[BG] Bulgarian Supreme Court to provide clarity on compensation for copyright infringements

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By resolution dated 15 December 2022, the *Върховният касационен съд* (Bulgarian Supreme Court of Cassation — SCC) opened interpretative case No. 3/2022 concerning the interpretation of certain questions regarding compensation for copyright infringements which cause confusion and disagreement between the lower courts and practitioners. The case was opened upon a request of the *Висшия адвокатски съвет* (Bulgarian Supreme Bar Council) and will be decided by the General Assembly of the Civil and Commercial Chambers of the SCC.

In short, the questions raised are:

1. which market should be considered when determining the amount of damages in cross-border cases (i.e. where the infringement does not take place in the country of residence of the author);

2. whether the compensation for infringement includes any attorney fees made prior to the litigation, but as part of the actions for out-of-court settlement; and

3. whether an author must prove the amount of non-material damage, if the copyright infringement has been proven.

In more detail:

1. The first question concerns copyright infringements which have occurred in a country other than the author's country of residence. In such instances, determining the leading pricing market is a crucial factor in calculating the amount of material damages in the form of lost royalties. This issue has caused quite some confusion and disagreement among courts and legal practitioners in the past. The SCC will provide much-needed clarity and guidance on the matter.

2. The second question relates to the inclusion of attorney fees in the compensation sought in court for copyright infringement. It is established that compensation for copyright infringement should cover both material and non-material damage. However, the question of whether out-of-court attorney fees made in pursuit of a settlement agreement with the infringing party should be included is much debated. The SCC's decision will be instrumental in establishing a clear framework for determining the appropriate level of compensation in these

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cases.

3. Finally, the court will consider the issue of non-material damage. In cases of copyright infringement, an author may be entitled to compensation for both material and non-material damage. However, the question of whether an author must prove the amount of non-material damage or whether it is automatically due if the infringement is proven has yet to be resolved. The SCC in this case will provide a clearer understanding of the obligations of authors and copyright holders in proving non-material damage.

The SCC's decision is eagerly anticipated by all stakeholders as it will establish clear and consistent guidelines for determining the appropriate level of compensation in case of infringements. It will also help promote the growth and development of the creative industries and will serve as a deterrent against future infringements.

Resolution of the Supreme Court of Cassation, Sofia, 15 December 2022

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