

REPUBLIC ACT No. 9239

February 10, 2004

AN ACT REGULATING OPTICAL MEDIA, REORGANIZING FOR THIS PURPOSE THE VIDEOGRAM REGULATORY BOARD, PROVIDING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

Republic of the Philippines
Congress of the Philippines
Metro Manila

Twelfth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-eighth day of July, two thousand and three.

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::

I. GENERAL PROVISIONS

Section 1. Short Title. - This Act shall be known as the "**Optical Media Act of 2003**".

Section 2. Policy. - It is hereby declared to be the policy of the State to ensure the protection and promotion of intellectual property rights.

The unregulated mastering, manufacture, replication, importation and exportation of optical media in all forms is inimical to economic growth and public interest. Towards this end, the State shall institute the means to regulate the manufacture, mastering, replication, importation and exportation of optical media.

Section 3. Definition of Terms. - For the Purpose of this Act, the following terms shall mean:

(a) *Economic Zone* - the Special Economic Zones, Industrial Estates, Export Processing Zones and Free Trade Zones as defined in Republic Act No. 7916 or the PEZA Law including the Clark Special Economic Zone, the Cagayan Special Economic Zone, the Zamboanga City Special Economic Zone, the Subic Bay Freeport and other economic zones now in existence in the Philippines or as may be established in the future;

(b) *IP Code* - Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines;

(c) *License* - the authority granted by the Optical Media Board (OMB) to establishments or entities registered with the OMB to engage in the business of mastering, manufacture, replication, importation or exportation of optical media;

(d) *Magnetic Media* - a storage medium or device characterized by a base, usually plastic, coated with ferric oxide powder, in which visual and/or aural information, or software code, may be recorded or stored, including, but not limited to, magnetic tape, cassettes, video tape, diskettes, and floppy discs;

(e) *Manufacture* - the act or business of producing optical media or devices containing sounds and/or images, or software code, including any work protected in Part IV of the IP Code, by mastering and/or replication. In relation to equipment, "manufacture" shall refer to the assembly or integration of various components into any equipment useful for the mastering, manufacture and/or replication of optical media;

(f) *Manufacturing Equipment* - any and all equipment, machine or device, now known or to be known in the future, intended or design for the production or manufacture, by mastering and/or replication of optical media, optical media masters, or production parts thereof, including but not limited to, those which shall be listed in the Implementing Rules and Regulations (IRR) of this Act or as prescribed by the OMB. For the purpose of this Act, optical disc writers and such other devices used in personal computers not for commercial purposes shall not be considered as manufacturing equipment;

(g) *Manufacturing Material* - any material such as, but not limited to, optical grade polycarbonate or polycarbonate substitutes with physical properties suitable for the manufacture of optical media;

(h) *Mastering* - the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;

(i) *Optical Media* - a storage medium or device in which information, including sounds and/or images, or software code, has been stored, either by mastering and/or replication, which may be accessed and read using a lens scanning mechanism employing a high intensity light source such as a laser or any such other means as may be developed in the future. The term shall include, but not be limited to, devices which shall be listed in the IRR of this Act, or as prescribed by the OMB;

(j) *OMB* - the Optical Media Board;

(k) *Replication* - the process of manufacturing optical media by reproducing or generating copies of the stamper in an injection molding machine or other forms of replicating equipment; and

(l) *Source Identification Code or SID Code* - a system of codes to identify the source of all optical media mastered, manufactured or replicated by any establishment or entity.

II. THE OPTICAL MEDIA BOARD

Section 4. *Reorganization.* - To implement the policies and attain the objectives enunciated in this Act, the Videogram Regulatory Board (VRB) created under Presidential Decree No. 1987 is hereby reorganized into the Optical Media Board (OMB).

The OMB shall be placed under the Office of the President (OP) and shall have its principal offices in Metropolitan Manila.

Section 5. *Coverage.* - The authority of the OMB shall cover the entire territory of the Republic of the Philippines including the economic zones as defined in this Act and in Republic Act No. 7916.

Section 6. *The Board* - The OMB shall be composed of four (4) ex officio members and five (5) regular members to be appointed by the President. The Chairperson shall be appointed by the President from among the five (5) regular members.

The *ex officio* members of the Board shall be composed of the Secretary of the Department of Trade and Industry (DTI) or his duly authorized representative; the Secretary of the Department of the Interior and Local Government (DILG) or his duly authorized

representative; the Secretary of the Department of Finance (DOF) or his duly authorized representative; and the Director-General of the Intellectual Property Office (IPO) or his duly authorized representative: Provided, That the authorized representatives shall have a rank not lower than the Assistant Secretary.

The Five (5) regular members shall be composed of three (3) representatives from the private sector, each of whom shall be appointed from an identified industry relying on intellectual property protection, one (1) representative from the consumer organizations and one (1) representative from the academe. The regular members shall be nominated by their nationally recognized associations or organizations.

The members of the Board shall elect from among themselves the Vice-Chairperson.

The Chairperson and the regular members of the Board shall hold office for a term of three (3) years, unless sooner removed by the President for cause: Provided, That the Chairperson and the Regular members may not serve for more than two (2) consecutive terms: Provided, further, That if any member fails to complete his or her term, the person appointed to fill the vacancy shall serve only for the unexpired portion of the term.

Section 7. Qualifications - The regular members of the Board shall be Filipino citizens, at least twenty-one (21) years old, of good moral character and standing in the community, and with proven competence in the industry they represent: Provided, that the Chairperson shall be at least thirty-five (35) years old, of known probity and managerial and administrative competence: Provided, finally, That at least two (2) members of the board must be members of the Philippine Bar.

Section 8. Compensation - The Chairperson shall receive a salary and allowances based on current approved standardized government compensation.

The Vice-Chairperson and members of the Board shall receive honoraria and allowances based on existing government accounting and auditing rules and regulations.

Section 9. Meetings - The Board shall meet regularly at least once a month or as often as necessary at the call of the Chairperson. A majority of the members of the Board shall constitute a quorum to do business.

Section 10. Powers and Functions of the OMB. - The OMB shall have the following powers and functions:

(a) Formulate and implement such policies and programs as are necessary for the accomplishment of the purposes of this Act;

(b) Evaluate the qualifications of any individual, establishment or other entity to engage in the mastering, manufacture or replication of optical media. For this purpose, the OMB shall require such person to substantiate its capability to engage in said activities;

(c) Supervise regulate, grant, or renew licenses for specific periods, or deny, suspend, or cancel the same, subject to such conditions as it may impose, for the activities enumerated in Section 13(a), (b) and (c);

(d) Conduct inspections, by itself or in coordination with other competence agencies of the government, at anytime, with or without prior notice, of establishments or entities including those within the economic zones engaged in the activities as provided in Section 13(a), (b) and (c) of this Act, and employ reasonable force in the event that the responsible person or persons of such establishment or entity evades, obstructs, or refuses such inspection. For this purpose, the agents of the OMB shall be considered agents in authority;

(e) Apply for or obtain search warrants from any court of law, or take into preventive custody any optical media and/or material or equipment, including parts, accessories and paraphernalia used for the mastering, manufacture or replication of optical media which are found in any premises if the OMB has reasonable ground to believe or suspect that these are evidence of violation of the provisions of this Act;

(f) Act as complainant in the criminal prosecution of violators of this Act;

(g) Hear and resolve administrative cases against violators of this Act and impose administrative sanctions including, but not limited to, the imposition of fines and penalties; confiscation of optical media; and suspension, non-renewal or cancellation of the license to operate and/or closure of establishments or entities that violate the provisions of this Act. For this purpose, the Board shall have the power to issue subpoena or subpoena duces tecum to compel the attendance of witnesses and production of documents and other effects;

(h) Call upon law enforcement agencies and the managing authorities in the economic zones for assistance in the implementation and enforcement of its decisions, orders, rules and regulations;

(i) To deputize, whenever necessary, provincial governors, city and municipal mayors, and representatives of the national government agencies, organizations representing copyright owners, neighboring rights owners and concerned sectors to help monitor compliance with and report to the OMB any violation of this Act;

(j) Require persons, establishments and entities engaged in the activities in Section 13 to keep and maintain for a period of at least five (5) years true and complete records of all activities related to the conduct of its business. For this purpose, the Board may, at any time, require the production of such records and samples of optical media from each mastering, manufacturing or replicating line;

(k) Levy, assess and collect, and periodically adjust and/or revise the rates of fees and charges for the issuance of licenses granted under this Act;

(l) Establish support offices as may be necessary;

(m) Create and maintain a database, and regularly publish data containing the list and activities of registered and/or licensed optical media and other related establishments. Any enforcement agency, including the Bureau of Customs, may refer to this database for enforcement and/or seizure;

(n) Prescribe the internal and operational procedures for the exercise of its powers and functions, the performance of its duties and responsibilities and other related matters; and

(o) Exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act, and to perform other related duties and responsibilities as may be directed by the President.

Section 11. Chief Executive Officer. - The Chairperson of the Board shall be the Chief Executive officer (CEO). The CEO shall exercise the following powers and functions:

(a) Execute and administer the policies, decisions, orders, resolutions and the rules and regulations issued by the Board;

(b) Establish the internal organization and administrative procedures of the OMB, and recommend to the Board the appointment, transfer, detail, and suspension or dismissal for cause of its administrative and subordinate personnel;

- (c) Direct and supervise the operations and the internal affairs of the OMB;
- (d) Submit an annual budget to the Board for its approval;
- (e) Delegate his or her authority, in whole or in part, to other members of the Board, in accordance with the rules and regulations of the OMB; and
- (f) Perform such other powers and functions as may be authorized by the Board or the President.

Section 12. *The OMB Secretariat.* - The OMB shall have a Secretariat, herein created, headed by an Executive Director who shall assist the Chairperson/CEO in the day-to-day operations of the OMB.

The Executive Director shall be appointed by the Chairperson subject to the approval of the Board. His term shall be coterminous with the CEO.

III. LICENSING AND OTHER REGULATORY PROVISIONS

Section 13. *Licensing and Registration.* - Any person, establishment or entity shall, prior to engaging in one or more of the business or activities enumerated hereunder, register with, and secure the appropriate licenses from the OMB:

- (a) Importation, exportation, acquisition, sale or distribution of optical media, manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
- (b) Possession or operation of manufacturing equipment, parts and accessories, or the possession acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media; and
- (c) The mastering, manufacture, replication, importation or exportation of optical media.

With respect to the preceding paragraph (c), the licenses issued by the OMB are conditions precedent for securing the necessary business permits, licenses, or registration from the appropriate authorities, and shall also be necessary requirement for the release of manufacturing equipment, parts and accessories, and materials intended for use in mastering and/or manufacturing optical media, from customs or economic zones exercising independent custom laws.

Those engaged or intending to engage in more than one of the above mentioned activities and/or conduct or intend to conduct business in more than one location shall separately register with and secure the license from the OMB for every business activity at each place of business.

No business activity registered and licensed by the OMB for a specific place of business shall be conducted in a place and/or location other than that indicated in the license, without the prior written approval of the OMN. The registration and license issued by the OMB shall be prominently displayed at the designated place of business.

Section 14. *Form, Term, Amendment and Renewal of License.* - Every license shall be in a form prescribed by the OMB and shall be valid for a period of three (3) years subject to conditions as the OMB may impose. The OMB may amend or renew a license upon application made by the licensee in accordance with this Act.

Failure to register and obtain a license from the OMB shall automatically cancel any permit, license or registration issued by any national or local government unit, agency or office.

Section 15. *Grounds for Non-issuance or Non-renewal of License.* - The OMB may refuse to grant a license, or to renew a license, upon the following grounds:

- (a) The applicant has failed to comply with any requirement imposed by the Board pursuant to this Act and its implementing rules and regulations;
- (b) The applicant or, in the case of juridical persons, any of its officers, directors, managers, shareholders, or partners, is convicted by final judgment of an offense under this Act or any law relating to the protection of intellectual property rights;
- (c) The application involves a place, location or premises where an offense has been committed under this Act or under any law relating to the protection of intellectual property rights: Provided, That the offenders have finally been convicted of such offense;
- (d) The applicant has furnished the OMB with any false or misleading information in connection with any application for or renewal of a license; or
- (e) The applicant has been previously issued a license that has been cancelled for cause within the preceding five (5) years from the date of the application.

The OMB shall decide whether or not to grant or renew a license within fifteen (15) working days from the filing of the application.

Section 16. *Grounds for Suspension or Cancellation of License.* - The OMB may, motu proprio or upon motion of any interested party, after notice and hearing, suspend or cancel a license on any of the following grounds:

- (a) when requested by the license holder;
- (b) when the license holder has ceased to engage in the activities authorized under the license or in the place, location or premises indicated in the license;
- (c) when the license holder has been convicted of an offense under this Act or under any other Law relating to the protection of intellectual property rights; or
- (d) when the license holder is in breach of, or is unable to comply with any of the conditions prescribed in the license.

Section 17. *Registration of Present Licenses.* - All existing establishments or entities in the Philippines engaged in activities enumerated in Section 13 shall, within thirty (30) calendar days after the effectivity of the rules and regulations implementing this Act, register with and secure the necessary licenses from the OMB.

Section 18. *Source Identification (SID) Codes.* - The OMB shall determine, develop and/or adopt a system of Source Identification (SID) codes that is of international recognition and acceptance.

The OMB shall prescribe SID codes for all persons, establishments or entities registered with and licensed by the OMB to engage in the mastering, manufacture or replication of optical media, including such other codes as it may determine or require. Such codes shall be applied to each and every optical media mastered, manufactured or replicated including glass masters, stampers or other parts used for the manufacture of optical discs.

The SID Codes shall be visible and legible and must conform to such specifications as prescribed by the OMB.

IV. PENAL PROVISIONS

Section 19. *Offenses and Penalties.* -

(a) Imprisonment of at least three (3) years but not more than six (6) years, and a fine of not less than Five Hundred thousand pesos (Php 500,000.00) but not exceeding One Million five hundred thousand pesos (Php 1,500,000.00), at the discretion of the Court, shall be imposed on any person, natural or juridical, who shall:

- (1) Engage in the importation, exportation, acquisition, sale or distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the OMB;
- (2) Engage in the mastering, manufacture, replication, importation or exportation of optical media without the necessary license from the OMB;
- (3) By himself, or through another, cause the mastering, manufacture or replication of any intellectual property in optical media intended for commercial profit or pecuniary gain without authority or consent of the owner thereof;
- (4) Engage in the Mastering, manufacture, or replication of optical media without affixing or installing in the resulting products the SID Code, and/or such other codes prescribed, assigned and authorized by the OMB. The absence of the codes prescribed, assigned and authorized by the OMB in any optical media shall be prima facie evidence that said optical media are in violation of this Act;
- (5) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes. The presence of false or unauthorized codes shall be prima facie evidence that said optical media are in violation of this act;
- (6) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes that have been assigned by the OMB to another person, or, having been assigned and authorized said codes by the OMB, allow or authorize another person, establishment or entity to use, affix or install such codes in the latter's products;

(b) Imprisonment of at least one year but not more than three years and a fine not less than one hundred thousand pesos, but not exceeding five hundred thousand pesos, at the discretion of the court, for the following offenses:

- (1) Engaging in the importation, exportation, sale or distribution of, or possess or acquire in commercial quantities manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media without the necessary licenses from the OMB;
- (2) Knowingly performing or rendering the service of mastering, manufacture or replication of optical media, after having been licensed by the OMB, to any person, in respect of any intellectual property, who does not have the consent by the owner of the intellectual property or his representatives or assigns;

For this purpose, any person, establishment or entity that is licensed by the OMB to engage in the above mentioned activities shall be considered to have acted in good faith in respect of any transaction entered into by him in respect to the preceding paragraph, if he notifies the OMB of such transaction within

five working days from receipt of the order, furnishing to the OMB all material information thereof;

(3) Refusing to submit to inspection by the OMB, or surrender for preventive custody any optical media, equipment, manufacturing materials, including parts, accessories and paraphernalia found during inspection operations to be in violation of the provisions of this Act;

For purposes of this subsection, violators who will employ armed resistance against agents of the OMB shall be penalized under other applicable laws in addition to those provide in this Act; and

(a) Imprisonment of at least 30 days but not more than 90 days or a fine of not less than 25,000.00 pesos but not exceeding fifty thousand pesos at the discretion of the court:

(1) Knowingly possess items of the same content or title, produced in violation of this Act, and used for the purpose with the intent to profit;

(2) Engaging in the sale, rental, distribution, importation, exportation of, or any other commercial activity involving optical media that are in violation of this Act.

(b) For subsequent offenses in Section 19(a), uniform imprisonment of six (6) years but not more than nine (9) years and a fine of not less than One Million five hundred thousand pesos (Php 1,500,000.00) but not exceeding Three million pesos (Php 3,000,000.00) at the discretion of the Court, shall be imposed.

(c) For subsequent offenses in Section 19(b), uniform imprisonment of three (3) years but not more than six (6) years and a fine of not less than Five hundred thousand pesos (Php 500,000.00) but not exceeding One million five hundred pesos (PHp 1,500,000.00) at the discretion of the Court, shall be imposed.

The offenses listed under this section shall be punished without prejudice to the application of appropriate penalties or sanctions provided under Section 216 and such other appropriate sections of the IP Code or Republic Act No. 8792 also known as the Electronic Commerce Act, the Revised Penal Code or other applicable laws.

Section 20. Determination of Penalties - In determining the number of years of imprisonment, or amount of fine to be imposed, the court shall consider the size of the operations of the offender, the value of the articles involved in the violation, and the period of violation. In imposing administrative penalties, the OMB shall likewise consider the said circumstances.

Section 21. Persons Liable. - If the offender is an alien, the person shall immediately be deported after serving his sentence, and shall, thereafter, be refused entry into the country.

If the offender is a government official or employee, he shall suffer perpetual disqualification from public office and forfeiture of his right to vote and participate in any public election for ten (10) years.

Should the offense be committed by the juridical person, the stockholder, chairperson, president, officer, director, trustee, partner or manager responsible for such violation shall be liable.

Section 22. Enforcement - The OMB may solicit the direct assistance of other agencies, the managing authorities in the economic zones and instrumentalities of the national and local governments, and may deputize for a limited period the heads or personnel of agencies to

perform enforcement functions for the OMB, insofar as such functions are concerned shall be subject to the direction and supervision of the OMB.

Section 23. *Disposal of Seized Materials.* - Any optical media, equipment or materials found to be in violation of the provisions of this Act, any books, records, or paraphernalia providing evidence of any violation committed by any person, establishment or entity, shall be confiscated and forfeited in the favor of the government and shall be disposed in accordance with pertinent laws and regulations: Provided, That confiscated optical media may, pending consideration of the case, be immediately destroyed upon final determination by the OMB in an administrative case, or by a court in a civil or criminal case, that are the same are in violations of this Act: Provided, further, That a sufficient representative sample shall be retained for evidentiary purposes.

The retained representative sample shall remain in custodia legis until the final resolution of proceedings thereon.

Equipment and materials imported of this Act shall be subject to seizure and immediate disposal by the Bureau of Customs.

IV. TRANSITORY PROVISIONS

Section 24. *The Videogram Regulatory Board (VRB) and Secretariat* - The incumbent Chairperson, Vice-Chairperson, members of the Board and Secretariat shall continue to perform their duties and functions in a hold-over capacity, and shall receive their corresponding salaries and benefits until such time that the new chairperson and at least majority of the Board shall have been appointed and qualified.

The Present officials and employees of the VRB shall be given priority, on the basis of experience, merit and fitness, in appointments to new positions to which they may qualify under the new staffing pattern: Provided, That those who shall be given new appointments shall be entitled to all compensation and benefits due them under existing laws: Provided, further, that those who shall be separated from service shall receive all separation pay and benefits due under existing laws.

The transition period shall not exceed six months after effectivity of this Act.

Section 25. *Transfer of Funds, Assets, Liabilities and Records.* All unexpended appropriations, real and personal property, contracts, records, documents, and assets and liabilities of the VRB shall be transferred to the OMB.

Section 26. *Regulation of Magnetic Media.* - The provisions of this Act shall apply mutatis mutandis to the regulation of magnetic media.

Section 27. *Classification of Motion Pictures and Cinematographic Works.* - The classification for audience suitability of motion pictures and cinematographic works in optical media including related publicity materials thereto shall be the function of the Movie and Television Review and Classification Board (MTRCB).

Section 28. *Prosecution of Pending Cases* - for the purpose of this Act, all pending cases for violation of presidential Decree No. 1987 shall continue to be prosecuted.

V. MISCELLANEOUS PROVISIONS

Section 29. *Organization Structure* - the organizational structure and staffing pattern of the OMB shall be established in coordination with the Dept. of Budget and Management (DBM) and in accordance with Civil Service laws, rules, and regulations.

Section 30. *Period of Implementation* - The OMB and the DBM shall prepare the necessary work programs to cover the staggered implementation of this Act for a period not exceeding five (5) years.

Section 31. *Appropriations*. - The appropriations for the VRB under the current General Appropriations Act shall be used to carry out the initial implementation of this Act. Thereafter, such sums as may be necessary for its implementation shall be included in the General Appropriations Act.

Section 32. *Annual Report*. - The OMB shall, within ninety days after the end of every fiscal year, submit to the President and to Congress an annual report on its accomplishments under this Act, together with its plans and recommendations to improve and develop its capability to enforce the provisions of this Act, and a complete accounting of transactions with respect to the use of income.

Section 33. *Congressional Oversight Committee on the OMB*. - The Congressional oversight committee on the optical media board shall be composed of the chairs of the senate committees on public information and mass media and trade and commerce and the house of representatives committees on trade and industry and public information, and two members each from the senate and house of representatives who shall be designated by the senate president and the speaker of the house of representatives: Provided, That one of the two senators and one of the two house members shall be nominated by the respective minority leaders of the senate and the house of representatives.

The COC-OMB is hereby mandated to oversee the implementation of this Act for a period of five years. For this purpose, COC-OMB shall set the implementation of this act and shall adopt its internal rules of procedure.

The Secretariat of the COC-OMB shall be drawn from the existing Secretariat personnel of the Senate and House of Representatives Committees comprising the COC-OMB.

To carry out the powers and functions of the COC-OMB, the initial sum of five million pesos shall be charged against the current appropriations of congress. Thereafter, the amount necessary for its continued operations shall be included in the annual General Appropriations Act.

Section 34. *Implementing Rules and Regulations*. - The OMB shall within three months from the effectivity of this Act submit to the COC-OMB, the implementing rules and regulations (IRR) governing this Act. The COC-OMB shall approve the IRR within thirty days.

Section 35. *Separability Clause*. - If, for any reason, any provision of this Act is declared invalid or unconstitutional, the other sections or provisions not so declared shall remain in full force and effect.

Section 36. *Repealing Clause*. - Presidential Decree No. 1987 is hereby repealed. Presidential Decree No. 1986 or the MTRCB Law and other laws, rules, regulations, decrees, executive orders, and other issuance or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 37. *Effectivity* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,

FRANKLIN DRILON
President of the Senate

JOSE DE VENECIA JR.
Speaker of the House of
Representatives

This Act which is a consolidation of house Bill No. 5225 and Senate Bill No. 2586 was finally passed by the House of Representatives and the Senate on December 17, 2003 and January 13, 2004, respectively.

OSCAR G. YABES
Secretary of Senate

ROBERTO P. NAZARENO
Secretary General
House of Representatives

Approved: February 10 2004

GLORIA MACAPAGAL-ARROYO
President of the Philippines