

Unofficial translation

Act on the Protection of Typographies for Semiconductor Products

(Swedish Statute Book 1992:1685, as last amended by SFS 2018:278)

The Subject Matter of Protection

Article 1. In order for a right in a topography to be conferred protection under this Act it has to be the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. If the topography consists of parts that are commonplace in the semiconductor industry, it shall be protected only if the combination of such parts fulfils the requirements.

The Scope of the Protection

Article 2. The right to a topography for a semiconductor product confers an exclusive right to

1. make copies of the topography,
2. import, for commercial purposes, copies of the topography, and
3. make the topography available to the public by offering copies of the topography for sale, rental, lending or distribution to the public in any other manner.

As a copy of the topography is considered also a semiconductor product manufactured by using the topography.

Beneficiary of the Protection

Article 3. The right in a topography belongs to the natural person who created the topography provided that he is a national of, or has his habitual residence in, a State member of the European Economic Area and that the provisions of the second Paragraph do not apply.

The right in a topography created by an employee in the course of his employment relation belongs to the employer unless there is an agreement to the contrary and provided that the employer is a natural person who is a national of, or has his habitual residence in, a State member of the Economic Area or is a legal entity having a real and effective industrial or commercial establishment in such a State.

If a right to a topography does not exist pursuant to the first and second Paragraphs, such right shall apply in favour of such natural persons or legal entities that fulfill the requirements in the second Paragraph in respect of attachment to the Economic Area, provided that such a person or entity has acquired an exclusive right to exploit the topography commercially in the entire Economic Area and first exploits the topography commercially in a State member of the Area.

The right to a topography shall apply also for the benefit of anyone who has acquired the right from the persons referred to in the first to third Paragraphs.

Term of Protection

Article 4. The right to a topography comes into existence when it has been created and lasts to the end of the tenth year from the year when the topography was first commercially exploited in any part of the world.

The right expires fifteen years from the end of the year when the topography was created, if it has not yet, within that time, been commercially exploited.

Limitations on the Protection

Article 5. Notwithstanding the provisions in Article 2 copies may be prepared of the topography exclusively for teaching about, or analysis of, the topography. Single copies may also be prepared for private use.

Copies prepared pursuant to the first Paragraph may not be used for any other purposes.

Article 6. The right to a topography does not extend to copies of topographies distributed to the public within the European Economic Area by the right-owner or with his consent.

Article 7. If a copy of a topography forms part of a public document, the copy shall, notwithstanding the provisions of Article 2, be made available as prescribed in Chapter 2 of the Freedom of the Press Act.

Transfer of the Right

Article 8. The transfer of a copy of a topography does not include a transfer of the right to the topography.

If the party holding the right to a topography has granted a right to someone else to exploit the topography commercially (license), this person may further transfer the right only if an agreement has been concluded to that effect. If the license forms part of a business activity, it may, however, be transferred together with the transfer of the business activity or part of it.

Criminal Liability, etc.

Article 9. Anyone who wilfully or by gross negligence commits an act constituting an infringement of the rights pursuant to Article 2 shall be punished by fines or imprisonment for not more than two years. A person who has violated an injunction issued under penalty of a fine pursuant to Article 9 b must not be adjudicated to criminal liability for infringements covered by the injunction.

Attempts to commit offences pursuant to the first Paragraph, or preparatory acts, shall be punishable under Chapter 23 of the Criminal Code.

A public prosecutor may bring a criminal action for offences under the first or second Paragraph only if injured party calls for a prosecution or such an action is called for in the public interest. Act (2005:304).

Article 9 a. Property in respect of which a violation exists pursuant to Article 9 shall be declared forfeited, if this is not obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such a violation shall be declared forfeited, if it is not obviously unreasonable. The same applies to what someone has received as compensation for costs related to such a violation, or the value of what has been received, if the act of receiving constitutes a violation pursuant to Article 9.

Property used as an implement in respect of a violation under Article 9 may be declared forfeited, where this is necessary for the prevention of violations or where there are otherwise special reasons. The same applies to property intended to be used as an implement in respect of a violation under Article 9, if the violation has been completed or

has constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited. *Act (2005:304)*.

Article 9 b. Upon a claim by the holder of the topography or by a party that, pursuant to a license, has the right to exploit the topography, the Court may issue an injunction prohibiting, under penalty of a fine, a party that commits, or contributes to, an act constituting an infringement to continue that act.

If the plaintiff shows a probable cause that an infringement, or a contribution thereto, is taking place and if it can reasonably be expected that the defendant, through the continuation of the act, or the contribution thereto, diminishes the value of the exclusive right to the topography, the Court may issue an injunction, under penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and preparatory acts, relating to infringements.

An injunction referred to in the second Paragraph may be issued only if the plaintiff deposits a security at the Court for the damage that may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him or her from it. In respect of the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has approved it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the second Paragraph shall continue to apply.

As regards appeals against decisions under the second or fourth Paragraph and as regards the proceedings in higher Courts, the provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure shall apply.

An action for the imposition of a fine is brought by the party applying for the injunction. *Act (2016:209)*

Article 9 c. If the applicant shows a probable cause that someone has committed an infringement of a topography, the Court may order, under penalty of a fine, one or several of the parties referred to in the second Paragraph to provide information to the applicant concerning the origin and distribution networks for the goods or services in respect of which the infringement has been committed (order to provide information). Such an order may be issued upon a claim by the holder of the topography or by a party that, pursuant to a license, has the right to exploit the topography. It may be issued only if the information can be assumed to facilitate the inquiry into the infringement relating to the goods or services.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting the goods that the infringement concerns,
3. has on a commercial scale been exploiting the service that the infringement concerns,

4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been identified by a party referred to in items 2 to 4 as being involved in the production or distribution of the goods, or the making available of the service, that the infringement concerns.

The information about the origin or distribution network of goods or services may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the services,
2. the names and addresses of intended wholesalers and retailers, and
3. information about how much has been produced, delivered, received or ordered and the price fixed for the goods or services.

The provisions in the first to third Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements. *Act (2009:114)*

Article 9 d. An order to provide information may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The obligation to provide information pursuant to Article 9 c does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) contains provisions limiting the use can be made of personal data received *Act (2018:278)*.

Article 9 e. If the claim for an order to provide information is directed against the applicant's opposite party in an infringement case, the provisions on court proceedings for that case apply. Decisions on orders to provide information may be appealed separately.

If the claim for an order to provide information is directed against a party other than the one referred to in the first Paragraph, the provisions in the Act (1996:242) on Court Matters shall apply. The Court may decide that either party shall bear its litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order. *Act (2016:209)*.

Article 9 f. Anyone who, pursuant to the provisions in Article 9 c, second Paragraph, items 2 to 5, has been ordered to provide information pursuant to the first Paragraph of the same Article has a right to a reasonable compensation for the costs and the inconvenience caused. The compensation shall be paid by the party applying for the order to provide information.

Anyone who makes available an electronic communication service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act (2003:389) on Electronic Communication, shall send a written notice about this to the person whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notice shall be compensated in accordance with the first Paragraph. Act (2009:114).

Article 9 g. In addition to what is prescribed in Chapter 3, Articles 8 and 9, of the Act (2018:218) on Additional Provisions Relating to the European Union Data Protection Regulation, personal data on violations of the law constituting criminal offences under Article 9, may be processed if this is necessary in order for a legal claim to be established, asserted or defended. Act (2018:278).

Article 9 h. Upon a claim by the plaintiff, the Court may, in infringement cases, order the party having committed, or contributed to, the infringement to defray appropriate measures to disseminate information about the judgment in the case.

The provisions in the first Paragraph apply also to acts constituting attempts, and to preparatory acts, relating to infringements. Act (2009:114).

Article 10. Anyone who, in contravention of this Act, acquires a copy of a protected topography and who does not know, or has any reasonable cause to know, that the topography is protected, has a right to continue the use of the copy of the protected topography also after he was informed that the topography is protected. Compensation shall be paid for the use in accordance with Article 11, first Paragraph.

Article 11. Anyone who exploits a topography in violation of this Act shall pay a compensation for the exploitation to the holder of the right to the topography if and to the extent that this is reasonable.

If the act has been carried out wilfully or by negligence, compensation shall be paid also for the further damage caused by the infringement. When the amount of the compensation is decided, particular consideration shall be given to

1. lost profit,
2. profit that has been made by the party that committed the infringement,
3. damage caused to the reputation of the topography,
4. moral damage, and
5. the interest of the holder in that infringements are not committed. Act (2009:114).

Article 12. Upon a claim by the holder of the right to the topography, the Court may, in so far as is reasonable, decide that the property in respect of which an infringement exists shall be recalled from the channels of commerce, be altered or destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used for the infringement.

The provisions of the first Paragraph apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

A decision on a measure pursuant to the first Paragraph must not imply that the party holding the right to the topography has to pay a compensation to the party against which the measure is directed.

Any measure pursuant to the first Paragraph shall be defrayed by the defendant where there are no specific reasons against it.

No decision referred to in this Article shall be issued, if forfeiture or a measure for the prevention of wrongful acts shall be decided pursuant to Article 9 a or the Criminal Code. Act (2009:114).

Article 12 a. If it can reasonably be assumed that someone has committed, or contributed to, an infringement, the Court may, for the purpose of preserving evidence relating to the infringement, order that an investigation be undertaken in respect of that party to search for objects or documents that can be assumed to be of importance for the investigation of the infringement (infringement investigation).

An order for an infringement investigation may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that caused to the party against which it is directed or to any other opposite interest.

The provisions in the first and second Paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement. Act (2009:114).

Article 12 b. Issues relating to an infringement investigation may be taken up for consideration only upon a claim by the holder of the topography or by anyone who, pursuant to a license, has a right to exploit the topography. If legal proceedings have not yet been initiated, the petition shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is issued. If a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the Court may, however, immediately issue an order to be valid until otherwise decided.

In other respects, any issue relating to an infringement investigation which arises before legal proceedings have been initiated shall be processed in the same way as if the issue had arisen in the course of legal proceedings. Act (2016: 209).

Article 12 c. An order for an infringement investigation may be issued only if the applicant deposits a security at the Court for the damage that may be caused to the opposite party. If the applicant is not able to deposit a security, the Court may liberate the applicant from it. In respect of the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code apply. The security shall be examined by the Court, unless the opposite party has approved it.

In respect of appeals against the decision by the Court on an infringement investigation and in respect of proceedings in higher Courts the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply. Act (1998:1459).

Article 12 d. An order on an infringement investigation shall contain information about

1. the purpose of the investigation,
2. the objects and document which may be searched for, and

3. which premises may be searched.

If necessary, the Court shall set also other conditions for the execution of the order. Act (1998:1459).

Article 12 e. An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, the order becomes invalid.

Where the applicant does not, within a month from the conclusion of the execution, file an action or initiates in some other manner a proceeding relating to the issue, any measure which has been undertaken in the context of the execution of the infringement investigation shall immediately be invalidated to the extent possible. The same applies if an order for an infringement investigation is invalidated after the execution has been concluded. Act (1998:1459).

Article 12 f. An order for an infringement investigation is executed through the Swedish Enforcement Agency in accordance with the conditions prescribed by the Court and in applying Chapters 1 to 3, Chapter 17, Articles 1 to 5, and Chapter 18 of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been issued after hearing the opposite party. The Agency has the right to take photographs and to make video and sound recordings of such objects for which it is authorized to search. The Agency may also make copies of, and extracts from, such documents for which it is authorized to search.

An infringement investigation must not concern written documents referred to in Chapter 27, Article 2, of the Code of Judicial Procedure. Act (2006:713).

Article 12 g. The opposite party has the right to summon an attorney when an order for an infringement investigation is to be executed. The execution must not begin before the attorney has arrived. This does, however, not apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution the Enforcement Agency is authorized to engage, as necessary, the services of an expert.

The Agency may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Agency shall see to it that the applicant or the representative is not being informed about the findings at the investigation more than can be justified by the execution. Act (2006:713).

Article 12 h. Photographs and video and sound recordings of objects as well as copies of, and extracts from, documents shall be listed and shall be held available for the applicant and the opposite party. Act (1998:1459).

Article 13. Property referred to in Article 12 may be seized, if it can reasonably be assumed that a criminal offence under this Act is taking place. In respect of such seizures, the provisions on seizures in criminal cases in general apply.

Article 14. The Patent and Market Court is the competent Court in cases and matters under this Act if they are not to be processed under the Act (1974:271) on Proceedings in Labour Disputes.

The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes which have to be initiated otherwise than before a Court shall not apply in respect of a claim for an order to provide information or an infringement investigation. *Act (2016:209).*

Applicability of the Act

Article 15. The Government may, on condition of reciprocity or if it follows from such an agreement with a foreign State or Intergovernmental Organization which has been approved by the Parliament, provide for the applicability of the Act to States other than those that form part of the European Economic Area.

Transitional Provisions

Act 1992:1685

1. This Act enters into force on the date decided by the Government, when the Act (1986:1425) on the protection of topographies for semiconductor products shall cease to apply.

2. The Act applies also to topographies coming into existence before the entry into force except as regards measures undertaken or rights acquired before then. If copies of topographies have been prepared before April 1, 1987, they may, however, notwithstanding Article 2, be further distributed.

Act 2005:304.

1. This Act enters into force on July 1, 2005.

2. In respect of criminal offences committed before this Act entered into force, Article 12 in its previous wording applies.

Act 2009: 114

1. This Act enters into force on April 1, 2009.

2. The provisions of Articles 9 c – 9 f and 9 h shall not apply when the infringement or the attempt, or the preparations, in respect of the infringement were committed before the entry into force.

Act 2016:209.

1. This Act enters into force on September 1, 2016.

2. Cases and court matters which have been initiated at the Stockholm District Court or the Svea Court of Appeal before the entry into force shall be transmitted to the Patent and Market Court or the Patent and Market Court of Appeal, respectively.

3. Earlier provisions still apply to other cases and court matters which have been initiated before the entry into force.
