

THE LAW ON OPTICAL DISCS

I. GENERAL PROVISIONS

Subject-matter of the Law Article 1

This Law shall regulate the manufacturing, commercial duplication, circulation and exports of optical discs, and imports and exports of production parts, raw materials and equipment used for manufacturing of optical discs.

Definitions Article 2

The terms used in this Law, shall have the following meaning:

- 1) **Optical Disc** shall mean any medium or device, other than a production part, on which data in digital form, readable by means of an optical scanning mechanism employing a high-density light source (a laser), has been stored or is capable of being stored, including all the formats, notably:
 - CD (compact disc)
 - CD-DA (compact disc digital audio)
 - CD-I (compact disc – interactive)
 - CD-P (compact disc – photo)
 - CD-ROM (compact disc read-only memory)
 - CD-R (compact disc recordable)
 - CD-RW (compact disc rewritable)
 - CD-WO (compact disc write once)
 - DVD (digital versatile disc)
 - DVD-RAM (digital versatile disc random access memory)
 - DVD-ROM (digital versatile disc read-only memory)
 - LD (laserdisc)
 - MD (mini-disc)
 - VCD (video compact disc)
 - CVD (China video disc)
 - SVCD (super video compact disc)
 - SACD (Super audio compact disc)
- 2) **Production Part** shall mean any component of a mould (a “stamper”), that embodies data in a digital form and is capable of being used to mould optical discs, or any other device embodying data from which a stamper may be produced by means of an electroplating process;
- 3) **Master disc** shall mean a disc made of glass or polymer that contains data in digital form used to produce Production Part (a “stamper”);

- 4) **Production equipment** shall mean machinery, equipment or devices, including Mastering Equipment, that is used or that may be used for production of Optical Discs or Production Parts.
- 5) **Mastering Equipment** shall mean any machine, equipment or device consisting of a signal processor and laser beam recorder or any other recorder that may be used to record data onto the Master Disc or to record data directly on a Production Part, including but not limited to:
 - Laser Beam Recorder;
 - Signal processing system for the Laser Beam Recorder;
 - Equipment for spin coating glass masters with a photo resistant layer;
 - Equipment for making Production Part;
 - Integrated optical disc replication lines;
 - Injection moulding machinery for the manufacture of optical discs
 - Moulds, and components thereof, for the manufacture of optical discs;
 - Metalizers for applying reflective layers to optical discs;
 - Equipment for applying lacquer layers to optical discs;
 - DVD upgrade kits;
- 6) **Manufacture** shall mean to make, or process raw material into, Optical Discs, as well as to make or process Production Parts;
- 7) **Raw Material** shall mean optical grade polycarbonate or any other raw material whose physical properties make it suitable for the production of Optical Discs;
- 8) **Manufacturer's Code** shall mean SID Code or LBR SID Code;
- 9) **SID Code** shall mean the Source Identification Code jointly developed by IFPI, the International Federation of the Phonographic Industry, and Philips International B.V. that is allocated to the manufacturers of Optical Discs;
- 10) **LBR SID Code** shall mean a SID code that is allocated to manufacturers of Master Discs and Production Parts;
- 11) **Production License** shall mean a license, issued under this Law, to manufacture optical discs or production parts;
- 12) **Licensed Premises** shall mean the premises specified in a production license as premises where production of optical discs or production parts takes place;
- 13) **Circulation** of optical discs shall mean sales, renting, leasing, barter or the like;
- 14) **Commercial duplication** of optical discs shall mean recording of materials protected by the intellectual property right from the existing media onto optical discs for the purposes of placing into circulation;
- 15) **Person** shall mean any natural person, company or any other form of a commercial entity.

16) **Professional organization** shall mean an organization whose membership consists wholly or substantially of intellectual property right holders, and which is mandated by those members to enforce or protect their intellectual property rights.

Responsible Authorities
Article 3

The state authority responsible for culture, the state authority responsible for foreign trade and the state authority responsible for internal trade shall be responsible for enforcement of this Law.

The state authority responsible for culture shall be responsible to administer all matters related to manufacturer's codes, production licenses and approvals for commercial duplication of optical discs.

The state authority responsible for foreign trade shall be responsible to administer all matters related to exports of optical discs and exports or imports of production parts, raw materials and the equipment for production of optical discs.

The state authority responsible for internal trade, through market inspectorate, shall administer supervision of activities related to production, commercial duplication and circulation of optical discs.

II. LICENSING, APPROVAL AND A LICENSE

1. MANUFACTURER'S LICENSE

Requirements for Manufacturing of Optical Discs and Production Parts
Article 4

Optical discs or production parts shall be manufactured by a person to whom a manufacturer's license and a manufacturer's code have been issued

Manufacturing referred to in paragraph 1 of this Article shall be performed in the licensed premises only.

Manufacturer's Code
Article 5

Any person intending to engage in manufacturing of optical discs must obtain a SID code.

Any person intending to engage in manufacturing of production parts must obtain a LBR SID code.

An application for obtaining codes referred to in paragraphs 1 and 2 of this Article shall be made in writing.

Codes referred to in paragraphs 1 and 2 of this Article shall be allocated not later than 30 days from the filing date of an application.

The authority referred to in Article 3, paragraph 2 of this Law, in coordination with the appropriate international organizations, shall determine form and content of manufacturer's codes, the manner of marking with such codes and the content and the manner of administration of the Register of Issued Manufacturer's Codes.

The Register referred to paragraph 4 of this Article shall be the public record.

Application for a Manufacturer's License Article 6

An application for a manufacturer's license shall be made in writing.

An application referred to in paragraph 1 of this Article shall be accompanied by:

- 1) The Certificate from the Central Register of the Commercial Court confirming the registration for the activity for which the license is required;
- 2) An information on the premises (address, square footage, title) where the manufacturing of optical discs or production parts is to take place, as well as of any ancillary facility (distribution or storage facility, and the like);
- 3) An information on responsible persons (name, surname and address);
- 4) A declaration, signed by the applicant, to the effect that neither the applicant, nor a director or any other responsible person of the applicant has, in the three years preceding the date of filing of the application, been convicted of any economic offence or criminal offence involving the infringement of an intellectual property right, that none of them is under investigation for any such offence and that the prohibition of the activity for which the license is required is not effective with respect to any of them.

Manufacturer's License Article 7

A manufacturer's license (hereinafter referred to as: the license) shall be issued only to an applicant that has obtained an appropriate manufacturer's code and submitted evidence referred to in Article 6, paragraph 2 of this Law.

The license shall include the following:

- 1) Name and surname, or the corporate name of the licensee;
- 2) Address of the premises where the production of optical discs or production parts is taking place, as well as of any ancillary facility, including any distribution or storage facility;
- 3) Indication whether the license has been issued for the manufacturing of optical discs or production parts or both;
- 4) The manufacturer's code that has been issued to the licensee.

The license shall be issued for the period not exceeding three years.

The license may be extended upon the written request of the licensee filed before the expiration of a period referred to in paragraph 3 of this Article, under conditions identical to those for the issuance of a license.

Obligations of the Licensee **Article 8**

Any licensee shall:

- 1) display the license in a conspicuous location in every licensed premises;
- 2) notify the licensing authority without delay, but not later than 30 days after any change occurs in relation to any particulars relevant to the issuance of the license;
- 3) take measures to establish that each customer ordering optical discs or production parts has the authorization to reproduce any material protected by the intellectual property right embodied on the optical discs or production parts ordered, which shall include the request to the customer to:
 - Identify the owner of the right with respect to material to be replicated on the optical discs ordered, or on any accompanying packaging thereof, or on any production parts;
 - Provide evidence that the customer is authorized to reproduce such material on an optical disc or production part (quantity and nature, territorial scope and time limitations of the authorization);
 - Provide details of the content of the materials to be replicated and verify such data by comparing it to the supplied source material ;

Where there are circumstances that reasonably give rise to any suspicion with respect to the existence and the scope of authorization to replicate materials embodied on optical discs or production parts, the licensee shall independently conduct additional verification of the data supplied by the customer.

Paragraph 1, subparagraph 3 and paragraph 2 of this Article shall not apply to production of optical discs that do not contain any replicated materials.

Refusal to Issue or Renew a License **Article 9**

The license shall not be issued or renewed if:

- 1) the applicant, or any director or any other responsible person of the applicant has in the period beginning three years prior to the date of lodging the application been convicted of any economic offence or criminal offence involving a violation of an intellectual property right, or if any of them is under investigation for any such offence or if the prohibition of the activity for which the license is required is effective with respect to any of them;
- 2) has not submitted the documentation referred to in Article 6, paragraph 2 of this Law;

- 3) has furnished false information in his application or accompanying documentation; or
- 4) the applicant is the holder of a license that has been terminated, or suspended in accordance with the provisions of Article 10 of this Law, in the period preceding the filing of the application.

Suspension of a License Article 10

The license shall be suspended if:

- 1) the licensee or any director or any other responsible person of the licensee has been charged with any economic offence or criminal offence involving an infringement of an intellectual property right;
- 2) a procedure has been initiated with respect to an economic offence or criminal offence involving an infringement of an intellectual property right, committed in the licensed premises, regardless of who is a perpetrator.

The license shall be suspended for as long as it takes for the appropriate court proceedings to be completed.

Termination and Revocation of a License Article 11

The license shall be terminated if:

- 1) the licensee or any director or any other responsible person of the licensee has been convicted of an economic offence or criminal offence involving an infringement of an intellectual property right;
- 2) any person has been convicted for an economic offence or criminal offence involving an infringement of an intellectual property right committed in the licensed premises, regardless of who is a perpetrator.

The license shall be revoked upon the request of the licensee or when the licensee ceases permanently to manufacture optical discs or production parts.

Record Keeping Article 12

Any licensee shall keep records and samples of optical discs and production parts manufactured for a period of five years, and shall make them available for inspection at the request of the licensing authority or a market inspector.

Samples referred to in paragraph 1 of this Article shall be:

- 1) a sample of each optical disc manufactured;
- 2) a copy in a retrievable form of the content of each production part.

The authority referred to in Article 3, paragraph 2 of this Law shall set out content

and the manner of record keeping referred to in paragraph 1 of this Article.

2. APPROVAL FOR COMMERCIAL DUPLICATION OF OPTICAL DISCS

Application for the Activity Approval

Article 13

Any person registered to commercially duplicate optical discs must, prior to commencing such business activity, obtain activity approval from the competent authority.

The application for the activity approval shall be accompanied by:

- 1) The Certificate from the Central Register of the Commercial Court confirming the registration for the activity for which the activity approval is required;
- 2) An information on responsible persons (personal data and address)
- 3) An information on the premises (address, square footage, title) where the commercial duplication of optical discs is to take place;
- 4) A declaration, signed by the applicant, to the effect that neither the applicant, nor a director or any other responsible person of the applicant has, in the three years preceding the date of filing of the application, been convicted of any economic offence or criminal offence involving the infringement of an intellectual property right, that none of them is under investigation for any such offence and that the prohibition of conducting the activity for which the activity approval is required, is not effective with respect to any of them.

Commercial duplication of optical discs outside of premises specified in the activity approval shall be prohibited.

Obligations of the Holder of Activity Approval

Article 14

Provisions of Article 8, paragraphs 1 and 2 of this Law shall apply *mutatis mutandis* to the obligations of a holder of an activity approval.

Holder of an activity approval shall keep records and samples of duplicated optical discs and the media from which the duplication has been carried out, for a period of five years beginning from the date of duplication, and shall make them available for inspection at request of the authority that has issued activity approval or a market inspector.

Provision of Article 12, paragraph 3 of this Law shall apply *mutatis mutandis* to the records of duplicated optical discs.

3. EXPORT AND IMPORT LICENSE

Export and Import Requirements

Article 15

Exports of optical discs and imports or exports of production parts, raw materials or equipment for production of optical discs may be conducted solely pursuant to a license issued by the responsible authority.

Application for an Export/Import License

Article 16

An application for an export or import license shall be made using the form prescribed by the authority referred in Article 3, paragraph 3 of this Law.

The application referred to paragraph 1 of this Law shall be accompanied by the following:

- 1) The Certificate from the Central Register if the Commercial Court confirming the registration of the foreign trade activity;
- 2) The proof that the manufacturer's code has been allocated to the applicant or to the person performing exports or imports;
- 3) When circumstances of the case so warrant, the proof that the intellectual property right related to exported or imported goods has been acquired.

Export and Import License

Article 17

If the applicant meets the requirements prescribed in Article 16 of this Law, import or export license shall be issued within 15 days from the date of filing the application..

A separate license shall be required in respect of each shipment of optical discs, production parts, raw materials or equipment for production of optical discs.

Application of Provisions Mutatis Mutandis

Article 18

Provisions of the Law on Foreign Trade shall apply *mutatis mutandis* to issuance of licenses for exports of optical discs or licenses for exports and imports of production parts, raw materials and equipment for production of optical discs, unless specified otherwise by this Law.

III. MANUFACTURING AND CIRCULATION

Obligation to Mark a Product

Article 19

Every licensee must mark each optical disc and each production part with the appropriate manufacturer's code endorsed in the license.

It shall be prohibited to forge a manufacturer's code or falsely apply to an optical disc or production part a manufacturer's code, or any mark so resembling a manufacturer's code; or make, possess or dispose of any instrument for the purpose of forging a manufacturer's code.

Prohibition of Possession and Operation Article 20

It shall be prohibited to possess or operate production equipment and production part unless it has been adapted to apply the appropriate manufacturer's code in accordance with this Law.

It shall be prohibited to manufacture, adapt or possess any mould or production part for production of optical discs, for the purpose of applying to an optical disc a forged manufacturer's code, or any mark similar to a manufacturer's code.

For the purposes of paragraphs 1 and 2 of this Article, a licensee shall mean a holder of any production equipment or production parts, or any mould for production of optical disc found in any licensed premises.

Prohibition to Circulate Un-marked Products Article 21

Circulation of optical discs or production parts that are not marked with the appropriate manufacturer's code endorsed on license, shall be prohibited.

IV. INSPECTORIAL SUPERVISION

Responsibilities and Powers of Market Inspectors Article 22

In addition to responsibilities and powers provided for in the Law on Inspectorial Supervision, any market inspector shall have a responsibility and a power to take, without a prior notice of person under the supervision, any of the following measures:

- 1) Inspect any licensed premises or premises specified in the activity approval, and conduct control of activities performed therein;
- 2) Inspect the license or activity approval;
- 3) Inspect the optical discs, production parts, production equipment and raw materials for production of optical discs, and prepare an inventory thereof;
- 4) Inspect records, books, contracts and other documents, as well as any evidence relating to a right to duplicate or record any material protected by an intellectual property right on an optical disc or a production part;
- 5) Verify that production parts or moulds, including spare ones, and production equipment have been adapted to apply a manufacturer's code endorsed in the

- license;
- 6) Verify that optical discs and production parts have had the necessary manufacturer's codes applied to them;
 - 7) Verify that full records as required under this Law and any by-laws based on this Law have been kept;
 - 8) Verify that the quantity of optical discs produced corresponds to the quantity of raw materials consumed and to the quantity of raw materials held in stock;
 - 9) Seize optical discs, production parts, raw materials, or equipments for production or duplication of optical discs, where there are reasonable grounds to suspect that an offence under this Law, or an economic offence or criminal offence under any other law involving an infringement of an intellectual property right has taken place, until the competent authority issues the decision, and to inform the holder of the intellectual property right or professional organization thereof;
 - 10) Under the circumstances referred to in subparagraph 9 of this paragraph, temporarily, until identified irregularities are corrected, ban the manufacturing of optical discs or production parts, or duplication of optical discs and to seal the licensed premises, or premises specified in the activity approval;
 - 11) Enable appropriate sampling of optical discs or production parts necessary as evidence in the procedure before the competent court, upon the request of the holder of the intellectual property right, professional organization or person under the supervision;
 - 12) Order destruction of seized optical discs or production parts when, regardless of the measures undertaken, the owner or holder thereof remains unknown.

Provision of paragraph 1 of this Article shall be applicable *mutatis mutandis* to any other premises or any means of transport where there are reasonable grounds to suspect that any offence under this Law or any offence under other law regulating protection of intellectual property right took place or is taking place in such premises or means of transport.

Obligations of the Person Under Supervision

Article 23

In addition to responsibilities provided for in the Law on Inspectorial Supervision, the licensee or a holder of an activity approval must, at request of the market inspector, take the following measures:

- 1) enable promptly inspectorial supervision of licensed premises and premises specified in the activity approval, as well as, in other premises and means of transport in which optical discs, production parts, raw material or equipment for production or duplication of optical discs are kept;
- 2) submit at least two copies of an optical disc manufactured in each production part;
- 3) submit at least two copies of each duplicated optical disc, and the media from which duplication has been carried out.

V. PENAL PROVISIONS

Offences

Article 24

Any company, entrepreneur, other form of a commercial entity or other legal entity that:

- 1) manufactures optical discs or production parts without a license (Article 4, paragraph 1);
- 2) fails to undertake prescribed measures for the purpose of determining if the customer ordering optical discs or production parts has been authorized to reproduce material protected by the intellectual property right on the ordered optical discs or production parts (Article 8, paragraph 1, subparagraph 3);
- 3) engages in commercial duplication of optical disc without the approval of the competent authority (Article 13, paragraph 1);
- 4) exports optical discs, or imports or exports production part, production equipment or raw materials for production of optical discs, without a license of the competent authority (Article 15);
- 5) fails to mark the manufactured optical discs or production parts with the manufacturer's code endorsed in the license (Article 19, paragraph 1);
- 6) applies forged manufacturer's code, falsely applies manufacturer's code or any mark resembling a manufacturer's code, to an optical disc or production parts, or makes, possesses or disposes of any instrument for the purpose of forging a manufacturer's code (Article 19, paragraph 2);
- 7) possesses or operates production equipment or a production part that has not been adapted to apply the appropriate manufacturer's code (Article 20, paragraph 1);
- 8) produces, adapts or possesses a mould for production of optical discs for the purpose of applying to an optical disc a forged manufacturer's code, or any similar mark (Article 20, paragraph 2);
- 9) places into circulation optical discs or production parts that are not marked with the manufacturer's code endorsed in the license (Article 21).

shall be fined for the offence in the amount equal to 30-300 times the minimal salary in the Republic.

If the offence referred to in paragraph 1 of this Article resulted in the damage to the holder of the intellectual property right, or in financial gain, the person referred to in paragraph 1 of this Article shall be fined up to 10 times the amount of the caused damage, or the amount of the financial gain, if such amount exceeds the maximum prescribed fine.

Any natural person and any responsible person in the company, other form of commercial entity and a legal entity shall be fined for an offence referred to in paragraph 1 of this Article in the amount equal to 5-20 times the minimal salary in the Republic.

Article 25

Any company, entrepreneur, other form of a commercial entity or other legal entity that:

- 1) manufactures optical discs or production parts at premises other than the licensed premises (Article 4, paragraph 2);
- 2) fails to keep samples of produced optical discs and production parts within the prescribed period (Article 12, paragraph 1);
- 3) commercially duplicates optical discs at premises other than the premises specified in the activity approval (Article 13, paragraph 3);
- 4) fails to keep samples of duplicated optical discs or media from which duplication has been carried out within the prescribed period (Article 14, paragraph 2).

shall be fined in the amount equal to 15-200 times the minimal salary in the Republic for the offence.

Any natural person and any responsible person in the company, other form of commercial entity and legal entity shall be fined for an offence referred to in paragraph 1 of this Article in the amount equal to 2-20 times the minimal salary in the Republic.

Article 26

The objects resulting from committing the offences referred to in Article 24, paragraph 1 and Article 25, paragraphs 1, subparagraphs 1 and 3 of this Law shall be confiscated and destroyed, and the objects used or intended to be used to commit the offence shall be seized.

Article 27

In addition to fines for offence referred to in Article 24, paragraph 1 and Article 25, paragraph 1, subparagraphs 1 and 3 of this Law, a protective measure of prohibition of manufacturing of optical discs and/or production parts and commercial duplication of optical discs shall be ordered.

Article 28

Any company, entrepreneur, other form of a commercial entity or other legal entity that:

- 1) fails to display the license in all licensed premises (Article 8, paragraph 1, subparagraph 1);
- 2) fails to notify the licensing authority within the prescribed period of any changes relevant to the issuance of the license (Article 8, paragraph 1, subparagraph 2);
- 3) fails to keep records in accordance with this Law (Article 12, paragraph 1, or Article 14, paragraph 2);

- 4) fails to promptly enable market inspector to perform inspectoral supervision in licensed premises and premises specified in the activity approval, as well as, in other premises or means of transport in which optical discs, production parts, raw material or equipment for production or duplication of optical discs are kept (Article 23, paragraph 1, subparagraph 1);
- 5) fails to submit to the market inspector required number of optical discs produced in each production part (Article 23, paragraph 1, subparagraph 2);
- 6) fails to submit to the market inspector required number of duplicated optical discs or the media from which duplication has been carried out (Article 23, paragraph 1, subparagraph 3).

shall be fined in the amount equal to 10-100 times the minimal salary in the Republic for the offence.

Any natural person and any responsible person in the company, other form of commercial entity and legal entity shall be fined for an offence referred to in paragraph 1 of this Article in the amount equal to 0.5-20 times the minimal salary in the Republic.

VI. TRANSITIONAL AND FINAL PROVISION

Article 29

By-laws under this Law shall be adopted not later than 6 months as of the date this Law comes into force.

Article 30

This Law shall come into force on the eight day after its publication in the Official Gazette of the Republic of Montenegro, and shall be effective six months as of the date this Law comes into force.