

Manufacture of Optical Discs Act, B.E. 2548 (2005)

Translation

BHUMIBHOL ADULYADEJ, REX.

Given on the 22nd of May, B.E. 2548

Being the 60th year of the present reign

By royal command of His Majesty King Bhumibhol Adulyadej, it is hereby proclaimed that:

It being fitting that there be a law on the manufacture of optical discs;

This Act contains certain provisions on the limitation of rights and liberty of individuals as lawfully permitted in Sections 29, 35, 48 and 50 of the Kingdom of Thailand's Constitution,

A law shall be passed with the advice and consent of the Parliament, stipulating as follows.

Section 1

This Act shall be referred to as the "Manufacture of Optical Discs Act, B. E. 2548 (2005)".

Section 2

This Act shall come into force at the end of ninety days after publication in the Government Gazette.

Section 3

In this Act:

"Optical Discs" refers to discs used for the recording of data through any means making the data capable of being presented visually, aurally or both in a continuous sequence. The term shall also refer to products governed by Ministerial Regulations.

"Manufacture" refers to any action resulting in the production of optical discs.

"Rights Holder" refers to the lawful owner of the copyright as accorded by the copyright law, the assignee of rights as well as those permitted to manufacture copyrighted works.

"Machinery" refers to machines used in manufacturing and machine equipment as governed by Ministerial Regulations.

"Manufacturing Mark" refers to marks and codes assigned by the Director General for use in identifying the manufacturing source of optical discs.

"Mastering Mark" refers to marks and codes assigned by the Director General to designate a copyrighted work.

"Manufacturing Place" refers to buildings, premises and vehicles where machinery is installed.

"Officer" refers to persons appointed by the Minister to enact this Act.

"Director General" refers to the Director General of the Department of Intellectual Property.

"Minister" refers to the minister in charge as accorded by this Act.

Section 4

The Minister of Commerce shall be in charge of enacting this Act and shall have the authority to appoint officers, issue Ministerial Regulations and Ministerial Notifications so as to implement this Act.

Ministerial Regulations and Ministerial Notifications shall come into effect upon publication in the Government Gazette.

Chapter I

Manufacture

Section 5

Whoever manufactures, when about to commence manufacturing, shall inform officers prior to the commence of the manufacturing.

Any copyright owner wishing to manufacture or hire a manufacturing shall, on each occasion, inform officers prior to the manufacturing or the hiring except in cases where the manufacturing or the hiring is intended for educational or governmental purposes and except in cases where it is intended for public benefit or intended for the conservation of the nation's art and culture. All in all, this shall be in accordance with the Minister's specifications.

When officers are informed as indicated in clause one or clause two, the informed officer shall issue a written acknowledgement to the informer on that day.

Forms to be used for informing, items to be listed, methods of informing and forms to be used for acknowledging shall be in accordance with the Director General's specifications.

Section 6

The informing document by the manufacturer shall comprise at least the following details.

- (1) name and address of manufacturer
- (2) name and address of manufacturing place
- (3) machinery details
- (4) other items as specified by the Director General

The informing document by the rights holder shall comprise at least the following details.

- (1) name and address of rights holder
- (2) name and address of manufacturing place
- (3) details on work to be manufactured or hired
- (4) other items as specified by the Director General

Any change in items indicated in clause one and clause two shall be in accordance with the criteria and methods announced by the Director General.

Section 7

In cases where the manufacturer has more than one manufacturing premise, the manufacturer shall inform of his manufacturing as stipulated in Section 5 clause one for all manufacturing premises.

The moving of manufacturing place specified in the informing document shall be made known to officers in advance.

The informing indicated in clause two shall be in accordance with the criteria and method specified by the Director General.

Section 8

The Director General shall assign a manufacturing mark for the manufacturer and a mastering mark for the copyright owner. The marks shall be displayed on optical discs manufactured by the manufacturer who has informed of his manufacturing intent in accordance with Section 5.

The production and display of manufacturing and mastering marks shall be in compliance with the criteria and method specified by the Director General.

Section 9

Upon having been correctly informed of the manufacturing (intent) indicated in Section 5 clause one, the Director General shall speedily issue a manufacturing mark for the manufacturer to display on optical discs and shall permit him to manufacture from the day the manufacturing mark is issued.

Upon being correctly informed of the manufacturing or hiring indicated in Section 5 clause two, the Director General shall speedily issue a mastering mark for the copyright owner to display on optical discs. The copyright owner shall be permitted to manufacture or hire the manufacturing from the day the mastering mark is issued.

The issuing of manufacturing marks and mastering marks shall be in accordance with the criteria, method and condition announced by the Director General.

Section 10

The manufacturer shall be responsible for the following.

- (1) Openly displaying an acknowledgement of informed manufacturing at the manufacturing place stated in the document.
- (2) Compiling a book-keeping indicating the number, production volume, sales, disposal and stock list of optical discs. The information, item entry and length of time kept for this bookkeeping shall be as announced by the Director General.

Section 11

The manufacturer shall have the duty to display the manufacturing mark and the mastering mark as accorded in Section 8 clause two.

Section 12

The copyright owner shall have the duty to produce a mastering mark as accorded in Section 8 clause two.

Section 13

It is forbidden for anyone to use a manufacturing mark except when he has informed of his manufacturing (intent) as indicated in Section 5 clause one and has been issued a manufacturing mark as accorded in Section 9 clause one.

It is forbidden for anyone to use a mastering mark except when he is the copyright owner who has informed of his manufacturing or hiring (intent) and has been issued a mastering mark as indicated in Section 9 clause two or except when he is a manufacturer hired by the copyright owner who had informed of his manufacturing or hiring (intent) as indicated in Section 5 clause two and had been issued a mastering mark as indicated in Section 9 clause two.

Section 14

In case the manufacturer closes down his business or in case he is not able to carry on manufacturing for whatever reason, the person wishing to continue the mentioned manufacturing shall inform officers as indicated in Section 5 within thirty days after the previous manufacturer stops or is not able to carry on his manufacturing.

During the time indicated in clause one, it shall be deemed that the manufacturer be the informer indicated in Section 5.

Section 15

It is forbidden for anyone to falsify or copy a manufacturing or mastering mark in order to mislead others into believing the marks are genuine.

Chapter II

Machinery and Polymer Grains or Other Material

Section 16

Anyone who has acquired or is in possession of machinery shall inform the Director General within thirty days of his acquisition or possession.

The informing indicated in clause one shall be in accordance with the criteria, method and condition announced by the Director General.

Section 17

Anyone who sells, gives or transfers machinery shall inform the Director General within seven days of the selling, giving or transferring.

The prescription in clause one shall apply to cases where the machinery has come outside the possession of the owner as indicated in Section 16 for any other reason.

The informing indicated in clause one shall be in accordance with the criteria, method and condition announced by the Director General.

Section 18

Anyone who comes into possession of or is in possession of polymer grains or other material used in manufacturing shall inform the Director General of the type, kind, volume and storage place for those polymer grains or other material within thirty days of his coming into possession or being in possession.

The type, kind and volume of polymer grains or other material to be informed of as indicated in clause one and the criteria and method of informing shall be as announced by the Director General.

Chapter III Officers

Section 19

In implementing this Act, officers shall be empowered to do the following.

- (1) Enter a manufacturing place between sunrise and sunset or during the operating hours of that manufacturing place in order to inspect (informing) acknowledgement documents, machinery, polymer grains or other material used in manufacturing as well as inspect other related documents that may be used as evidence against violators of this Act.
- (2) Request persons to provide information or to hand over bookkeeping, documents or other evidence when there is reason to believe that the information, book-keeping, documents and mentioned evidence may lead to the discovery of or be used as evidence in proving the violator's unlawful doings as accorded in this Act.

Section 20

In performing their duties as indicated in Section 19, officers shall display their identification cards to relevant persons.

Identification cards indicated in clause one shall be in a form specified by the Minister in the Government Gazette

Section 21

In implementing this Act, officers shall be deemed officers designated by the Penal Code.

Chapter IV Penalties

Section 22

Anyone not complying with Section 5 clause one, Section 7 clauses one or two shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand Baht or both.

Section 23

Anyone not complying with Section 5 clause two shall be liable to a fine not exceeding two hundred thousand Baht.

Section 24

Anyone not complying with Section 10 (1) shall be liable to a fine not exceeding ten thousand Baht.

Section 25

Anyone not complying with Section 10 (2) shall be liable to a fine not exceeding one hundred thousand Baht.

Section 26

Anyone not complying with Section 11 shall be liable to an imprisonment term not exceeding one year or a fine not exceeding two hundred thousand Baht or both.

Section 27

Anyone not complying with Section 12 shall be liable to a fine not exceeding two hundred thousand Baht.

Section 28

Anyone violating Section 13 shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding six hundred thousand Baht or both.

Section 29

Anyone violating Section 15 shall be liable to imprisonment for a term of between six months and five years and a fine of between one hundred thousand and one million Baht.

Section 30

Anyone not complying with Section 16 or Section 17 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand Baht or both.

Section 31

Anyone not complying with Section 18 shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand Baht or both.

Section 32

Anyone obstructing or not complying with the orders of officers given in accordance with Section 19 shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding fifty thousand Baht or both.

Section 33

Anyone who informs as indicated in Section 16 or Section 17 and supplies false information shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand Baht or both.

Section 34

Anyone who informs as indicated in Section 18 and supplies false information shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand Baht or both.

Section 35

For offenses where only fines are prescribed, if the offender submits to paying a high fine to the Director General, the case shall be deemed closed as accorded in the provisions of the Criminal Procedure Code.

Section 36

In case a juristic person commits an offense as accorded in this Act, it shall be deemed that the board members or all managers of that juristic person have taken part in the offense except when proven that the action of the juristic person was committed without their knowledge or consent.

Section 37

For persons having committed an offense and having been liable to penalties as accorded by this Act, upon the termination of his penalty term but not exceeding a time period of five years, if he commits another offense as accorded by this same Act, the person shall be liable to a penalty twice that of the penalty imposed by the court for his previous offense.

Section 38

Anyone not complying with or violating Section 5 clause one, Section 7 clauses one or two, Sections 11, 13, 15, 16 or 17 shall have his machinery seized by court order.

The seized machinery shall be used for government work, shall be sold to government offices or state enterprises or shall be destroyed as indicated in the criteria, method and condition announced by the Minister.

(Constitutional Court ruling number 30/2548, dated 1 February, 2548 overruled Section 38 of the Manufacture of Optical Discs Bill B. E. 2548)

Section 39

The Intellectual Property and International Trade Court shall have the jurisdiction to hear cases as accorded by this Act.

Transitory Provision

Section 40

Anyone already engaged in manufacturing prior to the promulgation of this Act, if he wishes to continue manufacturing, shall inform officers as accorded in Section 5 within thirty days from the promulgation of this Act. After the mentioned time period, he shall be liable to the penalties prescribed in Section 22.

Section 41

Anyone having already acquired or having already been in possession of machinery on the day this Act comes into force shall inform the Director General as indicated in Section 16 within thirty days after this Act comes into force. After the mentioned time period, he shall be liable to the penalties prescribed in Section 30 and upon providing false information, he shall be liable to the penalties prescribed in Section 33.

Section 42

Anyone who has already acquired or is already in possession of polymer grains or other material which is used as manufacturing raw material on the day this Act comes into force shall inform the Director General as indicated in Section 18 within thirty days after this Act comes into force. After the mentioned time period, he shall be liable to the penalties prescribed in Section 31 and if he provides false information, he shall be liable to the penalties prescribed in Section 34.

Countersigned by
Mr. Taksin Shinawatra
Prime Minister

Remark: The rationale for having this Act is that at present the infringement of intellectual property rights in Thailand, especially the violation of copyright through optical disc products, has so much aggravated that state mechanisms have not been able to efficiently control or prevent such doings. It is, therefore, fitting that there be measures to regulate the manufacturing of optical discs by establishing a manufacturing reporting process which persons wishing to manufacture can use as a channel to inform the authorities of their intent. Also, this system may be used to keep track of machinery used in manufacturing, the volume of raw materials and their storage place. Such measures will help support the prevention mechanism for copyright infringement, make it more efficient and systematic, create effectiveness in the collection of taxes and support those involved in the optical disc manufacturing business to act in accordance with the law. Hence, the need to have this legislation.

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