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

BHUMIBOL ADULYADEJ, REX.
Given on the 22nd Day of May B.E. 2548;
Being the 60th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to have a law on the production of optical discs,

This Act contains certain provisions in relation to the restriction of rights and liberties of a person, in respect of which section 29 in conjunction with section 35, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1 This Act is called the “Optical Disc Production Act, B.E. 2548 (2005)”.

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

* Translated by Ms. Vipatboon Klaosoonontorn, and reviewed by Mr. Boonma Tejavanija under contract for the Office of the Council of State of Thailand’s Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.


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Section 3 In this Act:

“Optical Disc” means a data recording disc used to record data by any means and capable of continuously transmitting data, visual images, sound or both visual images and sound and shall include products prescribed in the Ministerial Regulations;

“Production” means the making by any means of an optical disc;

“Copyright Owner” means a copyright owner pursuant to the copyright law and shall include an assignee of copyright or a licensee authorised to produce a copyrighted work;

“Machinery” means a machinery used to produce and shall include accessories of a machinery as prescribed in the Ministerial Regulations;

“Production Certification Mark” means a mark and a code issued by the Director-General to identify a source of production of optical discs;

“Original Work Certification Mark” means a mark and a code issued by the Director-General to identify a copyrighted work produced;

“Production Place” means a building, place or vehicle where a machinery 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 having charge and control of the execution of this Act.

Section 4 The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to appoint competent officials and issue Ministerial Regulations and Notifications for the execution of this Act.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.
CHAPTER I
PRODUCTION

Section 5 Any person intending to produce shall notify the competent official before starting production.

Any copyright owner intending to produce or commission production shall notify the competent official before starting each production or commission unless the production or commission is for educational use, official purposes, public benefits or conservation of national arts and cultures as prescribed by the Minister.

Once notified under paragraph one or paragraph two, the competent official shall issue a receipt to the notifier as evidence of the notification on the date of receipt of the notification.

The notification form, the particulars to notify, the notification methods and the receipt form shall be as prescribed by the Director-General.

Section 6 The notification form for a producer shall contain at least the following particulars:

(1) name and address of the producer;
(2) name and address of the production place;
(3) details of the machinery used;
(4) other particulars prescribed by the Director-General.

The notification form for a copyright owner shall contain at least the following particulars:

(1) name and address of the copyright owner;
(2) name and address of the production place;

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(3) details of the work to be produced or commissioned to produce;
(4) other particulars prescribed by the Director-General.

Amendment of any particulars in paragraph one or paragraph two shall be in accordance with the rules and procedure prescribed by the Director-General.

Section 7 Where a producer has more than one production place, he or she shall notify the competent official of the production pursuant to section 5 paragraph one for all production places.

A relocation of the production place indicated in the notification receipt shall be notified to the competent official prior to the date of relocation.

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

Section 8 The Director-General shall assign a Production Certification Mark for the producer and an Original Work Certification Mark for the copyright owner for display on the optical discs produced by the producer who made a notification pursuant to section 5.

The appearance, the making and the display method of the Production Certification Mark and the Original Work Certification Mark shall be in accordance with the rules and procedures prescribed by the Director General.

Section 9 Upon due receipt of a production notification pursuant to section 5 paragraph one, the Director-General shall promptly issue a Production Certification Mark to the producer for display on the optical discs. Production may start from the date of receipt of the Production Certification Mark.

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Upon due receipt of a notification of production or commission to produce pursuant to section 5 paragraph two, the Director-General shall promptly issue an Original Work Certification Mark to the copyright owner for display on the optical discs. The copyright owner may start production or commission to produce from the date of receipt of the Original Work Certification Mark.

Issuance of the Production Certification Mark and the Original Work Certification Mark shall be in accordance with the rules, procedures and conditions prescribed by the Director-General.

Section 10  The producer shall have duties as follows:
(1) display the receipt of the production notification in an open space in the production place as indicated in the receipt;
(2) prepare an account showing the number and the quantity of production, sales, distribution, and possession of the optical discs produced with a statement, particulars and duration as prescribed by the Director-General.

Section 11  The producer shall make and display the Production Certification Mark and the Original Work Certification Mark pursuant to section 8 paragraph two.

Section 12  The copyright owner shall make the Original Work Certification Mark pursuant to section 8 paragraph two.

Section 13  No one may use the Production Certification Mark unless he or she is the producer having notified the production pursuant to section 5 paragraph one and received the Production Certification Mark pursuant to section 9 paragraph one.
No one may use the Original Work Certification Mark unless he or she is the copyright owner having notified the production or commission to produce pursuant to section 5 paragraph two and received the Original Work Certification Mark pursuant to section 9 paragraph two, or is the producer commissioned to produce by the copyright owner who has notified the production or commission to produce pursuant to section 5 paragraph two and received the Original Work Certification Mark pursuant to section 9 paragraph two.

Section 14 Where the producer ceases to do business or is unable to carry on the production for whatever reason, the person desiring to carry on the production shall notify the competent official pursuant to section 5 within thirty days from the date the producer ceased to do business or was unable to carry on the production.

During the period indicated in paragraph one, the producer shall be deemed the notifier pursuant to section 5.

Section 15 No one shall counterfeit or imitate the Production Certification Mark or the Original Work Certification Mark to mislead others into believing that it is such a mark.

CHAPTER II
MACHINERY, PLASTIC PELLETS AND OTHER MATERIALS

Section 16 Any person having acquired or possessed a machinery shall notify the Director-General within thirty days from the date of acquisition or possession.

The notification under paragraph one shall be in accordance with the rules, procedures and conditions prescribed by the Director-General.
Section 17  Any person having sold, discharged or transferred a machinery shall notify the Director-General within seven days from the date of the sale, discharge or transfer.

The provisions of paragraph one shall apply where a machinery is out of possession of the possessor under section 16 by other means under whatever circumstances.

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

Section 18  Any person having acquired or possessed plastic pellets or other materials which are raw materials used in the production shall notify the Director-General of the category, type, quantity and storage place of the plastic pellets or other materials within thirty days from the date of acquisition or possession.

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

CHAPTER III
COMPETENT OFFICIALS

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

(1) to enter a production place between sunrise and sunset, or during the production hours of the production place, to inspect the receipt of notification, machinery, plastic pellets or other materials which are raw materials used in the production as well as other related documents which may be used as evidence in taking action against offenders under this Act;

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(2) to order any person to give statements or to submit books of account, documents or other evidence where there is a reasonable ground to believe that such statements, account books, documents or evidence may be useful in finding proof or used as proof of an offence under this Act.

Section 20  In performing duties under section 19, a competent official shall present his or her identification card to any person involved.

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

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

CHAPTER VI
PENALTIES

Section 22  Any person failing to comply with section 5 paragraph one, section 7 paragraph one or paragraph 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  Any person failing to comply with section 5 paragraph two shall be liable to a fine not exceeding two hundred thousand baht.

Section 24  Any person failing to comply with section 10 (1) shall be liable to a fine not exceeding ten thousand baht.
Section 25  Any person failing to comply with section 10 (2) shall be liable to a fine not exceeding one hundred thousand baht.

Section 26  Any person failing to comply with section 11 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding two hundred thousand baht, or both.

Section 27  Any person failing to comply with section 12 shall be liable to a fine not exceeding two hundred thousand baht.

Section 28  Any person 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  Any person violating section 15 shall be liable to imprisonment for a term of six months to five years or a fine of one hundred thousand baht to one million baht, or both.

Section 30  Any person failing to comply 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  Any person failing to comply 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.

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Section 32  Any person obstructing or failing to comply with an order of a competent official pursuant to 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  Any person notifying under section 16 or section 17 by presenting a false statement 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  Any person notifying under section 18 by presenting a false statement 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  Where an offence is punishable with only a fine, if the offender agrees to pay the maximum fine, the case shall be deemed settled pursuant to the provisions of the Criminal Procedure Code.

Section 36  Where a juristic person commits an offence under this Act, all board members or managers shall be deemed joint offenders unless they can show that the juristic person committed the offence without their knowledge or consent.

Section 37  Any person having committed an offence and penalised under this Act, again commits an offence under this Act within five years from the date of discharge shall be liable to twice the penalty imposed by the court for the last offence.
Section 38
(The Constitution Court, in its Ruling No. 30/2548 dated February 1, B.E. 2548 (2005), held that section 38 of the Optical Disc Production Bill B.E. ... was unconstitutional) 2

Section 39  The Intellectual Property and International Trade Court shall have jurisdiction to hear cases under this Act.

TRANSITORY PROVISIONS

Section 40 Any person who has already produced on the date this Act comes into force and desires to carry on the production shall notify a competent official pursuant to section 5 within thirty days from the effective date of this Act. After expiration of such period, he or she shall be liable to the penalty imposed in section 22.

Section 41 Any person who has already acquired or possessed a machinery on the date this Act comes into force shall notify the Director-General pursuant to section 16 within thirty days from the effective date of this Act. After expiration of such period, he or she shall be liable to the penalty imposed in section 30. If he or she notifies by presenting a false statement, he or she shall be liable to the penalty imposed in section 33.

2 Section 38 If any person fails to comply with or violates section 5 paragraph one, section 7 paragraph one or two, section 11, section 13, section 15, section 16 or section 17, the court shall order confiscation of the machinery.

The confiscated machinery shall be used for official purposes or sold to a governmental office or a state enterprise or destroyed in accordance with the rules, procedures and conditions prescribed by the Minister.

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Section 42  Any person who has already acquired or possessed plastic pellets or other materials which are raw materials used in the production on the date this Act comes into force shall notify the Director-General pursuant to section 18 within thirty days from the effective date of this Act. After expiration of such period, he or she shall be liable to the penalty imposed in section 31. If he or she notifies by presenting a false statement, he or she shall be liable to the penalty imposed in section 34.

Countersigned by
Police Lieutenant Colonel Thaksin Shinawatra
Prime Minister