



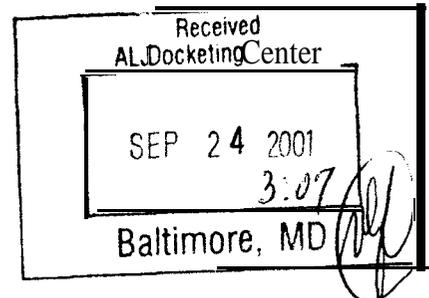
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SEP 21 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Silicon Graphics, Inc.  
2011 N. Shoreline Blvd.  
Mountain View, California 94043

Attention: Sandra Escher  
General Counsel



Dear Ms. Escher:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Silicon Graphics, Inc. (SGI) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2001)) (the Act).<sup>2</sup>

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<sup>1</sup> The Regulations governing the violations at issue are found in the 1996, 1997, 1998 and 2000 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799 (1996), as amended (61 **Fed. Reg.** 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 C.F.R. Parts 768-799 (1997, 1998 and 2000)). The March **25, 1996 Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March **25, 1996 Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. A. §§ 1701 - 1706 (1991 & Supp. 2001)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 **Fed. Reg.** 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.



Charge 1

On or about September 22, 1996, SGI exported Power Challenge Superservers from the United States to All-Russian Scientific Research Institute for Technical Physics (VNIITF), also known as Chelyabinsk 70 (VNIITF), in Russia, using General License G-CTP. In fact, the computers were not eligible for General License G-CTP (Section 77 1A.28(d)) but required a validated license for the export under Section 772A.1(b) of the former Regulations. BXA alleges that by exporting from the United States commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order or license issued thereunder, SGI violated Section 787A.6 of the former Regulations.

Charge 2

In connection with the export referenced in Charge 1 above, SGI knew or had reason to know that the computers were not eligible for export under General License G-CTP but required a validated license. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order or license issued thereunder has occurred, was about to occur, or was intended to occur, SGI violated Section 787A.4 of the former Regulations.

Charge 3

On or about January 5, 1997, SGI exported memory upgrades from the United States to VNIITF, in Russia, using License Exception CTP. In fact, the upgrades were not eligible for License Exception CTP (Section 740.7(d)) but required a license for the export under Section 742.12 of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

Charge 4

In connection with the export referenced in Charge 3 above, SGI knew or had reason to know that the computers were not eligible for export under license exception CTP but required a license. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge that a violation of the Act, the Regulations, or any order, license or authorization issued thereunder, has occurred, was about to occur, or was intended to occur, SGI violated Section 764.2(e) of the Regulations.

### Charge 5

On or about October 24, 1998, SGI exported from the United States to the People's Republic of China an Origin 2000 Deskside computer without first obtaining a license or notifying BXA of the export as required under Section 740.7(d)(4)<sup>3</sup> of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

### Charge 6

On or about October 26, 1998, SGI reexported from its manufacturing facility in Switzerland to the United Arab Emirates an Origin 2000 Deskside computer subject to the Regulations without first obtaining a license or notifying BXA of the reexport as required under Section 740.7(d)(4)<sup>4</sup> of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

### Charge 7

In connection with the reexport referenced in Charge 6 above, SGI also failed to report to BXA that the reexport had taken place as required under Section 740.7(d)(4)<sup>5</sup> of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

### Charge 8

On or about February 10, 2000, SGI reexported from its manufacturing facility in Switzerland to Qatar an Origin 2000 Deskside computer subject to the Regulations without first obtaining a license or notifying BXA of the reexport as required under Section 740.7(d)(5) of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

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<sup>3</sup> The citation to this provision changed to Section 740.7(d)(5) on January 14, 1999. See 64 Fed. Reg. 2430 (January 14, 1999).

<sup>4</sup> Id.

<sup>5</sup> Id.

### Charge 9

In connection with the shipment referenced in Charge 8 above, at the time of the reexport from Switzerland to Qatar, SGI knew or had reason to know that it had not obtained a license or notified BXA of the reexport. BXA alleges that, by selling or transferring commodities that is subject to the Regulations with knowledge that a violation of the Act, the Regulations, or any order, license or authorization issued thereunder, has occurred, was about to occur, or was intended to occur, SGI violated Section 764.2(e) of the Regulations.

### Charge 10

In connection with the shipment referenced in Charge 8 above, SGI failed to report to BXA that the reexport had taken place as required under Section 740.7(d)(5) of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

BXA alleges that SGI committed one violation each of Section Section 787A.4 and Section 787A.6 of the former Regulations and six violations of Section 764.2(a) and two violations of Section 764.2(e) of the Regulations, for a total of ten violations.

Accordingly, SGI is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations and 15 C.F.R. § 6.4(a)(3)(2001))<sup>6</sup>;

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If SGI fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

SGI is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

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<sup>6</sup> The maximum penalty for any violation committed after October 23, 1996 is \$11,000 per violation.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

Accordingly, SGI's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 212024022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of SGI's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address and all communication with BXA concerning this matter should be directed to Ms. Kim. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosures



COPY

2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Silicon Graphics, Inc.  
2011 N. Shoreline Blvd.  
Mountain View, California 94043

Attention: Sandra Escher, Esquire  
General Counsel

Dear Ms. Escher:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Silicon Graphics, Inc. (SGI) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 2000)) (the Act).<sup>2</sup>

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<sup>1</sup> The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799 (1996), as amended (61 **Fed. Reg.** 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 C.F.R. Parts 768-799 (1997)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 Fed. Reg. 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508.

Facts constituting violations :

Charge 1

On or about April 21, 1996, SGI exported from the United States to Israel Power Challenge R4400 processors to be used by the Ministry of Defense of Israel using General License G-CTP. In fact, such processors were not eligible for General License G-CTP but required a validated license for export under Section 776A. 10 of the former Regulations. BXA alleges that by exporting commodities from the United States to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order or license issued thereunder, SGI violated Section 787A.6 of the former Regulations.

Charge 2

In connection with the export referenced in Charge 1 above, SGI knew or had reason to know that the processors were not eligible for export under General License G-CTP. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order or license issued thereunder has occurred, was about to occur, or was intended to occur, SGI violated Section 787A.4 of the former Regulations.

Charge 3

In connection with the export referenced in Charge 1 above, on or about the same time, SGI advised the freight forwarder that the processors were eligible for export under General License G-CTP. The freight forwarder then represented on the Shipper's Export Declaration, an export control document as defined in Section 770A.2 of the former Regulations, that the processors were eligible for export under General License G-CTP. In fact, the export required a validated license from BXA. BXA alleges that, by causing the doing of an act prohibited the Act, or any regulation, order or license issued thereunder, SGI violated Section 787A.2 of the former Regulations.

Charge 4

On or about January 2, 1997, SGI exported from the United States to Israel Onyx R10000 processors to be used the Ministry of Defense of Israel using license exception CTP. In fact, such processors were not eligible for license exception CTP but required a license for the export under Section 742.12 of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

#### Charge 5

In connection with the export referenced in Charge 4 above, SGI knew or had reason to know that the processors were not eligible for export under license exception CTP. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge that a violation of the Act, the Regulations, or any order, license or authorization issued thereunder, has occurred, was about to occur, or was intended to occur, SGI violated Section 764.2(e) of the Regulations.

#### Charge 6

In connection with the export referenced in Charge 4 above, on or about the same time, SGI advised the freight forwarder that the processors were eligible for export under license exception CTP. The freight forwarder then represented on the Shipper's Export Declaration, an export control document as defined in Part 772 of the Regulations, that the computers were eligible for export under license exception CTP. In fact, the export required a license from BXA. BXA alleges that, by causing the doing of an act prohibited by the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(b) of the Regulations.

#### Charge 7

On or about January 9, 1997, SGI exported from the United States to Israel Power Challenge R10000 processors to be used by the Ministry of Defense of Israel using license exception CTP. In fact, the processors were not eligible for license exception CTP but required a license for the export under Section 742.12 of the Regulations. BXA alleges that, by engaging in conduct prohibited by or contrary to the Act, the Regulations, or any order, license or authorization issued thereunder, SGI violated Section 764.2(a) of the Regulations.

#### Charge 8

In connection with the export referenced in Charge 7 above, SGI knew or had reason to know that the processors were not eligible for export under license exception CTP. BXA alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge that a violation of the Act, the Regulations, or any order, license or authorization issued thereunder, has occurred, was about to occur, or was intended to occur, SGI violated Section 764.2(e) of the Regulations.

## Charge 9

In connection with the export referenced in Charge 7 above, SGI filed a Shipper's Export Declaration, an export control document as defined in Part 772 of the Regulations, representing that the processors were eligible for export under license exception CTP. In fact, the export required a license from BXA. BXA alleges that, by making a false or misleading statement of material fact in connection with the preparation, submission, issuance or use of an export control document, SGI violated Section 764.2(g) of the Regulations.

BXA alleges that SGI committed one violation of Section 787A.2, one violation of Section 787A.4, and one violation of Section 787A.6 of the former Regulations and two violations of Section 764.2(a), one violation of Section 764.2(b), two violations of Section 764.2(e) and one violation of Section 764.2(g) of the Regulations, for a total of nine violations.

Accordingly, SGI is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations;'

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If SGI fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

SGI is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

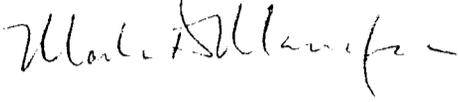
Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

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<sup>3</sup>The maximum civil penalty for any violation committed after October 23, 1996 is \$11,000 per violation. See 15 C.F.R. § 6.4(a)(3)(2000).

Accordingly, SGI's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of SGI's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )

Silicon Graphics, Inc. )  
2011 N. Shoreline Blvd. )  
Mountain View, California 94043 )

01-BXA-10 and 01-BXA-15

Respondent. )

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Silicon Graphics, Inc. ("SGI") and the Bureau of Industry and Security, United States Department of Commerce ("BIS"), pursuant to Section 766.18(b) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2002)) ("Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act").<sup>2</sup>

<sup>1</sup> The Regulations governing the violations at issue are found in the 1996, 1997, 1998 and 2000 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 23, 1996) (hereinafter "the former Regulations")), and 15 C.F.R. Parts 768-799 (1997, 1998 and 2000)). The March 23, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 23, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 Fed. Reg. 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

WHEREAS, BIS has initiated administrative proceedings against SGI pursuant to the Act and the Regulations by issuing charging letters on April 19, 2001 and September 21, 2001 ("the charging letters");

WHEREAS, SGI has received notice of issuance of the charging letters issued pursuant to Section 766.3(b) of the Regulations;

WHEREAS, SGI has reviewed the charging letters and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, SGI fully understands the terms of this Settlement Agreement and the Order of the Assistant Secretary of Commerce for Export Enforcement implementing this Settlement Agreement ("Order");

WHEREAS, SGI enters into this Settlement Agreement voluntarily and with full knowledge of its rights;

WHEREAS, SGI states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, SGI neither admits nor denies the allegations contained in the charging letters;

WHEREAS, SGI wishes to settle and dispose of all matters alleged in the charging letters by entering into this Settlement Agreement; and

WHEREAS, SGI agrees to be bound by the Order, when entered;

NOW THEREFORE, SGI and BIS agree as follows:

1. BIS has jurisdiction over SGI, under the Regulations, in connection with the matters alleged in the charging letters.

2. BIS and SGI agree that the following sanctions shall be imposed against SGI in complete settlement of the alleged violations of the Regulations set forth in the charging letters:

- a. SGI shall be assessed a civil penalty in the amount of \$182,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. SGI and all of its successors or assigns, and, when acting for or on behalf of SGI, its officers, representatives, agents or employees may not, for a period of three years from the date of entry of the Order, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States to Russia that is subject to the Regulations, or in any other activity subject to the Regulations related to Russia, including, but not limited to:
  - i. Applying for, obtaining, or using any license, License Exception, or export control document;
  - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

iii. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

c. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the three year denial period set forth in paragraph 3.b. shall be suspended for a period of three years from the entry of the appropriate Order, and shall thereafter be waived, provided that during the period of suspension, SGI has committed no violation related to Russia of the Act or any regulation, order or license issued thereunder, and, provided further that SGI has made timely payment of the \$182,000 civil penalty assessed pursuant to this Settlement Agreement and the Order.

3. SGI agrees that, for a period of three years from the date of the entry of an appropriate

Order:

- a. SGI's eligibility to export or reexport to Russia under the authority and conditions of License Exception CTP as set forth in Section 740.7 of the Regulations shall not be exercised without prior written consent from Director, Office of Export Enforcement, BIS;
- b. SGI will not export or reexport any item to a military or nuclear end-user or end-use in Russia without prior written consent from the Director, Office of Export Enforcement, BIS;
- c. SGI will not engage in any other activity that is subject to the Regulations, including an activity such as repair, maintenance or in-country transfer of an item,

involving any military or nuclear end-user or end-use in Russia without prior written consent from the Director, Office of Export Enforcement, BIS; and

- d. SGI will not knowingly participate in any way, directly or indirectly, in any other activity subject to the Regulations, involving any military or nuclear end-user or end-use in Russia, without prior written consent from the Director, Office of Export Enforcement, BIS.

4. SGI agrees to provide, within 45 days of the date of the Order, a report to BIS with regard to its exports to certain countries of concern during the six month period immediately preceding the date of the Order. BIS will use the information in connection with its activities related to the consideration of, or concerning license applications.

5. SGI agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the charging letters; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the Order, when entered.

6. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against SGI in connection with any violation of the Act or the Regulations arising out of the transactions identified in the charging letters or that were the subject of investigation by

BIS, or that are otherwise known by BIS as of the date of this Settlement Agreement in connection with these transactions.

7. SGI understands that BIS will make the charging letters, this Settlement Agreement, and the Order, when entered, available to the public.

8. BIS and SGI agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, BIS and SGI agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

9. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

10. This Settlement Agreement shall become binding on BIS only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering an Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

Settlement Agreement

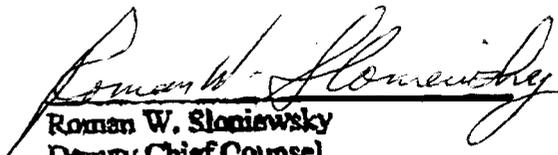
SGI

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11. Each signatory affirms that he or she has authority to enter into this Settlement Agreement and to bind his or her respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

SILICON GRAPHICS, INC.



Roman W. Sloniewsky  
Deputy Chief Counsel  
Office of Chief Counsel  
for Industry and Security

Date: 1/03/03



Sandra Escher  
Senior Vice President  
and General Counsel  
Silicon Graphics, Inc.

Date: 12/20/02

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

\_\_\_\_\_  
In the Matter of: )  
 )  
Silicon Graphics, Inc. )  
2011 N. Shoreline Blvd. ) 01-BXA-10 and 01-BXA-15  
Mountain View, California 94043 )  
 )  
Respondent )  
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ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), having initiated administrative proceedings against Silicon Graphics, Inc., 2011 N. Shoreline Blvd., Mountain View, California 94043 (“SGI”), pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),’ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2002)) (“Regulations”),\* based on allegations that SGI violated the former Regulations and the

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<sup>1</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 *Fed Reg.* 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

<sup>2</sup> The Regulations governing the violations at issue are found in the 1996, 1997, 1998 and 2000 versions of the Code of Federal Regulations, (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter “the former Regulations”), and 15 C.F.R. Parts 768-799 (1997, 1998 and 2000)). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS

Regulations; and

BIS and SGI having entered into a Settlement Agreement pursuant to Section 766.1 S(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$182,000 is assessed against SGI, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, SGI shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that for a period of three years from the date of this Order, SGI, its successors or assigns, and when acting for or on behalf of SGI, its officers, representatives, agents or employees (“denied person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States to Russia that is subject to the Regulations, or in any other activity subject to the Regulations related to Russia, including, but

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alleges occurred. The Regulations establish the procedures that apply to this matter.

not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. **Benefitting** in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations to Russia;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Russia, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted

acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to Russia;

- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Russia; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Russia and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Russia. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SIXTH, that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth above shall be suspended in its entirety for three years from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, SGI has committed no violation related to Russia of the Act or any regulation, order or license issued thereunder, and, provided further, that SGI has made timely payment of the civil penalty as provided herein.

SEVENTH, that, for period of three years from the date of this Order, SGI's eligibility to

export or reexport to Russia under the authority and conditions of License Exception CTP as set forth in Section 740.7 of the Regulations shall not be exercised without prior written consent from the Director, Office of Export Enforcement, BIS;

EIGHTH, that, for period of three years from the date of this Order, SGI will not export or reexport any item to a military or nuclear end-user or end-use in Russia without prior written consent from the Director, Office of Export Enforcement, BIS;

NINTH, that, for period of three years from the date of this Order, SGI will not engage in any other activity that is subject to the Regulations, including an activity such as repair, maintenance or in-country transfer of an item, involving any military or nuclear end-user or end-use in Russia without prior written consent from the Director, Office of Export Enforcement, BIS;

TENTH, that, for period of three years from the date of this Order, SGI will not knowingly participate in any way, directly or indirectly, in any other activity subject to the Regulations, involving any military or nuclear end-user or end-use in Russia, without prior written consent from the Director, Office of Export Enforcement, BIS;

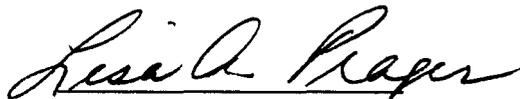
ELEVENTH, that SGI shall provide, within 45 days of the date of this Order, a report to BIS with regard to its exports to certain countries of concern during the six month period immediately preceding the date of this Order;

TWELFTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying that office that this case is withdrawn from adjudication, as provided by Section 766.18 of the Regulations;

and

THIRTEENTH, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Lisa A. Prager  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Entered this 6th day of January 2003.

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UNITED STATES' DEPARTMENT OF  
**COMMERCE**  
**NEWS**

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WASHINGTON, D.C. 20230

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BUREAU OF  
INDUSTRY  
AND  
SECURITY

FOR IMMEDIATE RELEASE  
January 7, 2003  
[www.bis.doc.gov](http://www.bis.doc.gov)

CONTACT: **Scott Kamins**  
Eugene Cottilli  
(202) 482-2721

**SILICON GRAPHICS SETTLES CRIMINAL AND CIVIL CHARGES THAT  
COMPUTER SHIPMENTS VIOLATED U.S. EXPORT CONTROL LAWS**

The Department of Commerce's Bureau of Industry and Security (BIS) announced that Silicon Graphics, Inc. (SGI) of Mountain View, California pled guilty to two felony charges that the company violated Commerce Department regulations by illegally exporting high performance computers to a Russian nuclear laboratory in 1996. SGI agreed to pay \$1 million in criminal fines to resolve the charges. In a related administrative case, SGI agreed to pay \$182,000 - the maximum penalty authorized by the Export Administration Regulations (EAR) - to settle civil charges arising from the same exports to the Russian nuclear laboratory, as well as additional charges relating to illegal computer exports to Israel and for failure to meet reporting requirements for exports to China, Qatar, and the United Arab Emirates.

As part of the settlement of criminal charges, SGI admitted that, on two occasions in 1996, the company exported four Challenge L computer systems, upgrades, and peripheral equipment to the All-Russian Institute for Technical Physics (Chelyabinsk-70) in violation of U.S. export control regulations. Chelyabinsk-70, located in Snezhinsk, Russia, is a nuclear laboratory operated by Russia's Ministry of Atomic Energy and is engaged in research, development, testing, and maintenance of nuclear devices.

In addition to the monetary penalties, the civil settlement agreement provided that SGI's exporting privileges to Russia will be denied for a period of three years. The denial of export privileges will be suspended provided that SGI does not commit any export control violations involving Russia during the suspension period. SGI also agreed, for a period of three years, not to exercise its eligibility to use License Exception CTP for exports and reexports to Russia, or to engage in any activity - such as repair or maintenance of computers - involving any military or nuclear end-user or end-use in Russia without the prior written consent of BIS. Finally, SGI agreed to report to BIS, within 45 days, all of its exports to certain countries of concern during the last six months.

In announcing the settlement, Acting Assistant Secretary of Commerce for Export Enforcement Lisa Prager stated that "this case demonstrates the Bureau's determination to rigorously enforce its controls over items that can be used in the proliferation of weapons of mass destruction."\*

The Department of Commerce, through BIS, administers and enforces export controls for reasons of national security, foreign policy, anti-terrorism, nonproliferation, and short supply. Criminal penalties and administrative sanctions can be imposed for violations of the EAR.

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