

LAW OF UKRAINE
On the Specifics of Governmental Regulation of Business Activity
in the Sphere of Production, Export and Import of Laser-Readable Discs

No.6251-1

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This Law shall regulate legal relations in the sphere of production, export and import of laser-readable discs.

Article 1. In this Law the terms shall have the following meanings:

- production of discs – activity associated with the issuance of laser-readable discs, which includes all stages of the manufacture and sale of one's own products;
- disc – any pre-recorded or recordable laser-readable disc, including a matrix;
- laser reading system – a system that enables reproduction of the information, recorded on optical media in digital form, by laser technologies;
- licensing conditions – a regulations document, the provisions of which set forth qualification, organizational, technological and other requirements with respect to activities associated with the production, export and import of discs, as well as the basic conditions with respect to the buildings, facilities, equipment and technical means that produce and store discs, observance of which is mandatory for the licensee;
- license authorizing production of discs – a document prepared in accordance with the State format, which certifies a licensee's right to produce discs during a stipulated period of time, subject to observance of the licensing conditions. A uniform license format shall be approved by the Cabinet of Ministers of Ukraine;
- master disc – a material medium containing in digital form all or part of the information that is transferred onto a matrix;
- matrix – a material medium in the form of a glass or polymer master disc, metal stamper or other similar or equivalent device containing information in digital form and used in disc production;
- licensing body - body of executive power authorized by the Cabinet of Ministers of Ukraine to carry out the activity associated with the licensing of the production, export and import of discs;
- identification code - a code that is assigned by the licensing body, which identifies the producer of a disc and which can be read without special technical means.

Article 2. This Law shall be applied to subjects of business activity that produce, export and import discs, as well as the raw materials and supplies for the manufacture of discs.

Relations in the sphere of production, export and import of discs shall be regulated by the Laws of Ukraine "On Entrepreneurship", "On Licensing Certain Types of Business Activity", "On Distribution of Specimens of Audiovisual Works and Phonograms", "On Foreign Economic Activity", this Law and other legislative acts of Ukraine.

Article 3. The licensing body shall:

- accept applications and other required documents that are filed with this body by subjects of business activity with the aim of obtaining a license authorizing production of discs;
- determine the contents to be provided in a license application and a list of the documents to be attached to the application;
- verify whether subjects of business activity possess permits authorizing reproduction (use) of objects of copyright and/or neighboring rights;
- make decisions authorizing issuance of a license or denying its issuance;
- issue licenses;
- suspend a license until revealed violations of the licensing conditions are eliminated;
- ensure the keeping of the licensing files and the licensing register;
- supervise the observance by licensees of the licensing conditions;
- issue orders requiring elimination of violations of licensing conditions;
- impose the sanctions stipulated in this Law.

The licensing body shall be financed from the State Budget of Ukraine.

Article 4. The licensee shall:

- produce discs that contain objects of copyright and/or neighboring rights only after verification by the licensing body that the licensee possesses a permit authorizing reproduction (use) of such objects;
- produce discs with the use of special equipment only in premises that meet the licensing conditions;
- apply identification codes to every disc and matrix produced;
- provide disc production with devices that apply identification codes thereto;

- notify the licensing body of changes in the information specified in a license authorizing production of discs;
- retain disc production records and specimens of produced discs;
- admit the licensing body and other supervisory bodies under their authority to the premises used by the licensee for the production and storage of discs.

Article 5. The production, export and import of discs shall be carried out by subjects of business activity only if they have licenses authorizing the production, export and import of discs, and if the licensing conditions are observed.

Issuance of a license or issuance denial, reformulation of a license; amendments to the documents attached to the license application; and issuance of a license duplicate shall be conducted in compliance with the procedure established by the Law of Ukraine "On Licensing Certain Types of Business Activity".

Decisions of the licensing body concerning reformulation, cancellation, and issuance of a duplicate of a license can be challenged by a subject of economic activity through the council of experts and appeals set up by the specially authorized body in charge of licensing.

Decisions of the licensing body concerning issuance of a license can be challenged in court.

When issuing a license, the licensing body shall assign to the applicant an identification code.

Article 6. Discs, raw materials for disc production – optical grade polycarbonate – and disc production matrixes shall be exported and imported on the basis of single-use licenses pursuant to the Law of Ukraine "On Foreign Economic Activity".

Disc production equipment (hereinafter, "equipment") that is imported into Ukraine shall be subject to certification in compliance with the procedure established by the legislation.

Matrixes shall be imported into Ukraine only if they bear identification codes.

Article 7. A license can be suspended for a certain term if:

- it is established that discs are being produced without application of identification codes;
- the disc production equipment does not have devices for applying identification codes to the discs.

License suspension decisions shall be adopted by the licensing body.

Article 8. A license can be canceled. The grounds for canceling a license shall be:

- the licensee's request to cancel a license;
- a document attesting to the fact of carrying out business activity associated with the production of discs without authors' contracts, license agreements or agreements (contracts) or other title documents that certify the producer's right to reproduce (use) objects of copyright and/or

neighboring rights;

- a document attesting to repeated violation by the licensee of the licensing conditions;
- a resolution canceling the State registration of a subject of economic activity;
- a notarized copy of the certificate of death of an individual who is a subject of business activity;
- a document attesting to the discovery of false data in the documents filed by a subject of business activity in order to obtain a license;
- a document attesting to the fact of the transfer of a license or a copy thereof to another legal entity or individual for the production of discs;
- a document attesting to the fact of a failure to submit, within the established term, notification of changes to the data indicated in the documents that were attached to the license application;
- a document attesting to a failure to obey orders requiring elimination of violations of the licensing conditions;
- the impossibility of a licensee ensuring observance of the licensing conditions.

Consideration of matters relating to the cancellation of a license on the basis of a document attesting to the fact of carrying out business activity associated with production of discs without authors' contracts, license agreements or agreements (contracts) or other title documents that certify the producer's right to reproduce (use) objects of copyright and/or neighboring rights; a document attesting to the repeated violation by the licensee of the licensing conditions; a document attesting to the fact of the transfer of a license or a copy thereof to another legal entity or individual for the production of discs; a document attesting to the fact of a failure to file, within the established term, notification on changes to the data indicated in the documents that were attached to the license application; a document attesting to a failure to obey orders requiring elimination of violations of the licensing conditions; or a document attesting to the discovery of false data in the documents submitted by the subject of business activity in order to obtain a license, shall be carried out by the licensing body, provided that it must invite the licensee or its representatives.

Upon cancellation of a license for these violations, the subject of business activity can obtain a new license authorizing production of discs no sooner than one year after the adoption by the licensing body of the decision concerning cancellation of the previous license.

The license cancellation decision shall take effect 10 days after it is adopted. This decision can be terminated by the council of experts and appeals set up by the specially authorized body in charge of licensing, on the basis of review of substantiated objections set forth in the licensee's complaint, submitted to the council within 10 days after the adoption of the decision.

Article 9. The licensing body shall supervise the observance of licensing conditions by licensees by performing scheduled and unscheduled inspections.

The frequency of scheduled inspections shall not exceed one inspection per year; unscheduled inspections shall be performed without prior notice to prevent violations of this Law in response to a written statement (notice) received by the licensing body suggesting violation by a licensee of the licensing conditions or copyright and/or neighboring rights, and to verify compliance with orders to eliminate violations of the licensing conditions.

The results of an inspection shall be formalized in a statement made in two copies. One copy of the statement shall be issued to the licensee; the second copy shall be kept by the licensing body.

Inspections can be carried out with the participation of the holders of copyright and/or neighboring rights, or their representatives.

If violations are discovered, then not later than 10 days after the execution of the relevant statement, the licensing body shall issue an order requiring elimination of the violations of the licensing conditions, adopt a decision to impose sanctions in the form of fines or license suspension until the revealed violations of the licensing conditions are eliminated, or cancel the license.

A licensee that receives an order requiring elimination of its violations of the licensing conditions shall eliminate the violations within the term stipulated in the order, and shall submit the relevant information to the licensing body.

During inspections, producers shall ensure the conditions required for the implementation of the inspections, present all required documents, and if an expert evaluation is necessary, provide samples of discs, raw materials and matrixes, and provide access to all production and storage premises and to equipment.

The State supervisory bodies shall supervise, under their authority, the observance of this Law to prevent and discover violations thereof.

The actions of the supervisory bodies can be challenged by the producers in court.

Article 10. For violations of the requirements set forth in this Law, financial sanctions in the following amounts shall be imposed, pursuant to the licensing body's decisions, upon subjects of business activity that produce, export or import discs:

- 1) 200 percent of the value of the manufactured products according to the sales prices, but not less than three thousand tax-exempt minimum individual incomes – if discs are produced without a license;
- 2) 200 percent of the value of the manufactured products according to the sales prices, but not less than three thousand tax-exempt minimum individual incomes – if discs are produced without authors' contracts, license agreements or agreements (contracts) or other title documents that certify the producer's right to reproduce (use) objects of copyright and/or neighboring rights;
- 3) 200 percent of the value of the manufactured products according to the sales prices, but not less than three thousand tax-exempt minimum individual incomes – if discs are produced without the application of identification codes;

4) three thousand tax-exempt minimum individual incomes – if devices for applying identification codes to all discs produced are not available on all pieces of the licensed disc production equipment;

5) ten thousand tax-exempt minimum individual incomes – in case of repeated violation of any licensing conditions within a year.

Final Provisions

1. This Law shall take effect on the day of its publication.

2. Within six months, the Cabinet of Ministers of Ukraine shall:

- bring its regulations into conformity with this Law;

- ensure the revision and cancellation by the central bodies of executive power of their regulations that conflict with this Law.

3. To amend the following legislative acts of Ukraine:

1) in Article 4 of the Law of Ukraine "On Entrepreneurship" ("Vidomosti Verkhovnoyi Rady Ukrayiny", 1991, No. 14, p. 168; "Vidomosti Verkhovnoyi Rady Ukrayiny", 2000, No. 36, p. 299), after part one, to add the following new part:

"The activity associated with the production of laser-readable discs, as well as the export and import of the equipment and raw materials for the production thereof, shall be carried out in compliance with the Law of Ukraine "On the Production, Export and Import of Laser-Readable Discs".

Parts two - five shall correspondingly be considered parts three - six.

2) In the Administrative Infringements Code of Ukraine ("Vidomosti Verkhovnoyi Rady Ukrayinskoyi RSR", 1984, annex to No. 51, p. 1122:

a) to add to the Code Article 164¹⁰ which shall read as follows:

"Article 164¹⁰ . Production and/or export of laser-readable discs, export and/or import of matrixes, equipment and raw materials for their production in contravention of the legislative requirements

Production and/or export of laser-readable discs, export and/or import of matrixes, equipment and raw materials for their production in contravention of the procedure stipulated in the Law of Ukraine "On the Specifics of Business Activity in the Sphere of Production, Export and Import of Laser-Readable Discs", -

shall result in the imposition on officials or individuals of a fine of from 100 to 1000 tax-exempt minimum individual incomes and the confiscation of the discs, raw materials and equipment for their production";

b) in Article 221, to replace the figures "164⁶ - 164⁹" with the figures "164⁶ - 164¹⁰";

3) To add to the Criminal Code of Ukraine Article 148⁹, which shall read as follows:

"Article 148⁹. Violation of the procedure for producing and/or exporting laser-readable discs, as well as exporting and/or importing matrixes, equipment and raw materials for their production

Production (manufacture) and/or export of laser-readable discs, as well as export and/or import of matrixes, equipment or raw materials for the production of such discs with the aim of selling or distributing them in contravention of the procedure stipulated in the Law of Ukraine "On the Specifics of Business Activity in the Sphere of Production, Export and Import of Laser-Readable Discs", if the extent of such actions is very significant, -

shall result in imprisonment for a period of up to 5 years and confiscation of the products, equipment, raw materials and property.

Very significant extent shall be understood as being when the value of the products (discs, equipment, raw materials) is one thousand or more times greater than the minimum individual income established under the legislation."