

(ii) IN GENERAL.—In the case of a nonprofit library, archives, educational institution, or public broadcasting entity, the court shall remit damages in any case in which the library, archives, educational institution, or public broadcasting entity sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.

(Added Pub. L. 105–304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2874; amended Pub. L. 106–113, div. B, §1000(a)(9) [title V, §5004(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–593; Pub. L. 111–295, §6(f)(3), Dec. 9, 2010, 124 Stat. 3181.)

#### AMENDMENTS

2010—Subsec. (c)(5)(B)(i). Pub. L. 111–295 substituted “118(f)” for “118(g)”.

1999—Subsec. (c)(5)(B). Pub. L. 106–113 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.”

#### § 1204. Criminal offenses and penalties

(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

(1) shall be fined not more than \$500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

(2) shall be fined not more than \$1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, EDUCATIONAL INSTITUTION, OR PUBLIC BROADCASTING ENTITY.—Subsection (a) shall not apply to a nonprofit library, archives, educational institution, or public broadcasting entity (as defined under section 118(f)).

(c) STATUTE OF LIMITATIONS.—No criminal proceeding shall be brought under this section unless such proceeding is commenced within 5 years after the cause of action arose.

(Added Pub. L. 105–304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2876; amended Pub. L. 106–113, div. B, §1000(a)(9) [title V, §5004(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–593; Pub. L. 111–295, §6(f)(3), Dec. 9, 2010, 124 Stat. 3181.)

#### AMENDMENTS

2010—Subsec. (b). Pub. L. 111–295 substituted “118(f)” for “118(g)”.

1999—Subsec. (b). Pub. L. 106–113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.”

#### § 1205. Savings clause

Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any

defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual’s use of the Internet.

(Added Pub. L. 105–304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2876.)

### CHAPTER 13—PROTECTION OF ORIGINAL DESIGNS

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1329.	Relation to design patent law.
1330.	Common law and other rights unaffected.
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1332.	No retroactive effect.

#### § 1301. 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 the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

(2) VESSEL FEATURES.—The design of a vessel hull, deck, or combination of a hull and deck, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).

(3) EXCEPTIONS.—Department of Defense rights in a registered design under this chapter, including the right to build to such registered design, shall be determined solely by operation of section 2320 of title 10 or by the instrument under which the design was developed for the United States Government.

(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 deck, 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—

(A) that is designed and capable of independently steering a course on or through water through its own means of propulsion; and

(B) that is designed and capable of carrying and transporting one or more passengers.

(4) A “hull” is the exterior frame or body of a vessel, exclusive of the deck, superstructure, masts, sails, yards, rigging, hardware, fixtures, and other attachments.

(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.

(7) A “deck” is the horizontal surface of a vessel that covers the hull, including exterior cabin and cockpit surfaces, and exclusive of masts, sails, yards, rigging, hardware, fixtures, and other attachments.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2905; amended Pub. L. 106-113, div. B, § 1000(a)(9) [title V, § 5005(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593; Pub. L. 110-434, § 1(b)-(d), Oct. 16, 2008, 122 Stat. 4972.)

#### AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-434, § 1(b), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).”

Subsec. (a)(3). Pub. L. 110-434, § 1(c), added par. (3).

Subsec. (b)(2). Pub. L. 110-434, § 1(d)(1), substituted “vessel hull or deck, including a plug or mold,” for “vessel hull, including a plug or mold.”

Subsec. (b)(4). Pub. L. 110-434, § 1(d)(2), added par. (4) and struck out former par. (4) which read as follows: “A ‘hull’ is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.”

Subsec. (b)(7). Pub. L. 110-434, § 1(d)(3), added par. (7).  
1999—Subsec. (b)(3). Pub. L. 106-113 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A ‘vessel’ is a craft, especially one larger than a row-boat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.”

#### EFFECTIVE DATE

Pub. L. 105-304, title V, § 505, Oct. 28, 1998, 112 Stat. 2918, as amended by Pub. L. 106-113, div. B, § 1000(a)(9) [title V, § 5005(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-593, provided that: “The amendments made by sections 502 and 503 [enacting this chapter and amend-

ing sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

#### JOINT STUDY OF EFFECT OF THIS CHAPTER

Pub. L. 105-304, title V, § 504, Oct. 28, 1998, 112 Stat. 2917, as amended by Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4741(b)(1), title V, § 5005(a)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-586, 1501A-593, provided that:

“(a) IN GENERAL.—Not later than November 1, 2003, the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title [enacting this chapter and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure].

“(b) ELEMENTS FOR CONSIDERATION.—In carrying out subsection (a), the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall consider—

“(1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;

“(2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;

“(3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;

“(4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments; and

“(5) such other considerations as the Register and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may deem relevant to accomplish the purposes of the evaluation conducted under subsection (a).”

#### § 1302. 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, a familiar symbol, an emblem, or a motif, or another 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;

(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 2 years before the date of the application for registration under this chapter.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2906; amended Pub. L. 106-44, § 1(f)(1), Aug. 5, 1999, 113 Stat. 222.)

#### AMENDMENTS

1999—Par. (5). Pub. L. 106-44 substituted “2 years” for “1 year”.

#### § 1303. Revisions, adaptations, and rearrangements

Protection for a design under this chapter shall be available notwithstanding the employ-