



ANNOUNCEMENT

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

ADVANCE NOTICE OF PROPOSED RULEMAKING.

DESIGN PROTECTION FOR VESSEL HULLS

The following excerpt is taken from Volume 64, Number 130 of the
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 212

[Docket No. RM 99-4A]

Design Protection for Vessel Hulls

AGENCY: Copyright Office, Library of Congress

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 1313(c) of title 17 permits a party damaged by the registration of a vessel hull design to request cancellation of the design. The Copyright Office is requesting interested parties to comment on the process and procedures that should be adopted for the cancellation of registrations of vessel hull designs.

DATES: 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, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered by hand, an original and 10 copies should be brought to: Office of the Copyright General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or William J. Roberts, Senior Attorney, Office of the General Counsel, Copyright Office, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: As part of the amendments made to the Copyright Act by the Digital Millennium Copyright Act, Public Law 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 registration of the design

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is made within two years after the date on which the design is first made public. Registration of designs is made at the Copyright Office.

The Copyright Office has adopted interim regulations, effective July 1, 1999, implementing the registration system for vessel hull designs. The interim regulations did not, however, address procedures for cancelling registrations upon petition of an interested party. This Notice of Inquiry seeks public comment as to what type of process and procedures the Copyright Office should adopt for the cancellation of registrations. Persons submitting comments are invited to combine those comments with the comments they submit relating to the interim regulations, which are due on the same date.

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 has just published interim regulations creating the registration process for vessel hull designs and has yet to make a registration, it was not necessary to immediately adopt cancellation regulations. The Office is now seeking comment on the appropriate structure and procedures for cancelling registrations. In considering a process, commenters should bear in mind that the fees for cancellation proceedings will be set at a level designed to recover the actual cost of the proceedings.

The Office specifically seeks comment to the following inquiries. First is the issue of who should conduct a cancellation proceeding. Should the proceeding be conducted by staff of the Copyright Office, and, if so, should it be conducted by staff of the Examining Division or by attorneys in the General Counsel's Office? Or, should the Office hire an administrative law judge ("ALJ") (preferably one with knowledge of vessel designs) to conduct the hearings and make findings of fact? If an ALJ is the preferable choice, how should the ALJ be paid? Should the ALJ's findings be given presumptive validity, or should the Register be empowered to make her own findings?

Second, how extensive should the proceeding be to consider the petition? The statute prescribes that the owner must be given 3 months to respond to the petition. Should additional written arguments be permitted in addition to the initial petition and the owner's response?

What type of submissions should be permitted, and what should the time be? Should the parties be confined to presenting their arguments in written format, or should

oral hearing be allowed as well? How extensive should such hearings be? Should they be conducted in accordance with the Administrative Procedure Act requirements for formal hearings, or according to some other less formal format?

Third, what should be the fee charged by the Copyright Office for such a proceeding? Because the registration fee is relatively modest, and because the fee for cancellation proceedings is likely to be considerably greater, should the obligation to pay for cancellation proceedings be shared by the party seeking cancellation and the party who obtained the registration? Should the fee be fixed, or should it be assessed in whole or in part based on the amount of time the presiding officer actually expends in reviewing the submissions and conducting the proceeding? Does the Office have authority to assess fees in that manner?

The Office welcomes responses to these inquiries, as well as any other information or comment as to the cancellation process.

Dated: July 1, 1999.

David O. Carson,
General Counsel.

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