

(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.)

#### Statutory Notes and Related Subsidiaries

##### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 98-620, title III, § 304, Nov. 8, 1984, 98 Stat. 3356, 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, proce-

dures, 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.)

#### Editorial Notes

##### 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.

#### Executive Documents

##### 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.