

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2002 SPECIAL 301 REPORT

# BULGARIA

### EXECUTIVE SUMMARY

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IIPA recommends that Bulgaria be added to the Special 301 Watch List in 2002. Certain copyright sectors report resurging problems with the production, distribution, and importation of optical disc media, which requires heightened bilateral attention. By not providing effective enforcement against this piracy, Bulgaria is in breach of its TRIPS enforcement obligations and of the two bilateral agreements with the United States.

Bulgaria made important strides in 1998 regarding the enforcement of its plant-licensing regime in order to curb its major piracy production, distribution and export problem that was threatening markets throughout Europe. During the mid-1990s, Bulgaria was one of the world's leading exporters of pirated goods, especially optical media products of music and software (CDs and compilations on CD-ROMs containing business and entertainment software). In response to mounting international pressure, legal reforms were adopted to regulate the production and distribution of optical disk media to prevent the spread of illegal material. The Bulgarian government acted to reduce illegal production, permanently closing several plants and temporarily shutting down others.

It is true that Bulgaria has accomplished many legislative reforms to amend its copyright law and criminal laws and adopt new legislation on CD plant verification. On a positive note, Bulgaria has deposited its instruments of ratification for both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The copyright law amendments of 2000 went far toward implementing many of these WIPO obligations. Nevertheless, the practical enforcement situation in Bulgaria is worse than ever and needs substantial improvement.

**BULGARIA: ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1996 – 2001**

INDUSTRY	2001		2000		1999		1998		1997		1996	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	3.0	20%	3.0	25%	4.0	25%	4.0	35%	5.0	80%	9.7	80%
Sound Recordings / Musical Compositions	3.0	65%	NA	NA	NA	NA	125.0	90%	95.0	85%	105.0	80%
Business Software Applications <sup>1</sup>	9.4	81%	8.1	78%	9.1	80%	10.7	93%	8.4	87%	12.9	94%
Entertainment Software	NA	84%	NA	NA	NA	NA	66.5	99%	62.0	94%	58.2	95%
Books	0.3	NA	NA	NA	NA	NA	0.5	NA	0.5	NA	0.4	NA
<b>TOTALS</b>	<b>15.7</b>		<b>8.1</b>		<b>NA</b>		<b>207.7</b>		<b>13.0</b>		<b>9.7</b>	

## SUMMARY OF BILATERAL IPR ENGAGEMENT<sup>2</sup>

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 to adopt, including procedures and remedies against copyright infringement, and a commitment to join the Geneva Phonograms Convention by the end of 1992. Bulgaria adopted a new copyright law effective August 1, 1993, but the law was deficient when compared with the bilateral obligations. Neither it nor the Bulgarian penal code authorized the imposition of significant criminal sanctions such as imprisonment of copyright pirates or appropriate confiscation provisions; and it failed to protect foreign sound recordings, thus rendering Bulgaria ineligible to join the Geneva Phonograms Convention as it had promised.

Given the devastating problem of Bulgarian CD production and exports, in February 1995 IIPA asked USTR to designate Bulgaria as a Priority Foreign Country and to withdraw Bulgaria's preferential trade benefits under the Generalized System of Preferences (GSP) program. Faced with the prospect of sanctions under Special 301, and aided by a change in government in Sofia, Bulgaria moved quickly to address the issues highlighted in IIPA's filing. On the eve of USTR's 1995 Special 301 decision, the U.S. and Bulgaria exchanged letters 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.

<sup>1</sup> BSA loss numbers for 2001 are preliminary.

<sup>2</sup> For further details on the history of Bulgaria's appearance in the Special 301 context, please refer to appendices D and E of this filing.

As a result, this second bilateral agreement, the 1995 Title Verification Agreement, provided for specific enforcement obligations on the part of the Bulgarian government to implement plant licensing and title verification systems. In April 1996, the Bulgarian government passed Decree 87/96 (the Title Verification Decree/TVD). This decree 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. Due to this, in February 1998, new amendments to the TVD were passed by the Bulgarian government and new plant licensing procedures of operation were introduced. Later in the same year the decree was once again amended to cover not only the licensing of CD manufacturers, but those who manufacture matrices/stampers for CD production. In February 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.

Piracy and export problems remained severe, and IIPA again recommended in February 1998 that Bulgaria be designated a Priority Foreign Country under Special 301. With the possibility looming of a PFC designation in April, the Bulgarian authorities finally took action to enforce the TVD and to start to control the production and distribution of pirate CDs by Bulgarian plants by first closing all of them and re-opening them only upon compliance with the newly introduced TVD plant licensing system. USTR decided to keep Bulgaria on the Priority Watch List in April, and conducted a six-month out-of-cycle review later that year to monitor the progress and success of these production controls. Satisfied that progress was being made, USTR announced in November 1998 that it was moving Bulgaria to the Watch List, a placement supported, albeit cautiously, by IIPA. At the time of that announcement, both USTR and IIPA agreed that title verification had to be significantly improved, and that additional controls on optical media production were required. In USTR's April 1999 Special 301 announcement, progress in Bulgaria was noted, and in recognition of its "firm commitment to effective enforcement" of its IPR laws and its roles as serving as "a model for other economies which are at risk of developing unwanted production capacity of pirated optical media," Bulgaria was removed from all Special 301 lists.

Bulgaria also participates in the U.S. trade program, the Generalized System of Preferences (GSP), which contains a criterion that eligible countries must provide "adequate and effective" IPR protection to U.S. copyright owners. In 2000, \$15.3 million of goods from Bulgaria entered the United States under the duty-free GSP code, accounting for 6.6% of its total imports to the U.S. For the first 11 months of 2001, \$18.6 million of Bulgarian goods (or 5.8% of Bulgaria's total imports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 33.5% increase over the same time period last year.

## **COPYRIGHT PIRACY IN BULGARIA**

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### **Optical Media Developments**

For four years leading up to March 1998, the principal piracy problem in Bulgaria was the

escalating pirate production and export of copyrighted material – principally sound recordings and computer software – on compact disks. By March 1998, CD manufacturing capacity had grown from a few million to almost 70 million units per annum. Copyright piracy in Bulgaria completely paralyzed the domestic market and export of pirated optical disks seriously disrupted markets throughout the world. The introduction of the TVDs plant licensing system in February 1998 had a significant impact on the situation in Bulgaria and its main export markets. As a result, pirate production was limited, CD plants were put under surveillance by economic police officers, and the main offending plant (UNISON, Botevgrad) was closed.

As a result, most of the plants received a production license and were at least temporarily operational. However, today there are only two licensed CD plants still in operation: CHSL located in Sofia (Boyana residential area) and the Hemus Group, also located in Sofia. Both plants have one line each and a total annual production capacity of approximately 12.5 million units.

With an annual optical disk production capacity much higher than the demand of the local market and growing production of gold CDs (recordable CDRs), Bulgaria remains a potential source of CD and CD-ROM based piracy in Europe. At the end of 2001, Bulgaria still had one mastering facility. Apparently as a result, however, of the identification of a consignment being exported by the plant which indicated its involvement in the production of unauthorized stampers, this mastering facility has left the country and its license has been revoked. Unfortunately, the export of these mastering facilities was unimpeded by the Bulgarian authorities, despite the clear involvement in illegal replication activity. As a result, there are currently no licensed CD mastering facilities operational in Bulgaria.

## **Traditional Piracy and Internet Piracy in Bulgaria**

The piracy of U.S. sound recordings and music remains unacceptably high in Bulgaria even with the significant progress made in 1998. Until mid-1998, Bulgarian-made pirate CDs (an estimated 90% of the output of Bulgarian plants) were being exported, with impunity Worldwide. Since 1998, Bulgaria has become an import market swamped with illegal CDs from Ukraine, Russia and Montenegro. In addition, there is a large and fast growing pirate CD-R market. And, as indicated above, the Bulgarian mastering facility has been involved in the production and export of illegal masters). Piracy of foreign recording is estimated to have hit on all-time high in 2001 with 95% of all foreign sound recording sold being illegal copies. The overall piracy level in Bulgaria for all repertoire is 65%. Estimated trade losses to U.S. companies due to recording piracy in Bulgaria is placed at \$3.0 million in 2001.

The motion picture industry reports that video piracy in Bulgaria was substantially curtailed in 2001. MPA reports an optical disc piracy rate of 15%; optical disc retail piracy at the moment can be found at flea markets and in the streets. Broadcast and cable piracy, though in sharp decline, are also an issue. Web-based piracy is only beginning to emerge. Pre-theatrical and pre-video release piracy has been curtailed, but still requires attention. There are no large illegal duplicators based in Bulgaria. Pirate product is sold by a small number of street vendors, flea markets and retailers. The rental of back-to-back copies can still be found in approximately 8-10% of all retail outlets, particularly smaller ones dispersed throughout the country. Small video retail stores are constantly in the process of merging with each other. Such consolidation has had a positive effect on piracy levels. The copying of VCD masters imported from Asia and Ukraine onto videocassettes and CD-ROMs is also a problem. The quality of counterfeit products is becoming so high that it is almost impossible to distinguish them

from originals. The vast majority of pirate VCDs seized (5,868 in 2001) was imported or was passing through the country. The shipments come from or are destined to neighboring countries – Turkey, Yugoslavia, Romania and Macedonia. There is some home production of CD-ROMs containing films, but most illegal optical discs are imported.

Since 1996, Bulgarian film licensees have been obliged to present agreements under which they have acquired the rights to reproduce and distribute films to the Copyright Department and to complete a declaration affirming these rights. Production orders for video carriers and duplication facilities must be registered at the Copyright Department and the Ministry of Industry. The Decree, as amended in 1997, also requires the registration of broadcasting and cable rights.

Due to the efforts of BullACT, the local anti-piracy organization, and the enactment of a 1998 Radio and Television Law providing for the licensing of broadcasters and cable operators, the level of television piracy has fallen dramatically, to about 10%. The illegal transmission of television programs is no longer present in larger cities, but can still be found in smaller, remote towns where some cable operators transmit nonencrypted television programs that include foreign motion pictures. Finally, three cases of pirated hard goods (VCDs) being marketed on Bulgarian Websites have been uncovered in 2001. Internet penetration is still at a low level but increasing. Most pirate cases concern music and computer games. The program has also raided two computer clubs where movies were downloaded from the Internet and offered for public viewing. BullACT views Internet piracy as an increasing problem that will grow once Internet connections improve. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Bulgaria are estimated to be \$3 million in 2001.

Software piracy remains pervasive throughout Bulgaria, and criminal enforcement is wholly inadequate. The Business Software Alliance (BSA) estimates losses to U.S. producers of business applications at \$9.4 million for 2001, with a piracy rate of 81%. 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 also been found in Western European markets, such as Germany, Belgium and the U.K. In addition, the domestic software market is flooded with illegal CD-ROMs, both silver and gold, containing a full range of different business software applications published.

The illegal production of optical media containing business software is only a part of the problem. The definition of software piracy also extends to the widespread use of unlicensed software in both the corporate and private sectors (EU/end-user piracy). In addition, the distribution of illegal software copies on the hard disks of sold computers is still a common practice among Bulgarian resellers (HDL/hard disk loading piracy). Finally, the Internet is increasingly used for the distribution of illegal software (Internet/online piracy). The business software industry reports that despite the broad legislative reform in the IPR field that has taken place in Bulgaria, the software piracy problem has not diminished. Ineffective implementation and enforcement of the new laws has kept the piracy rate at an unacceptably high level. As a result, within the last three years, out of over 90 criminal prosecutions filed, only one has produced a court sentence and the others, despite BSA's efforts, are not likely to be brought to court in the foreseeable future. There are clear signs of increased illegal activities, both with regard to the local manufacturing of pirated optical discs and to the use and distribution of unlicensed

software.

For the entertainment software industry, market stalls and regular retail outlets selling pirate videogame products are a key problem. Burn-to-order shops are commonplace. Internet piracy is growing and Internet burn operations are increasing too. Newspaper advertisements also flaunt CD burning of game software. The Interactive Digital Software Association (IDSA) reports that illegal entertainment software, in all formats, assembled in Bulgaria is continuing to be exported and sold throughout Eastern Europe. Reports indicate that all of industrially produced pirate CD-ROMs (silver discs) are being imported from Russia. Local CD-burning operations (using gold discs) range to up to 35-40% of the market, depending on the platform. IDSA estimates that the 2001 videogame piracy level in Bulgaria is 84%. Estimated trade losses due to videogame piracy are not available.

The book publishing industry indicates that Bulgaria, like other Eastern European countries, has experienced pirating of American books, especially popular fiction and textbooks, for years. Estimated trade losses due to book piracy for 2001 are \$300,000.

## **COPYRIGHT ENFORCEMENT IN BULGARIA**

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In summary, the key elements for effective action are: (1) continued vigilance by the Ministry of Interior in enforcing the plant licensing decrees; (2) effective implementation of title verification; (3) the application of raw material (polycarbonate) monitoring both at the plants and by customs officials, in compliance with the decree of March 1998; (4) effective, expeditious criminal prosecutions and the imposition of deterrent penalties for all forms of piracy; and (5) implementation of effective anti-corruption measures within the enforcement authorities and the judiciary; and (6) more active and regular involvement of policy forces in cooperation with rightholders to conduct targeted raids throughout the country.

In 1997, an Inter-Ministerial Council for the Protection of Copyright and Neighboring Rights was organized to better coordinate and direct Bulgaria's anti-piracy enforcement efforts. The Council, headed by the Deputy Prime Minister, is broadly based 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. Despite the high expectations of the IP industries, the council has failed to achieve the goal it was established to obtain. In the past four years of operation, none of its motions have brought any concrete results; its sessions have not been attended by the designated top officials; and its lack of cooperation with IP industry representatives has prevented it from becoming an efficient tool in fighting the Bulgarian piracy problem.

Additional agencies also concerned with IPR protection, in one way or another, include: the National Radio and Television Council, the Ministry of Culture, the Ministry of the Interior, the Ministry of Finance, the Ministry of Justice and European Legal Integration, the Ministry of Education and Science, the Ministry of Public Health, and the General Tax Administration Directorate.

Finally, although the Council for Protection of Copyright and Neighboring Rights established a task force to fight software crimes and offenses in June 2001 to increase the efficiency of the prosecution of software crimes, the task force had only two sessions in 2001 without any result

whatsoever. The newly elected government is supposed to pass a decree designating the new members of the council and the task force, which has not yet happened.

## Title Verification and CD Plant Licensing

To review, Bulgaria adopted a title verification system in 1996 to crack down on illegal production (Decree 87/96). The major statutory deficiency in the title verification system at that time was corrected in April 1997, when the decree was amended to include the registration of CD-ROM manufacturing (even though it was limited to manufacturing, not distribution orders). With 1998 amendments to Decree 87/96, a plant licensing system was introduced, and provided that only plants with a production license are allowed actually to start CD production after having obtained the necessary license from the Ministry of Economy.

Beginning with the March 1998 crackdown, the Ministry of Interior was quite successful in implementing the TVDs plant licensing system.<sup>3</sup> This implementation included a plant surveillance system undertaken by economic police officers working under the Ministry of Interior. Effective in July 1998, Decree 87/96 was further amended to regulate stampers under the same procedures (licensing and title verification), which combined with regulations on raw material imports should improve the regulation of the plants if properly enforced.

The recording industry reports that the plant licensing regulations are still implemented. The licenses are issued by the Minister of Economy upon a motivated proposal made by a special Licensing Commission composed of 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). The plant surveillance system is undertaken by economic police within the Ministry of Interior and its units. Here is a summary regarding the CD plants:

- The state-owned DZU plant in Stara Zagora has been sold to the Hungarian company VIDEOTON. One of the two production lines is inoperable the other is not licensed and does not operate. There is one mastering facility – not licensed and not operational.
- CHSL plant in Sofia has moved from the premises belonging to the state recording company (Balkanton) to its own premises in Sofia. It has one licensed production line, operational, with an annual capacity of about 5,5 million disks.
- SMC plant in Veliko Turnovo as well as the second SMC in Sofia have been liquidated and the lines exported.
- PUL CD in Plovdiv is not licensed, the line has been exported.
- UNISON CDM in Botevgrad with two lines is not licensed and not operational.
- HEMUS GROUP in Sofia is a production line, which appeared mid last year and was licensed in October 2001, operational, with a capacity of 7 million disks annually.
- OPTICAL DISC is a CD-R production line operating in Botevgrad, with a production capacity of about 7million blank CD-Rs annually.

All statistics on the number of orders for CD manufacturing can be obtained from the public register that the Copyright Dept. is obliged to keep. If correctly implemented no illegal orders should move forward. Unfortunately, the Ministry of Culture does not properly carry out the obligatory title

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<sup>3</sup> At that time, the 5 Bulgarian CD plants were temporarily closed, pending compliance with the licensing regulations. In early 1999, there were 5 known CD production facilities in Bulgaria that had been licensed since March 1998. Those licensed plants had a total of 11 CD production lines (7 mono-lines and 2 twin-lines) with a potential annual production capacity of over 40 million units.

verifications. As a result production orders have been incorrectly licensed for unauthorized material. It still happens too often that the Ministry of Culture issues licenses for the production of CDs, based on false documents and without having carried out any investigation prior to granting the production license. The practice of granting specific production licenses without proper investigation and the backlog at the Ministry of Culture remain the biggest loopholes in the plant licensing scheme. Further, there are no effective sanctions for noncompliance with title verification; there are only very small administrative fines.

But 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) monitoring, 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 use its authority to make proper title verification and post-production controls by the Ministry of Culture 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. The Bulgarian Government needs to work closely with the industries to make the title verification system one that is efficient and effective.

## **Polycarbonate Monitoring and SID Codes**

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. This 1998 Decree requires, in pertinent part, that every deal whereby the goods listed in its Appendix 1 are brought, imported, exported or re-exported from Bulgaria is subject to registration. Polycarbonate material (as well as computer software on CD-ROMs, audio and video carriers and stampers) was added to this appendix. Industry reports indicate that it is 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 raw materials for the CD plants are being closely monitored.

## **Criminal Enforcement in Bulgaria Needs Substantial Improvement**

### **Police Actions: Some cooperation, some problems**

The recording industry reports that in 2001, 410 police raids were conducted against pirate retail outlets, during which 954 points were checked. Over 100 of those raids have been carried out together with BAMP/IFPI Sofia. Some 172,098 pirate units were seized in these actions.

The motion picture industry reports that, despite high crime rates and Bulgaria's challenging transition to a free market economy, BullACT's activities against video piracy remain strong. Most of the notorious pirate video shops have been closed following joint raids by the police and BullACT. Nevertheless, raids and checkups are continuing to be performed in order to keep piracy rates low. For example, in mid-December 2001, BullACT and police conducted a series of raids against a popular market in Slaveykov Square in Sofia in which over 800 pirate optical discs containing movies were seized, along with other counterfeit products. In 2001, BullACT conducted 197 raids against markets,

Internet sites, duplication labs, and VCD/DVD retailers. The percentage of rental piracy product is now about 20%, and more video stores than ever before are stocking only legal product. BullACT has also begun to see home production of CD-ROMs containing movies. Cable piracy substantially decreased in 2001. Continuing cooperation between the police and BullACT gives reason to believe that the Bulgarian authorities will continue to take the enforcement measures needed in the fight against piracy.

The BSA rejuvenated its enforcement program in Bulgaria in September 1999. At that time the software piracy rate in Bulgaria was over 90%. The software industry's enforcement activities have been focused against 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. From 1999 till the end of 2001, the police, with the substantial assistance of the BSA, have conducted 98 raids. Of these, 74 cases involved end users, 11 involved CD resellers, 11 involved hard disk loaders and 2 involved firms pirating via 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.

BSA and RIAA report that, although the police are generally cooperative, they systematically refuse to focus their enforcement efforts on larger targets and only agree to raid small companies and, in case of software, computer game clubs or Internet cafes. 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 that have to be prepared by the Ministry of Culture that cause a huge backlog in prosecution cases.

### **Prosecutions and judicial sentencing are ineffective and non-deterrent**

MPA reports that no defendant has received an actual jail sentence. However, every criminal case results in a suspended sentence being imposed as part of the probationary period. The sentences continue to be rather light, with fines less than \$500. Judicial reform is required if Bulgaria is going to meet its accession requirements to the EU. In addition, problems with the judiciary have allowed cases to be dismissed. It is important that this process be made quicker and that the courts impose stiffer penalties.

BSA reports that 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. As an illustration, out of 98 software raids conducted and criminal prosecutions initiated, only one has generated a criminal sentence. The sentence itself is quite insufficient, amounting to a fine of 700 leva for each person found guilty (about U.S. \$350) and confiscation and destruction of the illegal software.

The recording industry reports that of the 410 raids conducted, the police filed 116 cases. Six people were sentenced to prison terms. Administration sanctions were imposed on 14 people, for a total of 3650 leva. In other cases, 8 people received criminal fines in the amount of 5050 leva.

## 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 9 months)<sup>4</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. It is reported that the cause of the delay is usually the investigation provided for in the Bulgarian law.

There are many reasons for delay, including imperfections in the procedural legislation, the low priority given IPR cases, the inexperience of police and magistrate investigators, and a heavy workload on the part of investigative services. After the initial "check" stage of the 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 permit copyright owners to assist in the preparation of the expert report, but if the Penal Proceedings Code is not respectively 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 this problem, 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 the adequate deterring effect.

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<sup>4</sup> Under the 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).

<b>CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2001</b>		
<b>ACTIONS</b>	<b>MOTION PICTURES</b>	<b>BUSINESS APPLICATIONS SOFTWARE</b>
Number of Raids conducted	197	
By Police		50
By Customs		
Number of cases commenced	30	47
Number of defendants convicted (including guilty pleas)	24	2
Acquittals and Dismissals	0	
Number of Cases Pending	12	83
Total number of cases resulting in jail time	0	0
Suspended Prison Terms	24	
Maximum 6 months	0	
Over 6 months	24	
Over 1 year	0	
Total Suspended Prison Terms		
Prison Terms Served (not suspended)	0	
Maximum 6 months		
Over 6 months		
Over 1 year		
Total Prison Terms Served (not suspended)		
Number of cases resulting in criminal fines	24	1
Up to \$1,000	24	1
\$1,000 to \$5,000	0	
Over \$5,000	0	
Total amount of fines levied		700

## **Border Measures**

Before 1998, the border control problem was one of illegal material flowing out of Bulgaria. Now that production levels have been reduced in Bulgaria, the Bulgarian market is being flooded with imports from Ukraine, Russia, Moldova, Montenegro and the Czech Republic. Therefore, border controls should also 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. BullACT feels that Bulgaria is being used as a transshipment point for pirate materials as they move throughout Europe.

Although the 2000 amendments to the copyright law introduced TRIPS border control measures to the Bulgarian legal system, problems remain in 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 the national borders. The decree contains grave discrepancies compared with the TRIPS and the Copyright Law provisions, which in practice make border control unenforceable.<sup>5</sup>

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<sup>5</sup> IIPA does not have the text of this decree.

## Civil Cases

Although the Bulgarian legislation provides for adequate civil remedies against software infringements such as civil searches, claims for compensation of damages and civil injunctions against the offenders, in practice it can be very difficult to enforce them and have a civil case. As a result, the BSA has not yet filed separate civil claims before the civil courts in Bulgaria. In contrast, IDSA reports that one of its member companies has 10 civil cases pending in Bulgaria, using a cease-and-desist campaign. Civil claims are filed within the criminal proceedings initiated after police raids. BSA reports several distinct problems with civil litigation in Bulgaria:

- Collecting valuable evidence to prove the infringement and the size of the damage so as to initiate a separate civil case is very difficult because the *inaudita altera parte* (civil) searches which were introduced to the copyright law in 2000 have not yet been tested in practice. High guarantee fees, instances of corruption, leaks of information, unpredictability of the results, and the reluctance of the courts to allow such searches are the main obstacles to the rightholders using this legal option.
- Civil cases do not reach court hearings on the merits, as the claims are rejected by the courts on procedural grounds. The rightholders are required to prove their active identification by presenting a bulk of documents most of which are impossible to obtain as they are not known to the foreign legal systems (in most of the cases, the plaintiffs are international corporations).
- The Bulgarian judiciary is notoriously slow and the procedures are to a greater extent formalized. Judges are rather inexperienced in adjudication of IPR cases and prefer to drop them on procedural grounds rather than further move the hearings.

CIVIL COPYRIGHT ENFORCEMENT STATISTICS 2001		
ACTIONS	BUSINESS APPLICATIONS SOFTWARE	ENTERTAINMENT SOFTWARE
Number of civil raids conducted		10
Post-Search Action		
Cases Pending		
Cases Dropped		
Cases Settled or Adjudicated		
Value of loss as determined by Rightholder (\$USD)*	USD 1,209,521	
Settlement/Judgment Amount (\$USD)	USD 6,113	

\* The civil claims are filed within the criminal proceedings initiated upon police/BSA raids.

## COPYRIGHT LAW AND RELATED ISSUES

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### 1993 Law on Copyright and Neighboring Rights, as Amended

On August 1, 1993, Bulgaria's Law on Copyright and Neighboring Rights entered into force, replacing its antiquated 1951 copyright law. 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 and 2000 (see discussion below).

Copyright Law Amendments (1998): On a positive note, amendments to the copyright law which were adopted in January 14, 1998 increased administrative fines imposed by the Ministry of Culture tenfold. However, these 1998 amendments also contained two serious problems: (1) They require the placement of holograms on blank audio and video tapes, CDs and CD-ROMs; and (2) they change the procedures for confiscation of infringing copies. These problems were resolved, with the 2000 amendments.

Copyright Law Amendments (2000): Further amendments to the Bulgarian copyright law were accomplished in 2000, apparently as part of Bulgaria's efforts to comply with European Union Directives and TRIPS. Industry reports indicate that these amendments provided for a longer term of copyright protection, a new communication right, provisional measures, and border control measures. In addition, these amendments provide 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 prohibiting circumvention devices and the possession of pirate product.

Future Legislation Coming: A working group was created in 2001 to assist in the drafting of amendments to legislation so that Bulgaria will be in compliance with the EU's directives on copyright, e-commerce, and conditional access. This group included representatives from local anti-piracy groups such as IFPI, BullACT, and BSA. A draft law to amend the 1993 Law on Copyright and Neighboring Rights was expected to be adopted by the Cabinet before Christmas, after which it will be send to the parliamentary media commission

## **Penalties in the Criminal Code (1995)**

The fine levels for piracy were established in the 1995 penal legislation. In 1997, the fines provided for in the Penal Code<sup>6</sup> were increased by amendment to Article 172(a), so that the fines for a first offense range from a minimum of \$454 (1000 BGN) to a maximum of \$1,363 (3000 BGN), and for a second offense from a \$1,363 (3000 BGN) minimum to a \$2,272 (5000 BGN) maximum. The fines for administrative remedies (provided for in the 1993 copyright act) were also too low, ranging from \$12 to \$112 for a first offense, \$56 to \$280 for a second offense. They too were amended (in January 1998), raising the administrative sanctions (fines) to \$909 (2000 BGN) for a first infringement, and to \$2,272 (5000 BGN) for a second infringement. Although these amendments are improvements, the penalty levels are still too low to act as deterrents to commercial crimes. 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).

## **WIPO Treaties**

On March 29, 2001, Bulgaria deposited its instruments of access to both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. IIPA applauds Bulgaria for taking this

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<sup>6</sup> Since 1997, the Bulgarian lev has been fixed to the Deutschmark at the rate of 1:1, and as a result, inflation rates are more predictable. The current exchange rate of the lev to the U.S. dollar is 1 USD = 2.2 BGN.

action, which will raise the minimum standards of copyright protection, particularly with respect to network based delivery of copyrighted materials. Implementation of the appropriate laws will protect against Internet and other forms of digital piracy, and encourage e-commerce, so these efforts are strongly encouraged by IIPA and its members. The 2000 copyright law amendments appear to go far toward implementing these obligations.

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

The Title Verification Decree (Decree No. 87/96) was amended in 1997 to install the plant licensing system, and again in July 1998 (by Decree No. 162/98) to regulate stampers under the same licensing and title verification procedures. As an overview, the TVD as amended provides the following:

- Title verification system. This system contains three levels of verification with the Copyright Department of the Ministry of Culture.
  1. 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).
  2. 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.
  3. 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.
- Plant licensing system. This system 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 interministerial 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.

There are still some improvements that need to be adopted to make the TVD more effective. First, it should consolidate the jurisdiction and authority in one agency (Interior) to effectively implement title verification and the plant licensing system. Second, it should be clarified to apply to all audio and video CDs, CD-ROMs and software works (and all other variations, such as CD-R, CD-T, DVD, etc.), as well as to videocassettes and laser disks. Third, it should clarify the application of customs authorities and export licenses to the title verification and plant licensing systems. Last, it should provide for criminal penalties for violations of the plant manufacturing authority.

## **Government Software Management**

For four years, the Bulgarian government has refused to pass and implement a government Software Assets Management (SAM) executive order to introduce an effective system for control over the acquisition and the use of computer programs by the Bulgarian state administration. Although as early as 1999, the Interministerial Council for Protection of Copyright and Neighboring Rights decided that such a legal act should be passed by the government and the draft order was prepared, today this issue is still pending.