

Kretsministerloven
ACT 15 JUNE 1990 NO 27 RELATING TO THE PROTECTION OF
LAYOUT-DESIGNS FOR INTEGRATED CIRCUITS

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15.
june
nr. 27

§ 1 *The exclusive right to layout-designs for integrated circuits*

A person who creates a layout-design, shall have the exclusive right to dispose of the layout-design on the conditions and with the limitations set out in this Act.

If two or more persons together have created a layout-design, they shall jointly acquire the right to the layout-design. Each of them may take action against infringement of that right.

The layout-design shall be the result of the creator's own intellectual effort and shall not be commonplace in the industry. Where the layout-design consists of elements that are commonplace in the industry, it shall be protected under this Act only if the combination of elements fulfils these conditions.

The protection under this Act does not extend to the concepts, processes, systems, techniques and information that the layout-design represents or is based upon.

§ 2 *Scope of the exclusive right*

An exclusive right to a layout-design shall have the effect that the rightholder has the exclusive right to:

1. reproduce the layout-design, including the manufacturing of an integrated circuit by using the layout-design
2. exploit the layout-design - including an integrated circuit manufactured by using the layout-design - commercially by sale, rental or any other method of commercial distribution, or by offering the layout-design for such distribution
3. import the layout-design - including an integrated circuit manufactured by using the layout-design - for the purpose of commercial exploitation.

§ 3 *Limitations to the exclusive right*

The exclusive right shall not extend to the manufacturing of copies of a layout-design for private purposes or for the purpose of analyzing or teaching. Such copies shall not be used for other purposes.

The exclusive right shall not extend to the commercial exploitation or the importation of a copy of a layout-design that has been put on the market within the European Economic Area by the rightholder or with his consent.

§ 4 *Succession of the exclusive right*

The exclusive right may be transferred to another person, in whole or in part. Transfer of a copy of the layout-design does not constitute a transfer of any right to the layout-design.

If a layout-design has been created in the course of the creator's employment, the exclusive right shall pass to the employer unless otherwise agreed.

§ 5 *Period of protection*

The exclusive right to the layout-design shall come into existence from the date when the layout-design was created, and shall come to an end 10 years from the end of the calendar year in which the layout-design was commercially exploited for the first time.

The exclusive right shall nevertheless come to an end 15 years from the end of the calendar year in which the layout-design was created, provided that the layout-design has by then not yet been commercially exploited.

Exploitation under conditions of confidentiality shall not be regarded as commercial exploitation within the meaning of this article, provided that no further distribution to third parties occurs. However, confidential exploitation for military purposes etc as mentioned in The Agreement on the European Economic Area article 123 shall be regarded as commercial exploitation.

§ 6 Damages

Whoever deliberately or negligently infringes another persons right under this Act, shall pay damages for the loss that the infringement has caused to the rightholder, including payment of a reasonable compensation for his actions.

§ 7 Right to exploitation of layout-designs that are manufactured, commercially exploited or imported in contravention of this Act

A person who has acquired an integrated circuit without knowing that it was manufactured, commercially exploited or imported in contravention of this Act, and without having reasonable grounds to know this, shall have the right to import and commercially exploit that integrated circuit. Importation or commercial exploitation that takes place when the acquirer is no longer in good faith, shall take place on reasonable terms that shall be agreed by the parties. If the parties are unable to come to an agreement, each of them may require that the conditions are determined according to regulations laid down by the King.

Under special circumstances, a court of law may decide that a person who in good faith has acquired a copy of a layout-design as mentioned i the first paragraph, shall have the right to import, commercially exploit or reproduce it on reasonable conditions as laid down by the court. The court may decide that the acquirer shall have the right to dispose of the layout-design in only some of those ways, and that the right to do so shall last for only a part of the period of protection for the layout-design.

Under quite special circumstances, a court of law may decide that a negligent acquirer shall have the right to dispose of the layout-design in one or more of the ways mentioned in the first and second paragraphs against payment of damages in accordance with § 6 and on such other conditions as the court shall lay down. Such a right shall not be granted if the acquirer has been grossly negligent in respect of the fact that the layout-design was manufactured, commercially exploited or imported in contravention of this Act.

§ 8 Confiscation

Copies of a layout-design that are manufactured, commercially exploited or imported in contravention of this Act or that are used in unlawful reproduction of the layout-design, may be confiscated for the benefit of the rightholder from the person who has committed the infringement.

Such confiscation may also take place from a person who has acquired a copy that he knew or should have known to have been manufactured, commercially exploited or imported in contravention of this Act.

In stead of confiscation, it may be decided that the copy shall be destroyed or amended in a specified way.

It may be decided that the rightholder shall pay a reasonable compensation for copies of the layout-design that are confiscated.

§9 Penalties

Deliberate or grossly negligent infringement of another person's right under this Act, or assistance in such infringement, shall be punishable by fines or imprisonment for up to three months.

Under particularly aggravating circumstances, the penalty shall be fines or imprisonment for up to three years. In determining whether particularly aggravating circumstances are present or not, in particular the loss caused to the rightholder and other persons, the profit gained by the infringer and the extent of the infringement shall be taken into account.

Public prosecution shall not take place unless the offended party so requests or prosecution is required in the public interest.

§10 The scope of the Act

This Act applies to

1. layout-designs that are created by a person who is a citizen of, or is domiciled in, a State within the European Economic Area, unless the exclusive right devolves on or passes directly to the employer or the person who commissioned the layout-design,
2. layout-designs that are created by an employee or a person commissioned for that purpose, when the exclusive right devolves on or passes directly to
 - a. a natural person who is a citizen of, or is domiciled in, a State within the European Economic Area, or
 - b. a legal person which has a real and effective industrial or commercial establishment within the European Economic Area, and
3. other layout-designs, when the layout-design is commercially exploited within the European Economic Area before it has been commercially exploited in any other place, and the person who for the first time commercially exploits the layout-design within the European Economic Area, is a natural or legal person as mentioned in subparagraph 2 litra a or b who has acquired an exclusive right to commercially exploit the layout-design within the European Economic Area from the person entitled to the layout-design.

For the purposes of subparagraph 3 of the first paragraph, the third paragraph of article 5 applies correspondingly.

The King may in regulations decide that the provisions of this Act shall apply in whole or in part to other layout-designs than those mentioned in the first paragraph.

§11 Entry into force, transitional provisions, amendmend of other Acts

This Act shall enter into force from such date as the King shall decide. 1)

This Act shall also apply to layout-designs that are created before the Act enters into force.

From the date when the present Act enters into force, other Acts shall be amended as follows:

- 1) 1 January 1992 according to Royal Decree 6 September 1991 no 570