



## Country Report BULGARIA

Annual report to the IFLA CLM committee

Helsinki Finland 2012

### I. COPYRIGHT

Copyrights in Bulgaria are regulated by the Law on copyright and related rights adopted in 1993 (hereinafter referred to as „**Copyright Law**“) and (since 2007 accession of Bulgaria to EU) the relevant acts and of EU including ECJ case law.

#### 1. *Revision/changes in existing law or regulations*

The Copyright Law was revised and amended several times since its adoption – 1994, 1998, 2000, 2002, 2005, 2006, 2007, 2009 and 2011.

The last revisions/changes in Copyright Law from 2011 were controversial both among the society and copyright specialists.

##### 1.1. Revisions 2011 took place in the following directions:

a. **Architectural works** - architectural projects and architectural works (build works) are pooled in one category (to which applies a same specific copyright regime). A provision is included, whereas an owner of a building has to consult the Union of Architects prior to changes in the building.

b. **Copyrights over portraits** - clarifications of the provision in direction - the cases where the consent of portrait' person is not mandatory.

c. **Permission for transmission in electronic network** - precisions of the provisions.

d. **Remuneration for free use of works** - The holders of related rights are specifically mentioned as to be compensated for use of copyrighted works as well the proportion of distribution of the remuneration between them is included in the Law.

e. **Protection of works of unknown authors** - A new provision is included in the Copyright Law - *“For works for which the term of protection is not calculated from the death of the author or authors have not been made public within 70 years after their creation, legal protection under this Act shall be terminated.”*

f. **Collective societies** - It is explicitly introduced the registration of the collective management societies in the Ministry of Culture for specific categories of rights, the uses and types of works covered by management, provided is an opportunity for refusal of registration, as well as opportunities for

further supervision the Ministry of Culture. The manner of determining the amount of fees collected by the collective management societies is regulated. Procedure of mediation in disputes regarding the conclusion or performance of a contract between the collective management societies and users is introduced.<sup>1</sup> Transitional provisions for collective management societies at the date of entry into force of changes in Copyright Act that have been registered under the previous regime in the Ministry of Culture.

Currently the following collective management societies are registered within the Ministry of Culture: MUSICAUTHOR, PROPHON, TEATHERAUTHOR, COPY BG, FILMAUTHOR, REPRO BG, ARTISTAUTHOR and EAZIPA.

July 11, 2012 - Proposal of EU Commission for a Directive on collective rights management and multi-territorial licensing ([http://ec.europa.eu/internal\\_market/copyright/management/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/management/index_en.htm).)

#### **g. Levies and compulsory administrative measures**

Increased levies for infringement of copyrights and related rights. It is introduced the opportunity to impose compulsory administrative measures in cases of copyright infringement.

Ministry of Culture is the institution that is responsible for the administrative infringements and sanctions. In reality, the resource of the Ministry is not sufficient for administrative liability to be a significant factor in the fight against copyright infringements.

#### **2. New legislation**

There are currently official working groups for discussions of new Penal Code of Republic of Bulgaria. <sup>2</sup> The stage of the Penal Code Draft at the moment is a public discussion.

With regard to copyrights - In the official draft for the plagiarism is proposed to be redefined the objects, namely - copyrighted work (or significant part of such work), as well records and programs (related rights). Further the plagiarism is proposed to be a crime that shall be pursued under the general order (under the current Penal Code the plagiarism is pursued not under the general order but based on a complaint of the injured party).

The penalty for piracy is increased on max 6 years imprisonment (from max 5 years imprisonment in the current Penal Code). <sup>3</sup>

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<sup>1</sup> There is a list of mediators included on the website of the Ministry of Culture.

<sup>2</sup> The current Penal Code was introduced in 1968 and amended numerous times.

<sup>3</sup> Extensive discussions in the Bulgarian society with regard to these changes influenced also from the ACTA discussions. The discussions on the Penal Code coincide with the ACTA protests.

### 3. *Orphan works*

No developments to report for Bulgaria in particular. <sup>4</sup>

June, 2012 – Political agreement on the EU Commission Proposal for a Directive on Orphan works.

### 4. *Mass digitization/Digital preservation*

No consolidated center for digitization in Bulgaria – different projects that are developed in separate institutions (Libraries, Archives etc.).<sup>5</sup>

List of Libraries that are digitizing currently – National Library “St. Cyril and Methodius”, 2 University Libraries (Sofia University and Shumen University), 3 Libraries from Bulgarian Academy of Sciences and 12 Regional Libraries (Varna, Veliko Tarnovo, Gabrovo, Dobrich..etc). Around 12 000 digitized objects (about 6 % of the collections part of the literary heritage).

EUROPEANA – currently there are about 38 000 objects from Bulgaria in EUROPEANA. The Commission indicative target is to be reached 267 000 objects till 2015. Libraries presented in EUROPEANA are – National Library “St. Cyril and Methodius”, Regional Libraries of Varna, Dobrich and Stara Zagora. <sup>6</sup>

March, 2012 – A cooperation project between Bulgarian Wikipedia and the State Agency “Archives” is started.

### 5. *Legal deposit*

A Law for the obligatory deposit of printed and other works (2001). Recipients of obligatory deposited items are National Library “St. Cyril and Methodius”, National Film Archive, National Historical Museum, Ministry of Transport, information technologies and State Agency “Archives”.

### 6. *Public lending rights*

According to the Copyright Act – the remuneration’ obligation to the right holders is not due (applicable) in cases where copyrighted works are lend by state and municipal cultural organizations such as libraries, university libraries, municipal libraries.

There are some discussions (only among researchers at this stage) with regard to the above cited provision in the Copyright Act (Art. 22a, par. 4) and its concordance to the EU Law. More specifically, if this exception is consistent to Art. 6 of **Directive 2006/115/EC**<sup>7</sup> – **the opportunity of the Member states to**

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<sup>4</sup> Provision mentioned in paragraph 1.1. e. could be regarded as connected to the issue

<sup>5</sup> There a center created in 2006 but its role has to be activated.

<sup>6</sup> The data is delivered in presentation (Sofia, November 2011) of Mrs. Vania Grashkina, Chair of Bulgarian Library and Information Association (BLIA).

<sup>7</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property

**derogate the exclusive public lending right keeping at least the remuneration for the authors.**

### *7. Levies*

See the above paragraph – 1.1. g.

### *8. Creative Commons*

No developments. Creative Commons is still not very popular option among the educational and state institutions.

Open access to research projects (Research repositories) – Several projects (6-7) of Universities in Bulgaria (New Bulgarian University, Bulgarian Academy of Sciences etc.). Not very popular and not well developed (as number of included materials and popularity among researchers).

## **II. LEGAL MATTERS**

July, 23, 2012 – EU Commission launched public consultation on preservation of open internet (net neutrality).

### *1. Revision/changes in existing law or regulations*

Important Revisions in the Industrial Property Legislation in force from 2010/2011

#### **Law on Marks and Geographical Indications**

- From 2010 is in force a provision according to which administrative liability is not applicable with regard to trademark infringements involving goods passing Transit through Bulgaria. <sup>8</sup>
- From March, 2011 is in force expedited (simplified) procedure for registration of TMs – The substantive examinations of trademark applications are cancelled, i.e. the Patent Office now checks only the formal requisites of the applications.

#### **Law on Industrial designs**

- From 2011 is in force new expedited procedure for registration of industrial designs.

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<sup>8</sup> Art. 81, par. 6 of the Law on Marks and GI. This a very controversial provision since it is exclude certain infringements from the scope of administrative liability. Bulgaria is an external border of EU and most of the cases that involve transit goods are actually imports in the EU Market. The reasoning of this rule is that Patent Office (the competent administrative authority) has no legal way to serve its act to foreigners (it was the main obstacle for enforcement of the administrative liability prior to the above change).

## ***2. New legislation***

Currently there is a draft Law for Industrial Property Representatives (prepared and proposed by the Patent Office).

One of the most important reason for the proposed law is that after EU accession (2007) citizens of EU and Switzerland must have the opportunity to be IPR representatives in front of Patent Office (which opportunity does not exist under the current law).

## ***3. Trade agreements***

**ACTA discussions** - Extensive discussions in Bulgaria on ACTA - on governmental level, among researchers, interested parties (collective societies, activists), bloggers, users, journalists etc. (Highly polarized positions: pro- and anti-.)

## ***4. Privacy/Antiterrorist Law/DRM/Other***

July 1, 2012 - The Passenger Name Records (PNR) agreement between the EU and USA entered in force.

July, 11 2012 - Bulgarian Ministry Council had adopted a Plan for the introduction of digital terrestrial television broadcasting (DVB-T). The plan includes the stages, terms and conditions for the introduction of digital terrestrial television broadcasting (DVB-T) ending with the exclusion of analogue terrestrial television broadcasting in Bulgaria on September 1, 2013.

## **III. LAW CASES**

### **1. Case C-545/07, Apis-Hristovich EOOD v Lakorda AD**

Reference for a preliminary ruling to ECJ related to Directive 96/9/EC. The Judgement(<http://curia.europa.eu/juris/document/document.jsf?docid=75646&doclang=EN&mode=&part=1>) relates to database right. In the Judgement of ECJ was provided interpretation and further guidance of the scope of database right with regard to legal databases and extraction. The case is still pending in Bulgaria.

### **2. Case 1/2011 of Supreme Court of Cassation (SCC) of Bulgaria**

Interpretative Decision № 1 of May 11, 2012 of SCC - Related to Parallel Import (Trademarks).

The Interpretative Decision 2012 of SCC is preceded by a few developments in the court practice in Bulgaria on the issue of parallel imports, namely Interpretative Decision № 1 of June, 15 2009 of SCC where is stated that: "The import of original goods without the consent of the Trademark Owner does not

constitute trademark infringement under the Law on marks and geographical indications”.

Because of the above position a reference for preliminary ruling was made by to ECJ in order to be interpreted the questions on parallel import in the light of EU law. The reference is made also in connection to the contradictory Interpretative Decision of SCC 2009. Case C-449/09 Canon vs. IPN Bulgaria was finished with an Order of ECJ (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:089:0002:0002:EN:PDF>) Based on the above developments a new asking for interpretation of parallel imports was made to the Supreme court of Bulgaria. Basically, the Interpretative Decision 2012 confirms and affirms the Decision from 2009 where is stated the parallel imports do not constitute trademark infringement under the Law on marks and geographical indications. It must be duly noted the Interpretative Decisions of the Supreme Courts of Bulgaria are binding for all of the bodies that applies the interpreted legal provisions. It means that all courts, prosecutor offices, administrative bodies (as Patent Office) etc. where could be raised parallel import issues are obliged to follow the Interpretative Decision 2009 and 2012.

#### **IV. LOBBY ACTIVITIES**

No developments to report.

#### **V. EDUCATIONAL ACTIVITIES**

No developments to report.

#### **VI. STRATEGIC PLANS FOR FUTURE**

Currently there is a process of preparation of a National Strategy for Culture 2020 under the Ministry of Culture. One of the directions followed (and Working Group) are the Intellectual property Rights. In the proposals of the group are included among the others: promotion of the open access to publicly financed research results and scientific data (in the light of Recommendation of EU Commission July, 17 2012) and promotion of the Creative Commons Licenses among educational institutions. Further, there are some recommendations for the digitization processes and revisions of copyrights (with regard to orphan works for example).

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