

IV. MEMBERSHIP

4.1 Major Consortia

A. United States

U.S.-based consortia are reasonably easy to identify because they may register with the Department of Justice to receive protection from punitive damages in an antitrust suit if they are engaged in the conduct of "precompetitive research".⁵¹ This protection from antitrust action has been afforded them by the **National Cooperative Research Act of 1984**. The act, which has recently been the subject of extensive debate in the United States, establishes the following:

- that precompetitive cooperative R&D is not illegal "per se", but rather the possible antitrust implications should be dealt with on a case-by-case basis,
- that if the case is analyzed and found to contravene antitrust laws, the consortium must pay actual damages, but is relieved from the prospect of paying treble damages (provided that the consortia has notified the government of its activities), and
- in order to deter "nuisance" suits, the court is empowered to penalize the plaintiff and require them to pay the legal expenses of the defendant.⁵²

To date over 300 consortia have filed with the Department of Justice, over half of these within the last three years.⁵³ The major "players" in the U.S. are members of the Council of Consortia CEOs which was formed in April 1990 by the late Dr. Robert Noyce (formerly CEO of SEMATECH, founder of Fairchild Semiconductor 1957 and Intel Corporation 1968), Mr. Grant Dove (former President and CEO of Microelectronics and Computer Technology Corporation (MCC)) and Mr. Larry Sumney (President and CEO of Semiconductor Research Corporation (SRC)).

⁵¹ Pre-competitive research "encompasses experimentation and study of phenomena and observable facts, development or testing of engineering techniques, development of prototypes and models, and collection and exchange of research information." (Olk, 1990)

⁵² Ibid.

⁵³ The opening statement of Congressman Jack Brooks (D-Tex), Subcommittee on Economic and Commercial Law hearing on H.R. 1313, the "National Cooperative Production Amendments of 1993", Thursday, March 18, 1993, stated that over 300 joint ventures have been reported to anti-trust agencies under that law. Olk states that as of August 1989, 137 consortia had registered and that new consortia were filing at the rate of about one or two per month.