

September 2012

Q&As on the Vessel Hull Design Protection Act (VHDPA)

What is “hull splashing”?

“Hull splashing” refers to the process by which vessel hulls are easily copied. In the process, fiberglass is applied to the hull of an existing vessel. As it has hardened, it is removed and used as a mold to reproduce unauthorized copies of the original design.

Does the VHDPA prevent hull splashing?

The VHDPA protects original designs that make the article attractive or distinctive in appearance to the purchasing or using public that have been properly registered with the U.S. Copyright. The VHDPA does not affect hull splashing of designs that are not properly registered with the U.S. Copyright Office.

Why is there separate protection for vessel hulls?

Copyright law does not generally protect useful articles (17 U.S.C. § 102). The VHDPA grants certain limited protection to a design of a vessel hull, deck, or combination of the two – which would be incorporated into a useful article – where the design makes the article attractive or distinctive in appearance to the purchasing or using public. 17 U.S.C. § 1301(a)(1). In addition, obtaining design patent protection for a vessel hull is a lengthy process and the VHDPA can provide protection while a design patent application is pending.

Is the protection under the VHDPA different than other forms of intellectual property protection?

The VHDPA protects the intellectual property in the shape of your boat’s hull and deck. Compared to patent protection, the VHDPA provides for a much simpler registration process, but provides only ten years of protection.

What if I have or later obtain a design patent for my boat design?

The issuance of a design patent for your design terminates any VHDPA design protection. 17 U.S.C. § 1329.

What does the VHDPA protect?

The VHDPA protects the original design of a vessel hull, deck, or a combination of the two which makes the article in which the design is incorporated attractive or distinctive in appearance to the purchasing or using public. 17 U.S.C. § 1301(a)(2). This protection includes a plug or mold. 17 U.S.C. § 1301(a)(2). The VHDPA was amended in 2008 in order to allow designers the option of protecting their hull and deck separately (see below for more information regarding the amendment).

Now, in a registration, you have the option to protect (1) the hull and deck as a combination, (2) the hull and deck as two separate rights, or (3) only the hull or only the deck. There will soon be three boxes on the Form D-VH: "hull," "deck," and "hull and deck combination" and you must select at least one box. If you want to protect both the hull and the deck (but not as a combination) be sure to check *both* the "hull" and the "deck" boxes, but not the "hull and deck combination" box. If the application doesn't have separate boxes (older versions will not have this) than be sure to state that you are protecting both separately in your narrative.

Does my registration protect the hull or the deck?

That is up to you. Since the Amendments in 2008, you may select to protect either the deck or the hull separately or both of them together (see above).

What is a "vessel" under the VHDPA?

"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." 17 U.S.C. § 1301(b)(3).

Is there a length or size requirement for a "vessel"?

No. The current act does not limit the length or size of a "vessel" under the VHDPA. The old D-VH forms indicated that there was a length limit, but there is no such limit anymore.

What is a "deck" under the VHDPA?

"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." 17 U.S.C. § 1301(b)(7).

Does “deck” include the deck, cabin and cockpit surfaces?

Yes. A “deck” includes the exterior and cockpit surfaces. It does not include “masts, sails, yards, rigging, hardware, fixtures, and other attachments.” It includes those items included into the mold, but not those added onto the boat later. 17 U.S.C. § 1301(b)(7).

What is a “hull” under the VHDPA?

“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.” 17 U.S.C. § 1301(b)(4).

How do I protect my vessel design?

You must register your design through the U.S. Copyright Office. Complete the registration application form, called the D-VH form, which is available at <http://www.copyright.gov/forms/formdvh.pdf> and submit the required materials, which are listed below and on the D-VH form instructions which are available at <http://www.copyright.gov/forms/formdvhi.pdf>. An application for registration must include a properly completed D-VH form, the pictorial representation of the design and the payment of the proper fee. Instructions are available on the form.

What is a proper pictorial representation of the design?

The application for registration must include two (2) copies of a drawing or other pictorial representation, such as a photograph, of the article embodying the design, including one or more views, adequate to show the design, in a form and style suitable for reproduction. 17 U.S.C. § 1310(d). Specific instructions are available with the form here <http://www.copyright.gov/forms/formdvhi.pdf>.

How long do I have to file a registration?

You must file your application for registration within two (2) years of your design being “embodied in a useful article that was made public by the designer or the owner in the United States or a foreign country.” 17 U.S.C. §§ 1302(5); 1310(a).

What does “made public” mean?

A design is made public when an article embodying the design is publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner’s consent. 17 U.S.C. § 1310(b).

If I have exhibited or sold my design in a foreign country, is my protection affected?

Yes. "Made public" includes activities outside the United States, so your two (2) year limit for filing an application for registration is affected by activities in foreign countries.

What if I previously filed for protection in a foreign country?

If you filed an application for registration of a design in a foreign country and you file an application for registration of the same design in the United States within six (6) months, then you receive the benefit of the earlier filing date in the foreign country. 17 U.S.C. § 1311.

What if I have changed my design from what I previously "made public"?

If the new design "is a substantial revision, adaptation or rearrangement," from a design that was sold more than two years ago (such that the old design cannot be protected), the new design may be registered. 17 U.S.C. § 1303. The registration will only cover the new design and will not extend to portions of the design that were "made public" more than two years before. 17 U.S.C. § 1303. What this means is that you should explain to the Copyright Office in your registration the changes you made to the new design that now make it a substantial revision of a previous design. The Copyright Office examiners are not boat designers and they do not know the importance of minor changes to a boat's hull and how they can make a big difference in how a boat operates. You must explain the reason for and the importance of the design changes.

Do I need an attorney to file the registration?

No. An attorney may be helpful in assisting a vessel designer in understanding their rights and options under the law, but there is no requirement that the registration be filed by an attorney.

Is my application examined by the Copyright Office?

The Copyright Office will examine the application to ensure that the required items have been included.

What happens to the information that I submit with my application for registration?

Materials that you submit with your application shall be maintained in a file and are available to the public. 17 U.S.C. §§ 1315; 1318. In addition, some materials are available on the Copyright Office website. Specifically, vessel hull registrations are listed on the website at <http://www.copyright.gov/vessels/list/index.html> and include the title,

a design description, the names of the designers, the owners, the registration number, and a copy of the application and the submissions, such as the drawings or photographs.

How long after I submit my application will it be registered?

The Copyright Office typically publishes a notice of registration one month after the receipt of a complete application.

How long does the protection last?

The registration of your design last for ten (10) years from earlier of (A) the date of publication of the registration by the Copyright Office; or (B) the date the design was first “made public” (as discussed above). 17 U.S.C. § 1304; 17 U.S.C. § 1305(a). The term of your protection lasts until the end of the calendar year in which it expires. 17 U.S.C. § 1305(b).

What is the effective date of my registration?

The effective date of your registration is the date when the Copyright Office publishes notice of the registration. 17 U.S.C. § 1313.

Does protection under the VHDPa give me international protection?

No. The VHDPa is a statute in the United States only. While the VHDPa protects designs within the United States, it does not prevent copying of designs outside of this country. However, foreign countries may offer patent protection or other forms of protection for vessels, which may be an option for you. An attorney familiar with this area can provide you with further information. The website www.stopfakes.gov can also provide you will helpful information.

How much does a registration cost?

The current cost for registration can be determined by checking the updated fee page, found at <http://www.copyright.gov/docs/fees.html>.

Can I complete one registration for multiple designs?

Yes. More than one design may be included in the same application if the designs are contained on a single make and model of a vessel, and the information in spaces 3 through 9 on Form D-VH (designer, owner, priority, made public date, contact person, deposit account, notice) is the same for each of the designs. A fee for each design must be paid. 17 U.S.C. § 1310(j); 37 CFR §212.3. D-VH/CON form must be used for each design beyond the first appearing on the D-VH. 37 C.F.R. §212.3.

One application can be filed to protect the hull and the deck as separate designs. You have the option to protect (1) the hull and deck as a combination, (2) the hull and deck as two separate rights, or (3) only the hull or only the deck. There are three boxes on the Form D-VH: "hull," "deck," and "hull and deck combination" – if you want to protect both the hull and the deck but not as a combination, be sure to check *both* the "hull" and the "deck" boxes, but not the "hull and deck combination" box.

What if my design is used in more than one vessel? For example, what if a hull or deck design is used in more than one model?

If the distinguishing elements of the design are in substantially the same form in different vessels, the design is protected as it appears in all the vessels when it is protected as to any one of them. Only one registration is required. 17 U.S.C. § 1310(i).

Do I need to renew my registration?

No. A registration lasts for ten years and there is no option or obligation for renewal.

What if my contact or other basic information is incorrect?

If basic information was completed incorrectly, you may file an application for correction found at <http://www.copyright.gov/forms/formdc.pdf>.

Do I need to update my registration if I change the model name for the vessel?

No. If the distinguishing elements of the design are in substantially the same form in different models, the design is protected as it appears in all the models when it is protected as to any one of them. Only one registration is required. 17 U.S.C. § 1310(i). However, you may submit additional materials if you desire. 37 C.F.R. 212.3(e)(5).

What if I change my design?

Your registered design only covers what was registered. If you change your design such that it "is a substantial revision, adaptation or rearrangement," from the previous design, you can also register the new design. 17 U.S.C. § 1303. The new registration will only cover the new design and will not extend your protection on the old design. 17 U.S.C. § 1303.

If the change to your design is not “a substantial revision, adaptation or rearrangement” from the previous design, you may submit additional materials if you desire. 37 C.F.R. 212.3(e)(5).

Do I need to mark my vessel with notice of my design protection?

Yes. “Notice” of your design protection must be placed on the vessel when it is made public. 17 U.S.C. § 1306.

What should the notice say?

Prior to registration, a notice must include:

- (1) the words “Protected Design,” the abbreviation “Prot’d Des.,” the letter “D” in a circle, or the symbol *D*
- (2) the year when the design protection commenced;
- (3) the name of the owner, an abbreviation by which the owner can be recognized, or a generally accepted alternative designation of the owner.

17 U.S.C. §1306(a)(1). An example of a proper notice is *D* 2011 ABC Corp.

After registration, the above format may continue to be used. Alternatively, the registration number can be used instead of the year and owner name. For example, after registration, an example of a proper notice is *D* 123,456. 17 U.S.C. §1306(a)(2).

Where and how should I place the notice?

The notice must be applied to give reasonable notice of the design protection while the vessel is passing through the normal channels of commerce. 17 U.S.C. §1306(b). Acceptable examples include:

- (1) In close proximity to the hull identification number;
- (2) In close proximity to the driver's helm console such that it is in plain view from the console;
- (3) If the vessel is twenty feet in length over all (LOA) or less, in close proximity to the capacity marking plate or notice; and
- (4) In close proximity to the make and/or model designation of the vessel.

37 C.F.R. § 212.4(d).

The design notice must be 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. 37 C.F.R. §212.(a)(2).

Can I continue to include a notice when my registration expires?

Once your registration expires, you must stop marking your vessels. If you include a design notice on a vessel that is not protected by the VHDPA for purposes of deceiving the public, you can be subject to penalties for false marking. 17 U.S.C. §1326. This does not mean that you are required to remove the notice from vessels that were manufactured prior to the expiration of your registration; you must simply stop marking vessels once your registration expires.

How did the 2008 amendments affect protection under the VHDPA?

The Vessel Hull Design Protection Amendments of 2008 were signed by the President on October 16, 2008. The VHDPA was amended to clarify that the “deck” and the “hull” can either be protected separately or jointly. The Amendments also cover “a plug or mold” used to make a “deck” or a “hull” or combination of deck and hull features. In addition, the VHDPA was amended in part because the Navy sought clarification as to how the VHDPA affects defense contracting.

How are past designs affected by the amendments to the VHDPA?

Designs that were made public before October 28, 1998 (the effective date of the VHDPA) cannot be protected under the VHDPA. Further, only registrations after October 16, 2008 are subject to the Amendments and registrations prior to that date are not affected by the Amendments. 17 U.S.C. § 1332.

If my company designs or builds vessels as a defense contractor or if I sell boats to the Department of Defense, can I still protect them?

The VHDPA Amendments from 2008 require that any Department of Defense rights in a registered design, including the right to build, are determined pursuant to 10 U.S.C. §2320, which governs the Government’s right to certain technical data under defense contracts, or a separate agreement under which the design was developed for the U.S. Government. 17 U.S.C. § 1301(a)(3).

If I transfer ownership of my design, can I record that transfer with the Copyright Office?

Yes. You can record transfers of ownership with the Copyright Office. Unless a transfer is recorded with the Copyright Office within three (3) months after it is executed or before the date of a subsequent transfer, that first transfer of ownership shall be void as against a subsequent purchaser who obtained the transfer for valuable consideration. 17 U.S.C. §1320(d).

What if someone is copying my protected design?

If you find that someone is copying a design that you have protected through registration, you have the right to stop them from copying that protected design. 17 U.S.C. § 1308. After issuance of a certificate of registration of your design, you may initiate an action against the infringer of the design. 17 U.S.C. § 1321. The statute of limitations for recovery of damages is three (3) years from the date the infringement was committed. 17 U.S.C. § 1323(c). In addition, you have the option of resolving an infringement dispute through arbitration. 17 U.S.C. § 1321(d).

For additional information:

- Go to <http://www.copyright.gov/vessels/>
- Contact
 - Cindy Squires, Esq. Chief Counsel for Public Affairs and Director of Regulatory Affairs, NMMA (202-737-9766; csquires@nmma.org)