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ACTION: REMARKS BY MR. KENNEDY

THE SEMICONDUCTOR CHIP PROTECTION ACT OF 1984

Mr. KENNEDY. Mr. President, I was proud to be part of the bipartisan effort in the Senate Judiciary Committee and the Senate to develop S. 1201, the Semiconductor Chip Protection Act of 1984, which passed the Senate last night. I particularly commend Senators MATHIAS, HART, and LEAHY for their impressive work on this act. Legislation to afford Federal legal protection against piracy of semiconductor chips was originally proposed almost 5 years ago, but it was met initially with diverse and conflicting views among the affected industries.

The bill approved by the Senate has broad-based industry support and strong bipartisan sponsorship. I am pleased to have worked with the principal sponsors to strike the right balance between the interests of our Nation's high technology industries in protecting their innovation and investment in semiconductor chip products, while also protecting the interests of users and consumers of those products.

Semiconductor chips are all around us; they have become the new building blocks of our modern society. From the digital wristwatches we wear to the computers we use in the Senate for tracking legislation and constituent correspondence, the chip is an indispensable element.

Yet, despite the importance of chips, their contribution to society, and the immense expense involved on the part of industry in developing them, it has become far too easy for unscrupulous pirates to open the chip and copy its contents. As the Judiciary Committee's report on the act reveals, development of an innovative chip can cost a company millions of dollars, while piracy can be carried out for a tiny fraction of that amount.

Without legislative protection, there is a genuine danger that our important high-tech industries will continue to be ripped off by those who would reap the profits without taking the risks. More important, the level of research and development investment in chip innovations in the future will be adversely affected if the surge of piracy is not rolled back. This legislation is well balanced, significant, and timely to achieve that goal.

Last week, the House Judiciary Committee reported its own version of a semiconductor chip protection bill. Congressman EDWARDS and Chairman KASTENMEIER have worked hard to make this legislation a reality, and I am pleased to see both Houses working within the same time frame to make enactment of this legislation a reality this year.

The legislation which the Senate has adopted has extremely important features that should be preserved as the bill moves forward. Businesses that manufacture and use chips, workers employed in plants manufacturing these products, and consumers all benefit from strong and broad Federal protection. The only ones who suffer are the pirates.

The Judiciary Committee report makes clear the committee's intent that the copyright protection afforded semiconductor chips in S. 1201 is to be recognized under the Universal Copyright Convention and applied internationally. Certain testimony was presented in subcommittee hearings raised questions about applicability of the UCC, but, on balance, I believe that the most effective protection we can provide to chip products is through the UCC channels, and I was pleased to see the Senate bill strongly adhere to this position. It is very essential to secure international recognition of U.S. chip copyrights, and the UCC is the best route to that goal.

The bill applies to chips developed after January 1, 1980, and allows the owner of the mask work copyright to enjoin distribution or importation of chips that were first pirated after that date. At the same time, the bill contains effective protection for innocent infringers; we are certainly not talking about catching the unwary in the net of legislative remedies provided by this bill.

S. 1201 does not make it retroactively unlawful for a party to have pirated or knowingly purchased a pirated chip in the past; it does, however, make it unlawful for a party to pirate or distribute a pirated chip in the future. As the committee report clearly explains in its discussion of the Andrus and Wickard cases, this legislation involves only a permissible restriction to be applied in the future—albeit to products manufactured in the past—and does not make unlawful any action already taken in the past.

Finally, I strongly support the overall approach of S. 1201 to the problem of semiconductor chip priacy. Its use of the Copyright Act as a framework for creating new rights and remedies provides a ready body of intellectual property learning for guidance in applying provisions of the new law in the future. The range of remedies, from criminal penalties through injunctive relief to the novel and imaginative compulsory royalty provision, will provide a broad and appropriate range of remedies against the chip pirate.

S. 1201 is a good bill and a reasonable bill, and I hope to see it signed into law at the earliest date.