



VESSEL DESIGNS SHOULD BE FIT FOR PURPOSE

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In this column I look at a couple of issues relating to vessel design that have come to my attention in recent times.

The first relates to designers and the intellectual property rights they have in their vessel designs. The relevant law is the Copyright Act 1994, and even the most technical or prosaic design drawing qualifies as artistic works under this act.

The case that established this in New Zealand related to a drawing for a rubber connector between a toilet pan and the waste pipe, which gives you an idea how basic drawings can be and still enjoy copyright protection. There is no need to register anything as copyright; it applies automatically as soon as an original work is produced.

In most instances, copyright in the drawings is owned by the person who produced the drawing (unless they are an employee). However, if the designs are commissioned and paid for then the person or company which commissions the drawing owns the copyright. All these arrangements can be amended by contract.

It is important to note that copyright protection only extends to preventing people from copying the design, and does not protect general design ideas or prevent people from coming up with similar designs through independent effort.

However, copying which is banned includes reproducing

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drawings in three-dimensional form (ie, building a vessel from copyright plans) and vice-versa (ie, drafting plans from a vessel which has been built from copyright plans).

Some designers get upset if a new vessel is not built according to their plans or is altered later, but there appears little that can be done about this under the Copyright Act. There is a relatively new provision in the act relating to moral rights, whereby the original author of a work can object to derogatory treatment of that work, even if they have sold the copyright.

Derogatory treatment can include distortion or mutilation of the work or a treatment which is prejudicial to the honour or reputation of the author. These moral right provisions have been little tested in New Zealand, but I do not think we would extend as far as preventing "mutilation" of a design by changing a vessel.

A number of other intellectual property laws might be of some assistance to designers who complain about their work or reputations being used inappropriately. For example, if they

have trademarked names, those names cannot be used without consent. Also, the general law of passing off or even the Fair Trading Act might be able to be used if a designer has developed a particular reputation in the look or design of a vessel to prevent competitors passing off their vessels as one of his or her own.

The second issue relates to the certification of vessel designs as to their safety, construction and performance. As far as I am aware there are no such certification requirements for recreational vessels, and the law only comes into play for commercial vessels covered by the Maritime Transport Act and the rules made under that act. Design approval for these commercial vessels must be given by a surveyor who approves the vessel's design as, "fit for its intended service and intended operating limits; and complying with all the applicable maritime and marine protection rules."

Concerns have been expressed to the writer about the ability to grant design approval for existing vessels. Generally the vessels involved are recreational "gin palaces", or private fishing vessels not built under the supervision of a surveyor which are subsequently converted to commercial applications.

The act clearly allows for this retrospective validation of designs to take place, therefore the concerns are not so much legal as technical and are somewhat beyond the writer's expertise.

However, designers have expressed concerns about surveyors giving approval without obtaining copies of the original plans, and of Maritime New Zealand accepting this, even where the original plans are available.

Surveyors are confident they can give approval through a visual inspection of the vessel and with appropriate input from specialists such as naval architects. Others query how enclosed spaces or materials can be inspected.

It is understood that Australian authorities do not allow design approval to be granted for vessels not built under survey. Some surveyors may approach their inspection on the basis that all they are required to do is to confirm that the vessel's design complies with the requirement of the relevant Maritime Rules and they are not giving a more general approval.

This view is echoed in a footnote to the relevant rules, which says that approval of the vessel's design, "does not guarantee any performance of the ship's design other than compliance with the Maritime and Marine Protection Rules of those elements included in the definition of ship design in the rules."

Whatever this may mean, it does not seem to take into account the first limb of the test referred to above, which is a requirement to approve that the vessel design is fit for its intended service and intended operating limit. Let us hope that none of these issues has to be tested in court, following a vessel failure brought about by flawed design. 

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