

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bills, H.R. 5496, H.R. 5600, and H.R. 5603, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?
There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 5 of rule I, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 5525, by the yeas and nays; H.R. 4772, by the yeas and nays; H.R. 5600, de novo; H.R. 5603; de novo; and H.R. 5496, de novo.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

SEMICONDUCTOR CHIP PROTECTION ACT OF 1984

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5525, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 5525, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 388, nays 0, not voting 45, as follows:

[Roll No. 221]

YEAS—388

| | | |
|--------------|--------------|---------------|
| Ackerman | Bosco | Coyne |
| Addabbo | Boucher | Craig |
| Albosta | Boxer | Crane, Daniel |
| Alexander | Breaux | Crane, Philip |
| Anderson | Britt | Crockett |
| Andrews (NC) | Brooks | Dannemeyer |
| Andrews (TX) | Broomfield | Darden |
| Annuozio | Brown (CA) | Daschle |
| Anthony | Brown (CO) | Daub |
| Applegate | Broyhill | Davis |
| Archer | Bryant | de la Garza |
| Aspin | Burton (CA) | Dellums |
| AuCoin | Burton (IN) | Derrick |
| Badham | Byron | DeWine |
| Barnes | Campbell | Dicks |
| Bartlett | Carper | Dingell |
| Bateman | Chandler | Dixon |
| Bates | Chapple | Donnelly |
| Beilenson | Cheney | Dorgan |
| Bennett | Clinger | Dowdy |
| Bereuter | Coats | Downey |
| Berman | Coelho | Dreier |
| Blaggi | Coleman (MO) | Duncan |
| Blirakis | Coleman (TX) | Durbin |
| Bliley | Collins | Dymally |
| Boehliert | Conable | Dyson |
| Boggs | Conte | Early |
| Boland | Conyers | Eckart |
| Boner | Cooper | Edgar |
| Bonior | Corcoran | Edwards (AL) |
| Bonker | Coughlin | Edwards (CA) |
| Borski | Courter | Edwards (OK) |

| | | |
|---------------|---------------|---------------|
| Emerson | Levin | Robinson |
| English | Levine | Rodino |
| Erdreich | Levitas | Roe |
| Erlenborn | Lewis (CA) | Roemer |
| Evans (IA) | Lewis (FL) | Rogers |
| Evans (IL) | Lipinski | Rose |
| Fascell | Livingston | Rostenkowski |
| Fazio | Lloyd | Roth |
| Feighan | Loefler | Roukema |
| Ferraro | Long (LA) | Rowland |
| Fiedler | Long (MD) | Roybal |
| Fields | Lott | Rudd |
| Fish | Lowery (CA) | Russo |
| Flippo | Lowry (WA) | Sabo |
| Florio | Lujan | Savage |
| Foglietta | Luken | Sawyer |
| Ford (MI) | Lundine | Schaefer |
| Ford (TN) | Lungren | Scheuer |
| Fowler | Mack | Schroeder |
| Frank | MacKay | Seiberling |
| Franklin | Madigan | Sharp |
| Frost | Markey | Shaw |
| Fuqua | Marlenee | Shelby |
| Garcia | Marriott | Shumway |
| Gaydos | Martin (IL) | Shuster |
| Gejdenson | Martin (NY) | Sikorski |
| Gekas | Martinez | Siljander |
| Gephardt | Matsul | Sisisky |
| Gibbons | Mavroules | Skeen |
| Gilman | Mazzoli | Skelton |
| Gingrich | McCain | Slattery |
| Glickman | McCandless | Smith (FL) |
| Gonzalez | McCloskey | Smith (IA) |
| Gore | McCollum | Smith (NE) |
| Gradison | McCurdy | Smith (NJ) |
| Gramm | McEwen | Smith, Denny |
| Gray | McGrath | Smith, Robert |
| Green | McHugh | Snowe |
| Gregg | McKernan | Snyder |
| Guarini | McKinney | Solarz |
| Gunderson | McNulty | Solomon |
| Hall (IN) | Mica | Spence |
| Hall (OH) | Mikulski | Spratt |
| Hall, Ralph | Miller (CA) | St Germain |
| Hall, Sam | Miller (OH) | Staggers |
| Hamilton | Mineta | Stangeland |
| Hammerschmidt | Minish | Stark |
| Hance | Mitchell | Stenholm |
| Hansen (UT) | Moakley | Stokes |
| Harkin | Molinari | Stratton |
| Harrison | Mollohan | Studds |
| Hartnett | Montgomery | Stump |
| Hatcher | Moore | Sundquist |
| Hawkins | Moorhead | Swift |
| Hayes | Morrison (WA) | Tallon |
| Hefner | Mrazek | Tauke |
| Heftel | Murphy | Tauzin |
| Hertel | Murtha | Taylor |
| Hightower | Myers | Thomas (GA) |
| Hiler | Natcher | Toricelli |
| Hillis | Neal | Towns |
| Holt | Nelson | Traxler |
| Hopkins | Nichols | Udall |
| Horton | Nielson | Valentine |
| Howard | Nowak | Vander Jagt |
| Hoyer | O'Brien | Vandersgriff |
| Huckaby | Oaker | Vento |
| Hughes | Obay | Volkmer |
| Hunter | Olin | Vucanovich |
| Hutto | Ortiz | Walgren |
| Hyde | Ottinger | Walker |
| Ireland | Owens | Watkins |
| Jacobs | Packard | Waxman |
| Jeffords | Panetta | Weaver |
| Jenkins | Parris | Weber |
| Johnson | Patman | Weiss |
| Jones (NC) | Patterson | Wheat |
| Jones (OK) | Paul | Whitley |
| Jones (TN) | Pease | Whittaker |
| Kaptur | Penny | Whitten |
| Kasich | Pepper | Williams (MT) |
| Kastenmeier | Perkins | Wilson |
| Kazen | Petri | Winn |
| Kennelly | Pickle | Wirth |
| Kildee | Porter | Wise |
| Kindness | Price | Wolf |
| Klecicka | Pursell | Wolpe |
| Kogovsek | Quillen | Wortley |
| Kostmayer | Rahall | Wright |
| Kramer | Rangel | Wyden |
| LaFalce | Ratchford | Wyllie |
| Lagomarsino | Ray | Yates |
| Lantos | Regula | Yatron |
| Latta | Reid | Young (AK) |
| Leath | Richardson | Young (MO) |
| Lehman (CA) | Rinaldo | Zschau |
| Lehman (FL) | Ritter | |
| Leland | Roberts | |

NOT VOTING—45

| | | |
|-----------|---------------|---------------|
| Alaska | Frenzel | Pasichyan |
| Barnard | Goodling | Pritchard |
| Bedell | Hansen (ID) | Ridge |
| Bethune | Hubbard | Schneider |
| Bevill | Kemp | Schnulze |
| Carney | Kolter | Schumer |
| Carr | Leach | Sensenbrenner |
| Chappell | Lent | Shannon |
| Clarke | Martin (NC) | Simon |
| Clay | McDade | Synar |
| D'Amours | Michel | Thomas (CA) |
| Daniel | Moody | Torres |
| Dickinson | Morrison (CT) | Whitehurst |
| Dwyer | Oberstar | Williams (OH) |
| Foley | Oxley | Young (FL) |

□ 1510

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1201) to amend title 17 of the United States Code to protect semiconductor chips and masks against unauthorized duplication, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1201

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Semiconductor Chip Protection Act of 1984".

DEFINITIONS

SEC. 2. Section 101 of title 17 of the United States Code is amended by adding at the end thereof the following:

"A 'semiconductor chip product' is the final or intermediate form of a product—

"(1) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from a piece of semiconductor material in accordance with a predetermined pattern;

"(2) intended to perform electronic circuitry functions; and

"(3) that is a writing, or the manufacture, use, or distribution of which is in or affects commerce.

"A 'mask work' is a series of related images, however fixed or encoded—

"(1) having the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

"(2) in which series the relation of the images to one another is that each image has the pattern of the surface of one of the semiconductor chip product.

"A 'mask' is a substantially two-dimensional sheet, partially transparent and partially opaque to preselected radiation. A mask embodies a mask work if the pattern of transparent and opaque portions of the mask is substantially similar to the pattern of one of the images of the mask work. Masks and mask works shall not be deemed

pictorial, graphic, or sculptural works. The copyright in a mask work shall neither extend to, nor affect, limit, or impair any copyright in any other work of authorship embodied therein or in a semiconductor chip product.

The provisions of sections 109(a), 401, 405, 406, 501(A), 503, 506, 509, and 602 of this title, applicable to copies of a work shall apply also to semiconductor chip products."

SUBJECT MATTER OF COPYRIGHT

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

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

"(6) mask works"; and

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

EXCLUSIVE RIGHTS

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

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting "; and" in lieu thereof; and

(3) adding at the end thereof the following:

"(6) in the case of mask works, only the following rights—

"(A) to embody the mask work in a mask;

"(B) to distribute a mask embodying the mask work;

"(C) to embody an image of the mask work in a semiconductor chip product;

"(D) in the manufacture of a semiconductor chip product, substantially to reproduce, by optical, electronic, or other means, an image of the mask work on material intended to be part of the semiconductor chip product; and

"(E) to distribute a semiconductor chip product made as described in subparagraph (C) or (D) of this paragraph."

LIMITATION ON EXCLUSIVE RIGHTS AS TO MASKS

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

"§ 119. Scope of exclusive rights: Rights of reverse engineering with respect to mask works

"(a) In the case of mask works, the exclusive rights provided by section 106 are subject to a right of reverse engineering use under the conditions specified by this section.

"(b) It is not infringement of the rights of the owner of a copyright on a mask work to reproduce the pattern on one or more masks or in a semiconductor chip product solely for the purpose of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask or semiconductor chip product, or the circuit schematic, logic flow, or organization of components utilized therein."

(b) The chapter analysis for chapter 1 of title 17 is amended by adding at the end thereof the following:

"119. Scope of exclusive rights: Right of reverse engineering with respect to mask works."

(c) Section 106 of title 17 of the United States Code is amended by striking out "118" and inserting in lieu thereof "119".

DURATION OF COPYRIGHT

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

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

"(1) distribution;

"(2) use in a commercial product; or

"(3) manufacture in commercial quantities of semiconductor chip products made as de-

scribed in subparagraph (C) or (D) of paragraph (6) of section 106."

INNOCENT INFRINGEMENT

SEC. 7. (a) Chapter 5 of title 17 of the United States Code is amended by adding at the end thereof the following:

"§ 511. Innocent infringement of mask works

"(a) Notwithstanding any other provision of this chapter, an innocent purchaser of an infringing semiconductor chip product shall not be liable as an infringer or otherwise be liable or subject to remedies under this chapter with respect to the distribution of units of such semiconductor chip product that occurred before such innocent purchaser had notice of infringement.

"(b) The remedies of the owner of a copyright on a mask work against an innocent purchaser shall be limited to a reasonable royalty upon each unit of the infringing semiconductor chip product that the innocent purchaser made or distributed after having notice of infringement, if the innocent purchaser establishes the applicability of all of the following circumstances:

"(1) the innocent purchaser, before first having notice of infringement, committed substantial funds to the use of the infringing product;

"(2) the innocent purchaser 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;

"(3) the innocent purchaser's use of the infringing product is and will be for substantially the same purpose that initially gave rise to the innocent purchaser's immunity under subsection (a);

"(4) in the case of an innocent purchaser who, after having notice of infringement, makes the infringing semiconductor chip product, or has it made for him, the copyright owner and the owner's licensees, if any, are unable to supply the semiconductor chip product to the innocent purchaser at a reasonable price; and

"(5) it would be inequitable in the circumstances not to permit the innocent purchaser to continue the use or proposed use of the infringing product.

"(c) The immunity of an innocent purchaser and limitation of remedies with respect thereto shall extend to good faith purchasers from him.

"(d) For the purposes of this section—

"(1) 'innocent purchaser' means one who purchases an infringing semiconductor chip product in good faith, and without having notice of infringement;

"(2) 'notice of infringement' means actual knowledge that, or reasonable grounds to believe that, a product is an infringing semiconductor chip product; and

"(3) 'infringing semiconductor chip product' means a semiconductor chip product which is made or distributed in violation of the exclusive rights of an owner of a copyright in a mask work."

(b) The table of sections for chapter 5 is amended by adding at the end thereof the following new item:

"511. Innocent infringement of mask works."

IMPOUNDING AND SEIZURE

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

SAVINGS CLAUSES

SEC. 9. Nothing contained in this Act shall be deemed to add to or detract from existing rights of owners of copyrights in works of authorship listed in section 102(a) of title 17

of the United States Code, prior to its amendment by this Act. Nothing contained in this Act shall be deemed to detract from any right of the lawful owner of a product purchased from the copyright owner, or from a person authorized by the copyright owner, freely to use, distribute and resell the product with liability therefor the copyright laws.

EFFECTIVE DATE

SEC. 10. The amendments made by this Act shall not create liability for any conduct that occurred prior to the date of enactment of this Act, but shall apply to all acts of manufacture or distribution of semiconductor chip products that occur in the United States after such date, to all acts of importation of semiconductor chip products into the United States that occur after such date, and to all violations of the exclusive rights of the copyrights owner under section 106(6) of title 17, United States Code, as amended by section 4 of this Act, that occur after such date. Notwithstanding the provisions of this section, no alleged infringer shall be liable under this Act with respect to the continued manufacture or distribution of any semiconductor chip product that the alleged infringer commercially distributed in the United States prior to January 1, 1930.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike out all after the enacting clause of the Senate bill, S. 1201, and to insert in lieu thereof the provisions of the bill, H.R. 5525, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An act to amend title 17, United States Code, to protect mask works of semiconductor chips against unauthorized duplication, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5525) was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will reduce to a minimum of 3 minutes the period of time within which a vote by electronic device may be taken on all of the additional motions to suspend the rules on which the Chair has postponed further proceedings.