§ 1001

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.’’


“(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

SUBCHAPTER A—DEFINITIONS

Sec. 1001. Definitions.

1002. Incorporation of copying controls.

SUBCHAPTER B—COPYING CONTROLS

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.
(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.


Editorial Notes

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.

Statutory Notes and Related Subsidiaries

Effective Date


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.