

tion 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 symbol”.

### § 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.

#### 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