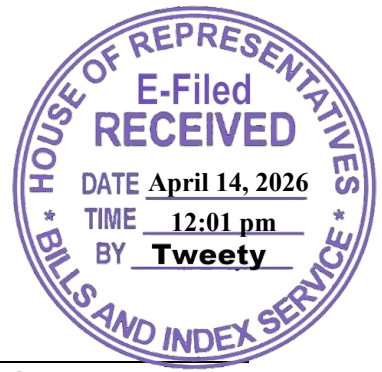


TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. 8858

EXPLANATORY NOTE

There is no denying that the rampancy of counterfeit optical and magnetic media had subsided over the years. This is due to the fact of the efficient and successful operations of the Optical Media Board (OMB) together with the participation of various stakeholders. Greater milestones have been achieved – such as the extirpation of various counterfeit optical media stalls located at Baclaran, Quiapo, Cebu, Cagayan De Oro, and Tuguegarao, as well as in other areas, all known to be hotspots of counterfeit optical and magnetic media stalls. However, counterfeit optical and magnetic media still persists in far-flung provinces wherein internet connection is unreliable. Due to limited manpower of the OMB, the entirety of the Philippines cannot be covered all at the same time.

Now, with the advent of high-speed internet connection, there is a drastic decline in the commercial viability of the optical and magnetic media encompassing Compact Discs (CDs) and Digital Versatile Discs (DVDs). Online internet streaming and cloud computing became the center stage for digital piracy. For this matter, the OMB has noted, in its continuous investigation to curtail piracy, the proliferation of various websites that are offering free online streaming of music, videos, and even hosting software and other media downloads without the legitimate grant, authorization, or franchise of the intellectual property right holder, owner, or creator.

In this modern day, a new set of laws should be created addressing the digital piracy previously proliferating through counterfeit optical media, but now found through the internet, and downloaded in various electronic data storage devices.

Hence, OMB finds the need to enforce a law against the same which shall also expand its jurisdiction to curb digital piracy without foregoing or enjoining its law enforcement from optical media stalls remaining in Metro Manila, and those located in the far flung provinces. The said new law must, therefore, further strengthen the law enforcement authority of OMB.

The Republic of the Philippines, as a member of the United Nations, imploring its obligation to the international community and international law, must enact updated laws, and enforce protection of intellectual property rights pursuant to the mandate of the Convention Establishing the World Intellectual Property Organization (WIPO) where this Republic is a member state.

It is, hence, imperative that this Congress, in the exercise of its power to take every step in order to honor such international obligation, and better protect intellectual property rights in the Philippines, take every conceivable step in an expeditious manner to modernize the Optical Media Act of 2003.

For these reasons, the passage of this bill is most urgently sought. Let this Bill of abolishing the OMB and creating for its expanded mandate the Omnibus Media Anti-Piracy Commission be given primary and urgent preference over other bills in this Congress.


RUFUS B. RODRIGUEZ


MAXIMO B. RODRIGUEZ, JR.

TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
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HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. **8858**

AN ACT

ABOLISHING THE OPTICAL MEDIA BOARD, REPEALING REPUBLIC ACT NO. 9239 THE OPTICAL MEDIA ACT OF 2003, AND CREATING THE DIGITAL MEDIA ANTI-PIRACY COMMISSION

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

**Title I
General Provisions**

Section 1. Short Title. – This Act shall be known as “The Digital Media Act”.

Section 2. Declaration of Policy. –It is hereby declared to be the policy of the State to ensure the protection and promotion of intellectual property rights.

The unregulated mastering, manufacture, replication, importation, exportation duplication, production, rental, distribution, and reproduction of optical media in all forms, the transfer of copyrighted digital information into electronic storage devices, and the unauthorized downloading, uploading, and streaming thereof, are inimical to economic growth and public interest. Towards this end, the State shall institute the means to regulate the manufacture, mastering, replication, importation, exportation, duplication, production, and reproduction of optical media, as well as, the transfer of copyrighted digital information into electronic storage devices whether via downloading, uploading, and streaming thereof to and from online resources.

Section 3. Definition of Terms. – For the Purpose of this Act, the following terms shall mean:

(a) Economic Zone - the Special Economic Zones, Industrial Estates, Export Processing Zones and Free Trade Zones as defined in Republic Act No. 7916 or the PEZA Law including the Clark Special Economic Zone, the Cagayan Special Economic Zone, the Zamboanga City Special Economic Zone, the Subic Bay Freeport and other economic zones now in existence in the Philippines or as may be established in the future;

(b) Commercial Purpose – refers to business, transactions, events, or affairs primarily intended for or directed towards mercantile advantage, monetary compensation, compensation of whatever nature, barter, or profit in relation to the subject of video, sound, music, photographs, software or any matter that can be registered as a copyright, patent, or trademark under the IP Code and related laws;

(c) Commercial Quantity– any amount necessary in order to make a commercial purpose satisfied, completed, perfected or delivered;

(d) Commission – shall refer to the decision-making body of the DMC composed of a Chairman, and four Member-Commissioners as provided under Section 5 hereof;

(e) DMC – the Digital Media Anti-Piracy Commission;

(f) Digital Information – refers to any records, documents, papers, reports, books, photographs, data, research materials, films, sound and video recording, or any form of sensory stimulant capable to be received, and perceived by the ocular, auditory, olfactory, gustatory, and tactile nerves of the human body, stored or archived in file formats cognizable by electronic devices. Such information must be capable of being a subject of a copyright, patent or trademark under the IP Code;

(g) Distribution – refers to the process of making optical or magnetic media, as well as other copyright protected works available for the consumption of the public other than by simple sale or retail. This term shall include making the items mentioned available to the public by renting out or leasing out. This term shall likewise include public exhibition of the copyrighted works themselves.

(h) Electronic device – a platform, media, or instrument intended to store, present, showcase, exhibit, detail, or manifest any form of digital information. Examples of this include cellphones, computers, smart televisions, smart watches, hard disc drives, solid state drives, flash drives, memory cards, and any instrument capable of storing, showing, exhibiting, detailing or manifesting any form of digital information, as well as technical variations and future iterations of said devices which may be developed or produced.

(i) Electronic file transfer – the transfer and/or transmission of digital information from one electronic device to another regardless of the form or means of transfer whether such be wireless or through conventional means or through other forms of technology yet to be developed in the future.

(j) Intellectual Property Code (IP Code) – Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines;

(k) License – the authority granted by the Omnibus Media Anti-Piracy Commission to engage in activities enumerated under Section 16;

(l) Magnetic Media - a storage medium or device characterized by a base, usually plastic, coated with ferric oxide powder, and/or any other means as may be developed in the future, 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, floppy discs, and hard disk drives encompassing the universal serial bus (USB) drives otherwise known as flash drives, external portable hard drives, and hard drives of whatever form or nature capable of storing digital information, as well as those which shall be listed in the Implementing Rules and Regulations (IRR) of this Act among others;

(m) Manufacture - the act or business of producing optical and magnetic media, transfer of digital information to electronic device or devices to 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 and magnetic media;

(n) Manufacturing Equipment - any and all equipment, machine or device, now known or to be known in the future, intended or designed for the production or manufacture, by mastering replication and/or duplication of optical media, optical media masters, or production parts thereof, including but not limited to, those which shall be listed in the Implementing Rules and Regulations (IRR) of this Act or as prescribed by the DMC. For the purpose of this Act, optical

disc writers and such other devices used in personal computers not for commercial purposes shall not be considered as manufacturing equipment;

(o) 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;

(p) Mastering - the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;

(q) Optical Media - a storage medium or device in which information, including sounds and/or images, video, or software code, or if digital information has been stored, either by mastering replication and/or duplication, 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 be limited to, devices which shall be listed in the IRR of this Act, or as prescribed by the DMC;

(r) Production – the process of making digital information including its mastering, reproduction, duplication, replication, and storage of the same into any electric device, optical and magnetic media, hard disk drives, and related similar media capable of storing any digital information;

(s) Digital Piracy – the act of mastering, reproduction, duplication, replication, distribution, and storage of the any copyrighted work into any electronic device, optical and magnetic media, hard disk drives, and related similar media capable of storing any digital information, or exhibition of said works, whether for free or with payment in any establishment or digital platform, or selling the same to the general public, or any private individual for commercial purpose without the legitimate authority, franchise, grant, or permission from the intellectual creator, publisher, record company, or Intellectual Property Right Owner, Holder or Creator;

(t) 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, through burning on protected works on CDs, VCDs, or DVDs, or by transferring or copying of the protected works in other electronic devices;

(u) Reproduction– the process of making or producing a copy of digital information into any electronic device, optical and magnetic media, hard disc drives, or any device capable of storing digital information;

(v) Service Provider – refers to either:

- i. On-line services or network access or the operator of facilities therefor, including entities offering the transmission, routing, or providing of connections for online communications, digital or otherwise, between or among points specified by a user, of electronic documents of the user's choosing; or
- ii. The necessary technical means by which electronic documents of an originator may be stored and made accessible to designated or undesignated third party.

Such service providers shall have no authority to modify or alter the content of the electronic data message or electronic document received or to make any entry therein on behalf of the originator, addressee or any third party unless specifically authorized to do so, and who shall retain the electronic document in accordance with the specific request or as necessary for the purpose of performing the services it was engaged to perform.

(w) Source Identification Code or SID Code– a system of codes to identify the source of all optical media mastered, manufactured or replicated by any establishment or entity;

(x) Transportation – the act and means of moving an omnibus media from one location to another either from manufacturer to a distributor or retailer, or from a distributor or retailer to a customer, or its legal meaning under the Code of Commerce as amended;

(y) Omnibus Media – any form of electronic device capable storing digital information for commercial purpose;

(z) File Transfer Protocol– transferring of files between any computers that have an Internet connection. There are two types namely:

- i. Uploading – transferring files from a client computer to a server computer;
- ii. Downloading – transferring from a server computer to a client computer;

Section 4. Scope. – This Act shall provide the framework for the abolishment of the Optical Media Board, and the creation of the Omnibus Media Anti-Piracy Commission, including the enforcement and investigation of the crimes defined in this Act, the prosecution thereof, the disposition and ruling of the quasi-judicial powers of the newly created Commission, the registration, licensing, and regulation of the optical and magnetic media, and storage devices, and the establishment of technical standards to be used in updating the list of storage devices with propensity to be used as an electronic device storage.

Title II

The Digital Media Anti-Piracy Commission and its Divisions

Chapter I

The Chairman and Four Member-Commissioners

Section 5. Abolishment of the Optical Media Board and Creation of the Digital Media Anti-Piracy Commission (DMC). – In order to improve the enforcement and campaign against Digital Piracy, the Optical Media Board shall be abolished, and, there is now, hereby created the Digital Media Anti-Piracy Commission (DMC) composed of a Chairman and four Commissioners to be appointed by the President, except in so far as provided in the transitory provisions hereof.

Section 6. Qualification of the Chairman and the Commissioners – The Chairman, as well as the four Member-Commissioners, shall be appointed by the President, and will each serve seven years except for those holding the transitory position of Commissioner under the transitory provisions of this Act.

The Chairman, and the Commissioners shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least Forty (40) years of age, must not have run in the past two preceding elections whether for a national or local elective post, and of recognized competence in any of the following fields: law, law enforcement, intellectual property right advocacy, commerce, information technology engineering, computer programming, web developing, information technology audit, or management of the administrative functions of a government agency, government instrumentality, or government owned or controlled corporations, with additional qualifications as herein mandated: *Provided*, That out of the five (5) members of the Commission, including the Chairman, at least three (3) of them shall be members of the Philippine Bar with at least eight (8) years of experience in the practice of law concurring with the additional requirements for their respective positions, and one (1) shall be a certified public accountant with at least eight (8) years cumulative experience in any scope of practice under Section 4 of R.A. No. 9298 Philippine Accountancy Act of 2004.

The Chairman must be a member of the Philippine Bar and shall act as the Chief Executive Officer of the DMC with additional qualification concurring with his eight (8) years of

law practice of at least two years of experience in litigation, and at least five years active experience involving intellectual property rights.

Of the four Commissioners, the First Commissioner shall be in-charge with the oversight function for the Registration and Licensing, and issuance of Permits for legitimate businesses engaged in the various activity defined and enumerated in this Act, including the cancellation of such licenses or permits with the concurrence of both the Chairman, - Commissioner with oversight for Legal Division, and the Hearing Lawyer handling the case. This Commissioner must have the additional qualification of at least five (5) years of experience in the civil service, three (3) years experience involving intellectual property rights, and two years of experience with frontline government services transacting with the general public.

The Second Commissioner shall be in-charge with the oversight function for the Enforcement and Investigation with an additional qualification of five (5) years of experience in any law enforcement agency, three (3) years of experience involving intellectual property rights, and two (2) years of experience involving information technology.

The Third Commissioner shall be in-charge with the oversight function for both the Legal Division for its efficient operation, and the Information Technology Division for the continuous update of what electronic devices can be used as storage devices for any digital information that can be a subject of copyright, patent or trademark. This Commissioner must be a Member of the Bar in the Philippines, and with eight (8) years of experience in the practice of law.

The Fourth Commissioner shall in be in-charge with the oversight function of both the administrative and financing division and with additional qualification of being a Certified Public Accountant with at least eight (8) years of experience in any scope of practice of Accountancy in the Philippines as set forth under Section 4 of R.A. No. 9298 Philippine Accountancy Act of 2004.

Section 7. Compensation and Other Emoluments for DMC Personnel. – The compensation and other emoluments for the Chairman and members of the Commission and the DMC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the Salary Standardization Act. For this purpose, the schedule of compensation of the DMC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission shall be submitted for approval by the President of the Philippines together with the General Appropriations Act for the fiscal calendar year in consideration. The new schedule of compensation shall be implemented within three (3) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: Provided, that in no case shall the rate be upgraded more than once a year.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Court of Appeals, respectively. The Chairman and the members of the Commission, upon completion of their term or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Presiding Justice and Associate Justices of the Court of Appeals, respectively.

Section 8. Innovation of Technical Competence. – The DMC shall establish rigorous training programs for its personnel for the purpose of enhancing the technical competence of the DMC in the following areas: evaluation of technical performance and monitor compliance with service and performance standards, performance-based rate-setting reform, environmental standards, internet competence standards, artificial intelligence standards, and such other areas as will enable the DMC to adequately perform its duties and functions.

Section 9. General Powers and Functions of DMC. – In addition to the quasi-judicial function of the DMC, the following shall be the general powers and functions of DMC:

- a) Formulate and implement such policies and programs as are necessary for the accomplishment of the purposes of this Act, with innovations for technological advancements in digital piracy;
- b) Evaluate the qualifications of any individual or juridical entity with establishment engaged in the mastering, manufacture, replication, importation, exportation, duplication, production, distribution, and reproduction of optical media in all forms, the transfer of copyrighted digital information into electronic storage devices, and the downloading, uploading, and streaming. For the purpose of this Act, the entity seeking registration and licensing shall exhibit its capacity to perform the acts to be registered, and state explicitly in the application forms the sources of raw materials, copyrights, patent, or any other form of intellectual property for which such grant of use were granted including the addresses of the grantor or source;
- c) Supervise, regulate, grant, renew, and cancel registrations and licenses upon evaluation of the DMC Legal Division pending dispositions of administrative or criminal cases;
- d) Conduct enforcement inspection operations by itself, or in coordination with other competent agencies of the government, at any time, with or without prior notice, of establishment or entities including those within economic zones, TIEZA designated areas, and other areas where digital piracy proliferate, and employ reasonable force in the event that the responsible person or persons of such establishment or entity evades, obstructs, or refuses such enforcement inspection operations. For this purpose, the agents, investigators, and any personnel of the DMC shall be considered agents of persons in authority;
- e) Apply for search warrants and warrants of arrest from any court of law in addition to Section 14 of this Act regarding the power to take into preventive custody any prohibitive articles, optical and magnetic media, and digital storage devices;
- f) Act as complainant in the criminal prosecution of violators of this Act;
- g) Hear and resolve administrative cases as enunciated in Section 10 hereof establishing the quasi-judicial powers of the DMC, as well as execute the resolutions of the mentioned administrative cases by means of garnishment, distraint, levy, forfeiture, foreclosure, and other means necessary to fully comply with the mandates of this Act;
- h) May call upon, whenever necessary, law enforcement agencies and the managing authorities in the economic zones, as well as owners of establishments, and local government units, for assistance in the implementation and enforcement of its decisions, orders, rules and regulations;
- i) To deputize, whenever necessary, provincial governors, city and municipal mayors, and representatives of the national government agencies, organizations representing copyright owners, neighboring right owners and legitimate stakeholders to help monitor the compliance with and report to the DMC any violation of this Act;
- j) Require registered persons and entities to keep and maintain true and complete records of all activities related to the conduct of its business in relation to optical and magnetic media, online streaming, downloading and uploading digital files of all kinds whether music, movie, program or software excluding banking transactions but any software, program, or application downloaded or uploaded online even if in relation to banking shall be within the jurisdiction of the DMC, and should register with DMC;

- k) Levy, assess, and collect, and periodically adjust and/or revise the rates of fees and charges for the issuance of licenses granted under this Act;
- l) Establish support offices as may be necessary;
- m) Create and maintain a database, and regularly publish data containing the list and activities of registered and/or licensed optical media and other related establishments. Any enforcement agency, including the Bureau of Customs, may refer to this database for enforcement and/or seizure;
- n) Prescribe the internal and operational procedures for the exercise of its powers and functions, the performance of its duties and responsibilities and other related matters encompassing the seizure or forfeiture of properties and assets derived from, in connection with, or intended to be used to violate the provisions of this Act;
- o) Stop, board and search any vessel or vehicle which is reasonably suspected of containing items/equipment in violation of the provisions of this Act, without a warrant issued by any court, if the delay necessary to obtain a warrant could result in the loss or destruction of evidence, or for any other reason when obtaining a warrant is not practicable. Provided, that there shall be an official written order from the Commission signed by the Chairman; and
- p) Exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act, and to perform other related duties and responsibilities as may be found urgent and necessary by the Commission;

Chapter II

Quasi-Judicial Function of DMC and the Legal Division

Section 10. Quasi-Judicial Function of the DMC. – The DMC Legal Division acting through its Chief shall be granted the primary jurisdiction to hear and decide cases involving Digital Piracy for all administrative violations thereon as defined and provided for in this Act. In relation to this power and function, DMC shall have the power to subpoena or subpoena duces tecum to compel the attendance of witnesses and production of documents and other effects;

The DMC Chief of Legal Division must have the qualification of having five (5) years practice of law, and must not have run in the past election as candidate in any elective position.

The DMC Chief of Legal Division shall be appointed by the Chairman of the DMC, and at the same time must abide by the Civil Service Commission requirements for hiring government employees.

The administrative cases are those whose resolutions would only involve the payment of compromise penalties, fines, and penalties in general to the Commission.

The decisions, resolutions, and orders of the DMC Chief of Legal Division must cite thereon the factual and legal bases.

In the absence of the Chief of the Legal Division, the Deputy Chief for the Legal Division shall take over in an acting capacity this quasi-judicial function of this Division.

The decisions, resolutions, and orders signed and issued by the DMC Chief of the Legal Division shall become final and executory within fifteen (15) days from receipt of the respondents or parties involved.

From the time of enactment of this Act, the DMC Legal Division shall issue its Rules of Procedure to be followed in the disposition of the administrative cases.

From time to time, the DMC Legal Division shall update the Rules of Procedures to conform with the innovations in modern technology with emphasis on Digital Piracy.

Section 11. Appellate Jurisdiction of the DMC. – The Chairman and the Commissioners shall have the appellate jurisdiction with respect to the petitions for appeal arising from the administrative cases decided by the DMC Chief of Legal Division.

Respondents shall have fifteen (15) days from the receipt of the decision, resolution, or order of the DMC Chief of Legal Division to file their appeal to the Commission.

The Commissioners shall act as a collegiate body in their decision on whether or not to reverse, modify or affirm the decisions, resolutions, or order of the DMC Chief of Legal Division on administrative cases presenting therein the factual and legal bases of such decision.

Only in cases of a tie among the Four Commissioners shall the Chairman be required and allowed to vote and provide therein either his or her concurring or dissenting decision based upon the factual and legal bases.

The Chairman, at most, shall only preside in the appellate proceedings of the Commission in the exercise of its appellate jurisdiction.

The Commission shall issue its separate Rules of Procedures pursuant to its appellate jurisdiction.

Section 12. Prosecutorial powers of the Commission. – The Commission acting through its DMC Deputy Chief of Legal Division shall be the lead government agency prosecutor involving all cases of Digital Piracy. The City or Provincial Prosecutor, as the case may be, shall coordinate with the DMC Deputy Chief of Legal Division regarding the control and supervision of the case.

Except in cases where the venue and jurisdiction of the trial shall be outside Metro Manila, the handling Prosecutor shall take full charge in the prosecution of the offenses hereby found in this Act.

Section 13. Power to close establishments, and cancel business registrations. – Businesses and other establishments found violating the provisions of this Act shall be ordered temporarily closed by the DMC pending the resolution of the administrative case, and must settle the administrative penalties, without prejudice to the prosecution of any criminal case, in relation thereto. As regards establishments adjudged with finality of committing a violation of any provision of this Act, the same may be ordered permanently closed.

In reference to the pending cases whether administrative or criminal, the closed establishment shall remain closed during the pendency of the proceedings.

Section 14. Power to take into preventive custody optical and magnetic media, and all forms of digital storage devices. – The Commission acting through its Intelligence Officers, Investigators, and Agents shall be hereby empowered to confiscate various articles encompassing optical and magnetic media and all forms of digital storage device, if found not registered with the DMC, or if violative of the provisions of this Act.

Section 15. Power of the lawyers of DMC to carry firearms. Herewith recognized are the consideration that the lawyers of DMC are under extreme danger in consideration of various cases involving omnibus media piracy. In order to protect themselves, they are with allowed and permitted to own, possess, and always carry firearms in order to better protect themselves. A mission order shall be herewith issued by the Chairman renewable every five years for the permit to own, possess, and carry firearms with live ammunitions.

Chapter III **Registration and Licensing**

Section 16. The following activities need prior registration with the DMC before engaging in actual conduct of business, importation, or exportation:

- a. Importation, exportation, acquisition, sale or distribution of optical media products, and digital storage devices of any kind including future developments in technology to which digital media file shall be stored;

- b. The mastering, manufacture, replication, importation or exportation of optical media;
- c. Importation, exportation, acquisition, sales or distribution of optical media manufacturing equipment, parts and accessories and manufacturing materials;
- d. Possession or operation of manufacturing equipment, parts and accessories, or the possession acquisition, sale or use of manufacturing materials for the mastering, manufacture, replication, duplication, production, and reproduction of optical media;
- e. Transportation of optical media products, its manufacturing equipment, parts and accessories, and manufacturing materials;
- f. Possession and/or use of optical and magnetic media products, and digital storage devices for commercial purpose;
- g. Those engaged in streaming movies, music, and online content subject to intellectual property registration such as trademark, copyright or with reference to a patented product;
- h. Those engaged in online and offline selling for downloads any available media file composed of movies, music, videos, electronic magazines, electronic books, and other intellectual property registrable content;
- i. Those engaged in repairs, maintenance, and restoration of any kind of electronic storage device capable of storing media files of whatever nature such as software, music, videos, recorded podcasts, or any electronic file at all in whatever form or format they may be;
- j. Those engaged in renting computers to the general public at large.

This section applies also to future developments in technology to include future forms of electronic and non-electronic storage devices capable of storing media such as music, videos, software, programs, and all sorts of files in whatever form or format such may be.

Section 17. DMC License and Registration as a Condition Precedent. – No local government unit business permit, including Barangay Permit, shall be issued absent the DMC License and Registration contemplated in the preceding section.

In addition, no TIEZA and PEZA accreditations and registration under R.A. No. 9593 and R.A. No. 7916 shall be issued without DMC License and Registration as herein provided.

Further, no importation and exportation shall be allowed by the Bureau of Customs for covered articles under this Act, unless the necessary DMC License and Registration shall be issued.

Section 18. One Branch, One DMC License and Registration. – Those engaged or intending to engage in more than one of the above mentioned activities and/or conduct or intend to conduct business in more than one location shall separately register with and secure the license from the DMC for every business activity at each place of business.

No business activity registered and licensed by the DMC for a specific place of business shall be conducted in a place and/or location other than that indicated in the license, without the prior written approval of the DMC. The registration and license issued by the DMC shall be prominently displayed at the designated place of business.

Section 19. Form, Term, Amendment and Renewal of License. – Every license shall be in a form prescribed by the DMC and shall be valid for a period of not more than two (2) years

subject to conditions as the DMC may impose. The DMC may amend or renew a license upon application made by the licensee in accordance with this Act.

Failure to register and obtain a license from the DMC shall automatically cancel any permit, license or registration issued by any national or local government unit, agency or office.

Section 20. Grounds for Non-issuance or Non-renewal of License. - The Commission acting through the Registration and Licensing Division may refuse to grant a license, or to renew a license, upon the following grounds:

- a) The applicant has failed to comply with any requirement imposed by the Commission pursuant to this Act and its implementing rules and regulations;
- b) The applicant or, in the case of juridical persons, any of its officers, directors, managers, shareholders, or partners, is convicted by final judgment of an offense under this Act or any law relating to the protection of intellectual property rights;
- c) The application involves a place, location or premises where an offense has been committed under this Act or under any law relating to the protection of intellectual property rights: *Provided*, That the offenders have finally been convicted of such offense;
- d) The applicant has furnished the Commission with any false or misleading information in connection with any application for or renewal of a license; or
- e) The applicant has been previously issued a license that has been cancelled for cause within the preceding five (5) years from the date of the application.

The Commission shall decide whether or not to grant or renew a license within fifteen (15) working days from the filing of the application.

Section 21. Grounds for Suspension or Cancellation of License. - The Commission may, motu proprio or upon motion of any interested party, after notice and hearing, suspend or cancel a license on any of the following grounds:

- a) when requested by the license holder;
- b) when the license holder has ceased to engage in the activities authorized under the license or in the place, location or premises indicated in the license;
- c) when the license holder has been convicted by final judgment of an offense under this Act or under any other Law relating to the protection of intellectual property rights; or
- d) when the license holder is in breach of, or is unable to comply with any of the conditions prescribed in the license.

Section 22. Registration of Present Licenses. – All existing establishments or entities in the Philippines engaged in activities enumerated in Section 16 shall, within thirty (30) calendar days after the effectivity of the rules and regulations implementing this Act, register with and secure the necessary licenses from the Commission.

Section 23. Source Identification (SID) Codes. – The Commission shall determine, develop and/or adopt a system of Source Identification (SID) codes that is of international recognition and acceptance for optical media.

The Commission shall prescribe SID codes for all persons, establishments or entities registered with and licensed by the Commission to engage in the mastering, manufacture or replication of optical media, including such other codes as it may determine or require. Such codes shall be applied to each and every optical media mastered, manufactured or replicated including glass masters, stampers or other parts used for the manufacture of optical discs.

The SID Codes shall be visible and legible and must conform to such specifications as prescribed by the Commission.

Chapter IV Enforcement and Investigation

Section 24. Efficient Use of Funds. – Pursuant to the Audit Rules of the Commission of Audit, and in keeping with public health and order, the DMC shall propose, from time-to-time, pecuniary rewards to informers, assets, and intelligence sources. Such rewards must first be approved by the Commission, and shall be disbursed after due enforcement operations.

Section 25. The right of the Agents of the Commission to bear firearms. – All Agents of DMC duly appointed and enjoying plantilla positions shall be hereby granted the right to bear firearms. Likewise, they are annually to be apprised of their use of the firearms, and must mandatorily enter into gun handling seminars, hostage taking situation seminars, and intelligence operations seminars.

Section 26. Mandatory Duty of the Agents of the Commission to learn Martial Arts. – In the course of operations, firearms may not be allowed to be carried, pursuant to the safety assessments of the Commission and the Chief of the Enforcement and Investigation Division, in these cases, the Agents are herein required to be skilled of in the field of hand to hand combat. Hence, they are required to undergo annual trainings for martial arts.

Section 27. Power to deputize. – Only the Commission can deputize certain individuals deemed appropriate to conduct and join in the enforcement operations of the Commission.

Chapter V Administrative and Financing Division

Section 28. The Administrative and Finance Division. – This division shall handle the human resource function, public information and communications function, accounting function, planning function, internal audit service, and such other support services to be needed in the operation of the Commission.

The Chief of this Division shall be in charge to regulate and govern the said functions for the complete support of the Legal Division works, and Enforcement and Investigation Division works.

Section 29. Communications with Civil Service Commission and Interagency Efforts. – This Division shall solely be responsible in the communications and liaison with the Civil Service Commission and other government agencies, government instrumentalities, government owned and controlled corporations, and other departments of the government.

Chapter VI Information Technology Operation Division

Section 30. The Cyber Arm of the Commission: Information Technology Operation Division. – This Division shall be solely responsible in regulating online content and online sources of multiple media available for download. This Division must pinpoint, triangulate, and determine the data transmissions and physical electronic data sources of those websites, and other online resources to which unlicensed software, music, videos and other forms of media are available.

Section 31. Qualification of the Information Technology Operation Division Chief. – The Chief of this Division must have five (5) years meaningful experience in online network systems monitoring, network administration, and have experience in online security of data and website contents.

Section 32. Cyber Operatives of the Commission. – The Cyber Operatives of the Commission must be those with two (2) years meaningful experience in network security and network administration.

Section 33. Mandatory Annual Trainings for Developments in Online and Network Information Technology. – The Agents and the Chief of this Division must undergo annual trainings, seminars, symposia, and similar opportunities in order to update themselves for the changes in information technology in terms of network systems, and better trace online sources of unauthorized, and unlicensed streaming and downloading of various media such as but not limited to changes music, video, software, and other applications.

Title III Penal Provisions

Chapter I Offenses and Penalties

Section 34. Offenses and Penalties. –

(a) Imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years, at least three (3) years but not more than six (6) years, and a fine of not less than Five Hundred Thousand Pesos (Php 500,000.00) but not exceeding Three Million Pesos (Php 3,000,000.00), at the discretion of the Court, shall be imposed on any person, natural or juridical, who shall:

1. Engage in the importation, exportation, acquisition, sale, or distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the DMC;
2. Engage in the mastering, manufacture, replication, importation, exportation, duplication, production, distribution, and reproduction of optical or magnetic media, as well as other copyrighted works without the necessary license from the DMC;
3. By himself, or through another, cause the mastering, manufacture, replication, duplication, production, and reproduction of any intellectual property in optical or magnetic media, as well as in other electronic devices, intended for commercial purpose without authority or consent of the owner thereof;
4. Engage in the mastering, manufacture, replication, duplication, production, distribution, and reproduction of optical media without affixing or installing in the resulting products the SID Code, and/or such other codes prescribed, assigned and authorized by the DMC. The absence of the codes prescribed, assigned and authorized by the DMC in any optical media shall be prima facie evidence that said optical media are in violation of this Act;
5. Engage in the mastering, manufacture, replication, duplication, production, and reproduction of optical media using, affixing or installing in the resulting products false SID codes and/or other codes that have not been authorized by the DMC. The presence of false or unauthorized codes shall be prima facie evidence that said optical media are in violation of this act;
6. Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes that have been assigned by the DMC to another person, or, having been assigned and authorized said codes by the DMC, allow or authorize another person, establishment or entity to use, affix or install such codes in the latter's products;

(b) Imprisonment of not less than six (6) months and one (1) day but not more than six (6) years, at least one year but not more than three years and a fine not less than One Hundred Thousand Pesos (Php 100,000.00), but not exceeding Five Hundred Thousand Pesos (Php 500,000.00), at the discretion of the Court, for the following offenses:

1. Engaging in the importation, exportation, sale or distribution of, or possess or acquire in commercial quantities manufacturing materials used or intended for use in the mastering, manufacture or replication of optical or magnetic media without the necessary licenses from the DMC;
2. Knowingly performing or rendering the service of mastering, manufacture, replication, duplication, production, distribution, and reproduction of optical or magnetic media, after having been licensed by the DMC, to any person, in respect of any intellectual property, who does not have the consent by the owner of the intellectual property or his representatives or assigns;

For this purpose, any person, establishment or entity that is licensed by the DMC to engage in the above mentioned activities shall be considered to have acted in good faith in respect of any transaction entered into by him in respect to the preceding paragraph, if he notifies the DMC of such transaction within five working days from receipt of the order, furnishing to the DMC all material information thereof;

3. Refusing to submit to inspection by the DMC, or surrender for preventive custody any optical or magnetic media, gadgets or devices, equipment, manufacturing materials, including parts, accessories and paraphernalia found during inspection operations to be in violation of the provisions of this Act;

For purposes of this subsection, violators who will employ armed resistance against agents of the DMC shall be penalized under other applicable laws in addition to those provide in this Act; and

(c) Imprisonment of not less than one (1) month and one (1) day but not more than six (6) months and 90 days or a fine of not less than Twenty five thousand pesos (Php 25,000.00) but not exceeding Fifty thousand pesos (Php 50,000.00), at the discretion of the Court;

1. Knowingly possess items of the same content or title, produced in violation of this Act, and used for the purpose with the intent to profit;
2. Engaging in the sale, rental, distribution, importation, exportation of, transportation or any other commercial activity involving optical media that are in violation of this Act.

(d) For subsequent offenses in Section 33(a) uniform imprisonment of six (6) years but not more than nine (9) years and the fine of not less than Three Million Pesos (Php 3,000,000.00) but not exceeding Six Million Pesos (Php 6,000,000.00), at the discretion of the Court, shall be imposed.

(e) For subsequent offenses in Section 33(b), uniform imprisonment of three (3) years but not more than six (6) years and a fine of not less than Five hundred thousand pesos (Php 500,000.00) but not exceeding One million five hundred pesos (PHP 1,500,000.00) at the discretion of the Court, shall be imposed.

The offenses listed under this section shall be punished without prejudice to the application of appropriate penalties or sanctions provided under Section 216 and such other appropriate sections of the IP Code or Republic Act No. 8792 also known as the Electronic Commerce Act, the Revised Penal Code or other applicable laws.

The Administrative Fines and Penalties of the DMC shall be defined under the Implementing Rules and Regulation of this Act but such fines and penalties shall not exceed the penalties herein under provided.

Section 35. Determination of Penalties. - In determining the number of years of imprisonment, or amount of fine to be imposed, the court shall consider the size of the operations of the offender, the value of the articles involved in the violation, and the period of violation. In imposing administrative penalties, the DMC shall likewise consider the said circumstances.

Section 36. Persons Liable. - If the offender is an alien, the person shall immediately be deported after serving his sentence, and shall, thereafter, be refused entry into the country.

If the offender is a government official or employee, he shall suffer perpetual disqualification from public office and forfeiture of his right to vote.

Should the offense be committed by the juridical person, the owner, president, chairperson, administrator, and its responsible officers shall be liable.

Section 37. Enforcement - The DMC may solicit the direct assistance of other agencies, the managing authorities in the economic zones and instrumentalities of the national and local governments, and may deputize for a limited period the heads or personnel of agencies to perform enforcement functions for the DMC, insofar as such functions are concerned shall be subject to the direction and supervision of the DMC.

Section 38. Disposal of Seized Materials. - Any optical media, equipment or materials found to be in violation of the provisions of this Act, any books, records, or paraphernalia providing evidence of any violation committed by any person, establishment or entity, shall be confiscated and forfeited in the favor of the government and shall be disposed in accordance with pertinent laws and regulations: *Provided*, That confiscated optical media may, pending consideration of the case, be immediately destroyed upon final determination by the DMC in an administrative case, or by a court in a civil or criminal case, that are the same are in violations of this Act: *Provided, further*, That a sufficient representative sample shall be retained for evidentiary purposes.

The retained representative sample shall remain in custodia legis until the final resolution of proceedings thereon.

Equipment and materials imported of this Act shall be subject to seizure and immediate disposal by the Bureau of Customs.

Title IV Transitory Provisions

Chapter I The Role of the Incumbent Optical Media Board Officers

Section 39. The Chairman of the DMC as appointed by the President from the time of effectivity of this Act shall serve for seven (7) years. The First Commissioner, who shall likewise be appointed by the President, shall serve for six (6) years. The incumbent Chief of Legal Division of Optical Media Board shall be the Second Commissioner and shall serve for five (5) years. The incumbent most senior Lawyer in the Optical Media Board shall serve as the Third Commissioner for four (4) years. Fourth Commissioner, as appointed by the President, shall serve for three (3) years. All succeeding appointments for the positions mentioned in this Section shall serve for seven (7) years to allow for staggered turn-over and to promote continuity in the DMC.

Section 40. The Chiefs from the other Divisions shall remain secured in their positions and will be retained as Chiefs of their respective Divisions during the migration from Optical Media Board to DMC.

Section 41. The current other officers and employees of the Optical Media Board shall continue to perform their duties and functions in a hold-over capacity, and shall receive their

corresponding salaries and benefits until such time that the plantilla positions be identified and organized by the Commission.

Section 42. The current officials and employees of the Optical Media Board shall be given priority, on the basis of experience, merit and fitness, in appointments to new positions to which they may qualify under the new staffing pattern: *Provided*, That those who shall be given new appointments shall be entitled to all compensation and benefits due them under existing laws: *Provided, further*, that those who shall be separated from service shall receive all separation pay and benefits due under existing laws.

The transition period shall not exceed six months after effectivity of this Act.

Section 43. Transfer of Funds, Assets, Liabilities and Records. – All unexpended appropriations, real and personal property, contracts, records, documents, and assets and liabilities of the OMB shall be transferred to the DMC.

Section 44. Regulation of Magnetic Media. - The provisions of this Act shall apply mutatis mutandis to the regulation of magnetic media and its derivative products such as hard drives, universal serial bus (USB) storage devices, flash drives, and any electronic storage device of media files such as but not limited to software, videos, and music.

Section 45. On-going Administrative Cases. – The pending Administrative Cases during the effectivity of this Act shall likewise be continued to be litigated and proceed accordingly solely on the basis of R.A. No. 9239.

Section 46. Prosecution of Pending Cases - for the purpose of this Act, all pending cases for violation of Presidential Decree No. 1987, and R.A. No. 9239 shall continue to be prosecuted.

Title V

Miscellaneous Provisions

Section 47. Organization Structure - the organizational structure and staffing pattern of the DMC shall be established in coordination with the Department of Budget and Management (DBM) and in accordance with Civil Service laws, rules, and regulations. However, the same shall be exempt from the Salary Standardization Act.

Section 48. Period of Implementation - The DMC and the DBM shall prepare the necessary work programs to cover the staggered implementation of this Act for a period not exceeding five (5) years.

Section 49. Appropriations. – Funds sufficient to carry out the functions and objectives of the DMC shall be appropriated every fiscal year in the General Appropriations Act. The appropriations for the Optical Media Board under the current General Appropriations Act shall be used to carry out the initial implementation of this Act. Thereafter, such sums as may be necessary for its implementation shall be included in the General Appropriations Act.

Section 50. Annual Report. - The DMC shall, within ninety days after the end of every fiscal year, submit to the President and to Congress an annual report on its accomplishments under this Act, together with its plans and recommendations to improve and develop its capability to enforce the provisions of this Act, and a complete accounting of transactions with respect to the use of income.

Section 51. Implementing Rules and Regulations. - The DMC shall within three months from the effectivity of this Act publish its Implementing Rules and Regulations.

Section 52. Separability Clause. - If, for any reason, any provision of this Act is declared invalid or unconstitutional, the other sections or provisions not so declared shall remain in full force and effect.

Section 53. Repealing Clause. - R.A. No. 9239 Optical Media Act of 2003, other laws, rules, regulations, decrees, executive orders, and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 54. Effectivity - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,