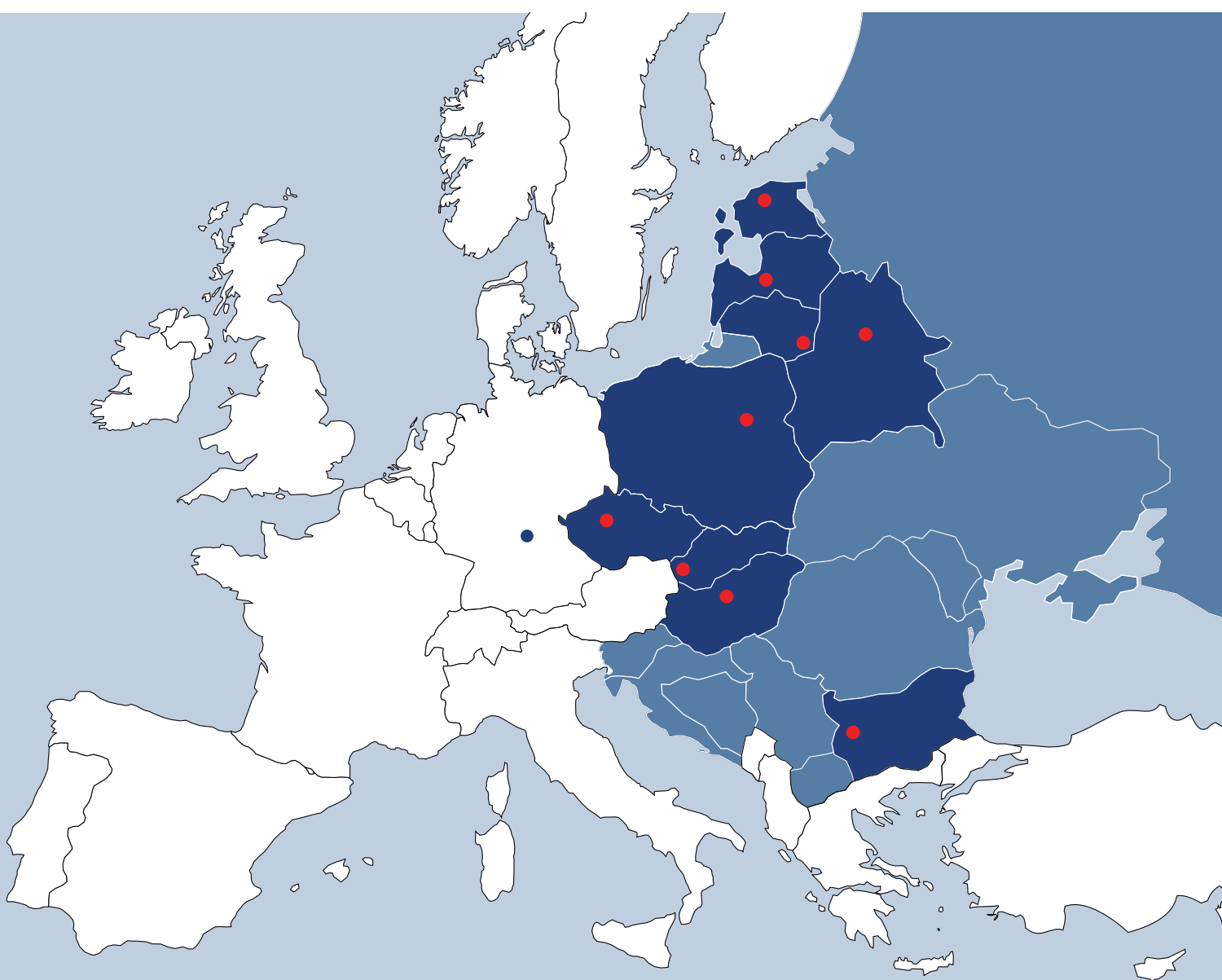


# Legal Protection of Computer Programs/Databases and Software Licences

Central- and Eastern Europe  
2014



**bnt international surveys series**

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## Introduction

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Despite recent harmonization of copyright law with regard to legal protection of computer programs and database rights, national law still plays an important role in the everyday practice of authors, producers of computer programs and databases, parties to license agreements and others dealing with the local legal framework for protecting these non-material rights within the European Union.

It is essential to acquire knowledge of specific implementation of European guidelines in each member state, of local provisions which are not yet harmonized and practical application of local and European law by authorities and courts. This knowledge will enable you to take appropriate business decisions, draft high-quality contracts and be ready for possible litigation, in other words to ensure that creative work and development costs invested in software programs and databases will pay off and be protected against infringement.

Here you have a bnt survey which provides a concise systematic overview of the legal framework for software and database protection as well as software license agreements in ten jurisdictions of Central and Eastern Europe.

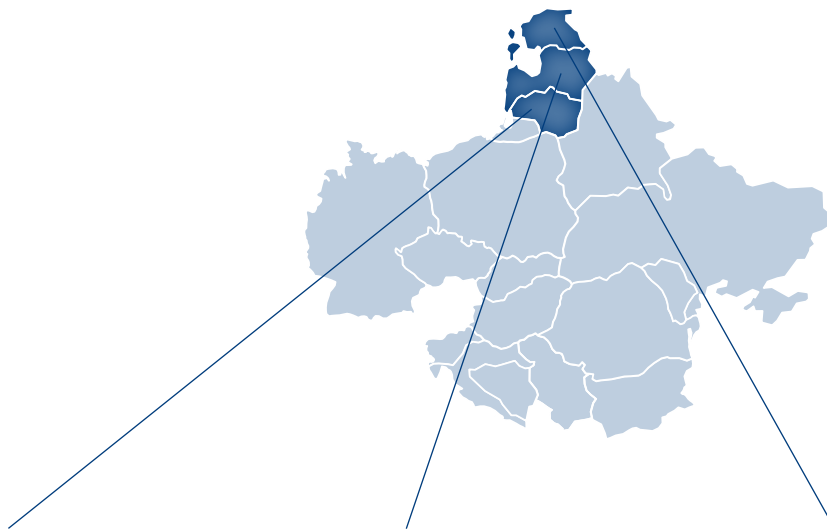
Our own bnt experts on IP matters have identified some frequently asked questions with an important impact on business decisions concerning the ten national markets where bnt attorneys-at law are present. We offer an insightful knowledge of local legislation and jurisdictions in the form of a comparative legal analysis, visualized by reader-friendly table formats enabling an understanding of the main aspects of our in-depth advisory experience.

This publication is a starting point for companies and practitioners with plans to extend their business into one of the CEE countries where we operate. It is part of the bnt International Survey Series dealing in similar form with many business-relevant comparative law issues. A complete list of our publications to date can be found on our website [www.bnt.eu](http://www.bnt.eu) in the bnt Practice Groups Media section.

Team

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### How can computer programs be legally protected?



→ **Lithuania:**

Computer programs can be legally protected in more than one way.

Alongside the popular copyright protection frame without the need for registration, alternatives are available such as patenting, commercial secret or trademark. However, the two latter alternatives might be useful only as subsidiary means (e.g. the name or logo of a program might be an object of trademark protection).

As for patenting, computer programs are not considered to be inventions in their own right. For a computer program to be patentable it has to be 1) part of an invention which has a technical character and 2) an invention of which a computer program forms part must have an industrial application. There have been also some tentative initiatives at creating a sui generis frame for legal protection of computer programs, but these attempts are still at a rudimentary stage. Nevertheless protection under copyright law is the most common legal way to protect computer programs as an object of intellectual property.

→ **Latvia:**

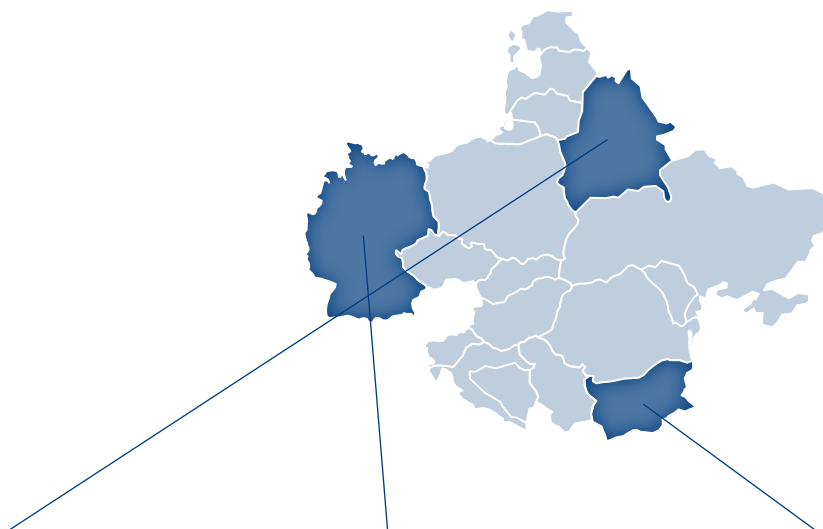
In general, computer programs are automatically protected without registration under copyright law. Computer programs are not patentable inventions due to lack of their own technological character.

→ **Estonia:**

Computer programs are explicitly protected under copyright law without registration in order to ensure protection.

Beyond copyright law, further protection in the form of a patent, utility model or other industrial property rights is generally not available; national jurisdiction is reluctant to extend the scope of legal protection of computer programs granted by copyright law.

## How can computer programs be legally protected?



→ **Belarus:**

Computer programs enjoy copyright law protection. Recently computer programs, which were seen as a type of literary work in previous regulations, became an independent object of copyright protection. Computer programs alone are not directly patentable. However, computer programs may be patentable as part of inventions and utility models.

→ **Germany:**

Generally computer programs are automatically protected under copyright law without registration.

Computer programs alone are not directly patentable inventions due to lack of their own technological character. However, computer programs may be patentable as part of computer-implemented inventions with a technical character solving a concrete technical problem by technical means. The same principle applies to computer programs as part of utility models. Details of the patentability of computer programs as (parts of) inventions are still unsolved and under discussion.

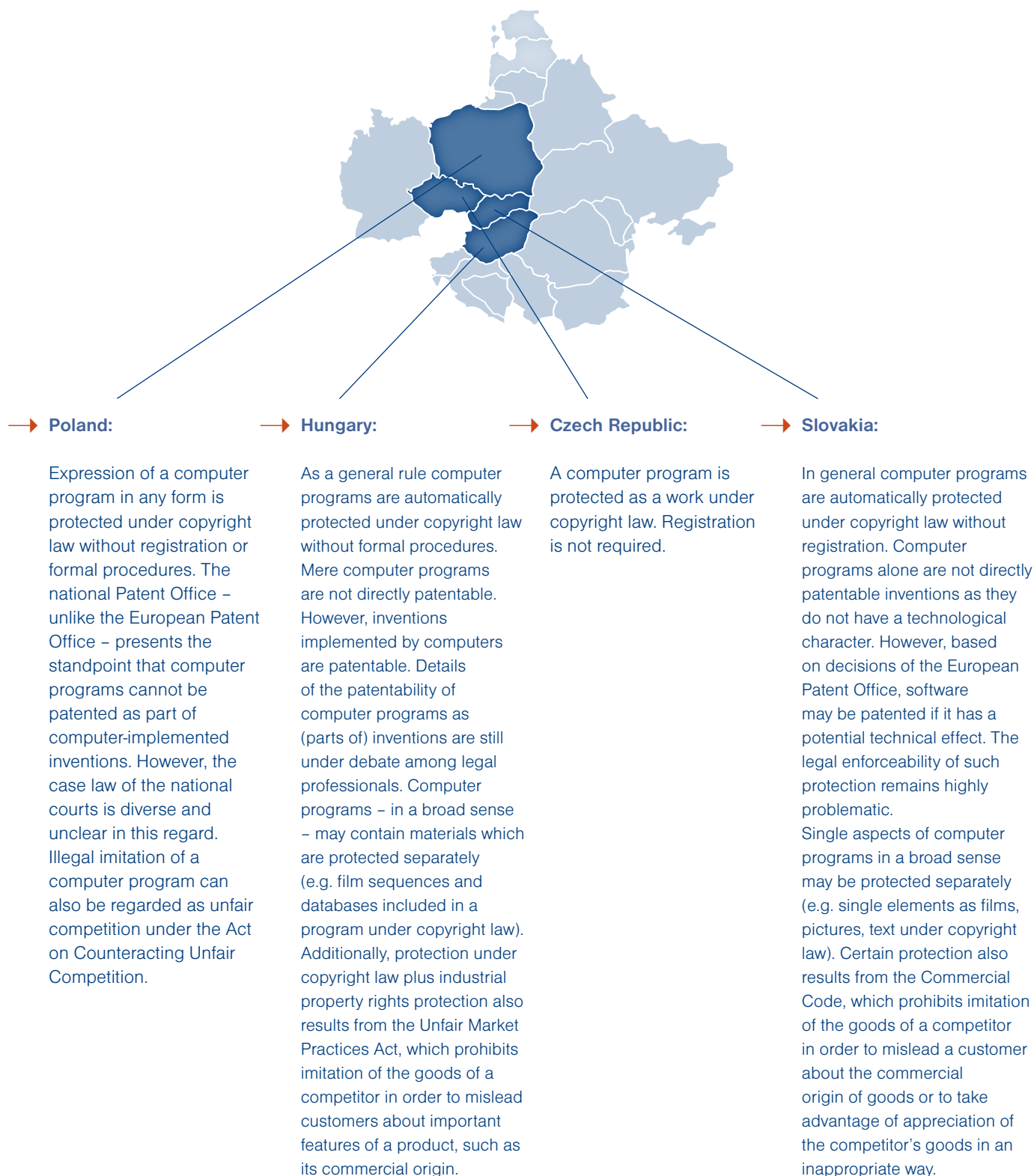
Single aspects of computer programs in a broad sense may be protected separately (e.g. text and databases included in a program under copyright law; the title of a computer program under trademark law). Protection may also result from the Unfair Competition Act, which prohibits imitation of goods of a competitor in order to mislead a customer about the commercial origin of goods or to take advantage of appreciation of a competitor's goods in an inappropriate way.

→ **Bulgaria:**

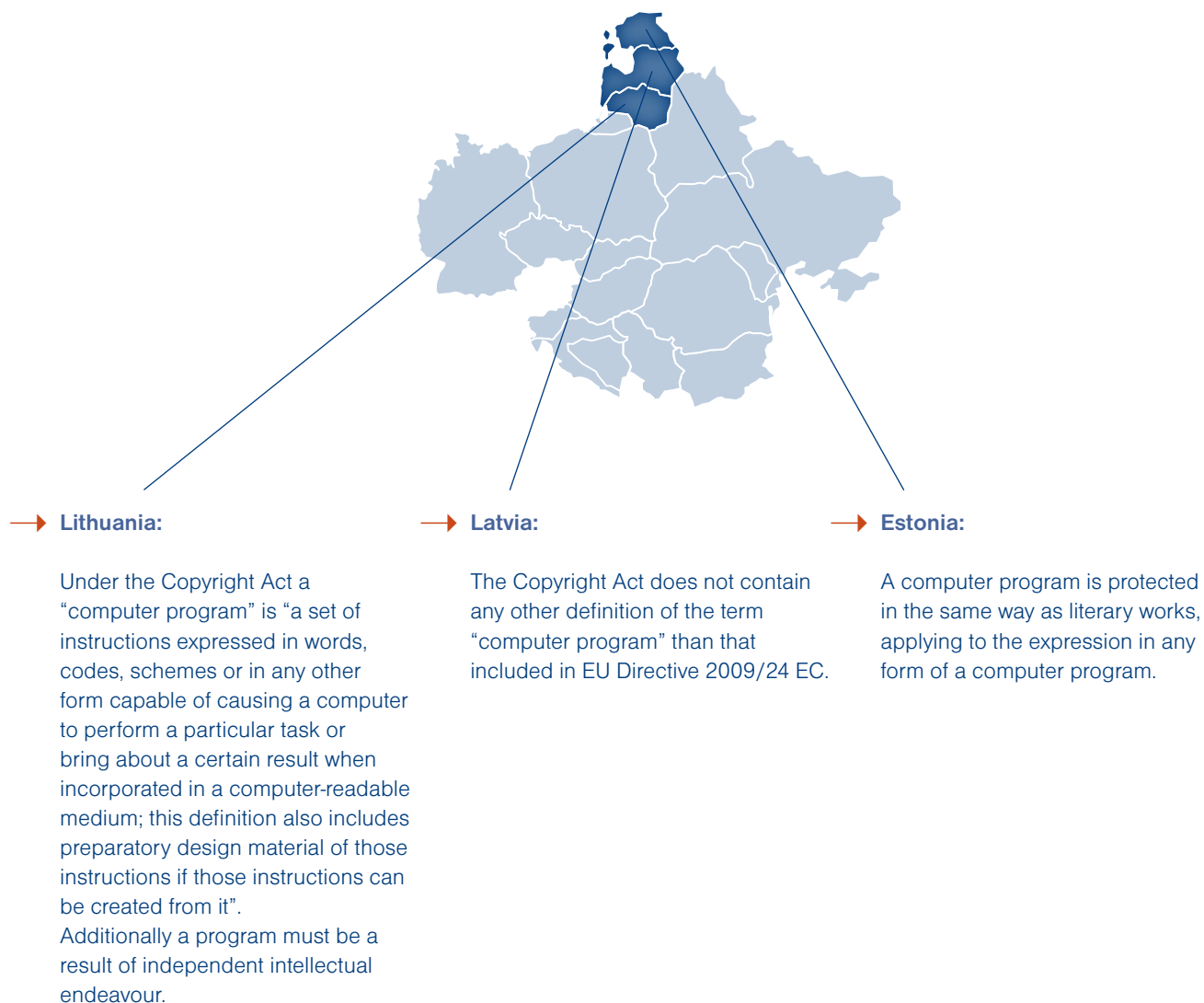
Computer programs enjoy copyright protection. Registering a product is not a prerequisite for its protection.



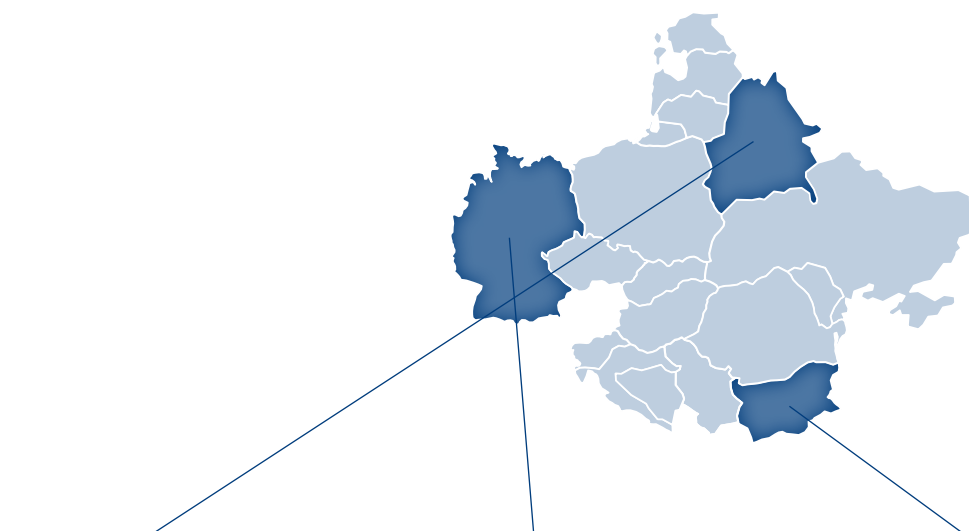
### How can computer programs be legally protected?



### What are the legal definitions of computer programs?



### What are the legal definitions of computer programs?



→ **Belarus:**

The law defines a computer program as an ordered set of instructions and data for use on a computer and other systems and devices intended for the processing, transmission and storage of information, making calculations, audiovisual images and other results, expressed in a physical form. The documentation is included in the program and is therefore also protected.

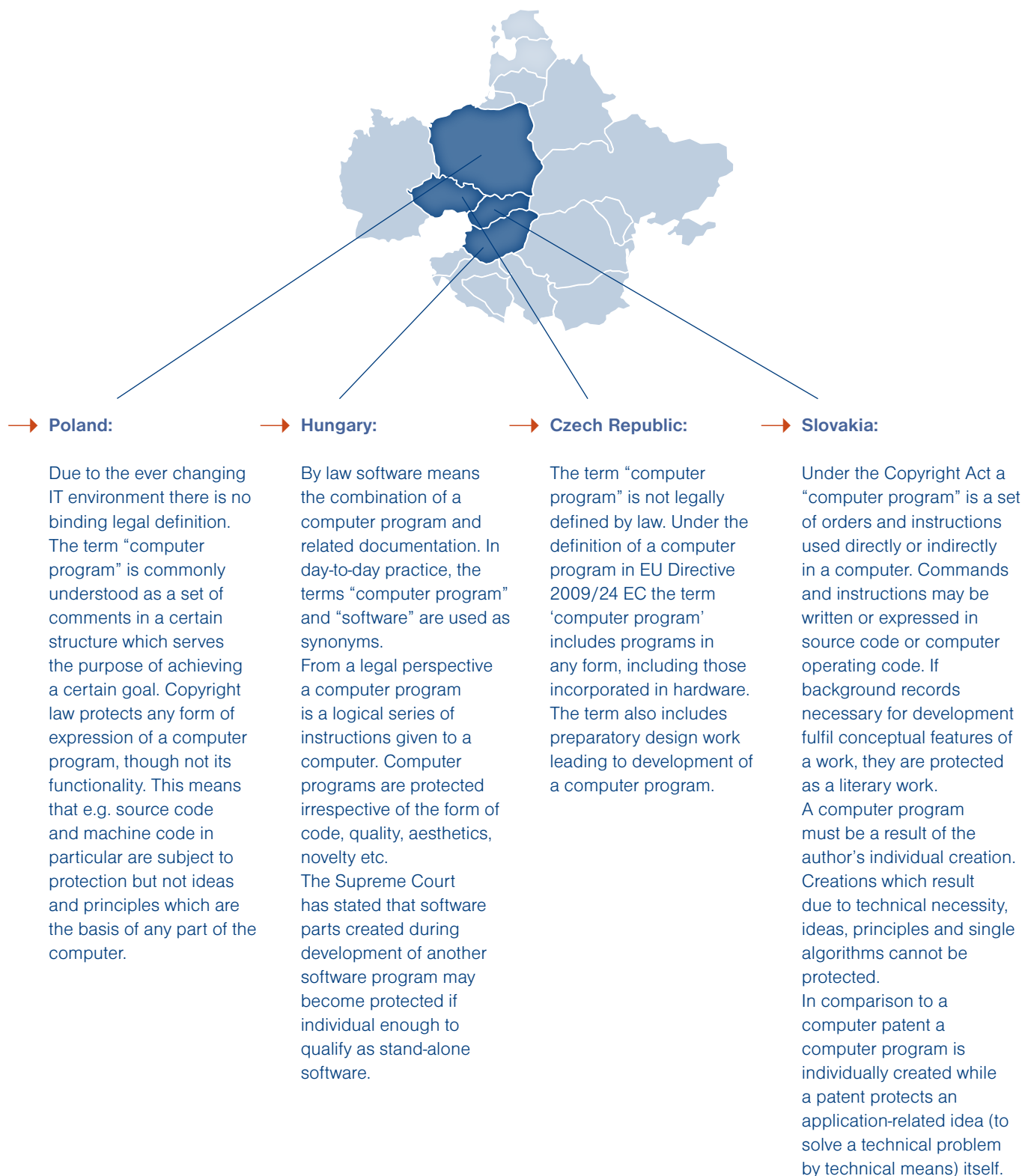
→ **Germany:**

By law computer programs in the sense of the Copyright Act are programs of any kind including preparatory design material. The Federal High Court defines computer programs as a sequence of commands which, after recording on machine-readable media, are capable of causing a machine with information-processing abilities to show, execute or achieve a certain function, task or result. Copyright law protects computer programs of any form of code. Protection of computer programs under copyright law requires individual design as the result of the author's own individual creation while aspects of quality, aesthetics, or novelty are not decisive. In comparison to a "computer patent", copyright law protects the design of an individually created program while patent law ensures protection of an application-related idea.

→ **Bulgaria:**

There is no national-law definition of a computer program.

### What are the legal definitions of computer programs?



## Legal Protection of Computer Programs/Databases and Software Licences 2014

- **Legal basis for protection of computer programs**
- Several sources may be available for protection of computer programs, such as the Eurasian Economic Community Agreement on unified principles of regulation in the sphere of protection and enforcement of intellectual property rights, the Civil Code and the Act "On copyright and related rights". The last of these contains special provisions for computer programs.
- **Scope of protection**
- The author has the following moral rights in respect of a computer program:
- right of authorship;
  - right of attribution;
  - right of integrity;
  - right to public disclosure;
  - right to recall.
- In general, it is the exclusive right of the author to use the work in any form and by any means and in any way at his own discretion. The author may allow or prohibit other persons to use his work. The author or other copyright holders enjoy the following exploitation rights:
- right of reproduction;
  - right of distribution of the original computer program or copies;
  - rental rights;
  - import rights;
  - right of communication to the public via wire or wireless means;
  - right of modification (changes, editing, translations);
  - other exploitation rights.
- These exploitation rights may be transferred partly or fully to other persons, in contrast to author's moral rights, which may not be disposed of.
- Moral rights are protected for an indefinite term. Copyright protection of exploitation rights lasts during the author's lifetime and extends for 50 years after death.
- **Limitations on scope of protection**
- The legal holder of a computer program copy is entitled to the intended application of a program, in particular to its installation on a computer or other device, launching and running on conditions set by the right holder.
- The legal holder is further entitled without the author's consent to make backup copies of a computer program exclusively for the purpose of replacement, as well as for archive purposes in case the original copy is lost, damaged etc. There is a possibility to adjust the computer program exclusively to ensure its proper functioning on the user's systems or together with other programs; or to alter it if the legal holder is authorized by the right holder and the source code is opened; or to perform actions necessary for program functioning according to its intended purpose, in particular, saving and storing it in the computer memory, unless otherwise agreed with the right holder, and only if those actions do not lead to creation of new computer programs or infringement of the copyright in any other manner.
- **Limitations – dispositive law?**
- Most legislative provisions may be changed by agreement between the parties, except for mandatory rules.
- For instance, the right to create a back-up copy and the author's individual moral rights in general may not be restricted by agreement.

## Legal Protection of Computer Programs/Databases and Software Licences 2014

→ <b>Legal basis for protection of computer programs</b>	<p>The applicable law here is the Copyright Act and the Act for Establishing Administrative Control on the Production and Trade of Optic Disks and Matrices Containing Objects of Copyright Protection.</p>
→ <b>Scope of protection</b>	<p>An author has the following immaterial rights:</p> <ul style="list-style-type: none"><li>• to decide whether, when and how the program is to be published; to decide whether the program is to be published under a pseudonym or anonymously;</li><li>• to be recognized as author of the program, to demand attribution of his/her name, pseudonym or identifying sign to the program whenever the latter is used;</li><li>• to demand integrity protection with regard to the program and his/her personal interests or dignity;</li><li>• to change the program when this does not infringe rights acquired by third persons; to have access to the program whenever it is in the possession of third persons;</li><li>• to deny use of the program due to changes in the author's beliefs. This right suggests proper indemnification by the author to third parties who have legitimately acquired the right to use the program.</li></ul> <p>An author has the following material rights:</p> <ul style="list-style-type: none"><li>• to use the program;</li><li>• to license its use by third persons, where use of a program comprises:<ul style="list-style-type: none"><li>– reproduction;</li><li>– distribution of the original and/or copies of the program to an unlimited number of persons;</li><li>– public presentation, wireless or cable transmission, offering wireless or cable access to the program or parts of it to an unlimited number of persons so that any of the addressees can use this access at times and places that may be suitable for them;</li><li>– translation, reworking, adaption and synchronization including introduction of any changes in particular those that lead to creation of a derivative program;</li><li>– import and export (except for trade within the EU, which due to the principle of exhaustion does not require a licence after copies have been legitimately sold for the first time in the EU) of specimens in trade quantities regardless of the fact whether production was legitimate.</li></ul></li></ul>
→ <b>Limitations on scope of protection</b>	<p>A person who legally acquires the right to use a computer program can do the following without permission by the author and free of charge:</p> <ul style="list-style-type: none"><li>• make a back-up copy of the program if necessary for the use the person acquired the program for;</li><li>• to observe, study and test the ways the program functions in order to determine the ideas and principles on which the program or any element of the program is based when this should happen in the course of starting, visualizing, running, transmitting and/or storing the program in the computer memory and in default of a restrictive agreement with the author;</li><li>• to translate the program code from one form into another when absolutely necessary in order to obtain information on reaching compatibility of the program with other programs, though under the condition that the necessary compatibility has not been granted as a completed product and translation is only conducted with regard to those parts of the computer program that are required in terms of reaching compatibility. The information thus gained cannot be used to create and distribute a computer program insubstantially different from the program the code of which has been translated. Further acts which could infringe the copyright of the original program are forbidden.</li></ul> <p>In default of a deviating agreement a person who legally acquires the right to use a computer program can start the program, visualize it on a screen, run it, transmit it over distances, store it in the memory of a computer, translate and/or rework it as well as introduce into it other changes when these actions are necessary for the purpose the person acquired the program for. A legitimate reason for introducing changes to the program is eliminating mistakes.</p>
→ <b>Limitations – dispositive law?</b>	<p>The above mentioned limitations on the scope of protection are mostly mandatory law and cannot be excluded by contract. Only the activities of an authorized user where the possibility of a deviating agreement with the copyright holder is explicitly mentioned above are covered by dispositive law and can be limited on the basis of a licence agreement.</p>

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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| → <b>Legal basis for protection of computer programs</b> | Protection of computer programs is granted by the Copyright Act which also implements Directive 2009/24/EC of the European Parliament and of the Council on legal protection of computer programs.   |
| → <b>Scope of protection</b>                             | <p>The author of a computer program has the following moral and economic rights.</p> <ul style="list-style-type: none"><li>• Moral rights:<br/>The author may decide on publication of a computer program, claim authorship and has the right to inviolability of his work, in particular the right to grant consent to any alteration of or other intervention in his work unless the Copyright Act states otherwise.</li><li>• Economic rights:<br/>The author has the right to use his work. This right comprises e.g.:<ul style="list-style-type: none"><li>– the right of reproduction,</li><li>– the right of distribution of the original or a copy of the work,</li><li>– rental and lending rights.</li></ul></li></ul>   |
| → <b>Limitations on scope of protection</b>              | <p>Under the Copyright Act a lawful user of a computer program does not infringe the copyright if he:</p> <ul style="list-style-type: none"><li>• reproduces, translates, adapts, arranges or otherwise alters a computer program if necessary for use of a lawfully acquired computer program if this is done during loading and operation of the computer program or while correcting computer program errors;</li><li>• makes a back-up copy of a computer program if necessary for its exploitation;</li><li>• examines, studies or tests the functionality of the program in order to identify the ideas and principles underlying any element of the program if this is done while loading, storing, displaying, running or transmitting or other acts which the user is authorised to perform;</li><li>• lawfully reproduces the code or translates its form during reproduction of the computer program if reproduction or translation is necessary to obtain the information needed to achieve interoperability of an independently created computer program with other programs.</li></ul> |
| → <b>Limitations – dispositive law?</b>                  | Most of the provisions of the Copyright Act are mandatory. The parties may regulate some mutual rights and obligations differently from the law by a licence agreement.  |

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for protection of computer programs**
- The “Computer Program Directive” 2009/24 EC has been implemented exhaustively into national law. Interpretation of national law aims almost exclusively at maximum compliance with European law. National law will generally be overruled as far as it diverges from European law.
- **Scope of protection**
- The author has an interest in protection of personal interest in his work (moral rights) as well as in exploiting his creation economically (economic rights). Copyright law lists an explicit catalogue of moral rights. For computer programs, however, the scope of protection of economic rights may be practically more relevant. Among those relevant for computer programs, these rights include:
- reproduction
  - distribution
  - translation
  - adaptations, modifications and other alterations
  - compilation and publication of collections and systematisation
  - communication of the work by satellite, cable network or other technical devices, making the work available to the public and
  - exclusive right for physical use and holding of a computer program for commercial purposes.
- As with all economic rights, these are transferrable to or exercisable partly or fully by other persons.
- **Limitations on scope of protection**
- By law, the author’s protection is limited in favour of the user’s interest in efficient use of computer programs. Without authorization by the author, a lawful user may:
- reproduce, translate, adapt and transform a computer program in any other manner if this is necessary for regular use of the program on a device or devices or to correct errors,
  - make a back-up copy of the program or replace a lost or destroyed program,
  - reproduce and translate a computer program as far as necessary to make it compatible with other programs.
- **Limitations – dispositive law?**
- While most regulations in copyright law are dispositive, the above limitations are not contractually amendable.



## Legal Protection of Computer Programs/Databases and Software Licences 2014

- **Legal basis for protection of computer programs**
- The Copyright Act governs protection of computer programs. §§ 69a et seq. of the Copyright Act contain special provisions for computer programs and implement EU Directive 2009/24 EC on legal protection of computer programs into national law. If not regulated otherwise in those special provisions the general provisions of the Copyright Act for literary works apply to computer programs. Details of legal interpretation of the Copyright Act and EU Directive 2009/24 EC are defined in broad case-law of national civil courts and the European Court of Justice.
- **Scope of protection**
- Besides so-called author's moral rights (right of recognition of authorship, right to public disclosure, defence against distortion of the author's work, right to withdraw) the author has different exploitation rights, including:
- right of reproduction;
  - right of distribution;
  - right to broadcast;
  - right of communication via video or audio recordings;
  - right of communication to the public via wire or wireless means;
  - right of modification (changes, editing, translations).
- These exploitation rights may be transferred partly or fully to other persons. The term of copyright ends 70 years after the death of the author.
- **Limitations on scope of protection**
- Copyright law provides several minimum rights for users and limitations on the scope of protection of computer programs besides general copyright barriers. Translation and modifications of computer programs are allowed without the right holder's consent, if necessary for the intended use of the program by a person authorized to use a copy. That authorized person may also create a backup copy without the right holder's consent if that copy is necessary to secure the future use of the program and to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if this is done by lawful loading, displaying, running, transmitting or storing the program.
- Moreover reproduction of codes or translation of the code form (decompiling) is allowed under certain circumstances without consent of the right holder. The general provision of the Copyright Act allowing copies for private use of works does not apply to computer programs.
- **Limitations – dispositive law?**
- Most provisions of copyright law can be changed by contract. However, some provisions are mandatory law. As to protection of computer programs, the user's legal right to create a back-up copy and to observe, study or test the functioning of the program as well as the user's decompiling rights must not be restricted by contractual agreement.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for protection of computer programs**
- Computer programs in general are protected as intellectual creations by the Civil Code. More specific regulation of protection can be found in Act LXXVI of 1999 on Copyright. In particular, paragraph c) of Section 1(2) explicitly mentions software as copyrighted material. Sections 58-60 of the Act on Copyright contain special provisions applicable to software only.
- The Act on Copyright has been amended several times since adoption. Therefore, it is in line with and implements EU Directive 2009/24 EC on legal protection of computer programs.
- **Scope of protection**
- Besides author's moral rights (right to publish a work, right to indicate the author's name, protection of the work's integrity, right to withdraw the work) the author has exploitation rights, including:
- right of reproduction;
  - right of distribution;
  - right to broadcast;
  - right of public performance;
  - right of modification (changes, editing, translations).
- Exploitation rights related to software may be transferred partly or fully to other persons.
- In general the term of copyright is 70 years after the death of the author.
- **Limitations on scope of protection**
- Unless otherwise agreed, the right holder's exclusive rights do not cover reproduction, alteration, adaptation, translation, or other modification of software as well as reproduction of the results of these acts in so far as the person authorized to acquire the software performs these actions in accordance with the intended purpose of the software. Licence contracts cannot prohibit users from making safety copies of software if necessary for its use.
- Persons authorized to use copies of software may, under certain circumstances and subject to certain special conditions, without the right holder's authorization, observe and study operation of the software and make trial use in the processes of its input, monitor display, running, transmission or storage in order to get to know the idea or principle serving as a basis for any of the software components.
- **Limitations – dispositive law?**
- In general the Act on Copyright is mandatory. However, in many cases a licence agreement can deviate from legal provisions.

## Legal Protection of Computer Programs/Databases and Software Licences 2014

- **Legal basis for protection of computer programs**
- The Copyright Act governs protection of computer programs and implements EU Directive 2009/24 EC on legal protection of computer programs into national law. The general provisions of the Copyright Act for literary works apply to computer programs plus some provisions dealing with additional safeguarding rules.
- **Scope of protection**
- The author of a work has the inalienable moral rights to the following:
- authorship – the right to be recognized as the author;
  - decision on disclosure;
  - withdrawal;
  - the title
  - inviolability
  - legal action against any distortion, modification, or other transformation of his or her work, as well as against infringement of author's rights as may damage the honour or reputation of the author.
- As to use of a computer program, the author has the following exclusive rights:
- distribution rights;
  - right to make the computer program available to the public by wire or other means;
  - leasing, rental and lending rights;
  - reproduction rights;
  - right to translate, adapt or transform the computer program in any other way and to reproduce the results thus obtained.
- These exploitation rights are partly or fully transferable to third persons. The term of copyright ends 70 years after the death of the author.
- **Limitations on scope of protection**
- The Copyright Act set several minimum rights for users and limitations on the scope of protection of computer programs besides general copyright barriers.
- Reproduction, translation, adaptation or any other transformation of the computer program does not require special permission from the right holder if necessary for the intended use of the program.
- An authorized person may also create a backup copy of the program if needed to secure future use of the program. An authorized person may also observe, study or test the functioning of the program in order to discover the ideas and principles underlying any element of the program. A lawful user may also translate or reproduce the code of a computer program under certain requirements to achieve interoperability with other programs if the information obtained is also only used for that purpose.
- **Limitations – dispositive law?**
- Most provisions of copyright law can be changed by contract and only a few provisions are mandatory. As to protection of computer programs the user's legal rights to create a back-up copy and to observe, study or test the functioning of the program in order to discover the ideas and principles underlying any element of the program are protected by mandatory law.

## Legal Protection of Computer Programs/Databases and Software Licences 2014

- **Legal basis for protection of computer programs**
- The Act on Copyright and Related Rights is the principal legal source for copyright protection of computer programs at national level. It is widely harmonised with several European Union legal acts (e.g. Council Directive 91/250/EEC and Directive 2009/24 EC on legal protection of computer programs). National copyright law is accompanied by an array of Supreme Court decisions, elaborating the theme of copyright protection of computer programs.
- **Scope of protection**
- Under copyright law, the author of a work has exclusive rights to authorise or to prohibit the following:
- reproduction;
  - publication;
  - translation;
  - adaptation, arrangement, dramatization or other transformation;
  - distribution of the original or copies to the public
  - public display of the original or copies;
  - public performance in any form or by any means;
  - broadcasting, retransmission, or communication to the public in any other way including Internet.
- Under national law, the author's economic rights run for the life of the author plus 70 years after death. Protection of the author's moral rights is of unlimited duration.
- **Limitations on scope of protection**
- Reproducing a computer program by a lawful user is considered legally allowed when done for purposes of adaptation and decompilation.
- A person entitled to use a computer program may make back-up copies or adapt the computer program if the copies or adaptations are necessary for use in line with the intended purpose or if the computer program is lost, destroyed or becomes unfit for use. A user may also study or test the functioning of the program in order to determine the ideas and principles underlying any element of the program.
- Under certain circumstances authorisation by the owner of copyright is not required where reproduction of the code of a computer programme or translation of its form are indispensable to obtain the information necessary to achieve interoperability of an independently created computer programme with other programs.
- **Limitations – dispositive law?**
- Norms on lawful reproduction or copying of a program or its components are imperative and cannot be changed by the parties to a contract.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for protection of computer programs** Copyright protection of computer programs is governed by the Act on Copyright and Related Rights which also implements EU Directive 2009/24 EC on legal protection.
- **Scope of protection** Besides author's moral rights the author enjoys other exploitation rights, including:
- right to reproduction;
  - right to translation,
  - right to adaptation,
  - right to change the structure or make other changes to the computer program
  - right to distribution, including lease.
- These exploitation rights may be transferred partly or fully to other persons.
- Protection under copyright law expires 70 years after the death of the author.
- **Limitations on scope of protection** The Act on Copyright and Related Rights provides several minimum rights for users and limitations on the scope of protection for computer programs besides general copyright restrictions.
- Translation and modifications of computer programs are allowed without the right holder's consent if necessary for the intended use of the program by a person authorized to use a copy of the program. An authorized person may create a backup copy of the program without the right holder's consent if necessary to secure future use of the program. An authorized person may observe, study or test the functioning of the program in order to determine the ideas and principles underlying any element of the program if this is done by lawfully loading, displaying, running, transmitting or storing the program.
- Reproduction of codes or translation of the code form (decompiling) is allowed under certain circumstances. The general provision of the Act on Copyright and Related Rights allowing copies for private use of works does not apply to computer programs.
- **Limitations – dispositive law?** Most provisions of national copyright law can be modified by contract but a few provisions are mandatory law. As to protection of computer programs the user's legal right to create a back-up copy and to observe, study or test the functioning of the program as well as the user's decompiling rights may not be restricted by contractual agreement between the user and the right holder.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for protection of computer programs**
- The Copyright Act governs protection of computer programs. If not regulated otherwise in those special provisions the general provisions of the Copyright Act for literary works apply to computer programs.
- **Scope of protection**
- Besides author's moral rights the author of a work enjoys other exploitation rights, including:
- right of reproduction;
  - right of public distribution by sale or other means of ownership transfer; by rental or lending;
  - right of modification (changes, editing, translations).
  - right to include the work in a collective work;
  - right to public display;
  - right to public performance;
  - right to broadcast.
- These exploitation rights are partly or fully transferable.  
The term of copyright is 70 years after the death of the author.
- **Limitations on scope of protection**
- By law the rightful user of a computer program copy may without the right holder's consent produce a copy or edit or translate it if needed for interconnection of the program with a computer for the purpose and in the scope for which it was acquired, including correcting mistakes; or to create a back-up copy.
- An authorized person does not need the explicit consent of the right holder to observe, study or test the functioning of a computer program in order to determine the ideas and principles underlying any element of the program if this is done by lawfully loading, displaying, running, transmitting or storing the program.  
Reproduction of codes or translation of the code form (decompiling) is allowed in certain cases. The general provision of the Copyright Act allowing copies for private use of works does not apply to computer programs.
- **Limitations – dispositive law?**
- An authorized person's legal right to create a back-up copy and to observe, study or test the functioning of the program as well as their decompiling rights may not be restricted by contractual agreement between the user and the right holder.

### General legal claims by the right holder of copyright in a computer program in cases of infringement

Country	Claim for cease and desist	Claim for abatement or removal	Damages claims in general	Damages claims for nonmaterial losses	Claim for destruction of illegal copies and other objects/materials/devices resulting from infringement or enabling infringement	Right to claim from the infringer to recall illegal copies and to remove them from all distribution channels	Right to claim delivery of illegal copies	Information claims	Claims against (potential) infringer for presentation of documents and inspection of goods	Claim for public announcement of final judgment/infringement/infringer	Claim for recognition of rights/authorship/infringement by a court and/or the infringer
Belarus	x	x	x (The amount of damages can be determined either as the proved amount of damages of the right holder or as compensation - up to 500.000 Euro - set by court)	x	x	x	No	x	x	x	x
Bulgaria	x	x	x	x	x	x	x	Only procedural claim in order to secure evidence	Only procedural claim in order to secure evidence	x	x
Czech Republic	x	x	x	x (Apology and/or cash compensation)	x	x	x	x	x	x	x
Estonia	x	x	x	x	x	x	x	x	x	x	x
Germany	x	x	x (The amount of damages can be calculated either on the basis of the real loss of the right holder, or on the basis of the infringer's profit or based on fees for a notional licence)	x	x	x	x (Against reasonable payment)	x	x	x	x (By way of a declaratory action in certain cases)
Hungary	x	x	x	x	x	x	x	x	x	x	x
Latvia	x	x	x	x	x	x	x	x	x	x	x
Lithuania	x	x	x (Actual damages and/or compensation)	x	x	No	No	x	x	x	x
Poland	x	x	x	x	x	x	x (Against reasonable payment)	x	x	x	x
Slovakia	x	x	x	x	x	x	Only procedural claim in order to secure evidence before civil proceedings	x	x (Based on court decision before initiating court proceedings)	x	x

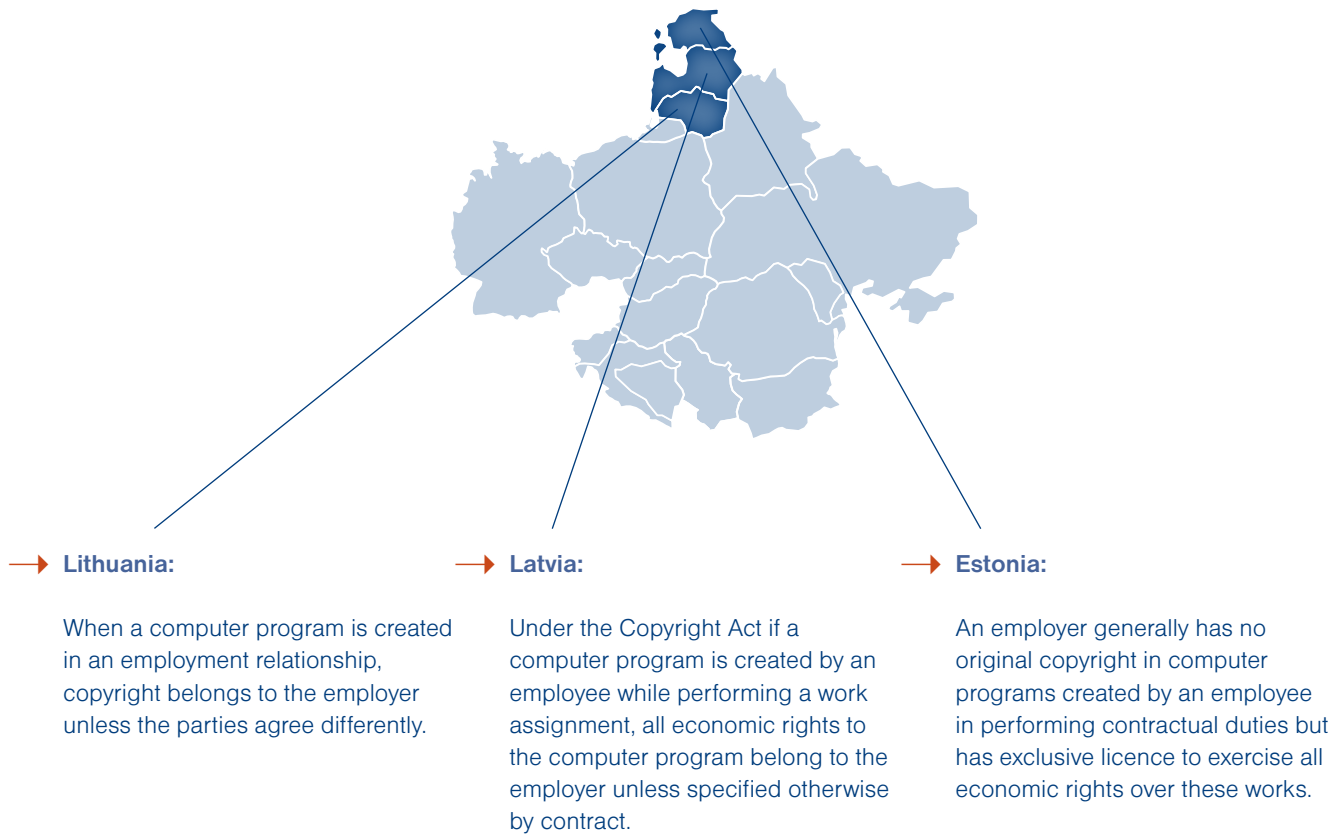
If the infringement is simultaneously a breach of other nonmaterial rights or constitutes an act of unfair competition the injured party may in addition use existing remedies for protection of those rights against unfair competition. Moreover where a contractual relationship exists between the infringer and the right holder, the right holder may have contractual claims against the infringer. The right holder may also initiate criminal/administrative proceedings against the infringer parallel to its civil law claims.

### Costs for legal protection of computer programs

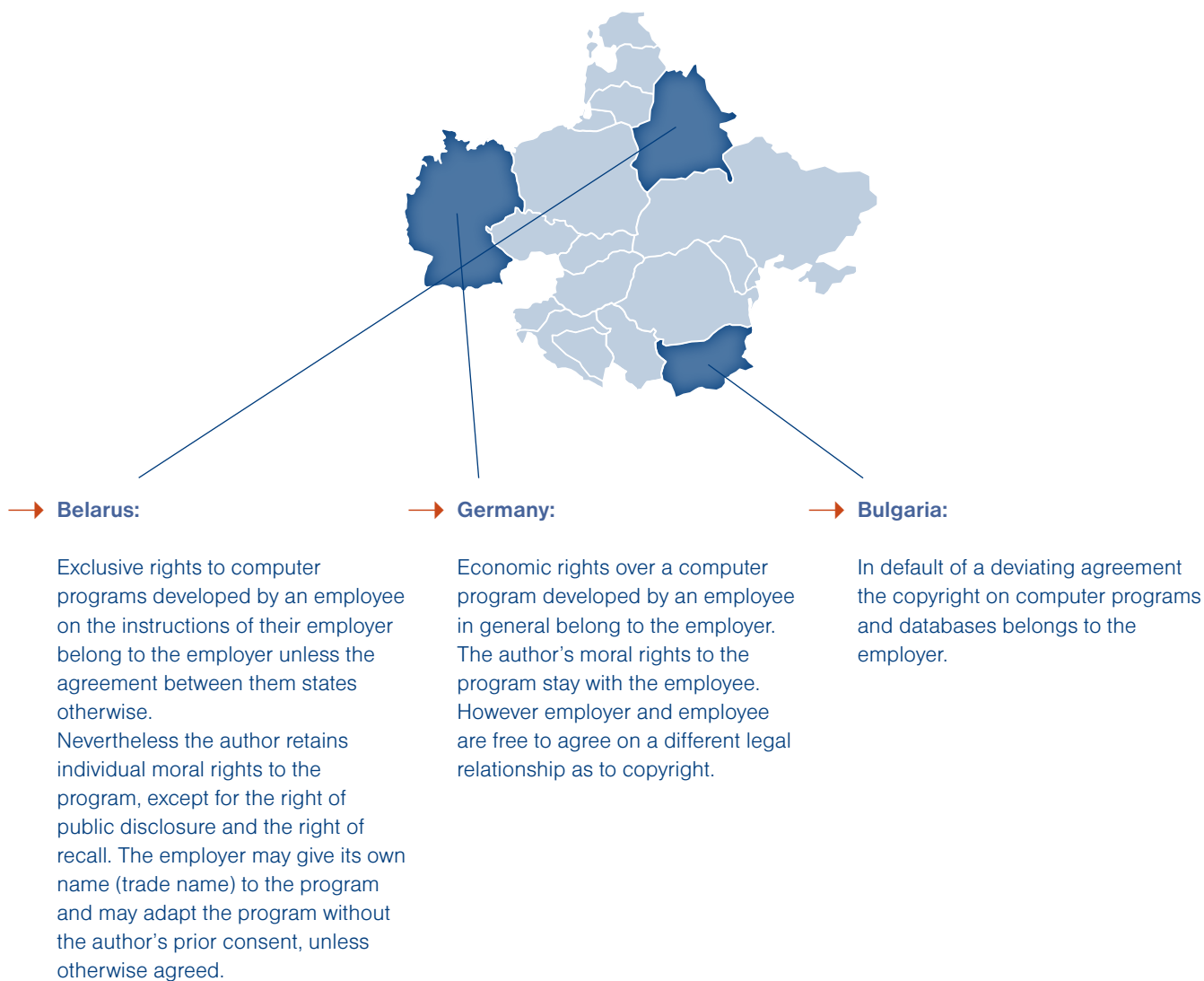
Country	Registration costs	Court fees for civil actions against infringers
<b>Belarus</b>	Approx. 25 Euro for optional registration	Depends on sum in dispute (the regular fee is 5% of the sum in dispute)
<b>Bulgaria</b>	No registration	Court fee calculated on the basis of the disputed sum: 4% in the first instance, 2% in cases of appeal and revision
<b>Czech Republic</b>	No registration	Depends on sum in dispute (Standard 5%)
<b>Estonia</b>	No registration	Depends on sum in dispute
<b>Germany</b>	No registration	Depends on sum in dispute: quite high in copyright cases
<b>Hungary</b>	EUR 16 for voluntary registration with Intellectual Property Office	Court fee 6% of sum in dispute
<b>Latvia</b>	No registration	Depends on sum in dispute
<b>Lithuania</b>	No registration	Depends on sum in dispute
<b>Poland</b>	No registration	Usually 5% of sum in dispute: quite high in copyright cases; for protection of moral rights of the author a flat court fee of 600 PLN (approx. 150 Euro)
<b>Slovakia</b>	No registration	Depends on sum in dispute



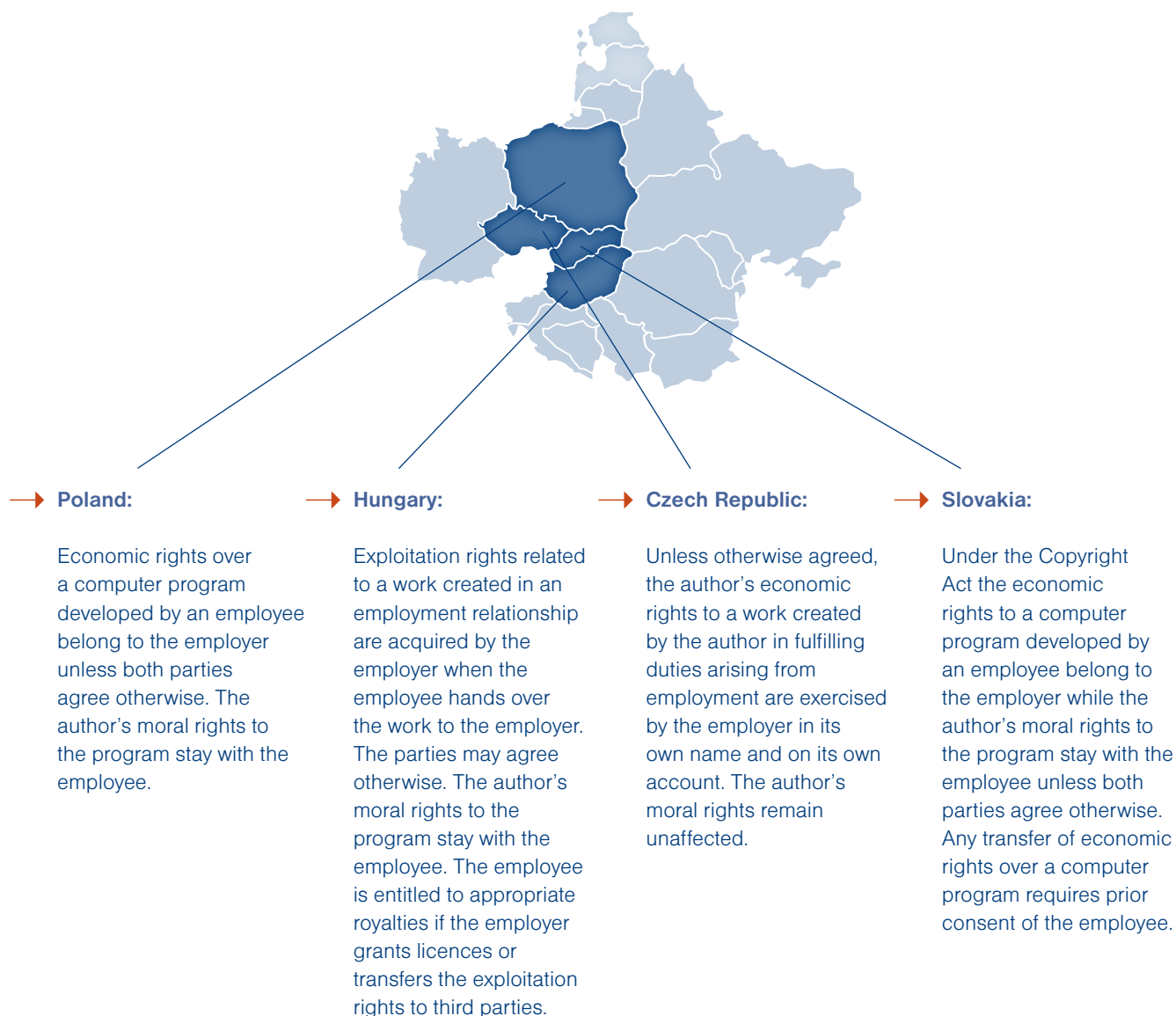
### Legal rights of employees who develop computer programs for their employer



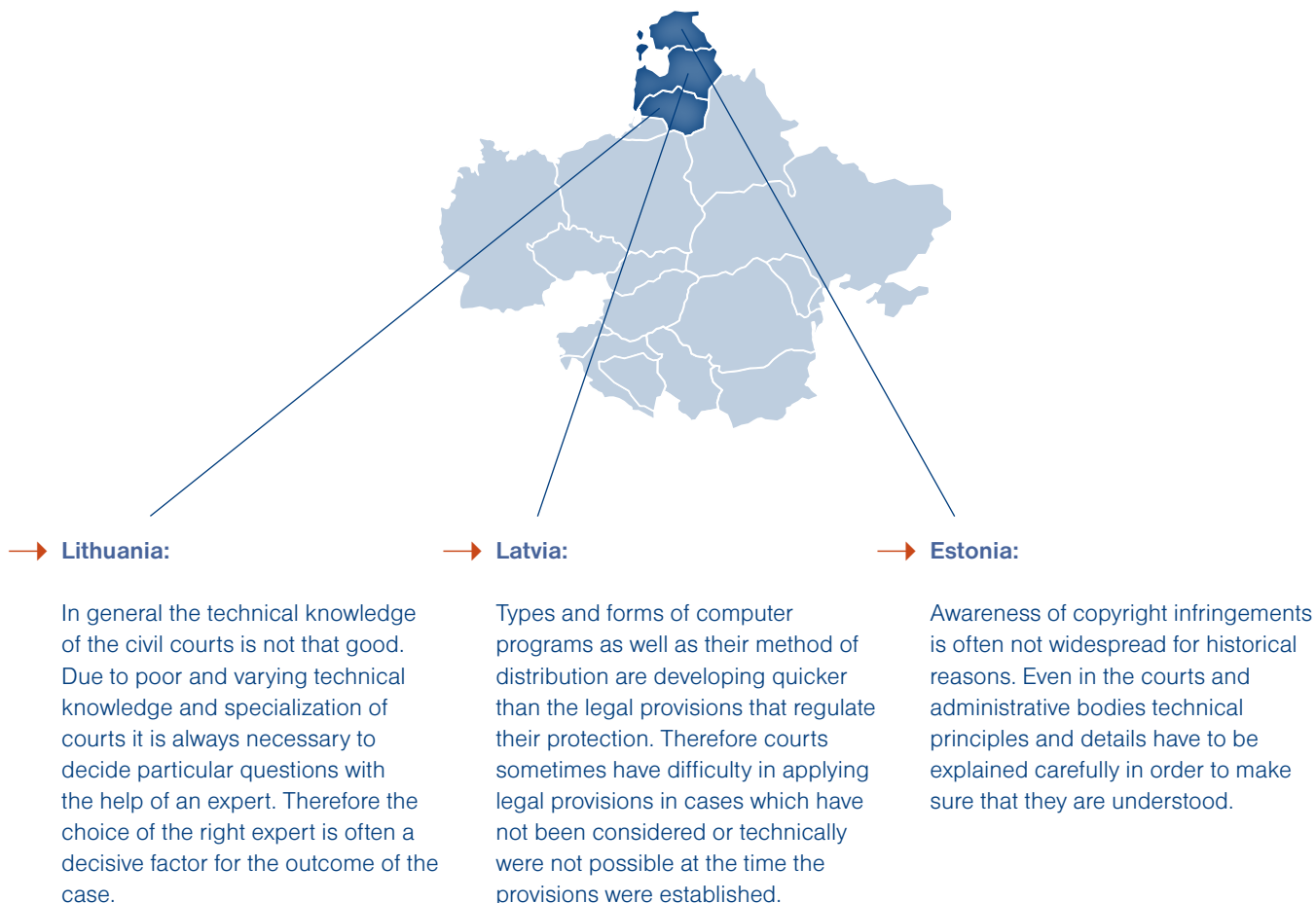
### Legal rights of employees who develop computer programs for their employer



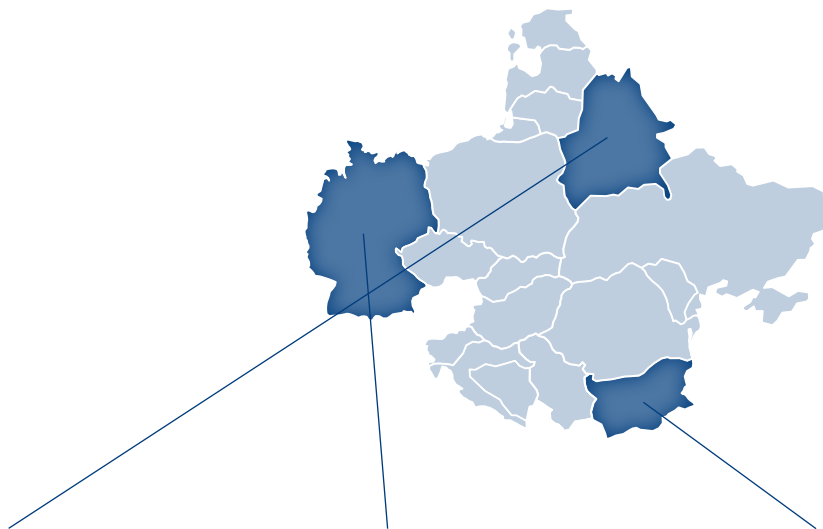
### Legal rights of employees who develop computer programs for their employer



## Common problems with courts and administrative bodies in relation to legal protection of computer programs



### Common problems with courts and administrative bodies in relation to legal protection of computer programs



#### → Belarus:

Exclusive rights to computer programs like any other copyrights are subject to judicial remedy at the Supreme Court Chamber for Intellectual Property Disputes in the first instance. So there is a limited possibility to appeal the decision of the Chamber. The courts normally require written documents as proof, which means that under these circumstances infringements in the digital sphere are hard to prove.

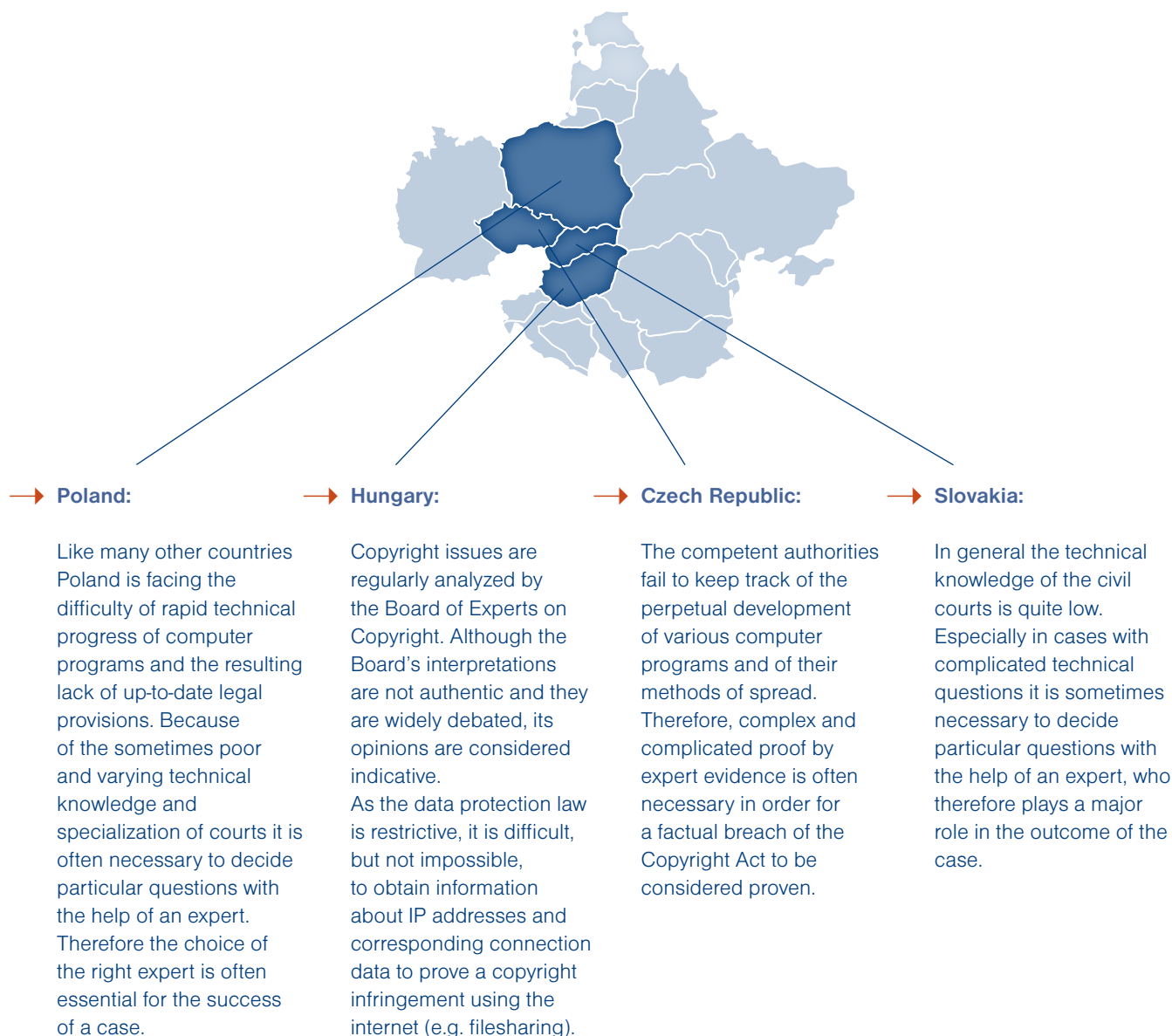
#### → Germany:

Due to technical progress the types and forms of computer programs as well as their methods of distribution are developing quicker than legal provisions for their protection. But in general the technical knowledge of German civil courts is quite good and especially in copyright law cases competence is concentrated in a few civil courts/chambers which already have some experience. Due to the restrictive data protection law it is very difficult to obtain information about IP addresses and the corresponding connection data to prove an infringement of copyright law using the internet. Even where right holders use special software to track IP addresses courts have often denied the application of the right holder to request the connection data from the internet provider, due to doubts about the correct determination of IP addresses by tracking software. Currently under discussion is whether watching illegal content by using video streams may constitute a copyright infringement.

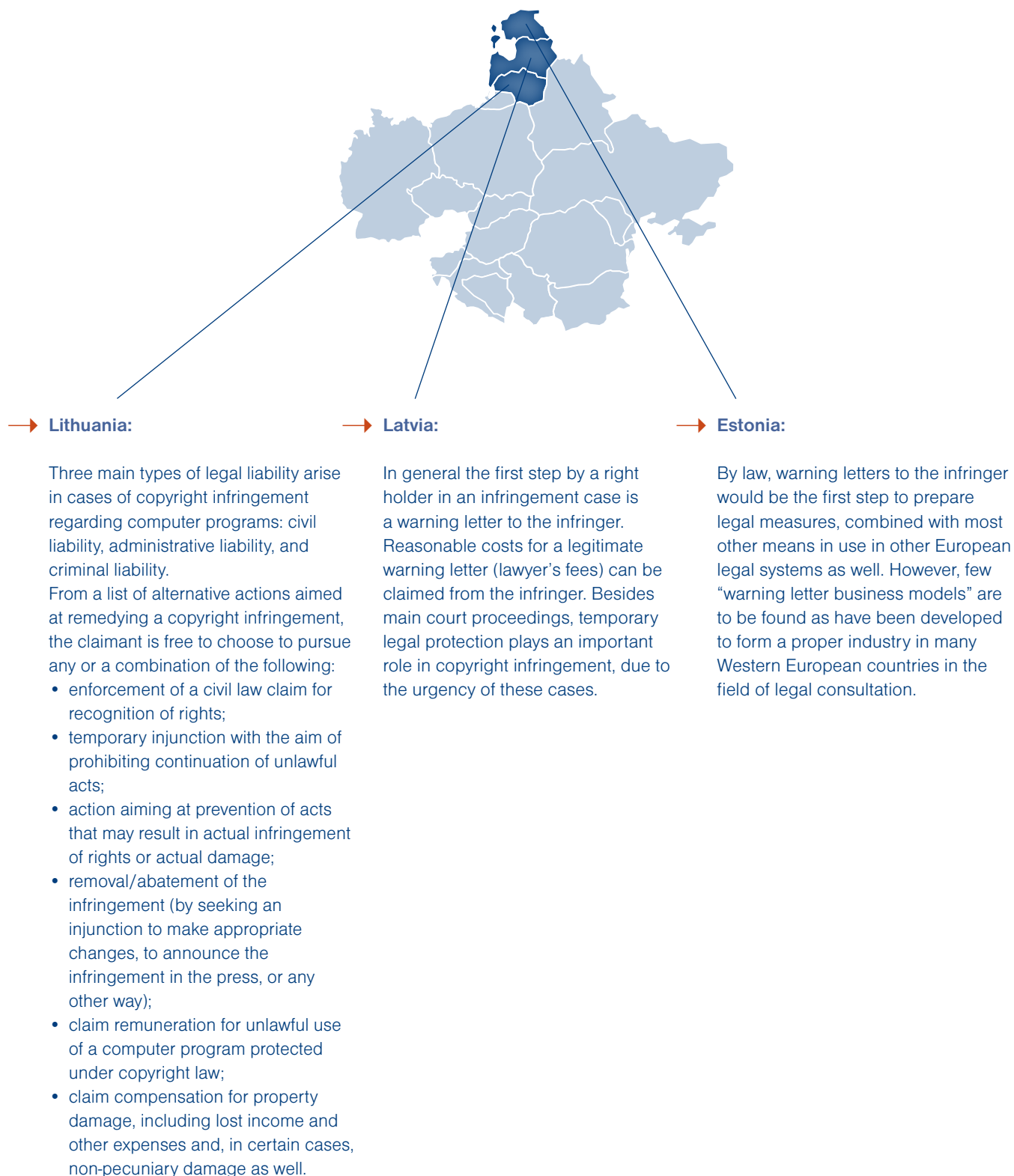
#### → Bulgaria:

The Copyright Act gives executive authorities such as the Ministry of Internal Affairs far reaching rights such as seizure of proof and objects of infringement. In practice, these are sometimes used selectively to the detriment of competition.

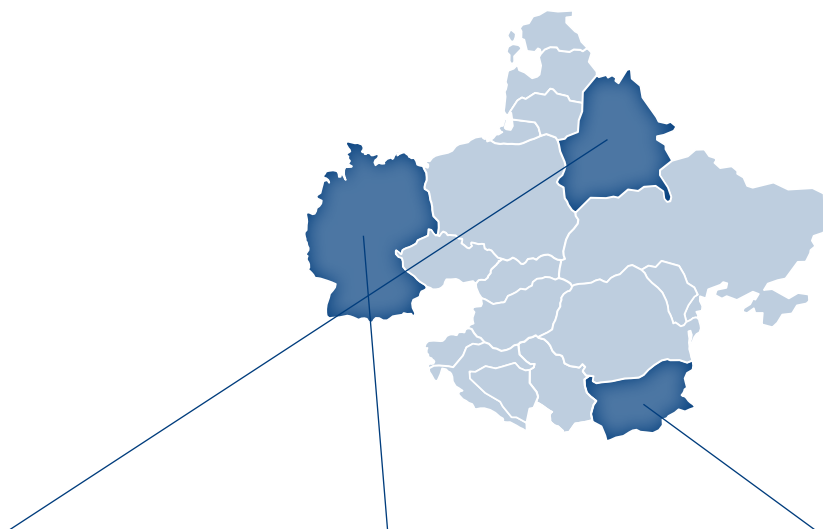
## Common problems with courts and administrative bodies in relation to legal protection of computer programs



## Typical legal measures in cases of infringement



### Typical legal measures in cases of infringement



#### → Belarus:

Depending on the severity of the infringement the right holder may take the following legal measures:

- write a warning letter;
- initiate proceedings before the civil court;
- initiate administrative proceedings;
- initiate criminal proceedings.

#### → Germany:

The typical first step by a right holder in an infringement case is a warning letter to the infringer often combined with a request to sign a cease and desist declaration with a penalty clause. If the infringer is not willing to sign a declaration, that will be seen as an indication of the risk of re-offending. That risk is an important criterion for confirmation of a cease and desist claim.

Besides main court proceedings, temporary legal protection plays an important role in cases of copyright infringement.

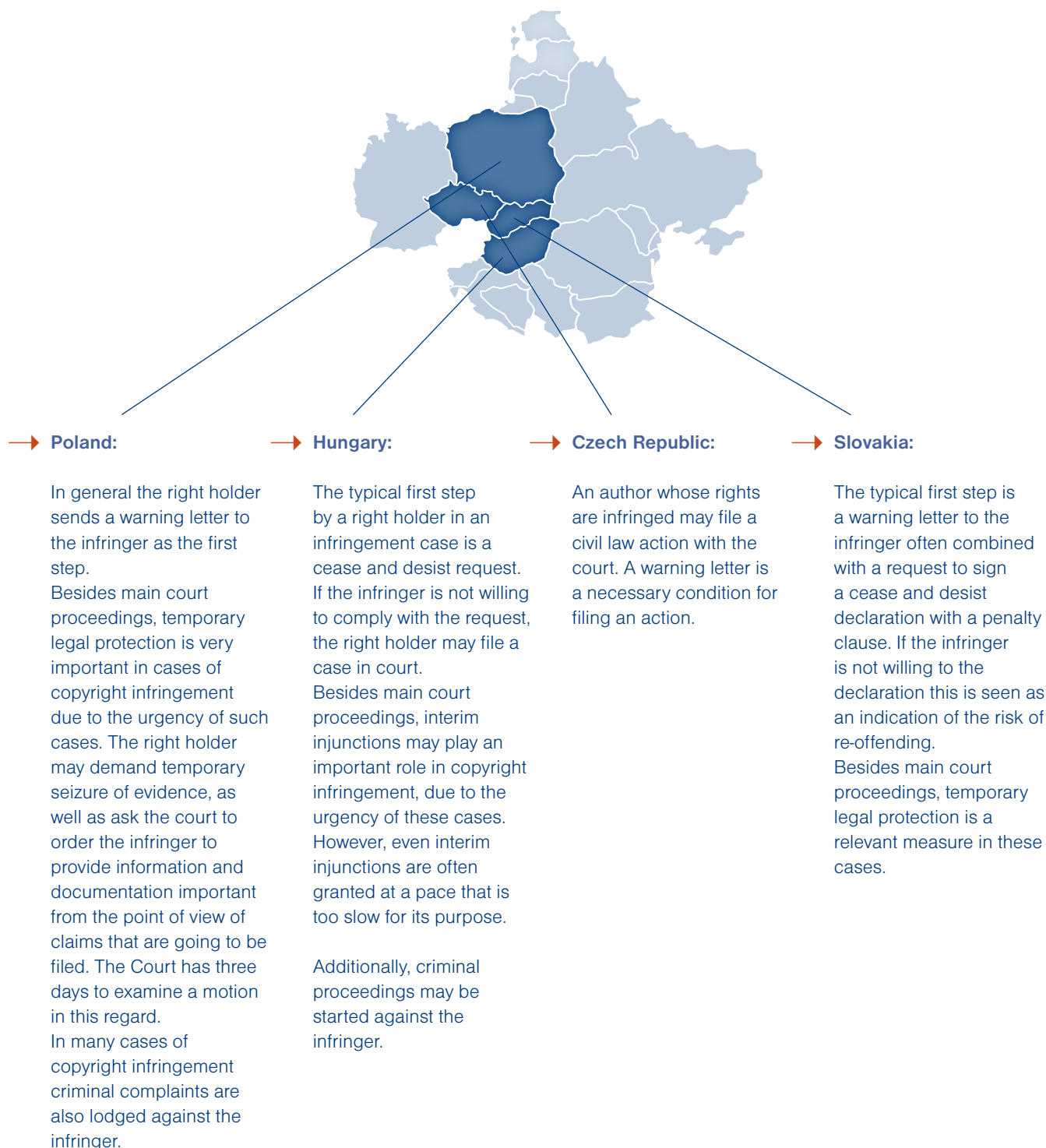
In many cases of copyright infringement criminal complaints are also lodged against the infringer.

#### → Bulgaria:

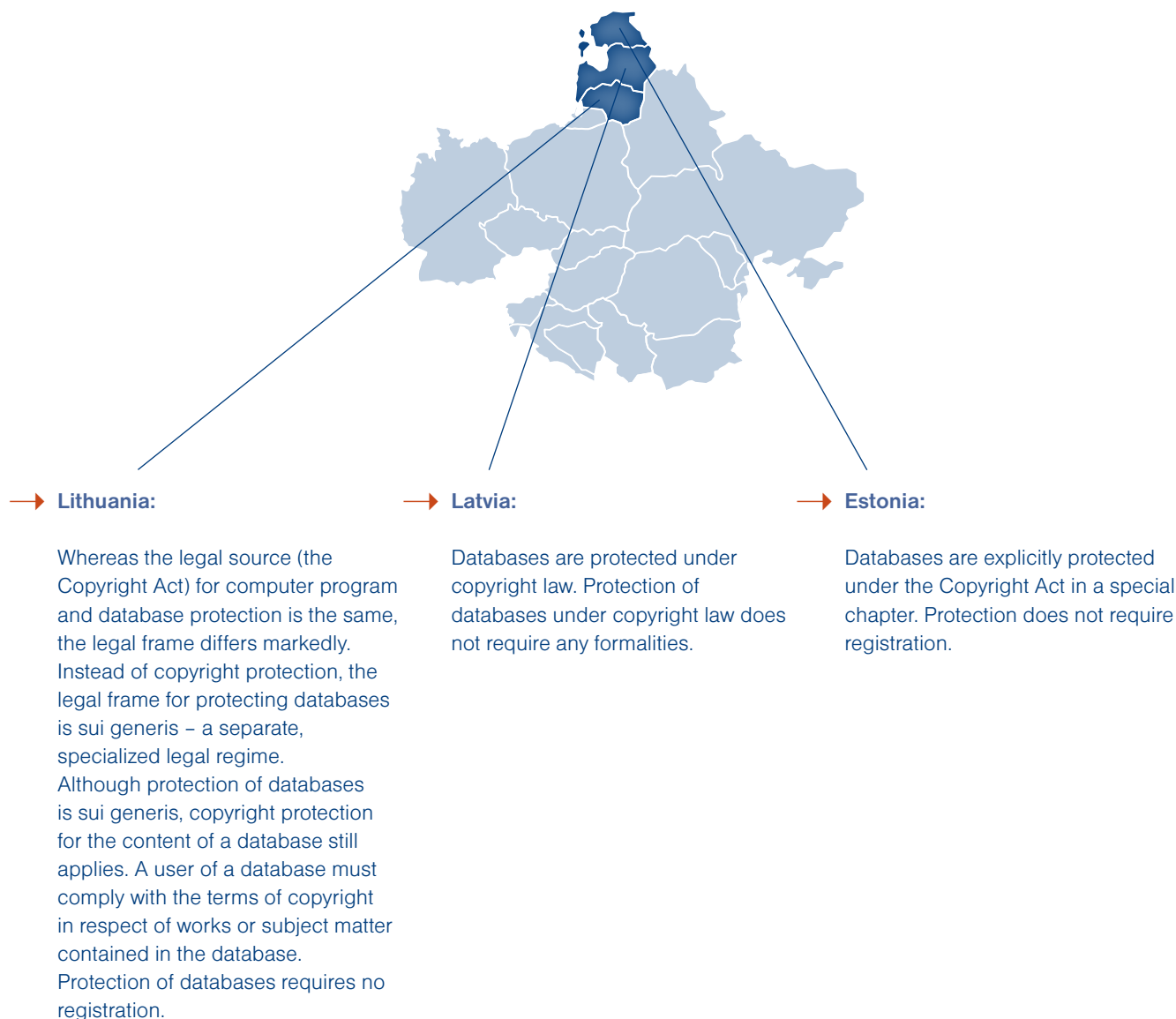
In the case of an infringement within state territory a complaint should be filed with the Ministry of Culture and the Ministry of Internal Affairs. In the case of illegitimate imports/exports on the border to non-EU-member states a complaint should be filed with the Ministry of Finance, Customs Department. Actions before a court for interim relief and measures to secure material evidence are possible and usual in advance or in the course of litigation for damages. With regard to damages claims, a lowered burden of proof applies. Thus, an author who can prove the merits but not the amount of the claim (in general, the principle of profit exhaustion applies) may claim the value of the objects of infringement and/or any amount between 50.000 BGN (approx. 25.000 EUR) and 100.000 BGN (approx. 50.000 EUR) that the court sees as appropriate and just.



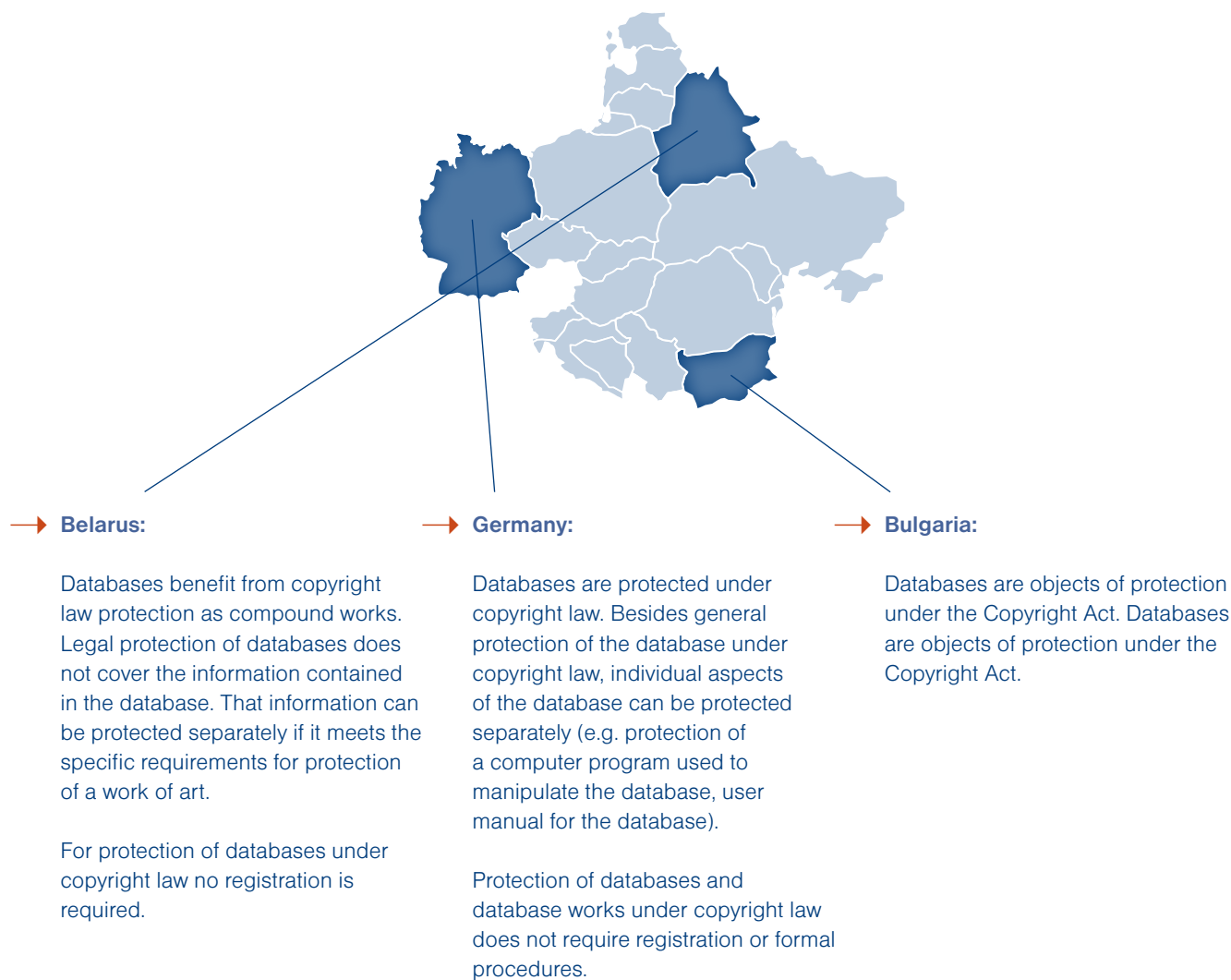
### Typical legal measures in cases of infringement



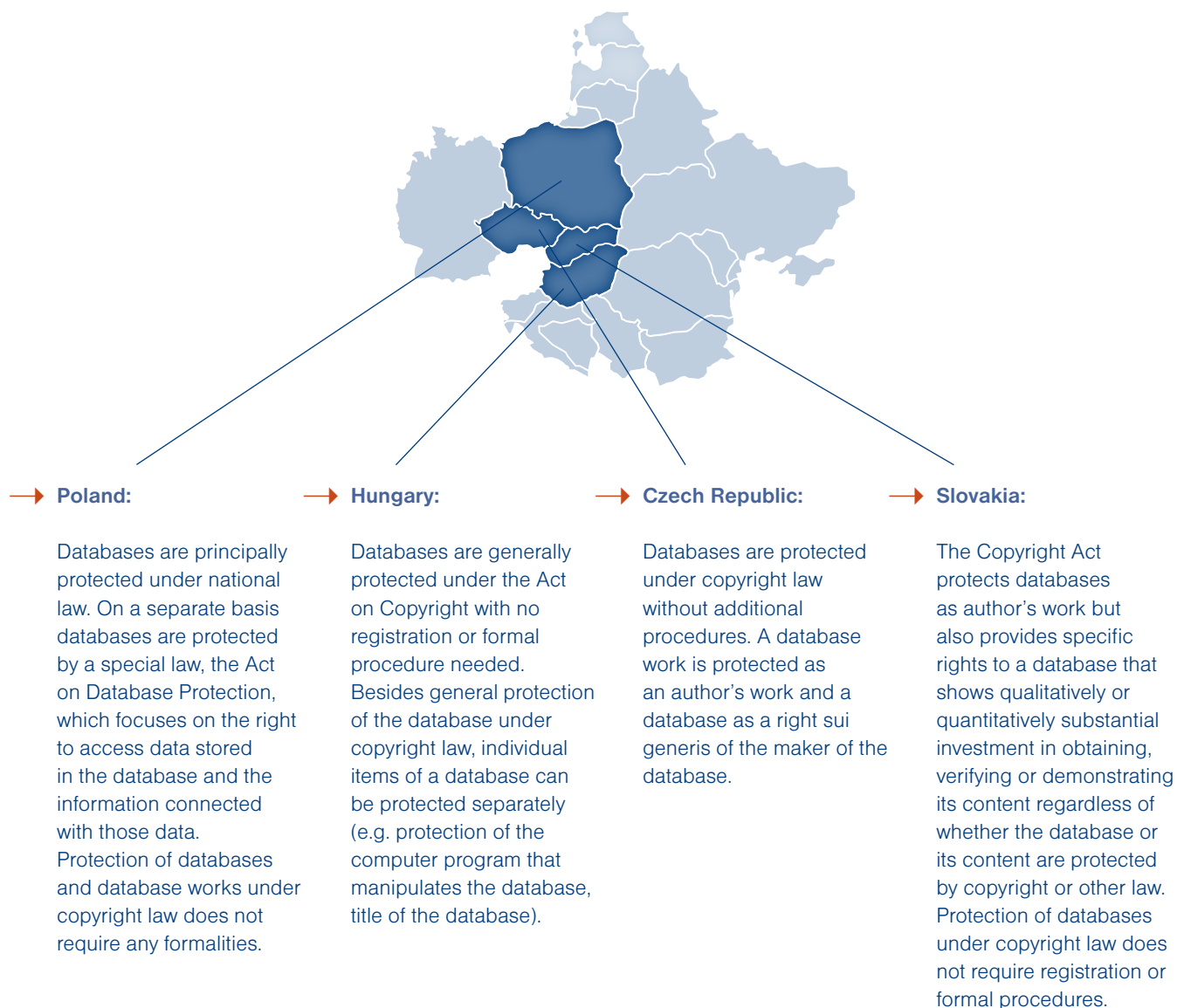
## How can databases be legally protected?



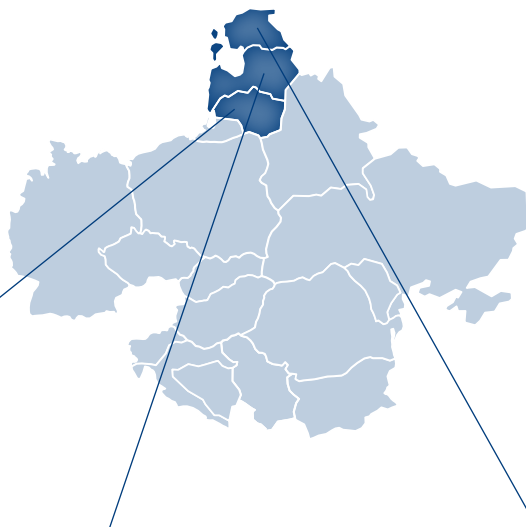
## How can databases be legally protected?



### How can databases be legally protected?



## What is the legal definition of a database?



→ **Lithuania:**

Copyright law supplies the following definition of a database: “a compilation of works, data or any other material arranged in a systematic or methodical way and individually accessible by electronic or other means, except for computer programs used in making or operating such databases”.

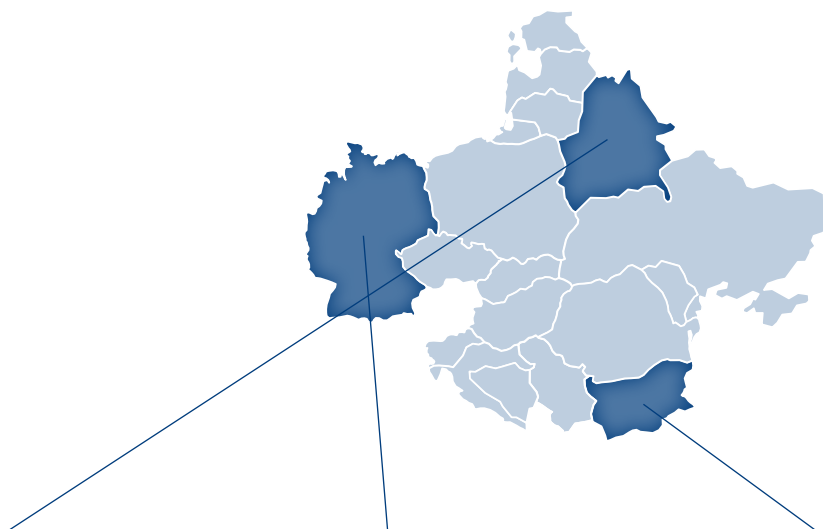
→ **Latvia:**

“Database” is defined as a collection of independent works, data or other materials arranged in a systematic or methodical way. In comparison to database works the selection or creation of elements does not need to be a personal intellectual creation. “Database works” are legally defined as a compilation work of which the elements are arranged in a systematic or methodical way and individually accessible by electronic or other means. In contrast to protection as a database a significant investment is not necessary for protection as a database work.

→ **Estonia:**

A database is defined as a “collection of independent works, data or other elements arranged in a systematic or methodical way and individually accessible by electronic or other means”. The definition of a database does not cover computer programs used in making or operating databases, while databases which, by reason of the selection or arrangement of their contents constitute the author’s own intellectual creation, are protected as such exclusively by copyright.

### What is the legal definition of a database?



→ **Belarus:**

The notion “database” is legally defined as “a set of data or other information, expressed in any physical form, of which compilation is the result of personal intellectual work of an author”. Only databases meeting the “artistic” criterion established by the legal definition will enjoy protection.

→ **Germany:**

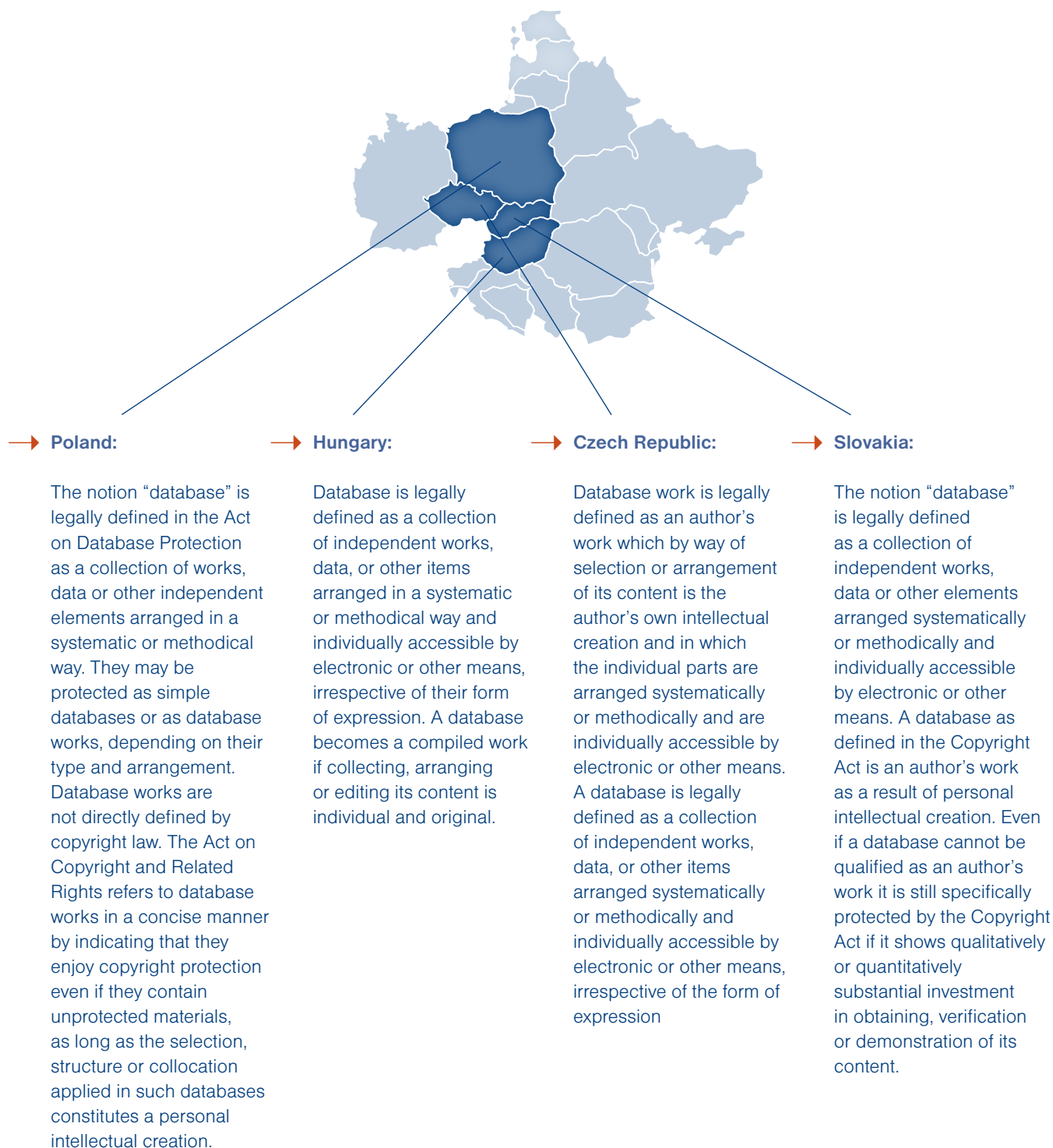
The law legally defines “database” as a collection of works, data or other independent elements arranged in a systematic or methodical way and individually accessible by electronic or other means and the obtaining, verification and presentation of which requires an investment significant in type or extent. Selection or creation of elements does not need to be a personal intellectual creation in the case of a “database”, but a “database work” does require personal intellectual creation.

Databases may be protected as simple databases as well as database works, depending on their type and arrangement. “Database works” describes a compilation work the elements of which are arranged in a systematic or methodical way.

→ **Bulgaria:**

A database is a collection of single objects of copyright, information and other material ordered systematically or methodically and accessible for the individual over electronic or other means of communication whereas computer programs applied for creating and using databases, records of a single audio-visual work, work of literature and/or music as well as collections of music recordings on a compact disk are not considered as databases.

### What is the legal definition of a database?



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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases**      Databases are protected by the Civil Code and the Act "On copyright and related rights".
- ➔ **Scope of protection**      The scope of protection of databases is basically the same as for other works protected under copyright law. The author possesses individual moral rights and exploitation rights, including the right of reproduction, distribution and modification as well as the right to make the database work available to the public.
- ➔ **Limitations on scope of protection**      Databases are viewed as compound works. Copyright to a database does not prevent other authors from using the same scope of information to create their own databases. If any information used in a database is subject to copyright its right holders are entitled to use the information without the database creator's consent.  
Reproduction of a database for private use without the right holder's consent and without payment of remuneration is forbidden. Nevertheless, an authorized user may make back-up copies of a database for archive and for replacement if the original is lost or damaged.



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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for special protection of databases**      Legal protection is granted by the Copyright Act for database works as well as for simple databases.
- **Scope of protection**      Database works generally have the same protection as other types of work.
- In regard to the scope of protection of databases which are not works an author of a database has the right to forbid:
- extraction by means of a permanent or temporary transfer of database content to any other carrier of information;
  - repeated usage of database content in any form of publication including distribution of copies, letting out (but not lending) or transfer in digital form.
- These rights are also given with regard to any substantial part of the database but also to non-substantial parts in cases of repeated or systematic infringement.
- **Limitations on scope of protection**      Limitations on the scope of protection of database works are similar to limitations on other types of work.
- A legitimate user of a database which has been published in any way has the right to use and extract any substantial content in any way in the following cases:
- using non-electronic content for personal purposes;
  - using content for non-commercial purposes as an illustration for educational or scientific purposes with the obligation to point out the source;
  - extraction and repeated usage for purposes of national security, in administrative and/or judicial proceedings.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases** Both database work and databases are protected under the Copyright Act. Protection is i.a. based on EU Directive 96/9 EC.
- ➔ **Scope of protection** The scope of protection of database works is similar to the scope of protection of a computer program. It entitles the maker of a database to prevent extraction or re-use of the entire content of the database or of substantial parts of it in terms of quality or quantity, and the right to grant to another person the authorisation to execute such a right.
- ➔ **Limitations on scope of protection** A limitation on the scope of protection of database work is common copyright protection of the author's work.  
The right of the maker of a database that has been made available to the public in any way is not infringed by a lawful user who extracts or re-uses insubstantial segments of the content of the database, doing so for whatever purpose, but on condition that that user uses the database in a normal and appropriate manner, not systematically or repeatedly, and without damaging the legitimate interests of the maker of the database.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for special protection of databases**      Protection of databases is regulated in a special chapter of the Copyright Act, which also implements directive 96/9 (database directive) into national law.
- **Scope of protection**      The scope of protection of database works is basically the same as for other works protected under copyright law, i.e. the maker of a database has the exclusive right to authorise or prohibit use of the database. The first sale of a copy of a database exhausts the right to control resale of that copy of the database.
- Protection of database works is generally subject to the same limitations as other works protected under copyright law: The lawful user of a database is entitled to perform any acts necessary for the purposes of access to the contents of the database and normal use of its contents.
- If the database was made available to the public, a lawful user is free to make extractions and to re-use insubstantial parts of its contents for all purposes (including commercial ones).
- **Limitations on scope of protection**      Substantial parts may only be extracted or reused for
- private purposes of the contents of a non-electronic database;
  - purposes of illustration for teaching or scientific research and
  - purposes of public security.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases**

Database works are protected under the Copyright Act as well as databases. Protection of database works and databases in national law is based on EU Directive 96/9 EC on legal protection of databases. Details of protection have been defined by the courts and the European Court of Justice.
- ➔ **Scope of protection**

The scope of protection of database works is basically the same as for other works protected under copyright law. The creator possesses moral rights and exploitation rights.

However, the scope of protection of a database which is not a database work is narrower and protects only certain rights of the database producer (e.g. rights of reproduction, distribution or public communication). The scope of protection is only granted for the whole database or a substantial part of it. Repeated and systematic reproduction, distribution or making available of non-substantial parts of the database is also subject to the exclusive right of the database producer if those actions contravene regular exploitation of the database or if they unreasonably affect the legitimate interest of the database producer.
- ➔ **Limitations on scope of protection**

Protection of database works is generally subject to the same limitations as other works protected under copyright law. The permitted use of database works the elements of which are individually accessible by electronic means for private or other personal use is extremely limited in comparison to personal use of other database works. Modification and reproduction of a database work by an authorized person is permitted if modification and reproduction is necessary to gain access to the elements of database work and for its regular use.

Databases or substantial parts of databases can generally be reproduced for private use. However this does not apply to databases the elements of which are accessible by electronic means. Reproduction of substantial parts of databases for necessary personal scientific use or teaching purposes is permitted for all kinds of database if commercial purposes are not pursued.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases**

A database becomes a compiled work if collecting, arranging or editing its content is individual and original. Compiled works are protected by the Copyright Act even if their parts or components are not or cannot be protected by copyright. As a result, a database enjoys full copyright protection only if it qualifies as a compiled work. Nevertheless, a database which is not a compiled work enjoys limited legal protection as laid down by the Act on Copyright.
- ➔ **Scope of protection**

Protection of databases which qualify as compiled works is basically the same as for other works protected under copyright law. The creator possesses moral rights and exploitation rights.

Databases which are not a compiled work enjoy limited legal protection. The creator is protected regarding copying and publication of the database or significant parts thereof.
- ➔ **Limitations on scope of protection**

Legal protection is generally limited by fair use which includes private copying, quoting and copying for the purposes of education or scientific work.

However, there are some other limitations which are specific to databases:

The consent of the creator of a database which is made available to the public is not required where a lawful user extracts and/or re-uses – whether repeatedly or systematically – insubstantial parts of the contents of the database. A substantial part of the contents of a database may be extracted for private purposes. However, these operations must not be for profit. These limitations do not apply to electronic databases. Moreover, a substantial part of the contents of a database may be extracted and/or re-used for the purposes of a judicial, administrative or other regulatory procedure in the necessary manner and to the necessary extent.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases** Database works are protected under the Copyright Act, as well as databases. Protection of databases in national law is based on EU Directive 96/9 EC on legal protection of databases.
- ➔ **Scope of protection** The scope of protection of database works is basically the same as for other works protected under copyright law. The creator possesses moral rights and exploitation rights including the right of reproduction, distribution and modification as well as the right to make the database work available to the public. However the scope of protection is only granted for the whole database or a substantial part of it. Repeated and systematic reproduction, distribution or making available of non-substantial parts of the database is also subject to the exclusive right of the database producer if these actions contravene regular exploitation of the database.
- ➔ **Limitations on scope of protection**

Protection of database works is generally subject to the same limitations as other works protected under copyright law. The permitted use of databases the elements of which are individually accessible by electronic means for private or other personal use is extremely limited. Modification and reproduction of a database work by an authorized person is permitted if modification and reproduction is necessary to gain access to the elements of the database work and for its regular use.

Databases or essential parts of databases can generally be reproduced for private use. However this does not apply to databases the elements of which are accessible by electronic means. Reproduction of essential parts of databases for necessary personal scientific use or teaching purposes is permitted for all kind of databases if commercial purposes are not pursued.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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|---|--|--|
| → | <b>Legal basis for special protection of databases</b> | Databases are protected by the Copyright Act, which is harmonised with the European Union, especially with Directive 96/9/EC on legal protection of databases.   |
| → | <b>Scope of protection</b>                             | The maker of a database can prohibit the permanent or temporary transfer of the database or any form of availability to the public by distribution if able to prove a substantial qualitative and/or quantitative investment in obtaining, arranging, verifying and presenting the contents of that database.  |
| → | <b>Limitations on scope of protection</b>              | <p>The maker of a database which is lawfully made available to the public in any manner cannot prevent lawful users of the database from extracting and re-using insubstantial parts of its contents.</p> <p>A lawful user of a database made available to the public can extract or re-use substantial parts of its contents without the authorisation of the maker:</p> <ul style="list-style-type: none"><li>• for private purposes of the contents of a non-electronic database;</li><li>• for illustration for teaching or scientific research in various fields if the source is indicated and to the extent justified by the non-commercial purpose to be achieved;</li><li>• for public and state security, an administrative or judicial procedure.</li></ul> |

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases**

Database works are protected under the Act on Copyright and Related Rights, but independently databases are protected under the Act on Database Protection. Protection of database works and databases in national law is based on EU Directive 96/9 on legal protection of databases. Details of protection have been defined by the national courts and the European Court of Justice.
- ➔ **Scope of protection**

Database works are basically protected in the same way as other works protected under copyright law. The creator possesses moral rights and exploitation rights. Protection is only granted for the whole database or a part of the database which is substantial in nature or extent. Repeated and systematic reproduction, distribution or making available of non-substantial parts of the database is also subject to the exclusive right of the database producer if these acts contravene regular exploitation of the database or unreasonably affect the legitimate interest of the database producer.
- ➔ **Limitations on scope of protection**

Protection of database works generally has the same limitations as other works protected under copyright law. The permitted use of databases the elements of which are individually accessible by electronic means for private or other personal use is extremely limited in comparison to personal use of other database works. Modification and reproduction of a database work by an authorized person are permitted if necessary to gain access to the elements of the database work and for its regular use.

Databases or essential parts of databases can generally be reproduced for private use. Reproduction of essential parts of databases for necessary personal scientific use or teaching purposes is permitted for all kinds of databases if commercial purposes are not pursued. In these cases the source must be clearly specified.



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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for special protection of databases**

Databases are protected under the Copyright Act (§ 5 (4), § 72 et seq.). Protection of databases in national law is based on EU Directive 96/9 on legal protection of databases. Details of protection have been defined by the European Court of Justice.
- ➔ **Scope of protection**

The scope of protection of databases as author's work is basically the same as for other works protected under copyright law. The creator has moral rights and exploitation rights, including the right of reproduction, distribution and modification as well as the right to make the database available to the public.

The scope of protection of databases not protected as author's work comprises the right of its creator to grant consent for extraction and re-use of the entire database content or a quantitatively or qualitatively substantial part of it. Repeated and systematic extraction or re-use of an unsubstantial part of database content or other unusual or inappropriate disposal that is detrimental to the legitimate interests of the database author is prohibited.
- ➔ **Limitations on scope of protection**

Protection of databases as an author's work is generally subject to the same limitations as other works protected by copyright law. The permitted use of databases that are individually accessible by electronic means for private or other personal use is extremely limited compared to personal use of databases not accessible by electronic means.

A database or its essential parts can in general be reproduced for private use. However, this does not apply to databases that are accessible by electronic means. Extraction or re-use of essential parts of non-electronic databases for necessary personal use, scientific use or teaching purposes or for public protection and in administrative or court proceedings is permitted for all kinds of databases if commercial purposes are not pursued. In these cases, the source should be clearly specified.

### Duration of protection as database work under copyright law in years after death of author

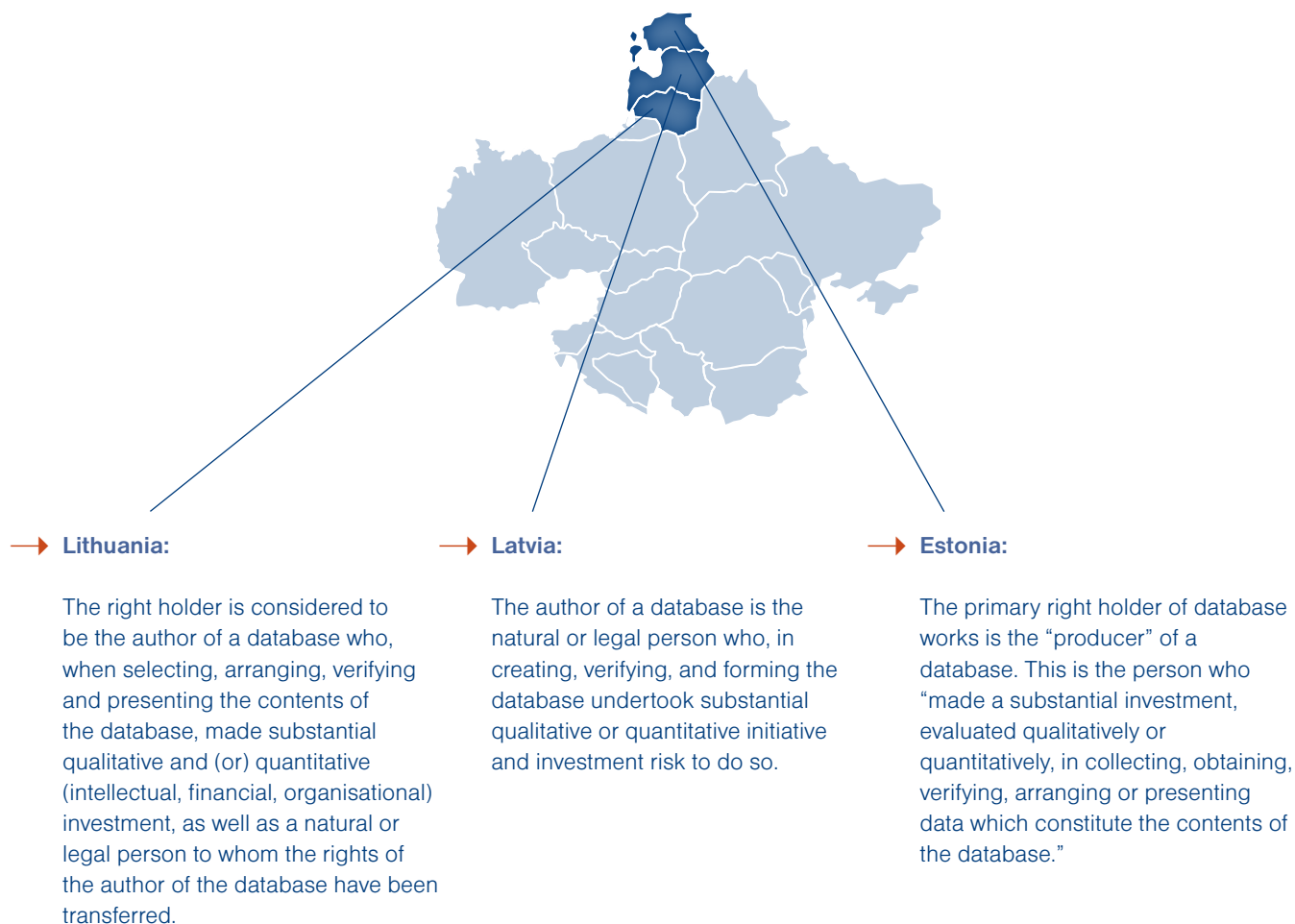
Slovakia	70
Poland	70
Lithuania	70
Latvia	70
Hungary	70
Germany	70
Estonia	70
Czech Republic	70
Bulgaria	70
Belarus	50

### Duration of sui generis protection of database producer rights in years from publication or creation database

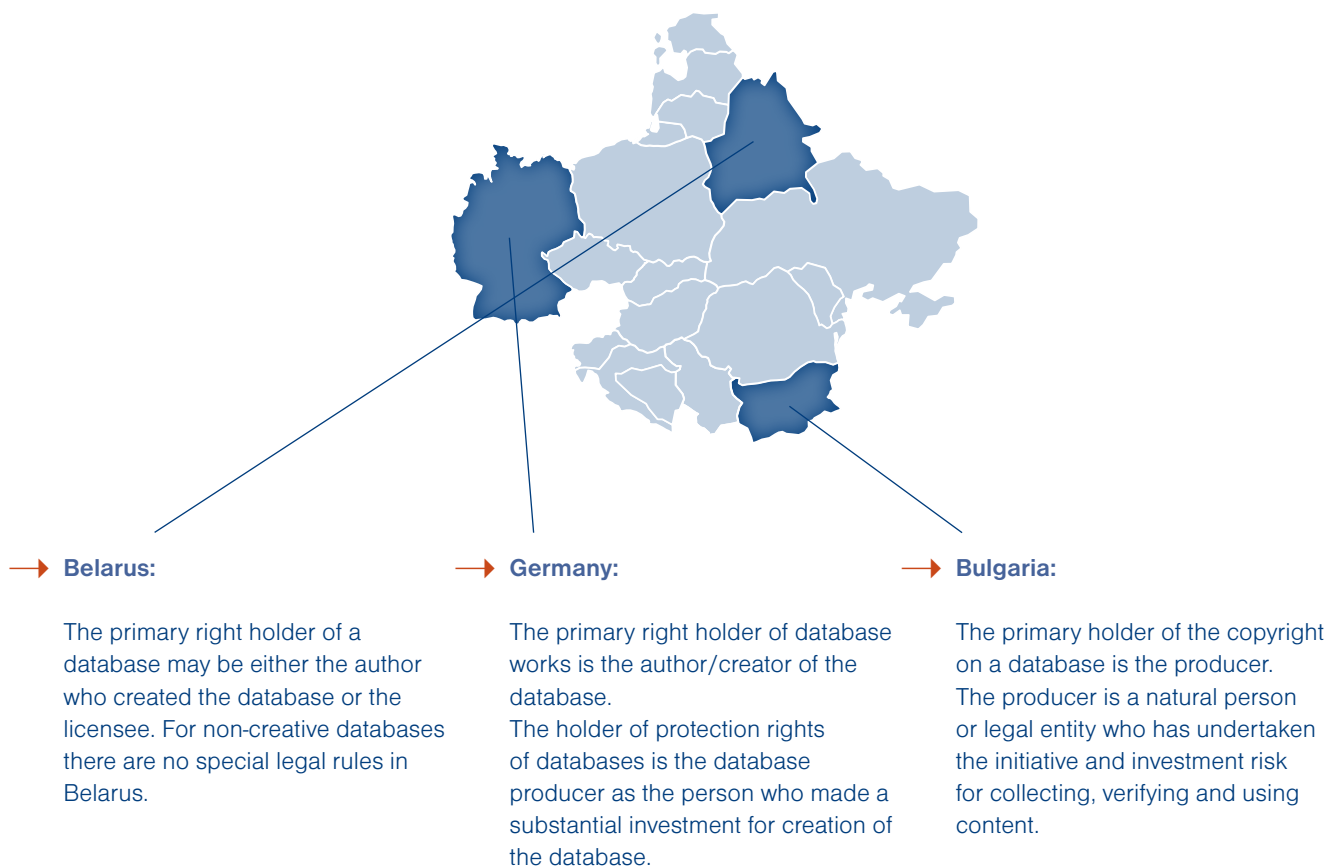
Slovakia	15
Poland	15
Lithuania	15
Latvia	15
Hungary	15
Germany	15
Estonia	15
Czech Republic	15
Bulgaria	15
Belarus*	

\*Belarusian law does not provide this right

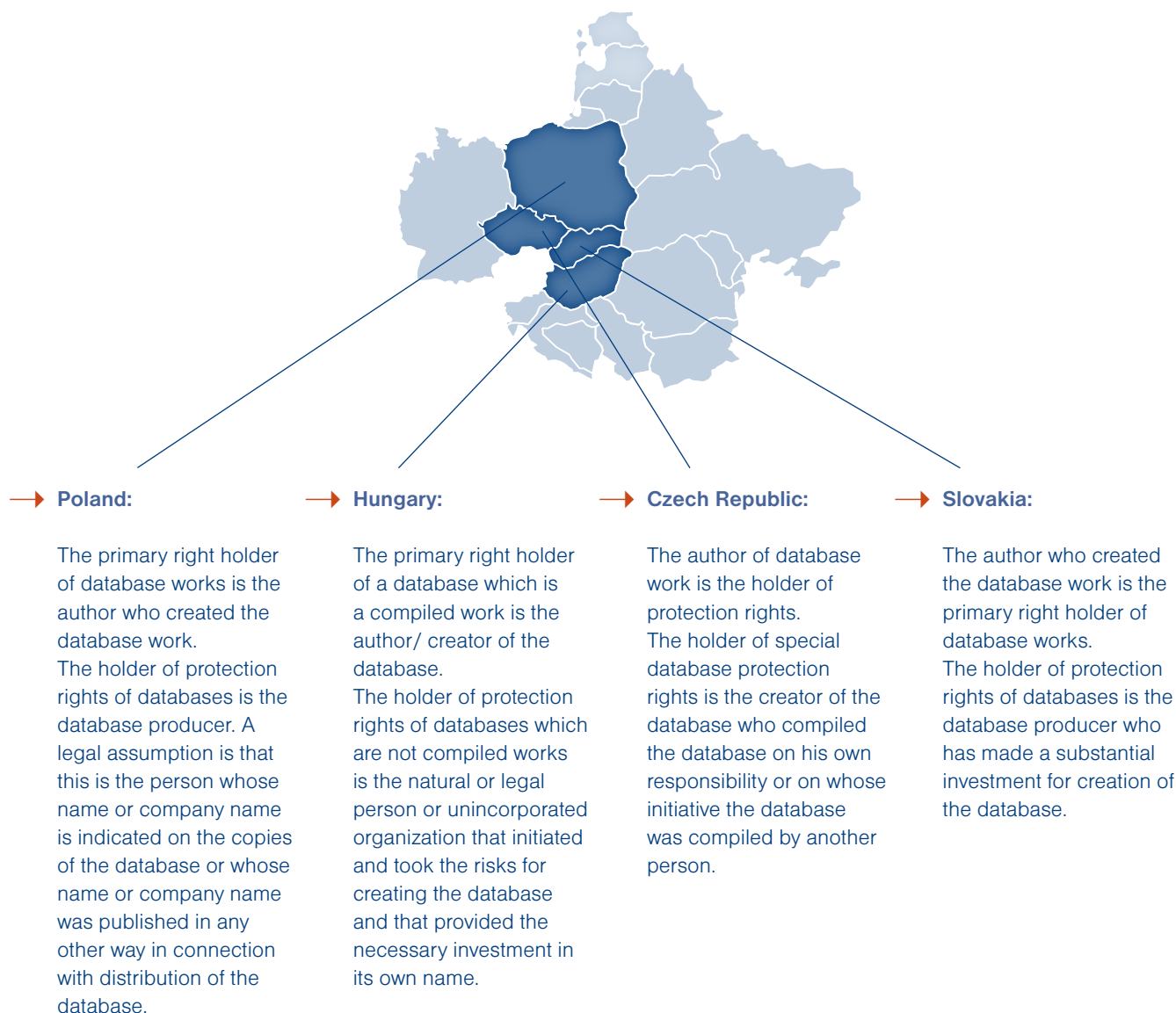
## Who is the holder of special database protection rights?



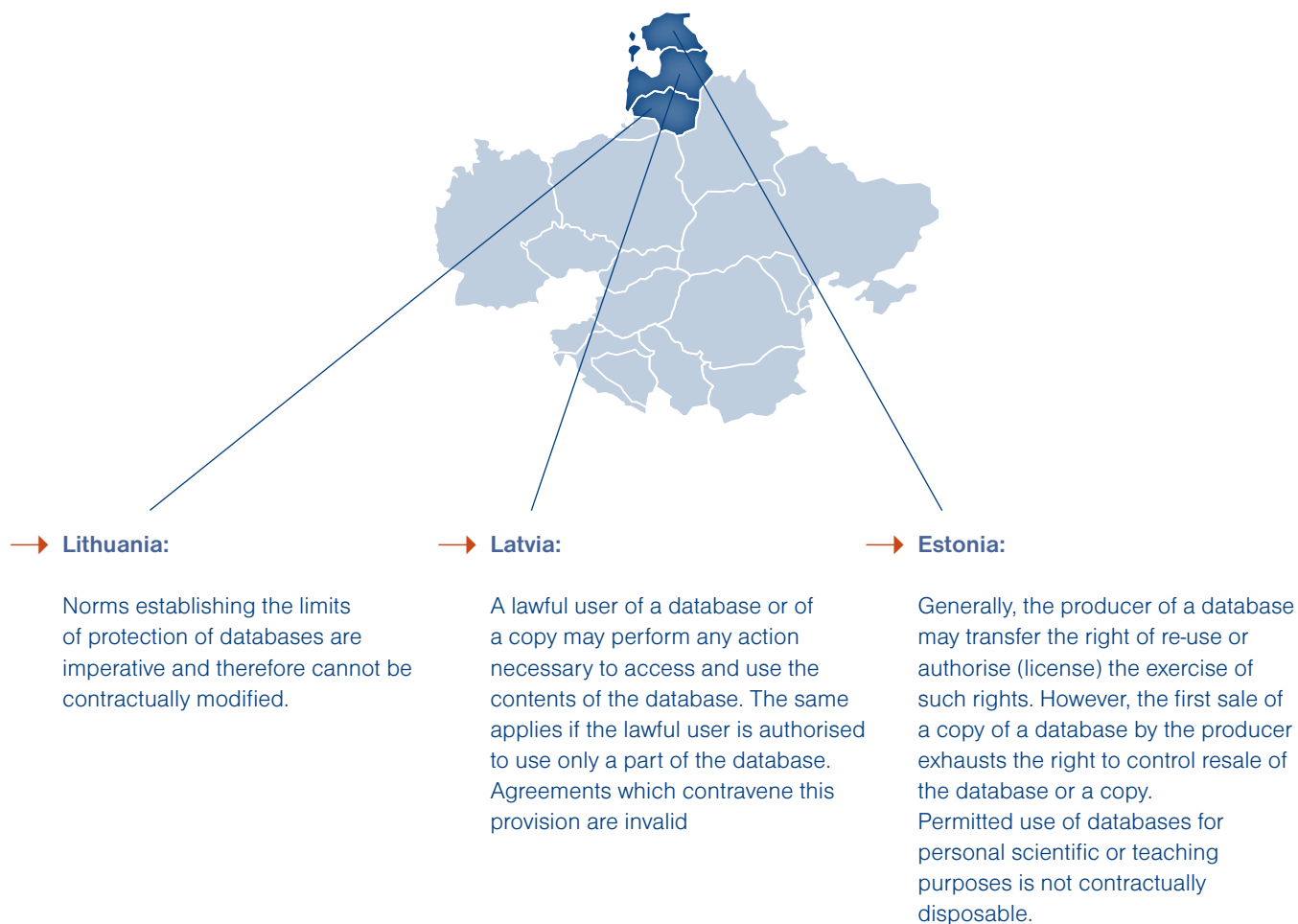
## Who is the holder of special database protection rights?



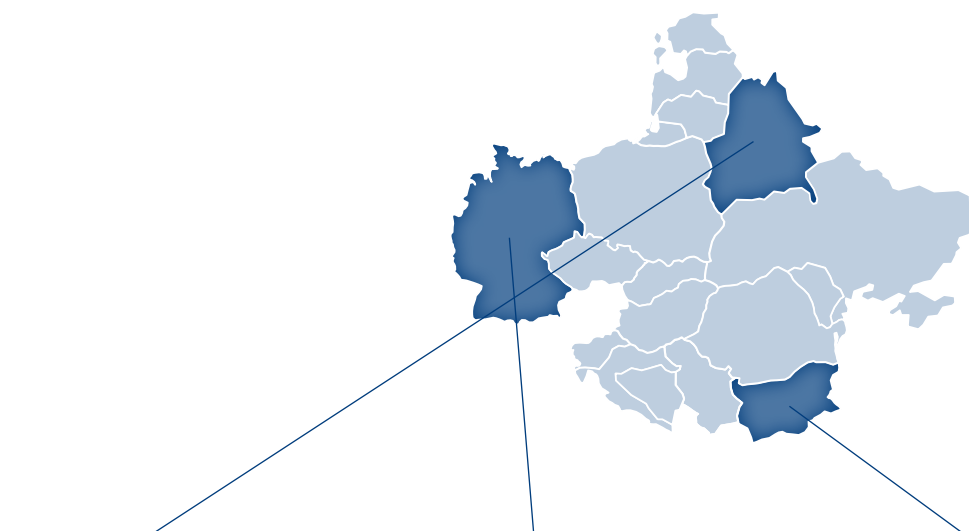
### Who is the holder of special database protection rights?



### Special provisions regarding contracts on use of databases



## Special provisions regarding contracts on use of databases



→ **Belarus:**

The law enables the user of a database to enter into a contract of adhesion. This means that by buying a database the purchaser agrees on the terms of the licence agreement specified in the database itself or on its packaging.

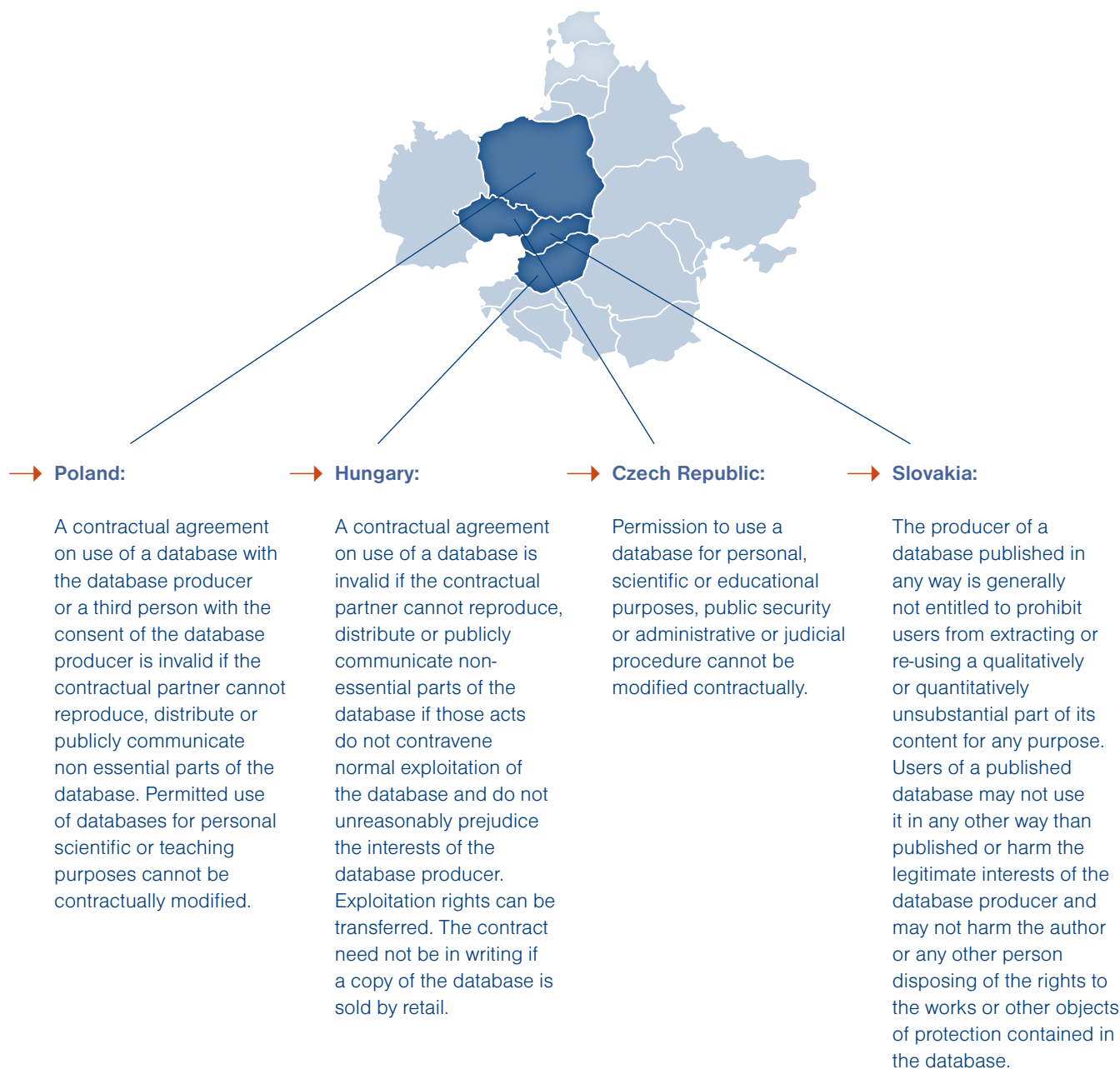
→ **Germany:**

By law, the parties to a licence agreement on use of a database cannot limit reproduction, distribution or public communication of non-essential parts of the database as far as those acts do not contravene normal exploitation of the database and do not unreasonably prejudice the interests of the database producer.  
Permitted use of databases for personal scientific or teaching purposes cannot be contractually modified.

→ **Bulgaria:**

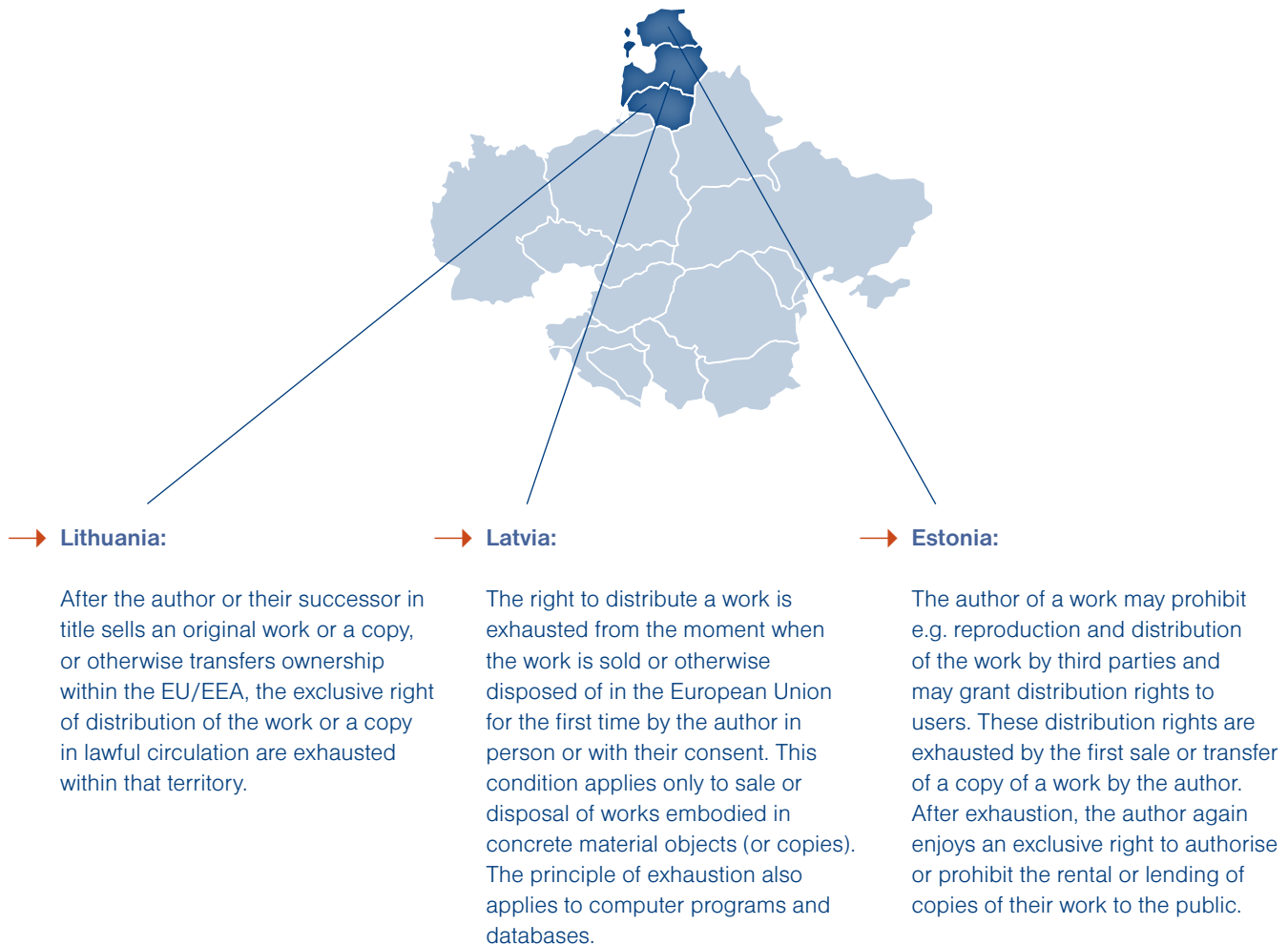
The permitted use of a database for personal, scientific or educational purposes, public security or administrative or judicial procedures cannot be modified by contract.

### Special provisions regarding contracts on use of databases

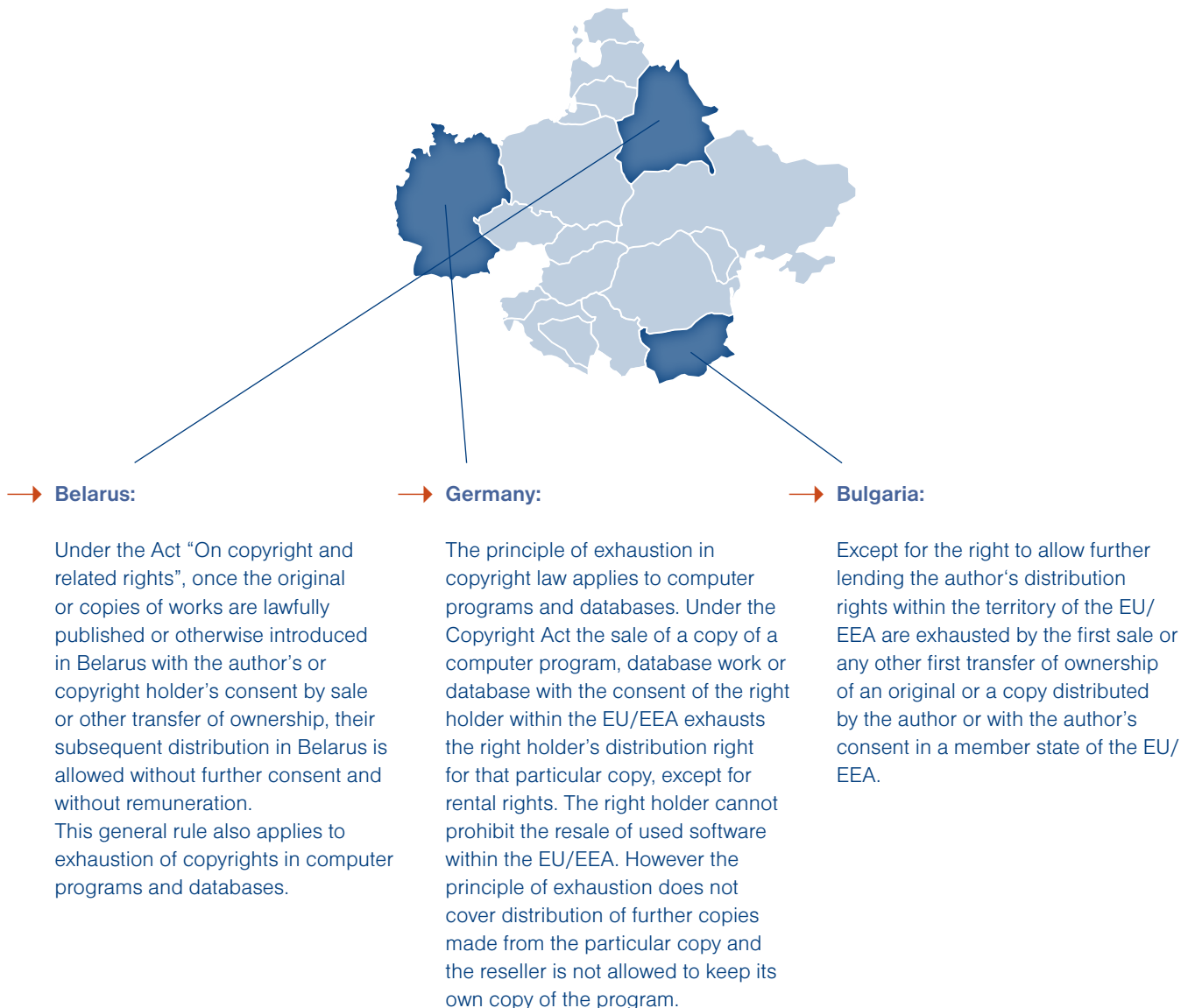




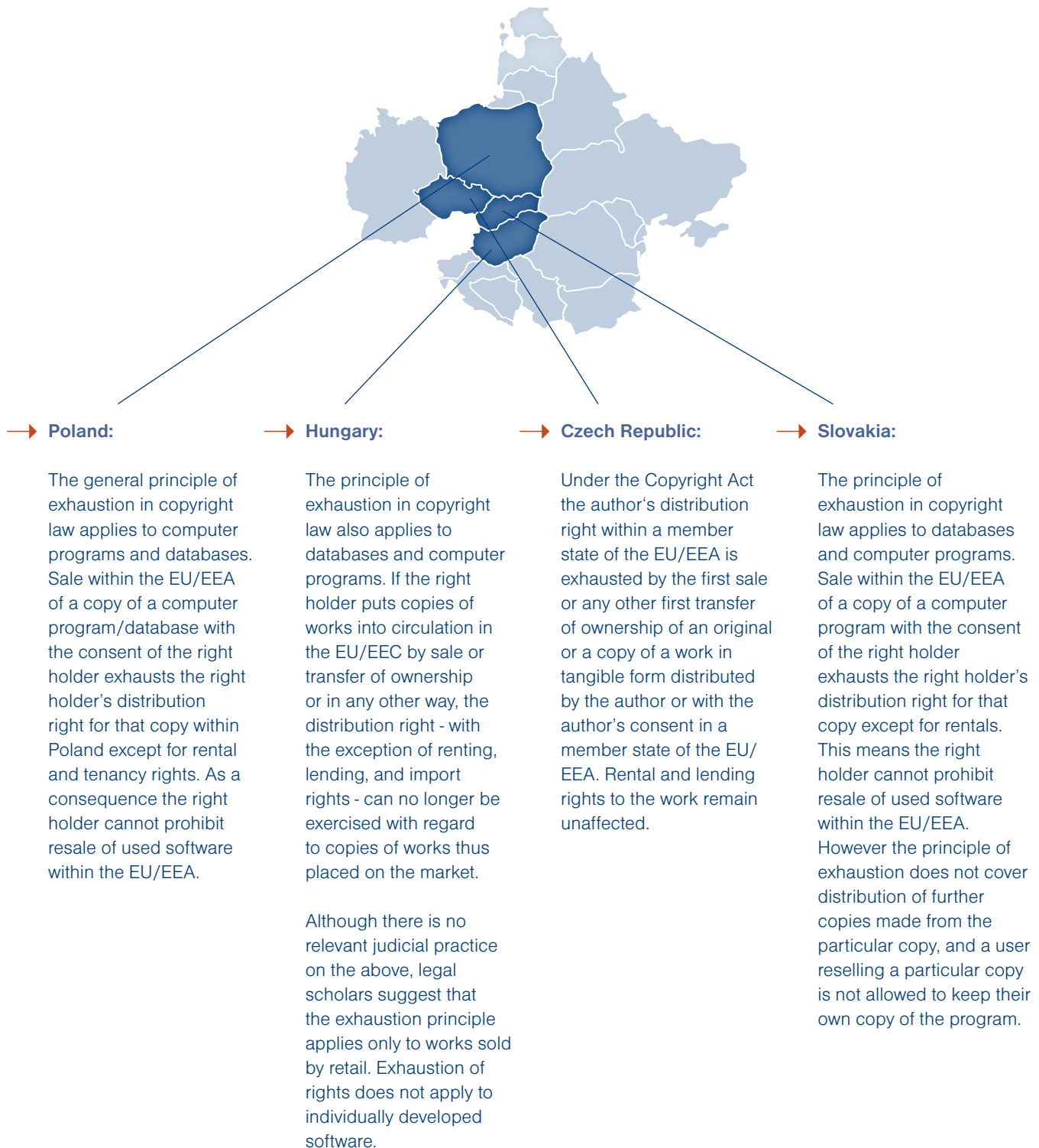
## Exhaustion of protection rights for computer programs and databases



## Exhaustion of protection rights for computer programs and databases



## Exhaustion of protection rights for computer programs and databases



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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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Typically, software licence agreements are linked to the sale/lease of standard software (not custom-made for the client). The grant of a licence for a copyright or industrial property right is a main part of that contractual relationship. Very often the provisions governing the licence are part of a broader contract also dealing with other legal aspects (e.g. warranty, maintenance, updates), even if the contract is often called only a “Licence Agreement”.

The following refers to licences for use of copyrights (especially protecting software).

### Possible types of licence, maximum duration and freedom of arrangement

**Belarus** – A licence agreement is always for a definite term and must define the territory. It may be exclusive or non-exclusive.

In the case of an exclusive licence the agreement must state the scope of exclusive rights transferred. A special form of transfer of exclusive rights is an author’s contract where the author (natural person) acts as the licensor.

**Bulgaria** – A licence agreement is subject to contractual freedom. Therefore, a licence can be granted for a limited or unlimited period (but no longer than ten years), exclusively or non-exclusively, with different scope of usage. Exclusive licence agreements must be concluded in written form. In default of time clauses a three-year usage period applies.

**Czech Republic** – A licence to use a computer program can be granted for a limited or unlimited period, exclusively or non-exclusively. If the licence is exclusive, the author may not license any third party and unless agreed otherwise cannot exercise the right to use the work in a form subject to an exclusive licence.

**Estonia** – By law, transfer of rights by licence agreement may be exclusive or non-exclusive, restricted to specific rights or parts of rights, e.g. for a special purpose, time limits, a territory or as to extent and manner of use.

**Germany** – By law the holder of a copyright can entitle a licensee to use their work in different ways. The parties may freely decide what types of use are covered by the licence and to what extent. The law expressly distinguishes between non-exclusive and exclusive rights of use. The holder of an exclusive right of use can generally entitle other persons to use the software non-exclusively. The right of use can be limited temporally, locally and in regard to content. The law does not set a time limit for the duration of a licence. However, the “natural” maximum time limit for licences is the duration of the copyright itself.

**Hungary** – The relevant types of licence are the following:

- exclusive / non-exclusive;
- worldwide / territorially limited licence;
- for a limited / unlimited period;
- transferable / non-transferable;
- licensee authorised to grant further licences to third parties.

As to scope of licence, it is theoretically possible to speak of licences that allow any kind of use by licence holders. However, it is not sufficient to agree that the licence holder can use the software in any way. This unspecific definition of the licence scope may be invalid, but in any case it is interpreted in a way that favours the copyright holder. Consequently, all conceivable uses should be listed in licence agreements in order to clarify what the licence holder can do with the software.

**Latvia** – By law the author/holder of a copyright can entitle a licensee to use their work. A licence may be non-exclusive, exclusive or compulsory.

A licensing agreement or a licence must indicate the territory in which it is in effect, if not it is in effect in the state in which the licensing agreement was executed or the licence issued.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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**Lithuania** – Copyright law defines a licence as a permit by the licensor granting the user the right to exploit the original or copies of a work within a specified territory in the way and under the conditions agreed upon in the licensing agreement. The law recognizes two kinds of licences: exclusive and non-exclusive.

Where computer programs and electronic databases fixed in material media are distributed through trading channels of distribution, the right to use a computer program or an electronic database should be granted under a licensing agreement contained in the package of a computer program or database and delivered to the purchaser (package licence).

The law does not state a time limit for the duration of a licence.

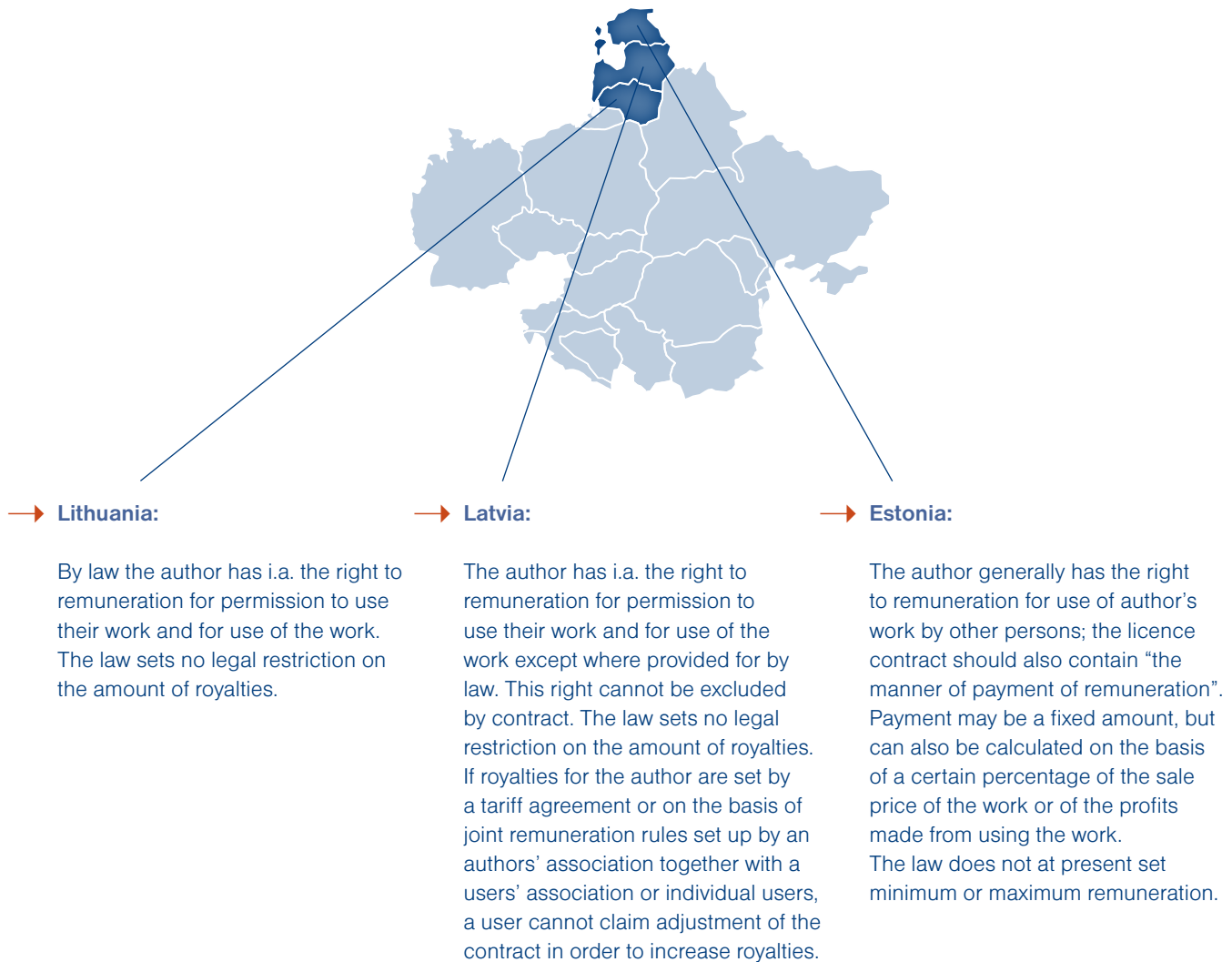
**Poland** – By law the author/holder of a copyright can entitle a licensee to use a work in different ways. The law expressly distinguishes between non-exclusive and exclusive rights of use. The right of use can be limited temporally, locally and in regard to content.

The law sets a time limit of 5 years for the duration of a licence except where the parties agree otherwise. Lapse of the agreed (or statutory) time limit leads to expiry of rights granted under a licence. A licence for a period longer than five years is considered, after a lapse of five years, as granted for an indefinite period.

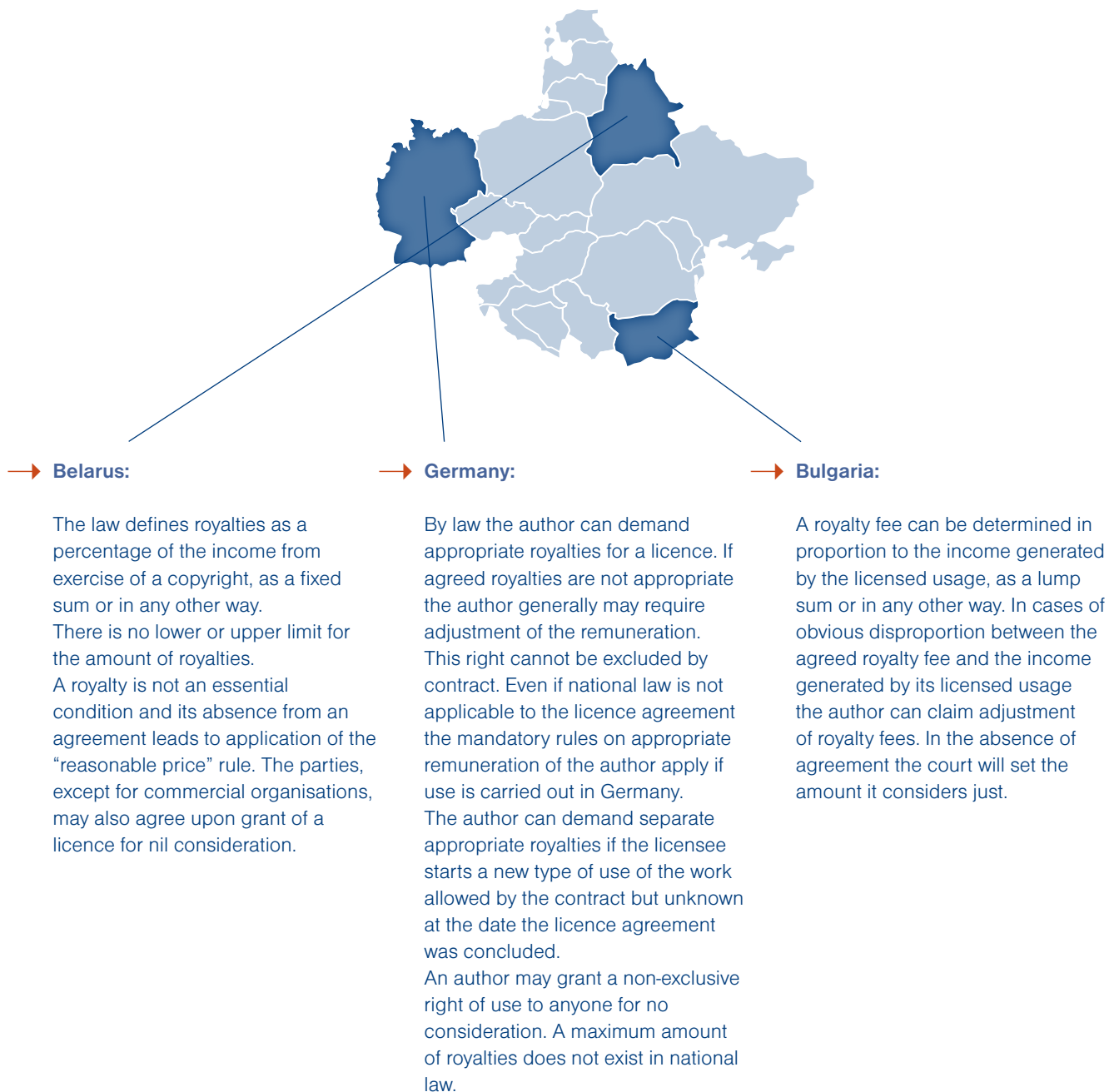
**Slovakia** – By law the author/holder of a copyright can entitle a licensee to use a work in different ways. The right of use under a licence can be limited temporally, locally and in regard to content. The law expressly distinguishes between non-exclusive and exclusive licences. If not stated otherwise in the contract, a licence is regarded as non-exclusive.

A licence granted by the author to a third person to use a work that is already subject to an exclusive licence is only valid after prior written consent of the exclusive licence holder.

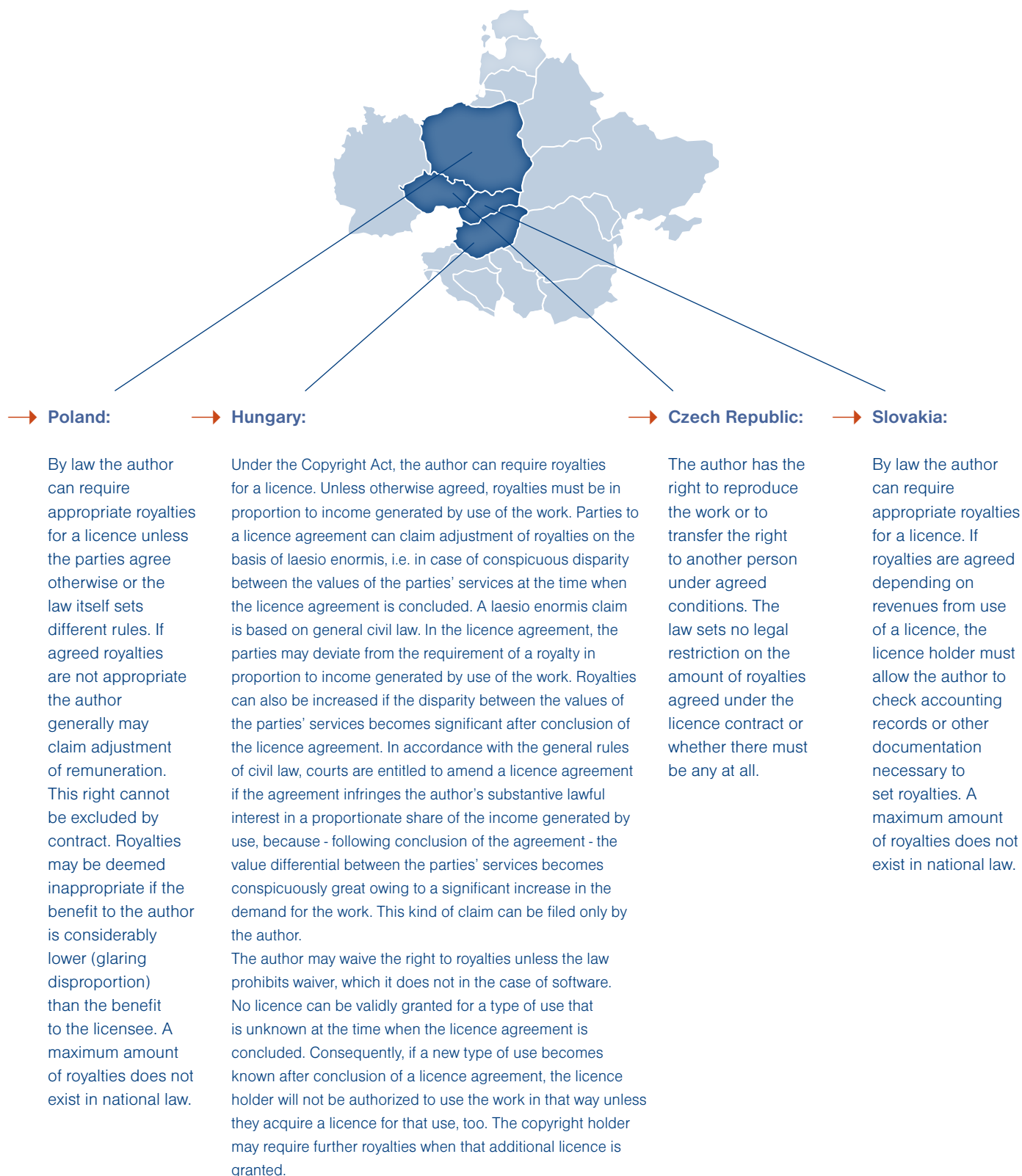
### Royalties – legal restrictions and rules, especially as to amount



### Royalties – legal restrictions and rules, especially as to amount



### Royalties – legal restrictions and rules, especially as to amount





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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for software licence agreements**

Chapter 60 of the Civil Code and articles 44-45 of the Act "On copyright and related rights" contain the legal basis for regulation of software licence agreements and set rules for the form and content of a licence agreement.
- ➔ **Choice of law possible for licence agreements?**

Parties to a licence agreement may choose the applicable law to govern the agreement itself and their claims arising from the licence agreement. Under the Civil Code the choice of law must be clearly expressed by the parties or unambiguously stem from the terms of the agreement or factual background.

Under national conflict of law rules the licensor's law applies if the parties did not choose the applicable law.

The applicable law governs only contractual relations themselves. If protection is sought in Belarus, the question of granting protection to the object is governed by national law, notwithstanding the provisions on the applicable law of the contract specified in the agreement.

The choice of law does not prejudice mandatory provisions of national law.
- ➔ **Rights remaining with the licensor/copyright holder**

Author's moral rights such as the right of authorship, right to name, right of integrity, right of publication etc. cannot be transferred. Exploitation rights may generally be fully conferred on a licensee.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for software licence agreements**      Legal rules for software licence agreements are contained in the Copyright Act, Art. 26-29 and 70-71a and by analogy also in the Commercial Act, Art. 587-599.
- ➔ **Choice of law possible for licence agreements?**      A licence agreement is a private-law agreement. The choice of applicable national law is therefore possible although this is not explicitly recognized in the Copyright Act.
- ➔ **Rights remaining with the licensor/copyright holder**      Immaterial rights are generally not transferrable.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- ➔ **Legal basis for software licence agreements**

Legal basis for software licence agreements

The licence agreement is regulated by the Copyright Act.
- ➔ **Choice of law possible for licence agreements?**

The parties may choose another jurisdiction in the licence agreement. Throughout Europe the choice of law is governed by EU Directive 593/2008 EC (Rome I) which does not set any form for choice of law.
- ➔ **Rights remaining with the licensor/copyright holder**

Moral rights remain with the author of a computer program. If a licence agreement is concluded as a non-exclusive one, the author remains authorised to exercise all rights to use the work.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**

Currently national Intellectual property law very rarely refers directly to licence contracts. However, the licence as a legal term will be introduced into national copyright law within the ongoing reform of national intellectual property law, which is expected to be completed in September 2014.  
The new Copyright Act will contain provisions for licence agreements and specify the conditions and range of such agreements.
- **Choice of law possible for licence agreements?**

Choice of law possible for licence agreements?  
  
The parties to a licence agreement may choose the applicable law for the licence agreement throughout Europe according to the European Rome I regulation.
- **Rights remaining with the licensor/copyright holder**

While economic rights of an author are transferable, moral rights are – at present – inseparable from the author's person and thus non-transferable.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**      §§31 et seq. of the Copyright Act contain provisions for (software) licence agreements and specify the conditions and range of such agreements.
  
- **Choice of law possible for licence agreements?**

The parties to a licence agreement may choose the applicable law. Throughout Europe the choice of law is governed by EU Directive 593/2008 EC (Rome I) which does not set any form for choice of law, as long as the choice is made expressly or is clearly shown by the terms of the contract or the circumstances of the case. If the parties choose a jurisdiction outside the EU and if all other elements relevant to the situation at the time the choice is made are located in the EU the choice of law must not prejudice mandatory provisions of Community law or those of national law transposing mandatory provisions of Community law into national law.

The choice of applicable law governing a licence agreement does not affect other questions in connection with the licence agreement (e.g. claims for infringement of copyright law, exhaustion). These questions are regularly governed by the national law of the country for which protection is sought (country of protection principle).
  
- **Rights remaining with the licensor/copyright holder**

The original copyright stays with the author: it is closely connected to the author and cannot be transferred except by inheritance. The author's moral rights cannot be transferred either. Exploitation rights may generally be fully conferred on a licensee. As to unknown types of use the author generally has the right to revoke the licence granted.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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→ **Legal basis for software licence agreements**

The following sections of the Copyright Act are the most relevant to (software) licence agreements and specify the conditions and range of such agreements:

- Sections 42-55 on the general rules for licence agreements;
- Sections 58-60 on the specific rules for software.

→ **Choice of law possible for licence agreements?**

The parties to a licence agreement may choose the applicable law for their agreement if the legal relationship contains a genuinely foreign element, e.g. one of the parties is domiciled outside Hungary. Throughout Europe the choice of law is governed by EU Directive 593/2008 EC (Rome I) which does not set any form for choice of law, as long as the choice is made expressly or is clearly shown by the terms of the contract or the circumstances of the case. By choosing a jurisdiction outside the EU, if all other elements relevant to the situation at the time the choice is made are located in the EU, the parties cannot avoid mandatory provisions of Community law or provisions of national law transposing mandatory provisions of Community law into national law.

Choice of the applicable law governing a licence agreement does not affect other questions in connection with the licence agreement (e.g. existence and content of copyright law). These questions are regularly governed by the national law of the country for which protection is sought.

→ **Rights remaining with the licensor/copyright holder**

Moral rights stay with the author. Economic rights are transferable in the case of software.

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### Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**      The Copyright Act regulates licence agreements and specifies their conditions and extent.
- **Choice of law possible for licence agreements?**

The parties to a licence agreement generally have free choice of the law applicable to the agreement. Throughout Europe the choice of law is governed by the European Rome I Directive which basically does not set any form for choice of law. If the parties choose a jurisdiction outside the EU and if all other elements relevant to the situation at the time the choice is made are located in the EU the choice of law must not prejudice mandatory provisions of Community law.

Other legal aspects in connection with a licence agreement (e.g. existence and content of copyright law; claims for infringement of copyright law, exhaustion) remain unaffected by the choice of law applicable to the contractual relationship. These topics are regularly governed by the national law of the country for which protection is sought (country of protection principle).
- **Rights remaining with the licensor/copyright holder**      Moral rights stay with the author: they are closely connected to the author and cannot be transferred. Exploitation rights may generally be fully conferred on a licensee.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**

The Act on Copyright and Related Rights governs the rules of copyright licensing in general and software licensing in particular. The Civil Code also applies because norms on agreements should be viewed as subsidiary. A licensing agreement is still by nature a civil law agreement.
- **Choice of law possible for licence agreements?**

The parties to a licence agreement may choose the applicable law for it. Within the EU the choice of law is governed by EU Directive Rome I which does not set any special form for choice of law.

Choice of applicable law governing a licence agreement is not relevant to other legal questions in connection with the licence agreement outside the contractual relationship. These questions are regularly governed by the national law of the country for which protection is sought (country of protection principle).
- **Rights remaining with the licensor/copyright holder**

Moral rights are inseparable from the author's person and therefore non-transferable. Exploitation rights (economic rights of the author) are transferable.



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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**

Copyright law does not contain specific provisions on software licence agreements; therefore the general rules on licence agreements apply.
- **Choice of law possible for licence agreements?**

Choice of the applicable law for a licence agreement is possible. Throughout Europe choice of law is governed by EU Directive 593/2008 EC (Rome I). Under the directive the choice must be made expressly or must be clearly shown by the terms of the contract or the circumstances of the case, but does not require a set form. If the parties choose a jurisdiction outside the EU and if all other elements relevant to the situation at the time the choice is made are located in the EU the choice of law must not prejudice mandatory provisions of Community law or of national law provisions implementing mandatory provisions of Community law.

Choice of applicable law governing a licence agreement does not affect other questions in connection with the licence agreement outside the contractual relationship (e.g. existence and content of copyright law; exhaustion), which are regularly governed by the national law of the country for which protection is sought (country of protection principle).
- **Rights remaining with the licensor/copyright holder**

The original copyright is closely connected to the author and cannot be transferred except by inheritance. The author's moral rights cannot be transferred either. Exploitation rights are fully transferable.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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- **Legal basis for software licence agreements**      §§ 40 et seq. of the Copyright Act regulate (software) licence agreements and specify their conditions and extent.
  
- **Choice of law possible for licence agreements?**      The parties to a licence agreement may choose the applicable law. Throughout Europe choice of law is harmonized by EU Directive 593/2008 EC (Rome I). If the parties choose a jurisdiction outside the EU and all other elements relevant to the situation are located in the EU the choice of law must not prejudice mandatory provisions of Community law. Other questions in connection with a licence agreement but outside the contractual relationship such as the scope of protection of copyrights and claims in case of infringement are not affected by the choice of applicable law for the contract, as these questions are regularly governed by the national law of the country where copyrights are to be protected (country of protection principle).
  
- **Rights remaining with the licensor/copyright holder**      Copyright is closely connected to the author and cannot be transferred except by inheritance. The author's moral rights cannot be transferred either. Exploitation rights, on the contrary, are fully transferable.

### Necessary form of license agreement

Country	Written form	Other formal requirements
<b>Belarus</b>	Yes, generally	No
<b>Bulgaria</b>	Generally not – only for exclusive licence agreements; however written form of licence agreement is recommended for several reasons	No
<b>Czech Republic</b>	In general not – only if an exclusive licence is granted	No
<b>Estonia</b>	Yes, generally	No
<b>Germany</b>	In general not - only if licence is granted by the author for unknown types of use	No
<b>Hungary</b>	Yes, generally. Written form is not required if software is sold commercially (typically, the licence is granted and accepted (i) during installation of retail software or (ii) by implied consent: opening software packaging which also indicates the terms of the licence).	No
<b>Latvia</b>	In general not – only the following types of licensing agreements must be in writing: <ul style="list-style-type: none"> <li>• publishing contracts;</li> <li>• contracts licensing the right of communication to the public;</li> <li>• contracts creating an audio-visual work;</li> <li>• contracts for compulsory exclusive licences.</li> </ul>	No
<b>Lithuania</b>	Yes, but currently disputed whether failure to adhere to written form leads to invalidity of the contract	No
<b>Poland</b>	In general not – only if an exclusive licence is granted	No
<b>Slovakia</b>	In general not – only if an exclusive licence is granted	If the licence agreement is not in written form any party may ask for the licence agreement's confirmation. If no licence agreement confirmation has been demanded within 15 days of signing the agreement the right to demand confirmation automatically ceases. Also, if no licence agreement confirmation has been given within 15 days from the demand, the parties are deemed to have not entered into the agreement.

### “Bestseller provision” – Right to demand higher royalties than agreed in case of unexpected success of a work/computer program and possibilities to limit that right

Country	Bestseller provision in written law	Possibility to demand higher royalties based on general legal provisions	Possibility to limit the right to demand higher royalties than agreed?
Belarus	–	General provisions of contract law on significant changes of circumstances which made the parties conclude the contract	Yes
Bulgaria	Yes	–	No
Czech Republic	Yes	–	Not possible
Estonia	No, but introduction of such a clause is currently under discussion	No	–
Germany	Yes, only in favour of the author; different persons in the licence chain may be liable to the author	–	Contractual limitation is possible in special cases under certain circumstances (setting remuneration by tariff agreement or on the basis of joint remuneration rules between authors' associations with users' associations or individual users)
Hungary	Yes, only in favour of the author.	–	Not possible
Latvia	No	No	–
Lithuania	No	General principles of contract law	Not possible
Poland	Yes, only in favour of the author; different persons in the licence chain may be liable to the author	Yes	Not possible
Slovakia	No	No	–

### Taxation of royalties from software license agreements

Country	Taxable income/Tax rate	Withholding tax for royalties paid in international context	VAT rate
<b>Belarus</b>	Taxable income – subject to general income tax (Tax rate 18%)	<p>Non-resident companies pay income tax 15%</p> <p>Reduced tax rate of 5% for non-residents without a permanent representative office in Belarus who receive royalties from residents of the Belarus Hi-Tech-Park</p> <p>A more favourable tax regime may also apply under double taxation treaties.</p>	Royalties generally exempt from VAT
<b>Bulgaria</b>	Taxable income – General tax rate is 10% (Only 60% of the income is taxable, for income generated by a tax resident who is a natural person but not a merchant)	<p>Generally the withholding tax rate is 10%.</p> <p>EU citizens can opt for tax treatment as residents.</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	General VAT rate of 20%
<b>Czech Republic</b>	Taxable income – tax rate 15%	<p>In general 15% (35%).</p> <p>The specific amount of tax rate also depends on double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	The specific amount of VAT is determined in each specific situation (Generally 21%).
<b>Estonia</b>	<p>Taxable income in general (income tax rate in general 21%)</p> <p>Royalties exempt from income tax if the amount complies with the arm's length trading principle.</p>	<p>In general 10%</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	The VAT rate is 20%
<b>Germany</b>	Taxable income – subject to general income/corporate tax rates in Germany (14% - 47.5%)	<p>15% (plus 0.825% solidarity surcharge) for licensees with limited tax liability in Germany</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	The general VAT rate of 19% is reduced for grant, transmission and exercise of rights under the Copyright Act to 7%. Granting a simple right to use software / database is not subject to reduced VAT rate.

### Taxation of royalties from software license agreements

Country	Taxable income/Tax rate	Withholding tax for royalties paid in international context	VAT rate
<b>Hungary</b>	<p>Taxable income – subject to general corporate tax rate (10%-19%).</p> <p>However, 50% of royalties can be deducted from profit before taxation. The deduction cannot exceed 50% of total profit before taxation.</p>	None	General VAT tax rate: 27%.
<b>Latvia</b>	Taxable income – tax rate 24% (in 2015 - 23%, in 2016 - 22%)	<p>15% for licensees with limited tax liability in Latvia</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	Not applicable
<b>Lithuania</b>	Taxable income – tax rate 15%	<p>15% for licensees with limited tax liability in Lithuania</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	If royalties exceed 155 000 Lt per year, they are an object for VAT (the rate is 21 %)
<b>Poland</b>	Taxable income subject to general income tax rate (18-32%)	<p>In general 20%</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	The general VAT rate of 23% is reduced for grant or transmission of licences for copyright to 8%. The reduced VAT rate applies only to authors (natural persons).
<b>Slovakia</b>	Taxable income – tax rate 19%/25% for natural persons and 22% for legal entities	<p>19% or 35% if the licensee is a taxpayer from a non-contractual state for tax purposes.</p> <p>Double taxation treaties or special rules for associated enterprises within the EU may lead to tax exemption or reduced withholding tax rate.</p>	General VAT tax rate of 20%

### How to transfer licences?

**Belarus** – The licence may be transferred in full under the general rules of obligations with the licensor's consent. In order to transfer a licence the parties may enter into a sublicense agreement.

**Bulgaria** – Transfer of software licences, including by means of a sublicense agreement, is only possible if permitted by the primary licence agreement. However, by analogy with the Commercial Act, holders of exclusive licences can be denied this right only for good reason.

If the share capital of a licensee passes to a third person the licence agreement remains unaffected unless it contains explicit capital ownership protection clauses.

**Czech Republic** – A licence may be fully transferred by a licence agreement or the parties may conclude an extensive sublicense agreement to have a similar effect

**Estonia** – If a licence entitles the licensee to transfer the licence to a third person, it may be transferred without special formal requirements by simple agreement, so that the author may not deny approval to the transfer of licence without reasonable cause. Acquisition in good faith of rights of use is not possible under national law.

A licence can be transferred even without the consent of the author if the transfer happens in the course of the total or partial sale of the licensee's company. The author has a right of revocation in regard to a licence granted in that case if use by the new licensee is not reasonable to the author.

If the author has not expressly agreed to the transfer, the transferee together with the old licensee is liable for obligations to the author resulting from licence agreements.

**Germany** – If a licence entitles the licensee to transfer the licence in full to another person, the licence may be transferred without special formal requirements by simple agreement. The author may not deny approval to the transfer without reasonable cause. Acquisition in good faith of rights of use is not possible.

A licence can be transferred even without consent of the author if the transfer happens in the course of the total or partial sale of the licensee's company. However, the author may revoke the licence granted in that case if use by the new licensee is not reasonable to the author. The transferee together with the old licensee is liable for obligations towards the author resulting from licence agreements (especially payment of royalties) if the author has not expressly agreed to the transfer.

**Hungary** – If the licence entitles the licensee to transfer the licence in full or in part to another person, the licence may be transferred without special formal requirements on the basis of a simple agreement. Special author's approval is not required.

A licence can in practice be transferred even without consent of the author if the licensee is a company and the licensee is sold to a third party.

**Latvia** – If the licence includes the possibility to transfer the licence in full to another person it may be transferred without special formal requirements by simple agreement.

**Lithuania** – A licence which entitles the licensee to transfer it in full to another person may be transferred by simple agreement without formalities.

**Poland** – A licence which allows the licensee to transfer the licence fully to another person is transferable without special formal requirements by simple agreement and no additional approval by the author is required.

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## Legal Protection of Computer Programs/Databases and Software Licences 2014

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Transfer of a licence does not require previous consent of the author if it happens in the course of total or partial sale of the licensee's company. However, the author may withdraw from or terminate a licence contract if he has a vital interest in it. The transferee together with the old licensee is liable for obligations to the author resulting from the licence that became due prior to transfer of the licensee's company (part of which is the licence itself). If the author has not expressly agreed to the transfer, the transferee is liable to the old licensee if the author demands payment from the latter.

**Slovakia** – A licence holder may transfer a licence only after prior written consent of the author. The licence holder must promptly inform the author of the transfer and details of the new licence holder.

A licence can be transferred even without consent of the author if the transfer happens in the course of the total or partial sale of the licensee's company.



### Legal protection against infringement by third parties – Relation between licensee and licensor

**Belarus** – In case of infringement of the author's moral rights the author – or after his death his successors, the executor of the will or a competent public authority – may take action against infringements.

Exploitation rights can be protected either by the author or by other right holders if exclusive rights were transferred to them.

**Bulgaria** – Besides the author a holder of an exclusive licence for a computer program can file actions in protection of infringed copyright.

**Czech Republic** – If the author grants an exclusive licence for a computer program the licensee may in the case of infringement of its right exercise protection rights and claim remedies in its own name and behalf.

**Estonia** – At present, generally only the author may take action against infringements by third parties. It is therefore essential for the protection of right holders' interests that the author and the licensee contractually agree on cooperation in case of infringement of copyrights by third persons. However, the planned national IP reform envisages granting proper rights of enforcement to right holders.

**Germany** – Generally it is the author who can take action against infringement by third parties. In the case of an exclusive licence in general the licensor can take legal measures against infringement by other persons. However, an author who grants exclusive licence remains entitled in regard to violation of the author's moral rights and/or to the extent he has a legitimate interest in regard to the violation.

Licensors with a non-exclusive licence generally may not take action against violation of copyrights.

The author/exclusive licensor and licensees should contractually agree on cooperation in case of infringement of copyrights by third persons.

The author or other entitled licensor may raise contractual and non-contractual claims against a licensee who exceeds its rights of use granted under a licence agreement.

**Hungary** – Primarily the author may take action against infringement by third parties. In the case of an exclusive licence, the holder may require the author to take the necessary steps against infringement by third parties. If the author does not do so within 30 days, the licensee may initiate proceedings in his own name. If the licence agreement explicitly allows, the holder of a non-exclusive licence may also do so.

**Latvia** – Primarily it is the author who can take action against infringements by third parties. In the case of an exclusive licence the licensor generally has the right to take legal measures against infringement of copyright by other persons. Licensors with a non-exclusive licence may generally not take action against violation of copyrights. It is helpful if the author/exclusive licensor and licensees contractually agree to cooperate in the case of infringement of copyrights by third persons.

**Lithuania** – Originally it is the author who can take action against third-party infringers. However, an exclusive licensor may take legal measures against infringement of a copyright by other persons. Licensors with a non-exclusive licence are generally not entitled to take action against violation of copyright. To avoid an unclear legal situation the author/exclusive licensor and licensees should contractually agree to cooperate in case of third-party infringement.

**Poland** – Primarily the author has the right to take action against infringements by third parties. An exclusive licensor generally has the same right, but an author who grants an exclusive licence remains entitled in regard to violation of the author's moral rights and/or to the extent he has a legitimate interest in regard to violation. Licensors with a non-exclusive licence may generally not file actions against violation of copyright.

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The question who prosecutes third-party infringements should be clarified in the licence agreement.

The author or other entitled licensor may raise contractual and non-contractual claims against a licensee who exceeds rights of use granted under a licence agreement.

**Slovakia** – Generally the author may take action against infringement by third parties. In the case of an exclusive licence the licence holder may exercise the same rights. Non-exclusive licensors generally may not take action against copyright violation. The author/exclusive licence holder and licensees should contractually agree to cooperate in case of infringement of copyrights.

The author or other entitled licence holder may raise contractual and non-contractual claims against a licensee who exceeds rights of use granted under a licence agreement.

### Impact of insolvency of licensor/licensee on licence and sublicence (agreements)

**Belarus** – In the case of insolvency of one party to a licence agreement the other party can claim preliminary termination of the agreement and payment of damages.

If a legal entity that acquires a copyright from an employee is in liquidation, this will result in the automatic transfer of all rights in the work back to the employee.

**Bulgaria** – A licence agreement does not terminate automatically if insolvency proceedings start with regard to the licensor or licensee. National legislation does not offer specific provisions on the issue. Introduction of contractual clauses dealing with the problem is therefore advisable.

**Czech Republic** – Czech insolvency law does not explicitly state any particularities regarding licences. Should either the licensor or the licensee go into insolvency, the licence is managed according to the results of the insolvency proceedings. The licence agreement is thus not terminated automatically.

**Estonia** – Under national law a licence agreement does not terminate automatically on insolvency of the licensor. There is at present no detailed regulation of the impact on licences of insolvency proceedings but it is intended to be included in upcoming IP reform.

**Germany** – On insolvency of the licensor the licence agreement does not terminate automatically. If the insolvency administrator refuses performance the agreement is considered terminated, the licence is returned to the licensor and the licensee may claim compensation from the insolvency estate. However, the insolvency administrator is free to continue performing the licence agreement.

After insolvency proceedings of the licensee begin, a licence agreement may not be terminated by the licensor due to default with payments of royalties or deterioration of the licensee's financial circumstances. As compensation for prohibition of termination the licensor's claims from continued performance of the licence agreement are treated with priority compared to normal insolvency claims.

The insolvency of a principal licensee and termination of the main licence do not influence continuance of a sub-licence. In this case the licensor may demand assignment of the claim for royalties from the principal licensee against a sub-licensee.

**Hungary** – Under national law, the insolvency of the licensor does not automatically result in termination of the licence agreement. The licensor or insolvency administrator will generally be interested in continuing a licence agreement because of payment of royalties. However the insolvency administrator can terminate the agreement. In that case the licensee may claim compensation from the insolvency estate.

Under national law, the insolvency of the licensee does not automatically lead to termination of a licence and the insolvency administrator can continue to use the software. However, it is common to stipulate a special right to terminate a licence agreement if a party becomes insolvent.

**Latvia** – Insolvency proceedings against the licensor or licensee do not lead to automatic termination of a licence agreement. Only if the insolvency administrator refuses to perform is the agreement considered terminated (normally an insolvent licensor has an interest in continuing the licence agreement). In that case the licensee may claim compensation from the insolvency estate.

**Lithuania** – Termination of a licence agreement is not automatic on insolvency of the licensor. The licensor or the insolvency administrator is generally interested in continuing the licence agreement because of payment of royalties, but the insolvency administrator may refuse to perform the agreement, which leads to termination. The licensee may claim

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compensation from the insolvency estate.

Insolvency of the licensee has no effect on the licence agreement either.

**Poland** – Insolvency of a party to a licence agreement does not terminate the agreement automatically. On insolvency of the licensor the insolvency administrator terminates the agreement by refusing to perform the agreement, which entitles the licensee to claim compensation from the insolvency estate.

Similar rules apply on the licensee's insolvency.

**Slovakia** – The licence agreement does not terminate automatically under Slovak insolvency law in the event of the licensor's insolvency. The licensor or the insolvency administrator is normally interested in continuation of the licence agreement. However, the insolvency administrator may refuse to perform the agreement and therefore terminate the agreement. In that case the licence returns to the licensor and the licensee may claim compensation from the insolvency estate.

Insolvency of the licensee has no effect on the licence agreement either. Once insolvency proceedings against the licensee begin, the licence agreement may not be terminated by the licensor due to default in payments of royalties or deterioration of the licensee's financial circumstances. As compensation the licensor's claims from continued performance of the licence agreement are treated with priority compared to normal insolvency claims.

## Notes

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