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FEDERAL COPYRIGHT LAW

THE LEGISLATIVE HISTORIES OF THE MAJOR ENACTMENTS OF THE 105th CONGRESS

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INTRODUCTION

Three major pieces of copyright legislation were passed by the 105th Congress. The first to be enacted was the No Electronic Theft (NET) Act, passed in response to a federal district court decision finding no criminal liability in the distribution of copyrighted software where there was no financial gain. Under the NET Act, liability is determined by the retail value of the work in question. Reproduction of works worth over $1,000 is a misdemeanor, while copying works valued over $2,500 ranks as a felony. Those convicted face fines and imprisonment of up to three years for the first offense, and up to six years for a second conviction. The act also extends the statute of limitations from three to five years and mandates "victim impact statements."

More controversial was the issue of copyright term extension. Opponents viewed such proposals as a move by major publishers and producers to deprive the public of access to copyrighted works soon to enter the public domain with the expiration of the old copyright term, most notably Disney's Mickey Mouse in 2002. Proponents claimed the extension of the copyright term by twenty years would promote creativity by offering artists and authors a greater return on their work, and would bring the United States into line with the copyright term in effect overseas.

Their views prevailed with the passage of the Sonny Bono Copyright Term Extension Act. Title I of the Act amends federal law so as to extend from fifty to seventy years the duration of copyrights. Most notably this includes copyrights on works created after Jan. 1, 1978, for which it extends the term to the life of the author plus seventy years. Section 104 of the Act provides an exception for libraries and archives, allowing reproduction for preservation, scholarship, or research during the last twenty years of the copyright term. This limited exception applies only if it can be determined that the work in question is not subject to normal commercial exploitation, cannot be obtained at a reasonable price, and the copyright holder has not provided notice that either of these conditions applies. Title II consists of the Fairness in Music Licensing Act of 1998. This provides that the use of transmission or retransmission of a non-dramatic musical work originated by a radio or television broadcast is not a copyright infringement if the establishment is a food service or drinking establishment, no direct charge was made to see or hear the

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transmission, and such, and that the transmission or retransmission was licensed by the copyright holder.

The final and most important copyright enactment of the 105th Congress was the Digital Millennium Copyright Act. The most notable part of the legislation was Title I, the WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998. This Act, which amends federal law to conform to these treaties, sparked controversy because of its "anti-circumvention" provisions which opponents claimed would render unlawful such legitimate activities as encryption research and reverse engineering. The remainder of the legislation includes:

Title II - the Online Copyright Infringement Liability Limitation Act which limits the liability for copyright infringement of Internet service providers;

Title III - the Computer Maintenance Competition Assurance Act providing that under certain conditions there is no copyright violation where copies of computer programs are made solely in conjunction with the repair of computer equipment;

Title IV - Miscellaneous Provisions;

Title V - Vessel Hull Design Protection Act which amends federal copyright law to protect original hull designs which make vessels distinctive or attractive.

Notably absent from the Act was any provision extending copyright protection to databases. Such a provision had been a last minute addition by the House to H.R. 2281, but was dropped from the final bill version by the Conference Committee.

This compilation includes the full text of all three enactments, prior bill versions, relevant congressional reports and hearings, *Congressional Record* references, and presidential statements. Also included are the full texts of the WIPO treaties.

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Doc. No. 19 143 Cong. Rec. S7772 (daily ed. July 21, 1997) (introduction of S. 1044 by Sen. Leahy and the text of the bill).

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Doc. No. 21 143 Cong. Rec. E1529 (daily ed. July 25, 1997) (remarks of Rep. Goodlatte on the introduction of H.R. 2265).

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Doc. No. 33 H.R. 2589 - Copyright Term Extension Act. Reported with an amendment, 105th Cong., 2d Sess. (Mar. 18, 1998).

Doc. No. 34 H.R. 2589 - Sonny Bono Copyright Term Extension Act. Passed by the House, 105th Cong., 2d Sess. (Mar. 25, 1998).

Doc. No. 35 H.R. 2589 - Sonny Bono Copyright Term Extension Act. Received in the Senate, 105th Cong, 2d Sess. (Mar. 26, 1998).

III. Prior Bill Versions

Doc. No. 36 S. 483 - Copyright Term Extension Act of 1995. Introduced by Sen. Hatch and referred to the Committee on the Judiciary, 104th Cong., 1st Sess. (Mar. 2, 1995).

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Doc. No. 38 H.R. 989 - Copyright Term Extension Act of 1995. Introduced and referred to the Committee on the Judiciary, 104th Cong., 1st Sess. (Feb. 16, 1995).

Doc. No. 39 H.R. 604 - Copyright Term Extension Act of 1997. Introduced by Rep. Gallegly and referred to the Committee on the Judiciary, 105th Cong., 1st Sess. (Feb. 5, 1997).

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Doc. No. 41 H.R. 4712 - Sonny Bono Copyright Term Extension Act. Introduced by Rep. and referred to the Committee on the Judiciary, 105th Cong., 2d Sess. (Oct. 7, 1998).

IV. Congressional Record

Doc. No. 42 141 Cong. Rec. E379 (daily ed. Feb. 16, 1995) (remarks of Rep. Moorhead on the Copyright Term Extension Act).

Doc. No. 43 141 Cong. Rec. S3390 (daily ed. Mar. 2, 1995) (introduction of S. 483 by Sen. Hatch, the text of the bill, remarks of Sen. Feinstein, and a reprint of Extending Copyright Preserves U.S. Culture by Prof. Arthur Miller).

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Doc. No. 51 144 Cong. Rec. E484 (daily ed. Mar. 26, 1998) (remarks of Rep. Jackson-Lee on H.R. 2589).

Doc. No. 52 144 Cong. Rec. E753 (daily ed. May 5, 1998) (remarks of Rep. Coble on H.R. 2589).

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I. The Law as Enacted

Doc. No. 68 Digital Millennium Copyright Act of 1998, P.L. 105-304, 112 Stat. 2860.

II. Reports on the Law

Doc. No. 69 WIPO Copyright Treaties Implementation and On-Line Copyright Infringement Liability Limitation, H. Rep. No. 105-551, pt. I, 105th Cong., 2d Sess. (May 22, 1998).

Doc. No. 70 Digital Millennium Copyright Act of 1998, H. Rep. No.105-551, pt. II, 105th Cong., 2d Sess. (July22, 1998).

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Doc. No. 81 S. 1121 - WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997. Introduced by Sen. Hatch and referred to the Committee on the Judiciary, 105th Cong., 1st Sess. (July 31, 1997).

Doc. No. 82 S. 1146 - Digital Copyright Clarification and Technology Education Act of 1997. Introduced by Sen. Ashcroft and referred to the Committee on the Judiciary, 105th Cong, 1st Sess. (Sept. 3, 1997).

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Doc. No. 86 H.R. 2652 - Collections of Information Antipiracy Act. Referred to Senate committee, 105th Cong., 2d Sess. (May 20, 1998).

Doc. No. 87 H.R. 2696 - Vessel Hull Design Protection Act. Introduced by Rep. Coble and referred to the Committee on the Judiciary, 105th Cong., 1st Sess. (Oct. 22, 1997).

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Doc. No. 88 H.R. 2696 - Vessel Hull Design Protection Act. Reported in the House, 105th Cong., 2d Sess. (Mar. 11, 1998).

Doc. No. 89 H.R. 2696 - Vessel Hull Design Protection Act. Passed by the House, 105th Cong., 2d Sess. (Mar. 18, 1998).

Doc. No. 90 H.R. 2696 - Vessel Hull Design Protection Act. Referred to Senate committee, 105th Cong., 2d Sess. (Mar. 19, 1998).

Doc. No. 91 H.R. 3048 - Digital Era Copyright Enhancement Act. Introduced by Rep. Boucher and referred to the Committee on the Judiciary, 105th Cong, 1st Sess. (Nov. 13, 1997).

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Doc. No. 93 S. 2037 - Digital Millennium Copyright Act of 1998. Introduced by Sen. Hatch and referred the Committee on the Judiciary, 105th Cong. 2d Sess. (May 6, 1998).

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Doc. No. 102 143 Cong. Rec. E1452 (daily ed. July 17, 1997) (introduction of the On-line Copyright Liability Limitation Act and the text of the bill).

Doc. No. 103 143 Cong. Rec. S8582 (daily ed. July 31, 1997) (introduction of S. 1121, the text of the bill, and remarks of Sens. Hatch, Leahy, Thompson, and Kohl).

Doc. No. 104 143 Cong. Rec. S8728 (daily ed. Sept. 3, 1997) (remarks of Sen. Ashcroft on H.R. 1146 and the text of the bill).

Doc. No. 105 144 Cong. Rec. S205 (daily ed. Jan. 29, 1998) (remarks of Sen. Leahy).

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Doc. No. 116 144 Cong. Rec. S7959 (daily ed. July 10, 1998) (remarks of Sen. Grams on S. 2291).

Doc. No. 117 144 Cong. Rec. H7074 (daily ed. Aug. 4, 1998) (text of H.R. 2281 and the consideration of the bill).

Doc. No. 118 144 Cong. Rec. S9935 (daily ed. Sept. 3, 1998) (remarks of Sen. Ashcroft on H.R. 2281).

Doc. No. 119 144 Cong. Rec. E1714 (daily ed. Sept. 14, 1998) (remarks of Rep. Hyde on H.R. 2281).

Doc. No. 120 144 Cong. Rec. S10657 (daily ed. Sept. 21, 1998) (introduction of S. 2502, the Vessel Hull Design Protection Act, by Sen. Breaux, and the text of the bill).

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Doc. No. 121 144 Cong. Rec. 11887 (daily ed. Oct. 8, 1998) (consideration of the conference report on S. 2281).

Doc. No. 122 144 Cong. Rec. S12730 (daily ed. Oct. 10, 1998) (remarks of Sen. Leahy on H.R. 2281).

Doc. No. 123 144 Cong. Rec. H10615 (daily ed. Oct. 12, 1998) (consideration of the conference report on S. 2281).

Doc. No. 124 144 Cong. Rec. S12375 (daily ed. Oct. 12, 1998) (remarks of Sen. Hatch on H.R. 2281).

Doc. No. 125 144 Cong. Rec. S12378 (daily ed. Oct. 12, 1998) (remarks of Sen Grams on the WIPO Copyright Treaties Implemenation Act Conference Report).

Doc. No. 126 144 Cong. Rec. E2136, (daily ed. Oct. 13, 1998) (remarks of Rep. Bliley on the Digital Millennium Copyright Act).

Doc. No. 127 144 Cong. Rec. E2144 (daily ed. Oct. 13, 1998) (remarks of Rep. Tauzin on H.R. 2281).

Doc. No. 128 144 Cong. Rec. S12730 (daily ed. Oct. 20, 1998) (remarks of Sen. Leahy on H.R. 2281).

Doc. No. 129 144 Cong. Rec. S12972 (daily ed. Oct. 21, 1998) (consideration of the WIPO treaties).

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Doc. No. 132 Digital Millennium Copyright Act of 1998, S. Rep. No. 105-190, 105th Cong., 2d Sess. (May 11, 1998).

Doc. No. 133 Collections of Information Antipiracy Act, H. Rep. No. 525, 105th Cong., 2d Sess. (May 12, 1998).

Doc. No. 134 WIPO Copyright Treaty (WCT) (1996) and WIPO Performances and Phonograms Treaty (WPPT) (1996), Exec. Rep. No. 105-25, 105th Cong., 2d Sess. (Oct. 14, 1998).

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Doc. No. 137 WIPO Performances and Phonograms Treaty adopted by the Diplomatic Conference on Dec. 20, 1996.

Doc. No. 138 Resolution Concerning Audiovisual Performances (Dec. 2-20, 1996).

Doc. No. 139 Agreed Statements Concerning the WIPO Copyright Treaty (Dec. 20, 1996).

Doc. No. 140 Agreed Statements Concerning the WIPO Performances and Phonograms Treaty (Dec. 20, 1996).

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LEGISLATIVE CHRONOLOGY

I. No Electronic Theft (NET) Act

House Actions

Jul. 25, 1997: Referred to the House Committee on the Judiciary.

Aug. 5, 1997: Referred to the Subcommittee on Courts and Intellectual Property.

Sep. 11, 1997: Subcommittee Hearings held.

Sep. 30, 1997: Subcommittee Consideration and Mark-up Session held.

Sep. 30, 1997: Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.

Oct. 7, 1997: Committee Consideration and Mark-up Session held.

Oct. 7, 1997: Ordered to be Reported (Amended) by voice vote.

Oct. 23, 1997: Reported to House (Amended) by House Committee on the Judiciary. H. Rep. No. 105-339.

Oct. 23, 1997: Placed on the Union Calendar, Calendar No. 198.

Nov. 4, 1997: Called up by House under suspension of the rules. Considered by House as unfinished business. Passed House (Amended) by voice vote.

Senate Actions

Nov. 5, 1997: Received in the Senate and read twice and referred to the Committee on the Judiciary.

Nov. 13, 1997: Passed Senate without amendment by unanimous consent.

Nov. 14, 1997: Message on Senate action sent to the House.

Executive Actions

Nov. 13, 1997: Cleared for White House.

Dec. 5, 1997: Presented to President.

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Dec. 16, 1997: Signed by President. Became Public Law No: 105-147.

II. Sonny Bono Copyright Extension Act

Senate Actions

Mar. 20, 1997: S. 505 read twice and referred to the Committee on the Judiciary.

Mar. 26, 1998: H.R. 2589 received in the Senate and read twice and referred to the Committee on Judiciary.

Oct. 7, 1998: S. 505 discharged by Senate Committee on the Judiciary. Measure laid before the Senate by unanimous consent. Amendment SP 3782 proposed by Senator Lott for Senator Hatch agreed to in Senate by unanimous consent. Passed Senate with an amendment by unanimous consent. Message on Senate action sent to the House.

House Actions

Oct. 1, 1997: H.R. 2589 referred to the House Committee on the Judiciary.

Mar. 3, 1998: Committee Consideration and Mark-up Session held on H.R. 2589.

Mar. 4, 1998: H.R. 2589 ordered to be Reported (Amended) by voice vote.

Mar. 18, 1998: H.R. 2589 reported to House (Amended) by House Committee on Judiciary. H. Rep. No.105-452.

Mar. 18, 1998: H.R. 2589 placed on the Union Calendar, Calendar No. 258.

Mar. 24, 1998: H.R. 2589 reported to House.

Mar. 25, 1998: H.R. 2589 Amendments: HA 531 Amendment offered by Representative Coble, and ageed to by voice vote; HA 533 Amendment Offered by Representative McCollum, and failed by recorded vote: 150 - 259; HA 532 Amendment Offered by Representative Sensenbrenner, and agreed to by recorded vote: 297 - 112. Rule H. Res. 390 passed House. Called up by House under the provisions of rule H. Res. 390. The House

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adopted the amendment in the nature of a substitute as agreed to by the Committee of the whole House on the state of the Union. H.R. 2589 passed House (Amended) by voice vote.

Oct. 7, 1998: S. 505 called up by House under suspension of the rules and passed by voice vote.

Executive Actions

Oct. 7, 1998: Cleared for White House.

Oct. 15, 1998: Presented to President.

Oct. 27, 1998: Signed by President. Became Public Law No: 105-298.

III. Digital Millennium Copyright Act

House Actions

July 29, 1997: Referred to the House Committee on the Judiciary.

Aug. 7, 1997: Referred to the Subcommittee on Courts and Intellectual Property.

Sep. 16, 1997: Subcommittee hearings held.

Apr. 1, 1998: Committee consideration and mark-up session held.

Apr. 1, 1998: Ordered to be Reported (Amended) by voice vote.

May 22, 1998: Reported to House (Amended) by House Committee on 105-551, Part I.

May 22, 1998: Referred jointly and sequentially to the House Committee on Commerce.

Jun. 5, 1998: Subcommittee hearings held.

Jun. 17, 1998: Subcommittee consideration and mark-up session held.

Jul. 17, 1998: Committee consideration and mark-up session held.

Jul. 17, 1998: Ordered to be Reported (Amended) by Yeas- Nay vote: 41 - 0.

Jul. 22, 1998: Reported to House (Amended) by House Committee on Commerce. H.Rep No. 105-551,Part II.

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May 22, 1998: Referred jointly and sequentially to the House Committee on Ways and Means.

Jul. 22, 1998: House Committee on Ways and Means discharged. Placed on the Union Calendar, Calendar No. 362.

Aug. 4, 1998: Called up by the House under suspension of the rules. Passed House (Amended) by voice vote.

Senate Actions

Apr. 30, 1998: S. 2037 ordered to be reported by the Committee on Judiciary.

May 6, 1998: S. 2037 reported to Senate by Senator Hatch without a report, and is placed on Senate Legislative Calendar under General Orders. Calendar No. 358.

May 11, 1998: By Senator Hatch from Committee on Judiciary filed written report on S. 2037. Report No. 105-190. Additional views filed.

May 14, 1998: S. 2037 laid before Senate by unanimous consent. Amendment SP 2411 proposed by Senator Hatch, and agreed to in Senate by voice vote. Passed Senate with an amendment by Yea-Nay vote. 99-0.

Sep. 17, 1998: Senate incorporated S. 2037 in H.R. 2281 as an amendment. Senate passed companion measure H.R. 2281 in lieu of this measure by unanimous consent. Senate vitiated previous passage. Indefinitely postponed by Senate by unanimous consent.

Aug. 31, 1998: Received in the Senate. Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 535.

Sep. 17, 1998: Measure laid before Senate by unanimous consent. Senate struck all after the Enacting Clause and substituted the language of S. 2037 amended. Passed Senate in lieu of S. 2037 with an amendment by unanimous consent.

Sep. 18, 1998: Message on Senate action sent to the House.

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Oct. 8, 1998: Conference papers: Senate report and managers' statement official papers held at the desk in Senate. Message on Senate action sent to the House.

Conference Actions

Sep. 17, 1998: Senate insists on its amendment asks for a conference and appoints as conferees Sens. Hatch; Thurmond and Leahy.

Sep. 23, 1998: On motion that the House disagree to the Senate amendment, and agree to a conference Agreed to without objection. The Speaker appoints as conferees Reps. Hyde, Coble, Goodlatte, Conyers, Berman Bliley, Tauzin, and Dingell..

Sep. 24, 1998: Conference held.

Oct. 8, 1998: Conference report H. Rep No. 105-796 filed in House. Senate agreed to conference report by unanimous consent. Conferees agreed to file conference report.

Oct. 12, 1998: House agreed to conference report by voice vote.

Executive Actions

Oct. 12, 1998: Cleared for White House.

Oct. 20, 1998: Presented to President.

Oct. 28, 1998: Signed by President. Became Public Law No: 105-304.

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Union Calendar No. 246

105TH CONGRESS
2D SESSION

H. R. 2696

[Report No. 105–436]

To amend title 17, United States Code, to provide for protection of certain original designs.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 1997

Mr. COBLE (for himself and Mr. SHAW) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 11, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 22, 1997]

A BILL

To amend title 17, United States Code, to provide for protection of certain original designs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Vessel Hull Design Protection Act".

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SEC. 2. PROTECTION OF CERTAIN ORIGINAL DESIGNS.

Title 17, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 12—PROTECTION OF ORIGINAL DESIGNS

"Sec.
"1201. Designs protected.
"1202. Designs not subject to protection.
"1203. Revisions, adaptations, and rearrangements.
"1204. Commencement of protection.
"1205. Term of protection.
"1206. Design notice.
"1207. Effect of omission of notice.
"1208. Exclusive rights.
"1209. Infringement.
"1210. Application for registration.
"1211. Benefit of earlier filing date in foreign country.
"1212. Oaths and acknowledgments.
"1213. Examination of application and issue or refusal of registration.
"1214. Certification of registration.
"1215. Publication of announcements and indexes.
"1216. Fees.
"1217. Regulations.
"1218. Copies of records.
"1219. Correction of errors in certificates.
"1220. Ownership and transfer.
"1221. Remedy for infringement.
"1222. Injunctions.
"1223. Recovery for infringement.
"1224. Power of court over registration.
"1225. Liability for action on registration fraudulently obtained.
"1226. Penalty for false marking.
"1227. Penalty for false representation.
"1228. Enforcement by Treasury and Postal Service.
"1229. Relation to design patent and copyright law.
"1230. Common law and other rights unaffected.
"1231. Administrator.
"1232. No retroactive effect.

"§ 1201. Designs protected

"(a) DESIGNS PROTECTED.—

"(1) IN GENERAL.—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to

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the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

"(2) VESSEL HULLS OR COMPONENT PARTS THEREOF.—The design of a vessel hull or component part of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1202(4).

"(b) DEFINITIONS.—For the purpose of this chapter, the following terms have the following meanings:

"(1) A design is 'original' if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than merely trivial and has not been copied from another source.

"(2) A 'useful article' is a vessel hull or a component part thereof, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article.

"(3) A 'vessel' is a craft, especially one larger than a rowboat, designed to navigate on water.

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"(4) A 'hull' is the frame or body of a vessel, exclusive of masts, sails, yards, and rigging.

"(5) A 'plug' means a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

"(6) A 'mold' means a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

"§ 1202. Designs not subject to protection

"Protection under this chapter shall not be available for a design that is—

"(1) not original;

"(2) staple or commonplace, such as a standard geometric figure, familiar symbol, emblem, or motif, or other shape, pattern, or configuration which has become standard, common, prevalent, or ordinary;

"(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trades;

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"(4) dictated solely by a utilitarian function of the article that embodies it; or

"(5) embodied in a useful article that was made public by the designer or owner in the United States or a foreign country more than 1 year before the date of the application for registration under this chapter.

"§ 1203. Revisions, adaptations, and rearrangements

"Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1202 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

"§ 1204. Commencement of protection

"The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1213(a) or the date the design is first made public as defined by section 1210(b).

"§ 1205. Term of protection

"(a) IN GENERAL.—Subject to subsection (b), the protection provided under this chapter for a design shall con-

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tinue for a term of 10 years from the date of the commencement of protection under section 1204.

"(b) EXPIRATION.—All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

"(c) TERMINATION OF RIGHTS.—Upon expiration or termination of protection in a particular design under this chapter, all rights under this chapter in the design shall terminate, regardless of the number of different articles in which the design may have been used during the term of its protection.

"§ 1206. Design notice

"(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public under section 1210(b), the owner of the design shall, subject to the provisions of section 1207, mark it or have it marked legibly with a design notice consisting of—

*"(A) the words 'Protected Design', the abbreviation 'Prot'd Des.', or the letter 'D' with a circle, or the symbol *D*;*

"(B) the year of the date on which protection for the design commenced; and

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"(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been approved and recorded by the Administrator before the design marked with such identification is registered.

"(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

"(b) LOCATION OF NOTICE.—The design notice shall be so located and applied as to give reasonable notice of design protection while the vessel hull embodying the design is passing through its normal channels of commerce.

"(c) SUBSEQUENT REMOVAL OF NOTICE.—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice on an article.

"§ 1207. Effect of omission of notice

"(a) ACTIONS WITH NOTICE.—Except as provided in subsection (b), the omission of the notice prescribed in section 1206 shall not cause loss of the protection under this chapter or prevent recovery for infringement under this chapter against any person who, after receiving written no-

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tice of the design protection, begins an undertaking leading to infringement under this chapter.

"(b) ACTIONS WITHOUT NOTICE.—The omission of the notice prescribed in section 1406 shall prevent any recovery under section 1223 against a person who began an undertaking leading to infringement under this chapter before receiving written notice of the design protection. No injunction shall be issued under this chapter with respect to such undertaking unless the owner of the design reimburses that person for any reasonable expenditure or contractual obligation in connection with such undertaking that was incurred before receiving written notice of the design protection, as the court in its discretion directs. The burden of providing written notice of design protection shall be on the owner of the design.

"§ 1208. Exclusive rights

"The owner of a design protected under this chapter has the exclusive right to—

"(1) make, have made, or import, for sale or for use in trade, any vessel hull embodying that design; and

"(2) sell or distribute for sale or for use in trade any vessel hull embodying that design.

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"§ 1209. Infringement

"(a) ACTS OF INFRINGEMENT.—Except as provided in subjection (b), it shall be infringement of the exclusive rights in a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

"(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (e); or

"(2) sell or distribute for sale or for use in trade any such infringing article.

"(b) ACTS OF SELLERS AND DISTRIBUTORS.—A seller or distributor of an infringing article who did not make or import the vessel hull shall be deemed to have infringed on a design protected under this chapter only if that person—

"(1) induced or acted in collusion with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase a vessel hull in the ordinary course of business shall not of itself constitute such inducement or collusion; or

"(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person's source of such vessel hull, and that person orders or reorders such article after hav-

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ing receiving notice by registered or certified mail of the protection subsisting in the design.

"(c) ACTS WITHOUT KNOWLEDGE.—It shall not be infringement under this section to make, have made, import, sell, or distribute, any vessel hull embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

"(d) ACTS IN ORDINARY COURSE OF BUSINESS.—A person who incorporates into that person's product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the account of another person in the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (1) or (2) of subsection (b). Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of subsection (b)(2).

"(e) INFRINGING ARTICLE DEFINED.—As used in this section, an 'infringing article' is any article the design of which has been copied from a design protected under this chapter, without the consent of the owner of the protected

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design. An infringing article is not an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium or an article that embodies, in common with the protected design, only elements described in section 1202. A design shall not be deemed to have been copied from a protected design if it is original and not substantially similar in appearance to a protected design.

"(f) ESTABLISHING ORIGINALITY.—The party to any action or proceeding under this chapter who alleges rights under this chapter in a design shall have the burden of establishing the design's originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make prima facie showing that such design was copied from such work.

"(g) REPRODUCTION FOR TEACHING OR ANALYSIS.—It is not an infringement of the exclusive rights of a design owner for a person to reproduce the design in a vessel hull or in any other form solely for the purpose of teaching, analyzing, or evaluating the appearance, concepts, or techniques embodied in the design, or the function of the vessel hull embodying the design.

"§ 1210. Application for registration

"(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—Protection under this chapter shall be lost if appli-

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cation for registration of the design is not made within one year after the date on which the design is first made public.

"(b) WHEN DESIGN IS MADE PUBLIC.—A design is made public when an existing vessel hull embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent.

"(c) APPLICATION BY OWNER OF DESIGN.—Application for registration may be made by the owner of the design.

"(d) CONTENTS OF APPLICATION.—The application for registration shall be made to the Administrator and shall state—

"(1) the name and address of the designer or designers of the design;

"(2) the name and address of the owner if different from the designer;

"(3) the specific name of the vessel hull embodying the design;

"(4) the date, if any, that the design was first made public, if such date was earlier than the date of the application;

"(5) affirmation that the design has been fixed in a useful article; and

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"(6) such other information as may be required by the Administrator.

The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this chapter.

"(e) SWORN STATEMENT.—The application for registration shall be accompanied by a statement under oath by the applicant or the applicant's duly authorized agent or representative, setting forth, to the best of the applicant's knowledge and belief—

"(1) that the design is original and was created by the designer or designers named in the application;

"(2) that the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and

"(3) that the applicant is the person entitled to protection and to registration under this chapter.

If the design has been made public with the design notice prescribed in section 1406, the statement shall also describe the exact form and position of the design notice.

"(f) EFFECT OF ERRORS.—(1) Error in any statement or assertion as to the utility of the vessel hull named in the application, the design of which is sought to be reg-

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istered, shall not affect the protection secured under this chapter.

"(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

"(g) DESIGN MADE IN SCOPE OF EMPLOYMENT.—In a case in which the design was made within the regular scope of the designer's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address of the employer for whom the design was made may be stated instead of that of the individual designer.

"(h) PICTORIAL REPRESENTATION OF DESIGN.—The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the vessel hull having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

"(i) DESIGN IN MORE THAN ONE USEFUL ARTICLE.—If the distinguishing elements of a design are in substantially the same form in different vessel hulls, the design shall be protected as to all such vessel hulls when protected as

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to one of them, but not more than one registration shall be required for the design.

"(j) APPLICATION FOR MORE THAN ONE DESIGN.—More than one design may be included in the same application under such conditions as may be prescribed by the Administrator. For each design included in an application the fee prescribed for a single design shall be paid.

"§ 1211. Benefit of earlier filing date in foreign country

"An application for registration of a design filed in the United States by any person who has, or whose legal representative or predecessor or successor in title has, previously filed an application for registration of the same design in a foreign country which extends to designs of owners who are citizens of the United States, or to applications filed under this chapter, similar protection to that provided under this chapter shall have that same effect as if filed in the United States on the date on which the applications as first field in any such foreign country, if the application in the United States is filed within 6 months after the earliest date on which any such foreign application was filed.

"§ 1212. Oaths and acknowledgments

"(a) IN GENERAL.—Oaths and acknowledgments required by this chapter—

"(1) may be made—

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"(A) before any person in the United States authorized by law to administer oaths, or

"(B) when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, and

"(2) shall be valid if they comply with the laws of the State or country where made.

"(b) WRITTEN DECLARATION IN LIEU OF OATH.—(1) The Administrator may by rule prescribe that any document which is to be filed under this chapter in the Office of the Administrator and which is required by any law, rule, or other regulation to be under oath, may be subscribed to by a written declaration in such form as the Administrator may prescribe, and such declaration shall be in lieu of the oath otherwise required.

"(2) Whenever a written declaration under paragraph (1) is used, the document containing the declaration shall state that willful false statements are punishable by fine or imprisonment, or both, pursuant to section 1001 of title 18,

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and may jeopardize the validity of the application or document or a registration resulting therefrom.

"§ 1213. Examination of application and issue or refusal of registration

"(a) DETERMINATION OF REGISTRABILITY OF DESIGN; REGISTRATION.—Upon the filing of an application for registration in proper form under section 1210, and upon payment of the fee prescribed under section 1216, the Administrator shall determine whether or not the application relates to a design which on its face appears to be subject to protection under this chapter, and, if so, the Register shall register the design. Registration under this subsection shall be announced by publication. The date of registration shall be the date of publication.

"(b) REFUSAL TO REGISTER; RECONSIDERATION.—If, in the judgment of the Administrator, the application for registration relates to a design which on its face is not subject to protection under this chapter, the Administrator shall send to the applicant a notice of refusal to register and the grounds for the refusal. Within 3 months after the date on which the notice of refusal is sent, the applicant may, by written request, seek reconsideration of the application. After consideration of such a request, the Administrator shall either register the design or send to the applicant a notice of final refusal to register.

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"(c) APPLICATION TO CANCEL REGISTRATION.—Any person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under this chapter, stating the reasons for the request. Upon receipt of an application for cancellation, the Administrator shall send to the owner of the design, as shown in the records of the Office of the Administrator, a notice of the application, and the owner shall have a period of 3 months after the date on which such notice is mailed in which to present arguments to the Administrator for support of the validity of the registration. It shall also be within the authority of the Administrator to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under this chapter, the Administrator shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for can-

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cellation shall be sent to the applicant and to the owner of record.

"§ 1214. Certification of registration

"Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Register and shall be recorded in the official records of that office. The certificate shall state the name of the useful article, the date of filing of the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain a reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, this description shall also appear in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

"§ 1215. Publication of announcements and indexes

"(a) PUBLICATIONS OF THE ADMINISTRATOR.—The Administrator shall publish lists and indexes of registered designs and cancellations of designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

"(b) FILE OF REPRESENTATIVES OF REGISTERED DESIGNS.—The Administrator shall establish and maintain a file of the drawings or other pictorial representations of reg-

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istered designs. The file shall be available for use by the public under such conditions as the Administrator may prescribe.

"§ 1216. Fees

"The Administrator shall by regulation set reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter, taking into consideration the cost of providing these services and the benefit of a public record.

"§ 1217. Regulations

"The Administrator may establish regulations for the administration of this chapter.

"§ 1218. Copies of records

"Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to this chapter. That copy shall be admissible in evidence with the same effect as the original.

"§ 1219. Correction of errors in certificates

"The Register may, by a certificate of correction under seal, correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature occurring in good faith but not through the fault of the Office. Such registration, together with the certificate, shall there-

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