



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

INTERIM REGULATIONS; REQUEST FOR COMMENTS.

DESIGN PROTECTION FOR VESSEL HULLS

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 212

[Docket No. RM99-4]

Design Protection for Vessel Hulls

AGENCY: Copyright Office, Library of Congress

ACTION: Interim regulations; Request for comments.

SUMMARY: The Copyright Office is adopting interim regulations to implement the registration process for original designs of vessel hulls protected under chapter 13 of the Copyright Act. The Office is requesting interested parties to comment on the regulations. The immediacy of the adoption is required to enable the Copyright Office to begin the registration process for vessel hull designs and implement the law, which became effective on October 28 of last year. **DATES:** Effective date is July 1, 1999. Comments should be submitted no later than August 6, 1999. Reply comments are due no later than September 7, 1999.

ADDRESSES: An original and 10 copies of comments and reply comments should be mailed to: Office of the General Counsel, Copyright Office, PO Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney, Office of the General Counsel,

Copyright Office, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

As part of the amendments made to the Copyright Act by the Digital Millennium Copyright Act (DMCA), Pub. L. 105-304, Congress enacted design protection for vessel hulls. Chapter 13 of the Copyright Act creates certain exclusive rights for owners of original designs of vessel hulls provided that registration of the design is made within two years after the date on which the design is first made public. Registration is to be made at the Copyright Office, in accordance with regulations established by the Register of Copyrights.

The Register is issuing the interim regulations contained in this notice to implement the registration process for vessel hull designs. Ordinarily, the administrative process would commence with publication of proposed regulations, followed by a period of public comment, and later publication of final regulations. The Register has determined, however, that interim regulations need to be adopted at this time in order to begin the registration process for vessel hull designs. The need for expedited regulations is evident from two circumstances. First, section 504 of the DMCA requires the Register, in conjunction with the Patent and Trademark Office, to submit a report to Congress evaluating the effects of design protection for vessel hulls within one year of passage of the DMCA. In order to submit a meaningful report to Congress, it is necessary to begin the registration process immediately; otherwise, there will be little to discuss regarding the effects of chapter 13.

Second, the Office has received a growing number of public inquiries regarding registration, particularly as the boating

industry prepares its new designs for summer display to dealers and distributors. The Office also acknowledges that the right to commence an infringement action brought by an owner of a vessel hull design is contingent upon first obtaining a certificate of registration. 17 U.S.C. 1321(a). The Register, therefore, concludes that it is appropriate to adopt interim regulations at this time, and request public comment on these regulations. After the Copyright Office reviews the comments, final regulations will be issued.

Interim Regulations

The interim regulations are codified at part 212 of 37 CFR. The highlights of these regulations are discussed briefly below.

1. Fees

The basic application fee is \$75. The Copyright Office considers this to be an introductory fee until such time as we can determine the cost to the Office of

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the registration process. This principle applies to the other fees described in Sec. 212.2 as well. The Office will adjust the fees, if necessary, in accordance with the provisions of 17 U.S.C. 1316.

An important aspect of the basic fee is that it applies to registration of one vessel hull design only. Multiple designs, whether submitted on a single or multiple application forms, require payment of the \$75 fee for each design registered.

2. Registration of Claims for Protection of Eligible Designs

Section 212.3 prescribes the essential requirements for registration of a vessel hull design.

The application form that must be used by all applicants seeking to register a vessel hull

design is the Form D-VH, available from the Copyright Office. Copies of the form may also be printed or downloaded from the Copyright Office website (<http://www.loc.gov/copyright/forms/formdvh.pdf>). The required elements of a registration application are a completed form D-VH, deposit material identifying the design or designs for which registration is sought, and the appropriate fee prescribed in Sec. 212.2. Applications may only be made by the owner or owners of a design, or their authorized representatives or agents.

Section 212.3(e) contains the requirements for submission of deposit material identifying the design or designs that are submitted for registration. The Copyright Office will accept either drawings or photographs identifying a design. It is important that the exact requirements of paragraph (e) with respect to character, quality, and submission of the photographs or drawings be satisfied. First, the photographs or drawings must adequately depict the design to establish the basis of the claim and to enable the Office to examine the claim. A court would be justified in denying a claim for infringement of an aspect of a design that was not adequately revealed in the deposit material accompanying the application. Second, the requirements of paragraph (e) must be met to enable the Copyright Office to reproduce the depictions of the design on the certificate of registration, as required by the statute. A registration cannot be made if the depictions of the design cannot be reproduced on the certificate.

Section 212.3(f) provides the requirements for submitting claims for multiple designs. Section 1310(j) of title 17 provides that "[m]ore than one design may be included in the same application under such conditions as may be prescribed by the [Register]." 17 U.S.C. 1310(j). In order to prevent confusion in examining a single application for multiple designs, the Office is limiting the circumstances under which a single application for multiple designs may be submitted. Paragraph (f) provides that a single application may be submitted for more than one design provided that each of the designs is embodied in the same make and model of the vessel and all other information apart from the type or style and description of the design is the same. If the information (apart from the type or style of the design and the description of the design) in any of the spaces on Form D-VH is different for one or more designs, then multiple application forms must be used. Thus, for example, if a particular make and model of a vessel manufactured by a company contains multiple designs created by the same designer, then a single application may be used (provided, of course, that the information in the remaining spaces of Form D-VH is the same). If, however, the designers for each design are different, then separate application forms must be used for each

design.

The \$75 application fee applies to each design submitted for registration, regardless of whether the designs appear on a single or multiple applications.

As permitted by 17 U.S.C. 1312(b), the Register is adopting a written declaration for Form D-VH in lieu of the oath required by 17 U.S.C. 1312(a). The written declaration eliminates the need for applicants to have the completed application form notarized. All applicants are advised to read the written declaration carefully before signing as there are criminal penalties for false statements. 17 U.S.C. 1327; 18 U.S.C. 1001.

Section 212.3(h) addresses priority claims—i.e., where an applicant has sought protection for the same design in another country prior to seeking registration in the United States. The paragraph requires the applicant to identify the country, filing date and serial number of the foreign application, and to provide a certified copy of the application and a translation of the application. In addition, if requested by the Copyright Office, the applicant must submit proof that the foreign country in which the prior application was filed extends protection to U.S. citizens that is similar to the protection contained in chapter 13 of title 17. If the protection is not similar, then no credit can be given to the prior application under 17 U.S.C. 1311.

Section 212.3(i) provides that the effective date of a registration is the date of its publication by the Copyright Office, and paragraph (j) provides that publications will be made on the Copyright Office's website.

3. Affixation and Placement of Design Notice

Section 212.4 prescribes the elements, affixation and placement of the design notice required by 17 U.S.C. 1306. The elements of a proper design notice are those prescribed in the statute and repeated in paragraph (b) of this section, and the affixation and location of the design notice is anywhere on the vessel that would give "reasonable notice" that the design is protected as the vessel passes through the normal channels of commerce.

Section 212.4(d) describes locations on a vessel where placement of a design notice would indeed give reasonable notice. These locations are by no means the only acceptable locations, but are offered as guidance and a "safe harbor" for what would constitute reasonable notice of design protection.

4. Recordation of Distinctive Identification

Section 1306 of title 17 provides that a distinctive identification of an owner of a design may be used in a design notice provided that the distinctive identification is first recorded with the Copyright Office. Section 212.5 of the interim regulations provides the requirements for recording a distinctive identification with the Copyright Office. A suggested format for the

recordation is posted on the Copyright Office website.

5. Recordation of Transfers and Other Documents

Section 1320 of title 17 of the United States Code provides that assignments, grants, conveyances and mortgages of rights in registered designs may be recorded in the Copyright Office. Section 212.6 provides that such documents shall be recorded in the same manner as documents pertaining to copyrights, as set forth in section 201.4.

6. Effective Date of Regulations

The effective date of the interim regulations is July 1, 1999. The immediacy of the effective date is required to enable the Copyright Office to begin the registration process for vessel hull designs and implement the law, which became effective on October 28 of last year. The Office will adopt final regulations following receipt of public comment on these interim regulations and based on its experience with registrations made under the interim regulations.

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Cancellation of Registrations

Section 1313(c) of title 17 provides that "[a]ny 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 [Register] at any time to cancel the registration on the ground that the design is not subject to protection under this chapter." 17 U.S.C. 1313(c). Upon receipt of such application, the Register must provide the owner of the design with the request for cancellation and "the owner shall have a period of 3 months after the date on which such notice is mailed to present arguments to the [Register] to support the validity of the registration." *Id.* The Register is granted authority to establish regulations by which the opposing parties may "appear and be heard in support of their arguments," and is directed to cancel the registration if she determines that "the design is not subject to protection under this chapter." *Id.*

Because the Copyright Office is just beginning the registration process with publication of these interim regulations, there is no need to adopt cancellation regulations at this time.

The Copyright Office welcomes information or comment as to the registration and cancellation process.

List of Subjects in 37 CFR Part 212

Design, Fees, Registration, Vessel hulls.

Interim Regulations

In consideration of the foregoing, the Register of Copyrights adds part 212 on an interim basis as follows:

PART 212—PROTECTION OF VESSEL HULL DESIGNS

- Sec.
212.1 Scope.
212.2 Fees.
212.3 Registration of claims of protection of eligible designs.
212.4 Affixation and placement of design notice.
212.5 Recordation of distinctive identification of vessel hull designer.
212.6 Recordation of transfers and other documents.

Authority: 17 U.S.C. chapter 13.

§212.1 Scope.

The provisions of this part apply to the protection and registration of original designs of vessel hulls under chapter 13 of title 17, United States Code. Design protection and registration under this part are separate from copyright protection and registration. Copyright registration is governed by the provisions of part 202 of this subchapter.

§212.2 Fees.

The following fees or charges are established by the Register of Copyrights for services related to designs:

- (a) For filing an application for registration of one design: \$75;
- (b) For filing an application for registration of more than one design: \$75, plus \$75 for each design beyond the first;
- (c) For each page of deposit material identifying the design beyond the third page: \$20;
- (d)(1) For special handling of an application for registration of a design: \$500;
- (2) For special handling of each additional design in an application for registration of multiple designs: \$50;
- (e) For corrections or omissions in the certificate of registration: \$65;
- (f) For recordation of a distinctive identification of an owner: \$50;
- (g) For providing an additional certificate of registration: \$25;
- (h) For providing any other certification of Copyright Office records: \$65 per hour;
- (i) For preparing a search report: \$65 per hour;
- (j) For expediting a request for certification or search of Office records, the appropriate fees set out in Sec. 201.3(d).

§212.3 Registration of claims for protection of eligible designs.

(a) *Limitations.* Protection is not available for, and an application for registration will not be accepted for:

- (1) An otherwise eligible design made public prior to October 28, 1998;
- (2) An otherwise eligible design made public on a date more than two years prior to the filing of an application for registration under this section;
- (3) A design ineligible for any of the

reasons set forth in 17 U.S.C. 1302.

(b) *Required elements of application.* An application is considered filed with the Copyright Office on the date on which the following three items have been received by the Copyright Office:

- (1) Completed Form D-VH;
- (2) Deposit material identifying the design or designs for which registration is sought; and
- (3) The appropriate fee.

(c) *Application by owner of design.* An application for registration under this section may be made only by the owner or owners of the design, or by the duly authorized agent or representative of the owner or owners of the design.

(d) *Application form.* Registration must be made on Form D-VH. Forms are available from the Copyright Office and may be reprinted from the Copyright Office's website (<http://www.loc.gov/copyright/forms/formdvh.pdf>).

(e) *Deposit material.*—(1) *In General.* Identification of the design to be registered may be made in the form of drawings or photographs. No more than two drawings or photographs of the design may appear on a single sheet. Applicants may submit up to three 8½" x 11" sheets containing drawings or photographs as part of the basic \$75 application fee. The fee for each additional sheet beyond three is \$20 per sheet. No combinations of drawings and photographs may be submitted on a single sheet. The drawings or photographs that accompany the application must reveal those aspects of the design for which protection is claimed. The registration extends only to those aspects of the design which are adequately shown in the drawings or photographs.

(2) *Views.* The drawings or photographs submitted should contain a sufficient number of views to make an adequate disclosure of the appearance of the design, i.e. front, rear, right and left sides, top and bottom. While not required, it is suggested that perspective views be submitted to show clearly the appearance and shape of the three dimensional designs.

(3) *Drawings.* (i) Drawings must be in black ink on white 8½" x 11" unruled paper. A drawing of a design should include appropriate surface shading which shows clearly the character and contour of all surfaces of any 3-dimensional aspects of the design. Surface shading is also necessary to distinguish between any open and solid areas of the design. Solid black surface shading is not permitted except when used to represent the black color as well as color contrast.

(ii) The use of broken lines in drawings depicting the design is understood to be for illustrative purposes only and forms no part of the claimed design. Structure that is not part of the design, but that is considered necessary to show the environment in which the design is used, may be represented in the drawing by broken lines. This includes any

portion of the vessel hull in which the design is embodied or applied that is not considered part of the design. When the claimed design is only surface ornamentation to the vessel hull, the vessel hull in which it is embodied must be shown in broken lines.

(iii) When broken lines are used, they should not intrude upon or cross the depiction of the design and should not

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be of heavier weight than the lines used in depicting the design. Where a broken line showing of environmental structure must necessarily cross or intrude upon the representation of the design and obscure a clear understanding of the design, such an illustration should be included as a separate figure, in addition to other figures which fully disclose the subject matter of the design.

(4) *Photographs.* High quality black and white or color photographs will be accepted provided that they are mounted on plain white 8½" x 11" unlined paper and do not exceed two photographs per sheet. Photographs must be developed on double weight photographic paper and must be of sufficient quality so that all the details of the design are plainly visible and are capable of reproduction on the registration certificate, if issued.

(f) *Multiple claims.*—(1) *In general.* Claims for more than one design may be filed in one of two ways. If multiple designs are contained on a single make and model of a vessel hull (and therefore, the information in Space 1 of Form D-VH—the make and model of the vessel that embodies the design—is the same for each of the designs), a single application form may be used for all designs, provided that the information in spaces 3 through 9 is the same for each of the designs. If multiple designs are contained on more than one make and model of a vessel, or the information in spaces 3 through 9 is not the same for each of the multiple designs, then separate applications must be used for each design.

(2) *Single application.* Where a single application for multiple designs is appropriate, a separate Form D-VH/CON must be used for each design beyond the first appearing on Form D-VH. Each Form D-VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D-VH/CON, and the deposit material must be attached to the Form D-VH/CON. The Form D-VH and all the Form D-VH/CONs for the single application must be submitted together.

(3) *Multiple applications.* Where multiple applications for more than one design are required, a Form D-VH must be completed for each design. Deposit material identifying the design must accompany each application. Multiple applications may be filed separately.

(4) *Fees.* The \$75 basic application fee

applies to each design submitted, regardless of whether a single application or multiple applications are used.

(g) *Written declaration.* In lieu of the oath required by 17 U.S.C. 1312(a), the application shall contain a written declaration, as permitted by 17 U.S.C. 1312(b), signed by the applicant, or the applicant's duly authorized agent or representative. If the design has been made public with the design notice prescribed in 17 U.S.C. 1306, the written declaration shall also describe the exact form and position of the design notice. The written declaration shall read as follows:

The undersigned, as the applicant or the applicant's duly appointed agent or representative, being hereby warned that willful false statements are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, hereby declares to the best of his/her knowledge and belief:

- (1) That the design has been fixed in a useful article;
- (2) That the design is original and was created by the designer(s), or employer if applicable, named in the application;
- (3) That those aspects of the design for which registration is sought are not protected by a design patent;
- (4) That the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and
- (5) That the applicant is the person entitled to protection and to registration under chapter 13 of title 17, United States Code.

(h) *Priority claims.* An applicant seeking the benefit of 17 U.S.C. 1311 because the applicant has, within the previous 6 months, filed an application for protection of the same design in a foreign country, must provide:

- (1) Identification of the filing date of the foreign application;
- (2) Identification of the foreign country in which the application was filed;
- (3) The serial number or any other identifying number of the foreign application;
- (4) A certified copy of the foreign application;
- (5) A translation of the foreign application and a statement, signed by the translator, that the translation is accurate, if the foreign application is in a language other than English; and
- (6) If requested by the Copyright Office, proof that the foreign country in which the prior application was filed extends to designs of owners who are citizens of the United States, or to applications filed under chapter 13 of title 17, United States Code, similar protection to that provided under chapter 13 of title 17, United States Code.

(i) *Effective date of registration.* The effective date of registration is the date of publication of the registration by the Copyright Office.

(j) *Publication of registration.* Publication

of registrations of vessel hull designs shall be made on the Copyright Office website (<http://www.loc.gov/copyright/vessels>).

§212.4 Affixation and placement of design notice.

(a) *General.* (1) This section specifies the methods of affixation and placement of the design notice required by 17 U.S.C. 1306. Sections 1306 and 1307 govern the circumstances under which a design notice must be used and the effect of omission of a design notice. A notice deemed acceptable under this part shall be considered to satisfy the requirements of section 1306 that it be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. As provided in that section, the examples specified in this part shall not be considered exhaustive of the methods of affixation and locations giving reasonable notice of the claim of protection in the design.

(2) The acceptability of a design notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such a manner and position that, when affixed, it may be viewed upon reasonable examination. There is no requirement that a design notice be permanently embossed or engraved into a vessel hull or deck, but it should be affixed in such a manner that, under normal conditions of use, it is not likely to become unattached or illegible.

(b) *Elements of a design notice.* If the design has been registered, the registration number may be included in the design notice in place of the year of the date on which protection for the design commenced and the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner. The elements of a design notice shall consist of:

- (1) The words "Protected Design", the abbreviation "Prot'd Des.", or the letter "D" within a circle, or the symbol *D*;
- (2) The year of the date on which protection for the design commenced; and
- (3) The name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

(c) *Distinctive identification.* Any distinctive identification of an owner may be used for purposes of paragraph (b)(3) of this section if it has been recorded by the Register of Copyrights pursuant to Sec. 212.5 before the design

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marked with such identification is registered.

(d) *Acceptable locations of notice.* The following are acceptable means of affixing and placement of a design notice:

- (1) In close proximity to the hull

identification number required by 33 CFR 181.23;

(2) In close proximity to the driver's console such that it is in plain view from the console;

(3) If the vessel is twenty feet in length or less and is governed by 33 CFR 183.21, in close proximity to the capacity marking; and

(4) In close proximity to the make and/or model designation of the vessel.

§212.5 Recordation of distinctive identification of vessel hull designer

(a) *General.* Any owner of a vessel hull may record a distinctive identification with the Register of Copyrights for purposes of using such distinctive identification in a design protection notice required by 17 U.S.C. 1306. A distinctive identification of an owner may not be used in a design notice before it has first been recorded with the Register.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording distinctive identifications of ownership of a vessel hull. However, persons recording distinctive identifications are encouraged to use the suggested format available on the Copyright Office website (<http://www.loc.gov/copyright/vessels>).

(c) *Recording distinctive identifications.* Any distinctive identification of an owner of a vessel hull may be recorded with the Register of Copyrights provided that a document containing the following is submitted:

- (1) The name and address of the owner;
 - (2) A statement of the owner that he/she is entitled to use the distinctive identification;
 - (3) A statement or depiction of the identification; and
 - (4) A recordation fee of \$50.
- (d) The document should be mailed to: Dept. D-VH, Vessel Hull Registration, P.O. Box 71380, Washington, DC 20024-1380.

§212.6 Recordation of transfers and other documents

The conditions prescribed in Sec. 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to design protection of vessel hulls under 17 U.S.C. chapter 13.

Dated: June 24, 1999.
Marybeth Peters,
Register of Copyrights.

James H. Billington,
Librarian of Congress.

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