

## NOTICE TO THE PUBLIC

Please find the draft of the Rules of Procedure to be adopted by the Optical Media Board in accordance with to Section 34, Section 10 (g) and (n), and Section 23 of Republic Act No. 9239 otherwise known as the “Optical Media Act of 2003.”

The Public is hereby invited to submit their written comments/objections/suggestions to the foregoing draft, which shall be considered in the finalization of the said Rules. The deadline for the written submissions is on 30 July 2007.

### **RULES OF PROCEDURE IN ADMINISTRATIVE CASES BEFORE THE OPTICAL MEDIA BOARD**

**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 material 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;

“**WHEREAS**, pursuant to Section 34, Section 10 (g) and (n), and Section 23 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 promulgated:”

#### **RULE I Title and Preliminary Matters**

**Section 1. Title.** – These Rules shall be known as the OMB Rules of Procedure.

**Section 2. Coverage.** – These Rules shall apply to administrative cases or proceedings 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 brining 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 only in a suppletory character to these rules in the interest of justice and whenever practicable and convenient.

## 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 case, including any private person, employee, personnel, officer, agent, or inspector of the Optical Media Board;
- d) **“Implementing Rules and Regulations”** – the Implementing Rules and Regulations of Republic Act No. 9239 or the Optical Media Act of 2003 including the annexes thereto<sup>1</sup>;
- e) **“OMB”** – the Optical Media Board;
- f) **“Respondent”** – the person against whom a complaint was filed;
- g) **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.
- h) **IP Code** - Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines;
- i) **License** - the authority granted by OMB to establishments or entities registered with the OMB to engage in the business of mastering, manufacture, replication, importation or exportation of optical media;
- j) **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;
- k) **Manufacture** - the act or business of producing optical media or devices containing 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;
- l) **Manufacturing Equipment** - any and all equipment, machine or device, now known or to be known in the future, intended or design for the production or manufacture, by mastering and/or replication 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 OMB. 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;

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<sup>1</sup> This addition is suggested because attached to the IRR are numerous schedules.

- m) **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;
- n) **Mastering** - the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;
- o) **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 be limited to, devices which shall be listed in the IRR of this Act, or as prescribed by the OMB;
- p) **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; and

### **RULE III**

#### **Procedure in Administrative Cases**

**Section 6. Parties.** – Any person, natural or juridical, who has cause to complaint about any violation of R.A. 9239 or the Implementing Rules and Regulations promulgated pursuant thereto, may file a complaint with the Legal Services Division of the OMB against persons or establishments charged with such violation. The former shall be considered complainant, and the latter, the respondent.

**Section 7. Appearances.** – In all proceedings before the duly constituted Hearing Committee or a duly appointed Hearing Officer, it is preferred that the parties be represented by counsel who is a member of the Bar, provided however, that a party may appear before the Hearing Committee or Hearing Officer without the assistance of counsel if he so desires; and provided further, that any confession or admission of guilt of a party made without the presence and assistance of counsel may not be used against such party in any criminal action.

**Section 8. Complaint.** – a) The complaint shall be in writing and verified.

- b) It shall state complainant’s name, address, and government position, if applicable.
- 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 respondent’s physical appearance such as but not limited to gender, approximate age, weight, height, color of hair, and other distinguishing physical appearance.<sup>2</sup> 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 concise statement of facts constituting the violation, and the supporting evidence available.

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<sup>2</sup> This addition is suggested because there are instances where it is very difficult to determine the name of the respondent.

**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 II, of the Implementing Rules and Regulations, there is reasonable ground to believe that a violation of the Act or its Implementing Rules and Regulations has been committed, is being committed or is about to be committed, and optical media and/or manufacturing material or equipment, including parts, accessories and paraphernalia subject of such violation has been taken into preventive custody, a copy of complaint shall 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.

- 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 notice to answer, the serving officer shall leave a copies of these documents in the premises where the items where 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, 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 and/or substance, the Legal Services Division of the OMB shall dismiss the same *motu proprio*.

- b) If the complaint is sufficient in form and substance, and in cases not arising from an inspection conducted by the personnel of the OMB, the said office 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 within the period of five (5) days within which to file his verified answer to examine these voluminous documents and/or object evidence and make copies or photograph the same.
- c) If a complaint is filed by the authorized personnel of the OMB in accordance with Section 9 hereof, the period to file an answer shall commence on the date when a copy of the complaint was served on the respondent or was left in the premises wherein the items were taken for preventive custody.

- d) Upon the filing of the complaint with the Legal Services Division of the OMB, any optical media and/or material or equipment, including parts, accessories and paraphernalia taken in accordance with Section 10 (e) of the Act, and/or its Implementing Rules and Regulations may be held in preventive custody until the termination of the administrative case or until an order for its disposal, destruction or return is duly issued.
- f) 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 a duly appointed Hearing Officer, 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 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 a duly appointed Hearing Officer, as the case may be, shall proceed to resolve the matter based on the evidence on record.

- b) If the answer filed is not verified, the respondent is allowed to verify the same within the period remaining of the five (5) days for filing of the answer, which in no case shall be fewer than two (2) days, within which to verify the same. Answers which are not verified shall be considered as unsigned and *motu proprio* or upon motion of an interested party, shall be expunged from the records.

**Section 14. Reply.** – The complainant may opt to file his reply within five (5) days from receipt of the verified answer. The reply need not be verified.

**Section 15. Evaluation.** – If on the basis of the pleadings, documents and evidence submitted by the parties the duly constituted Hearing Committee or a duly appointed Hearing Officer, as the case may be, find no sufficient cause to warrant further proceedings, the complaint shall be dismissed. Otherwise, the parties shall be summoned to a preliminary conference to consider the following matters:

- a) Whether the parties are amenable to submitting the case for resolution on the basis of the complaint, answer, evidence on record and such other evidence, pleadings, position paper or memorandum as may be submitted during or after the preliminary conference;
- b) Whether the parties desire further proceedings to determine the nature of the charge, stipulation of facts, a definition of the issues, identification and marking of exhibits, waiver of objections to admissibility of evidence, limiting the number of witnesses, names of witnesses, and such other matters as may aid in the prompt and just resolution of the case;

- c) Whether there is a need for clarificatory hearings or dispensing with the cross-examination of the complainant, respondent, or their witnesses; and
- d) Hearing dates.

**Section 15. Hearings.** – a) Unless necessary, no hearing is required and the case may be determined based on the pleadings and other documents submitted by the parties. At this stage, the duly constituted Hearing Committee or a duly appointed Hearing Officer, as the case may be, at their discretion and for the purpose of making such determination, hold a clarificatory hearing and propound clarificatory questions to the parties and/or their witnesses, under oath, to further elicit facts and information.

- b) In case hearings are held, only those witnesses who have submitted their affidavits on or before the preliminary conference or specified date shall be allowed to testify. The affidavit of any witness shall constitute his direct testimony, subject to cross-examination by the other party. In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the duly constituted Hearing Committee or a duly appointed Hearing Officer shall be allowed.
- c) The hearings shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings.

**Section 16. Who may conduct hearings.** – a) Hearings may be conducted by the duly constituted Hearing Committee or by a duly appointed Hearing Officer, and any hearing conducted by either of these body/individual are deemed as a hearing before the Board.

- b) The Hearing Committee shall be composed of the Chairman, who shall be the presiding officer, the head of the Legal Services Division, a Board member from the private sector as determined by the Chairman.
- c) The Chairman may appoint a Hearing Officer, who must be a member of the Legal Services Division of the OMB. The Hearing Officer shall conduct the hearing for the Hearing Committee and accordingly render the decision.
- d) All decisions, orders, judgments, resolutions issued by the Hearing Committee or the Hearing Officer shall be approved and signed by the Chairman.

**Section 17. Role of the duly constituted Hearing Committee or a duly appointed Hearing Officer.** – The duly constituted Hearing Committee or a duly appointed Hearing Officer, as the case may be, shall personally conduct the conference and/or hearings. It/He shall determine the order of presentation of evidence by the parties, subject to the requirements of due process. It/He shall take full control of the proceedings, examine the parties and their witnesses to satisfy itself/himself with respect to the matters at issue, ask questions only for the purpose of clarifying points of law or fact involved in the case. It/He shall limit the presentation of evidence to matters relevant to the issue before it/him and necessary for a just and speedy disposition of the case.

**Section 18. Subpoena.** – Upon application to the Legal Services Division of the OMB, through the Hearing Committee or a duly appointed Hearing Officer, by either party and on meritorious ground, a subpoena *ad testificandum* and/or subpoena *duces tecum* may be issued to compel the attendance of witnesses and production of documents and other effects.

**Section 19. Presumptions.** – Unless rebutted, the following presumptions shall apply:

- b) Any optical media and/or manufacturing materials or equipment, including parts, accessories and paraphernalia found in the custody, use, possession or control of any person, establishment or entity engaged in: 1) importation, exportation, sale, distribution, rental, or any commercial purpose of optical media, 2) importation, exportation, acquisition, sale or distribution of manufacturing equipment, parts and accessories, and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media, 3) possession or operation of manufacturing equipment, parts and accessories, 4) possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media, 5) mastering, manufacture or replication of optical media, or 6) offering to the public with intent to profit the use of optical disc writers and rewriters, without first being registered with the OMB, or without a valid registration with the OMB, shall be presumed to have been imported, exported, acquired, sold, rented, distributed, possessed, operated, used, mastered, manufactured, replicated, or offered, as the case may be, in violation of the Act.
  
- c) Any optical media and/or material or equipment, including parts, accessories and paraphernalia found in the custody, use, possession or control of any person, establishment or entity engaged in: 1) importation, exportation, sale, distribution, rental, or any commercial purpose of optical media, 2) importation, exportation, acquisition, sale or distribution of manufacturing equipment, parts and accessories, and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media, 3) possession or operation of manufacturing equipment, parts and accessories, 4) possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media, 5) mastering, manufacture or replication of optical media, or 6) offering to the public with intent to profit the use of optical disc writers and rewriters, without first securing the appropriate commercial license or licenses issued by the OMB, or without a valid license issued by the OMB, shall be presumed to have been imported, exported, acquired, sold, rented, distributed, possessed, operated, used, mastered, manufactured, replicated, or offered, as the case may be, in violation of the Act.
  
- d) Any optical media and/or material or equipment, including parts, accessories and paraphernalia found in the custody, use, possession or control of any person, establishment or entity which refused to submit to any inspection being conducted by authorized personnel of the OMB, or refused to comply with a preventive custody order, or refused to surrender to the OMB for preventive custody, shall be presumed to have been imported, exported, acquired, sold, distributed, possessed, operated, used, mastered, manufactured, replicated, or offered, as the case may be, in violation of the Act.
  
- e) Any optical media and/or material or equipment, including parts, accessories and paraphernalia found in the custody, use, possession or control of any person, establishment or entity engaged in the mastering, manufacture, replication or duplication of optical media containing intellectual property, which failed to show during inspection conducted by authorized personnel of the OMB, or when required to do so, the authority or consent of the owner thereof or his duly authorized representative to master, manufacture, replicate or duplicate optical media, as the case may be, shall be presumed to have been

operated, used, mastered, manufactured, replicated or duplicated, as the case may be, in violation of the Act.

- f) Any mastering, stamping, or mould equipment that do not bear, carry or incorporate any Source Identification Code (SID) or which bears, carries or incorporates a false, falsified, imaginary or unauthorized SID shall be presumed to have been used or intended to be used in violation of the Act.
- g) Any optical disc manufactured, mastered, replicated in and/or exported from the Philippines, sold, traded, distributed, or possessed for the purpose of sale, trade, distribution or export that does not bear, carry or incorporate any SID or which bears, carries or incorporates a false, falsified, imaginary or unauthorized SID shall be presumed to have been manufactured, mastered, replicated, exported, sold, traded, distributed or possessed, or intended to be so, as the case may be, in violation of the Act.
- h) Any person, establishment or entity in possession of optical media shall be presumed to possess the same for “the purpose of sale, rental, distribution or any other commercial purpose” if the person, establishment or entity shall have in its possession at least three (3) pieces of media containing similar copyrighted content, or at least six (6) pieces of media containing dissimilar copyrighted content.

**Section 20. Decision.** – a) Not later than thirty (30) days upon the matter being submitted for resolution the duly constituted Hearing Committee or a duly appointed Hearing Officer, as the case may be, shall render its/his decision, which is deemed as rendered by the Board.

- b) All decisions rendered under this section shall approve and signed by the Chairman or his duly authorized representative.
- c) A decision shall be based on substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.
- d) Any member of the Hearing Committee or the Board, as the case may be, may submit a dissenting opinion stating the reasons thereof, which shall be attached to the majority decision.

**Section 21. Motion for Reconsideration or new trial.** – a) The aggrieved party may file a motion for reconsideration or new trial with the Legal Services Division of the OMB within the period to appeal on any of the following grounds:

- 1) New evidence has been discovered which materially affects the decision; or
  - 2) Errors of facts and/or of law or irregularities have been committed prejudicial to the interest of the movant.
- b) Only one motion for reconsideration shall be allowed. Upon receipt of the said motion, the Legal Services Division of the OMB shall forward the same to the duly constituted Hearing Committee or the duly appointed Hearing Officer, as the case may be, who shall accordingly resolve the matter. Any resolution issued by either of the said bodies/individual is deemed as rendered by the Board.

- c) All resolutions rendered under this section shall be approved and signed by the Chairman or his duly authorized representative.
- d) The filing of the motion for reconsideration or new trial shall suspend or stop the running of the period for appeal, and the remainder of such period shall begin to run from the date of receipt by the movant of the denial of the motion for reconsideration or new trial.

**Section 21. Period to Appeal.** – A party adversely affected by the decision may appeal to the Office of the President within thirty (30) days from receipt of the official copy of the decision, deducting the time during which a motion for reconsideration or new trial is pending, which in no case shall not be less than five (5) days.

**Section 22. How taken.** – The appeal shall be filed directly with the Office of the President, and shall specifically set forth assignment of error/s with reasons, authorities, and precedents relied upon for reversal or modification of the appealed decision, and with notice and copy thereof served to the Legal Services Division of the OMB and the adverse party.

**Section 23. Finality.** The decision shall become final and executory thirty (30) days after the official receipt of a copy thereof by the party adversely affected or his counsel, unless within that period a motion for reconsideration or for new trial is filed or an appeal to the Office of the President is perfected or when the decision in the appeal, if any, becomes final and executory.

### **RULE III Offenses and Penalties**

**Section 20. Administrative Sanctions.** – Without prejudice to the filing of criminal and civil actions in appropriate cases, the Board may impose administrative penalties, including confiscation of optical media or manufacturing material or equipment, parts, accessories and paraphernalia, in accordance with Title IV of the Implementing Rules and Regulations.

**Section 21. Disposal/Return of Seized Materials.** – a) After the answer has been filed or after the lapse of the proper period with no answer being filed, the Board En Banc, the Hearing Committee, or duly appointed Hearing Officer, as the case may be may order the disposal, destruction, or return of optical media and/or material or equipment, including parts, accessories and paraphernalia being held in preventive custody. Any action in this matter shall be without prejudice to the decision in the administrative case.

- b) Any optical media product and/or material or manufacturing material or equipment, including parts, accessories and paraphernalia held in preventive custody and found to be in violation of the Act shall be disposed of or destroyed in accordance with the decision or resolution of the OMB, but a sufficient representative sample shall be retained for evidentiary purpose in the criminal and civil actions that may be filed.
- c) Items taken into preventive custody shall be returned to its owner whether he be the respondent or not, upon presentation of verifiable proof of ownership, within thirty (30) days from the date of the taking into protective custody unless the appropriate criminal or administrative complaint has been instituted against the person, establishment or entity which appears to be liable for the offense or violation of the Act or the Implementing Rules and Regulations or upon proper

order of the Board En Banc, the Hearing Committee, or the duly appointed Hearing Officer, as the case may be.

- d) Orders and/or resolutions relative the disposition of items held in preventive custody is final and immediately executory.

#### **RULE IV Execution**

**Section 22. Execution Upon Finality of Decision.** – Execution shall issue after the decision of the Hearing Committee or a duly appointed Hearing Officer has become final and executory; provided, however, that execution pending appeal may be allowed in the sound discretion of the Hearing Committee or a duly appointed Hearing Officer, such as when the appeal is patently dilatory. Execution pending appeal may be stayed upon filing of bond by the losing party in such reasonable amount as may fixed by the Hearing Committee or the duly appointed Hearing Officer or upon issuance of a status quo order by the Office of the President.

**Section 23. Enforcement of Decision.** – The decision shall be enforced through writ of execution which may be directed to any law enforcement agency by the Hearing Committee or the duly appointed Hearing Officer.

#### **RULE V Fees**

**Section 24. Docketing Fee.** – For the filing of a complaint, a private complainant must pay to the OMB, through its cashier, a docketing fee of One Hundred Pesos (P 100.00). Government officers filing the complaint by virtue of their official function are exempted from paying the filing fees.

**Section 25. Other Fees.** – The complainant shall also pay Ten Pesos (P10.00) as legal research fund fee, for transcript of records, or copy of a decision, order, resolution, or other official record, Five Pesos (P 5.00) per page thereof, for transcript of stenographic notes, Five Pesos (P 5.00) per page, and for a certification, Five Pesos per page.

#### **RULE VI Other Provisions**

**Section 26. Applicability of these Rules to Cases Involving Magnetic Media.** – These Rules shall apply to cases involving magnetic media and where the phrase “optical media product” occurs, the phrase “magnetic media” shall be substituted.

**Section 27. Retroactive application.** – These rules shall be applied to pending administrative matters.

#### **RULE V Final Provisions**

**Section 28. Supplementary Rules.** – The Board, En Banc, may from time to time issue such supplementary rules as it may deem fit and necessary.

**Section 29. Amendment/Repeal.** – These Rules may also be amended or repealed by the Board, En Banc.

**Section 30. Separability Clause.** – If any section or provision of these Rules is held unconstitutional or invalid, the other provisions not affected thereby shall remain valid and binding.

**Section 31. Effectivity.** – These rules shall take effect fifteen (15) days following the completion of their publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

**(SGD.) ROSENDO B. MENESES**  
Executive Director