national protection of mask works in a consistent and harmonious manner; and

''(5) it is inherent in section 902 of title 17, United States Code, that the President has the authority to revise, suspend, or revoke, as well as issue, proclamations extending mask work protection to nationals, domiciliaries, and sovereign authorities of other countries, if conditions warrant.

''(b) PURPOSES.—The purposes of this Act [amending this section and section 902 of this title] are—

''(1) to extend the period within which the Secretary of Commerce may grant interim protective orders under section 914 of title 17, United States Code, to continue this incentive for the bilateral and multilateral protection of mask works; and

''(2) to codify the President's existing authority to revoke, suspend, or limit the protection extended to mask works of foreign entities in nations that extend mask work protection to United States nationals.''

CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

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AMENDMENTS

2004—Pub. L. 108–419, § 5(i)(4)(B), Nov. 30, 2004, 118 Stat. 2369, substituted ''Determination'' for ''Arbitration'' in item 1010.

SUBCHAPTER A—DEFINITIONS

§ 1001. Definitions

As used in this chapter, the following terms have the following meanings:

(1) A ''digital audio copied recording'' is a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission.

(2) A ''digital audio interface device'' is any machine or device that is designed specifically to communicate digital audio information and related interface data to a digital audio recording device through a nonprofessional interface.

(3) A ''digital audio recording device'' is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

(A) professional model products, and

(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

(4)(A) A ''digital audio recording medium'' is any material object in a form commonly distributed for use by individuals, that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

(B) Such term does not include any material object—

(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer; or

(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including computer programs or data bases.

(5)(A) A ''digital musical recording'' is a material object—

(i) in which are fixed, in a digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and

(ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(B) A ''digital musical recording'' does not include a material object—

(i) in which the fixed sounds consist entirely of spoken word recordings, or

(ii) in which one or more computer programs are fixed, except that a digital musical recording may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

(C) For purposes of this paragraph—

(i) a ''spoken word recording'' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and

(ii) the term ''incidental'' means related to and relatively minor by comparison.

(6) ''Distribute'' means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

(7) An ''interested copyright party'' is—

(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

(B) the legal or beneficial owner of, or the person that controls, the right to reproduce

in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

(C) a featured recording artist who performs on a sound recording that has been distributed; or

(D) any association or other organization—

(i) representing persons specified in subparagraph (A), (B), or (C), or

(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

(8) To ''manufacture'' means to produce or assemble a product in the United States. A ''manufacturer'' is a person who manufactures.

(9) A ''music publisher'' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

(10) A ''professional model product'' is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the Secretary of Commerce shall establish by regulation.

(11) The term ''serial copying'' means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term ''digital reproduction of a digital musical recording'' does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.

(12) The ''transfer price'' of a digital audio recording device or a digital audio recording medium—

(A) is, subject to subparagraph (B)—

(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and

(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.

(13) A ''writer'' is the composer or lyricist of a particular musical work.

(Added Pub. L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4237.)

REFERENCES IN TEXT

Section 482 of the Internal Revenue Code of 1986, referred to in par. (12)(B), is classified to section 482 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Pub. L. 102–563, § 4, Oct. 28, 1992, 106 Stat. 4248, provided that: ''This Act [see Short Title of 1992 Amendments note set out under section 101 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 28, 1992].''

SUBCHAPTER B—COPYING CONTROLS

§ 1002. Incorporation of copying controls

(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—

(1) the Serial Copy Management System;

(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or

(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—

(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

(Added Pub. L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4240.)

SUBCHAPTER C—ROYALTY PAYMENTS

§ 1003. Obligation to make royalty payments

(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distrib-