



Introducing a Secondary Publication Right in Bulgaria

New Legislative Developments in support of Open Science – Bulgaria and Slovenia

Ana Lazarova

Digital Republic, KR21 National Coordinator for Bulgaria



A Right to a Secondary Publication (SPR)

- **Aim:** to address the problem of hindering the access to the output of publicly funded scientific research.
- **Legal nature:** a variety of special regimes empowering (or obliging) authors to retain some of the usage rights over their publicly funded works vis-à-vis scientific publishers



A Right to Reuse - pre-existing Bulgarian provision

Pre-existing Article 60 of the Copyright and Neighbouring Rights Act, entitled **Right to Reuse**, provided that :

“[t]he author has the right to use their work, which was already published in a periodical, after the date of publication, unless otherwise agreed in writing.”

Restrictions:

- No restrictions on the **type of publication eligible for re-use**;
- No **embargo** period;
- **Contractual override** possible.



Bulgarian implementation of the CDSM Directive and User Rights

Law amending the **Bulgarian Copyright and Neighbouring Rights Act** - promulgated on 01.12.2023

- TDM for the purposes of scientific research - 72 hours
- general TDM exception - formalising opt-out
- introduction of previously untransposed InfoSoc exceptions (parody, incidental inclusion)
- broadening of existing exceptions (informatory, teaching etc.)
- synchronizing the regimes for exceptions to copyright and to neighbouring rights
- all exceptions in the law (except for the ones that are overridable according to the law) - proclaimed **imperative** by a new general provision
- removal of the time limit on copyright licensing



SPR in the spirit of the CDSM Directive

- strengthening of the **weaker bargaining position** of authors and their protection vis-a-vis primary exploiters of their works - i.e. producers and publishers.
- the amendment of the existing art.60 of the CRNA follows the spirit of Articles 18 et seq. CDSMD



New SPR mechanism

new para 2 to art. 60 states that:

“[t]he author of a work of **academic literature** created on the occasion of a research, funded in whole or in part by public funding, shall retain the right to make that work or parts thereof available in educational or scientific repositories for non-commercial purposes after its acceptance for publication by a publisher, and shall be obliged to mention the publisher when doing so.”



New SPR mechanism

- **works eligible for re-use:**
 - a. works of academic literature
 - b. no further requirements concerning the work or its length
 - c. not limited to articles (although systematically - in periodicals)
 - d. no restrictions as to the version available for a secondary publication



New SPR mechanism

- **funding**
 - a. requirement that the work is the result of research that is funded in whole or in part by public funding
 - b. no minimum percentage of public funding required for the publication to be subject to SPR
- **embargo**
 - a. no embargo period – the publication is reusable immediately after its acceptance for publication by a publisher



New SPR mechanism

- **requirements for the secondary publication:**
 - a. must take place in educational or scientific repositories for non-commercial purposes
 - b. the publisher of the primary publication must be mentioned
 - c. only provides for access to the work, and it's silent considering the work's reuse
 - d. the instrument implies no obligation for the author to republish



New SPR mechanism

New para 3:

“[a]ny arrangement which prevents or restricts what is provided for in para 2 shall be null and void.”

New para 4:

“a publisher may not impose restrictions on the publication of a work of academic literature solely on the grounds that it has already been published in an educational or scientific repository for a non-commercial purpose.”



SPR and existing Works-for-Hire regime

Art. 41 Bulgarian Copyright Act:

Copyright in a work created within the framework of an **employment contract** belongs to the author, unless otherwise provided for in the Copyright law. However, the employer has the exclusive right to use the work so created for its own purposes (insofar as the employment contract does not provide otherwise).

Art. 42 Bulgarian Copyright Act:

Copyright in a **work made for hire** resides in the author of the work, unless the commission contract provides otherwise. Also, unless otherwise agreed, the commissioning party has the (non-exclusive) right to use the work for the purpose for which it was commissioned.



What's Next?

Issues to be solved next:

- where (in which repository) would academic works be 'republished'
- format of secondary publications (open format)
- possible entities responsible for publishing the works to a repository
- possible obligations for the authors to deposit their published works

A proposal for a **Law on the Promotion of Scholarly Research and Innovation**



Thank you for your attention!

Ana Lazarova

ana@digrep.bg

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