

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 775 final

Brussels, 23 December 1985

Proposal for a
COUNCIL DIRECTIVE

on the legal protection of original topographies of
semiconductor products

(submitted to the Council by the Commission)

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Explanatory Memorandum

I. Introduction

1. Integrated circuits and similar semiconductor products are formed from semiconducting, conducting and insulating material. These combine to form the transistors, diodes and other components required to make up an electronic circuit. The configuration of the various layers of an integrated circuit can be determined in several different ways, for example, by directing a pattern of light onto a photosensitive surface, which then permits specific areas of semiconductor material to be removed, and by "doping" the material with other substances. The pattern of light is frequently determined by the use of masks which act much in the same way as stencils. Other examples of techniques in current use include direct writing with an electronic beam on semiconductor material.

2. Integrated circuits are playing an increasingly important role not only in the electronics industry itself, but in a broad range of industrial sectors from motor vehicles to machine tools. High levels of investment are required to develop new, improved integrated circuits, particularly those of a more complex kind. At the same time, a circuit can be copied at a fraction of the cost of developing it from scratch. These copied products can significantly reduce the return on the investment made by the original developer and consequently adversely affect his ability to continue to invest in innovative designs.

3. The legal protection available to the developer of new integrated circuits is in many cases far from clear. The degree of inventiveness to secure a patent may well be absent. Copyright or design protection of the configuration of the circuit as embodied in the circuit itself seems not to be available in most jurisdictions

both within and outside the Community, though such protection does appear to be available in at least the United Kingdom and Ireland and possibly also the Netherlands.

4. To provide clearer protection for the design of integrated circuits in the United States, a Semiconductor Chip Protection Act was enacted on 8 November 1984. This creates a new and specific form of protection for the design of integrated circuits and other semiconductor products (mask works). The protection is made available to United States nationals and domiciliaries as well as to foreign citizens whose States have entered into a treaty affording protection to mask works to which the United States is a party. However, by Presidential proclamation, protection can also be extended to citizens of countries which the President finds extend protection to United States nationals either on substantially the same basis as such countries protect their own citizens or on substantially the same basis as the United States Law. In addition, a transitional provision has been included in section 914 of the Act permitting the Secretary of Commerce to extend protection to foreign producers for 3 years from the Act's enactment if he finds that the countries in question are making good faith efforts and reasonable progress toward entering into a treaty with United States on the subject or enacting legislation of a kind on which the President could later rely to extend the protection of the United States Act indefinitely.

5. In 1985, the Japanese legislature also adopted a law creating a specific form of protection for integrated circuits. The Japanese law (No. 43 of 1985 promulgated on 31 May 1985) creates a circuit layout right giving the creator of the layout the exclusive right to authorize for a period of ten years from the registration of his right the use for business purposes of the circuit layout. The basic features of the law in respect of the scope of protection conferred are much along the lines set out in the United States Act. Foreign producers, however, have from the outset been granted national treatment.

6. Within the Community, in the majority of Member States, the legal protection available to integrated circuits is at best uncertain and it appears likely that a number of legislative initiatives will be taken in the near future, partly in response to the United States legislation.

7. Representatives of the European electronics industry have expressed their concern about the situation to the Commission and have pointed out the disadvantages and risks that could flow from inadequate or insufficiently rapid adaptation of applicable legislation in the Member States. In the absence of clear protection in their countries of origin, semiconductor products developed in the Community will not be adequately protected in the important American market. In addition, unco-ordinated responses at national level in the Community might pose new problems for electronic firms seeking to develop their activities on the basis of a single Community-wide market. Substantial differences in national laws could directly and adversely affect the functioning of the Community's internal market in integrated circuits and similar semiconductor products.

8. At the international level, the World Intellectual Property Organisation has just begun work intended to lead to a new international treaty on the protection of integrated circuits. A committee of experts began examining a draft treaty⁴ on the subject at the end of November 1985. At this stage, however, it is not clear whether such a treaty can be adopted in the near future.

9. In these circumstances, the Commission considered it desirable that, as a matter of urgency, a proposal for a directive be made to ensure sufficiently convergent development of the laws of the Member States in this area. The preparation of such a proposal, together with a declaration by the Council of its intent to examine it with a view to its rapid adoption, would also create the conditions in which a petition could reasonably be made on the Community's behalf under section 914 of the United States law for transitional protection for Community semiconductor producers. Accordingly, on 19 June 1985, on

⁴IPIC/CE/I/2, 28 June 1985.

the Commission's proposal, the Council adopted a resolution indicating its intention to examine the Commission's future proposal for a directive with a view to deciding on its adoption as rapidly as possible, subject to whatever amendments might be necessary, in particular, in the light of the Opinions of the European Parliament and the Economic and Social Committee. On the following day the Commission petitioned the United States authorities on the Community's behalf.

10. By orders of 12 September 1985 issued to the individual Member States on the basis of the Community petition, the United States Commissioner of Patents and Trademarks acting on behalf of the Secretary of Commerce granted interim protection to nationals and residents of all EEC Member States except the Netherlands and the United Kingdom, which countries, prior to the Commission's petition, had already filed petitions on their own behalf. The effective date of the orders made in favour of the eight Member States is 20 June 1985 and the orders terminate on 12 September 1986, though they may be renewed. At the same time the temporary protection granted to the Netherlands was extended to expire also on the 12 September 1986. The interim protection granted to the United Kingdom on the basis of existing copyright protection had already been granted for the maximum period laid down in the law, that is, three years from its enactment on 8 November 1984, consequently expiring on 8 November 1987.
11. Accordingly, to ensure continued protection under the United States law for all Member States after the 12 September 1986, the Community will have to request renewal of all the orders save that made in respect of the United Kingdom. Such a request presupposes that good faith efforts and progress in respect of providing for protection of the topographies of semiconductor products in the EEC Member States can be shown by the time a petition is to be made in the summer of 1986.

II. The general approach of the Commission's proposal for a directive

12. The Commission's proposal is designed to ensure that integrated circuits and similar semiconductor products are protected in every Member State in accordance with certain common basic principles, while at the same time it leaves the Member States choice as to form and methods. This framework approach seems necessary since the legal starting points of the Member States are very different, while results need to be achieved quickly if the exercise is to achieve its objectives, in particular, continued protection for Community producers in the United States market. A search for a uniform solution or even a relatively high level of harmonisation, though in the long run the ideal solution, is likely to cause considerable delay which could be damaging to the Community semiconductor industry. The proposed directive accordingly has a framework character similar to that of a number of existing international instruments in the industrial and intellectual property field including, for example, the Geneva Convention of 1971 for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms and the Vienna Agreement of 1973 for the Protection of Type Faces and their International Deposit.
13. In summary, the proposed directive seeks to specify what should be protected; who should benefit from the protection; which maximum formalities may be required to be fulfilled as a condition for the subsistence of protection; which acts should be considered infringements and which should not; what limits should be respected as to the length of the protection; and, if provision is made for marking protected products, what mark should be prescribed. At the same time, Member States would be free to choose how they legislate for the protection, in particular, whether they rely on copyright or on provisions enacted specifically for this purpose or on a combination of copyright law and specific legislation.
14. In the longer term, consideration should also be given to the adoption of further measures designed to ensure that new and unnecessary obstacles to trade in semiconductor products do not arise within the Community. In particular, registration and deposit

requirements in a number of Member States will clearly complicate the operations of semiconductor producers. The possibility of a single procedure, perhaps to be administered within the framework of the European Patent Organisation, should be addressed. The realisation of this objective is likely to take a considerable time, however, not least because of the need to agree on an extension of the European Patent Organisation's responsibilities, not only among Community Member States but also among the other members of the Organisation. Accordingly, it should be pursued separately from the discussion of the creation of a basic Community legal framework in the form of a directive. A fortiori the same applies to consideration of the adoption a Community system for the protection of the topographies of semiconductor products or even for designs generally.

Legal basis

15. Since divergent national legislation on the legal protection of integrated circuits and similar semiconductor products would adversely affect the functioning of the common market in those products, the appropriate basis for most of the provisions of the directives is Article 100 EEC. In addition, given the reciprocity approach of the United States, it seems desirable to deal also with the question of protection for nationals from non-Member States. An extension of protection on the EEC market to producers of semiconductor products from non-Member States is a matter of considerable significance, not least commercial, to the Community's entire semiconductor industry. It is accordingly desirable that provision be made for an extension of this kind being decided upon for the Community as a whole, particularly since action of this kind will provide a favourable basis for the extension of protection in non-Member States to Community firms. Given that such a provision has for its objective defining the conditions under which producers outside the Community will be entitled to protection for products developed by them and accordingly has an intended effect on trade flows in such products across the external frontiers of the Community, Article 113 EEC also forms part of the proposed directive's legal basis.

III. Particular provisions

Chapter 1: Definitions

Article 1

16. The first and second of these definitions specify the characteristics of the object to be protected, namely, the "topography" of a "semiconductor product". The definitions seek to be as specific as possible while at the same time not limiting the definition by reference to technical features that may soon prove to be outmoded.
17. "Topography" expresses the basic concept of images representing the physical configuration in three dimensions of a semiconductor product without being too closely founded on current techniques. It also appears to translate readily into most Community languages. The definition covers the configuration of a product as embodied in the product itself as well as other expressions of the configuration in the form of masks, drawings or computer coding.
18. "Semiconductor" product is used rather than "integrated circuit" so as to include items that are not in fact circuits because they are not complete circuits. The product must consist of an integrated whole, a body of material, containing a layer of semiconducting material and one or more other layers of conducting, insulating or semiconducting material arranged in a particular form, and be intended to perform some electronic function. Products also performing other functions, such as optical function, are not excluded. This combination of features specified by the definition will exclude certain electronic devices which need not be covered by the directive such as printed circuits.
19. "Commercial exploitation" is defined for the purposes of Articles 4 (maximum formalities for subsistence of protection) and 6 (term of protection).

Chapter 2: Protection of original topographies of semiconductor products

Article 2

20. Article 2(1) contains the basic obligation of Member States to protect the topographies of semiconductor products by conferring exclusive rights in accordance with the directive's provisions. Article 2(2) provides that these rights may be granted in different ways: either by national copyright law or by provisions enacted for the specific purpose of protecting topographies of semiconductor products or by a combination of these provisions. Protection by other means, such as the generally applicable provisions of unfair competition law, will thus not satisfy the requirements of this article, though they may continue to apply to protect topographies of semiconductor products in certain cases as is made clear by Article 9. The exclusion of unfair competition rules from Article 2 is explained by reason of their relatively undefined character at least as far as legislative provisions are concerned. In the present context, a higher degree of legislative precision and resulting certainty of application seems required.

21. Article 2(3) excludes from protection topographies that do not fulfil certain conditions. First, it excludes those that are not the result of their creator's own intellectual effort, that is, those that are themselves copies. Second, it explicitly provides for cases in which well known elements are incorporated in a topography. Such topographies can only be considered original if the manner in which the well known elements are combined is both the result of independent intellectual effort and in itself not well known in the industry. These provisions seem desirable in order to ensure a sufficiently convergent approach to the concept of originality. In this form, Article 2(3) is consistent with the approach of the WIPO draft Treaty and the United States Act. The imposition of novelty requirements in this field poses sufficient practical problems to make it an unattractive alternative. Furthermore, if the directive were to leave open the possibility of Member States choosing either an originality or a novelty requirement, the protection offered by the laws of different Member States could vary significantly. To define both originality and novelty in a way which guarantees

sufficient convergence and is at the same time acceptable to all Member States is unlikely to prove feasible. For this reason, the definition of a single originality standard has been preferred.

Article 3

22. Article 3 is a minimum provision that ensures that, whatever legislative technique is chosen, Community semiconductor developers will benefit from protection in all Member States. Under paragraph 1 the protected person is defined as being any creator of the topography who is a national and resident of a Member State. Paragraph 2 permits an alternative solution in the context of registered forms of protection in which the person registering the right may not be the creator himself. In both cases the principle of national treatment of persons from Community Member States is confirmed.

23. Article 3(3) provides a mechanism whereby the Community will be able to promote the legal protection of topographies of semiconductor products in States which are not Members of the Community. By Council decision, protection within the EEC Member States can be extended to persons who are not eligible for protection in accordance with paragraph 1, it being understood that such decisions will be taken on the basis of reciprocity.

24. Obligations to protect topographies of semiconductor products arguably exist already as between certain States, though the issue may be controversial. The fourth paragraph of Article 3 is designed to ensure that the provisions in the directive cannot be used to support an argument denying the existence of existing or future international obligations in the field.

Article 4

25. Laws enacted for the specific purpose of protecting topographies of semiconductor products may well provide for registration of claims for protection and for obligatory deposit of material identifying, describing or exemplifying the topography. This Article authorises Member States to make the subsistence of protection after the

expiration of a period of grace of two years duration beginning with the topography's first commercial exploitation subject to conditions of this type. Any fees payable must not exceed the administrative costs of the procedure. In this connection, it should be borne in mind that under copyright systems in the Community there will be no obligatory registration or deposit and a fortiori no fees payable and no disclosure of identifying descriptive or exemplifying material.

26. No further formalities as a condition for protection are admitted. Article 8 on marking concerns legal provisions that are facultative in character.

Article 5

27. Acts which must be considered infringements are listed in Article 5(1). "Reproduction of topographies in whole or in part" covers reproduction in the form of a semiconductor product. Various means of qualifying "in part", for example, by the addition of the word "substantial" are possible, but it is doubtful whether they clarify the text and accordingly they have not been included. Article 5(1)(b) covers both traffic in semiconductors and in topographies as such.
28. The second and third paragraphs of Article 5 concern the difficult problem of so-called reverse engineering. The second paragraph authorizes reproduction of topographies for the purposes stated and thereby legitimizes reverse engineering as a technical procedure. The third paragraph addresses the more difficult and controversial problem of the commercial exploitation of the results of reverse engineering. Such a provision seems necessary if the Community semiconductor industry is not to be put at a disadvantage by comparison with the United States industry which has the benefit of a similar provision, though at the price of a certain legal insecurity at least in the initial period of the provision's application. In practice, once substantial similarity between two topographies is shown, someone relying on a reverse engineering defence in relation to a product that he has marketed will have the burden of establishing that his topography is indeed an original creation realized on the basis of reverse engineering. To do so, he will have

to show in detail how it was developed. This "paper trail" will have to provide a sufficient indication of independent creative activity to exclude the possibility of simple copying.

29. Article 5(4)(a) applies the principle of Community exhaustion to the protection of topographies of semiconductor products.
30. Article 5(4)(b) introduces an exception in favour of the innocent infringer, defined as a person who has purchased a semiconductor product without reasonable grounds to believe that a protected topography was used in its manufacture. Article 5(5) clarifies the possible legal consequences of commercial exploitation of infringing products by an innocent purchaser. He cannot be confronted with an injunction but only a claim for royalties. The innocent infringer will thus be able to dispose commercially of stock in hand when he first learns of its infringing character.
31. Article 5(6) contains a provision common to several international instruments on intellectual property rights. It corresponds to Article 3(4) of the draft WIPO Treaty. It is meant to ensure that transport vehicles of any kind may temporarily or accidentally enter the national territory, waters or airspace of a Member State regardless of whether their equipment contains components which infringe exclusive rights in respect of semiconductor topographies.

Article 6

32. Article 6(1) requires protection to last at least ten years from the time when the topography is first commercially exploited. Member States opting for a registration system may calculate the term of protection from the fulfilment of the registration requirement provided it takes place after the first commercialisation. If the product is first registered and then commercialised the term of protection shall be calculated as from its commercialisation. The choice between systems making the subsistence of protection dependent on registration and protection systems without registration makes provision for a uniform term of protection impossible. The wording of this paragraph helps to ensure, however, that distortions resulting from varying terms of protection will be minimized.

33. Article 6(2) contains two provisions. The first one sets a maximum for the term of protection to fifteen years calculated from the fixation or encoding of the topography. The provision will be of importance both to States introducing a registration system with a grace period of up to two years from first commercialisation and also to States without registration systems. Once again it helps to ensure that, whatever system is chosen, distortions resulting from differing terms of protection are kept to a minimum. In particular, the term of protection accorded to a topography as embodied in a semiconductor product should everywhere not exceed fifteen years from its first fixation or encoding. Postponing first commercial exploitation within the meaning of the directive will serve to extend the term of protection only to the extent that the period of fifteen years from fixation or coding is not exceeded.

34. The second part of Article 6(2) makes it clear that insofar as a topography fulfils the requirements for being considered a protected work under the Berne Convention or the Universal Copyright Convention the maximum term of years from fixation or encoding shall not apply. This provision is necessary since topographies in certain forms, for example, as drawings, are already protected in accordance with the provisions of those conventions for periods longer than 15 years. These acquired rights should not be prejudiced by the directive.

Article 7

35. This article makes clear that protection is limited to the configuration of the topography of the semiconductor product and does not extend to other possible features. If these are to be protected, the protection must have some other basis, such as patent law.

Article 8

36. Member States may wish to provide for distinctive marking of protected semiconductor products, though marking cannot be made a condition for the availability of protection. Divergent marking requirements would constitute a nuisance better avoided. The prescribing of a common symbol for those States that wish to provide for one accordingly seems sensible.

37. The same reasoning applies of course at the international level. The United States has opted in its law for an M in a circle, linked to the law's reliance on the concept of "mask work". However, given the likelihood of changing techniques in the future, the desirability of relying primarily on the concept of "mask work" is doubtful. Consequently, the M symbol also seems questionable. The text therefore suggests a T symbol, pending the outcome of negotiations at the international level which may make some other symbol more appropriate.

Chapter 3: Continued application of other legal provisions

38. This article makes clear that laws protecting the topographies of semiconductor products other than copyright laws or laws enacted for that specific purpose continue to apply. Patent and unfair competition laws, each within its own field of application, are both examples of laws which may have a role to play in particular cases.

Chapter 4: Final Provisions

39. The relatively short period of twelve months for Member States to comply with the directive is necessary given the need to ensure that national laws grant adequate protection by the time the transitional period under the United States law expires in November 1987.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the legal protection of original topographies of semiconductor products

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(85/C 360/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100 and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the functions of semiconductor products depend in large part on the topographies of such products and whereas the development of such topographies requires the investment of considerable resources, human, technical and financial, while topographies of such products can be copied at a fraction of the cost needed to develop them independently;

Whereas semiconductor products are playing an increasingly important role in a broad range of industries and semiconductor technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas topographies of semiconductor products are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas certain existing differences in the legal protection of semiconductor products offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards semiconductor products and such differences could well become greater as Member States introduce new legislation on this subject;

Whereas existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the common market to a substantial degree need not be removed or prevented from arising:

Whereas the export to non-member States of semiconductor products manufactured within the Community will depend in large part on those States extending substantially on the basis of reciprocity adequate legal protection to the topographies of such products; therefore to safeguard such

exports a Community measure is needed to provide such legal protection in accordance with developing international standards; whereas the basis on which topographies of semiconductor products developed by persons outside the Community are to be protected within the Community should accordingly be such as to favour the extension of legal protection in those countries to topographies of semiconductor products developed by nationals and residents of the Member States; and whereas this basis is thus a matter of significance to the Community as a whole and, if necessary, should be decided at Community level;

Whereas the Community's legal framework on the protection of original topographies of semiconductor products can accordingly in the first instance be limited to certain basic principles by provisions specifying who and what should be protected, the exclusive rights on which protected persons should be able to rely to authorize or prohibit certain acts and for how long the protection should last;

Whereas other matters can for the time being be decided in accordance with national law, in particular, whether Member States rely on the provisions of copyright laws or on provisions enacted specifically for the purpose of protecting topographies of semiconductor products or on a combination of these provisions, whether registration or deposit is required as a condition for the subsistence of protection and, with the exception of a provision applicable to innocent infringers, whether and on what conditions third parties may obtain licences in respect of protected topographies;

Whereas, however, this flexibility in the Community framework for the time being needs to be balanced by provisions designed to prevent new obstacles arising to trade between Member States in semiconductor products, in particular as regards marking of such products and, as soon as circumstances permit, a common registration and deposit procedure in the event that more than one Member State makes the subsistence of protection conditional on the fulfilment of such conditions;

Whereas protection of original topographies of semiconductor products under copyright laws or some specific form of protection should be without prejudice to the application in appropriate cases of some other forms of protection;

Whereas further measures designed to facilitate reliance on laws granting protection to original topographies of semiconductor products in the Community can be considered at a later stage, while the application of common basic principles by all Member States in accordance with the provisions of this Directive is an urgent necessity;

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

Definitions

Article 1

For the purposes of this Directive,

- (a) a *semiconductor product* means the final or an intermediate form of any product,
 - (1) consisting of a body of material which includes a layer of semiconducting material; and
 - (2) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern; and
 - (3) intended to perform, exclusively or in part, an electronic function.
- (b) the *topography* of a semiconductor product means a series of related images, however fixed or encoded,
 - (1) representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and
 - (2) in which series, each image has the pattern or part of the pattern of the surface of the semiconductor product in its final or any intermediate form.
- (c) *commercial exploitation* of the topography of a semiconductor product means to make available to the public by sale, rental, leasing or any other method of commercial distribution the topography or a semiconductor product manufactured by using the topography.

CHAPTER 2

Protection of original topographies of semiconductor products

Article 2

1. The Member States shall protect the topographies of semiconductor products by conferring exclusive rights in accordance with the provisions of this Directive.

2. Exclusive rights may be conferred by the provisions of national copyright laws, by provisions enacted for the specific purpose of protecting the topographies of semiconductor products, or by a combination of these provisions.

3. However, the topography of a semiconductor product shall not be protected unless it satisfies the condition that it be original in the sense that it is the result of its creator's own intellectual effort. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall not be considered original unless the combination of such elements, taken as a whole, is original and not commonplace.

Article 3

1. Protection shall apply at least in favour of natural persons who are the creators of the original topographies of semiconductor products and who are nationals of and resident in a Member State and their successors in title.
2. However, where Member States provide for registration in accordance with Article 4, they may alternatively provide that protection shall apply at least to persons registering original topographies who are either nationals and residents of a Member State or companies and firms within the meaning of Article 58 of the Treaty.
3. Member States shall extend protection to persons who do not qualify for protection under paragraphs 1 or 2 in accordance with decisions to be adopted by the Council acting by qualified majority on a proposal from the Commission.
4. Paragraphs 1, 2 and 3 shall be without prejudice to Member States' obligations under international agreements.

Article 4

1. The Member States may provide that protection shall no longer apply to the topography of a semiconductor product unless it has been registered with a public authority within two years of its first commercial exploitation. Member States may require in addition to such registration that material identifying, describing or exemplifying the topography or any combination thereof has been deposited with a public authority.
2. Member States may subject registration and deposit in accordance with paragraph 1 to the payment of fees not exceeding their administrative costs.
3. Conditions prescribing the fulfilment of additional formalities shall not be admitted.

Article 5

1. The exclusive rights referred to in Article 2 shall include the rights to authorize any of the following acts:
 - (a) reproduction of the topographies in whole or in part;
 - (b) the sale, rental or leasing, or the offering for sale, rental or leasing, or any other method of commercial

distribution, or the importation of the topographies or of semiconductor products manufactured by using the topographies.

2. The exclusive right to authorize reproduction of the topographies shall not apply to reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.
3. The exclusive rights to authorize the acts specified in paragraph 1 shall not extend to any such act in relation to an original topography created on the basis of an analysis and evaluation of another topography carried out in conformity with paragraph 2.
4. The exclusive right to authorize the acts specified in paragraph 1(b) shall not apply to any such act:
 - (a) committed after the topography or the semiconductor product has been put on the market in a Member State by the person entitled to authorize its marketing or with his consent; or
 - (b) committed by a person who has purchased a semiconductor product without reasonable grounds to believe that its manufacture infringed the exclusive right specified in paragraph 1(a).
5. Where paragraph 4(b) applies, the Member States may subject the acts specified in paragraph 1(b) to the payment of royalties.
6. The exclusive right to authorize importation of a semiconductor product manufactured by using a protected topography shall not extend to products which are part of a land vehicle, vessel, aircraft or spacecraft which enters temporarily or accidentally the territory, waters or airspace of a Member State.

Article 6

1. The exclusive rights to which reference is made in Article 2 shall come to an end on a date 10 years from the date on which the topography is first commercially exploited or, where registration is a condition for the subsistence of protection, from the date on which the topography is first commercially exploited or the date on which it is registered, whichever is the later.
2. The exclusive rights shall come to an end not later than 15 years from the date on which the topography is first fixed or encoded. This provision shall be without prejudice

to rights conferred by the Member States in fulfilment of their obligations under the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention and to corresponding rights conferred on a Member State's nationals or persons resident on its territory.

Article 7

The protection granted to the topographies of semiconductor products in accordance with Article 2 shall not extend to any concept, process, system or technique embodied in the topography other than the topography itself.

Article 8

Where the legislation of Member States provides that semiconductor products manufactured using protected topographies may be distinctively marked, the mark to be used shall be a capital T in a circle as follows: (T)

CHAPTER 3

Continued application of other legal provisions

Article 9

The provision of this Directive are without prejudice to any legal provisions protecting the topographies of semiconductor products other than those referred to in Article 2(2).

CHAPTER 4

Final provisions

Article 10

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to comply with this Directive by 1 October 1987.
2. Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.