

(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

(3) STATUTORY DAMAGES.—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than \$200 or more than \$2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within 3 years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

(5) INNOCENT VIOLATIONS.—

(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

(B) NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTIONS.—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.

(Added Pub. L. 105-304, title I, §103(a), Oct. 28, 1998, 112 Stat. 2874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1202 of this title.

**§ 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, OR EDUCATIONAL INSTITUTION.—Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.

(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.)

**§ 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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1326.	Penalty for false marking.
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1328.	Enforcement by Treasury and Postal Service.
1329.	Relation to design patent law.
1330.	Common law and other rights unaffected.
1331.	Administrator; Office of the Administrator.
1332.	No retroactive effect.

**TERMINATION OF CHAPTER**

*For termination of chapter by section 505 of Pub. L. 105-304, see Effective and Termination Dates note set out under section 1301 of this title.*

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 28 sections 1338, 1498.

**§ 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 HULLS.—The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).

(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, 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, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.

(4) A “hull” is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.

(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.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2905.)

#### TERMINATION OF SECTION

*For termination of section by section 505 of Pub. L. 105-304, see Effective and Termination Dates note below.*

#### EFFECTIVE AND TERMINATION DATES

Pub. L. 105-304, title V, § 505, Oct. 28, 1998, 112 Stat. 2918, provided that: “The amendments made by sections 502 and 503 [enacting this chapter and amending 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] and shall remain in effect until the end of the 2-year period beginning on such date of enactment. No cause of action based on chapter 13 of title 17, United States Code, as added by this title, may be filed after the end of that 2-year period.”

#### JOINT STUDY OF EFFECT OF THIS CHAPTER

Pub. L. 105-304, title V, § 504, Oct. 28, 1998, 112 Stat. 2917, provided that:

“(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 28, 1998], and not later than 2 years after such date of enactment, the Register of Copyrights and the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Rep-

resentatives a joint report evaluating the effect of the amendments made by this title [enacting this chapter, 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 Commissioner of Patents and Trademarks shall consider—

“(1) the extent to which the amendments made by this title have 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 Commissioner 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 1 year 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.)

#### TERMINATION OF SECTION

*For termination of section by section 505 of Pub. L. 105-304, see Effective and Termination Dates note set out under section 1301 of this title.*

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1303 of this title.

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

Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1302 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2906.)