competent bodies should promptly complete an updated Manual for Uniform Prosecutors' Practices in Investigating and Prosecuting IPR Crimes and circulate the Manual as an Attorney General's mandatory instruction to district and regional prosecutors' offices.

IIPA recommends consultations with members of the copyright industries in Bulgaria to establish an IPR Enforcement Agency to coordinate Bulgaria's administrative and enforcement bodies involved in IPR protection and enforcement. Such an Enforcement Agency would focus on building adequate administrative and professional capacity. It would also provide specialized training in the field of IPR protection, lists of qualified experts to be used in IPR investigations, and specialized facilities for the purposes of administrative enforcement procedures.

## **COPYRIGHT LAW REFORM AND RELATED ISSUES**

**Copyright Law Amendments:** On March 25, 2011 the National Assembly of Bulgaria adopted amendments to the Bulgarian Law on Copyright and Related Rights (LCRR). Disappointingly, much-needed provisions on compulsory administrative measures for combating online piracy were removed from the draft prior to passage. This negative legislative development deepened the problem of the general administrative inefficiency of the Ministry of Culture to cope with law enforcement efforts, especially dealing with digital and online copyright and

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<sup>3</sup>BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in Bulgaria was 64%, representing a commercial value of unlicensed software of US\$102 million. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA's 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.

related rights infringements. Instead, the amendments codified a number of flaws, chipping away at the ability for recording artists and producers to be remunerated for the use of their music.

First, revisions to Article 21 of the LCRR have eliminated the right to fair separate compensation for simulcasting as a separate use for which rights holders were previously entitled to equitable remuneration.

In addition, major obstacles to the private copy levy system were adopted into Article 26 of the LCRR, greatly reducing the amount of royalties that can be collected from private copying levies—formerly one of the only sources of revenue in an otherwise difficult Bulgarian music marketplace—so much in fact that it is essentially no longer possible to operate COPY BG, which brings together authors and holders of related rights from music, film industries and theater. Lack of enforcement combined with a popular perception that copying provides some compensation to artists further permits massive infringement with no income at all for rights holders from private copy levies. As a result, the national collecting society for recorded music in Bulgaria, is unable to conclude a reciprocal agreement with its U.S. counterpart to provide fair compensation to U.S. recording artists and phonogram producers for the massive private copying of their protected repertoire in Bulgaria.

The general revision of Article 40 of the LCRR, and the subsequent new articles adopted under the Collective Rights Management Section of the law, have created numerous additional problems. The revisions impose an accreditation procedure, including excessive registration requirements and administrative procedures on Bulgaria's collecting societies, leaving the Ministry of Culture overburdened and facing new administrative inefficiencies. The recognized societies also face heavier scrutiny in comparison to other organizations and private commercial entities (particularly in the field of public performance) that conduct competing activities with effectively no oversight. At the same time, the music industry appreciates the activity of the Ministry of Culture and the efforts of the competent Inspectorate to implement the legal requirements in the public performance sector of Bulgaria. In 2012, the inspections of sites using music for public performance (hotels, restaurants, shops, various retailers, malls, gas stations and many others) almost doubled and reached 405 all over the country. This enforcement trend should be encouraged and actively supported by the Ministry of Culture.

New provisions dealing with the process of negotiation impose a government-monitored tariff setting procedure under which the market value of copyright works is no longer the relevant criterion for rate setting, diminishing the ability for rights holders to agree to fair rates. There is also no working body or mechanism for settlement of disputes between societies and users, leaving no avenue to resolve a multitude of conflicts.

Finally, the amendments to the LCRR failed to eliminate the very problematic law limiting the freedom to enter into contracts for a set number of years (a ten-year limitation, under Article 37 (2), and a five-year limitation, under Article 76 (3)), inconsistent with the copyright industry best practice of producers' neighboring rights for the use of authors' works and artists' rights, respectively. The need to re-negotiate contracts with authors and artists every ten or five years, respectively, prevents producers from exercising their neighboring rights in full.

These amendments have already had a negative impact on the creative community and rights 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. Fallout from the new law is that it has already had a detrimental effect on payments for broadcasting rights: no new tariffs have been agreed upon between the interested parties at the branch level following the new law requirements, and any agreements reached in 2011 and 2012 refer mostly to past periods, covering massive previous unauthorized usage. The result has been serious financial compromises on behalf of the collecting societies, generating losses for rights holders.<sup>4</sup> Delays with the new procedures related to registration of collecting societies in 2011, and the clumsy negotiation procedure of the tariffs

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<sup>4</sup>The 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. Similar agreement was concluded in June 2012 that regulated the licensing terms and due payments for 2011 and by the end of 2012.

approval caused by the latest amendments, have ushered in once again a new era of unauthorized use of music, and a year to come with no expectations for licenses or due payment from Bulgaria's radio and tv broadcasters in 2013. This standstill must be quickly resolved. IIPA hopes that the ruling majority in the Parliament will move quickly to present needed amendments to improve the prospects for effective IPR enforcement in Bulgaria, to curb the piracy rate, and create space for legitimate music services online.

**Proposed new Criminal Code:** Rights holders continue to have concerns about the pending bill for a new Criminal Code, which could seriously hinder efforts for copyright crimes to be vigorously pursued in Bulgaria's courts. In the year since the bill has been in development, no private sector representatives have been allowed to join the draft working group to provide an expert opinion on the provisions concerning intellectual property crimes. Furthermore, the draft changes do nothing to address the new challenges posed by evolving forms of Internet piracy, and instead could open the door for misinterpretations and poor enforcement. IIPA encourages the Bulgarian Ministry of Justice to include IPR experts and representatives as the draft moves forward.

The last amendments of the existing Criminal Code were adopted in 2006 after severe battles with anti-IPR lobbyists in the Bulgarian Parliament. Still, those amendments presented a solid set of provisions for criminal enforcement of IPR, with sanctions that were commensurate with the negative effects of piracy in the market and the general public. It is crucial that the contemplated changes to the Criminal Code continue to account for those concerns, and that they provide the necessary resources to the Cyber Crime Unit within the General Directorate to Combat Organized Crime at the Ministry of Interior so that it may continue its important efforts to police online criminal activity.