

Mr. SCOTT of Virginia. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the Senate bill, S. 2565.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

#### VESSEL HULL DESIGN PROTECTION AMENDMENTS OF 2008

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6531) to amend chapter 13 of title 17, United States Code (relating to the vessel hull design protection), to clarify the definitions of a hull and a deck.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 6531

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. VESSEL HULL DESIGN PROTECTION.

(a) SHORT TITLE.—This Act may be cited as the “Vessel Hull Design Protection Amendments of 2008”.

(b) DESIGNS PROTECTED.—Section 1301(a) of title 17, United States Code, is amended by striking paragraph (2) and inserting the following:

“(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).”

(c) EXCEPTIONS.—Section 1301(a) of title 17, United States Code, is amended by adding at the end the following:

“(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.”

(d) DEFINITIONS.—Section 1301(b) of title 17, United States Code, is amended—

(1) in paragraph (2), by striking “vessel hull, including a plug or mold,” and inserting “vessel hull or deck, including a plug or mold;”

(2) by striking paragraph (4) and inserting the following:

“(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.”; and

(3) by adding at the end the following:

“(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.”

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from North Carolina (Mr. COBLE) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

#### GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6531, the Vessel Hull Design Protection Amendments of 2008, makes technical corrections to the 1998 Vessel Hull Design Protection Act for the purpose of clarifying Congress’ intent that the design of an original vessel hull, separate from a vessel deck, may be protected.

In 1998, the Vessel Hull Design Protection Act established sui generis intellectual property protection for original vessel hull designs. That Act sought to address the problems of copycats who make molds of popular boat designs in order to produce knock-off versions. These knock-offs obviously cut into the market of the original manufacturers who had invested substantial time and resources in designing and testing their boats. Nevertheless, some copycats—mostly operating overseas—have exploited a flaw in the language of the 1998 Act.

As defined in the Act, a protected “hull” consists of both the hull and deck of a vessel. In determining infringement, the courts have interpreted this to mean that an allegedly infringing design must be substantially similar to both the hull and the deck of the protected design taken together. This means that a vessel with a hull identical to a protected design but with a different deck is not considered an infringement. This loophole has allowed copycats to continue to take and use popular hull designs of others with impunity.

To correct the problem, H.R. 6531 explicitly extends protection to a hull, a deck, or both, as the original manufacturer chooses. If a manufacturer elects to protect just the hull, infringement will be judged based on whether the hull of the alleged infringer is substantially similar. The same applies also if only the deck is protected.

If a manufacturer elects to protect both the hull and the deck, infringement will continue to be judged on whether the combined hull and deck design is substantially similar.

□ 1415

It is anticipated that the Copyright Office will promulgate regulations and a registration form that will clearly indicate that a deck, a hull, or hull-and-deck combination can be protected in one application.

H.R. 6531 also amends the 1998 Act to ensure that any vessel manufactured

by or on behalf of the Department of Defense is governed by that agency’s general procurement law, notwithstanding vessel hull design protection.

Passage of H.R. 6531 will finally provide boat manufacturers with the protection that Congress intended to give them a decade ago.

And one point, Mr. Speaker, the bill does not address the problem of fashion design policy that is hurting U.S. designers. But given the complexity of developing the appropriate protection scheme for fashion designs, it would be better addressed in a more thorough manner the next Congress.

So I urge my colleagues to support this important measure this time.

I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I, too, rise in support of H.R. 6531, the Vessel Hull Design Protection Amendments Act of 2008, and urge its passage by the House. I’ll try not be too detailed, Mr. Speaker, but the subject matter invites some detail.

I understand this bill is better informed through a review of the underlying statute, the Vessel Hull Design Protection Act, which Congress passed as part of the Digital Millennium Copyright Act in 1998. Chairman HOWARD BERMAN, the distinguished gentleman from California, and I were the primary sponsors of the Digital Millennium Copyright Act of that year.

Boat manufacturers invest significant resources in the design and development of safe, structurally sound, and often high-performance boat hull designs. Including research and development costs, a boat manufacturer may invest as much as \$50,000 to produce a design from which one line of vessels can be manufactured.

When a boat hull is designed and the design engineering and tooling process is complete, the engineers then develop a boat plug from which they construct a boat mold. The manufacturer constructs a particular line of boats from this mold.

Unfortunately, those individuals intent on stealing an original boat design can simply use a finished boat hull in place of the manufacturer’s plug to develop a mold. This practice is referred to in the trade as splashing a mold. The copied mold can then be used to create a line of vessels with a hull seemingly identical to that appropriated from the design manufacturer.

Hull splashing is a problem for consumers as well as manufacturers in boat design firms. Consumers who purchase these knock-off boats are defrauded in the sense that they are not benefiting from the many attributes of hull design, other than shape, that are structurally relevant, including those related to quality and safety.

It is also highly unlikely that a consumer will know if a boat had been copied from an existing design. More importantly for the purposes of promoting intellectual property rights, if

manufacturers are not permitted to recoup at least some of their research and development costs, they may no longer invest in new, innovative boat designs that boaters eagerly await.

In response to this problem and a Supreme Court case called *Bonito Boats* that prohibits State action on the matter, we wrote the Vessel Hull Design Protection Act a decade ago. The statute has functioned well during this time, but its continued viability is complicated by an eleventh circuit opinion, *Maverick Boat Company v. American Marine Holding*.

*Maverick* involves a dispute under the vessel hull statute between two marine manufacturers. Unfortunately, the holding of the case has created a loophole that knock-off manufacturers may well exploit. Because the statute protects the design of a vessel hull, and a hull is defined as the frame or body of a vessel, including the deck, exclusive of masts, sails, yards, and rigging, the court presumably reasoned that a hull must be examined in its totality. In other words, when assessing the design attributes of a hull under the statute, one may not examine its components, meaning the frame or body and the deck, separately.

This reasoning subverts Congress' intent when we passed the Vessel Hull Design Protection Act. At the time, proponents of reform were responding to the Supreme Court's ruling in *Bonito Boats*, which struck down State plug-mold statutes that effectively banned hull splashing as a method for copying hull designs. That is, the very practice, that is, hull splashing, that Congress sought to prescribe in 1998 would, in part, be legitimized by the eleventh circuit's decision in the *Maverick* case.

In brief, H.R. 6531 cures this problem by amending the definition of vessel hulls. The new definition will prevent knock-off manufacturers from indulging in hull splashing or misappropriation of either an original design of a hull or a deck. The bill specifies that only the hull's exterior frame or body is protected and clarifies other terms under the statute.

Importantly, H.R. 6531 contains a provision that was omitted from an earlier draft, S. 1640, that the other body passed last October. The new provision creates an exception to the vessel hull statute for the Armed Forces. This is necessary because the United States Navy, the United States Coast Guard, and perhaps the United States Marines, often have vessels built to specifications. It is not unthinkable that a vessel constructed for use by the Armed Forces might infringe a registered design.

Nothing in the legislative history of the statute suggests that Congress intended to complicate national security in any way. This is especially true since a separate provision of the U.S.

Code, section 2320 of title X, addresses the rights of the Armed Forces and private parties to use patented inventions, copyrighted works, and technical data related to defense projects.

H.R. 6531, therefore, ensures this provision or a contract between the government and relevant third parties will determine the rights of the Armed Forces in a registered hull design.

Mr. Speaker, this is a noncontroversial bill that has received process in the form of hearings in this Congress, as well as the 109th Congress. It is a technical fix that allows the Vessel Hull Design Protection Act to operate as Congress intended.

I urge my colleagues to support H.R. 6531.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H.R. 6531, the Vessel Hull Design Protection Amendments of 2008. This bill amends the United States Code, in the section relating to the vessel hull design protection, to clarify the definitions of a hull and a deck.

Industrial designs, like other forms of intellectual property, originated in Europe and have a long history. The objective of industrial design protection is similar to other intellectual property protections: promoting the creation of new, unique, and appealing designs for products by granting exclusive economic rights for a limited time. Many countries have established industrial design laws that are separate and distinct from other forms of intellectual property rights. The United States provides protection for industrial designs through design patents, trade dress, copyright and vessel hull design protection.

There have been several efforts to provide a sui generis form of protection for industrial designs at least since the 1976 Copyright Act. However, it was not until 1998 that some limited success in these efforts took the form of the Vessel Hull Design Protection Act. This Act was passed as part of the Digital Millennium Copyright Act. While the scope of protection in the Act was limited to vessel hulls, the act took much of its language and structure from previous legislative proposals establishing a general design right.

The Vessel Hull Design Protection Act grants exclusive rights to the design of an original vessel hull. To be original, a vessel hull design must be a non-trivial variation over prior vessel hulls, which is the result of the designer's creative endeavor and is not copied from another source. The Vessel Hull Design Protection Act does not provide any protection to non-original designs, staple or commonplace designs, and designs dictated solely by utilitarian function. The Vessel Hull Design Protection Act defines a "hull" as the frame or body of a vessel, including a deck.

Significantly, H.R. 6531, makes changes to this Act and excludes "deck" from the definition of a "hull". By H.R. 6531, "hull" is simply defined as the exterior frame or body of a vessel, exclusive of the deck, superstructure, masts, sails, yards, rigging, hardware, fixtures, and other attachments. The "deck" is defined as the horizontal surface of the vessel that covers the hull.

This refined definition should add more clarity to vessel hull protection. To secure vessel

hull design protection, an application for the design must be submitted to the Copyright Office that sets forth the salient features of the design. According to the Copyright Office, applicants generally provided only a minimal description and rely heavily upon references to photographs they provide in their applications to define the designs they want protected. The Copyright Office must then decide whether the application, on its face, appears to be subject to protection. The definitional change provided by H.R. 6531 should simplify this process.

The Copyright Office's review focuses upon on making sure formal requirements are met, such as ensuring that the subject is a vessel and not a car, for instance. The review does not, however, look at the compliance with substantive requirements such as determining whether the design is original.

A registered vessel hull design gives the designer exclusive rights to make, sell, import, or use in trade, vessel hulls embodying the design. Certainly, the definitional change will make it easier to determine the design of the vessel and to ascertain whether any infringement has occurred. An infringing hull design is one that has been copied without the consent of the designer. A vessel hull design will not be considered copied if it is original and not substantially similar in appearance to a protected vessel hull design. When infringement is proven, a vessel hull designer may seek injunctive relief and either damages adequate to compensate for the infringement or the infringer's profits.

Mr. Speaker, I urge my colleagues to support H.R. 6531 because it simplifies the definition of a hull and makes it easier to determine whether there has been infringement.

Mr. COBLE. I have no further requests for time, Mr. Speaker, so I yield back my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the bill, H.R. 6531.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

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#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

JULY 22, 2008.

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on July 22, 2008, at 10:21 a.m.:

That the Senate passed S. 901.

That the Senate passed S. 3294.