98TH CONGRESS 1ST SESSION

S. 1201

To amend title 17 of the United States Code to protect semiconductor chips and masks against unauthorized duplication, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4 (legislative day, MAY 2), 1983

Mr. MATHIAS (for himself and Mr. HART) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17 of the United States Code to protect semiconductor chips and masks against unauthorized duplication, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 That this Act may be cited as the "Semiconductor Chip Pro-
- 4 tection Act of 1983".
- 5 DEFINITIONS
- 6 SEC. 2. Section 101 of title 17 of the United States
- 7 Code is amended by adding at the end thereof the following:

1	"A 'semiconductor chip product' is the final or in-
2	termediate form of a product—
3	"(1) having two or more layers of metallic,
4	insulating, or semiconductor material, deposited
5	on or etched away from a piece of semiconductor
6	material in accordance with a predetermined pat-
7	tern;
8	"(2) intended to perform electronic circuitry
9	functions; and
10	"(3) that is a writing or a discovery, or the
11	manufacture, use, or distribution of which is in or
12	affects commerce.
13	"A 'mask work' is a series of related images—
14	"(1) having the predetermined, three-dimen-
15	sional pattern of metallic, insulating, or semicon-
16	ductor material present or removed from the
17	layers of a semiconductor chip product; and
18	"(2) in which series the relation of the
19	images to one another is that each image has the
20	pattern of the surface of one form of the semicon-
21	ductor chip product.
22	"A 'mask' is a substantially two-dimensional, par-
23	tially transparent and partially opaque sheet. A mask
24	embodies a mask work if the pattern of transparent
25	and opaque portions of the mask is substantially similar

1	to the pattern of one of the images of the mask work.
2	Masks and mask works shall not be deemed pictorial,
3	graphic, or sculptural works. The copyright in a mask
4	or mask work shall not extend to any other work of
5	authorship embodied therein.
6	"As used in sections 109(a), 401, 405, 406, 501(A),
7	503, 506, 509, and 602 of this title, 'copy' includes a semi-
8	conductor chip product that is subject to the exclusive rights
9	described in section 106.".
10	SUBJECT MATTER OF COPYRIGHT
11	SEC. 3. Section 102(a) of title 17 of the United States
12	Code is amended—
13	(1) by adding after paragraph (5) the following:
14	"(6) mask works;"; and
15	(2) by redesignating paragraphs (6) and (7) as
16	paragraphs (7) and (8), respectively.
17	EXCLUSIVE RIGHTS
18	SEC. 4. Section 106 of title 17 of the United States
19	Code is amended—
20	(1) by striking out "and" at the end of paragraph
21	(4);
22	(2) by striking out the period at the end of para-
23	graph (5) and inserting "; and" in lieu thereof; and
24	(3) adding at the end thereof the following:
25	"(6) in the case of mask works—

1	(A) to embody the mask work in a mask,
2	"(B) to distribute a mask embodying the
3	mask work;
4	"(C) to use a mask embodying the mask
5	work to make a semiconductor chip product;
6	"(D) in the manufacture of a semiconductor
7	chip product, substantially to reproduce, by opti-
8	cal, electronic, or other means, images of the
9	mask work on material intended to be part of the
10	semiconductor chip product; and
11	"(E) to distribute or use a semiconductor
12	chip product made as described in subparagraph
13	(C) or (D) of this paragraph.".
14	LIMITATION ON EXCLUSIVE RIGHTS AS TO MASKS
15	SEC. 5. (a) Chapter 1 of title 17 of the United States
16	Code is amended by adding at the end the following:
17	"§ 119. Scope of exclusive rights: Compulsory licensing
18	with respect to mask works
19	"(a) In the case of mask works, the exclusive rights
20	provided by section 106 are subject to compulsory licensing
21	under the conditions specified by this section.
22	"(b) The owner of a copyright on a mask work shall be
23	required to grant a compulsory license under the copyright,
24	to any applicant therefor, subject to all of the following terms

- "(1) The applicant has purchased a semiconductor chip product made or distributed in violation of the owner's exclusive rights under section 106.
 - "(2) When the applicant first purchased such semiconductor chip product (hereinafter in this section referred to as the 'infringing product'), the applicant did not have actual knowledge that or reasonable grounds to believe that the infringing product was an infringing product (hereinafter in this section referred to as 'having notice of infringement').
 - "(3) The applicant, before having notice of infringement, committed substantial funds to the use of the infringing product; the applicant would suffer substantial out-of-pocket losses (other than the difference in price between the infringing product and a noninfringing product) if denied the use of the infringing product; and it would be inequitable in the circumstances not to permit the applicant to continue the use or proposed use of the infringing product.
 - "(4) The applicant offers, subject to the applicant's rights, if any, under section 501(e) of this title, to pay the copyright owner a reasonable royalty for infringing products.

1	"(5) The royalty shall be for each unit of the in-
2	fringing product distributed or used by the applicant
3	after having notice of infringement.
4	"(6) The license shall be one to make and have
5	made (but only if the copyright owner and the owner's
6	licensees, if any, are unable to supply the applicant at
7	a reasonable price), use, and distribute the infringing
8	product, for substantially the same purposes that gave
9	rise to the applicant's right to a compulsory license,
10	throughout the United States, for the life of the copy-
11	right, revocable only for failure to make timely pay-
12	ments of royalties.".
13	(b) The chapter analysis for chapter 1 of title 17 is
14	amended by adding at the end thereof the following:
	"119. Scope of exclusive rights: Compulsory licensing with respect to mask works.".
15	DURATION OF COPYRIGHT
16	SEC. 6. Section 302 of title 17 of the United States
17	Code is amended by adding at the end thereof the following:
18	"(f) Masks.—Copyright in mask works endures for a
19	term of ten years from the first authorized—
20	"(1) distribution;
21	"(2) use in a commercial product; or
22	"(3) manufacture in commercial quantities
23	of semiconductor chip products made as described in subpara-
24	graph (C) or (D) of paragraph (6) of section 106.".

1	INNOCENT INFRINGEMENT
2	SEC. 7. Section 501 of title 17 of the United States
3	Code is amended by adding at the end thereof the following:
4	"(e) Notwithstanding any other provision of this chap-
5	ter, a purchaser of a semiconductor chip product who pur-
6	chased it in good faith, without having notice of infringement
7	(as that term is used in section 119 of this title), shall not be
8	liable as an infringer or otherwise be liable or subject to rem-
9	edies under this chapter with respect to the use or distribu-
10	tion of units of such semiconductor chip product that occurred
11	before such purchaser had notice of infringement.".
12	IMPOUNDING AND SEIZURE
13	SEC. 8. Sections 503(a), 503(b), and 509(a) of title 17
14	of the United States Code are each amended by inserting
15	"masks," after "film negatives," each place it appears.
16	EFFECTIVE DATE
17	SEC. 9. The amendments made by this Act shall take
18	effect ninety days after the date of enactment of this Act, but
19	shall not apply to—
20	(1) semiconductor chip products manufactured in
21	the United States or imported into the United States
22	before the effective date;
23	(2) masks made in the United States or imported
24	into the United States before the effective date; or

1	(3) semiconductor chip products manufactured in
2	the United States by means of masks described in
3	paragraph (2) of this section.

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