

97TH CONGRESS  
2D SESSION

# S. 3117

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

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 18 (legislative day, NOVEMBER 30), 1982

Mr. MATHIAS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 1982".

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:

8 "A 'semiconductor chip product' is the final or in-  
9 termediate form of a product—

1           “(1) having two or more layers of metallic,  
2           insulating, or semiconductor material, deposited  
3           on or etched away from a piece of semiconductor  
4           material in accordance with a predetermined pat-  
5           tern;

6           “(2) intended to perform electronic circuitry  
7           functions; and

8           “(3) that is a writing or a discovery, or the  
9           manufacture, use, or distribution of which is in or  
10          affects commerce.

11          “A ‘mask work’ is a series of related images—

12           “(1) having the predetermined, three-dimen-  
13           sional pattern of metallic, insulating, or semicon-  
14           ductor material present or removed from the  
15           layers of a semiconductor chip product; and

16           “(2) in which series the relation of the  
17           images to one another is that each image has the  
18           pattern of the surface of one form of the semicon-  
19           ductor chip product.

20          “A ‘mask’ is a substantially two-dimensional par-  
21          tially transparent and partially opaque sheet. A mask  
22          embodies a mask work if the pattern of transparent  
23          and opaque portions of the mask is substantially similar  
24          to the pattern of one of the images of the mask work.

1 Masks and mask works shall not be deemed pictorial,  
2 graphic, or sculptural works.

3 “As used in sections 109(a), 405, 406, 501(a), 503,  
4 506, 509, and 602 of this title, ‘copy’ includes a semiconduc-  
5 tor chip product that is subject to the exclusive rights de-  
6 scribed in section 106.”.

7 SUBJECT MATTER OF COPYRIGHT

8 SEC. 3. Section 102(a) of title 17 of the United States  
9 Code is amended—

10 (1) by adding after paragraph (5) the following:

11 “(6) mask works;”; and

12 (2) by redesignating paragraphs (6) and (7) as  
13 paragraphs (7) and (8), respectively.

14 EXCLUSIVE RIGHTS

15 SEC. 4. Section 106 of title 17 of the United States  
16 Code is amended—

17 (1) by striking out “and” at the end of paragraph  
18 (4);

19 (2) by striking out the period at the end of para-  
20 graph (5) and inserting “; and” in lieu thereof; and

21 (3) adding at the end thereof the following:

22 “(6) in the case of mask works—

23 “(A) to embody the mask work in a mask;

24 “(B) to distribute a mask embodying the  
25 mask work;

1 “(C) to use a mask embodying the mask  
2 work to make a semiconductor chip product;

3 “(D) in the manufacture of a semiconductor  
4 chip product, substantially to reproduce, by opti-  
5 cal, electronic, or other means, images of the  
6 mask work on material intended to be part of the  
7 semiconductor chip product; and

8 “(E) to distribute or use a semiconductor  
9 chip product made as described in subclause (C)  
10 or (D) of clause (6) of this section.”.

11 **LIMITATION ON EXCLUSIVE RIGHTS AS TO MASKS**

12 **SEC. 5.** (a) Chapter 1 of title 17 of the United States  
13 Code is amended by adding at the end the following:

14 “§ 119. **Scope of exclusive rights: Compulsory licensing**  
15 **with respect to mask works**

16 “(a) In the case of mask works, the exclusive rights  
17 provided by section 106 are subject to compulsory licensing  
18 under the conditions specified by this section.

19 “(b) The owner of a copyright on a mask work shall be  
20 required to grant a compulsory license under the copyright,  
21 to any applicant therefor, on the following terms and condi-  
22 tions, and in the following circumstances:

23 “(1) The applicant has purchased semiconductor  
24 chip products made or distributed in violation of the  
25 owner’s exclusive rights under section 106.

1           “(2) When the applicant first purchased such  
2 semiconductor chip product (hereinafter in this section  
3 referred to as the ‘infringing product’), the applicant  
4 did not have actual knowledge that or reasonable  
5 grounds to believe that the infringing product was an  
6 infringing product (hereinafter in this section referred  
7 to as ‘having notice of infringement’).

8           “(3) The applicant, before having notice of in-  
9 fringement, committed substantial funds to the use of  
10 the infringing product; the applicant would suffer sub-  
11 stantial out-of-pocket losses (other than the difference  
12 in price between the infringing product and a nonin-  
13 fringing product) if denied the use of the infringing  
14 product; and it would be inequitable in the circum-  
15 stances not to permit the applicant to continue the use  
16 or proposed use of the infringing product.

17           “(4) The applicant offers, subject to the appli-  
18 cant’s rights, if any, under section 501(e) of this title,  
19 to pay the copyright owner a reasonable royalty for in-  
20 fringing products.

21           “(5) The royalty shall be for each unit of the in-  
22 fringing product distributed or used by the applicant  
23 after having notice of infringement.

24           “(6) The license shall be one to make, have made  
25 (but only if the copyright owner and the owner’s li-

1 censees, if any, are unable to supply the applicant at a  
2 reasonable price), use, and distribute the infringing  
3 product, for substantially the same purposes that gave  
4 rise to the applicant's right to a compulsory license,  
5 throughout the United States, for the life of the copy-  
6 right, revocable only for failure to make timely pay-  
7 ments of royalties.”.

8 (b) The sectional analysis at the beginning of chapter 1  
9 of title 17 is amended by adding the following:

“119. Scope of exclusive rights: Compulsory licensing with respect to mask  
works.”.

10 DURATION OF COPYRIGHT

11 SEC. 6. Section 302 of title 17 of the United States  
12 Code is hereby amended by adding at the end thereof the  
13 following:

14 “(f) MASKS.—Copyright in mask works endures for a  
15 term of ten years from the first authorized—

16 “(1) distribution;

17 “(2) use in a commercial product; or

18 “(3) manufacture in commercial quantities

19 of semiconductor chip products made as described in sub-  
20 clause (C) or (D) of clause 6 of section 106 of this title.”.

21 INNOCENT INFRINGEMENT

22 SEC. 7. Section 501 of title 17 of the United States  
23 Code is amended by adding at the end thereof the following:

1           “(e) Notwithstanding the other provisions of this chap-  
2 ter, a purchaser of a semiconductor chip product who pur-  
3 chased it in good faith, without having notice of infringement  
4 (as that term is used in section 119 of this title), shall not be  
5 liable as an infringer or otherwise be liable or subject to rem-  
6 edies under this chapter with respect to the use or distribu-  
7 tion of units of such semiconductor chip product that occurred  
8 before such purchaser had notice of infringement.”.

9

#### IMPOUNDING AND SEIZURE

10           SEC. 8. Sections 503(a), 503(b), and 509(a) of title 17 of  
11 the United States Code are each amended by inserting  
12 “masks,” after “film negatives,” each place it appears.

13

#### EFFECTIVE DATE

14           SEC. 9. The amendments made by this Act shall take  
15 effect ninety days after the date of enactment of this Act, but  
16 shall not apply to—

17           (1) semiconductor chip products manufactured in  
18 the United States or imported into the United States  
19 before the effective date;

20           (2) masks made in the United States or imported  
21 into the United States before the effective date;

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

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