

(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 Sec-

retary 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 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 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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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 802, 912 of this title.

SUBCHAPTER A—DEFINITIONS

§ 1001. Definitions

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