

OPTICAL DISC PRODUCTION ACT B.E. 2548 (2005)

BHUMIPOL ADULYADEJ, REX.
Given on the 22nd May 2005
Being the 60th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to have the law on the production of optical discs.

This Act contains certain provisions restricting the rights and liberties of persons permitted by virtue of law under Section 29, in conjunction with Section 35, Section 48 and Section 50 of the Constitution of the Kingdom of Thailand;

Be it, therefore, enacted by His Majesty King Bhumibol Adulyadej, by and with the advice and consent of the Parliament, as follows:

Section 1. This Act shall be called the “Optical Disc Production Act B.E. 2548”.

Section 2. This Act shall come into force after ninety days from the date of its publication in the Government Gazette.

Section 3. In this Act:

“Optical disc” means a disc on which data is or can be recoded by whatsoever means, and such data can be translated into information, pictures, sounds or both pictures and sounds in a continuous manner, and shall include the products prescribed in the Ministerial Regulation.

“Production” means any action to cause an optical disc to exist.

“Copyright owner” means a copyright owner by virtue of the Copyright Law, and shall include a transferee of a copyright, or a licensee authorized to produce a copyrighted work.

“Machine” means a machine which is or can be used in the production, and shall include accessories of such a machine prescribed by the Ministerial Regulation.

“Source identification code” means a sign and a code issued by the Director General to identify the production source of optical discs.

“Copyright code” means a sign and a code issued by the Director General to identify the copyrighted work produced.

“Factory” means a building, a premise or a vehicle on which the machine is installed.

“Competent official” means a person appointed by the Minister to perform under this Act.

“Director General” means the Director General of the Department of Intellectual Property.

“Minister” means the Minister who is in charge of the operation under this Act.

Section 4. The Minister of Commerce shall be in charge of the operation under this Act and shall have the authority to appoint competent officials and issue the Ministerial Regulations so as to implement this Act.

CHAPTER 1.

PRODUCTION

Section 5. Any person who intends to operate the production must notify the competent official before starting the production.

Any copyright owner who intends to operate the production or to commission others to produce optical discs must notify the competent official before starting the production each time unless it is a production or a commission to produce for an educational purpose, for the public interest, or for the conservation of culture.

When the competent official has received a notification under paragraph one or paragraph two, the competent authority shall issue a certificate of receipt to the notifier as evidence of notification on the date of notification.

The notification form, the items to be notified, the method of notification and the reception certificate shall be prescribed by the Director General.

Section 6. The notification form for the producer must at least include the following items:

- (1) Name and address of the producer
- (2) Name and address of the factory
- (3) Details of the machine
- (4) Other items determined by the Director General

The notification form for the copyright owner must at least include the following items:

- (1) Name and address of the copyright owner

- (2) Name and address of the factory
- (3) Details of the work to be produced or commissioned to be produced
- (4) Other items determined by the Director General

Any change to the items in paragraph one and paragraph two must be in compliance with the rules and procedures prescribed by the Director General.

Section 7. In the case where the producer has more than one factory, the producer must provide notification on each factory as provided under Section 5 paragraph one.

Any relocation of the factory specified in the certificate of receipt must be notified to the competent official before the date of relocation.

The notification under paragraph two shall be in compliance with the rules and procedures prescribed by the Director General.

Section 8. The Director General shall assign the source identification code for the producer and the copyright code for the copyright owner to be displayed on the optical disc which is produced by the producer who has notified under Section 5.

The specification, the making and the method of display of the source identification code and the copyright code shall be in compliance with the rules and procedures prescribed by the Director General.

Section 9. When the notification of production under Section 5 paragraph one has been duly received, the Director General shall promptly issue a source identification code to the producer, to be displayed on the optical disc, and the production shall be permissible from the date of receipt of the source identification code.

When a notification of production or commission to produce under Section 5 paragraph two has been duly received, the Director General shall promptly issue a copyright code, to be displayed on the optical disc, and the production or the commission to produce by the copyright owner shall be permissible from the date of receipt of the copyright code.

The issuance of the source identification code and the copyright code shall be in compliance with the rules, procedures and conditions prescribed by the Director General.

Section 10. The producer shall have duties to proceed as follows:

(1) Display the certificate of receipt to produce at a visible place in the factory specified in the certificate

(2) Prepare an account showing the quantity produced, the number of sales, the amount distributed, the number remaining in possession with the statements, titles, and accounting periods in a form prescribed by the Director General

Section 11. The producer shall have duties to produce and display the source identification code, and to display the copyright code in compliance with Section 8 paragraph two.

Section 12. The copyright owner shall have a duty to produce the copyright code in compliance with Section 8 paragraph two.

Section 13. It is forbidden for anyone to use a source identification code except the producer who has provided notification of the production under Section 5 paragraph one and received the source identification code under Section 9 paragraph one.

It is forbidden for anyone to use a copyright code except the copyright owner who has provided notification of the prod[uc]tion or commission to produce under Section 5 paragraph two and received the copyri[g]ht code under Section 9 paragraph two, or the producer commissioned to produce by the copyright owner who has provided notification of the production or commission to produce under Section 5 paragraph two and received the copyright code under Section 9 paragraph two.

Section 14. In the case where the producer ceases the business operation or cannot continue the production for any reason, one who intends to continue the production must notify the competent official under Section 5 within thirty days from the date on which the producer ceases the business operation or cannot continue the production.

During the period under paragraph one, the producer is considered to be the notifier under Section 5.

Section 15. It is forbidden for anyone to forge or imitate the source identification code and the copyright code to make other persons believe that it is such a code.

CHAPTER 2

MACHINE AND PLASTIC PARTICLES OR OTHER MATERIALS

Section 16. Whoever acquires or possesses a machine must notify the Director General within thirty days from the date of acquisition or possession.

The notification under paragraph one shall be in compliance with the rules, procedures and conditions prescribed by the Director General.

Section 17. Whoever sells, distributes or transfers a machine must notify the Director General within 7 days from the date of selling, distribution, or transferring.

The provision in paragraph one shall apply to the case where the machine is out of the possession of the person under Section 16 by whatever means.

The notification under paragraph one shall be in compliance with the rules, procedures and conditions prescribed by the Director General.

Section 18. Whoever acquires or possesses plastic particles or other materials which are the raw materials used in the production of optical discs must notify the Director General of the category, type, quantity and location of the plastic particles or other materials within thirty days from the date of acquisition or possession.

The category, type and quantity of the plastic particles or other materials to be notified under paragraph one, and the rules and procedures of notification shall be prescribed by the Director General.

CHAPTER 3

COMPETENT OFFICIAL

Section 19. In performing the duties under this Act, the competent official shall have the following powers:

(1) Enter into a factory during the time from sunrise to sunset, or during the production hours of such a factory in order to inspect the certificate of receipt, the machine, the plastic particles or other materials which are the raw materials used in the production and related document that may be used as evidence in taking action against the violations under this Act.

(2) Order any person to come and give a statement or to submit an account book, document, or other evidence if there is a reasonable ground to believe that such a statement, an account book, document or evidence may be beneficial for a discovery or may be used as evidence in proving the wrongdoing under this Act.

Section 20. In performing the duties under Section 19, the competent official must show an identification card to the person involved

The identification card under paragraph one shall be prescribed by the Minister and published in the Government Gazette.

Section 21. In performing the duties under this Act, the competent official shall be the competent official under the Criminal Code.

CHAPTER 4

PENALTIES

Section 22. Whoever fails to comply with the provision in Section 5 paragraph one, Section 7 paragraph one or paragraph two, shall be subject to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand baht or both imprisonment and fine.

Section 23. Whoever fails to comply with the provision in Section 5 paragraph two shall be subject to a fine not exceeding two hundred thousand baht.

Section 24. Whoever fails to comply with the provision in Section 10 (1) shall be subject to a fine not exceeding ten thousand baht.

Section 25. Whoever fails to comply with the provision in Section 10 (2) shall be subject to a fine not exceeding one hundred thousand baht.

Section 26. Whoever fails to comply with the provision in Section 11 shall be subject to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand baht or both imprisonment and fine.

Section 27. Whoever fails to comply with the provision in Section 12 shall be subject to a fine not exceeding two hundred thousand baht.

Section 28. Whoever violates the provision in Section 13 shall be subject to imprisonment for a term not exceeding three years or a fine not exceeding six hundred thousand baht or both imprisonment and fine.

Section 29. Whoever violates the provision in Section 15 shall be subject to imprisonment for a term from six months up to five years and a fine from one hundred thousand baht up to one million baht.

Section 30. Whoever fails to comply with the provision in Section 16 or Section 17 shall be subject to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand baht or both imprisonment and fine.

Section 31. Whoever fails to comply with the provision in Section 18 shall be subject to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand baht or both imprisonment and fine.

Section 32. Whoever obstructs or fails to comply with the order of the competent official who gives the order under Section 19 shall be subject to imprisonment for a term not exceeding three months or a fine not exceeding fifty thousand baht or both imprisonment and fine.

Section 33. Whoever notifies under Section 16 or Section 17 by providing a false statement shall be subject to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand baht or both imprisonment and fine.

Section 34. Whoever notifies under Section 18 by providing a false statement shall be subject to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand baht or both imprisonment and fine.

Section 35. Any offense which is subject only to a fine, if the offender agrees to pay such a fine at the maximum rate to the Director General, shall be deemed ended pursuant to the provision of the Criminal Procedure Code.

Section 36. In case where a juristic commits an offense under this Act, it shall be deemed that all directors or managers of the juristic person are joint offenders with the juristic person unless they can prove that the juristic person committed the offense without their knowledge or consent.

Section 37. Whoever having committed an offense and having been penalized by virtue of this Act subsequently commits an offense under this Act within five years after being discharged from the penalty shall be subject to double penalty as the judge prescribes for the latter offense.

Section 38.

(Invalidated by the ruling of the Constitution Court No. 30/2548 dated 1st February 2548)

Section 39. The intellectual property and international trade courts shall have jurisdiction over cases under this Act.

TRANSITORY PROVISIONS

Section 40. Whoever has already operated the production on the date which this Act comes into force, and intends to continue the production must notify the competent official under Section 5 within thirty days from the date upon which this Act comes into force. A failure to notify within the specified period will result in penalties as provided under Section 22.

Section 41. Whoever has already acquired or possessed a machine on the date which this Act comes into force must notify the Director General under Section 16 within thirty days from the date upon which this Act comes into force. A failure to notify within the specified period will result in penalties as provided under Section 30, and a notification providing a false statement will result in penalties as provided under Section 33.

Section 42. Whoever has already acquired or possessed plastic particles or other materials which are the raw materials used in the production on the effective date which this Act comes into force must notify the Director General under Section 18 within thirty days from the date which this Act comes into force. A failure to notify within the specified period will result in penalties as provided under Section 31, and a notification providing with a false statement will result in penalties as provided under Section 34.

Countersigned by

Police Lientenant Colonel Thaksin Shinawatra

Prime Minister