

*Forgotten and Abandoned:
Section 113's Limitations on Copyright in Works Depicting Useful Articles*

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The purpose of Section 113(b) of the Copyright Act was to preserve the principle, well-established in existing case law, that "copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the manufacture of the useful article itself." H.R. Rep. No. 94-1476, at 105 (1976). Unfortunately, this principle was not clearly expressed in the language of the statute. Instead, section 113(b) states only that "the owner of copyright in a work that portrays a useful article as such" does not have "any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law . . . in effect on December 31, 1977." While perhaps in 1978 experienced copyright practitioners were familiar with the existing case law, in the ensuing three-and-a-half decades the meaning of this provision has been forgotten. The result is that section 113(b) is widely ignored, and copyright owners in depictions of useful articles routinely receive compensation and an injunction when others manufacture the useful article depicted. This article proposes a codification of pre-1978 case law that would restore the limitations on copyright in depictions of useful articles that Congress intended when the 1976 Copyright Act was drafted.

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