

LAW ON OPTICAL DISCS
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Subject matter
Article 1

This Law regulates the conditions for the production of optical discs and production parts, import and export of production parts and equipment used for the production of optical discs, as well as commercial multiplication, import, export and marketing of optical discs.

Meaning of expressions
Article 2

Some expressions used in this Law have the following meaning:

- 1) optical disc is every media which is used for the electronic storage of data in the digital form, which can be written and read by means of the optical mechanism for scanning, using the source of light of great density, such as the laser beam, regardless the format of disc,
- 2) production part (stamper) is a component of the mould containing data in the digital form, intended for the shaping of optical discs, or any device containing such data from whom the production part (stamper) can be produced by means of galvanization;
- 3) glass master is a disc made of glass or polymers or some similar material containing data in the digital form, on the basis of which the production part (stamper) is being made;
- 4) production equipment are machines, devices, equipment for the production of glass master, as well as any other equipment which is used or which can be used for the production of optical discs or production parts (stamper);
- 5) equipment for the production of master are machines, devices or instruments consisting of the processor of signal and the device for the recording by laser beam or any other device which can be used for the recording of data to the master or directly to the production part (stamper);
- 6) production is the performance of optical discs, as well as performance or processing of production parts (stamper);
- 7) production code is LBR SID code identifying the laser beam recorder where the production part (stamper) and Mould SID code is made, identifying the mould where the multiplication of optical discs has been done, issued by the Intellectual Property Office (henceforward: Office) and which serves for the identification of the producers of optical discs, or production parts (stamper), which were jointly developed by IFPI- International Federation of Phonographic Industry and Philips international BV);

- 8) production license is a document allowing persons with the assigned production code the production of optical discs and / or production parts (stamper);
- 9) licensed premises are the objects stated in the license for the production, where the production of optical discs is performed and / or the production of production parts (stamper);
- 10) holder of license is the legal person or entrepreneur to whom the license has been issued for the production of optical discs and / or production parts (stamper);
- 11) person is the legal person or entrepreneur;
- 12) marketing of optical discs is sales, lending, rental and exchange of optical discs;
- 13) commercial multiplication of optical discs is the recording of material protected by copyright or related rights from the existing holders to the optical discs, aiming at their marketing or export.

Conditions for the production of optical discs and / or production parts (stamper)

Article 3

Production of optical discs and / or production of production parts (stamper) can be performed only by a person to whom production code has been assigned and that has production license.

Production mentioned in the paragraph 1 of this article can be performed exclusively in the licensed premises, in compliance with this Law.

Production code

Article 4

Production code is assigned by the Office and entered in the Register of assigned production codes and issued licenses.

Production code, at the written request of the applicant, is assigned in the period of 30 days from the date of filing the request.

The Register of assigned production codes and issued licenses is kept in the electronic form with the use of computer program with the unified data base.

The request from paragraph 2 of this article keeps in particularly the data on:

- 1) the applicant;
- 2) the responsible persons of the applicant;
- 3) premises where the production will take place.

The contents and manner of keeping the Register of assigned production codes and issued licenses is more closely prescribed by the Minister authorized for the task in the domain of science (henceforward: Minister).

Production license Article 5

Production license (henceforward: license) is issued by the Office by passing a decision, in compliance with the Law, on the basis of the written request of the person that obtained the production code and intends to engage in the production of optical discs and / or production parts (stamper).

The decision on the issuing of license is final in the administrative procedure and against it administrative suit can be initiated.

Issued license is not transferable.

Issued licenses are entered in the Register of assigned production codes and issued licenses by the Office.

Conditions for issuing a license Article 6

License is issued to the person that:

- 1) is registered for the performance of activities requesting a license;
- 2) possesses an appropriate production code;
- 3) possesses premises where to perform the production of optical discs and / or production parts (stamper);
- 4) in the period of five years before filing the request has not been validly sentenced for the economic transgression, or his director or other responsible person, in the period of five years before filing the request for the issuing of license has not been validly sentenced for the criminal act infringing intellectual property right, which makes him unworthy of performing the activities of the production of optical discs and production parts (stamper), against the mentioned persons, no legal procedure is initiated for any of these acts and no legal measure is enforced prohibiting them the performance of activities requesting a license.

Contents of the request for the issuing of license Article 7

Request for the issuing of license contains data on the person submitting the claim.

Along with the claim from paragraph 1 of this article, evidence is submitted confirming the compliance with the conditions from article 6 of this Law.

Minister prescribes more closely the contents of the claims from paragraph 1 of this article as well as evidence from paragraph 2 of this article.

Term for issuing a license
Article 8

License is issued in the period of 15 days since the date of filing the proper request.

Proper request for the issuing of the license, in the meaning of paragraph 1 of this article, is the request containing data and evidence from paragraph 7 of this Law.

If the request is not proper, the Office sends an invitation in writing, in the term of 15 days, with the statement of reasons, to the person filing the request inviting him to make additions to the request in the time limit determined by the Office which can not be shorter than 15 days or longer than 30 days from the date of reception of the invitation.

If in the provided time limit the person filing the request does not make additions to the claim, the Office rejects the request by conclusion.

Refusal to issue the license
Article 9

The request to issue a license is refused if:

- 1) the applicant is not registered for performing the activity for which the license is requested;
- 2) the applicant has no appropriate production code;
- 3) the applicant does not possess the suitable premises where the production of optical discs and / or production parts takes place;
- 4) the applicant was validly convicted for the economic transgression, or the director or other responsible person of the applicant was validly convicted for the criminal act of the infringement of intellectual property rights which makes him unworthy of performing the activity of production of optical discs and production parts (stamper) in the period of five years before filing the request;
- 5) a procedure is being conducted for the act from item 4 of this paragraph at the moment of passing the decision on the request for the issue of the license against the applicant, the director or other responsible person of the applicant, until the valid reaching of the final decision in the procedure;
- 6) at the moment of passing the decision regarding the request to issue license, the measure is valid prohibiting the applicant, the director or other responsible person of the applicant to perform activities for which the license is being requested.

Decision refusing the issuing of the license from the reasons mentioned in paragraph 1 of this article is passed by the Office in the period of 15 days from the date of filing the formally correct request from article 7 of this Law.

Decision from paragraph 2 of this article is final in the administrative procedure and administrative suit can be initiated against it.

Content and term of validity of the license Article 10

License contains in particular:

- 1) data on the holder of license;
- 2) data on the licensed premises;
- 3) data on the activities for which the license is being issued – production of optical discs and / or production parts (stamper);
- 4) production code of the holder of license;
- 5) other prescribed data.

License is issued with the term of validity of two years from the date of passing the decision on the issue of license, and it can be prolonged the unlimited number of times in a manner and under conditions prescribed by this Law.

The Minister closely prescribes the appearance and content of the license from the paragraph 1 of this article.

Prolongation of the validity of license Article 11

Prolongation of the validity of license is performed on the basis of the written request filed to the Office by the holder of license, at the earliest 60 days, and at the latest 20 days before the expiry of the term of validity of the license.

Formally correct request for the prolongation of the validity of license is the request filed in the time limit from paragraph 1 of this article which contains data from article 6 of this Law, as well as data on the number of license for which the prolongation of validity is requested.

With regard to the content of the claim, the term for passing the decision on the prolongation or the decision on the refusal of prolongation of validity of the license is duly subjected to the implementation of provisions of articles 7, 8 and 9 of this Law.

The decision from paragraph 3 of this article is final in the administrative procedure and administrative suit can be initiated against it.

Obligations of the holder of license Article 12

The holder of license has an obligation to:

- 1) display the copy of the license on a visible spot in all licensed premises, and the original of the license should be displayed in the office of the responsible person;
- 2) apply the assigned production codes on all optical discs and / or production parts (stamper);

- 3) inform the Office in writing about every change of data from the article 6 of this Law, 15 days at the latest from the day the change occurred;
- 4) bearing in mind the circumstances of the case, undertake reasonable measures in order to establish that the orderer of optical discs and / or production parts (stamper) is authorized to reproduce material on the ordered optical discs or production parts (stamper), which has been protected by copyright and related rights, in particular to demand from the orderer to:
 - (1) furnish data on the holder of right for the material which is the subject matter of reproduction on the ordered optical discs and / or production parts (stamper) or on their packaging,
 - (2) furnish evidence that he is authorized to reproduce such material on optical discs and / or production parts (stamper), with regard to the amount and kind, time and territorial validity of the authorization issued by the initial holder of right,
 - (3) secure data on the contents of material which is the subject matter of reproduction and check those data by comparing them with the enclosed material;
- 5) keep evidence on the amount, content and serial of production of optical discs, keep evidence and data from the paragraph 1, item 4 of this article and keep copies of optical discs and / or production parts (stamper) in compliance with this Law.

If the circumstances of the case provoke doubt in the existence and scope of authority for the reproduction of material on optical discs and / or production parts (stamper), the holder of license must additionally check the data obtained from the orderer.

Provisions of paragraph 1, item 4 and paragraph 2 of this article are not applied for the production of empty optical discs.

Temporarily revocation of license Article 13

Office, ex officio, passes a decision for the temporary revocation of license at the latest until the passing of the final decision in a legal suit if:

- 1) procedure for the economic transgression has been initiated against the holder of license, or if the procedure has been initiated against the responsible person of the holder of license for the criminal act of infringement of intellectual property rights which makes him unworthy of performing activity of the production of optical discs;
- 2) procedure has been initiated against the legal person for the economic transgression, or against the natural person for the criminal act of intellectual property right infringement which makes him unworthy of the performance of activities of the production of optical discs, if the infringement has been done in the licensed premises.

The body which initiated procedure from paragraph 1 of this article has an obligation to inform the Office about it in writing with no delay.

Decision on the temporary confiscation of license is final in the administrative procedure and administrative suit can not be initiated against it.

Permanent revocation of license Article 14

The Office passes the decision ex officio on the permanent revocation of license if:

- 1) the holder of license is validly convicted for the economic transgression, or if the responsible person of the holder of license is validly convicted for the criminal act of the infringement of intellectual property rights which makes him unworthy of performing the activity of production of optical discs;
- 2) legal person validly convicted for the economic transgression, or natural person validly convicted for the criminal act of infringement of intellectual property rights which makes him unworthy of the performing of the activity of the production of optical discs, and which has been conducted in the licensed premises.

The competent body which passed the decisions from paragraph 1 of this article has an obligation to inform the Office about it in writing with no delay.

The decision on the permanent revocation of license is final in the administrative procedure and the administrative suit can be initiated against it.

Cancellation of license Article 15

The Office can cancel a license by a decision.

Decision on the cancellation of license is passed at the request of the holder of license or ex officio, if the Law establishes that the holder of license permanently stopped performing the activity of the production of optical discs and / or production parts (stamper).

The decision on the cancellation of license is final and the administrative suit can be initiated against it in the administrative procedure.

Recording of optical discs Article 16

The holder of license has an obligation to keep evidence of the produced optical discs, to keep specimens of the produced optical discs and / or production parts (stamper) and to

keep evidence and data from the article 12, paragraph 1, item 4 of this Law in the period of 5 years and, at request, to make them available to the market inspector, empowered customs officer and empowered person from the ministry competent for internal affairs, and, at the written request, to the Office and the empowered representative of the organization for the collective management of copyright and related rights (henceforward: organization).

Specimens from paragraph 1 of this article are:

- 1) specimen of the produced optical discs;
- 2) content of the production part (stamper), in the form which enables insight into that content.

The Minister closely prescribes the content and way of keeping record of the optical discs.

The obligation of marking products Article 17

The holder of license must mark the optical discs with the recorded content and/or production part (stamper) with the appropriate production code which has been stated in the license.

Import and export of optical discs, production parts (stamper) and production equipment Article 18

Import or export of optical discs, production parts (stamper) and production equipment, can be performed by a person registered in compliance with the law regulating the registration of business companies.

Natural person can freely perform import or export of optical discs for its own non-commercial needs, under the condition that the optical discs are kept in the personal luggage of the passenger or that they have been sent in a small parcel.

Cooperation of the competent customs body and the market inspection Article 19

The competent Customs body has an obligation to forward on the first working day of the month data to the customs inspection regarding persons who performed import from the article 18 of this Law and data on the import performed during the previous month.

The market inspection must perform supervision over the marketing of the imported goods from the article 18 of this Law at the latest in the course of 60 days from the date of reception of the data from paragraph 1 of this article.

The optical discs with the recorded contents and the production parts (stamper) which are being exported must be marked with a production code as proven by evidence.

The Competent Customs body performs control of fulfillment of conditions from paragraph 3 of this article.

Prohibition of placing a false production code Article 20

Placing a false production code is prohibited, or unauthorized placing production code or similar mark on optical discs and / or production codes (stamper), as well as elaboration, storage or use of device which has primarily the purpose of placing false production code.

Prohibition of storage and use of unadjusted equipment Article 21

It is prohibited to storage and / or use production equipment and production parts (stamper), which have not been adjusted for the placing of suitable production code in compliance with this Law.

It is prohibited to produce, alter or keep moulds, or production parts (stamper) for the production of optical discs which is suitable for the placing of false production code or similar mark on the optical disc.

In the meaning of paragraph 1 and 2 of this Law, the holder of license is considered the keeper of the production equipment and / or production parts (stamper) or mould for the production of optical discs found in the licensed premises.

It is forbidden to use devices or equipment for the destruction of the production codes or for making them unclear.

Prohibition of marketing of the unmarked products Article 22

It is prohibited to market optical discs and / or production parts (stamper) with the recorded contents that has not been marked with the appropriate production code.

It is forbidden to market optical discs and / or production parts where the production code is destroyed or unclear.

Rights and duties of the market inspection Article 23

Inspection supervision over the enforcement of this Law is performed by the market inspection.

In the framework of the inspection supervision, the market inspection has the right and the obligation to:

- 1) inspect the licensed premises and perform the control of the activities going on there;
- 2) inspect the issued license;
- 3) inspect the optical discs, production parts (stamper), production equipment and raw material for the production of optical discs and make their registration;
- 4) inspect the records, business books, contracts and other documents as well as the proof of the rights of reproduction or recording material protected by copyright and related rights on the optical discs or production parts (stamper);
- 5) check and establish whether the production parts (stamper), or moulds, including the reserve production parts (stamper) and moulds and production equipment are adjusted for the placing of production codes contained in the license;
- 6) check and establish whether the optical discs and production parts (stamper) are marked by a suitable production code;
- 7) check the keeping of the records prescribed by this Law;
- 8) temporarily confiscate, until the decision of the Court is reached, the optical discs, production parts (stamper), raw material or production equipment for the manufacturing or multiplication of optical discs, if it expresses doubt that this Law has been violated in a manner described as transgression or if some other law has been violated which has been described as transgression or criminal act of infringement of intellectual property rights and to inform thereof the holder of intellectual property right or the organization;
- 9) confiscate a certain number of specimens of optical discs or production parts (stamper) needed for the evidence in the procedure before the competent court;
- 10) pass a decision to order the destruction of confiscated optical discs, or production parts (stamper) when, despite the undertaken activities for the identification of the owner, their owner or holder remains unknown;
- 11) take specimens of optical discs for checking and sending data to the international organizations for the protection of intellectual property rights.

Decision from paragraph 2, item 10 of this article is final in the administrative procedure and the administrative suit can be initiated against it.

Provisions of paragraph 2 of this article are accordingly applied to other premises and vehicles, when there is justified doubt that the infringement of this Law, or violation of provisions of some other law protecting intellectual property rights, has been done or is being done there.

Penal provisions
Article 24

The legal person will pay a fine in the amount of 100,000 to 2,000,000 dinars for the economic transgression, if he:

- 1) produces, storages, puts into the channels of commerce, imports and/or exports optical discs or production parts (stamper), contrary to the provisions of this Law (articles 3, 17, 18, par. 1, 20, 21 and 22);
- 2) does not respect the obligation of marking, storage and keeping records prescribed by this Law (article 12, paragraph 1, item 5).

The entrepreneur shall be punished for the acts from paragraph 1 of this Law for the transgression by paying a fine in the amount of 50,000 to 500,000 dinars.

The natural person or responsible person in the legal person shall be punished for acts from paragraph 1 of this article by paying a fine in the amount of 50,000 to 150,000 dinars.

The objects involved in the performing of transgression and the objects used for the actual performing of the transgression from paragraphs 1-3 of this article shall be confiscated, and the objects of the execution of transgression shall be destroyed.

The verdict sentencing the wrong doer for the transgression from paragraph 1-3 of this article shall be made public by publishing.

Transitory and final provisions
Article 25

By-laws for the enforcement of this Law shall be passed in the period of six months from the date of the enforcement of this Law.

Article 26

This Law is enforced on the eight day from the publication date in the “Official Gazette of the Republic of Serbia” and is implemented at the expiry of six months from the date of enforcement.