

# Copyright

*Contributing editors*

Andrew H Bart, Steven R Englund, Susan J Kohlmann  
and Andrew J Thomas



2017

GETTING THE  
DEAL THROUGH 

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## Copyright 2017

*Contributing editors*

**Andrew H Bart, Steven R Englund, Susan J Kohlmann  
and Andrew J Thomas  
Jenner & Block LLP**

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com

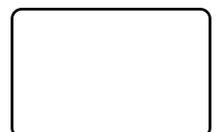


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## CONTENTS

<b>Overview</b>	<b>5</b>	<b>Germany</b>	<b>51</b>
Andrew H Bart, Steven R Englund, Susan J Kohlmann and Andrew J Thomas Jenner & Block LLP		Jasper Hagenberg and Christine Nitschke Buse Heberer Fromm Rechtsanwälte Steuerberater Partnerschaftsgesellschaft mbB	
<b>Austria</b>	<b>6</b>	<b>India</b>	<b>56</b>
Sonja Dürager bpv Hügel Rechtsanwälte OG		Pravin Anand and Nishchal Anand Anand and Anand	
<b>Belgium</b>	<b>12</b>	<b>Japan</b>	<b>62</b>
Karel Nijs and Vicky Bracke LMBD Prioux		Takashi Nakazaki Anderson Mōri & Tomotsune	
<b>Brazil</b>	<b>19</b>	<b>Mexico</b>	<b>66</b>
Rodrigo d'Avila Mariano, Talitha Correa Chaves and Cristina Zamarion Carretoni Chiarottino e Nicoletti - Advogados		Carlos Trujillo and Karla Alatraste Uhthoff, Gomez Vega & Uhthoff	
<b>Bulgaria</b>	<b>25</b>	<b>Spain</b>	<b>72</b>
Ivan Marinov Delchev & Partners		Jesús Arribas, Beatriz Bejarano and Guillem Villaescusa Grau & Angulo	
<b>Chile</b>	<b>29</b>	<b>Switzerland</b>	<b>78</b>
Claudio Magliona, Nicolás Yuraszeck and Carlos Araya García Magliona Abogados		Dirk Spacek Walder Wyss Ltd	
<b>China</b>	<b>35</b>	<b>Turkey</b>	<b>84</b>
Xie Guanbin, Zhang Bin and Che Luping Lifang & Partners		Sinem Birsin, Beril Çelebi Cem and Nihan Malkoçer İnanıcı-Tekcan Law Office	
<b>Denmark</b>	<b>41</b>	<b>United Kingdom</b>	<b>89</b>
Lasse Søndergaard Christensen, Jesper Madsen, Hanne Kirk and Frederik Tram Gorrissen Federspiel		Abby Minns, Douglas Peden, Anna Rawlings and Robert Guthrie Osborne Clarke	
<b>France</b>	<b>46</b>	<b>United States</b>	<b>94</b>
Olivia Bernardeau-Paupe Hogan Lovells LLP		Andrew H Bart, Steven R Englund, Susan J Kohlmann and Andrew J Thomas Jenner & Block LLP	
		<b>Venezuela</b>	<b>101</b>
		Matías Pérez-Irazábal Hoet Pelaez Castillo & Duque	

# Bulgaria

Ivan Marinov

Delchev & Partners

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## Legislation and enforcement

### 1 What is the relevant legislation?

The protection of intellectual property is generally stated in the Constitution of the Republic of Bulgaria. The main legal act is the Bulgarian Copyright and Neighbouring Rights Act (CNRA).

### 2 Who enforces it?

Authors and other copyright holders, artists-performers and other neighbouring rights holders, collective management organisations, the court, the customs (in case of border measures), the Minister of Culture, the Ministry of Culture and the Ministry of Internal Affairs.

### 3 Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so?

There are no specific provisions in that regard. What may be of relevance is the transposition into the CNRA of the Orphan Works Directive.

### 4 Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

There are no specific provisions in that regard. Any such application should be substantiated based on general rules and the particular facts of any case.

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## Agency

### 5 Is there a centralised copyright agency? What does this agency do?

No, there is no such agency. The Ministry of Culture has certain competencies in respect of collective management, exercise of rights of deceased authors with no successors, administrative-penal measures, etc.

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## Subject matter and scope of copyright

### 6 What types of works are copyrightable?

An object of protection by copyright is any work of literature, art and science which is the result of a creative endeavour and is expressed in any way or in any objective form.

The CNRA suggests a non-exhaustive list of copyrightable works:

- literary works, including works of scientific and technical literature, of publicity and computer software;
- musical works;
- stage works: dramatic or dramatico-musical works, mime, choreographic, etc;
- films and other audiovisual works;
- works of fine art, including works of applied art, design and folk art crafts;
- realised works of architecture and implemented spatial plans;
- photographic works and works created in a process analogous to photography;

- approved architectural projects, approved spatial planning projects, maps, schemes, plans and others related to architecture, urban planning, geography, topography, museum research and any other area of science and technology;
- graphic design of publications;
- cadastral maps and state topographical maps.
- translations and adaptations of existing works and works of folklore;
- arrangements of musical works and works of folklore;
- periodicals, encyclopedia, collections, anthologies, bibliographies, databases and suchlike which include two or more works or materials.

Objects of copyright protection may also be parts of works referred above, preparatory sketches, plans, etc.

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### 7 What types of rights are covered by copyright?

It should be noted that the more appropriate legal term under Bulgarian law is 'author's right'. For consistency, however, here we shall use the term 'copyright'.

Copyright comprises economic and moral rights. The author has essentially one economic right: the exclusive right to use the work and respectively to authorise its use by third parties unless otherwise provided for by law. The author has also the right to compensation for each type of use of the work and for each time of use of the same type of use. According to the case law of the Bulgarian Supreme Court of Cassation, the compensation is payable even if it has not been agreed upon. This implies that the right to compensation is of imperative nature and may not be avoided by contract (ie, a clause saying that the author waives their (agrees to no) compensation should be void).

Moral rights are expressly listed in the law. The most important of them are the author's right to be recognised as the author of the work and the right to require their name, pseudonym or other identifying sign to be indicated in the respective manner upon each use of the work. Those rights are inalienable from the personality of the author and any contractual clause to the contrary shall be void.

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### 8 What may not be protected by copyright?

Normative and individual acts of government authorities; acts of courts; ideas and concepts; folklore works; news, facts, information and data are not protected by copyright.

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### 9 Do the doctrines of 'fair use' or 'fair dealing' exist?

Under Bulgarian law, the doctrine of 'free use' applies, which means use without the copyright holder's permission (but not necessarily without payment of compensation). By express reference in the law, it also applies to neighbouring rights.

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### 10 What are the standards used in determining whether a particular use is fair?

The general principle is that the 'free use' is only permitted in a limited number of situations expressly listed in the law and under the conditions that (i) it does not impede the normal use of the work and (ii) it does not prejudice the copyright holder's legitimate interests.

Generally, there are two types of 'free use': without payment of compensation (not applicable for computer programs); and with payment of fair compensation (not applicable for computer programs and architectural works). Any 'free use', however, has to be made without removal, damaging, destroying or disruption of the technical measures (as defined in the CNRA) for protection without the copyright holder's consent.

In certain situations of 'free use' expressly listed in the law, users who want to benefit from the 'free use', but are prevented by technical measures of protection, may request from the holder of the copyright the relevant access to an extent justified by the purpose. However, that does not apply to situations where works or other protected objects have been made available on a contractual basis to an unlimited number of persons in a way allowing access from a place and at a time individually chosen by each of them.

#### 11 Are architectural works protected by copyright? How?

Yes, they are. However, their protection somewhat steers away from the fundamental principle established in article 5(2) of the Berne Convention and taken over in Bulgarian copyright law that the enjoyment and the exercise of the copyright shall not be subject to any formality. In 2011, some very controversial amendments were introduced in respect of architectural works that have attracted a lot of criticism.

According to the legal definition of 'works of architecture' those are 'projects of buildings and facilities, spatial plans and schemes, approved under the effective legislation, buildings and other facilities and their elements, permanent objects representing the synthesis of architecture with other arts, as well as the layouts of interiors of permanent nature registered by a [collective management] organisation under Article 40.' It is apparent that the legal definition itself provides for certain formalities of approval and registration in the absence of which no copyright should arise.

The situation is also confusing and controversial with regard to 'architectural projects'. Following the amendments in 2011, 'architectural projects' have been stated as a separate category of works outside architectural works (see question 6). In addition to that, they need to be approved, which also appears as a formality to the arising of copyright.

#### 12 Are performance rights covered by copyright? How?

Performance rights are not covered by copyright. They are protected as one of the categories of neighbouring rights. Under Bulgarian law, the official legal term is 'rights of artists-performers' whereby the legal definition is natural persons who perform works (ie, anyone who presents, plays (music; a role; a variety, puppet, illusionistic show), dances, recites, conducts, comments, etc).

#### 13 Are other 'neighbouring rights' recognised? How?

Neighbouring rights under Bulgarian law are expressly listed. They cover the following categories: (i) rights of artists-performers regarding their performances; (ii) producers of phonograms regarding their phonograms; (iii) producers of the initial recording of a film or another audio-visual work regarding the original and copies obtained as a result of such recording.

#### 14 Are moral rights recognised?

Yes, they are recognised both in respect of copyright and neighbouring rights. Their scope, however, is different for copyright and neighbouring rights, on the one hand, and for each category of neighbouring rights on the other hand.

### Copyright formalities

#### 15 Is there a requirement of copyright notice?

Copyright notice is just a legal possibility rather than a legal requirement or obligation.

#### 16 What are the consequences for failure to display a copyright notice?

The copyright arises, exists and is subject to proof irrespective of any copyright notice. The use of copyright notice or information is, however, not entirely without any legal consequences.

Generally, the copyright holder or the person who is granted the exclusive right to exploit the work is entitled to use the © mark before their own name or the name of the work or the date the work is made available to the public.

In addition, there is a rebuttable presumption that the author is the person whose name or other identifying sign is indicated in the customary manner on the original, copies or duplicates of the work or its packaging.

A pseudonym or anonymity may also be used. If they do not disclose the author's identity the copyright is exercised by the natural or legal person who or which has for the first time communicated the work to the public with the author's consent.

#### 17 Is there a requirement of copyright deposit?

No, there is no such requirement.

#### 18 What are the consequences for failure to make a copyright deposit?

Not applicable.

#### 19 Is there a system for copyright registration?

No, generally there is no such system. As an exception, there is a highly controversial reference contained in the legal definition of architectural works that implies the need for registration in the absence of which no copyright should arise (see question 11).

#### 20 Is copyright registration mandatory?

No, generally it is not mandatory. As an exception, it appears that registration is mandatory for architectural works only.

#### 21 How do you apply for a copyright registration?

The registration of architectural works is made by collective management organisations.

#### 22 What are the fees to apply for a copyright registration?

The fees are determined by the respective collective management organisation.

#### 23 What are the consequences for failure to register a copyrighted work?

It appears that in the absence of registration of an architectural work, no copyright should arise.

### Ownership and transfer

#### 24 Who is the owner of a copyrighted work?

Under Bulgarian copyright, the 'owner' is considered as the person who has the right in rem over the material carrier. Rights in rem are not relevant for copyright. Rights in rem and copyright do not interfere except in certain cases expressly provided for by law (eg, the exhaustion of the right of distribution, transfer of ownership over works of fine art and works created in a process analogous to photography, etc).

The relevant figures for copyright purposes are the author and other copyright holders.

By law, the author is always the natural person as a result of whose creative endeavours the work is created. The author is always a natural person (ie, they may never be a legal entity).

As a general rule, the author is by law the only one who may originally hold the entire copyright (the complete set of economic and moral rights). As an exception to that rule, the entire copyright may originally be held by holders of copyright (including legal entities) other than the author only in cases expressly provided by law (eg, the employer for computer programs and the (natural or legal) person responsible for the creation and publication of a periodical).

#### 25 May an employer own a copyrighted work made by an employee?

The copyright in a work created in the context of employment vests with the author unless otherwise provided for by law (eg, computer programs). However, by law, the employer has the exclusive right to use the work for its own purposes without the author's permission and

without compensation (unless otherwise agreed in the employment agreement). The employer is entitled to exercise this right to the extent it corresponds to its usual activity.

The employment agreement must be in writing.

## **26 May a hiring party own a copyrighted work made by an independent contractor?**

The statutory provision in the CNRA regarding commissioned works has probably caused more debate than any other provision.

That provision states that the copyright in commissioned works vests with the author unless otherwise agreed and adds that, unless otherwise agreed, the hiring party may use the work without the author's permission (but not without compensation) for the purposes it was ordered.

The debate has been focused on whether 'agreed otherwise' allows the parties to agree that the entire copyright may originally arise for or vest with the hiring party. Practitioners often use clauses to that effect. On the other hand, some commentators have openly criticised and are opposed to that, because who may originally hold the entire copyright may only be determined by an imperative statutory provision (ie, as a general rule it is always the author; and other than that - only in exceptional cases provided for by law, eg, in the case of computer programs and periodicals) and it is not possible for the parties to determine that by way of contract.

Some light has been shed in a recent case before the Bulgarian Supreme Court of Cassation where one of the questions that was considered concerned the scope of 'unless agreed otherwise'. The court made it clear that in the case of commissioned works, the hiring party enters into the agreement in order to use the work that will be created and that the author retains the copyright (ie, the copyright arises in the same way as when the work is created at the author's own initiative) implying that it may not be specified by contract that the entire copyright shall vest with the hiring party.

What the court went on to say, however, raises certain questions. The court held that, by law, the hiring party was entitled to the exclusive use of the work. Two things must be noted in this respect - first, the law makes no reference to such 'exclusivity', implying that this should be subject to express agreement between the parties (as opposed to the case of employment relations where 'exclusivity' is expressly referred in the law); and second, the court did not mention that the use must be 'for the purposes it [ie, the work] was ordered' (perhaps that could be taken to be self-explanatory and the court did not need to mention it).

The court explained that 'unless agreed otherwise' might relate to the possibility for the parties to agree other parameters of the exclusive use (eg, non-exclusive use, term of use, territory of use, etc).

The agreement does not need to be in writing (ie, it may be oral).

## **27 May a copyrighted work be co-owned?**

Yes, it may. Co-authorship is generally possible between natural persons, but theoretically is not entirely excluded between legal entities or even between a natural person and a legal entity in exceptional circumstances.

## **28 May rights be transferred?**

Once it arises, the copyright may not be subject of translatative succession; that is, copyright may not be subject to purchase-and-sale transactions, exchange (barter), donation, contribution in kind, etc.

The only legally provided exception is upon the author's death when the copyright may be succeeded by the author's successors (either by will or by law) save for two moral rights which by law may not be exercised by successors (ie, the right to modify the work, provided that this does not infringe rights acquired by other persons; and the right to stop the use of the work due to changes in beliefs).

## **29 May rights be licensed?**

Under Bulgarian law, the legal terms 'a licence' and 'to license' formally (ie, by law) refer only to industrial property objects (eg, trademarks, patents, industrial designs, etc). It is incorrect to use those terms for copyright (and neighbouring rights). The proper terms regarding copyright under Bulgarian law are 'use' or 'exploit'.

Having regard to the above, the formal answer is that rights may not be 'licensed' in the strict sense of the term. What may be granted is the right of use.

In respect of the grant of the right of use, there are certain imperative limitations that may not be avoided by contract (eg, an agreement whereby the author grants the right of use of all author's works to be created in future is void; the use may be granted for a maximum of 10 years (except for architectural works where this does not apply), etc).

It is also important to note that those limitations generally apply in cases where the author has created the work at the author's own initiative and subsequently decides to grant the right of use of the ready-made work to a third party. As opposed to that, the scope of rights conferred by law (ie, not by contract) on employers and hiring parties (see questions 25 and 26) are not subject to time limitation unless otherwise agreed.

## **30 Are there compulsory licences? What are they?**

Not applicable.

## **31 Are licences administered by performing rights societies? How?**

The legal terms used under the CNRA are 'collective management' and 'collective management organisations'.

Collective management is possible both for copyright and neighbouring rights. Collective management organisations are registered with the Ministry of Culture.

Authors and holders of neighbouring rights are free to form collective management organisations. A collective management organisation may generally negotiate and conclude agreements with users and collect the compensation for its members.

In certain cases, the collective management of copyright or neighbouring rights may be mandatory by law; that is, individual management is excluded (eg, in certain situations of transmission over an electronic communication network, etc). In those cases, collective management organisations may also act on behalf of authors (and other neighbouring right holders) who are not their members.

## **32 Is there any provision for the termination of transfers of rights?**

If a contract granting exclusive rights does not specify a deadline by which the user should start the use of the work, the author may rescind the contract if the use has not started within two years as of its conclusion, or as of the date of delivery of the work if it occurs after the conclusion of the contract.

In the case of publishing contracts and unless agreed otherwise, the author may unilaterally terminate the contract by a written notification when it is concluded for more than one publication and the total print of the last publication is sold out and within one year the publisher fails to reproduce and distribute the next publication, provided that within the same term the author requests the publisher to do so.

In the case of contracts for public presentation, the author may terminate the contract if the user suspends the public presentation of the work for a period longer than one year.

## **33 Can documents evidencing transfers and other transactions be recorded with a government agency?**

No.

## **Duration of copyright**

### **34 When does copyright protection begin?**

The general rule is that copyright protection begins as of the moment of creation of a work subject to no further formalities whatsoever.

Following some controversial amendments introduced in 2011, it seems that in certain cases an approval (for architectural projects and spatial planning projects) or registration (for architectural works) may be required. It is unclear whether such an approval or registration is the moment as of which copyright protection actually begins or only serves as a requirement for the arising of copyright protection as of the creation of the work, or is simply an administrative requirement.

The beginning of neighbouring rights protection depends on the particular category of neighbouring rights.

**35 How long does copyright protection last?**

The general rule is that copyright lasts during the author's lifetime and 70 years after the author's death. In terms of the relevant event that conditions the beginning of the 70 years, some special rules exist for co-authorship, musical works with words, musical-dramatic works, computer programs created in an employment context, anonymous and pseudonymous works and films and collection works. The 70 years in any case are deemed to begin on 1 January of the year following the year in which the relevant event occurred (eg, author's death, etc).

There are two moral rights, which, by exception, are not limited in time – the right for the author's name, pseudonym or other identifying sign to be indicated in the respective manner upon each use of the work; and the right to preserving the integrity of the work and to object to any modifications of or any derogatory action in relation to the work which would be prejudicial to the author's legitimate interests and personal dignity. After the duration of the copyright has elapsed, those two moral rights may be exercised by the Ministry of Culture or the respective collective management organisation (if during the author's lifetime the author (or their successors) was a member of such an organisation).

Neighbouring rights protection generally lasts for 50 years. However, under certain circumstances, the term of protection for some of the categories (rights of artists-performers and producers of phonograms) may be extended to 70 years (based on transposition of Directive 2011/77/EU). The relevant event differs depending on the category of neighbouring rights and the 50 or 70 years are deemed to begin on 1 January of the year following the year in which the relevant event occurred.

**36 Does copyright duration depend on when a particular work was created or published?**

The copyright protection for a computer program created in an employment context, and anonymous and pseudonymous works not disclosing the author's identity, is 70 years as of the moment the work is first lawfully made available to the public.

**37 Do terms of copyright have to be renewed? How?**

No.

**38 Has your jurisdiction extended the term of copyright protection?**

The term of copyright protection is 70 years.

The term of neighbouring rights protection is 50 years and under certain circumstances may be extended to 70 years for some of the categories of neighbouring rights.

**Copyright infringement and remedies****39 What constitutes copyright infringement?**

There is no legal definition of 'copyright infringement'. Generally speaking, it is the use of an object protected by copyright (or neighbouring

right) without the consent of the right holder save for cases of free use expressly provided for by law.

**40 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?**

There is no such legal concept under Bulgarian copyright law.

**41 What remedies are available against a copyright infringer?**

Generally speaking, remedies in civil, administrative (including border measures) and criminal proceedings are possible.

**42 Is there a time limit for seeking remedies?**

There is no special time limit particularly regarding copyright (ie, general rules regarding time limitation apply). Depending on the type of claim, the time limit may be up to five years or there could be no time limit.

**43 Are monetary damages available for copyright infringement?**

Yes, they are.

**44 Can attorneys' fees and costs be claimed in an action for copyright infringement?**

Yes, they can.

**45 Are there criminal copyright provisions? What are they?**

Yes, there are. The main provisions concern intellectual piracy, plagiarism and cases of imposed co-authorship (ie, anyone who, by abusing their official position, includes themselves as a co-author of a work of science, literature or arts, without participating in the creative process for its elaboration).

**46 Are there any specific liabilities, remedies or defences for online copyright infringement?**

No, there are not.

**47 How may copyright infringement be prevented?**

It is not possible to give a general answer to this question and the approach should be case-specific.

**Relationship to foreign rights****48 Which international copyright conventions does your country belong to?**

A list may be found here: [www.wipo.int/wipolex/en/profile.jsp?code=BG](http://www.wipo.int/wipolex/en/profile.jsp?code=BG).

**49 What obligations are imposed by your country's membership of international copyright conventions?**

It is impracticable to answer this question in this format.

Delchev & Partners

law firm

Ivan Marinov

[ivan.marinov@delchev-lawfirm.com](mailto:ivan.marinov@delchev-lawfirm.com)

8 Tsar Kaloyan Str  
2nd floor  
1000 Sofia  
Bulgaria

Tel: +359 2 933 09 78  
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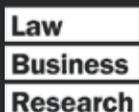
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