

LAW OF UKRAINE

On Amendments to Certain Legislative Acts of Ukraine (in respect of brining order to operations involving production, exportation, importation of discs for laser readable systems [laser-readable discs], equipment or raw materials for their production)

The Supreme Rada of Ukraine hereby resolves:

I. To amend the following legislative acts of Ukraine:

1. To restate Article 203-1 of the Criminal Code of Ukraine (Vidomosti Verkhovnoji Rady [*Gazette of the Supreme Rada*], 2001, No. 25-26, page 131; 2002, No. 17, page 121) as follows:

“Article 203-1. Illegal Turnover of Discs for Laser Readable Systems, Matrixes, Equipment or Raw Materials for their Production

1. Illegal production, exportation, importation, storage, sale and carriage of discs for laser readable systems, matrixes, equipment or raw materials for their production, if such acts involve considerable amounts,

- shall be punishable by a fine in the amount ranging from one to five thousands of non-taxable minimum personal incomes or by correctional labor for a term of up to two years, or by imprisonment for the same period, subject to seizure and destroying of discs for laser readable systems, matrixes, equipment or raw materials for their production.

2. The same acts, if committed for the second time or in prior collusion by a group of person, or committed in large amounts,

- shall be punishable by imprisonment for a term ranging from two to five years, subject to seizure and destroying of discs for laser readable systems, matrixes, equipment or raw materials for their production.

Note. A “considerable amount” shall mean the cost of discs for laser readable systems, matrixes, equipment or raw materials for their production that exceeds the amount of the non-taxable personal income by twenty and more times; a “large amount” shall mean the cost of discs for laser readable systems, matrixes, equipment or raw materials for their production that exceeds the amount of the non-taxable personal income by one hundred and more times.

2. To restate **Clause 63 in Article 9 of the Law of Ukraine "On Licensing of Certain Types of Business Activities"** (Vidomosti Verkhovnoji Rady [*Gazette of the Supreme Rada*], 2000, No. 36, page 299, No. 45, page 377; 2001, No. 11, page 45, No. 16, page 76, No. 22, page 105, No. 49, page 259; 2002, No. 6, page 39, No. 7, page 50, No. 17, page 121, No. 20, page 134, No. 30, page 207), as follows:

“63) exportation, importation of discs for laser readable systems, matrixes”.

3. In the Law of Ukraine "On Specifics of State Regulation of the Activities of Business Entities Associated with Production, Export, and Import of Discs for Laser-Readable Systems" (Vidomosti Verkhovnoji Rady [Gazette of the Supreme Rada], 2002, No. 17, page 121):

1) throughout the text:

the words “by the agency authorized by the Cabinet of Ministers of Ukraine (hereinafter referred to as, the “Licensing Authority”)” and “Licensing Authority” shall be replaced for the words “the central agency of executive power in the area of intellectual property” in applicable cases;

to add the word “matrixes” after the words “of discs for laser readable systems” in applicable cases, except for paragraphs 4, 9 in Article 1 of the Law”;

2) in Article 1:

to restate paragraph 3 as follows:

“production of discs shall mean activities involving the use of the technological method for processing of raw materials into optically carriers in the form of discs for laser readable systems, matrixes, in the course of which information is recorded simultaneously with the production of a disc, which information is subject to copyright and/or related rights, or without such recordation, as well as to selling of discs or matrixes of one’s own production”;

to restate paragraph 5 as follows:

“licensing conditions” shall mean a list of requirements for activities involving production, exportation and importation of discs for laser readable systems, matrixes as defined by this Law and of licensing conditions approved pursuant to the Law of Ukraine “On Licensing of Certain Types of Business Activities”, and compliance with which is obligatory for producers, exporters and importers of discs for laser readable systems, matrixes, who have obtained appropriate licenses”;

to supplement this Article, after paragraph 6, with the following two paragraphs:

"export (import) license" —

shall mean a duly sanctioned right to export (import) equipment and raw materials for production of discs for laser readable systems and matrixes, which license is issued for a specific business entity to engage in a foreign economic operation for a prescribed period of time”;

“raw materials” shall mean optical polycarbonate that is used for production of discs for laser readable systems and matrixes”.

In connection therewith, paragraphs 7 – 11 shall be regarded as paragraphs 9 – 13;

to supplement 12, after the words “storage, sale”, for the word “carriage”;

3) in Article 2:

to replace Part 3 with the following Parts:

“This Law shall not apply to discs for laser reading systems that are not the subject matter of exports/imports, which discs are:

imported or exported, sent by international mail or express mail by natural persons, in the quantity not exceeding 20 copies;

imported or exported, sent by international mail or express mail by legal entities for purposes of business activities, without a right to, and not for purposes of, further sale or distribution thereof;

imported or imported with technical documentation together with equipment.

Discs for laser readable systems, matrixes, equipment and raw materials for their production shall be carried in transit pursuant to the Customs Code of Ukraine and of the Law of Ukraine “On Transit of Cargo”;

4) in Part 1 of Article 4:

to substitute the words “matrix code” for the words “mold code” in Item “b”;

to restate Item “g” as follows:

“g) to store accounting documents on production of discs for laser readable systems, matrixes within a time period prescribed by law, and to furnish two mandatory free samples of the produced discs for laser readable systems with the information recorded thereon to the specially authorized agency for licensing affairs, which agency shall store them for a period of three years pursuant to the Law of Ukraine “On Mandatory Samples of Documents”.

Procedures governing the furnishing, storage and handing out of samples of discs for laser readable systems shall be approved by the Cabinet of Ministers of Ukraine”;

5) in Article 5:

to restate Parts 1, 3 – 6 as follows:

"1. Exportation/importation of discs for laser readable systems and matrixes shall be licensed in accordance with this Law and the Law of Ukraine “On Licensing of Certain Types of Business Activities”.

Major components for specialized equipment used to produce discs for laser readable systems and matrixes, the list of which shall be approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as, the “equipment”), and raw materials for their production shall be licensed in accordance with this Law and the Law of Ukraine “On Foreign Economic Activities”;

“3. Exportation and importation of discs for laser readable systems, matrixes, equipment and raw materials for their production shall be licensed by the central agency of executive power for economic affairs pursuant to this Law, the Law of

Ukraine “On Licensing of Certain Types of Business Activities” and the Law of Ukraine “On Foreign Economic Activities”.

4. A license for exportation and importation of discs for laser readable systems, matrixes shall be issued to a business entity that has complied with the requirements set out in Article 10 of the Law of Ukraine "On Licensing of Certain Types of Business Activities" and has filed with the central agency of executive power for economic affairs the confirmed data on:

its own or leased warehouse premises;

its own or leased premises, in which wholesale and/or retail sale of discs for laser reading systems and matrixes will be carried out (in respect of a license for importation of discs, matrixes).

The license for exportation and importation of discs for laser readable systems and matrixes shall be issued for a term ranging from two to three years.

The license for exportation and importation of equipment and raw materials for production of discs for laser readable systems and matrixes shall be issued to a business entity if there is a foreign economic contract (agreement).

5. Discs for laser readable systems and matrixes may be exported only if there are special identification codes for them. Matrixes may be imported if there are special identification codes for them.

6. A copy of the license for exportation and importation of discs for laser readable systems, matrixes, equipment or raw materials for their production, together with documents filed for obtaining the license, shall be stored by the central agency of executive power for economic affairs for a period of three years”;

6) to restate Article 6 as follows:

“Article 6. Control of Production, Exportation and Importation of Discs for Laser Readable Systems, Matrixes

1. The central agency of executive power in the area of intellectual property, other government agencies within limits of their powers prescribed by law shall be bodies that will effectuate control over production of discs for laser readable systems and matrixes.

The central agency of executive power for economic affairs, the central agency of executive power in the area of intellectual property, bodies of the specially authorized central agency of executive power in the area of customs and other government agencies within limits of their powers prescribed by law shall be bodies that will effectuate control over exportation and importation of discs for laser readable systems, matrixes, equipment and raw materials for their production.

State control of compliance with requirements set out in this Law for production of discs for laser readable systems and matrixes shall be effectuated by a specially authorized agency for licensing affairs, the central executive agency in the

area of intellectual property through the conduct of scheduled and out-of-schedule inspections as and when provided by law.

State control of compliance with requirements set out in this Law for exportation and importation of discs for laser readable systems and matrixes shall be effectuated by the central agency of executive power for economic affairs, the central agency of executive power in the area of intellectual property, the specially authorized central agency of executive power in the area of customs by way of monthly monitoring of information on issued approvals, licenses and actual quantities of products shipped pursuant to the licenses for exportation and importation of discs for laser readable systems and matrixes.

State control of compliance by business entities with intellectual property laws, including those in the sphere of production, exportation and importation of discs for laser readable systems and matrixes, shall be carried out by State inspectors for intellectual property affairs.

State inspectors for intellectual property affairs shall be authorized to involve representatives from controlling bodies specified in paragraph 1 of this Article for the conduct of inspections.

Powers of State inspectors for intellectual property affairs, procedures governing the conduct of inspections by State inspectors for intellectual property affairs shall be prescribed by the Cabinet of Ministers of Ukraine,

2. Scheduled inspections shall be carried out by the agency that issues the respective license not more than once a year subject to 5-day prior notice thereof to a business entity.

Out-of-schedule (unexpected) inspections shall be carried out without prior notice thereof to a business entity in order to control whether:

the producer, exporter or importer of discs for laser readable systems, matrixes has a license;

licensing conditions, which are laid down in Parts 1 and 2 of Article 4 and Part 4 of Article 5 of this Law, are complied with;

orders to eliminate violations of licensing conditions are complied with;

violations of licensing conditions are discontinued on a condition that there is documentary confirmed information on such violations.

Out-of-schedule (unexpected) inspections shall be also carried out without prior notice thereof to a business entity in the event that persons, who hold copyright and/or related rights, have filed written applications with the agency, which issued the respective license, claiming violations of their rights.

Inspections may be carried out with participation of persons, who hold copyright and/or related rights, or representatives of such persons.

3. A business entity shall have a right to challenge actions of controlling bodies in court”;

7) in Article 7:

in Part 2:

to delete the words “by the exporter and the importer” in paragraph 3;

to supplement the Part with the following paragraph:

“to seal and/or seize discs for laser reading systems, matrixes produced in violation of requirements of this Law, raw materials, equipment for their production for a period until the matter has been resolved by the court”;

8) to substitute the word “availability” for the word “affixation” in paragraph 6 in Part 1, Article 8;

9) To restate Article 9 as follows:

“Article 9. Special Measures to terminate Requirements for Production, Exportation and Importation of Discs for Laser Readable Systems, Matrixes

1. For purposes of terminating violations of the requirements set out in this Law for production of discs for laser readable systems and matrixes, the central agency of executive power in the area of intellectual property may additionally undertake the following special measures:

1) restriction on or temporary prohibition of activities of business entities in the event that such activities do not comply with the requirements of this Law;

2) revocation of a license for production of discs for laser readable systems and matrixes in the event that licensing conditions, which are specified in Parts 1 and 2 of Article 4 of this Law, have been violated for the second time. The producer may obtain a new license permitting the conduct of the given type of activity not earlier than in 5 years from the date on which the central agency of executive power in the area of intellectual property adopted a decision to revoke the previous license;

3) suspension of the production license in the event that violations of the requirements set out in the Law are uncovered, which violations have been committed by the producer who refuses to comply or does not comply with demands of the central agency of executive power in the area of intellectual property relating to termination of the violations within 1 month from the date on which such violations were uncovered;

4) sealing and/or seizure of discs for laser readable systems and matrixes produced in violation of the requirements of this Law, as well as of equipment and raw materials for their production that do not meet the requirements of this Law.

2. The license for production of discs for laser readable systems and matrixes shall be deemed to have been suspended or revoked as from the date on which the central agency of executive power in the area of intellectual property adopted the relevant decision.

3. Special measures, which are specified in Items 1 - 3 in Part 1 of this Article, shall be undertaken by a decision of the central agency of executive power in the area

of intellectual property pursuant to procedures as are laid down by the Cabinet of Ministers of Ukraine.

4. Special measures, which are specified in Item 4 of Part 1 in this Article, shall be undertaken pursuant to the procedures set out in Article 9-1 of this Law.

5. For purposes of terminating violations of the requirements set out in this Law for exportation and importation of discs for laser readable systems, matrixes, equipment and raw materials for their production or in the event of change in any data indicated in a license for exportation and importation of equipment and raw materials for production of discs for laser readable systems and matrixes, the central agency of executive power for economic affairs shall revoke such a license.

It shall be permitted to obtain a new license for exportation/importation of discs for laser readable systems, matrixes, equipment or raw materials for their production:

within a period not exceeding 10 business days from the date of a written application submitted by the business entity – in the event of any changes in any data indicated in the license;

not earlier than in 5 years from the date of a decision adopted by the central agency of executive power for economic affairs – in the event of violation of requirements of this Law.

In the event of a change in any data indicated in the license for exportation and importation of discs for laser readable systems and matrixes, the exporter/importer must have such a license re-issued pursuant to the procedures laid down by the Law of Ukraine “On Licensing of Certain Types of Business Activities”.

6. The specially authorized agency of executive power in the area of customs shall be notified in writing of revocation of a license for exportation and importation of discs for laser readable systems, matrixes, equipment and raw materials for their production”;

10) To supplement with Article 9-1 as follows:

“Article 9-1. Procedures for Seizure of Discs for Laser Readable Systems, Matrixes, Equipment or raw Materials for their Production

Discs for laser readable systems and matrixes produced in violation of the requirements set out in this Law, as well as equipment and raw materials for their production that do not comply with the requirements set out in this Law shall be seized, as provided in Item 4 of Article 9 of this Law, by officers of the central agency of executive power in the area of intellectual property, with involvement, if need be, of representatives from agencies of the Ministry of Internal Affairs of Ukraine.

The entire consignment of discs for laser readable systems, matrixes, equipment or raw materials for their production produced, imported or designated for exportation, which do not comply with the requirements set out in this Law, shall be seized from illegal turnover.

An act shall be drawn up as a result of the seizure, one counterpart of which act shall be issued to the business entity, and the other counterpart shall be stored by the agency of executive power in the area of intellectual property.

The discs for laser readable systems, matrixes, equipment or raw materials for their production seized from the business entity shall be packaged and sealed at the place of seizure.

The seized discs for laser readable systems, matrixes, equipment or raw materials for their production may be left with the business entity, which in such case shall be liable for ensuring their safe storage in separated premises, which premises shall be sealed by an officer of the central agency of executive power in the area of intellectual property.

The discs for laser readable systems, matrixes, equipment or raw materials for their production shall be seized, packaged and transported at the cost of the business entity, from which such have been seized.

II. Final Provisions

1. This Law shall enter into force as of the date of promulgation hereof.

2. To provide that Item 1 in Section I of this Law shall be revised in three years following the entry into force of this Law.

3. Within 2 months from the date of the entry into force of this Law, the Cabinet of Ministers of Ukraine must:

bring its rules and regulations into conformity with this Law;

ensure that agencies of executive power issue rules and regulations prescribed by this Law.

President of Ukraine
KYIV
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V. YUSCHENKO