

Statement of Congressman Bob Goodlatte
Introduction of the Design Piracy Prohibition Act
March 30, 2006

Mr. Speaker, I rise to introduce the Design Piracy Prohibition Act.

Article I Section 8 of our Constitution lays the framework for our nation's copyright laws. It grants Congress the power to award inventors and creators, for limited amounts of time, exclusive rights to their inventions and works. The founding fathers realized that this type of incentive was crucial to ensure that America would become the world's leader in innovation and creativity. This truth is still applicable today. We must be sure to continue to reward our innovators with the exclusive rights to their works for limited periods of time. This incentive is still necessary to maintain America's position as the world leader in innovation.

Most industrialized nations provide legal protection for fashion designs. However, in the United States – the world's leader in innovation and creativity – fashion designs are not protected by traditional intellectual property protections. Copyrights are not granted to apparel because articles of clothing, which are both creative and functional, are considered "useful articles," as opposed to works of art. Design patents are intended to protect ornamental designs, but clothing rarely meets the criteria of patentability. Trademarks only protect brand names and logos, not the clothing itself, and the Supreme Court has refused to extend trade dress protection to apparel designs.

Thus, if a thief steals a creator's design, reproduces and sells that article of clothing, and attaches a fake label to the garment to market it, he would be violating federal law. However under current law it is perfectly legal for that same thief to steal that same design, reproduce and sell the article of clothing if he does not attach a fake label to it. This loophole allows pirates to cash in on others' efforts and prevents designers in our country from reaping a fair return on their creative investments.

Furthermore, the production life cycle for fashion designs is very short. Once a particular design gains popularity through a fashion show or other event, a designer usually has only a limited number of months to effectively produce and market that original design. Further complicating this short-term cycle is the fact that once a design is made public, pirates can now virtually immediately offer an identical knock-off piece on the Internet for distribution. Again, under current law this theft is legal unless the thief also reproduces a label or trademark. Because these knock-offs are of such poor quality, these reproductions not only take away designer's profits, but also damage the designer's reputation.

Chapter 13 of the Copyright Act offers protection for the designs of vessel hulls. The Design Piracy Prohibition Act protects designers by amending Chapter 13 of the Copyright Act to also include protections for fashion designs. Because the production life cycle for fashion designs is very short, this legislation similarly provides a tailored period of protection that suits the industry – three years. This legislation further establishes damages for infringing a fashion design at the greater of \$250,000 or \$5 per copy.

As America's fashion design industry continues to grow, America's designers deserve and need the type of legal protections that are already available in other countries. The Design Piracy Prohibition Act establishes these protections, and I urge my colleagues to support this important legislation.