

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2004 SPECIAL 301 REPORT

# BULGARIA

### EXECUTIVE SUMMARY

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**Special 301 recommendation:** IIPA recommends that Bulgaria be added to the Special 301 list in 2004, and placed on the Priority Watch List.

**Overview of key problems:** Copyright piracy, especially optical media piracy, returned to Bulgaria several years ago after a brief absence in the late 1990s. Despite a string of warnings from Bulgaria's trading partners and the private sector, the Government of Bulgaria and the various enforcement agencies have dramatically failed in clamping down on the endemic piracy problem that continues to affect the commercial interests and investment of both Bulgarian and foreign copyright industries. Even with repeated training of enforcement officials and relentless involvement of copyright sector representatives in legal actions against IPR infringement, the track record of prosecutors and courts in bringing an end to the massive copyright crime in Bulgaria is highly disappointing at best.

Large quantities of pirated CDs, especially of music, computer and entertainment software, continue to be easily available in all major cities. Problems with both the growing local production and the importation of pirated optical disc (OD) media abound. Unwarranted and misplaced deregulatory zeal by the Bulgarian government in 2002 led to the withdrawal of a critical element of the existing CD regulatory regime, despite express prior guarantees given both to the United States and the European Union. Bulgaria's CD plant licensing system is currently up for renewal, and efforts are underway to implement a new optical media licensing system. After almost two years of work, the Council of Ministers submitted draft legislation addressing optical media regulations to the Bulgarian Parliament in January 2004. In 2002, the copyright industries submitted comprehensive model legislation to the relevant Bulgarian ministries. However, the legislative package adopted by the Council of Ministers is completely inadequate to strengthen Bulgaria's flawed OD regulatory system. In fact, government officials have consistently rebuffed the expertise offered and proposed amendments advocated by several copyright industry sectors to strengthen the legislative proposal over the past 18 months.

On the enforcement front, the copyright sectors report mixed results. MPAA notes that BullAct, the local anti-piracy organization for the audiovisual industry, has a very active anti-piracy program and enjoys excellent cooperation from law enforcement authorities. In other instances, the national police, however, fail to cooperate at critical moments. Pre-raid leaks are the norm, not the exception. A significant hurdle remains poor prosecutions; cases simply do not progress. The situation further deteriorated when, through a change in the Criminal Procedure Law, damaged parties were not any more allowed to join criminal prosecution cases. In the few cases that do reach final judgment the sentences are not deterrent, are usually suspended, and involve low fines. The Bulgarian courts also continue to demand excessive and cumbersome proof of rights ownership and chain of title, even in blatant infringement cases. They have difficulties in expeditiously issuing injunctive orders and fail to impose sufficient damages in civil copyright infringement cases.

## **Actions which the Bulgarian government should take in 2004**

### **Law Reform**

- Incorporate all amendments submitted by the copyright industry into the draft optical disc regulation in order to create an effective regulatory regime equipped to prevent resurgence of large-scale illegal optical disc production;
- Increase criminal sanctions in the penal code for copyright infringement up to deterrent levels;
- Amend the criminal procedural code to (1) introduce presumption of rights ownership for criminal infringement cases; (2) allow rightsholders or their representative organizations to assist in preparing expert opinion reports concerning infringement of their intellectual property rights; (3) improve existing procedures to reflect the specifics of the digital environment with regard to the investigation and prosecution of computer, software and Internet-related crimes; (4) provide for criminal liability of the managers of entities where IP crimes are committed; (5) re-establish the option for the rightholder to file a civil claim at any stage of the criminal trial; and (6) refine the definition of “injured party” in the criminal trial to cover rightsholders who have incurred a loss of profit;
- Instruct the judiciary and the courts to accept affidavits from rightsholders as sufficient proof for their identification. At present, rightsholders are required to present a bulk of documents which are very difficult and sometimes impossible to obtain as they are unknown to foreign legal systems (in most cases rights of international companies are affected);
- Introduce a country-wide regulatory instrument prohibiting street sales of cultural and copyrighted products, outlawing any sale or offering for sale of optical discs and other carriers of copyrighted materials in street stalls;

### **Enforcement**

- Take actions to enforce the current regime regarding title verification and CD plant licensing (and, to the extent the OD regulatory system is revised in 2004, training efforts will be needed to educate enforcement authorities about the new law);
- High-level government officials should instruct the enforcement agencies, including the national police, to make piracy a priority and to set goals for tough anti-piracy sanctions. They should also recognize that organized crime elements are involved in piratical activities and, consequently, instruct the National Service for Combating Organized Crime to significantly step up their actions against crime syndicates involved in copyright theft;
- Increase *ex officio* enforcement actions against those selling and distributing infringing copyrighted products in the streets, in retail stores and in markets throughout the country and effectively enforce in all major cities in Bulgaria the local decrees prohibiting street sales of copyrighted products, such as CDs and cassettes;
- Improve judicial issuance of adequate civil remedies in business software cases, including the issuance of *ex parte* civil searches, damages, and injunctive relief;
- Improve border enforcement to halt the importation and exportation of piratical products, especially optical media products;
- Provide the tax authorities with the competence and mandate to seize infringing copyrighted products and impose administrative sanctions (fines);
- Instruct law enforcement bodies, judiciary and courts not to return pirated goods to the market, but to destroy these goods as a rule.

**BULGARIA**  
**ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1999 – 2003<sup>1</sup>**

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	4.0	25%	3.0	20%	3.0	20%	3.0	25%	4.0	25%
Records & Music	7.0	80%	7.2	83%	3.0	65%	NA	NA	NA	NA
Business Software Applications <sup>2</sup>	NA	NA	6.2	68%	8.3	75%	8.1	78%	9.1	80%
Entertainment Software	NA	NA	21.9	91%	NA	84%	NA	NA	NA	NA
Books	0.3	NA	0.3	NA	0.3	NA	NA	NA	NA	NA
<b>TOTALS<sup>3</sup></b>	NA		38.6		14.6		8.1		NA	

Bulgaria last appeared on a USTR Special 301 list in 1998, after the conclusion of a Section 301 trade investigation. For the last two years, IIPA has requested that Bulgaria be reinstated on the Special 301 list primarily due to the growing optical disc piracy and a continuing lack of improvement of IPR enforcement. The arrival of a new government in 2001, promises of Bulgarian reform and improvements of the optical disc regime and enforcement have deflected placement on the Special 301 lists, yet those root problems have not been resolved at all.<sup>4</sup>

Bulgaria presently has several agreements with the U.S. which contain IPR obligations. 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. That bilateral provided clear and explicit enforcement obligations for Bulgaria

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in the IIPA’s 2004 Special 301 submission at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

<sup>2</sup> BSA’s 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com>. BSA’s statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. In IIPA’s February 2003 Special 301 filing, BSA’s 2002 estimated losses of \$7.0 million and levels of 72% were identified as preliminary. BSA’s revised figures are reflected above. BSA’s trade loss estimates reported here represent losses due to piracy which affect only U.S. business software publishers in this country, and differ from BSA’s trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in Bulgaria (including U.S. publishers) and (b) losses to local distributors and retailers in Bulgaria.

<sup>3</sup> In IIPA’s 2003 Special 301 submission, IIPA estimated that total 2002 losses to the U.S. copyright-based industries in Bulgaria were \$39.4 million. IIPA’s revised loss figures are reflected above.

<sup>4</sup> For more details on Bulgaria’s history in the Special 301 process, see Appendix D (<http://www.iipa.com/pdf/2004SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>) of this submission. IIPA’s previous Special 301 submissions can be accessed at <http://www.iipa.com/countryreports.html>.

to adopt, including procedures and remedies against copyright infringement, and a commitment to join the Geneva Phonograms Convention by the end of 1992. In September 2003, the U.S. government welcomed the European Commission's decision which endorses a political understanding which preserves the U.S. bilateral investment treaties (BITs) with several EU-accession countries, including Bulgaria. This BIT is important as it provides a broad provision on national treatment. Second, the U.S. and Bulgaria exchanged letters in April 1995, in which Bulgaria promised to accede to the Geneva Phonograms Convention "on a priority basis" and to protect U.S. sound recordings published in the last 50 years; 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. Third, the 1995 Title Verification Agreement contained specific enforcement-related obligations, requiring the Bulgarian government to implement optical disc plant licensing and title verification systems. In addition, Bulgaria is a beneficiary country under the Generalized System of Preferences (GSP) trade program.<sup>5</sup>

## **COPYRIGHT PIRACY IN BULGARIA**

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### **Piracy is widespread, with optical disc and Internet piracy on the rise.**

The piracy of U.S. sound recordings and music remains unacceptably high in Bulgaria, with around 80% of all foreign sound recordings sold being illegal copies. There is a large and fast growing pirate CD-R market. This phenomenon has been exacerbated by the fact that there are now three CD-R plants and two DVD-R plants in Bulgaria; therefore the likelihood of blank CD-R production moving straight into the pirate chain of unauthorized burning and distribution is high. Streets and markets in Sofia and other major cities are full of pirated CD-R music, DVD-R music and film. Pre-recorded CDs from Russia, including MP3 collections, are in abundance. Some of the pirated music in CD-R form is imported from Russia and possibly Ukraine, though a greater proportion is likely to come from unauthorized recording onto Bulgarian produced blank media, and does constitute a significant part of the music piracy problem in Bulgaria. Estimated trade losses, not including the devastating effects of sharply growing Internet-piracy in and from Bulgaria, to U.S. companies due to recording piracy in Bulgaria is placed at \$7.0 million in 2003.

The entertainment software industry reports that piracy at Internet cafés has become a major problem. Criminal syndicates appear to be in control of a number of Internet cafés where either pirated or unlicensed entertainment software is in use at these establishments. CD-R burning is also allowed on the premises, with the customer ordering from a catalogue of pirate video games and then making a copy using the café's equipment — all at \$1.00 per copy. These syndicates have also taken to organizing themselves into informal "associations," indicating the highly organized nature of the piracy in this sector. Pirate entertainment software products remain readily available at retail stores and in market stalls and kiosks. While CD-R burning occurs with greater frequency at the Internet cafés, silver (or factory-produced) discs remain the primary form of pirate product in the country, most of which is shipped from Russia, Serbia and Montenegro and the Former Yugoslav Republic of Macedonia. Piracy of cartridge-based entertainment software products is also of concern with pirate and counterfeit product still shipping from China through the United Arab Emirates.

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<sup>5</sup> During the first 11 months of 2003, \$37.4 million worth of Bulgarian goods (or 9.3% 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 44.2% increase over the same period in 2002. The U.S. government is currently reviewing Bulgaria's eligibility under the GSP program; a review of a reverse preferential treatment issue was initiated in 2003.

The Motion Picture Association of America (MPAA) reports that the most significant problem its industry faces in Bulgaria continues to be the threat posed by pirate digital media. Pirate optical discs and the Internet have completely overtaken traditional videocassette piracy. The popularity of home burning has led to an increase in the number of DVD-Rs and CD-Rs on the market, with pirates increasingly choosing to make their own discs rather than run the risk of having their shipments detained by customs. The local anti-piracy organization, BullACT, has seized almost 27,000 CD-Rs containing unauthorized films in 2003. Pirate DVDs from Russia are also beginning to appear on the market with Bulgarian and Russian subtitles. DVDs from the Far East are also available, but they typically contain only Chinese, Spanish and French subtitles. These DVDs are believed to be used for export to Kosovo and Macedonia. Several successful seizures along the border have led to the dismantling of a network that used Bulgaria as a transshipment point for pirate DVDs. Pirate DVDs currently make up 50% of the total pirate optical disc market. In addition, Internet cafes 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 cafes also serve as centers to rip and copy DVDs and to trade film files. It is estimated that Bulgaria currently has over 5,000 cafes that require constant monitoring to ensure that they are conducting legal activities. The distribution of films through informal networks and chatrooms has made the Internet one of the most popular methods for distribution of pirate product. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Bulgaria are estimated to be approximately \$4 million in 2003.

Software piracy remains pervasive throughout Bulgaria, and criminal enforcement is wholly inadequate, according to the Business Software Alliance (BSA). All the CD production facilities in Bulgaria have the capability to produce high quality (silver disc) CD-ROMs loaded either with unauthorized compilations of pirate copies of business applications and entertainment software or single company counterfeit programs. The local market cannot absorb more than a small quantity of this product, and nearly all of it is exported. In the past, pirate software compilations from Bulgaria have been seized in Russia and elsewhere in Central and Eastern Europe. Material has been found in Western European markets, such as Germany, Belgium and the U.K. The domestic software market is flooded with illegal CD-ROMs, both silver and gold, containing a full range of different business software applications published. There is widespread use of unlicensed software in both the corporate and private sectors (end-user piracy). In addition, the practice of distributing illegal software copies on the hard disks of sold computers (HDL/hard disk loading piracy), while still a common practice among Bulgarian resellers, is being increasingly replaced by selling so-called "naked PCs" with an additional service for installation of pirate software at the customer's premises. BSA also reports an increase in use of the Internet for distribution of illegal software.

American books, especially popular fiction and textbooks, continue to be pirated in Bulgaria. Estimated trade losses due to book piracy remain at \$300,000 for 2003.

## **Optical Disc Piracy in Bulgaria Returns**

Optical media piracy has been growing in Bulgaria over the last few years. The domestic market is flooded with pirate optical discs (as discussed above). Domestic overproduction is a more serious problem than illegal imports. Finished pirated discs are mass-imported into Bulgaria. For the last two years, local copyright industry representatives, especially the recording, film and business software industries, have been working with numerous Bulgarian agencies to advocate improvements to the OD regulatory scheme in Bulgaria (see discussion below on legislative reform).

**Local plant capacity:** The number of plants and production lines in Bulgaria has continued to rise. There are now seven plants operating in Bulgaria: CHSL, Media Plant, TOT 2000, Euro Silver Group (Sofia), Media Sys, Optical Storage (Stara Zagora), and Silver First (Plovdiv). Two further plants are believed to be non-operational and unlicensed (the former Unison in Botevgrad and the former DZU plant in Stara Zagora). This means that the seven operational plants — between them having nine (9) lines — plus four non-operational lines, giving a likely operational capacity of some 57 million discs per year, and a potential of 73 million units (if the non-operational lines are included). The legitimate demand for optical discs in Bulgaria (all formats) is far below 10 million copies per annum. This shows that Bulgaria's over-capacity continues to grow exponentially.

OPTICAL DISC PLANTS IN BULGARIA	DESCRIPTION
<b>OPERATIONAL PLANTS (7)</b>	
<b>CHSL</b>	Sofia-based. Has one licensed production line, with an annual capacity of about 3.7 million discs.
<b>MEDIA PLANT</b>	This plant in Sofia has one licensed production line with a capacity of 5.2 million disks annually. Successor from TOT 2002 of the Hemus Group line, and located in Hemus' old location, in premises owned by the Kyralfa mastering plant, whose location remains unknown.
<b>TOT 2002</b>	Successor to Hemus' equipment and location, though sold these to Media Plant and relocated with new equipment to new premises in Sofia.
<b>EURO SILVER GROUP</b>	Sofia-located production line, with both CD-R and DVD-R production capability. The plant has not permitted any visit to the facility to verify machinery and production capacity. A figure of approx. 5 million is estimated.
<b>MEDIA SYS</b>	This is a DVD plant operating in Stara Zagora. Its DVD production line has a maximum annual capacity of about 5.4 million units. There is one mastering facility, which is also licensed and operational.
<b>OPTICAL STORAGE</b>	This is a CD-R and DVD-R production line operating in Stara Zagora, which is understood within the last six months to have acquired three further CD-R/DVD-R lines. Production capacity will have to be confirmed in light of this, though a figure of about 25 million blank media might be expected annually.
<b>SILVER FIRST</b>	This is a CD-R production line operating in Plovdiv, with a production capacity of about 7.7 million CDs or blank CD-Rs annually.
<b>KNOWN NON-OPERATIONAL PLANTS (2)</b>	
<b>VIDEOTON</b>	This is a Hungarian-owned company which purchased the former Bulgarian state-owned DZU plant in Stara Zagora. It had an estimated capacity of 7.4 million discs per year. Reportedly, one of the two production lines is inoperable and the other is not licensed and does not operate. There also is one mastering facility which is not licensed and not operational.
<b>UNISON DCM</b>	This plant in Botevgrad has two lines and an estimated capacity of 7.4 million discs per year; it is not licensed and is not operational.
<b>TOTAL</b>	<b>Estimated 57 million discs per year for the existing 7 plants</b> (A potential of 73 million units per year, if the non-operational lines are included)
Source: IFPI, January 2004	

**Imports and transshipment of piratical products / CD-R piracy:** Bulgaria is still widely used to transship pirate CDs from Ukraine and Russia to the Balkans, Greece and Turkey. Bulgarian government officials have emphasized that the bulk of piracy in Bulgaria is due to piratical imports. The industries disagree, and believe that that attitude is a diversion to draw attention away from the growing domestic production problem, predominately on CD-Rs. It is estimated that around 70% of all optical disc piracy in Bulgaria involves illegally burned CD-Rs.

Plant inspections in October 2003 revealed that whole batches of blank CDs, produced at one Bulgarian plant, disappeared before arriving at the location where the traditional CD-R type information was supposed to be printed on the discs. The authorities were informed but there has been no sign of any follow-up. This discovery confirms the growing suspicion of large-scale burning activity on CD-Rs in underground workshops, with full knowledge and co-operation of certain plants. These burned CD-Rs are subsequently printed with content-related label information and artwork in order to look like originals. This phenomenon also reinforces the need to introduce a SID Code obligation for all blank media, including all equipment and molds/mirror blocks, regardless of whether these are or are not actually used in the production process.

**Organized crime:** The industries report that the link between organized crime elements being involved in OD piracy is blatant and undeniable. There have been highly publicized “turf wars” among various organized syndicates. The Russian syndicates appear to be increasingly involved in some of Sofia hotspots and at the seaside resorts.<sup>6</sup> The fact that organized crime elements are involved in piracy makes it very dangerous for the private sector to take anti-piracy actions. Time and again, 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 the infamous Slaveikov Square in Sofia. Many Internet cafés seems to be heavily controlled by organized crime, using unlicensed and illegal business and entertainment software.

It should be noted that the anti-organized crime agency openly acknowledges the involvement of organized criminal groups in the pirate distribution business.<sup>7</sup> However, their 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. Instead, it focuses on the prohibition of street, outdoor and market sales of optical discs and increased customs controls. Although these are recommendable actions, endorsed by the copyright sector, they fail to address the core of the problem: organized and highly dangerous criminal groups involved in all forms of copyright theft. In this context it is necessary to highlight that the City Government of Sofia introduced strict regulation of street sales of copyright product more than a year ago. This regulation has, however, never been enforced in any meaningful way.

## **COPYRIGHT ENFORCEMENT IN BULGARIA**

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**Interagency coordination efforts:** In November 2002, a new Inter-Ministerial Council for the Protection of Copyright and Neighboring Rights was formed by an ordinance issued by the Minister of Culture. The first Inter-Ministerial Council was formed in 1997, but was abolished in July 2002 when the Council of Ministers repealed the 1997 decree (Decree No. 120/1997) which created it. The council was first organized to better coordinate and direct Bulgaria’s anti-piracy enforcement

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<sup>6</sup> “The Russian mafia conquered Slaveikov Square,” *Noshten Trud*, August 25-26, 2003.

<sup>7</sup> “There is a danger that Bulgaria may be put on the black list,” *Noshten Trud*, January 26-27, 2004.

efforts. It is currently headed by the Deputy Prime Minister, and includes: the Secretary of the Interior; the Deputy Ministers of Foreign Affairs, Industry, and Foreign Trade; the Chief of the Customs Service; and representatives from the Chief Prosecutor's Office, National Investigation Agency, Directorate of the National Police and National Security Service. Other members include representatives from the Ministry of Culture, the Ministry of Economy, the Ministry of Interior and the Customs Service. The industries report that this Council has made no efforts to work with them.

It is quite disturbing that the Bulgarian law enforcement agencies and judiciary still fail to make any significant progress in their enforcement actions, despite the training and assistance provided by both the U.S. government and the E.U. in the last 8-10 years. From their lack of action, let alone *ex officio* action, the continued bottlenecks at the prosecutorial level and the dismal record of court convictions, it is clear that, apart from some rare exceptions, the general attitude of the entire Bulgarian enforcement system with respect to copyright crime leaves very much to be desired. This attitude, which has prevented any effective clamp-down on widespread and blatant piracy, is exacerbated by a continued lack of political will at the government level. The continuing frustration of the legislative process with respect to the new optical disc regulation is just one of many examples of a government policy that is more focused on symbolic action than on introducing and implementing meaningful, strong and effective enforcement legislation and programs.

**Poor enforcement of existing OD plants:** OD plant licenses are issued by the Minister of Economy upon a proposal made by a special Licensing Commission composed of an equal number of representatives from the Ministry of Culture, the Ministry of Interior and the Ministry of Economy. (The Ministry of Industry does not exist separately any more). Regrettably, communication between the Licensing Commission and interested private industry is poor, with licenses being issued and industry not being informed automatically of new lines or plants. For example, on September 23, 2003; a license for CD-R production was given to EURO SILVER GROUP. Production started in October 2003, though the recording industry (BAMP/IFPI) found out about this only in mid-November after contacting the commission. The plant surveillance system — in its latter years showing several exploitable weaknesses — which was supposed to be undertaken by economic police within the Ministry of Interior and its units has all but disappeared, leaving plants unregulated.

Plant licensing and surveillance of licensed facilities alone cannot stop plants from illegal production. Plant licensing will only work if combined with effective title verification, general application of SID-codes, polycarbonate (raw material) and equipment monitoring, involvement of the private sector in the controlling activities, deterrent criminal prosecutions of individuals engaged in commercial piracy, seizures and distribution of equipment used in the course of pirate activity. The government needs to give the Ministry of Culture additional means to carry out proper title verification and post-production controls. This should be made as high a priority as plant surveillance, so that product is not "licensed" without any serious investigation into the ownership of the copyright as required by the TVD and its title verification regulations. Plants which take advantage of the lax title verification system should be permanently closed, and parties presenting fake licenses should be prosecuted. An additional concern is that a licensed manufacturer is able to hold as many molds — including non-coded molds — as they wish, since it effectively is the production of non-coded discs that constitutes an infringement. In the absence of an obligation on the plant to declare and submit molds for examination, and of regular, proactive checks, a plant can undertake illegal production.

Another example of the weaknesses inherent in the current system follows. In October 2003, a check was carried out by NSCOC, the Ministry of Economy and the General Tax Directorate in the CD-R plant Silver First, Plovdiv. It was ascertained that the plant had acquired a



second mold for CD-R replication, and in fact that the Licensing Committee had been informed about this. During the inspection, the plant owners failed to provide production records for CD-Rs, nor any information about the sales of the production. The owners maintained that such information is prepared only in their registered Sofia office. Further, the owners stated that the produced CD-Rs are transported to Sofia and kept in a warehouse, the location of which they were “unaware.” The recording industry is not appraised of whether this matter has been satisfactorily investigated fully. Nonetheless the following conclusions can be reached:

- The plant was able to acquire a further mold, and receive the consent of the Licensing committee.
- Any plant can acquire as many molds as it wishes. Only the proven fact of production of CDs/DVDs without use of a code will be considered an offense.
- The enforcement structures were not empowered to deal satisfactorily with the plant management’s lack of cooperation and obstruction concerning production records, etc.
- The enforcement structures being unable to monitor the extent Bulgarian produced blank media — at any of the plants in the country — is fuelling the huge domestic and regional CD-R/DVD-R problem.

**Seizures of pirate OD media in 2003:** The recording industry reports seizures by various Bulgarian law enforcement agencies of 201,516 pirate optical discs and cassettes in 2003. The motion picture industry reports the seizures of almost 27,000 pirate CD-Rs containing unauthorized films and over 8,400 pirate DVDs.

**Moderately good cooperation with some police actions, but there are exceptions (pre-raid leaks, corruption):** Recent positive developments have been the improved efficiency of the Customs Agency and the cooperation between the General Tax Directorate and the National Service Police Directorate. The motion picture industry reports that BullACT (the local anti-piracy organization) continues to maintain a high level of anti-piracy activities and works well with Bulgarian law enforcement authorities. Several entertainment software companies enjoy positive relationships with law enforcement who are assisting on the significant problems with piracy in Internet cafés. BSA also reports good cooperation with the General Tax Directorate and the police authorities, especially with the IPR section of the National Services to Combat Organized Crime.

However, some police districts within the Sofia region (especially those under the direction of the Sofia Directoria of the Ministry of Interior) remain reluctant to pursue aggressively anti-piracy actions; those actions which they do take are often ineffective. Some police systematically refuse to focus their enforcement efforts on larger targets and only agree to raid small companies and, in the case of software, computer game clubs or Internet cafés. There are a few signs that some police are very slowly beginning to show some signs of shifting the focus of their enforcement efforts from small companies to larger targets. However, pre-raid leaks are very common. The slow and ineffective criminal procedure, the many instances of corruption among both executive authorities and the judiciary establishment, as well as the lack of knowledge and experience in the field of computer software and IT crimes, lead to groundless delays in police investigations and court proceedings. In the area of music piracy it is the unacceptable delays in the expert reports (see below) that have to be prepared by the Ministry of Culture that cause a huge backlog in prosecution cases.

BullACT engages in a high level of activities and enjoys excellent cooperation from the law enforcement authorities. In 2003, BullACT, in cooperation with local law enforcement, conducted 644 investigations and 470 raids. These raids have had a positive impact on the audiovisual piracy

situation, and the film industry no longer suffers from the blatant piracy that used to exist. Audiovisual piracy is still a problem, but it is far less visible than that suffered by other rightsholders.

The recording industry reports that, in 2003, the competent authorities in Bulgaria carried out 869 checks at over 2,000 points, including wholesale and retail points, storage places, production premises (recording facilities), as well as vehicles (during checks at customs), during which they seized a total of 201,516 pirate CDs, CD-Rs and MCs. 108 of those raids have been carried out together with BAMP. 117,084 optical discs and tapes with music, films, entertainment and business software were seized in these joint actions.

The business software industry's enforcement activities have been focused on companies using illegal software in their daily business as well as distribution of software by resellers and hard disk loading and software crimes committed on the Internet. The ongoing good cooperation between the police and the BSA still gives hope that Bulgaria will make progress in the fight against software crimes, start prioritizing larger targets, and improve the collecting and preserving of valuable evidence during raids. In many software cases, the Ministry of Culture's experts fail to attend the court hearings for which they are summoned, leading to the need for re-scheduling and causing additional delays in the proceedings. BSA also reports that as a consequence of a joint initiative by the IP industry, the Bulgarian Parliament approved amendments to the Tax Procedure Code in April 2002 pursuant to which tax authorities are now entitled to review the software licensing status of companies being audited for compliance with tax laws. Unfortunately, the amendments failed to authorize tax inspectors to impose administrative penalties, although the software industry is working with the Ministry of Finance to change the law in this respect. The business software industry stresses that an explicit mandate granting authority to impose sanctions for illegal software use is needed to make this an effective means to fight software piracy.

Entertainment software companies report good cooperation with law enforcement. There is little to no enforcement action, however, taken against high-level suppliers and organized crime syndicate operations. Without the aid of enforcement authorities, investigations into syndicate operations involved in piracy will continue to be extremely difficult for the industry, given the obvious dangers inherent in pursuing actions against criminal enterprises.

**Prosecutions and judicial sentencing remain ineffective and non-deterrent:** This is a continuing bottleneck in pursuing criminal copyright infringement cases. Court cases can still take up to three years to complete, but overall the length of time has been decreasing. In the limited number of convictions for copyright crime, judges have been reluctant to impose deterrent penalties. According to official information from the Ministry of the Interior, only 17 persons were sentenced for copyright crimes under Article 172a of the Criminal Code in 2003. 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. For example, there is no information showing that 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. Every criminal case seems to result in a suspended sentence being imposed as part of the probationary period.

BSA reports that, despite the active enforcement by police, the Bulgarian prosecutors and judges undermine software infringement prosecutions through perverse decisions and motions by returning critical evidence, such as seized computers and hard drives, to defendants, or refusing to accept such items as evidence, although properly seized. In a number of cases, prosecutions have been abandoned altogether, without any apparent cause. In the last four years 150 raids resulted

in criminal trials, and only one of them has been successfully completed with a verdict. Four cases were closed when the prosecution and defense reached a settlement agreement and all others are either pending, abandoned by the prosecutors or terminated by the court. The first end-user case which was completed with a verdict took 3 ½ years to complete, and the 2 defendants were each sentenced to pay a fine of only BGL 1000 (US\$640) – clearly not a deterrent sanction.

The recording industry reports that in 2003, of the 654 raids conducted, the police instituted 209 preliminary police inquiry cases to investigate alleged criminal offenses under Article 172a of the Criminal Code. Eventually, only 13 inquiry cases under Article 172a of the Criminal Code were instituted. The NSCOC sent 44 cases to different prosecutors' offices and 35 proceedings were instituted. Only 17 persons were reported to be convicted for criminal offenses under Article 172a of the Criminal Code 2003 (see above).

**Unwarranted delays in criminal actions:** Criminal enforcement actions which could deter piracy are not being used effectively. BSA, MPA, and the RIAA report unwarranted delays in criminal enforcement actions, in large part because of the time it takes to move a case from the police, through the magistrate investigator, and on to the prosecutor's office to the court. During this time, seized pirate product may deteriorate (creating evidentiary problems if seized materials are no longer in their original condition) and caseloads can become unmanageable. Although the Penal Proceedings Code provides for relatively short terms within which the investigation should be completed (the longest period could be nine months),<sup>8</sup> cases are usually delayed for a much longer time due to the incompetence, corruption and underestimation of the importance of the prosecution of IP crimes. It is important that this process be made quicker and that the courts start imposing stiffer penalties. There are many reasons for delay, including imperfections in the procedural legislation, the low priority given to IPR cases, the inexperience of police and magistrate investigators, and the heavy workload on the part of investigative services.

**Still problems and delays caused by the need for expert reports in criminal proceedings:** After the initial "check" stage of criminal proceedings, the second stage (preliminary investigation/decision to prosecute phase) also 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 Penal Proceedings 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. Besides these problems, the Penal Proceedings Code contains a number of gaps and other discrepancies that create prerequisites for prosecutors and courts to drop cases on procedural grounds. This law should be amended to provide for a fast, uncomplicated and smooth development of the IPR cases that would lead to sentences having an adequate deterring effect.

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<sup>8</sup> Under Bulgarian criminal law, an investigation is supposed to be completed in two months, although the regional prosecutor may prolong the term for an additional four months (and a general prosecutor in very rare instances for three additional months).

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS IN BULGARIA: 2003			
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	SOUND RECORDINGS
Number of Raids conducted			
By Police	473	26	654
By Customs	3	26	10
Number of cases commenced	23		144
Number of defendants convicted (including guilty pleas)	25	26	n/a
Acquittals and Dismissals			n/a
Number of Cases Pending	3		n/a
Total number of cases resulting in jail time	2	26	n/a (nil)
Suspended Prison Terms			n/a
Maximum 6 months	15		n/a
Over 6 months	6		n/a
Over 1 year			n/a
Total Suspended Prison Terms	21		n/a
Prison Terms Served (not suspended)			n/a
Maximum 6 months			n/a
Over 6 months			n/a
Over 1 year			n/a
Total Prison Terms Served (not suspended)	0	26	n/a
Number of cases resulting in criminal fines		26	n/a
Up to \$1,000	25		n/a
\$1,000 to \$5,000			n/a
Over \$5,000			n/a
Total amount of fines levied	US\$12,500	n/a	n/a

**Civil cases do not proceed expeditiously.** The Bulgarian judiciary is notoriously slow and the procedures are to a great extent formalized. Judges are rather inexperienced in adjudication of IPR cases and prefer to drop them on procedural grounds rather than proceed with the hearings.

**Border measures need strengthening.** The Bulgarian market is still facing ongoing imports from Russia, Ukraine and Serbia and Montenegro. Border controls must be significantly improved. 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.

The recording industry reports positive relations with the Bulgarian Customs Agency. In June 2003, Bulgarian customs and the Ministry of Finance destroyed 230,000 pirate optical discs (including music CDs, movie DVDs, and CD-Rs of business and entertainment software). The recording industry (BAMP/IFPI) concluded a Memorandum of Cooperation and Information Exchange with the Customs Agency in July 2003. To the best of BSA's knowledge, there has not been a single suspension pirate software products at the borders in 2003.

Although the 2000 amendments to the copyright law introduced TRIPS border control measures to the Bulgarian legal system, problems remain in its implementation. Industry representatives report that the legislation delegated to implement these provisions, namely the Decree on the Implementation of the Border Control, failed to establish a fast and effective procedure for preventing the movement of infringing goods across national borders. The

procedure is expensive and time-consuming. Consideration of the rightsholder's application for monitoring the movement of a particular product costs, an initial BGN 500 (US\$320) plus an additional monthly fee of BGN 150 (US\$95) for each and every title listed in the application. The applications are not considered on time and counterfeit and pirate goods are shipped over the border before the customs have decided whether to approve the application or not. Significant guarantees and evidence are also requested before taking action. The decree contains grave discrepancies compared with the TRIPS and the Copyright Law provisions, which in practice makes border control unenforceable.<sup>9</sup> For instance, TRIPS requires detention of the goods for 10 days after which time the goods should be released, if the rights holder fails to produce evidence that proceedings on the merits have been initiated (i.e. evidence of a civil case or a civil injunction); the Bulgarian Decree requires both a filing and an application for an injunction. A court decision on a civil injunction application, a rarity in Bulgaria, would usually take much longer than 10 days, thus rendering the provision unworkable in practice. In addition, a recent 2003 amendment to the Decree explicitly excluded parallel imports from the scope of the border control measures. There is general willingness on behalf of the customs agency to work on the border control measures but the imperfections in the legal framework and lack of administrative capacity prevent them from doing so.

## **COPYRIGHT LAW AND RELATED ISSUES**

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### **Law on Copyright and Neighboring Rights (1993, amended through 2002)**

Bulgaria's Law on Copyright and Neighboring Rights entered into force on August 1, 1993. Four years after it promised the U.S. it would do so, Bulgaria adhered to the Geneva Phonograms Convention (in September 1995), thus affording protection to U.S. sound recordings. Further amendments to the copyright law were made in 1994, 1998<sup>10</sup>, 2000<sup>11</sup> and 2002. Bulgaria deposited its instruments of accession to both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty in March 2001.

Amendments to the Bulgarian Copyright Act were passed on July 25, 2002, so that Bulgaria would be in compliance with the EU's directives on copyright, e-commerce, and conditional access. These entered into effect on January 1, 2003. IIPA was informed by our industry colleagues that

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<sup>9</sup> IIPA does not have the text of this decree on border control measures.

<sup>10</sup> IIPA's 2003 Special 301 submission contained a more detailed history of Bulgaria's copyright law amendments; see pp. 359-361 at <http://www.iipa.com/rbc/2003/2003SPEC301BULGARIA.pdf>. The 1998 amendments to the copyright law increased administrative fines imposed by the Ministry of Culture tenfold. However, they also contained two serious problems: (1) they required the placement of holograms on blank audio and video tapes, CDs and CD-ROMs; and (2) they changed the procedures for confiscating infringing copies. These twin problems were resolved by the 2000 amendments.

<sup>11</sup> The 2000 copyright law amendments were aimed to further Bulgaria's efforts to comply with European Union Directives, TRIPS and partially with the WIPO Internet treaties. Industry reports indicate that these amendments provided for a longer term of copyright protection, a new communication right, provisional measures, and border control measures. They also provided administrative sanctions for tampering with rights management information and for the manufacturing and distribution of decoding devices without the consent of the copyright holder. Amendments also were made which prohibited circumvention devices and the possession of pirate product. Rightsholders were granted the right to claim additional damages calculated on the basis of the revenue from the infringing act, the value of the infringing goods at retail price (of the legitimate copy), or pre-established damages instead of compensation.

these amendments contained a good number of positive improvements, including a requirement for obligatory licensing of CD manufacturers to be outlined by the Council of Ministers<sup>12</sup> (see discussion of OD legislation, below).

Despite some progress in the 2002 amendments, the legislation did include several troubling provisions and left gaps in what the copyright industries view as proper implementation of the WIPO treaties. For example:

- The right of “communication to the public” for producers of sound recordings is only a right of remuneration. Producers should have the exclusive right to authorize any communication to the public of their sound recordings by wire or wireless means. Unfortunately, “communication to the public” is difficult to translate directly into Bulgarian. Confusion may arise from a provision in the law according to which remuneration collected for public performance and broadcasting of phonograms is split equally between performers and producers.
- The scope of the “making available right” extends to “an unlimited number of people” instead of a more clearly defined and limited “public.”
- The law only contains two of the three-step TRIPS Article 13 test for limitations.
- The private copying exception under Article 25 which applies *mutatis mutandis* to producers is problematic because it does not contain the restriction that the reproduction is for ends that are neither directly or indirectly commercial. This provision also is misleading by stating that private copying can be done “without compensation” and at the same time a levy mechanism is established in Article 26 for blank media and recording equipment.
- Fines provided under administrative and criminal sanctions are too low and not deterrent. In addition, the new provisions on technological protection measures<sup>13</sup> and rights management information<sup>14</sup> appear to lead only to administrative and criminal sanctions, there is no civil

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<sup>12</sup> The 2002 amendments accomplished the following positive improvements: A new chapter on database protection was added; the definition of the distribution right was revised; revisions/refinements were made to existing exceptions to protection; criminal sanctions and administrative sanctions (fines) for violations involving technological measures of protection were added; the term of protection of sound recordings was redefined (it still 50 years, but is calculated in conformity with provisions of the EU directive); amendments regarding the collection and distribution of the reprographic levy and the blank tape levy were made. Additional amendments were made to the provisions involving transfers of rights and the administration of collecting societies. Also introduced was national exhaustion of the distribution right, which prohibits “parallel imports.”

<sup>13</sup> Industry colleagues report that the provisions on technological protection measures under Article 97(6) are unsatisfactory as they do only establish criminal liability and only fines are imposed on the infringer. Also the provisions do not cover the scope of protection as required under the EU Copyright Directive. The proposed amendments to the provision do not solve this problem. **Neither the current law nor the draft provisions** include a definition of “effective technological measures” as established under Article 6(3) of the Copyright Directive. With respect to the act of circumvention of technological measures itself the draft provisions introduced in Article 148 (6) a knowledge requirement which is not in the current provision in Article 97(6) at all and which is not in line with Article 6(1) of the EU Copyright Directive, which requires knowledge or reasonable grounds to know that the person is pursuing that objective (i.e., the circumvention). Article 148(6), however, refers to knowing or having reasonable grounds that these [circumvention] devices are primarily designed for such purpose. **The draft amendments** introduce a provision with respect to trafficking in circumventing devices and services which is not included in the current law. However, it lacks the element of Article 6(2)(a) and (b) that describe the elements of circumventing devices and services. Regarding the acts prohibited in Article 6(2) of the directive, **the proposed amendments**, only the element of “advertising” for sale or rental is missing; it does however, include the element of “offer” for sale and rental alongside sale and rental itself.

<sup>14</sup> With respect to rights management information, the new Article 148 (9) is in line with the definition as established in Article 7 of the EU Copyright Directive. The scope of the protection is restricted by a knowledge requirement which is not in line with Article 7 of the EU Copyright Directive. In the directive, knowing or having reasonable grounds to know refers

liability, and all are subject to a “primarily designed test” (thus limiting its usefulness).

- The term of protection for sound recordings remains at only the TRIPS *minima* level and should be extended. In fact, the term of protection for works or objects of neighboring rights protection whose term is not measured by the life of the author should be 95 years from publication.
- Another troubling problem is the maximum duration of agreements for the transfer of rights, which was originally introduced in the 1993 Copyright Law. Proposals to eliminate this transfer provision were made twice (in 2000 and 2002), but were not accepted.
- There is a mandatory fall-back/return of exclusive rights to authors and performers after ten years.
- Contractual arrangements for the transfers of rights which exceed ten years in duration are considered void;
- There is an exception from the importation and exportation right for amounts of less than commercial quantities;
- The ephemeral recording exemption for TV and radio organisations does not clearly require that the reproduction should be done by means of their own facilities. It also lacks any regulation with respect to the recordings made and does not require the broadcasting organization to destroy the recordings within a certain time limit.

### 2003 Proposed Optical Disc Law

In mid-2002, copyright sector representatives, joined by U.S. government and EU officials, expressed opposition to Bulgaria’s attempts to rescind and/or reconfigure some of the key decrees which regulate optical disc production in Bulgaria. First, the CD plant licensing regime (Title Verification Decree No. 87/96) was threatened to be abolished, but such a result was avoided. The industries also pressed hard to avoid turning the TVD into a registration system.<sup>15</sup> Obtaining this result was a major victory. However, deregulatory zeal resulted in a decision by the Council of Ministers on November 14, 2002 to abolish the system which tracked the importation of optical disc grade polycarbonate and stampers (Decree 233/2000). The copyright industries, along with the U.S. government and European Union, objected to this deregulation because the obligation to register the importation of optical disc grade polycarbonates and stampers is an essential element for the accurate and effective enforcement of an optical disc law.<sup>16</sup> The global copyright community

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to the enabling, etc., of an infringement of copyright or related right. The provision in Article 97(7) and the draft provision in Article 148(8) require that the person must know or have reasonable grounds to know that the rights management information has been removed or modified without authority.

<sup>15</sup> The Bulgarian government passed Decree 87/96, the Title Verification Decree (TVD) in April 1996. It provides for a verification procedure in regard to the reproduction and distribution (including exportation) rights of sound and video recordings, as well as for an obligatory registration at the Ministry of Culture’s Copyright Department of all applications for the manufacturing of sound and video carriers containing protected material. The TVD was further amended in 1997 to explicitly cover the registration of CD-ROM manufacturing. However, the adopted measures proved insufficient in reducing the illegal manufacturing of pirated optical media. As a result, amendments to the TVD were passed by the Bulgarian government and new plant licensing procedures of operation were introduced in 1998. Later, the decree was once again amended to cover not only the licensing of CD manufacturers, but also those who manufacture matrices/stampers for CD production. Also in 1998, the Council of Ministers adopted more amendments to Decree 87/96 to stop all CD production at each plant until such plants could be licensed under new procedures of operation.

<sup>16</sup> In 1998, Bulgaria adopted legislation to monitor the trafficking of polycarbonate, the material used to make compact discs. Decree 271/98 amended 1977 legislation regarding export and import-related trade policies. The monitoring of the trafficking of polycarbonate was established with Decree 493/1997, in force from January 1, 1998 till December 31, 1998.

has agreed that the key elements of an effective optical disc law include at least 11 elements (which were fully outlined in IIPA 2003 Special 301 report).<sup>17</sup>

The 2002 amendments to the Bulgarian Copyright Law provide for obligatory licensing of CD manufacturers, as well as the terms and conditions for the production and distribution of CDs and other carriers containing subject matter of copyright and neighboring rights. The Council of Ministers is charged with developing such terms and conditions. In redrafting the legal basis for OD manufacturing control, the copyright industries have urged that Bulgaria should take care to safeguard the previous achievements and take the opportunity to improve the system to address those weaknesses that have become apparent over time. In November 2002, the drafting of a new decree began, with the Ministry of Culture in the lead. On February 7, 2003, a draft was circulated to other ministries. However, this procedure was aborted in order to await the adoption of the General Law on Regulating Economic Activity.

In the summer of 2003, the Minister of European Integration launched a new initiative to introduce an optical disc regulation before the end of the year. A government working group was urgently established and started working on a draft without in any way properly consulting with the copyright industries and disregarding the bulk of recommendations made during the previous drafting process in 2002. In December 2003, a “Draft Law on the Administrative Regulation of the Manufacture and Trade with Optical Discs, Matrices and Other Carriers Embodying Subject of Copyright and Neighboring Rights” was approved by the Council of Ministers, and was forwarded to the Bulgarian Parliament in January 2004.<sup>18</sup> During the last four months of 2003, copyright sector representatives informed all participants of the working group of the obvious shortcomings in their draft and once again proposed concrete amendments. However, none of the industries’ key recommendations were reflected in the version which was adopted by the Council of Ministers. With respect to this latest draft legislation, IFPI/BSA have identified at least four specific areas where reform is essential.

- Most importantly, a SID code obligation is needed for all optical discs produced in Bulgaria, and this must include blank discs (CD-R, DVD-R, etc.). First, the requirement to have SID codes on blank CD-R relates to ensuring that there is an obligation for SID codes to be etched on all of the relevant replication machinery, molds, etc. This way, a plant owner can

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Appendix 1 provided that subject to registration are *imports* of polycarbonates and stampers and *exports* of computer software and CD-ROMs as well as audio and video carriers. Decree 271/98 (in force from January 1, 1999 till December 31, 2000) amended the 1998 legislation and provided for registration only of imports of polycarbonates and stampers. In case of import of polycarbonates, the agreement with the final consignee was required. In case of import of stampers, registration under the Title Verification Decree of the reproduction and distribution rights in the works which might be reproduced from the stamper was required. Decree 233/2000 (in force from January 1, 2001) replaced the 1998 legislation without alterations to the established registration regime. Industry representatives had reported that it was not possible for an individual to place a direct order for polycarbonate for delivery to Bulgaria. Those who place legitimate orders have their shipments examined by customs officials and must show their required permit from the Ministry of Economy’s Trade Division. The registration system was abolished by the Council of Ministers with amendments to Decree 233/2000 in November 2002 (the registration of imports was deleted).

<sup>17</sup> IIPA believes that the following 11 elements are critical to an effective optical disc regulatory system: (1) licensing of facilities; (2) licensing of export/import of materials; (3) requirement to apply manufacturer’s code; (4) license record-keeping requirements; (5) registration requirement for commercial optical disc duplication; (6) plenary inspection authority; (7) search and seizure authority; (8) government record-keeping requirements; (9) criminal penalties for violations; (10) possibility of withholding, suspending, or revoking a license for prior copyright infringement, fraud in the application process, or violation of the optical disc law/regulation; (11) possibility of closure of the OD plant.

<sup>18</sup> The discussion herein is based on reports of local copyright experts and industry representatives in Bulgaria; an English translation of the draft legislation is not available.



not possess a clean mold and tell the authorities that it is only used for blank CD-Rs. In addition, it is useful to have blank CD-Rs identified so that if that disc is used to manufacture pirate product, the chain of distribution may be uncovered. (The industries had earlier received some reassurances that this would be included in the draft legislation, but unfortunately it was omitted from the version adopted by the Council of Ministers.)

- It must be clear that private sector experts shall at all times and unconditionally be permitted to participate in plant inspections;
- Additional, enhanced rights and competencies are needed to permit inspectors to search premises, investigate documents and equipment and seize, for further investigation, all relevant materials;
- A full-fledged import-export registration system is needed for optical disc grade polycarbonates and other essential raw materials as well as equipment for optical disc production, including matrices (the industries are asking only for a registration scheme, not a licensing regime). The various local copyright industries question whether the polycarbonate import is being analyzed alongside—and cross-referenced with—declared production levels. It is also important that the resale or movement of imported polycarbonate within Bulgaria must be tracked carefully in order to counteract illegal production.

This proposed OD legislation contains very serious gaps and inconsistencies, even compared to the currently existing licensing regime. If adopted by the Parliament as is, it will likely result in fostering — not hindering — conditions for the re-emergence of local production of piratical optical discs containing copyrighted materials. Discussions among Bulgarian ministries continue on this legislation, and the copyright industries will continue to press for the strongest solutions to ensure a comprehensive and effective OD regulatory system.

### **Title Verification Decree (1996, as Amended)**

There are two components of the TVD. First, there is the Title Verification System; the current system contains three levels of verification with the Copyright Department of the Ministry of Culture.

- The first level of verification requires the obligatory registration of the rights for reproduction and distribution of sound and video recordings. Each person (physical or legal entity) who has acquired such rights should file an application for registration together with a copy of the license agreement under which the rights have been granted or copies of the contracts with the authors and the performers whose works and performances are embodied in the sound or video recordings. Sound and video recordings cannot be reproduced and distributed in any form prior to registration. This system for verification does not apply to software, only to sound recording and audiovisual works (video recordings).
- The second level of verification requires the obligatory registration of all orders for manufacturing of matrices (stampers), recorded CDs and other sound and video carriers embodying subject matter of copyright and neighboring rights, including software. Under this registration system, the manufacturer should obligatorily submit an application for verification of the legitimacy of the order to the copyright department. The application should be accompanied by a copy of the contract for placing the order, information on the titles, and a copy of the plant license. Again, the plants are not allowed to manufacture any units prior to receiving permission from the Ministry of Culture.
- The third level of verification requires the obligatory registration of all facilities for manufacturing of sound and video carriers embodying subject matter of copyright and

neighboring rights excluding the CD manufacturing facilities, which are subject to licensing under the plant licensing system.

The second component of the TVD is the Plant Licensing System, which provides that each CD and/or stamper manufacturer should obtain a government license to operate as such. The license is granted by order of the Minister of Economy upon approval of an inter-ministerial licensing committee including representatives of the Ministry of Culture, Ministry of the Interior and the Ministry of Economy. The application for obtaining such license should be accompanied by documents for the company's incorporation, tax registration, the Ministry of Culture's certificate for the installation of SID code, etc. The CD or stamper manufacturing license is valid for one year and cannot be extended.

## **Criminal Code**

The levels of fines for copyright piracy were established in the 1995 penal legislation. In 1997, the fines provided for in the Penal Code were increased by amendment to Article 172(a), so that the fines for a first offense range from a minimum of US\$641 (1000 BGL) to a maximum of US\$1,922 (3000 BGL), and for a second offense from a US\$1,922 (3000 BGL) minimum to a US\$3,200 (5000 BGL) maximum. The fines for administrative remedies (provided for in the 1993 copyright act) were also too low: about \$12 to \$112 for a first offense, \$56 to \$280 for a second offense. These were amended (in January 1998), raising the administrative fines to US\$1,280 (2000 BGL) for a first infringement, and to US\$3,200 (5000 BGL) for a second infringement. Although these amendments are improvements, the penalty levels are still too low to act as deterrents to commercial crimes. IIPA acknowledges that a major impediment to the imposition of criminal penalties was eliminated in 1997, when the element of proof that an infringer committed a crime with a "commercial purpose" was deleted from Article 172(a).