(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.

(Added Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2360.)

PRIOR PROVISIONS

Prior sections 805 to 810 were repealed by Pub. L. 103–198, § 2(e), Dec. 17, 1993, 107 Stat. 2308.

Section 805, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to staff of Copyright Royalty Tribunal.

Section 806, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to administrative support of Tribunal.

Section 807, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to deduction of costs of proceedings involving distribution of royalty fees.

Section 808, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to reporting requirements of the Tribunal.

Section 809, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to effective date of final determinations of Tribunal.

Section 810, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to judicial review of final decisions of Tribunal.

CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Sec.
901. Definitions.
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AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, § 13210(11), Nov. 2, 2002, 116 Stat. 1910, substituted ''licensing'' for ''licensure'' in item 903.

1997—Pub. L. 105–80, § 12(a)(21), Nov. 13, 1997, 111 Stat. 1535, substituted ''Ownership, transfer, licensure, and recordation'' for ''Ownership and transfer'' in item 903.

§ 901. Definitions

(a) As used in this chapter—

(1) a ''semiconductor chip product'' is the final or intermediate form of any product—

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuitry functions;

(2) a ''mask work'' is a series of related images, however fixed or encoded—

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

(3) a mask work is ''fixed'' in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration;

(4) to ''distribute'' means to sell, or to lease, bail, or otherwise transfer, or to offer to sell, lease, bail, or otherwise transfer;

(5) to ''commercially exploit'' a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product;

(6) the ''owner'' of a mask work is the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter of such person or representative are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person's employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b);

(7) an ''innocent purchaser'' is a person who purchases a semiconductor chip product in good faith and without having notice of protection with respect to the semiconductor chip product;

(8) having ''notice of protection'' means having actual knowledge that, or reasonable grounds to believe that, a mask work is protected under this chapter; and

(9) an ''infringing semiconductor chip product'' is a semiconductor chip product which is made, imported, or distributed in violation of the exclusive rights of the owner of a mask work under this chapter.

(b) For purposes of this chapter, the distribution or importation of a product incorporating a semiconductor chip product as a part thereof is a distribution or importation of that semiconductor chip product.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3347.)

AUTHORIZATION OF APPROPRIATIONS

Section 304 of title III of Pub. L. 98–620 provided that: ''There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title and the amendments made by this title [enacting this chapter].''

§ 902. Subject matter of protection

(a)(1) Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, is eligible for protection under this chapter if—

(A) on the date on which the mask work is registered under section 908, or is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is (i) a national or domiciliary of the United States, (ii) a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party, or (iii) a stateless person, wherever that person may be domiciled;

(B) the mask work is first commercially exploited in the United States; or

(C) the mask work comes within the scope of a Presidential proclamation issued under paragraph (2).

(2) Whenever the President finds that a foreign nation extends, to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided in this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection extended under any such proclamation.

(b) Protection under this chapter shall not be available for a mask work that—

(1) is not original; or

(2) consists of designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, is not original.

(c) In no case does protection under this chapter for a mask work extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3348; amended Pub. L. 100–159, § 3, Nov. 9, 1987, 101 Stat. 900.)

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–159 inserted provision at end permitting the President to revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection extended under any such proclamation.

EX. ORD. NO. 12504. PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Ex. Ord. No. 12504, Jan. 31, 1985, 50 F.R. 4849, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*) and in order to provide for the orderly implementation of that Act, it is hereby ordered that, subject to the authority of the Director of the Office of Management and Budget under Executive Order No. 11030, as amended [44 U.S.C. 1505 note], requests for issuance by the President of a proclamation extending the protection of Chapter 9 of title 17 of the United States Code against unauthorized duplication of semiconductor chip products to foreign nationals, domiciliaries, and sovereign authorities shall be presented to the President through the Secretary of Commerce in accordance with such regulations as the Secretary may, after consultation with the Secretary of State, prescribe and cause to be published in the Federal Register.

RONALD REAGAN.

§ 903. Ownership, transfer, licensing, and recordation

(a) The exclusive rights in a mask work subject to protection under this chapter belong to the owner of the mask work.

(b) The owner of the exclusive rights in a mask work may transfer all of those rights, or license all or less than all of those rights, by any written instrument signed by such owner or a duly authorized agent of the owner. Such rights may be transferred or licensed by operation of law, may be bequeathed by will, and may pass as personal property by the applicable laws of intestate succession.

(c)(1) Any document pertaining to a mask work may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. The Register of Copyrights shall, upon receipt of the document and the fee specified pursuant to section 908(d), record the document and return it with a certificate of recordation. The recordation of any transfer or license under this paragraph gives all persons constructive notice of the facts stated in the recorded document concerning the transfer or license.

(2) In any case in which conflicting transfers of the exclusive rights in a mask work are made, the transfer first executed shall be void as against a subsequent transfer which is made for a valuable consideration and without notice of the first transfer, unless the first transfer is recorded in accordance with paragraph (1) within three months after the date on which it is executed, but in no case later than the day before the date of such subsequent transfer.

(d) Mask works prepared by an officer or employee of the United States Government as part of that person's official duties are not protected under this chapter, but the United States Government is not precluded from receiving and holding exclusive rights in mask works transferred to the Government under subsection (b).

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3349.)

§ 904. Duration of protection

(a) The protection provided for a mask work under this chapter shall commence on the date

on which the mask work is registered under section 908, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

(b) Subject to subsection (c) and the provisions of this chapter, the protection provided under this chapter to a mask work shall end ten years after the date on which such protection commences under subsection (a).

(c) All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3349.)

§ 905. Exclusive rights in mask works

The owner of a mask work provided protection under this chapter has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the mask work by optical, electronic, or any other means;

(2) to import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) to induce or knowingly to cause another person to do any of the acts described in paragraphs (1) and (2).

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

§ 906. Limitation on exclusive rights: reverse engineering; first sale

(a) Notwithstanding the provisions of section 905, it is not an infringement of the exclusive rights of the owner of a mask work for—

(1) a person to reproduce the mask work solely for the purpose of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or the circuitry, logic flow, or organization of components used in the mask work; or

(2) a person who performs the analysis or evaluation described in paragraph (1) to incorporate the results of such conduct in an original mask work which is made to be distributed.

(b) Notwithstanding the provisions of section 905(2), the owner of a particular semiconductor chip product made by the owner of the mask work, or by any person authorized by the owner of the mask work, may import, distribute, or otherwise dispose of or use, but not reproduce, that particular semiconductor chip product without the authority of the owner of the mask work.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

§ 907. Limitation on exclusive rights: innocent infringement

(a) Notwithstanding any other provision of this chapter, an innocent purchaser of an infringing semiconductor chip product—

(1) shall incur no liability under this chapter with respect to the importation or distribution of units of the infringing semiconductor chip product that occurs before the innocent purchaser has notice of protection with respect to the mask work embodied in the semiconductor chip product; and

(2) shall be liable only for a reasonable royalty on each unit of the infringing semiconductor chip product that the innocent purchaser imports or distributes after having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(b) The amount of the royalty referred to in subsection (a)(2) shall be determined by the court in a civil action for infringement unless the parties resolve the issue by voluntary negotiation, mediation, or binding arbitration.

(c) The immunity of an innocent purchaser from liability referred to in subsection (a)(1) and the limitation of remedies with respect to an innocent purchaser referred to in subsection (a)(2) shall extend to any person who directly or indirectly purchases an infringing semiconductor chip product from an innocent purchaser.

(d) The provisions of subsections (a), (b), and (c) apply only with respect to those units of an infringing semiconductor chip product that an innocent purchaser purchased before having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

§ 908. Registration of claims of protection

(a) The owner of a mask work may apply to the Register of Copyrights for registration of a claim of protection in a mask work. Protection of a mask work under this chapter shall terminate if application for registration of a claim of protection in the mask work is not made as provided in this chapter within two years after the date on which the mask work is first commercially exploited anywhere in the world.

(b) The Register of Copyrights shall be responsible for all administrative functions and duties under this chapter. Except for section 708, the provisions of chapter 7 of this title relating to the general responsibilities, organization, regulatory authority, actions, records, and publications of the Copyright Office shall apply to this chapter, except that the Register of Copyrights may make such changes as may be necessary in applying those provisions to this chapter.

(c) The application for registration of a mask work shall be made on a form prescribed by the Register of Copyrights. Such form may require any information regarded by the Register as bearing upon the preparation or identification of the mask work, the existence or duration of protection of the mask work under this chapter, or ownership of the mask work. The application shall be accompanied by the fee set pursuant to subsection (d) and the identifying material specified pursuant to such subsection.

(d) The Register of Copyrights shall by regulation set reasonable fees for the filing of applications to register claims of protection in mask works under this chapter, and for other services relating to the administration of this chapter or the rights under this chapter, taking into consideration the cost of providing those services, the benefits of a public record, and statutory fee schedules under this title. The Register shall

also specify the identifying material to be deposited in connection with the claim for registration.

(e) If the Register of Copyrights, after examining an application for registration, determines, in accordance with the provisions of this chapter, that the application relates to a mask work which is entitled to protection under this chapter, then the Register shall register the claim of protection and issue to the applicant a certificate of registration of the claim of protection under the seal of the Copyright Office. The effective date of registration of a claim of protection shall be the date on which an application, deposit of identifying material, and fee, which are determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration of the claim, have all been received in the Copyright Office.

(f) In any action for infringement under this chapter, the certificate of registration of a mask work shall constitute prima facie evidence (1) of the facts stated in the certificate, and (2) that the applicant issued the certificate has met the requirements of this chapter, and the regulations issued under this chapter, with respect to the registration of claims.

(g) Any applicant for registration under this section who is dissatisfied with the refusal of the Register of Copyrights to issue a certificate of registration under this section may seek judicial review of that refusal by bringing an action for such review in an appropriate United States district court not later than sixty days after the refusal. The provisions of chapter 7 of title 5 shall apply to such judicial review. The failure of the Register of Copyrights to issue a certificate of registration within four months after an application for registration is filed shall be deemed to be a refusal to issue a certificate of registration for purposes of this subsection and section 910(b)(2), except that, upon a showing of good cause, the district court may shorten such four-month period.

(Added Pub. L. 98–620, title III, §302, Nov. 8, 1984, 98 Stat. 3351.)

§909. Mask work notice

(a) The owner of a mask work provided protection under this chapter may affix notice to the mask work, and to masks and semiconductor chip products embodying the mask work, in such manner and location as to give reasonable notice of such protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of notice for purposes of this section, but these specifications shall not be considered exhaustive. The affixation of such notice is not a condition of protection under this chapter, but shall constitute prima facie evidence of notice of protection.

(b) The notice referred to in subsection (a) shall consist of—

(1) the words ''mask work'', the symbol *M*, or the symbol Ⓜ (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(Added Pub. L. 98–620, title III, §302, Nov. 8, 1984, 98 Stat. 3352; amended Pub. L. 105–80, §12(a)(22), Nov. 13, 1997, 111 Stat. 1535.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–80 substituted '' 'mask work', the symbol'' for '' 'mask force', the sumbol''.

§910. Enforcement of exclusive rights

(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights. As used in this subsection, the term ''any person'' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(b)(1) The owner of a mask work protected under this chapter, or the exclusive licensee of all rights under this chapter with respect to the mask work, shall, after a certificate of registration of a claim of protection in that mask work has been issued under section 908, be entitled to institute a civil action for any infringement with respect to the mask work which is committed after the commencement of protection of the mask work under section 904(a).

(2) In any case in which an application for registration of a claim of protection in a mask work and the required deposit of identifying material and fee have been received in the Copyright Office in proper form and registration of the mask work has been refused, the applicant is entitled to institute a civil action for infringement under this chapter with respect to the mask work if notice of the action, together with a copy of the complaint, is served on the Register of Copyrights, in accordance with the Federal Rules of Civil Procedure. The Register may, at his or her option, become a party to the action with respect to the issue of whether the claim of protection is eligible for registration by entering an appearance within sixty days after such service, but the failure of the Register to become a party to the action shall not deprive the court of jurisdiction to determine that issue.

(c)(1) The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 905 with respect to importation. These regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(A) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(B) Furnish proof that the mask work involved is protected under this chapter and that the importation of the articles would infringe the rights in the mask work under this chapter.

(C) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(2) Articles imported in violation of the rights set forth in section 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3352; amended Pub. L. 101–553, § 2(b)(1), Nov. 15, 1990, 104 Stat. 2750; Pub. L. 105–80, § 12(a)(23), Nov. 13, 1997, 111 Stat. 1535.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 337 of the Tariff Act of 1930, referred to in subsec. (c)(1)(A), is classified to section 1337 of Title 19, Customs Duties.

The customs laws, referred to in subsec. (c)(2), are classified generally to Title 19.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–80 substituted ''As used'' for ''as used'' in second sentence.

1990—Subsec. (a). Pub. L. 101–553 inserted sentences at end defining ''any person'' and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–553 effective with respect to violations that occur on or after Nov. 15, 1990, see section 3 of Pub. L. 101–553, set out as a note under section 501 of this title.

§ 911. Civil actions

(a) Any court having jurisdiction of a civil action arising under this chapter may grant temporary restraining orders, preliminary injunctions, and permanent injunctions on such terms as the court may deem reasonable to prevent or restrain infringement of the exclusive rights in a mask work under this chapter.

(b) Upon finding an infringer liable, to a person entitled under section 910(b)(1) to institute a civil action, for an infringement of any exclusive right under this chapter, the court shall award such person actual damages suffered by the person as a result of the infringement. The court shall also award such person the infringer's profits that are attributable to the infringement and are not taken into account in computing the award of actual damages. In establishing the infringer's profits, such person is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the mask work.

(c) At any time before final judgment is rendered, a person entitled to institute a civil action for infringement may elect, instead of actual damages and profits as provided by subsection (b), an award of statutory damages for all infringements involved in the action, with respect to any one mask work for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in an amount not more than $250,000 as the court considers just.

(d) An action for infringement under this chapter shall be barred unless the action is commenced within three years after the claim accrues.

(e)(1) At any time while an action for infringement of the exclusive rights in a mask work under this chapter is pending, the court may order the impounding, on such terms as it may deem reasonable, of all semiconductor chip products, and any drawings, tapes, masks, or other products by means of which such products may be reproduced, that are claimed to have been made, imported, or used in violation of those exclusive rights. Insofar as practicable, applications for orders under this paragraph shall be heard and determined in the same manner as an application for a temporary restraining order or preliminary injunction.

(2) As part of a final judgment or decree, the court may order the destruction or other disposition of any infringing semiconductor chip products, and any masks, tapes, or other articles by means of which such products may be reproduced.

(f) In any civil action arising under this chapter, the court in its discretion may allow the recovery of full costs, including reasonable attorneys' fees, to the prevailing party.

(g)(1) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of the owner of a mask work under this chapter, or for any other violation under this chapter.

(2) In a suit described in paragraph (1) for a violation described in that paragraph, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include actual damages and profits under subsection (b), statutory damages under subsection (c), impounding and disposition of infringing articles under subsection (e), and costs and attorney's fees under subsection (f).

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3353; amended Pub. L. 101–553, § 2(b)(2), Nov. 15, 1990, 104 Stat. 2750.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–553 added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–553 effective with respect to violations that occur on or after Nov. 15, 1990, see section 3 of Pub. L. 101–553, set out as a note under section 501 of this title.

§912. Relation to other laws

(a) Nothing in this chapter shall affect any right or remedy held by any person under chapters 1 through 8 or 10 of this title, or under title 35.

(b) Except as provided in section 908(b) of this title, references to ''this title'' or ''title 17'' in chapters 1 through 8 or 10 of this title shall be deemed not to apply to this chapter.

(c) The provisions of this chapter shall preempt the laws of any State to the extent those laws provide any rights or remedies with respect to a mask work which are equivalent to those rights or remedies provided by this chapter, except that such preemption shall be effective only with respect to actions filed on or after January 1, 1986.

(d) Notwithstanding subsection (c), nothing in this chapter shall detract from any rights of a mask work owner, whether under Federal law (exclusive of this chapter) or under the common law or the statutes of a State, heretofore or hereafter declared or enacted, with respect to any mask work first commercially exploited before July 1, 1983.

(Added Pub. L. 98–620, title III, §302, Nov. 8, 1984, 98 Stat. 3354; amended Pub. L. 100–702, title X, §1020(b), Nov. 19, 1988, 102 Stat. 4672; Pub. L. 102–563, §3(c), Oct. 28, 1992, 106 Stat. 4248.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–563 inserted ''or 10'' after ''8''.

1988—Subsecs. (d), (e). Pub. L. 100–702 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''The provisions of sections 1338, 1400(a), and 1498(b) and (c) of title 28 shall apply with respect to exclusive rights in mask works under this chapter.''

§913. Transitional provisions

(a) No application for registration under section 908 may be filed, and no civil action under section 910 or other enforcement proceeding under this chapter may be instituted, until sixty days after the date of the enactment of this chapter.

(b) No monetary relief under section 911 may be granted with respect to any conduct that occurred before the date of the enactment of this chapter, except as provided in subsection (d).

(c) Subject to subsection (a), the provisions of this chapter apply to all mask works that are first commercially exploited or are registered under this chapter, or both, on or after the date of the enactment of this chapter.

(d)(1) Subject to subsection (a), protection is available under this chapter to any mask work that was first commercially exploited on or after July 1, 1983, and before the date of the enactment of this chapter, if a claim of protection in the mask work is registered in the Copyright Office before July 1, 1985, under section 908.

(2) In the case of any mask work described in paragraph (1) that is provided protection under this chapter, infringing semiconductor chip product units manufactured before the date of the enactment of this chapter may, without liability under sections 910 and 911, be imported into or distributed in the United States, or both, until two years after the date of registration of the mask work under section 908, but only if the importer or distributor, as the case may be, first pays or offers to pay the reasonable royalty referred to in section 907(a)(2) to the mask work owner, on all such units imported or distributed, or both, after the date of the enactment of this chapter.

(3) In the event that a person imports or distributes infringing semiconductor chip product units described in paragraph (2) of this subsection without first paying or offering to pay the reasonable royalty specified in such paragraph, or if the person refuses or fails to make such payment, the mask work owner shall be entitled to the relief provided in sections 910 and 911.

(Added Pub. L. 98–620, title III, §302, Nov. 8, 1984, 98 Stat. 3354.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in text, is the date of enactment of Pub. L. 98–620, which was approved Nov. 8, 1984.

§914. International transitional provisions

(a) Notwithstanding the conditions set forth in subparagraphs (A) and (C) of section 902(a)(1) with respect to the availability of protection under this chapter to nationals, domiciliaries, and sovereign authorities of a foreign nation, the Secretary of Commerce may, upon the petition of any person, or upon the Secretary's own motion, issue an order extending protection under this chapter to such foreign nationals, domiciliaries, and sovereign authorities if the Secretary finds—

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A); or

(B) enacting or implementing legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

(b) While an order under subsection (a) is in effect with respect to a foreign nation, no application for registration of a claim for protection in a mask work under this chapter may be denied solely because the owner of the mask work is a national, domiciliary, or sovereign authority of that foreign nation, or solely because the mask work was first commercially exploited in that foreign nation.

(c) Any order issued by the Secretary of Commerce under subsection (a) shall be effective for such period as the Secretary designates in the order, except that no such order may be effective after the date on which the authority of the Secretary of Commerce terminates under subsection (e). The effective date of any such order shall also be designated in the order. In the case

of an order issued upon the petition of a person, such effective date may be no earlier than the date on which the Secretary receives such petition.

(d)(1) Any order issued under this section shall terminate if—

(A) the Secretary of Commerce finds that any of the conditions set forth in paragraphs (1), (2), and (3) of subsection (a) no longer exist; or

(B) mask works of nationals, domiciliaries, and sovereign authorities of that foreign nation or mask works first commercially exploited in that foreign nation become eligible for protection under subparagraph (A) or (C) of section 902(a)(1).

(2) Upon the termination or expiration of an order issued under this section, registrations of claims of protection in mask works made pursuant to that order shall remain valid for the period specified in section 904.

(e) The authority of the Secretary of Commerce under this section shall commence on the date of the enactment of this chapter, and shall terminate on July 1, 1995.

(f)(1) The Secretary of Commerce shall promptly notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the issuance or termination of any order under this section, together with a statement of the reasons for such action. The Secretary shall also publish such notification and statement of reasons in the Federal Register.

(2) Two years after the date of the enactment of this chapter, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the actions taken under this section and on the current status of international recognition of mask work protection. The report shall include such recommendations for modifications of the protection accorded under this chapter to mask works owned by nationals, domiciliaries, or sovereign authorities of foreign nations as the Secretary, in consultation with the Register of Copyrights, considers would promote the purposes of this chapter and international comity with respect to mask work protection. Not later than July 1, 1994, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report updating the matters contained in the report transmitted under the preceding sentence.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3355; amended Pub. L. 100–159, §§ 2, 4, Nov. 9, 1987, 101 Stat. 899, 900; Pub. L. 102–64, §§ 3, 4, June 28, 1991, 105 Stat. 320, 321.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (e) and (f)(2), is the date of enactment of Pub. L. 98–620, which was approved Nov. 8, 1984.

AMENDMENTS

1991—Subsec. (a)(1)(B). Pub. L. 102–64, § 3(1), inserted ''or implementing'' after ''enacting''.

Subsec. (e). Pub. L. 102–64, § 3(2), substituted ''July 1, 1995'' for ''July 1, 1991''.

Subsec. (f)(2). Pub. L. 102–64, § 4, substituted ''July 1, 1994'' for ''July 1, 1990''.

1987—Subsec. (e). Pub. L. 100–159, § 2, substituted ''on July 1, 1991'' for ''three years after such date of enactment''.

Subsec. (f)(2). Pub. L. 100–159, § 4, which directed the amendment of subsec. (f) by inserting at end ''Not later than July 1, 1990, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report updating the matters contained in the report transmitted under the preceding sentence.'', was executed by inserting new language at end of par. (2) of subsec. (f) as the probable intent of Congress.

FINDINGS AND PURPOSES

Section 2 of Pub. L. 102–64 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and originating in foreign countries that are making good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

''(2) the Secretary of Commerce has determined that most of the industrialized countries of the world are eligible for orders affording interim protection under section 914 of title 17, United States Code;

''(3) no multilateral treaty recognizing the protection of mask works has come into force, nor has the United States become bound by any multilateral agreement regarding such protection; and

''(4) bilateral and multilateral relationships regarding the protection of mask works should be directed toward the international protection of mask works in an effective, consistent, and harmonious manner, and the existing bilateral authority of the Secretary of Commerce under chapter 9 of title 17, United States Code, should be extended to facilitate the continued development of protection for mask works.

''(b) PURPOSES.—The purposes of this Act [amending this section and enacting provisions set out as a note under section 901 of this title] are—

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

''(2) to clarify the Secretary's authority to issue such interim protection orders.''

Section 1 of Pub. L. 100–159, as amended by Pub. L. 105–80, § 12(b)(1), Nov. 13, 1997, 111 Stat. 1536, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and originating in foreign countries that are making good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

''(2) the Secretary of Commerce has determined that most of the industrialized countries of the world are eligible for orders affording interim protection under section 914 of title 17, United States Code;

''(3) the World Intellectual Property Organization has commenced meetings to draft an international convention regarding the protection of integrated electronic circuits;

''(4) these bilateral and multilateral developments are encouraging steps toward improving inter-

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

SUBCHAPTER A—DEFINITIONS

Sec.
1001. Definitions.

SUBCHAPTER B—COPYING CONTROLS

1002. Incorporation of copying controls.

SUBCHAPTER C—ROYALTY PAYMENTS

1003. Obligation to make royalty payments.
1004. Royalty payments.
1005. Deposit of royalty payments and deduction of expenses.
1006. Entitlement to royalty payments.
1007. Procedures for distributing royalty payments.

SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

1008. Prohibition on certain infringement actions.
1009. Civil remedies.
1010. Determination of certain disputes.

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