

104TH CONGRESS
2D SESSION

H. R. 4159

To amend title 17, United States Code, to protect vessel hull designs against unauthorized duplication, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1996

Mr. SAXTON (for himself, Mr. BONIOR, Mr. SHAW, Mr. ZIMMER, Mr. SMITH of New Jersey, Mr. JONES, Mr. PETRI, Mr. BREWSTER, Mr. NEUMANN, Mr. OBERSTAR, Mr. CLEMENT, Mr. BILIRAKIS, Mr. DEUTSCH, Mr. TORRICELLI, Mr. PALLONE, Mr. BALLENGER, Mr. LOBIONDO, and Mr. FRANKS of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to protect vessel hull designs against unauthorized duplication, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Boat Protection Act
5 of 1996”.

6 **SEC. 2. PROTECTION OF VESSEL HULL DESIGNS.**

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

1 **“CHAPTER 12—PROTECTION OF VESSEL**
 2 **HULL DESIGNS**

“Sec.

“1201. Definitions.

“1202. Subject matter of protection.

“1203. Ownership and transfer.

“1204. Duration of protection.

“1205. Exclusive rights in plugs or molds.

“1206. Limitation on exclusive rights: reverse engineering; first sale.

“1207. Limitation on exclusive rights: innocent infringement.

“1208. Plug or mold notice.

“1209. Enforcement of exclusive rights.

“1210. Remedies for infringement.

“1211. Relation to other laws.

3 **“§ 1201. Definitions**

4 “As used in this chapter—

5 “(1) ‘vessel hull’ has the meaning given that
 6 term in regulations which the Register of Copyrights
 7 shall issue;

8 “(2) a ‘plug’ means a device or model used to
 9 make a mold for the purpose of exact duplication,
 10 regardless of whether the device or model has an in-
 11 trinsic utilitarian function that is not only to portray
 12 the appearance of the product or to convey informa-
 13 tion;

14 “(3) a ‘mold’ means a matrix or form in which
 15 a substance for material is used, regardless of
 16 whether the matrix or form has an intrinsic utilitar-
 17 ian function that is not only to portray the appear-
 18 ance of the product or to convey information;

1 “(4) a plug or mold is ‘fixed’ in a vessel hull
2 when its embodiment in the vessel hull, by or under
3 the authority of the owner of the plug or mold, is
4 sufficiently permanent or stable to permit the vessel
5 hull to be perceived, reproduced, or otherwise com-
6 municated for a period of more than transitory du-
7 ration;

8 “(5) a plug or mold is ‘original’ if it is the inde-
9 pendent creation of a person who did not copy it
10 from another source;

11 “(6) to ‘commercially exploit’ a plug or mold is
12 to sell, offer for sale after the plug or mold is fixed
13 in a vessel hull, or otherwise distribute to the public
14 for profit vessel hulls embodying the plug or mold;

15 “(7) the ‘owner’ of a plug or mold is—

16 “(A) the person who created the plug or
17 mold;

18 “(B) the legal representative of that per-
19 son if that person is deceased or under a legal
20 incapacity;

21 “(C) the employer of that person if that
22 person created the plug or mold within the
23 scope of that person’s employment; or

24 “(D) a party to whom the rights of the
25 person, representative, or employer described in

1 subparagraph (A), (B), or (C) are transferred
2 in accordance with this chapter;

3 “(8) an ‘innocent purchaser’ is a person who
4 purchases a vessel hull or a product in which a ves-
5 sel hull is contained in good faith and without hav-
6 ing notice of protection under this chapter with re-
7 spect to that vessel hull or product;

8 “(9) having ‘notice of protection’ means having
9 actual knowledge that, or reasonable grounds to be-
10 lieve that, a plug or mold fixed in a vessel hull is
11 protected under this chapter; and

12 “(10) an ‘infringing vessel hull’ is a vessel hull
13 which is made, imported, or distributed in violation
14 of the exclusive rights of the owner of a plug or
15 mold under this chapter.

16 **“§ 1202. Subject matter of protection**

17 “(a) NATIONALITY REQUIREMENTS.—

18 “(1) IN GENERAL.—An original plug or mold
19 fixed in a vessel hull is eligible for protection under
20 this chapter if—

21 “(A) on the date on which the plug or
22 mold is first commercially exploited, the owner
23 of the plug or mold is a national or domiciliary
24 of the United States, or is a national, domi-
25 ciliary, or sovereign authority of a foreign na-

1 tion that is party to a treaty affording protec-
2 tion to plugs or molds to which the United
3 States is also a party, or is a stateless person,
4 wherever that person may be domiciled;

5 “(B) the plug or mold is first commercially
6 exploited in the United States; or

7 “(C) the plug or mold comes within the
8 scope of a Presidential proclamation issued
9 under paragraph (2).

10 “(2) PRESIDENTIAL PROCLAMATIONS.—When-
11 ever the President finds that a foreign nation ex-
12 tends, to plugs or molds of owners who are nationals
13 or domiciliaries of the United States or to plugs or
14 molds on the date on which the plugs or molds are
15 first commercially exploited, protection—

16 “(A) on substantially the same basis as
17 that on which the foreign nation extends protec-
18 tion to plugs or molds of its own nationals and
19 domiciliaries and plugs or molds first commer-
20 cially exploited in that nation, or

21 “(B) on substantially the same basis as
22 provided in this chapter, the President may by
23 proclamation extend protection under this chap-
24 ter to plugs or molds—

1 “(i) of owners who are, on the date on
2 which the plugs or molds are first commer-
3 cially exploited, nationals, domiciliaries, or
4 sovereign authorities of that nation, or
5 “(ii) which are first commercially ex-
6 ploited in that nation.

7 “(b) EXCLUSION FOR PRODUCTS NOT ORIGINAL.—
8 Protection under this chapter shall not be available for
9 a plug or mold that—

10 “(1) is not original; or

11 “(2) consists of designs that are staple, com-
12 monplace, or familiar in the vessel manufacturing in-
13 dustry, or variations of such designs, combined in a
14 way that is not original.

15 “(c) OTHER EXCLUSIONS.—In no case does protec-
16 tion under this chapter for a plug or mold extend to any
17 idea, procedure, process, system, method of operation,
18 concept, principle, or discovery, regardless of the form of
19 which it is described, explained, illustrated, or embodied
20 in the plug or mold.

21 **“§ 1203. Ownership and transfer**

22 “(a) VESTING OF RIGHTS IN OWNER.—The exclusive
23 rights in a plug or mold under the chapter shall vest in
24 the owner of the plug or mold.

1 “(b) TRANSFER OF RIGHTS.—The exclusive rights in
2 a plug or mold under this chapter may be transferred in
3 whole or in part by any means of conveyance or by oper-
4 ation of law, and may be bequeathed by will or pass as
5 personal property by the applicable laws of intestate suc-
6 cession.

7 “(c) CONFLICTING TRANSFERS.—In any case in
8 which conflicting transfers of the exclusive rights in a plug
9 or mold are made, the transfer first executed shall be void
10 as against a subsequent transfer which is made for a valu-
11 able consideration and without notice of the first transfer,
12 unless the first transfer is recorded in the Copyright Office
13 within 3 months after the date on which it is executed,
14 but in no case later than the day before the date of such
15 subsequent transfer.

16 “(d) PROTECTION EXCLUDED FOR UNITED STATES
17 GOVERNMENT.—Plugs or molds prepared by an officer or
18 employee of the United States Government as part of that
19 person’s official duties are not protected under this chap-
20 ter, but the United States Government is not precluded
21 from receiving and holding exclusive rights in plugs or
22 molds transferred to the Government under subsection
23 (b).

1 **“§ 1204. Duration of protection**

2 “(a) COMMENCEMENT OF PROTECTION.—The pro-
3 tection provided for a plug or mold under this chapter
4 shall commence on the date on which the plug or mold
5 is first commercially exploited.

6 “(b) TERM OF PROTECTION.—Subject to the provi-
7 sions of this chapter, the protection provided under this
8 chapter to a plug or mold shall continue for a term of
9 10 years beginning on the date on which such protection
10 commences under subsection (a).

11 **“§ 1205. Exclusive rights in plugs or molds**

12 “Subject to the other provisions of this chapter, the
13 owner of a plug or mold has the exclusive rights to do
14 and to authorize any of the following:

15 “(1) Reproduce the plug or mold by optical,
16 electronic, or any other means.

17 “(2) Import or distribute a vessel hull in which
18 the plug or mold is embodied.

19 “(3) Induce or knowingly cause another person
20 to do any of the acts described in paragraphs (1)
21 and (2).

22 **“§ 1206. Limitation on exclusive rights: reverse engi-
23 neering; first sale**

24 “(a) REVERSE ENGINEERING.—Notwithstanding the
25 provisions of section 1205(1), it is not an infringement
26 of the exclusive rights of the owner of a plug or mold to

1 reproduce the plug or mold solely for the purpose of teach-
2 ing, analyzing, or evaluating the concepts or techniques
3 embodied in the plug or mold or the design or organization
4 of components used in the plug or mold.

5 “(b) FIRST SALE.—Notwithstanding the provisions
6 of section 1205(2), the owner of a particular vessel hull
7 lawfully made under this chapter, or any person author-
8 ized by such owner, is entitled, without the authority of
9 the owner of the plug or mold, to sell or otherwise dispose
10 of that vessel hull.

11 **“§ 1207. Limitation on exclusive rights: innocent in-**
12 **fringement**

13 “(a) IN GENERAL.—Notwithstanding any other pro-
14 vision of this chapter, an innocent purchaser of an infring-
15 ing vessel hull—

16 “(1) shall incur no liability under this chapter
17 with respect to the importation or distribution of
18 units of the infringing vessel hull that occurred be-
19 fore that innocent purchaser had notice of protection
20 with respect to that vessel hull; and

21 “(2) shall be liable only for a reasonable royalty
22 on each unit of the infringing vessel hull that the in-
23 nocent purchaser imports or distributes after having
24 notice of protection with respect to that vessel hull.

25 The amount of the royalty referred to in paragraph

1 (2) shall be based on wholesale cost and shall be
2 determined by voluntary negotiation between the
3 parties, mediation, or binding arbitration, or, if the
4 parties do not resolve the issue, by the court in a
5 civil action for infringement.

6 “(b) SUBSEQUENT PURCHASES.—The immunity
7 from liability and limitation on liability referred to in sub-
8 section (a) shall apply to any person who directly or indi-
9 rectly purchases an infringing vessel hull from an innocent
10 purchaser.

11 “(c) APPLICABILITY ONLY TO PRODUCTS PUR-
12 CHASED BEFORE NOTICE OF PROTECTION.—The provi-
13 sions of subsections (a) and (b) apply only with respect
14 to units of an infringing vessel hull that an innocent pur-
15 chaser purchased before having notice of protection with
16 respect to that vessel hull.

17 **“§ 1208. Plug or mold notice**

18 “(a) AFFIXATION NOTICE.—The owner of a plug or
19 mold provided protection under this chapter may affix no-
20 tice to the plug or mold or to the vessel hull embodying
21 the plug or mold in such manner and location as to give
22 reasonable notice of such protection. The Register of
23 Copyrights shall prescribe by regulation, as examples, spe-
24 cific methods of affixation and positions of notice for pur-
25 poses of this section, but these specifications shall not be

1 considered exhaustive. The affixation of such notice is not
2 a condition of protection under this chapter but shall con-
3 stitute prima facie evidence of notice of protection.

4 “(b) CONTENTS OF NOTICE.—The notice referred to
5 in subsection (a) shall consist of—

6 “(1) the words ‘plug or mold’, or the letters PM
7 in a circle;

8 “(2) the year in which the plug or mold was
9 first fixed in a vessel hull; and

10 “(3) the name of the owner or owners of the
11 plug or mold or an abbreviation by which the name
12 is recognized or is generally known.

13 **“§ 1209. Enforcement of exclusive rights**

14 “(a) INFRINGERS.—Except as otherwise provided by
15 this chapter, any person who violates any of the exclusive
16 rights of the owner of a plug or mold under this chapter
17 shall be liable as an infringer of such rights.

18 “(b) CIVIL ACTION FOR INFRINGEMENT.—The owner
19 of a plug or mold protected under this chapter shall be
20 entitled to institute a civil action for any infringement of
21 the exclusive rights in that plug or mold under the chap-
22 ter.

23 “(c) ENFORCEMENT OF RIGHT TO IMPORT.—

24 “(1) REGULATIONS.—The Secretary of the
25 Treasury and the United States Postal Service shall

1 separately or jointly issue regulations for the en-
2 forcement of the right to import set forth in section
3 1205. These regulations may require, as a condition
4 for the exclusion of articles from the United States,
5 that the person seeking exclusion—

6 “(A) obtain a court order enjoining, or an
7 order of the International Trade Commission
8 under section 337 of the Tariff Act of 1930 ex-
9 cluding, importation of the articles; or

10 “(B) furnish proof that the plug or mold
11 involved is protected under this chapter and
12 that the importation of the articles would in-
13 fringe the rights in the plug or mold under this
14 chapter, and also post a surety bond for any in-
15 jury that may result if the detention or exclu-
16 sion of the articles proves to be unjustified.

17 “(2) SEIZURE AND FORFEITURE OF INFRING-
18 ING ARTICLES.—Articles imported in violation of the
19 right to import set forth in section 1205 are subject
20 to seizure and forfeiture in the same manner as
21 property imported in violation of the customs laws.
22 Any such forfeited article shall be destroyed as di-
23 rected by the Secretary of the Treasury or the court,
24 as the case may be, except that the articles may be
25 returned to the country of export whenever it is

1 shown to the satisfaction of the Secretary of the
2 Treasury that the importer had no reasonable
3 grounds for believing that his or her acts constituted
4 a violation of the law.

5 **“§ 1210. Remedies for infringement**

6 “(a) INJUNCTIVE RELIEF.—Any court having juris-
7 diction of a civil action arising under this chapter may
8 grant temporary and permanent injunctions on such terms
9 as the court may deem reasonable to prevent or restrain
10 infringement of the exclusive rights in a plug or mold
11 under this chapter.

12 “(b) ACTUAL DAMAGES AND PROFITS.—Upon find-
13 ing for the owner of the plug or mold, the court shall
14 award the owner actual damages suffered by the owner
15 as a result of the infringement. The court shall also award
16 the owner the infringer’s profits that are attributable to
17 the infringement and are not taken into account in com-
18 puting the award of actual damages. In establishing the
19 infringer’s profits, the owner of the plug or mold is re-
20 quired to present proof only of the infringer’s gross reve-
21 nue, and the infringer is required to prove his or her de-
22 ductible expenses and the elements of profit attributable
23 to factors other than the plug or mold.

24 “(c) STATUTORY DAMAGES.—At any time before
25 final judgment is rendered, the owner of the plug or mold

1 may elect, instead of actual damages and profits as pro-
2 vided in subsection (b), an award of statutory damages
3 for all infringements involved in the action with respect
4 to any one plug or mold for which any one infringer is
5 liable individually, or for which any two or more infringers
6 are liable jointly and severally, in an amount not more
7 than \$250,000 as the court considers just.

8 “(d) RECOVERY OF COSTS BY PREVAILING PARTY.—
9 In any action for infringement under this chapter, the
10 court in its discretion may allow the recovery of full costs,
11 including reasonable attorneys’ fees, to the prevailing
12 party.

13 “(e) TIME LIMITATION ON BRINGING ACTIONS.—An
14 action for infringement under this chapter shall not be
15 maintained unless the action is commenced within 3 years
16 after the claim accrues.

17 “(f) DESTRUCTION OR OTHER DISPOSITION OF IN-
18 FRINGING ARTICLES.—As part of the final judgment or
19 decree, the court may order the destruction or other dis-
20 position of any infringing vessel hulls, and any plugs,
21 molds, or other articles by means of which such vessel
22 hulls may be reproduced.

23 **“§ 1211. Relation to other laws**

24 “(a) OTHER RIGHTS NOT AFFECTED.—Nothing in
25 this chapter shall affect any right or remedy held by any

1 person under chapters 1 through 11 of this title, or under
2 title 35.

3 “(b) REFERENCES IN CHAPTERS 1 THROUGH 11.—
4 References to ‘this title’ or ‘title 17’ in chapters 1 through
5 11 of this title shall be deemed not to apply to this chap-
6 ter.

7 “(c) PREEMPTION.—The provisions of this chapter
8 shall preempt the laws of any State to the extent those
9 laws provide any rights or remedies with respect to a plug
10 or mold which are equivalent to those provided by this
11 chapter, except that such preemption shall be effective
12 only with respect to actions filed on or after January 1,
13 1998.

14 “(d) APPLICABILITY OF TITLE 28 PROVISIONS.—The
15 provisions of sections 1338, 1400(a), and 1498(b) and (c)
16 of title 28 shall apply with respect to exclusive rights in
17 plugs or molds under this chapter to the same extent as
18 those provisions apply to mask works.”.

19 **SEC. 3. TECHNICAL AMENDMENT.**

20 The table of chapters of title 17, United States Code,
21 is amended by adding at the end thereof the following new
22 item:

“12. Protection of Vessel Hulls Designs 1201.”.

23 **SEC. 4. EFFECTIVE DATE.**

24 The amendments made by this Act shall take effect
25 on January 1, 1997.

1 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this Act and the amend-
4 ments made by this Act.

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