

ters 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 re-

ferred 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 subsections (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 international 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 multi-lateral 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