

104TH CONGRESS
2D SESSION

S. 2103

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1996

Mr. BREAUX (for himself, Mr. FAIRCLOTH, Mr. HEFLIN, Mr. INHOFE, Mr. HELMS, and Mr. MACK) introduced the following bill; which was read twice and 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 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. Registration of claims of protection.

“1209. Plug or mold notice.

“1210. Enforcement of exclusive rights.

“1211. Remedies for infringement.

“1212. Relation to other laws.

3 **“§ 1201. Definitions**

4 “As used in this chapter—

5 “(1) a ‘vessel hull’ shall have the meaning as
 6 such term is defined under regulations prescribed by
 7 the Register of Copyrights;

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 an author 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 the author
16 of the plug or mold, the legal representatives of a
17 deceased author or of an author under a legal inca-
18 pacity, the employer of an author who created the
19 plug or mold for the employer in the case of a work
20 made within the scope of the author’s employment,
21 or a person to whom the rights of the author or of
22 such employer are transferred in accordance with
23 this chapter;

24 “(8) an ‘innocent purchaser’ is a person who
25 purchases a vessel hull or a product in which a ves-

1 sel hull is contained in good faith and without hav-
2 ing notice of protection with respect to that vessel
3 hull or product;

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

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

12 **“§ 1202. Subject matter of protection**

13 “(a)(1) An original plug or mold fixed in a vessel hull
14 is eligible for protection under this chapter if—

15 “(A) on the date on which the plug or mold is
16 registered under section 1208, or the date on which
17 the plug or mold is first commercially exploited,
18 whichever occurs first, the owner of the plug or mold
19 is—

20 “(i) a national or domiciliary of the United
21 States;

22 “(ii) a national, domiciliary, or sovereign
23 authority of a foreign nation that is party to a
24 treaty affording protection to plugs or molds to
25 which the United States is also a party; or

1 “(iii) a stateless person, wherever that per-
2 son may be domiciled;

3 “(B) the plug or mold is first commercially ex-
4 ploited in the United States; or

5 “(C) the plug or mold comes within the scope
6 of a Presidential proclamation issued under para-
7 graph (2).

8 “(2) Whenever the President finds that a foreign na-
9 tion extends, to plugs or molds of owners who are nation-
10 als or domiciliaries of the United States or to plugs or
11 molds on the date on which the plugs or molds are reg-
12 istered under section 1208, or the date on which the plugs
13 or molds are first commercially exploited, whichever occurs
14 first, protection—

15 “(A) on substantially the same basis as that on
16 which the foreign nation extends protection to plugs
17 or molds of its own nationals and domiciliaries and
18 plugs or molds first commercially exploited in that
19 nation;

20 “(B) on substantially the same basis as pro-
21 vided in this chapter,

22 the President may by proclamation extend protection
23 under this chapter to plugs or molds—

24 “(i) of owners who are, on the date on
25 which the plugs or molds are registered under

1 section 1208, or the date on which the plugs
 2 or molds are first commercially exploited,
 3 whichever occurs first, nationals, domiciliaries,
 4 or sovereign authorities of that nation; or

5 “(ii) which are first commercially exploited
 6 in that nation.

7 “(b) Protection under this chapter shall not be avail-
 8 able for a plug or mold that—

9 “(1) is not original; or

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

14 “(c) In no case does protection under this chapter
 15 for a plug or mold extend to any idea, procedure, process,
 16 system, method of operation, concept, principle, or discov-
 17 ery, regardless of the form of which it is described, ex-
 18 plained, illustrated, or embodied in the plug or mold.

19 **“§ 1203. Ownership and transfer**

20 “(a) The exclusive rights in a plug or mold subject
 21 to protection under the chapter shall vest in the owner
 22 of the plug or mold.

23 “(b) The exclusive rights in a plug or mold registered
 24 under section 1208, or a plug or mold for which an appli-

1 cation for registration has been or is eligible to be filed
2 under section 1208, may be—

3 “(1) transferred in whole or in part by any
4 means of conveyance or by operation of law; and

5 “(2) bequeathed by will or pass as personal
6 property by the applicable laws of intestate succes-
7 sion.

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

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

23 **“§ 1204. Duration of protection**

24 “(a) The protection provided for a plug or mold under
25 this chapter shall commence on the date on which the plug

1 or mold is registered under section 1208, or the date on
2 which the plug or mold is first commercially exploited,
3 whichever occurs first.

4 “(b) Subject to the provisions of this chapter, the pro-
5 tection provided under this chapter to a plug or mold shall
6 continue for a term of 10 years beginning on the date on
7 which such protection commences under subsection (a).

8 **“§ 1205. Exclusive rights in plugs or molds**

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

12 “(1) To reproduce the plug or mold by optical,
13 electronic, or any other means.

14 “(2) To import or distribute a vessel hull in
15 which the plug or mold is embodied.

16 “(3) To induce or knowingly to cause another
17 person to do any of the acts described in paragraphs
18 (1) and (2).

19 **“§ 1206. Limitation on exclusive rights: reverse engi-
20 neering; first sale**

21 “(a) Notwithstanding the provisions of section
22 1205(1), it is not an infringement of the exclusive rights
23 of the owner of a plug or mold to reproduce the work solely
24 for the purpose of teaching, analyzing, or evaluating the
25 concepts or techniques embodied in the plug or mold or

1 the design or organization of components used in the plug
2 or mold.

3 “(b) Notwithstanding the provisions of section
4 1205(2), the owner of a particular vessel hull lawfully
5 made under this chapter, or any person authorized by such
6 owner, is entitled, without the authority of the owner of
7 the plug or mold, to sell or otherwise dispose of that vessel
8 hull.

9 **“§ 1207. Limitation on exclusive rights: innocent in-**
10 **fringement**

11 “(a) Notwithstanding any other provision of this
12 chapter, an innocent purchaser of an infringing vessel
13 hull—

14 “(1) shall incur no liability under this chapter
15 with respect to the distribution of units of the in-
16 fringing vessel hull that occurred before that inno-
17 cent purchaser had notice of protection with respect
18 to that vessel hull; and

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

23 “(b) The amount of the royalty referred to in sub-
24 section (a)(2) shall be determined—

1 “(1) by voluntary negotiation between the par-
2 ties, mediation, or binding arbitration; or

3 “(2) by the court in a civil action for infringe-
4 ment, if the parties do not resolve the issue.

5 “(c) The immunity from liability and limitation on
6 liability referred to in subsection (a) shall apply to any
7 person who directly or indirectly purchases an infringing
8 vessel hull from an innocent purchaser.

9 “(d) The provisions of subsections (a) and (b) apply
10 only with respect to units of an infringing vessel hull that
11 an innocent purchaser purchased before having notice of
12 protection with respect to that vessel hull.

13 **“§ 1208. Registration of claims of protection**

14 “(a) Protection of a plug or mold under this chapter
15 shall terminate if application for registration of a claim
16 of protection in the plug or mold is not made as provided
17 by this chapter within 2 years after the date on which
18 the plug or mold is first commercially exploited.

19 “(b) The Register of Copyrights shall be responsible
20 for all administrative functions and duties under this
21 chapter. Except for section 708, the provisions of chapter
22 7 of this title relating to the general responsibilities, orga-
23 nization, regulatory authority, actions, records, and publi-
24 cations of the Copyright Office shall apply to this chapter,
25 except that the Register of Copyrights may make such

1 changes as may be necessary in applying those provisions
2 to this chapter.

3 “(c) The application for registration of a plug or mold
4 shall be made on a form prescribed by the Register of
5 Copyrights and shall include any information regarded by
6 the Register of Copyrights as bearing upon the prepara-
7 tion or identification of the plug or mold, the existence
8 or duration of protection, or ownership of the plug or
9 mold.

10 “(d) The Register of Copyrights shall by regulation
11 set reasonable fees for the filing of applications to register
12 claims of protection in plugs or molds under this chapter,
13 and for other services relating to the administration of this
14 chapter or the rights under this chapter, taking into con-
15 sideration the cost of providing those services, the benefits
16 of a public record, and statutory fee schedules under this
17 title. The Register shall also specify the identifying mate-
18 rial to be deposited in connection with the claim for reg-
19 istration.

20 “(e) If the Register of Copyrights, after examining
21 an application for registration, determines, in accordance
22 with the provisions of this chapter, that the application
23 relates to a plug or mold which warrants protection under
24 this chapter, then the Register shall register the claim and
25 issue to the applicant a certificate of registration of the

1 claim under the seal of the Copyright Office. The effective
2 date of registration of a claim of protection shall be the
3 date on which an application, deposit, and fee, which are
4 determined by the Register of Copyrights or by a court
5 of competent jurisdiction to be acceptable for registration,
6 have all been received in the Copyright Office.

7 “(f) In any action for infringement under this chap-
8 ter, the certificate of registration of a plug or mold shall
9 constitute prima facie evidence—

10 “(1) of the facts stated in the certificate; and

11 “(2) that the applicant issued the certificate
12 has met the requirements of this chapter, and the
13 regulations issued under this chapter, with respect
14 to the registration of claims.

15 “(g) Any applicant for registration under this section
16 who is dissatisfied with the refusal of the Register of
17 Copyrights to issue a certificate of registration under this
18 section may seek judicial review of that refusal by bringing
19 an action for such review in an appropriate United States
20 district court, in accordance with chapter 7 of title 5, not
21 later than 60 days after the refusal. The failure of the
22 Register of Copyrights to issue a certificate of registration
23 within 3 months after an application for registration is
24 filed shall be deemed to be a refusal to issue a certificate

1 of registration for purposes of this subsection and section
2 1210(c).

3 **“§ 1209. Plug or mold notice**

4 “(a) The owner of a plug or mold provided protection
5 under this chapter may affix notice to the plug or mold
6 or to the vessel hull embodying the plug or mold in such
7 manner and location as to give reasonable notice of such
8 protection. The Register of Copyrights shall prescribe by
9 regulation, as examples, specific methods of affixation and
10 positions of notice for purposes of this section, but these
11 specifications shall not be considered exhaustive. The af-
12 fixation of such notice is not a condition of protection
13 under this chapter but shall constitute prima facie evi-
14 dence of notice of protection.

15 “(b) The notice referred to in subsection (a) shall
16 consist of—

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

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

21 “(3) the name of the owner or owners of the
22 plug or mold or an abbreviation by which the name
23 is recognized or is generally known.

1 **“§ 1210. Enforcement of exclusive rights**

2 “(a) Except as otherwise provided by this chapter,
3 any person who violates any of the exclusive rights of the
4 owner of a plug or mold under this chapter shall be liable
5 as an infringer of such rights.

6 “(b) The owner of a plug or mold protected under
7 this chapter shall be entitled to institute a civil action for
8 infringement after a certificate of registration of a claim
9 in that plug or mold is issued under section 1208.

10 “(c) In any case in which an application for registra-
11 tion and the required deposit and fee have been received
12 in the Copyright Office in proper form and registration
13 of the plug or mold has been refused, the applicant is enti-
14 tled to institute a civil action for infringement under this
15 chapter if notice of the action, together with a copy of
16 the complaint, is served on the Register of Copyrights, in
17 accordance with the Federal Rules of Civil Procedure. The
18 Register may, at his or her option, become a party to the
19 action with respect to the issue of whether the claim is
20 eligible for registration by entering an appearance within
21 60 days after such service, but the failure of the Register
22 to become a party to the action shall not deprive the court
23 of jurisdiction to determine that issue.

24 “(d)(1) The Secretary of the Treasury and the Unit-
25 ed States Postal Service shall separately or jointly issue
26 regulations for the enforcement of the right to import set

1 forth in section 1205. These regulations may require, as
2 a condition for the exclusion of articles from the United
3 States, that the person seeking exclusion—

4 “(A) obtain a court order enjoining, or an order
5 of the International Trade Commission under sec-
6 tion 337 of the Tariff Act of 1930 excluding, impor-
7 tation of the articles; or

8 “(B)(i) furnish proof that—

9 “(I) the plug or mold involved is protected
10 under this chapter; and

11 “(II) the importation of the articles would
12 infringe the rights in the plug or mold under
13 this chapter; and

14 “(ii) post a surety bond for any injury that may
15 result if the detention or exclusion of the articles
16 proves to be unjustified.

17 “(2) Articles imported in violation of the right to im-
18 port set forth in section 1205 are subject to seizure and
19 forfeiture in the same manner as property imported in vio-
20 lation of the customs laws. Any such forfeited article shall
21 be destroyed as directed by the Secretary of the Treasury
22 or the court, as the case may be, except that the articles
23 may be returned to the country of export whenever it is
24 shown to the satisfaction of the Secretary of the Treasury

1 that the importer had no reasonable grounds for believing
2 that his or her acts constituted a violation of the law.

3 **“§ 1211. Remedies for infringement**

4 “(a) Any court having jurisdiction of a civil action
5 arising under this chapter may grant temporary and per-
6 manent injunctions on such terms as the court may deter-
7 mine reasonable to prevent or restrain infringement of the
8 exclusive rights in a plug or mold under this chapter.

9 “(b) Upon finding for the owner of the plug or mold,
10 the court shall award the owner actual damages suffered
11 by the owner as a result of the infringement. The court
12 shall also award the owner of the infringer’s profits that
13 are attributable to the infringement and are not taken into
14 account in computing the award of actual damages. In es-
15 tablishing the infringer’s profits, the owner of the plug or
16 mold is required to present proof only of the infringer’s
17 gross revenue, and the infringer is required to prove his
18 or her deductible expenses and the elements of profit at-
19 tributable to factors other than the plug or mold.

20 “(c) At any time before final judgment is rendered,
21 the owner of the plug or mold may elect, instead of actual
22 damages and profits as provided by subsection (b), an
23 award of statutory damages for all infringements involved
24 in the action, with respect to any 1 plug or mold for which
25 any 1 infringer is liable individually, or for which any 2

1 or more infringers are liable jointly and severally, in an
2 amount not more than \$250,000 as the court considers
3 just.

4 “(d) In any action for infringement under this chap-
5 ter, the court in its discretion may allow the recovery of
6 full costs, including reasonable attorneys’ fees, to the pre-
7 vailing party.

8 “(e) An action for infringement under this chapter
9 shall not be maintained unless the action is commenced
10 within 3 years after the claim accrues.

11 “(f) As part of the final judgment or decree, the court
12 may order the destruction or other disposition of any in-
13 fringing vessel hulls, and any plugs, molds, or other arti-
14 cles by means of which such vessel hulls may be repro-
15 duced.

16 **“§ 1212. Relation to other laws**

17 “(a) Nothing in this chapter shall affect any right
18 or remedy held by any person under chapters 1 through
19 11 of this title, or under title 35.

20 “(b) Except as provided in section 1208(b) of this
21 title, references to ‘this title’ or ‘title 17’ in chapters 1
22 through 11 of this title shall be deemed not to apply to
23 this chapter.

24 “(c) The provisions of this chapter shall preempt the
25 laws of any State to the extent those laws provide any

1 rights or remedies with respect to a plug or mold which
 2 are equivalent to those provided by this chapter, except
 3 that such preemption shall be effective only with respect
 4 to actions filed on or after January 1, 1998.

5 “(d) The provision of sections 1338, 1400(a), and
 6 1498 (b) and (c) of title 28 shall apply with respect to
 7 exclusive rights in plugs or molds under this chapter.”.

8 **SEC. 3. TECHNICAL AMENDMENT.**

9 The table of chapters of title 17, United States Code,
 10 is amended by adding at the end thereof the following new
 11 item:

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

12 **SEC. 4. EFFECTIVE DATE.**

13 (a) The amendments made by this Act shall take ef-
 14 fect on January 1, 1997.

15 (b) Subject to paragraph (2) of this subsection, pro-
 16 tection shall be available under chapter 12 of title 17,
 17 United States Code, as added by section 2 of this Act,
 18 to any plug or mold fixed in a vessel hull that was first
 19 commercially exploited on or after January 1, 1996, and
 20 before January 1, 1997, if a claim of protection in the
 21 plug or mold is registered in the Copyright Office before
 22 January 1, 1998, under section 1208 of title 17, United
 23 States Code, as added by section 2 of this Act.

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