

## THE NEW DATABASE LEGISLATION IN BULGARIA

*UDC 004.65+347.78(497.2)*

**Maria Markova**

"Intellectual property" Department, University of National and World Economy, Sofia,  
Bulgaria

**Abstract.** *In the last four years some very important changes in the Bulgarian Copyright and related rights law were made, in particular in the years 2000 and 2002. The greatest changes concerned one specific object of intellectual property, namely databases. Subjects of research in this paper are databases as intellectual products. The most important issues studied in the present paper are the legislative changes with regard to: the legal definition of the term database; some important moments in this definition are pointed out, which lead to a better understanding of the characteristics of a database; the copyright protection of a database and the sui generis rights system; the rights holders. The changes set out three groups of rights holders: authors; makers of databases; users of databases; the scope of the exclusive rights of each of these groups; the possibilities of civil law and administrative law protection of the rights of authors and makers of databases; terms of protection of the rights to database.*

### I

The paper has as its subject of research databases as intellectual products. Special attention will be paid to the last changes in the Bulgarian legislation, in particular in the Copyright and related rights law, made in 2000 and 2002.<sup>1</sup>

**I** A legal definition of databases is the following: "Database is a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means." There are several important issues in this definition:

- Databases are **compilations** of materials, data and/or works regardless of the form of their expression;
- Databases are **collective** works. The difference between collective works and works created in co-authorship is that collective works imply individual works of

---

Received February 15, 2005

<sup>1</sup> Copyright and related rights law, State gazette No56/1993, last amendments No77/2002

every author, which are then combined. While works of co-authorship are created jointly by two or more authors.

- Databases are **organized**, collected works, expressed in a particular form. This organization is built up upon a methodical principle.
- Databases are systematized and classed information, i.e. databases are an abstract system of information, created upon certain principle of gathering of materials, data or works and combining them in that system in such a way that differentiates that information from all others outside that system.
- Databases are not only electronic information or information concerning electronic instructions, programs, etc. They must be fixed on an electronic or digital carrier. They are processed and accessible in the electronic way.

Databases are objects of copyright. The legal grounds for this statement we can find in Article 3 /2/ of the Copyright and related rights law, which defines: "Objects of copyright are also... periodicals, encyclopedias, collections, anthologies, bibliographies, databases and others of the kind, which consist of two or more works or materials".

This text leads to the conclusion that the author of a database can obtain an exclusive right to it.

The legislative texts explicitly indicate the scope of the term "databases" by pointing the works that cannot be categorized as databases:

- Computer programs, which are used for the creation or functioning of a database;
- Fixations of a particular audio/video, literary or artistic work;
- Collection of phonograms on a CD-Rom.

## II The second important matter with regard to protection of databases, set in the Bulgarian Copyright and related rights law in its last amendments is the definition of three groups of holders of exclusive rights.

These are:

- Authors;
- Makers of databases;
- Users of databases.

The database Author is a physical person, as a result of whose creative activity a database was created /Article 5 of the Copyright and related rights law/. The intellectual product – database – is a result of selection, arrangement and systematization from its author/s. These intellectual efforts the legislator has considered as an intellectual activity.

The Author as a subject – holder of author's rights – has an exclusive right to his database. It is explicitly shown in the legislative texts that authors of the works included in a database reserve their author's rights on the works /Article 11/1//. For these works to be included in a database the consent of their authors is needed/Article 11 /2//.

The exclusive right of the author is a combination of economic and moral rights /look up "Computer programs and databases in the intellectual property system and the fight against their piracy"<sup>2</sup>, also "New objects of intellectual property"<sup>3</sup>/.

---

<sup>2</sup> Markova, M., "Computer programs and databases in the Intellectual property system and the fight against their piracy, INSO magazine No8 and No9, 2002

When a database is created under a labor agreement, the author's right belongs to the employer /Article 14 of the Copyright and related rights law/.

Together with the author's rights to database sui generis rights can be established. They are regulated in Section II of the Law – "Related rights and sui generis rights", in Chapter 11 "Rights of the makers of databases". The legislative text of Article 93b /2/ says that the "maker of a database is the physical or juridical person who has taken the initiative and risk of investment in obtaining, verification or use of the content of a database, if this investment is qualitatively and/or quantitatively a substantial investment". A careful study of this text will reveal that the law assumes the protection only for substantial investments, which constitute:

- significant financial resource in the form of capital investment;
- significant labor expenditures – qualified labor, special knowledge of the people, who participated in the obtaining, systematization and arranging the access to the database;
- significant time expenditures - quantitative criteria for the necessary time in creating of a database, which corresponds to the difficulty of creating activities.

According to the legal text of Article 93b "Holder of the right upon a database is the maker of the database". **So what is the scope of that exclusive right of the maker of a database?** The answer of that question is given in Article 93c:

- The maker of a database has the specific for this object right to allow extraction of the whole or of a substantial part of a database through permanent or temporary transfer of the content to another carrier.
- The maker of a database has the right of re-utilization of the whole content of a database or of a substantial part of a database in any form of making available to the public all or by the distribution of copies, by renting, by on-line or other forms of transmission.

This text is clarified in the Law by explaining some specific situations that may occur.

- Actions, which do not fall into the scope of the rights of the maker of a database: "Lending of a database do not constitute extraction or re-utilization";
- Actions, which the right's holder may prevent under certain conditions are "the repeated and systematic extraction and/or re-utilization of insubstantial of the contents of a database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database";
- Actions of estrangements or licensing of the right of the maker of a database: "the rights of the maker of a database of extraction and re-utilization might be estranged or transferred to other people";
- Exhaustion of the rights of a maker of a database: "the first sale on the territory of the Republic of Bulgaria of a material copy of a database made by the holder of the right or with his consent leads to exhaustion of his right to control further sales of this copy";

---

<sup>3</sup> Borisov, B., Markova, M. "New objects of intellectual property", University publishing house "Stopanstvo", 2002

- However, when the database is transferred in an electronic form, the right of the maker of a database continues upon the physical copies of the database. When the maker of a database has made available to the public copies of the database on a physical medium he has gained economic benefits from their realization. But when the maker of a database offers the database in the modern information and communication channels he expects economic benefits through the system of restricted access.

The so defined *sui generis* rights of the makers of databases are synchronized with the logic of intellectual property. The intellectual property system as a system of legal regulations is a guarantee against investment and market risk of creators and users of new intellectual products in economy.

Very important legal texts are those in Article 93d:

- If a collision between author's rights and *sui generis* rights appear, priority is given to the author's rights. The maker's right upon a database can not be exercised in such a way that might lead to infringement or restriction upon author's rights on a database/Article 93d /2//.
- The rights of makers of databases exist irrespective to the rights of the author of a database /Article 93d /1//

In Chapter 11 "Rights of the makers of databases" we can find a new subject-holder of rights. This is the **lawful user**.

In the additional provisions of the Law, paragraph 2 we can find legal definition of the term lawful user: Users of works are the physical and juridical persons such as publishers, theatres, organizers of concerts, radio and television organizations, catering establishments, producers of phonograms, producers of films, Internet service providers and others who bring the work to the readers and audience directly or through other persons."

**The legal status of users of databases is clarified in Article 93e, where we can find their rights and obligations.**

- When a database was brought to the public the maker of a database or right holder may not prevent a **lawful** user of the database from extracting and re-utilizing insubstantial parts. A lawful user is a user, who has received the consent of the maker of the database/right holder according to a license, a sale-trade contract, donation, etc.
- If the lawful user has the right to extract and re-utilize only a particular part of the database content, the text mentioned above concerns only that part.
- The lawful user cannot make actions, which are to infringe the rights of the author or a related right upon the works, included in a database.
- The actions of the lawful user may not conflict with the normal usage of the database and may not unreasonably prejudice the legitimate interest of the maker of a database, either.
- The lawful user can extract or re-utilize the content of a database without the consent of the maker if:
  - these actions are made for personal purposes;
  - these actions are made with educational and research purposes in the scope defined by the purposes and providing the source;
  - these actions are made to protect the state security or in legal and administrative procedures.

### III Duration of the exclusive right upon databases

1. The copyright on databases continues for the life of the author and 70 years after his death. When the database is created by two or more authors this term of 70 years begins after the death of the last author survived.
  - Databases created according to a labor agreement the copyright continues for 70 years after the first communication to the public and the right holder is the employer.
2. The term of protection of sui generis rights has some specifics:
  - The rights of extraction and re-utilization of the content of a database are protected for 15 years /Articles 93b and 93h/
  - The term of protection begins from the 1<sup>st</sup> January of the year, following the year in which the creation or communication to the public of the database was made.
  - Every new substantial investment in the database, which leads to a substantial alteration in the content of a database, sets the beginning of a new term of protection with regard to the part, which resulted from this investment /Article 93,p.3/.
3. **The term of protection of the rights of the lawful user** are related to the conditions, written down in the contract between him and the maker of a database. The maximum term of protection is of course 15 years – in accordance with the term of protection of the rights of the maker of a database.

### IV Legal protection of the author's rights and the rights of the maker of a database

The new legislative texts in the Copyright and related rights law broadened the scope of **protection of the right holders of author's, related and sui generis rights**. This protection is realized in two ways:

- Civil law protection
- Administrative law protection

There is an infringement of the right upon a database whenever "somebody realizes rights in the scope of author's rights, related rights or sui generis rights without the consent of the rights holder or with contradiction with some legislative texts" /for example free use stated in Article 94/.

**The protection under the civil law** gives the opportunity for the author and maker of a database to claim damages alternatively or cumulatively with one of the following claims:

- Claim of stopping the illegal usage of a database;
- Claim of confiscation and destroying of illegally reproduced databases;
- Claim of confiscation of the devices, used for the illegal actions;
- Claim of return of the illegally reproduced databases.

When there are legal grounds to claim damages, but there is no information about the size of the damages, the legislator has made the following provisions: persons, whose interests are harmed instead of compensation, can ask for:

- The revenues, realized as a result of the infringement;
- The equivalence of the object of infringement at the prices of legally reproduced copies;

- The amount between 100 and 50 000 Bulgarian *levs* (currency), the exact amount is determined by the court.

The legislator has offered a number of provisional measures in order future infringements to be prevented. In particular those are:

- Restriction for conducting particular actions, which are considered to be or will be illegal usage of a database;
- Confiscation of the illegally reproduced databases;
- Confiscation or sealing of equipment, which is supposed that can be used for conducting of an infringement of the right upon a database;
- Sealing of the room, in which an infringement is done or can be done /article 96/1//

The administrative law protection set in the legislative text of the Copyright and related rights law is as following:

- Fines and property sanctions for the amount of 200 to 2 000 Bulgarian *levs* for the first infringement and amounts from 1000 to 5000 Bulgarian *levs* for the second and further infringements;
- The administrative act of infringement is made by organs, authorized by the Minister of Culture in cooperation with the Ministry of Interior.

The changes in the Copyright and related rights law made in 2000 and 2002 created a complete legal protection of databases in our national legislation, which is brought in agreement with the Directive 96/9 of the Council and the European Parliament.

#### REFERENCES

1. Copyright and related rights law, State gazette No56/1993, last amendments No77/2002
2. Markova, M., "Computer programs and databases in the Intellectual property system and the fight against their piracy, INSO magazine No8 and No9, 2002
3. Borisov, B., Markova, M. "New objects of intellectual property", University publishing house "Stopanstvo", 2002

## ZAKONSKE ODREDBE ZA BAZE PODATAKA

**Maria Markova**

*U poslednje četiri godine su donesene neke vrlo važne promene u zaštiti autorskih prava u Bugarskoj kao i slični zakoni o autorskim pravima, naročito one donesene u godinama 2000 i 2002. Najveće promene se odnose na osoben predmet intelektualnog vlasništva, naime, baze podataka.*

*Predmeti istraživanja u ovom članku su baze podataka kao intelektualni produkti. Najznačajnije teme koje se proučavaju u ovom članku su zakonske promene s obzirom na; zakonsku definiciju termina baze podataka; neke bitne momente u ovoj definiciji koji su istaknuti, a koji omogućavaju bolje razumevanje karakteristika baza podataka; zaštitu autorskih prava koja se odnose na baze podataka i samosvojestven sistem prava; nosioce prava.*

*Promene ustanovljuju tri grupe nosioca prava; autore, tvorce baza podataka, korisnike baza podataka; raspon ekskluzivnih prava svake pojedinačne grupe; mogućnosti građansko pravne i administrativno pravne zaštite prava autora i tvoraca baza podataka; uslovi zaštite prava baze podataka.*