

[, November 21, 2007]

OMB RULES OF PROCEDURE

WHEREAS, IT IS A DECLARED STATE POLICY TO ENSURE THE PROTECTION AND PROMOTION OF INTELLECTUAL PROPERTY RIGHTS;

WHEREAS, the unregulated sale, rental, distribution, mastering, manufacture, replication, duplication, importation and exportation of optical media products in all forms is, inimical to economic growth and public interest;

WHEREAS, there is a need for the State to institute means to regulate the manufacture mastering, replication, importation and exportation of optical media manufacturing matena or equipment, including parts, accessories and paraphernalia;

WHEREAS, the Optical Media Board is empowered to hear and resolve administrative cases for violations of Republic Act No. 9239 and its Implementing Rules and Regulations and impose the necessary administrative penalties;

WHEREFORE, pursuant to Sections 10 (g) and (n), 23, and 34 of Republic Act No. 9239, otherwise known as the "Optical Media Act of 2003," the following rules of procedure to govern administrative proceedings are hereby adopted."

RULE I

Title and Preliminary Matters

Section 1. Title- These Rules shall be cited as the OMB Rules of Procedure.

Section 2. Coverage. These Rules shall apply to administrative cases for violations of Republic Act No. 9239 and/or its Implementing Rules and Regulations.

Section 3. Construction. These Rules shall be liberally construed to carry out the objectives of Republic Act No. 9239 and its Implementing Rules and Regulations promulgated pursuant thereto.

In implementing these Rules, the Board shall observe proper flexibility and avoid undue technicality with the end in view of bringing forth the truth and meting out justice as fairly and expeditiously as possible.

Section 4. Suppletory Application of the Rules of Court. The Rules of Court shall apply in a suppletory character.

RULE II

Definition of Terms

Section 5. Definitions. As used in these Rules, the following terms shall mean:

- a) "Act" - Republic Act No. 9239 or the "Optical Media Act of 2003";
- b) "Board" - the body of the Optical Media Board composed of four (4) ex-officio members and five (5) regular members appointed by the President;
- c) "Complainant" - the person who initiated the complaint who may be a private person or any employee, personnel, officer, agent, or inspector of the Optical Media Board;
- d) "Duplication" - the process of manufacturing optical media by reproducing or generating copies by burning through the use of disc writers and other duplicating devices;
- e) "RR" - the Implementing Rules and Regulations of Republic Act No. 9239 or the Optical Media Act of 2003 including the Annexes thereto;
- f) "IP Code" - Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines;
- g) "License" - the authority granted by the OMB to establishments or entities registered with it to engage in the business of mastering, manufacture, replication, importation or exportation of optical media;
- h) "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;
- i) "Manufacture" - the act or business of producing optical media or devices contain' 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;
- j) "Manufacturing Equipment" - any and ail equipment, machine or device, now known o to be known in the future, intended or designed for the production or manufacture by duplication, mastering and/or replication of optical media, optical media masters or production parts thereof, including but not limited to, those which are listed in the IRR of the Act or are prescribed by the OMB. For the purpose of these Rules, optical disc writers and such other devices used for commercial activities are considered as manufacturing equipment;
- k) "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 and shall include rewritable and/or recordable discs;

- I) "Mastering" - the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;
- m) "OMB" - the Optical Media Board as a government agency;
- n) "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 limited to, devices which shall be listed in the IRR of R.A. No. 9239, or as prescribed by the OMB;
- o) "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;
- p) "Respondent"-the person against whom a complaint was filed; and
- q) "Source Identification Code or SID Code" - a system of codes to identify the source of every optical media mastered, manufactured or replicated by any establishment or entity.

RULE III

Procedure in Administrative Cases

Section 6. Parties. Any person, natural or juridical, who has cause to complain about any violation of R.A. No. 9239 or the IRR promulgated pursuant thereto, may file a written complaint with the Board through the Legal Services Division of the OMB against person or establishments charged with such violation. The former shall be considered as the complainant, and the latter, as the respondent.

Section 7. Appearances. In all proceedings before the duly constituted Hearing Committee or a duly appointed Commissioner, it is preferred that the parties be represented by counsel who is a member of the Philippine Bar duly authorized to practice law in the country, provided however, that a party may appear before the Hearing Committee or Commissioner by and for himself.

Section 8. Complaint. There are two (2) types of complaints that may be filed.

The first type is that initiated by a complaining party against a particular respondent for violations of the Act or its IRR.

The second type is that initiated by an agent, officer, inspector and/or deputy of the OMB as a result of an inspection order.

Complaints filed by a complaining party independent of an inspection must comply with the following:

- a) The complaint shall be in writing and verified, in set of four (4) copies for the board and of as many other copies as there are respondents.

- b) It shall state complainant's name and address.
- c) It shall likewise state the name and address of the respondent. If the respondent cannot be identified by his name, an assumed name may be used together with the practical description of respondents physical appearance such as but not limited to gender, approximate age, weight, height, color of hair, and other distinguishing physical appearance. A respondent identified by an assumed name shall be required to provide his true name in order for him to participate in the proceedings and the complaint shall be considered as amended accordingly.
- d) The complaint must contain the violation committed, a statement of ultimate facts constituting the violation, and all supporting evidence available.

Section 9. Complaint served during inspection, a) If during an inspection conducted by authorized personnel of the OMB in accordance with Section 10 (d) of the Act or Rule 6, Title H, of the IRR, there is reasonable ground to believe that a violation of the Act or its IRR has been committed, is being committed or is about to be committed, the inspection officer, agent, inspector, or deputy of the OMB shall then and there prepare a written complaint against the person and/or establishment inspected.

The written complaint shall be in set of two (2) copies, one set to be served upon the respondent during the actual inspection, which complaint need not be verified.

A detailed receipt of the items taken into preventive custody shall likewise be issued to the owner and/or the person in actual possession or control of said items, together with a notice to answer the complaint within a non-extendible period of five (5) days from receipt thereof. The complaint, the detailed receipt, and the notice to explain may be contained in one written instrument.

b) Should the said person refuse to receive a copy of the complaint and/or the detailed receipt of the items taken in preventive custody and/or the notice to answer, the serving officer shall leave copies of these documents in the premises where the items were seized.

The same procedure shall apply when the place inspected is abandoned and no one claims ownership of the items to be taken into preventive custody.

c) Within a reasonable period after the service of the complaint and notice to answer to the respondent, in no case more than five (5) days, the serving officer shall verify the said complaint before a notary public or a designated subscribing officer and shall file the same with the Legal Services Division of the OMB together with the copy of the complaint duly received by respondent or properly left in the premises inspected, the detailed receipt of the items taken under preventive custody, and all other supporting evidence.

For this purpose the Chairman, in his absence the Executive Director, are designated as subscribing officers before whom the complainant may appear and verify the complaint

d) The verified complaint and sworn statements of the witnesses shall serve as their

direct testimony.

e) The power of the OMB to conduct inspections shall not be limited by this Section.

Section 10. Action on the Complaint. a) Upon receipt by the Legal Services Division of the OMB of the complaint, it shall evaluate the same. If the complaint is not sufficient in form, the Legal Services Division of the OMB shall order the complainant to amend his complaint. Failure to make the necessary amendments shall be sufficient grounds for the dismissal of the complaint, in which case the said office shall make the necessary recommendations to the Hearing Committee or the Commissioner to prepare a written order of dismissal for the approval and signature of the Chair.

b) If the complaint is sufficient in form, and in cases not arising from an inspection conducted by the personnel of the OMB, the Legal Services Division of the OMB shall issue a notice to respondent requiring him to file his verified answer within a non-extendible period of five (5) days.

A copy of the complaint and all other supporting documents and evidence shall be attached to the notice.

In cases of voluminous documents and/or object evidence, the same need not be attached to the notice provided however that the respondent is allowed to examine these voluminous documents and/or object evidence and make copies or photograph the same within the period to file the answer.

c) If a complaint is filed by the authorized personnel of the OMB in accordance with Section 9 hereof, the period to file the answer shall commence on the date when a copy of the complaint was served on the respondent or was left in the premises inspected.

d) Upon receipt of the last pleading filed, or upon expiration of the period to file the same, the Legal Services Division of the OMB shall forward the records of the matter to the duly constituted Hearing Committee or Commissioner as the case may be, for proper proceedings.

Section 11. Answer, a) The answer shall be verified. It must be in writing and must contain all material facts and applicable laws, including legible copies of all documentary evidence and sworn statements of witnesses. Defenses not contained in the answer are deemed waived.

b) The verified answer of the respondent and sworn statements of his witness shall be considered as their direct testimony.

Section 12. Personal knowledge, expertise, and competence. The parties and their witnesses shall state only matters of which they have personal knowledge, or of which they have expertise.

Section 13. Failure to File Answer, a) If the respondent fails or refuses to file his answer, he shall be deemed to have waived his right to file the same and the duly constituted Hearing Committee or Commissioner, as the case may be, shall proceed to resolve the matter based on the evidence on record.