

**UNESCO**  
**WORLD ANTI PIRACY OBSERVATORY**

**BULGARIA**

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## **I. Legislation**

### **1. Copyright laws**

Copyright is protected in Bulgaria through international Agreements, the [Law on Copyright and Neighboring Rights of 1993](#), as well as other legislation related to enforcement of copyright or affecting copyright protection.

The Law on Copyright and Neighboring Rights– was promulgated on June 29, 1993 and entered into force on August 1, 1993.

### **2. Other laws**

The other laws pertaining to anti-piracy measures and copyright enforcement are:

- [Criminal Code](#) (promulgated on April 2, 1968; effective May 1, 1968) – *Art. 172a (promulgated on June 1, 1995; last amendment promulgated on September 12, 2006, effective October 13, 2006)*
- [Criminal Procedure Code](#) – promulgated on October 28, 2005 (effective April 29, 2006)
- [Civil Procedure Code](#) – promulgated on July 20, 2007 (effective March 1, 2008)
- [Administrative Violations and Sanctions Act](#) – promulgated on November 28, 1968
- [Law on the administrative regulation of the manufacture and trade in optical discs, matrices and other carriers containing subject matter of copyright and neighboring rights](#) – promulgated on September 13, 2005 (effective October 14, 2005)
- [Obligations and Contracts Act](#) – promulgated on November 11, 1950 (effective January 1, 1951)
- [Law on the Ministry of Interior](#) – promulgated on February 24, 2006 (effective May 1, 2006)
- [Rules Implementing the Law on the Ministry of Interior](#) – promulgated on June 9, 2006
- Council Regulation (EC) 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
- [Radio and Television Act](#) – promulgated on November 23, 1998
- [Electronic Communications Act](#) – promulgated on may 22, 2007
- [Electronic Commerce Act](#) – promulgated on June 23, 2006 (effective December 24, 2006)

### **3. Latest developments and perspectives**

There are pending discussions in the Bulgarian Parliament concerning the amendment of Article 251 of the Electronic Communications Act (ECA). Article 251 of ECA transposes the EU Data Retention Directive (*Directive 2006/24/EC of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC*) to the local legislation. The above regulations are related to the data retained by ISPs, respectively to the availability of the enforcement authorities to obtain such data in cases of copyright infringement investigations.

There are also pending discussions in the Bulgarian Parliament concerning amendments in the Tourism Act related to the introduction of provisions that would guarantee for better enforcement of the public performance rights (requirements for hotels, restaurants, etc. to present contracts with the respective collecting societies as a prerequisite and condition for obtaining the relevant tourist license).

#### **4. Summary of legislation**

- *Exclusive rights of the authors and of the owners of Neighbouring Rights*

The author enjoys exclusive economic and moral rights (Articles 15 to 22 of the Law on Copyright and Neighboring rights). He enjoys the exclusive economic rights to use the work created by him and to permit its use by other persons except where the Law on Copyright and Neighboring rights provides otherwise (Article 18). Using the work means:

- Reproduction of the work;
- Distribution of the original of the work or copies thereof among an unlimited number of persons;
- Public presentation or performance of the work;
- Broadcasting of the work by wireless means;
- Transmission and retransmission of the work by cable;
- Public display of a work of fine art or a work created by photographic or similar means;
- Translation of the work into another language;
- Adaptation of the work. Adaptation means the adjustment of the work and the making of any alterations to it, as well as the use of the work for the purpose of creating a new derivative work;
- Implementation of an architectural design by building or manufacturing the object to which it relates;
- Communication by wireless means or cable, by making the work available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them;
- Importation and export of copies of the work in commercial quantities, irrespective of whether they have been manufactured legally or in violation of the author's exclusive rights.

In addition to the above mentioned economic rights, the author enjoys moral rights which include the right to (Article 15):

- decide whether his work may be made available to the public and to determine the time, place and manner in which this may be done except for films and other audiovisual works; works of architecture; blueprints, maps, sketches, plans and others relating to architecture, urban planning, geography, topography, museum activities and to any sphere of science and techniques for which such rights shall be arranged by contract
- claim authorship of the work
- decide whether such works shall be made available to the public under a pseudonym or anonymously
- require that his name, his pseudonym or other identifying mark be mentioned in a suitable manner whenever his work is used
- require that the integrity of his work be preserved and object to any changes therein, as well as to any other actions which might violate his legitimate interests or personal dignity
- make alterations in the work in so far as the acquired rights of other persons are not thereby prejudiced
- have access to the original of the work when it is in the possession of another person and whenever such access is necessary for the exercise of any moral or economic right

- stop the use of the work due to changes in his beliefs, with the exception of already completed works of architecture, subject to compensation for the damages incurred by persons who have lawfully obtained the right to use the work

Related/ Neighboring rights are protected under Articles 72 to 93a of the Law on Copyright and Neighboring Rights. These rights are the rights of performing artists in their performances; producers of phonograms in their phonograms; producers of the initial record of a film or other audio-visual work in their original and copies obtained as a result of this record, and radio and television broadcasting organizations in their radio and television programs.

- **Performers rights:**

The performer enjoys the exclusive right to permit against compensation (Art. 76):

- The wireless broadcasting of his performance, transmission and retransmission by cable and sound or video recording of the performance, reproduction of the recordings on audio or video carriers and their distribution.
- The public performance, wireless broadcasting, transmission and retransmission by cable of such recordings.
- Providing access to his recorded performance or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them.
- Importation and export of copies of the recording containing the performance of the work in commercial quantities, irrespective of whether they have been manufactured legally or in violation of the performer's rights.

In addition to the above mentioned economic rights, the performer has moral rights which include (Article 75):

- The right to demand that his name, pseudonym or artistic name be indicated or otherwise communicated in the customary manner at each live performance, or on every use of a recording of that performance when it is reproduced or used in any other manner.
- The right to demand the preservation of the completeness and integrity of a recorded performance in case of reproduction or use in any other manner.

- **Producers of phonograms**

The producer of phonograms has the exclusive economic right to grant permission against compensation for (Art. 86):

- The reproduction and distribution of the phonogram;
- The importation and the export of copies of the phonogram in commercial quantities, irrespective of whether they have been manufactured legally or in violation of the producer of phonogram's rights;
- The public performance and wireless broadcasting and transmission and retransmission of the phonogram by cable;
- providing access to the phonogram or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them.

In addition to economic rights, the producer of phonogram enjoys a moral right which consists of his right to require that his name appears in the customary manner on the sound carriers and their packaging whenever recordings made by him are reproduced and distributed (Article 87).

- **Film Producers**

The producer of the initial recording of the film or another audio-visual work enjoys the exclusive economic rights to grant permission against compensation for (Article 90a):

- Their multiplication;
- Their public showing;
- Their broadcasting by wireless means;
- Their transmission and retransmission by cable;
- Their reproduction;
- Their distribution;
- Their translation into another language, dubbing or subtitling;
- providing access to the film or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them;
- Importation and export of copies of the film in commercial quantities irrespective of whether they have been manufactured legally or in violation of the film producer's rights.

In addition to economic rights, the film producer enjoys a moral right which consists of his right to require that the name or the title of the film be mentioned in the usual manner whenever the film is used (Article 90a).

- **Broadcasting organizations rights**

The radio or television organization which has made the initial broadcasting or transmission of its own program shall have the exclusive economic right to grant permission against compensation for (Article 91):

- Re-broadcasting of the program by wireless means or retransmission thereof by cable;
- Recording of the program and reproduction and distribution of the recordings;
- providing access to the programme or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them.

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

The free use of works is permissible, in compliance with the three-step test, only in the cases specified in the Law on Copyright and Neighboring Rights, provided that it does not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the copyright holder (Articles 23 to 26, 70 and 71 of the Law on Copyright and Neighboring Rights).

*Free Use without Payment of Compensation*

The following shall be permissible without the consent of the copyright holder and without payment of compensation:

1. Temporary reproduction of works provided the act is transient or incidental has no independent economic significance and is an integral and essential part of a technological process, and whose sole purpose is to enable:
  - a) Transmission in a network by an intermediary, or
  - b) Other lawful use of the work.
2. Quotations provided the source and the name of the author are mentioned, unless impossible.
3. Use of parts of published works or of a limited number of works in other works to the extent justified by the purposes of analysis, comments or scientific research. Such use shall be permissible only for scientific and educational purposes, provided the source and the name of the author are cited unless impossible.

4. Use as current information in the press and other mass media of speeches, reports, sermons and the like and parts thereof, delivered at public meetings, as well as of pleas before the court provided the source and the name of the author are cited unless impossible.
5. Reproduction by the mass media of already disclosed articles on current economic, political or religious issues in case such use has not been explicitly forbidden, provided the source and the name of the author are cited unless impossible.
6. Reproduction by a photographic, cinematographic or another analogous process, as well as by way of sound or video recording, of works related to current events, for the purposes of the mass media, to a limited extent justified by the purposes of information, provided the source and the name of the author are cited unless impossible.
7. Use of works permanently exhibited at streets, squares and other public places, excluding mechanical contact copying, as well as their broadcasting by wireless means or transmission by cable or other technical means, if done for the purposes of information or another non-commercial purpose.
8. Public presentation and public performance of published works in schools and other educational establishments, provided that there are no pecuniary revenues and no compensation is paid to the participants in the preparation and realization of the presentation or performance.
9. Reproduction of already published works by public libraries, schools or other educational establishments, museums and archives with educational purposes or with the purpose of preservation of the works, provided this use will not serve commercial purposes.
10. Reproduction of already disclosed works in Braille or another analogous method, if not done for gainful purposes.
11. Permitting access of natural persons to works in collections belonging to organizations referred to in item 9, provided this is done for scientific purposes and is not of commercial nature.
12. Ephemeral recording of a work by radio and television organizations, to which the author has granted the right to use the work, made by means of their own facilities and for their own programs and within the framework of the granted authorization. Recordings that have exceptional documentary character may be preserved in official archives.
13. Use of works for the purposes of national security, in court or administrative procedures or in the parliamentary practice.
14. Use of works during religious ceremonies or during official ceremonies organized by the public authorities.
15. Use of a building, which is a work of architecture or a plan of such a building for the purpose of its reconstruction.

*Free Use Against Compensation*

(1) The following shall be permissible without the consent of the copyright holder and against payment of equitable compensation:

1. Reproduction for non commercial purposes, on paper or similar medium by reprographic or another analogous process, of works with the exception of music notes.
2. Reproduction of works on any medium made by a natural person for his private use and for non commercial purposes.

(2) The provision under paragraph 1, item 2 shall not refer to computer programs and works of architecture.

The aforementioned limitations to copyright cannot be carried out in a manner accompanied with removal, damage, destruction or disruption of technological protection measures without the consent of the copyright holder.

The aforementioned limitations are not applicable to computer programs. Limitations to copyright relating to computer programs are provided under Articles 70 and 71 of the Law on Copyright and Neighboring Rights which stipulate the following:

The person who has lawfully acquired the right to use a computer program may use that program, display it on a screen, execute it, transmit it, store it in the memory of computer, translate it, adapt it and introduce other changes in it as much as these actions are necessary for attaining the objective for which the right to use that program was acquired, including for elimination of errors, unless agreed otherwise.

The person who has lawfully acquired the right to use a computer program may without the consent of the author and without payment of separate compensation:

1. make a back-up copy of the program insofar as it is necessary for the respective use for which the program had been acquired;
2. observe, study and test the functioning of the program in order to determine the ideas and principles which underlie any of its elements as much as this is done in the process of loading the program, displaying it on a screen, running, transmitting or storing it in the computer memory on the condition that he is entitled to carry out these actions;
3. translate the programming code from one form into another only if that is absolutely necessary for obtaining information to achieve interoperability of an existing program with other programs and on the condition that the necessary information on how to do that is not readily provided and that these acts are undertaken only in respect of such parts of the program that are necessary to achieve interoperability. The obtained information shall not be used for the creation and distribution of a computer program insignificantly different from the program the code of which is being translated, nor for any other action that may infringe the copyrights in the program.

Excluded from copyright protection are normative and individual acts of state government bodies and official translations thereof; ideas and concepts; works of folklore; news, facts, information and data (Article 4 of the Law on Copyright and Neighboring rights).

- *Protection of foreign works*

In addition to works, whose authors are citizens of the Republic of Bulgaria or persons, who have a permanent address in the country, irrespective of where the works have been published for the first time; the Law on Copyright and Neighboring Rights applies to:

- works whose authors are citizens of an EU member-state or persons who have permanent address in such a country regardless of where the first publication of the works has taken place;
- works, whose authors are citizens of a state, with which the Republic of Bulgaria is bound by an international copyright treaty, or persons who have a permanent address in such a country, irrespective of where the works have been published for the first time;
- works, which have been published for the first time or have been implemented as architectural designs on the territory of the Republic of Bulgaria or on the territory of a state, with which the Republic of Bulgaria has concluded an international copyright treaty, irrespective of the nationality of their authors;
- works, which have been published for the first time on the territory of a state, with which the Republic of Bulgaria is not bound by an international copyright treaty but simultaneously or within a period of thirty days after the publication have been published on the territory of the Republic of Bulgaria or on the territory of another state with which the Republic of Bulgaria has concluded such a treaty (Article 99 of the Law on Copyright and Neighboring Rights).



The Law on Copyright and Neighboring Rights applies also to the broadcasting of a work by satellite in case the signal is transmitted to the satellite from the territory of the Republic of Bulgaria, or from the territory of a State not member of the European Union provided that specific conditions are met; performances of performers who are citizens of the Republic of Bulgaria or who have permanent address in it regardless of where the performances have been carried out, performances of foreign performers on the territory of the Republic of Bulgaria, performances of foreign performers, citizens of a Member State of the European Union or having permanent address in such state regardless of where the performances have been carried out; phonograms, initial recordings of films or other audio-visual works, and programs of radio and television organisations made by natural persons who are citizens of the Republic of Bulgaria or who have permanent address in it, by citizens of Member States of the European Union or having permanent address in some of them, or by legal persons which seat is on the territory of the Country or on the territory of such State, regardless of where the recordings have been made, as well as to recordings made or simultaneously published for the first time by foreign persons on the territory of the Republic of Bulgaria or a Member State of the European Union (Articles 99b, 100 and 101 of the Law on Copyright and Neighboring rights).

- *Period of copyright protection*

Copyright protection is provided for the lifetime of the author and 70 years from the 1st of January of the year following the author's death; 70 years from the 1st of January of the year following the death of the last surviving author in the event of co-authored works; 70 years from the 1st of January of the year following the year in which the work was first made available to the public for anonymous or pseudonymous works - or 70 years from the 1st of January of the year following the author's death when the pseudonym adopted by the author leaves no doubt as to his identity or if the author of an anonymous or pseudonymous work discloses his identity during the above mentioned period; 70 years from the 1st of January of the year following the year in which the work was made available to the public for computer programs and databases; 70 years from the 1st of January of the year following the death of the last surviving among the director of the film, the scriptwriter, the operator, the author of the dialogue and the author of the music if it has been created especially for the film; 70 years from the 1st of January of the year following the year in which the work was published for collection works (periodicals, encyclopaedia, collections, anthologies, bibliographies, databases and other similar subject matter including two or more works or products) (Articles 27 to 31 of the Law on Copyright and Neighboring Rights).

Rights of performing artists last for 50 years from the 1st of January of the year following the year of in which the recording of the performance was published, or in case the recording was not published or the performance was not recorded - from the 1<sup>st</sup> of January of the year following the year in which the first performance was held. Rights of producers of phonograms last for 50 years from the 1st of January of the year following the year in which the phonogram was made. If the phonogram was lawfully published during this period, the term shall run from the first of January of the year, following the year of this publishing. If the phonogram was not lawfully published, but was lawfully made available to the public in another way during this period, the term shall start on the first of January of the year, following the year of making it available to the public. Rights of producers last for 50 years from the 1st of January of the year following the year of making the film available to the public, and if it was not made available to the public - from the beginning of the year following the year of its creation. Rights of broadcasting organizations last for 50 years from the 1st of January of the year following the year in which the programme was broadcasted or transmitted for the first time (Articles 82, 89, 90b, and 92 of the Law on Copyright and Neighboring Rights).

- *Registration*

Copyright protection does not depend on formalities. The copyright in literary, artistic and scientific works shall arise for the author with the creation of the work (Article 2 of the Law on Copyright and Neighboring Rights). Therefore, the registration of copyrighted works is not mandatory under the Bulgarian Law on Copyright and Neighboring Rights.

## **5. International treaties**

Bulgaria is a member of the following International Treaties and Conventions on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#)
- [Universal Copyright Convention](#)
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS)
- [WIPO Copyright Treaty](#) (WCT)
- [WIPO Performances and Phonograms Treaty](#) (WPPT)
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#)
- [Cyber Crime Convention](#)

## **II. Measures and remedies**

### **1. Copyright infringement**

Any use of a copyrighted work without the right owner's consent (except where the Law on Copyright and Neighboring Rights provides otherwise) constitutes a copyright infringement. The law does not contain a definition of a copyright infringement, but it uses the wording "use of a work in violation of the provisions of this law". However, Art. 97 of the aforementioned Law, found under Chapter 13 relating to "Administrative penal provisions", stipulates which acts shall be considered infringements thus sanctioned by the competent administrative authorities:

According to Article 97. (1) Any person who in violation of the provisions of this Law:

1. reproduces and distributes video carriers embodying recorded reproduced films or other audiovisual works, performances, recordings of films or other audiovisual works;
2. reproduces and distributes audio carriers embodying reproduced works, performances or sound recordings;
3. organizes, in whatever manner, communication to the public of films or other audiovisual works;
4. offers third parties sound or video recording services with the purpose to prepare single copies of works or other material protected by this Law;
5. organizes live or recorded public performance or presentation of works;
6. broadcasts by wireless means, transmits or retransmits by cable works, performances, sound recordings, recordings of films or other audiovisual works or radio or television programs;
7. publishes, reproduces or distributes already published works;

8. owns a computer program, knowing or having grounds to believe that this is an infringement of copyright;

9. reproduces, saves on the hard disc of a computer or distributes or otherwise uses computer programs;

10. reproduces or distributes works of applied art, design and crafts, photographic works or works made in a manner similar to photography;

11. uses unlawfully works of architecture and projects, maps, schemes, plans and others related to architecture, urban planning, geography, topography, museum research and any other area of science and technology;;

12. saves in digital form on a digital carrier films or other audiovisual works or their recordings, musical works, performances, or sound recordings, records of films or other audiovisual works;

13. provides access to the work, phonograms, initial recordings of films or other audio-visual works, programs of radio and television organizations, or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them;

14. impedes the execution of a provisional measure under article 96a;

15. does not fulfill an obligation under Article 20a (6), Article 26 (2) and (8), Article 95c (3) or Article 96a (9);

16. infringes a prohibition under Article 93c

shall be liable to a fine or pecuniary sanction ranging from 300 to 3,000 BGL, unless the infringement is punishable by a more severe penalty; subject matter of the infringement, regardless of whose property may be, shall be seized in favor of the State and shall be handed over for destruction by agencies of the Ministry of Interior.

(2) A repeat offence under paragraph (1) committed within one year of the imposition of the previous penalty shall be punished with a fine or pecuniary sanction ranging between 1,000 and 5,000 BGL; subject matter of the infringement, regardless of whose property it may be, shall be seized in favor of the State and shall be delivered for destruction by agencies of the Ministry of Interior...

The above item 13 of Article 97 (1) is the provision concerning Internet copyright infringements.

## **2. Remedies to protect copyright holders**

Both civil and criminal remedies are available in addition to administrative penal provisions.

### Civil Remedies

The civil remedies (Articles 94 to 96a of the Law on Copyright and Neighboring Rights) include both provisional measures (when a copyright, a neighboring right or the sui generis right of the producer of a database, has been infringed or when there is sufficient data to believe that such an infringement will be committed or evidence will be lost, destroyed or concealed) and civil proceedings on the merits. In civil proceedings on the merits the right owner or the person to whom he has granted the exclusive right for use may claim before the court:

- compensation of all damages including lost profits, moral damages and revenues realized by the infringer due to the infringement;
- establishing of the act of infringement;
- discontinuance of the unlawful use or a prohibition of the activity that will constitute unlawful use;
- seizure and destruction of the illegally produced copies of the work and the subject matter of neighboring rights, including negatives, master copies, printing blocks and other material used for the purposes of copying;

- seizure and disablement of the copying, decryption and reproducing of equipment used exclusively for committing the infringement;
- conceding the illegally produced copies of the work and the subject matter of neighboring rights, including negatives, master copies, printing blocks and other material used for the purposes of copying;
- dissemination, at the expense of the infringer, of information on the court decision in two daily newspapers and in television organization with national coverage in a time span defined by the court.

The Law on Copyright and Neighboring Rights also provides for securing of evidence also as for requesting information on the origin and distribution networks in the event of infringement (Articles 95c and 95d).

### Criminal Remedies

As per criminal remedies, Article 172a of the Criminal Code provides for imprisonment and a fine in cases of criminal offences committed.

Accordingly, (1) Any person who records, reproduces, distributes, broadcasts or transmits or otherwise uses other 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 5 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 2 to 5 years and a fine from two thousand to five thousand leva.

(3) In case the offence under paragraph (1) and (2) is repeated or considerable damage has been incurred, the punishment shall be imprisonment from 1 to 6 years and a fine from three thousand to ten thousand leva.

(4) In case the offence under paragraph (2) is in particularly large scale, the punishment shall be imprisonment from 2 to 8 years and a fine from ten thousand to fifty thousand leva.

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

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

It should be noted that the corpus delicti "otherwise uses" of Article 172a of the Criminal Code covers all other offences that are not exhaustively listed in (1), including Internet piracy.

The injured party may file before the criminal court to allow for joint consideration within the criminal court proceedings a civil claim for compensation of damages incurred from the offence. Even if the civil claim is not allowed within the criminal proceedings, the injured party may claim for compensation of the damages before the civil court upon completion of the criminal trial. Nevertheless, in case the defendant is found guilty the infringing copies of the works are forfeited in favor of the State and are subject of destruction.

### **3. Provisional measures**

Article 96a of the Law on Copyright and Neighboring Rights provides for provisional measures in cases when a copyright, a neighboring right or the sui generis right of the producer of a database, has been infringed or when there is sufficient data to believe that such an infringement will be committed or evidence will be lost, destroyed or concealed. The provisional measures are allowed upon request of the right owner or the person to whom he has granted the exclusive right for use. Without informing the person with regard to whom a provisional measure has been requested, the

court may allow some of the provisional measures listed below depending on the claim of the right owner:

- prohibition of the performance of the activity alleged to constitute or to be about to constitute an unlawful use of a work, a subject matter of neighboring rights or a data base ;
- seizure of the copies of the work, subject matter of neighboring rights or a data base which are alleged to have been illegally reproduced, the negatives, matrices, clichés and other material intended for reproduction of the copies, as well as other evidence substantial for proving the infringement;
- seizure or sealing of the equipment which is alleged to have been or to be about to be used to commit violations;
- sealing of the premises in which the infringement is alleged to have been or will be committed.

The authorization, imposition and revocation of provisional measures take place according to the procedures stipulated in the Civil Procedure Code (CPC) unless the Law on Copyright and Neighboring Rights provides otherwise. According to the CPC provisional measures may be requested at any time of the court proceeding before the first and second instances (prior to the conclusion of the trial at the second instance) also as prior to filing a copyright claim on the merits (in this case, the court provides the plaintiff with a period not longer than one month to file the claim on the merits).

The provisional measures request is decided by the court on the day of its submission by the plaintiff. The CPC provides that provisional measures are allowed in case the plaintiff will not be able to enforce or will be hindered to enforce the rights established with the court decision on the merits and if the claim is supported by sufficient written evidence of infringement and/or a guarantee defined by the court is deposited by the plaintiff. The court's ruling on the provisional measures request may be appealed by the plaintiff within a 7-day period upon notification about the ruling and by the defendant within a 7-day period upon official delivery by the bailiff of the notification that a provisional measure(s) is allowed by the court. An appeal against the court's ruling does not suspend the execution of the ruling.

According to the Law on Copyright and Neighboring Rights, the provisional measure consisting in prohibition of performance of the activity is imposed by virtue of the court order. The rest of the provisional measures as listed above are imposed by a public or private bailiff at the same time when he delivers a notification of the authorization of the provisional measure on the defendant (the notification is delivered to the defendant by the bailiff within a 3-day period upon lodging the plaintiff's application with the bailiff). A provisional measure allowed to prevent an imminent infringement is imposed within a term compliant with its purpose. The seized property shall be submitted by an inventory for keeping to the claimant who can use it solely as evidence. The plaintiff or his representative may be present and may cooperate when the provisional measures are being imposed. The Law on Copyright and Neighboring Rights also provides that the provisional measure prohibition of the performance of the activity may also be imposed with regard to third parties for whom there is enough data that they assist the activity that is claimed to be or is about to be an infringement.

Finally, if it is established that an imposed provisional measure has been requested without grounds, the aggrieved party may demand that the person who has requested the measure pay for the damages incurred thereby.

#### **4. Penalties for copyright infringement**

- In civil cases

Penalties are not imposed by civil courts. The scope of the civil court's decision depends on the claim(s) of the plaintiff (establishing of the act of infringement, compensation of damages, etc.) The plaintiff may file for any or all of the claims listed above ([See Remedies to protect copyright holders](#)), including for compensation of damages (Articles 94 and 95 of the Law on Copyright and Neighboring Rights).

- For criminal offence in copyright cases

The Criminal Code provides for imprisonment (up to 5 years) and a fine (up to 5000 BGN) in case of criminal offences committed. In the event of a repeated offence or considerable damaging consequences occurred the penalty goes from 1 to 6 years of imprisonment and a fine from 3000 to 10000 BGN. In the event of damages amounting to a particularly large-scale value the penalty is from 2 to 8 years of imprisonment and a fine from 10000 to 50000 BGN. (Article 172a of the Criminal Code)

- Seizure, confiscation, forfeiture and destruction of all infringing copies

The civil court may order seizure, forfeiture and destruction of the infringing copies and equipments used exclusively for the committing of the infringement if so claimed by the plaintiff (Article 95 of the Law on Copyright and Neighboring Rights).

In accordance with Article 172 (6) of the Criminal Code the criminal courts are obliged to rule forfeiture and destruction of infringing copies with their final judgment.

In case the plaintiff has claimed so, the civil court may rule for publication of its decision in two daily newspapers and in television organization with national coverage in a time span defined by the court (Article 95 of the Law on Copyright and Neighboring rights). There is no such provision in the Criminal Code.

#### **5. Requirements for foreign persons**

No special requirements/approvals are required with regard to foreign natural or legal persons. However, all documentation submitted (authorization papers, evidence, etc.) should be duly legalized, translated and apostilled (if applicable) in order to be accepted by the respective authority. As per authorization, it should be noted that the Bulgarian civil and criminal courts are strictly formalized and a bunch of authorization documents are necessary in order to prove the duly authorization powers of a rights owner representative – explicit and detailed Powers of Attorney; Certificate of Good Standing/Excerpts from the Trade Register for the legal entities that are to certify for the current legal status of a company; Acts of Incorporation, Company by-laws, etc. that are to prove the links of authorization, etc. As mentioned above, all papers should be duly notarized and apostilled.

### **III. Enforcement**

#### **1. Enforcement authorities**

##### **a) Authorities responsible for enforcing the copyright law**

1. Criminal enforcement (preliminary investigation bodies):

- Prosecutorial bodies – the regional DA's Offices are responsible for the prosecution of IPR crimes;

- Police authorities - the regional Economic Police Sections of Directorate "Counteraction to Crime", General Directorate "Criminal Police"; the Cyber Crime Unit at Directorate "Counter Organized and Serious Crime", General Directorate "Criminal Police" (the general organization provisions of the Law on the Ministry of Interior, the Rules Implementing the Law on the Ministry of Interior - Articles 75 and 79).

2. Administrative enforcement:

- The Ministry of Culture, Department "Inspectorate Copyright" at Directorate "Copyright and Neighboring Rights" – Articles 98 and. 98c of the Law on Copyright and Neighboring rights and internal organizational rulings of the Minister of Culture.

3. Enforcement at the border:

- The Customs Agency and its regional divisions – Law on the Customs, Articles 96b to 96e of the Law on Copyright and Neighboring rights.

##### **b) Enforcement bodies entitled to act ex-officio in copyright infringement cases**

The enforcement bodies are entitled to act ex officio – no particular provisions in that regard. Based on the general provision of Article 208 of the Criminal Procedure Code stipulating that among the legal grounds to open a preliminary investigation (such as notifications to the preliminary investigation bodies about criminal offences committed) is also the direct discovery by the preliminary investigation bodies of signs of a criminal offence committed, the enforcement bodies (including the administrative penal bodies) are entitled to act not only upon a lead but ex officio too.

##### **c) Courts dealing with copyright cases**

There are no specialized courts for copyright infringements. However, aimed at avoiding corrupt practices cases are allocated on a random principle.

There is special competency for disputes under the Law on Copyright and Neighboring rights – civil remedies are settled at first instance by the district courts (Article 96).

As per criminal offences, they are decided at a first instance by the regional courts (Article 35 of the Criminal Procedure Code).

#### **2. Enforcement at the border**

Articles 96b to 96e of the Law on Copyright and Neighboring rights, provide for border enforcement of copyright. Prior to Bulgaria's accession to the EU and in accordance with Article 96e of the Law on Copyright and Neighboring rights, the Council of Ministers has adopted a Decree on the Border Measures which has not been revoked yet. Presently Customs Regulation No. 1383/2003 has direct implementation in Bulgaria and being an EU member now all local provisions that contradict to the above Customs Regulation should be considered abolished and replaced by the relevant provisions of the Regulation.

The Customs authorities apply border measures upon an application filed by the right holder or ex officio. Upon official notification to the right holder about the suspension of the release of goods

where there is data to believe that they infringe rights protected under the Law on Copyright and Neighboring rights, the respective right holder may initiate proceedings on the merits to establish the act of infringement and request for the suspension of the release of the infringing goods or file for provisional measures prior to filing a claim on the merits.

The competent authority responsible for administering applications for copyright infringements at borders is the Head Office of the Customs Agency.

As a general rule, the importer and the copyright holder are notified in a timely fashion of the suspension of the release of the goods by the customs.

The customs authorities are obliged to inform the right holder, the importer and the sender immediately upon suspension of the release of the goods. The same persons shall have the right to inspect the suspended goods and to receive information about them.

If, within 10 working days from being notified according to para 3 about the suspension, the applicant does not provide evidence that a procedure has been initiated before the respective court for decision on the merits of the case or that a security has been admitted, the customs bodies shall release the suspended goods on condition that all requirements for regular import or export have been observed. The term may be extended by ten days upon reasoned request by the applicant.

The competent bodies before which the legal procedure under para 4 has been initiated shall rule upon appeal of the interested party whether the measures of suspension must be confirmed, amended or revoked.

The refusal of the customs bodies to satisfy the application for suspension of the goods shall be subject to appeal by the order of the Administrative Procedure Code.

Where the request for suspension has not been followed by a procedure as above mentioned or it was found to be ungrounded the affected party shall have the right of indemnification.

The competent customs authorities cannot order the destruction/disposal of infringing goods. Such destruction/disposal may be ordered upon completion of the civil/criminal proceedings on the merits. Where no proceedings on the merits have been initiated the customs authorities may order destruction/disposal either upon out of court settlement agreement between the right owner and the infringer whereby an official request for destruction/disposal has been filed by both parties or upon an explicit declaration in that regard signed by the infringer. It should be noted that the local instruments to introduce the fast destruction procedure under Article 11 of the Customs regulation No. 1383/2003 have not been adopted in Bulgaria yet.

The customs authorities are entitled to act ex-officio in copyright infringement cases according to Article 96d of the Law on Copyright and Neighboring rights (Article 4 of the Customs Regulation No. 1383/2003). The customs bodies shall not be liable for the actions on suspension of the goods taken by them in good faith.

The law provides for a de minimis import exception (such as the import for personal use of a non-commercial quantity and new items acquired for personal use.

Article 96b of the Law on Copyright and Neighboring rights (Article 3 (2) of the Customs Regulation No.1383/2003) provides that border measures shall not be applied to goods transported by passengers in small quantities for non-commercial purposes, on the condition that they are in duty-free amounts.



## **IV. Public Awareness**

### **1. Awareness campaigns and actions**

A public awareness campaign was organized in 2006/ 2007.

### **2. Promotion of legal exploitation**

### **3. Associations and organizations with awareness-raising purpose**

### **4. Best practices**

The Results achieved by the enforcement bodies are published every month on the website of the Ministry of Culture.

In 2008 the private sector represented by the anti-piracy organizations and the local collecting societies established the Annual Intellectual Property Awards. During the first ceremony to present the annual awards representatives of various public authorities (politicians, representatives of the enforcement authorities and other officials, journalists, etc.) were awarded for their exclusive work and support to the enforcement of IPR. The event achieved positive appraisal from both the public and the private sector and had very good media coverage as well. The initiative is planned to become an annual event to promote the importance of intellectual property and its effective protection.

## **V. Capacity-building**

### **1. Training**

### **2. Establishment of specialized units and intersectoral groups**

- establishment of specialized intellectual property/ copyright units within the enforcement bodies (police, customs, etc.): a specialized unit (the Cyber Crime Unit) at Directorate "Counter Organized and Serious Crime", General Directorate "Criminal Police" is established to fight computer and Internet related crimes including copyright piracy; Department "Inspectorate Copyright" at Directorate "Copyright and Neighboring Rights", the Ministry of Culture. As per border measures of copyright, they are conducted by the regional divisions of Directorate "Customs Intelligence and Investigation" at the Customs Agency.
- creation of copyright or intellectual property associations/ organizations/ bodies: special NGOs are established by the private sector to unite and protect the interests of various right holders also as to work and cooperate the state authorities in the field of copyright/neighboring rights protection.
- setting up of inter-sectoral groups to fight piracy and to help enforce intellectual property rights:- a Council for Intellectual Property Rights (IPR) Protection at the Minister of Culture has been established in 2006. Participants in this body are the Deputy minister of Culture, a Deputy minister of Justice, a Deputy minister of Finance, a Deputy minister of Economy, a Deputy minister of Interior, the Chairperson of the Patent Office, the Chairperson of the

Sofia City Court, the Deputy Chief Prosecutor – head of the Supreme Cassation Prosecution Office, the chairpersons of the Council on Electronic Media, the Commission for Protection of the Competition and the Communications Regulation Commission, representatives of the Customs Agency, the National Revenue Agency, the Directorates “Counteraction to Crime” and “Counter Organized and Serious Crime” at the General Directorate “Criminal Police”. The Council was set up in order to stimulate the inter-sectoral communication with regard to the enforcement of IPR with the main purpose of developing the working agenda and the strategies of all competent state authorities involved in the protection of IPR.

- specialized copyright enforcement and anti-piracy training, including training of Ministry of Justice, Ministry of Interior or other relevant authorities: round table discussions and anti-piracy trainings of enforcement authorities, including representatives of the judicial system, the Ministry of Interior, the Ministry of Culture, the Customs Agency, etc. are consistently and sustainably conducted, mainly upon initiative of the private sector with the assistance and participation of foreign state or private sector representatives. A few initiatives of the National Institute of Justice for training seminars of judiciary representatives in the field of IPR enforcement where private sector’s representatives are invited to participate and present their experience in the field of the protection of intellectual property. The Department of Justice (DoJ) representative at the US Embassy in Sofia has a special agenda to support the work of the judiciary in the field of IPR protection, including also support in seminars and trainings.
- organization of public awareness campaigns by public authorities or civil society against piracy and counterfeit; public awareness campaigns are organized primarily by the private sector as well. A sporadic example of a campaign organized by the public authorities was the 2006 Ministry of Culture’s outdoor campaign under the slogan “Piracy robs”.
- initiatives related to the promotion of legal exploitation of protected material; - primarily the private sector is the one engaged in the promotion of legal exploitation of protected materials through its IPR campaigns, warning letters initiatives, etc.
- hotlines, licensing schemes, optical discs regulations.

### **3. Best practices**

The Ministry of Culture has policy of irreconcilability to violations of copyright. Since the end of 2007 more than 700 spots throughout the country have been checked for public performance, use of software, and retransmission by cable. This policy has found response by the wide public and has changed its attitude. In May, a common meeting of the Council for Protection of Intellectual Property and the Regular Consultative Council was held in Plovdiv, where all proposals for amendments to the Copyright and Neighboring Rights law were discussed.

## **VI. Other**

### **1. TPM/DRM**

The law on Copyright and Neighboring Rights provides for the Protection of Technological Protection Measures.

Article 25a of the law binds the free use of a work with preserving the technological protection measures.

In addition, Article 97 relating to administrative penal provisions contains provisions related to violations of TPMS.

Article 97 provides that a fine or pecuniary sanction for legal entities from 300 to 3000 BGN, or from 1000 to 5000 BGN in case of repeated offence, and seizure and destruction of the subject matter of the infringement shall be imposed on (1) persons who, knowingly remove, modify, destroy or disrupt or otherwise circumvent without having the right to do so, technological protection measures knowing or having grounds to know that these devices are primarily designed for such purposes; and (2) persons who manufacture, import, distribute, sell, rent, advertise, offer for sale or rental, or possess for commercial purposes devices, products or components, or provide services for such actions that:

- (i) are advertised and offered as means for circumvention of technological protection measures
- (ii) have only limited commercial purpose or application other than the one meant to circumvent technological protection measures
- (iii) are mainly meant, manufactured, adjusted or used to make possible or facilitate the circumvention of technological protection measures.

## **2. Licensing Schemes**

## **3. Optical Discs**

The Law of the Administrative Regulation of the Production and Trade with Optic Discs, Matrixes and Other Carriers Containing Subjects of Copyright and Related Rights stipulates the administrative regulation and control over the production, including the reproduction, distribution, import and export of the optic discs, matrixes and other carriers containing subjects of copyright and related rights. The law is also applicable to the production of optic discs without record and matrixes for their production, as well as the import and export of staple for production of optic discs or of equipment for production of optic discs, matrixes for their production or of other carriers.

## **4. Hotlines**

The private sector is mainly engaged in the support of hotlines related to the protection of Intellectual Property Rights (IPR). An exception in that regard is the hotline of the Cyber Crime Unit at Directorate “Counter Organized and Serious Crime” at their website [www.gdbop.bulhostpro.org](http://www.gdbop.bulhostpro.org) (website under construction). As per licensing schemes, the private sector and its business representatives are engaged in promoting various legalization offers to the users. As per Optical Discs (OD) regulations, in 2005 the Law on the administrative regulation of the manufacture and trade in optical discs, matrices and other carriers containing subject matter of copyright and neighboring rights was adopted. The Law provides for administrative control and licensing of OD manufactures on behalf of the Ministry of Economy and the Ministry of Culture.

## **5. Contact Details**

- Ministry of Culture (web: [www.mc.gouvernement.bg](http://www.mc.gouvernement.bg)):

Mr. Georgi Damyanov – Director of Directorate “Copyright and Neighboring Rights”, Ministry of Culture, tel. + 359 2 94 000 821;

Mr. Bogomil Dszhidrov – Head of Department “Inspectorate Copyright” at Directorate “Copyright and Neighboring Rights”, Ministry of Culture, tel. + 359 2 94 000 841

- Ministry of Interior (web: [www.mvr.bg](http://www.mvr.bg)):

Mr. Javor Kolev – Head of the Cyber Crime Unit at Directorate “Counter Organized and Serious Crime”, General Directorate “Criminal Police”, tel. + 359 888 795 021, web: [www.gdbop.bulhostpro.org](http://www.gdbop.bulhostpro.org) (*under construction*);

Mr. Kiril Vladimirov – Inspector at the Economic Police Section at the central office of Directorate “Counteraction to Crime”, General Directorate “Criminal Police”, tel. + 359 898 758 424

- Customs Agency (web: [www.customs.bg](http://www.customs.bg)):

Mr. Katerina Chekerova - Directorate “Customs Intelligence and Investigations”, Customs Agency, tel. + 359 2 9859 45 28

- Bulgarian Association of the Music Producers/BAMP – Mrs. Ina Kileva, Executive Director, tel. + 359 2 963 27 57, web: [www.bamp-bg.org](http://www.bamp-bg.org)

- Bulgarian Association to Counteract the Illegal Use of Protected Works/BulACT (representing the film industry) - Mrs. Velislava Dimitrova, Executive Director, tel. + 359 2 963 07 13

- Business Software Alliance/BSA – Mr. Velizar Sokolov, Legal Council of the Business Software Alliance, tel. + 359 2 971 02 58, web: [www.bsabg.org](http://www.bsabg.org)