

01000000

111/01-02

*Copythet – Cultural Practices  
Transgressing Copyright Boundaries*



# Disegno

JOURNAL OF DESIGN CULTURE

Double blind peer reviewed open access scholarly journal. Not for commercial use.

**Editorial Board:** Victor Margolin, Professor Emeritus, University of Illinois  
Jessica Hemmings, Head of Visual Culture, National College of Art and Design, Dublin

**Editors:** Heni Fiáth, Zsolt Gyenge and Márton Szentpéteri

**Graphic Design:** Borka Skrapits

**Project manager:** Ildikó Fazekas

**Copy Editing:** Will Potter

## Aims and Scope

Disegno publishes original research papers, essays, reviews on all possible aspects of design cultures. The notion of design culture is understood by us as resolutely vague: our aim is to freely discuss the designed environment as mutually intertwined flows of sociocultural products, practices and discourses. This attitude openly ventures beyond the academic distinctions between art, design and visual culture being accordingly open to all themes with relation to sociocultural creativity and innovation. Our post-disciplinary undertaking expects intellectual contribution from all potential members of different design cultures. Besides providing a living platform for debating issues of design culture our particular aim is to consolidate and enhance the social legitimacy of design culture studies as an emerging field in the Central European academe providing criticism of fundamental biases and misleading cultural imprinting with respect to the field of design.

All articles published in Disegno will go through a rigorous double-blind peer review process.  
This journal does not charge APCs or submission charges.

Disegno is sponsored by public funds, therefore it is freely available in both print and on-line formats.  
Print copies are produced in limited numbers.

**Contact:** Moholy-Nagy University of Art and Design, Institute for Theoretical Studies  
H-1121 Budapest, Zugligeti út 9-25.  
Editors: [disegno@mome.hu](mailto:disegno@mome.hu)

The full content of Disegno can be accessed online: [disegno.mome.hu](http://disegno.mome.hu)

**Published by:** Fülöp József

**Publisher:** Moholy-Nagy University of Art and Design, 1121 Budapest, Zugligeti út 9-25.



MOHOLY-NAGY MŰVESZETI EGYETEM  
MOHOLY-NAGY UNIVERSITY OF ART AND DESIGN BUDAPEST

**Printing:** Print City Europe Zrt.

**ISSN:** 2064-7778 (Print) **ISSN:** 2416-156X (Online)

Creative Commons License

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.



The edition of Disegno has been supported by the publisher  
of OCTOGON architecture & design magazine, Vertigo Publishing.

**OCTOGON**  
architecture & design

The project has been realized in connection with the title of the “University of National Excellence”  
of Moholy-Nagy University of Art and Design Budapest.

**Supported by:**



EMBERI ERŐFORRÁSOK  
MINISZTERIUMA

# Contents

## 006 editorial

### research papers

- 010** Megan E. Blissick, Belinda T. Orzada: *The Effects of Design Protection Legislation on Manufacturer Motivation*
- 028** Amanda Queiroz Campos, Luiz Salomão Ribas Gomez: *Fast Fashion and Globalization: Study of Florianópolis' Sister Store of the Spanish Fast-Fashion Retail Chain Zara*
- 044** Massimo Menichinelli: *A Framework for Understanding the Possible Intersections of Design with Open, P2P, Diffuse, Distributed and Decentralized Systems*
- 072** Deanna Herst, Michelle Kasprzak: *On "Open" Authorship: The Afterlife of a Design*
- 096** Dr. Robert Phillips, Dr. Matt Dexter, Professor Sharon Baurley, Professor Paul Atkinson: *Standard Deviation — Standardization and Quality Control in the Mash-up Era*
- 118** Gábor Pfisztner: *Photography — Remaking Life, the Universe, and Everything*
- 132** Adela Muntean: *The Algorithmic Turn in the Found Footage Filmmaking: The Digital Remake*
- 150** Dr. Christopher Brisbin: *"I hate cheap knock-offs!": Morphogenetic Transformations of the Chinese "Culture of the Copy"*
- 168** Giuseppe Resta: *Models and Re-elaborations in Late Nineteenth Century Architecture: The Great Tower for London Competition*

### essays

- 184** Dr. Dénes Tamás: *A "Reinvented" City*
- 200** Bea Correa: *Authentic vs. Fake*

## 214 Editors and authors

---

# ***THE EFFECTS OF DESIGN PROTECTION LEGISLATION ON MANUFACTURER MOTIVATION***

---

***Megan E. Blissick, Belinda T. Orzada***

---

## ***ABSTRACT***

*This theoretical paper reviews the motivational factors of design protection legislation on knockoff manufacturing in the United States. Since at least the early 20th Century, U.S. apparel designers have requested design protection legislation. In fact, more than ninety attempts have been made to gain legal recognition and protection for original apparel designs through the U.S. legislative system since 1914. In France, however, from the time of Charles Frederick Worth, rules existed concerning what qualified as couture design, and over the following years, design protection in Europe evolved to continually protect creative design. In contrast, the United States continues to have limited design legislation that fails to protect fashion design. Parties in opposition to increased protection argue that legislation will stifle creativity, whereas parties in support counter that protection will encourage designers to create. This paper proposes the necessity of future research based on Tedmond Wong's Innovative Design Protection and Piracy Prevention Act (IDPPPA) Game Theory Model to gauge the effect of design protection legislation on apparel manufacturer motivation to knock off designs. While this paper does not test the proposed research, it provides background supported by analysis and synthesis of current facts, data and research literature, and proposes directions of inquiry that may support design protection legislation.*

*#United States, #knock off, #apparel manufacturing, #motivation  
doi:10.21096/diseagno\_2016\_1-2meb-bto*



## **INTRODUCTION**

This paper seeks to identify the impact of design protection legislation for apparel goods on manufacturer motivation to knock off fashion products in the United States. Knockoff fashion pieces are copies or imitations of retailer products, often created or obtained unethically and distributed without accreditation to the origin of design. Knockoffs have the ability to impact the 1.9 million fashion and apparel workers in the United States (US) (Maloney 2015), and the 1.7 million members of the European manufacturing industry. (Textiles and Clothing 2016). High-end industry members claim that knock offs of their designs dilute their brands and erode their profit margins. Statistics indicate that in 97 percent of cases, the net present value of the original design drops an average 13 percent (Appel, Li-bai, & Muller 2013). Even with these losses, designers are restricted when they attempt to seek legal recourse. US copyright law offers restricted legislation in regards to protecting fashion compared to the European Union (EU), and the unprotected area of fashion design allows for manufacturers to knock off designer styles at margins of the price.

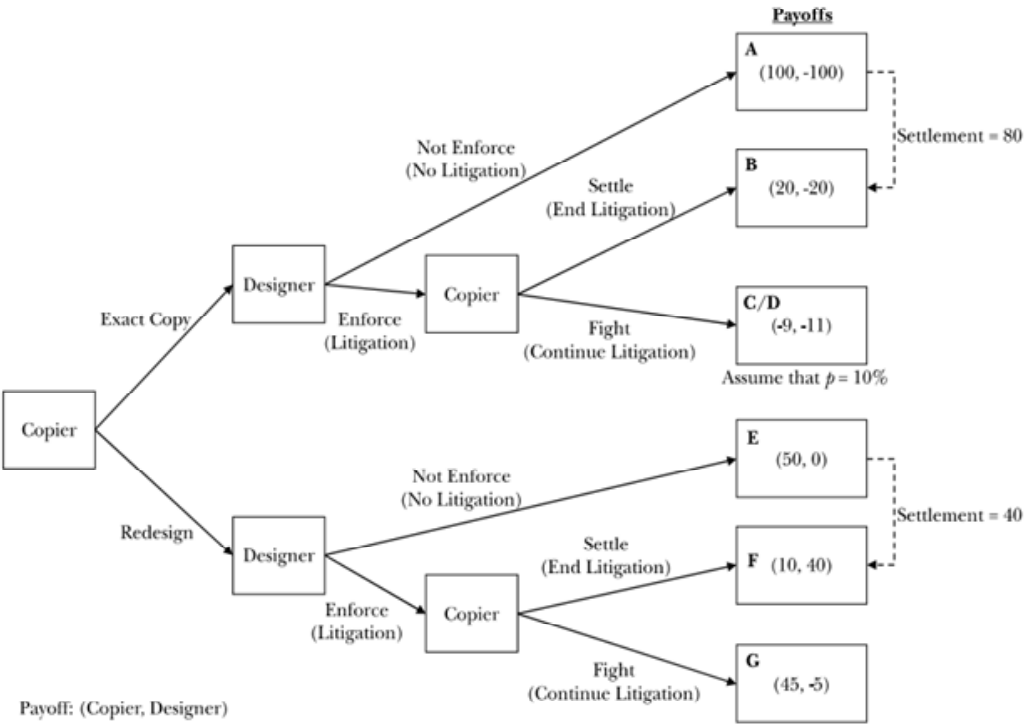
Knockoff fashion designs harbor economic and social influence over-fashion retailers, designers, and their firms. Retailers could find their companies failing due to brand dilution from knockoff styles, or could face heavy litigation and negative brand image by infringing on patent or trademark property. Designers of creative and unique work face the possibility of their property being mass-produced without their knowledge or consent. The effect of knockoff goods can even fall back to the manufacturer, who could lose contracts from designers concerned with their intellectual property. Overall, the knockoff industry negates economic and environmental growth in both the social and trade divisions (The Economic 2007). The extent to which the knockoff industry impacts the apparel industry drives the necessity to implement stronger design protection legislation in the United States.

Opinions vary regarding increased design legislation in the United States. Some parties insinuate that a lack of legislation increases creativity by not allowing a monopoly on fashion design (Raustiala & Sprigman 2012, 168). Opposing views argue a lack of legislation results in a lack of creativity, citing trends of duplication as a result of decreased cost and effort of copying (Wong 2013, 1139-1192). In order to see lasting change in United States design legislation, factual evidence of the effects of design legislation must be identified.

THEORETICAL FRAMEWORK

The theoretical framework of this study is the Innovative Design Protection and Piracy Prevention Act (IDPPPA) Game Theory Model proposed by Tedmond Wong of the University of Pennsylvania Law School (Wong 2013, 1165-1181). The IDPPPA is the proposed extension of chapter 13 of the Copyright Act, a statute in place for fashion design that does not protect creative design (Ellis 2011, 163-212). The IDPPPA would extend the current copyright statute to provide *sui generis* protection for fashion design, protection that would cover intellectual property areas outside of traditional copyright laws (Ellis 2011, 165). Wong's proposed framework outlines the scenarios and outcomes between designers and copiers in various degrees of legal protection, and the IDPPPA model outlines the potential gain or loss in each scenario for a copier to create an exact copy or redesign a designer's work, theorizing the copier's motivation as the potential payoff (Wong 2013, 1180). The model predicts copier behavior based on the potential payoff, as shown in figure 1.

Fig.1.  
Innovative Design Protection  
and Piracy Prevention Act  
Game Model, from Tedmond  
Wong, 2013, 1180.



Wong's IDPPPA Game Theory Model theorizes as to the positive effects of increased knockoff legislation on decreased participation in the knockoff fashion industry. (Wong 2013, 1161-1164). As legislation or designer ability to enforce litigation becomes apparent, knockoff manufacturers lose motivation in the form of payoffs to fight litigation, pushing them to settle. Further, increased legislation should reduce exact copying, thus increasing the motivation to create unique and original designs (Wong 2013, 1165-1181). This theoretical framework addresses the possibility for design protection legislation to incentivize creativity over copying.

## **RESEARCH GOALS/OBJECTIVES**

The objective of this paper is to identify and evaluate the potential for design protection legislation to decrease knockoff manufacturing motivation while maintaining creativity in the fashion industry. Legislation regarding design protection in both the United States as well as the EU is explored with the EU legislation providing a comparison for this research. Knockoff retailers and the economic impact of the knockoff apparel industry on both the US and the EU is discussed. We utilize information gathered from the literature review to identify directions of future research. Our investigation is guided by two research questions:

*RQ 1: How does design legislation influence designers in the United States?*

*RQ 2: Does design legislation deter knockoff manufacturing in the United States?*

## **LITERATURE REVIEW HISTORY**

Following trends is the way of life in the fashion world. Trickle-down theory suggests that styles emerge from top design houses and flow into mainstream fashion. Of course the reverse is also true, with "the streets" influencing high fashion as well (Mendes & De la Have 1999). The question is, when did following trends evolve from taking an idea and elaborating on it—a designer putting their own spin on it, so it becomes unique in its own right—to the outright copying of most details?

In the late-nineteenth and early-twentieth century, the beginnings of the ready-made apparel industry found US manufacturers influenced by French fashion houses. The trickle-down process became more widespread (Marcketti & Parsons, 2006, 214-228) as copy houses were disseminating cheap copies of couture designs. This was accomplished by sketching designs at fashion shows or purchasing toiles, and was later aided by new types of trade literature, which provided fashion forecasts (Mendes & De la Have 1999). Thus, French

couture houses sought to establish copyright protection. Design protection began with the formation of *L'Association de protection des industries artistiques saisonnières* (PAIS), a group formed by designer Madeline Vionnet in 1921 to protect haute couture designs (Palmer 2013). Under the advisement of PAIS, designs would be photographed and documented as evidence in the case of copying. Any formal complaints of piracy would be handled under French penal code until 1943, at which time the *Chambre Syndicale de la haute couture*, Charles Frederick Worth's organization to distinguish between haute couture and ready-made clothing, took over the service (Palmer 2013). A system was developed allowing major retailers to purchase toiles of Parisian couture designs for legal reproduction. There were strict rules forbidding sketching and photography of fashion shows, and each season's design release dates were strictly controlled (Mendes & De la Have 1999). However, design piracy still occurred.

Regarding design piracy in the United States fashion industry, Sara Marcketti and Jean Parsons identified trade publications calling for manufacturers and retailers to end this practice as early as the 1910s. By 1932, the Fashion Originators' Guild of America had been formed, in part, to protect style originators from copying or piracy by a system of self-regulation. The Guild's registration system functioned very similarly to that of PAIS, with manufacturers required to submit a sketch of the original design, a brief description, and an affidavit of originality. The Guild did not protect foreign models and styles considered "generic" (Marcketti & Parsons 2006, 214-228). Ultimately, the Guild did not succeed because the regulation it proposed became too controlling. Schmidt notes that seventy-three bills were proposed in Congress between 1914–1983 to protect design through legal measures, however none passed because of the ambiguity of design protection (Schmidt 1983, 861-880).

## **LEGISLATION**

### **UNITED STATES DESIGN PROTECTION**

In the United States, design protection is available through copyright, patent and trademark laws. Design patents are available for new, non-obvious ornamental design, but fall short for fashion design—the registration process for a design patent takes eighteen to twenty-four months, and protection only begins upon issuing of the patent, not filing (Dinwoodie 2008). Design is protected under copyright “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article” (Copyright Law 2011). Trademarks apply only to the source of design; a designer can protect their brand name, but not the designs under that name (Trademan 2014), failing to protect individual design.



## **COPYRIGHT LAWS**

Separability testing for design copyright involves the applicant party displaying separation of physicality and conceptuality with the intention to distinguish between applied art and industrial design (Protection 2007). This high-level separation restricts most industrial designs, and in this case, fashion designs, from copyright protection (Protection 2007).

The Congressional hearing on H.R. 5055 in July 2006 regarded the inclusion of fashion design protection under chapter 13 of title 17 of the United States Code (Protection 2007). This hearing explained the current design protection available under existing law, which mainly protects counterfeit products. Where knockoffs mimic the design of another product in a non-deceptive manner, counterfeit goods infringe on trademarks, patents, or copyrights of the original designer, such as brand names and logos (Chadury & Zimmerman 2009).

Though unlikely, any product that does obtain copyright protection will be protected against infringement up to \$50,000 or \$1 per copy (whichever is greater) as compensation and not as a penalty (Copyright Law 2011). This means that the infringing party will not face an increased fine for a subsequent violation. The July 2006 Congressional hearing proposed changes to the recovery for infringement for up to \$250,000 or \$5 per copy (Protection 2007).

Proposed legislation under chapter 13 of title 17, which provides very similar protection to copyright protection but is technically distinct, would define an article of apparel as a “useful article,” which is currently protected under chapter 13 (Protection 2007). Apparel products (clothing, fashion accessories, and footwear) would receive three years of protection if the apparel firm filed for protection within three months of the product being made public (Protection 2007). This protection would be geared mostly towards haute couture designers making four or more figures off of apparel products.

As of the most recent publication of the United States Code, no changes have been made to include fashion designs as useful articles, thus fashion design remains restricted from copyright protection in the United States (United States 2015). For apparel designers to protect any of their original work, they must apply for other legislative means.

## **PATENT LAWS**

United States patent laws regarding design fall under 35 U.S.C. 171, and state that anyone that invents a new, original, and ornamental design for an article may obtain a patent for a term of fifteen years (United States 2015). Filing on an original design patent costs \$220 per patent, and examination of an original design patent costs \$140

(United States 2015). Finally, the cost for issuing a design patent is \$860, costing a company \$1,420 in total per design patent (United States 2015).

There are some ways for businesses to circumvent the high costs of patenting their designs. Small businesses see some relief in patent fees; under the Small Business Act, all patent fees are reduced by 50 percent (United States 2015). If a company files more than twenty claims at one time, the filing cost for the additional claims will be reduced to \$52, and the filing fee will be reduced by 75 percent if filed electronically (United States 2015). However, the examination and issuing charges remain static for all large companies, so though they may reduce filing costs, companies will still face high fees to patent their designs.

### **TRADEMARK LAWS**

High-end fashion houses often have trademarks to differentiate their products from the numerous imitators on the market. In the United States, a trademark provides protection for products, allowing the affected party to claim compensation for damages if their trademark was illegally used. Paper applications for trademarks come with a \$375 fee, which can be reduced to \$325 if the application is submitted online (U.S. Trademark 2015). Any trademark registered after November 16th, 1989, will remain in force for ten years, and may be renewed for periods of ten years with a fee of \$400 in paper, or \$300 online (U.S. Trademark 2015).

In relation to fashion goods, US trademark laws protect jewelry, precious metals and stones, “fancy goods”, furnishing, leather and leather imitation products, yarns and threads for textile uses, textiles, textile goods, clothing, footwear, lace, and embroidery (U.S. Trademark 2015). If a trademark is infringed upon, the owner of the trademark is entitled to recover the infringing party's profits and damages sustained by the infringing party as well as all legal fees (U.S. Trademark 2015). If the defending party is found guilty of intentionally using a counterfeit trademark in connection with the distribution of goods and services, the party will enter judgment to pay three times profits or damages sustained to the infringing party, up to \$2,000,000 (U.S. Trademark 2015). The harsh penalization of the infringing party falls in sharp contrast to copyright laws, which only threaten the infringing party with compensatory fees instead of penalization.

For fashion retailers, a trademark is the best option with which to protect their goods due to the penalization of infringing parties and the ability to protect the trademark over a long period of time. However, trademarks only apply to the source of the goods and services from a party, and not the designs under that trademark (Trademan 2014). A designer cannot protect their specific designs under a trademark, limiting the power of trademark use as a form of design legislation.

## **THE EUROPEAN UNION**

### *Design Protection*

In the European Union, design can be protected under apparel copyright law, intellectual rights, trademark protection, or community design protection. Copyright law allows designers to register dress design, apparel, accessories, footwear, and fashion design for all or part of a product (Montalvo 2014). This protection lasts for five years, and is available for extensions. Community protection is an informal means of design protection that lasts for three years, protecting designers of short-term products (Montalvo 2014). Trademark law protects non-utilitarian, distinctive design for up to ten years, and can be renewed indefinitely (Schickl 2013, 15-38).

### *Apparel copyright laws*

Apparel copyright laws for Europe are enforced under the Single Market of the EU (Countries 2015). National copyright law in the EU protects dress design, apparel, accessories, and footwear (Montalvo 2014). In 1998, the implementation of the EU Designs Protection Directive allowed a means of registration for fashion design (Montalvo 2014). Design was defined as “the appearance of the whole or a part of a product resulting from the features of [...] the lines, contours, colors, shape, texture [...] or its ornamentation” (Directive 1998, cited in Montalvo 2014). The Directive also protects novel design, which is determined by the design’s availability to the public (Montalvo 2014).

### *Community Protected Design*

In addition to copyright laws, the EU enacted protection of Community design rights to protect both registered and unregistered goods (Montalvo 2014). Registered designs benefit from protection for five years with renewal up to twenty-five years, and unregistered designs are protected for three years from the date that they were published in community, giving fashion designers that produce products with short life cycles a means of protecting their designs (Montalvo 2014). Table 1 displays fees for community design registration.

If a party is found infringing on another party’s community-protected design, the claimant may file for injunctive relief in the form of a cease and desist (Design Protection 2015). In cases of trademark, design, or copyright protection in which the infringing party does not oblige to a cease and desist, the proprietor may file for a preliminary injunction. Claims in a district court may request compensation for damages to the proprietor in the form of lost profits, infringed profits, or reasonable royalty; the court does not award punitive damages. From the

filing of the complaint to final judgment, the process takes on average six to nine months (Design Protection 2015).

*Intellectual Property*

	Fee (1st Design)	Additional fee (Designs 2-10)	Additional fee (Designs 11+)
Registration	€230	€115	€50
Publication	€120	€60	€30
Deferred Publication	€40	€20	€10

Table 1. Community design fees

The concept of design protection for European fashion design begins with the distinction between clothing for the purpose of utility (ready-to-wear) and design supremacy (haute couture) (Palmer 2013). Instead of guaranteeing rights to a certain product, the EU grants designer intellectual rights to their creative designs. Designers can seek design protection in cases of the materialization of their intangible creative idea (example: the physical embodiment of a unique pattern). This type of design protection is commonly used for exceptional and unique designs and patterns, whereas products with a shorter and more mainstream life cycle seek Community or trademark protection (Fischer 2008).

*Trademark Protection*

For products that require a broader scope of protection, the EU offers Community trademark protection for industrial designs. Community trademark protection, which applies to the twenty-eight member states of the EU, is offered to designs that are distinctive (indicative of the originating source) and non-functional; functional designs cannot obtain protection via trademark law. Trademark law deems a design as functional if it consists exclusively of shapes derivative of the nature of the product, if the design is necessary to achieve a level of technicality for the product, or if the design provides substantial value to the product (Schickl 2004). If a design can meet the requirements of distinction and non-functionality, trademark protection can extend to protect three-dimensional design. This process occurs within a six- to twelve-month period, and can be renewed indefinitely in ten-year periods (Schickl 2004).

With complex protective measures to allow designers freedom to create without fear of their designs being stolen, Europe has produced the highest number of the most influential designers since 1923 listed by TIME Magazine (Skarda 2012). Legislative protection has not restricted creativity, nor resulted in a monopoly over the fashion industry, but instead has inspired designers to create iconic, industry-shaping fashion. Evidence of influential and creative fashion emerging from areas of higher protection and restrictive legislation could potentially influence the US to review their opinions towards design protection.

## **KNOCKOFF RETAILERS**

A knockoff is defined as a copy or imitation, especially of an expensive or designer product ("Knockoff" 2016). Knockoffs vary from counterfeit products, products that are an exact imitation of something valuable or important with the intention to deceive or defraud; fraudulent imitations of something else; or forgeries (Counterfeit 2016). Knockoffs are one of three forms of piracy common in the fashion industry (Ellis 2011, 163-212). Trend imitation as previously discussed borrows some characteristics but also incorporates changes to designs. Knockoffs replicate another firm's designs, often very closely, but at lower prices by using cheap labor and/or less expensive fabrics, and then sell them under a different company's name.

## **MEDIA**

Knockoff retailing in the United States is highly prevalent in fast-fashion retailers. Retailer Nasty Gal faces legal repercussions for a claim made on Twitter in June 2015 that singer-songwriter Taylor Swift wore one of their designs to the 2015 Billboard Music awards (Laugel 2015). The design in question was a knockoff of the Balmain jumpsuit that the singer-songwriter was actually wearing at the event. Due to the lack of copyright protection for fashion designs, the legal repercussions will only cover the false advertisement, not the knockoff product (Laugel 2015). Another fashion retailer that has been identified as a knockoff manufacturer is Forever 21. Sued over fifty times, Forever 21 has never lost a case, always opting to settle out of court (Laugel 2015). The result of out-of-court settlements is the lack of conviction; Forever 21 has never been convicted for infringing on trademarks or designs. Speculations point to knockoff retailing as part of Forever 21's business strategy, inferring that the retailer spends less money by settling out of court and draws positive attention to consumers seeking designer products at a fraction of the price (Laugel 2015).

Design knockoff is highly prevalent in fast fashion, but does occur in both directions. In September 2015, Yves Saint Laurent was accused of knocking off a Forever 21 dress print (Siebert 2015). The dress in question, sold for \$23 at Forever 21, retailed for \$3,490 from Yves Saint Laurent (Siebert 2015). The copied design received both positive and negative media attention; respondents were amused by the "reversed" knockoff, while other consumers found the action of copying fast fashion distasteful (Siebert 2015). Knockoff accusations toward luxury designers and high fashion houses has led to the questioning of the evolution of the role of the creative director (Phipps-Rufus 2015).

Italian fashion house Moschino's head designer Jeremy Scott faces a lawsuit regarding copyright infringement on the Moschino autumn/winter 2015 collection (Jeremy Scott 2015). The line featured at Milan Fashion week featured graffiti designs claimed to be originals from



graffiti artist Joseph Tierney (Jeremy 2015). Scott has been accused on multiple occasions, and admitted to infringing on Tierney's graffiti designs, incorporating them into Moschino's autumn/winter 2015 collection without permission (Jeremy 2015). After this admission of guilt, Scott removed the products in question from the collection. However, as of December 2015, Moschino graffiti print products were still available for purchase on the Moschino website.

Knockoff retail does not always occur at opposing price points; designer Mansur Gavriel was accused of knocking off designer Maryam Nassir Zadeh's line of open-toe mule sandals in September 2015 (Coscarelli 2015). The two designers offer identical price points, with the Mansur Gavriel shoes retailing for \$325 to \$625 and the Zadeh shoes retailing for \$391. Zadeh made a statement accusing Mansur Gavriel of purchasing the shoes in question from her store in July 2014, stating that the store records served as proof of Mansur Gavriel knocking off the mule sandals (Sherman 2015). Though the records could prove intent to knock off the designs, copyright protection in the United States does not protect anything functional, and the design lacks distinctiveness that could be protected by trademark law (Sherman 2015).

Due to lack of legislative action, US retailers have turned to knockoff designing as a way of life. This stifling of creativity results in drawn-out lawsuits, negative publicity, and products removed from lines, giving designers a bad name and causing doubt among their success. Rather than working towards innovation, creation has come to a standstill filled with lawsuits and cyclical design.

### **PUBLIC OPINION**

Kim and Karpova's research into the theory of planned behavior identified consumer attitudes towards non-deceptive counterfeit fashion goods (Kim & Karpova 2010, 79-94). Participants in the study who had purchased counterfeit goods in the past were more likely to purchase again, as were participants who identified themselves as value-conscious consumers. Integrity and consumption habits were not found to be related, inferring that consumers do not perceive counterfeit product purchases as unethical or irresponsible. Consumers were least likely to purchase counterfeit goods when functioning under the belief that public opinion of counterfeit product consumption was undesirable (Kim & Karpova 2010, 79-94).

Acceptance of knockoff manufacturing is voiced through media outlets that support the process. In Kal Raustiala and Christopher Sprigman's 2012 publication, *The Knockoff Economy: How Imitation Sparks Innovation*, the two authors argue that the economy of the United States thrives on production of knockoffs. The authors argue the viewpoint that patent and copyright laws are conducive to creativity, and propose that copying can be beneficial for creativity (Raustiala & Sprigman 2012, 7). They further argue that even though copying is a

common event in the fashion industry, and though there are victims to knock-off products, the industry as a whole has continued to thrive and innovate in the face of copying (Kim & Karpova 2010).

Raustiala and Sprigman view copyright protection as restrictive towards innovation, serving to increase the profits of the creator to increase their willingness to continue to create (Kim & Karpova 2010, 167-168). They describe this process as “hostile”, and argue that increased protection would decrease competition, which they claim is a notable source of both economic and cultural importance. The belief that copyright and rules that deter copying will decrease competition, and in turn creativity drives the argument to minimize knockoff protection (Kim & Karpova 2010, 169).

Acknowledging the lack of ethical discord and the encouragement of knockoff fashion to promote competition, Amy Landers proposed justifications towards the intellectual protection of fashion design (Landers 2014, 427-508). Landers approached the field of fashion with distinction between creative design and mass-market product, discriminating between clothes created for commodity and clothes that are capable of conveying meaning (Landers 2014). This distinction identifies apparel with value that transcends utilitarian needs as worthwhile of design protection, and rejects mass-market clothing designed to appeal to a broad market. The paper argues that apparel design with cultural significance that is expressive and not driven solely by customer taste, but rather contributes to cultural conversation deserves intellectual property protection.

Amy Landers proposed an openwork model for fashion protection (Landers 2014). Because fashion design is a highly collaborative process that involves inspiration and influence from multiple parties, Landers proposes that a minimal level of intellectual property protection will still incentivize and stimulate creativity. Rather than focus on copyright protection as a means solely for a company to maintain profits, she states that the focus should instead be on crediting the original author with cultural authority. This approach focuses on the aesthetic creation of the designer, aligning the rationale of design protection for fashion with that of artists in other fields (Landers 2014).

## **INDUSTRY RESPONSE: LEGAL ACTION**

### *United States*

Although United States legislation is limited in comparison to Europe, designers file for and win lawsuits for products protected by patent and trademark law. Lydia Dishman’s October 2015 article outlines the victories of Tory Burch, Christian Louboutin, Hermes, and Belstaff in the United States (Dishman 2015). In 2013, Tory Burch was awarded \$38.9 million in a lawsuit against jewelry designer Lin & J International regarding the trademarked “Isis Cross” design. Christian Louboutin successfully trademarked the red sole of his shoes in a New York federal court after

two years of litigation. The New York firm, Thursday Friday Inc. featured a screen-printed image of the Hermes Birkin bag on a tote bag, and was ordered to terminate production and pull products from the floor. In September 2015, Belstaff was awarded \$42 million in damages from 678 counterfeit websites. These successful legal actions all involved aspects of products that were protected by some form of legislation. When legislation protects design, the designer is able to defend their intellectual property against knockoff manufacturers.

### *European Union*

In the EU, lawsuits emerge for similar reasons, but designers are able to demand compensation for cultural as well as intellectual design protection. Chanel filed a lawsuit in January 2015 against Shop Jeen for trademark infringement and counterfeiting (Zerbo 2015). In addition to filing for their legally-protected designs, Chanel claimed that the means of advertising the infringing products were non-cohesive with that of the Chanel brand, further damaging the company (Zerbo 2015). European brand Adidas has sued both Forever 21 and Sketchers over their designs, arguing that the designs in question are confusingly similar, and will dilute the distinctive quality of Adidas (Weisberg 2015). The nature of these lawsuits allude to the additional layer of design protection representative of the European view of fashion design as a non-functional work that is indicative of the originating source (Schickl 2013).

## **IMPLICATIONS**

The goal of this research was to shed light on the major concerns restricting the implementation of stricter design protection in the United States. Those opposed to design protection legislation claim that monopolistic copyright will stifle creativity in lieu of profits (Raustiala & Sprigman 2012, 168). Parties in support of design legislation, including Tedmond Wong, the author of the game theory model, propose that protection will incentivize designers to create and innovate (Landers 2014). Gaining insight into the creative processes of industry members, the influence of copying and knocking off other retailers, and the power of knockoff legislation as part of the creative process is imperative. Research findings supporting the belief that legislation will incentivize creative design could serve as ground on which to propose more stringent design protection legislation in the United States.

Fashion retailers in the United States are denied legal protection to their designs due to the functionality of clothing as well as the potential monopolization of the fashion industry. Congress hesitates to enforce design protection that would decrease creativity and limit an industry that provides a necessary function for consumers. Evidence of the positive effects of the proposed legislation on creative

design can increase positive public opinion towards design protection, further incentivizing the creation of fashion design.

### **RECOMMENDED FUTURE RESEARCH**

It is our viewpoint that an understanding of the motivations of apparel manufacturers to copy the work of others rather than apply their own creativity to a design. During Congressional hearings, apparel industry executives testified as to the harms of design piracy. Others argued that the limited protection afforded through the court system improves or allows for creativity. What motivates the act of design piracy? Is it purely a profit-influenced decision? Following trends in fashion is important. Design variations are one thing—knockoffs and counterfeits are another. Has the pressure to reduce lead times and reduce costs led to this problem?

Research is needed to gain information regarding both attitudes and actions in the US apparel industry, including the knocking off of other retailer's designs and the motivational factors behind knocking off products. For Congress to make informed decisions leading to a balance of protection vs. freedom, they need to understand the other side of the industry. Gaining information regarding product development team's creative inspiration techniques, owners, designers, and product developers' attitudes towards knocking off apparel goods, and their experiences regarding knockoff legislation will provide insight to the problem and hopefully lead to solutions that benefit the industry.

It is important to understand the influence of design legislation on designers and apparel manufacturers at all levels of the industry. From where does a product developer draw inspiration? What resources, both inside and outside of the fashion industry influence the product developer? How would the product development and design process change if US protections against design piracy were more stringent (or more lenient)? Wong's IDPPPA game theory states that more stringent design protection will decrease piracy incentive, at the worst motivating retailers to become creative with copies, and at the best motivating retailers to be creative and avoid piracy altogether (Wong 2013).

The implications of this research could serve to clarify the varying opinions surrounding increased design legislation in the United States. In order to see lasting change in United States design legislation, Congress must be assured that design legislation will increase creativity and manufacturer motivation in the United States. This research can gauge the motivational factors of the knockoff industry, the effect of design legislation, and the relationship between these two on manufacturer motivation, with the hopes of a positive relationship to encourage increased design legislation in the United States.

## REFERENCES

- Appel, Gil, Libai, Barak, and Muller, Eitan. "The Short and Long-term Impacts of Fashion Knockoffs on Original Items." Marketing Science Institute, 2013. Accessed March 23, 2016, <http://www.msi.org/reports/the-short-and-long-term-impacts-of-fashion-knockoffs-on-original-items/>
- Chaudhry, Peggy E., Zimmerman, Alan. *The Economics of Counterfeit Trade: Governments, Consumers, Pirates and Intellectual Property Rights*, Springer Science & Business Media, 2009.
- "Copyright." *Dictionary.com*. Accessed January 8, 2016, <http://dictionary.reference.com/browse/copyright?s=t>.
- "Copyright Law of the United States of America: Title 17 of the United States Code." *Washington, DC: U.S. Copyright office*. December 2011.
- Coscarelli, Alyssa. "Are Mansur Gavriel's new shoes a low-key knockoff?" Last updated September 16, 2015, <http://www.refinery29.com/2015/09/94101/mansur-gavriel-knockoff-maryam-nassir-zadeh-fashion-week-spring-2016#slide>
- "Counterfeit." *Google.com*. Accessed January 8, 2016, <https://www.google.com/search?q=counterfeit>.
- "Countries in the EU and EEA." *Gov.uk*. Last updated July 24th, 2015. <https://www.gov.uk/eu-eea>.
- "Design protection in Europe." (2015). *Bardehle Pagenberg*. Accessed December 7, 2015, [http://www.bardehle.com/fileadmin/contentdocuments/broschures/Design\\_protection.pdf](http://www.bardehle.com/fileadmin/contentdocuments/broschures/Design_protection.pdf)
- "Design Protection in Europe." *Bardehle Pagenberg*. Last updated July 2015, [http://www.bardehle.com/fileadmin/contentdocuments/broschures/Design\\_protection.pdf](http://www.bardehle.com/fileadmin/contentdocuments/broschures/Design_protection.pdf).
- Dinwoodie, Graeme B. "The Protection of Designs Under U.S. Law," IPR University Center, November 18, 2008. [http://www.iprinfo.com/julkaisut/iprinfo-lehti/lehtiarkisto/2008/IPRinfo\\_4-2008/fi\\_FI/The\\_Protection\\_of\\_Designs\\_under\\_US\\_Law/](http://www.iprinfo.com/julkaisut/iprinfo-lehti/lehtiarkisto/2008/IPRinfo_4-2008/fi_FI/The_Protection_of_Designs_under_US_Law/)
- "Directive 98/71/EC of the European Parliament and of the Council on the Legal Protection of Designs." (October 13, 1998). *Official Journal of the European Communities*. Accessed November 2, 2015 from [http://eur-lex.europa.eu/resource.html?uri=cellar:399f8f58-0b0e-4252-a0a8-8-c8600f55c5e.0008.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:399f8f58-0b0e-4252-a0a8-8-c8600f55c5e.0008.02/DOC_1&format=PDF)
- Dishman, Lydia. "How Stella McCartney, Tory Burch, Hermes are fighting 'cheap knockoffs'" *Fortune.com*. Last updated October 24, 2015, <http://fortune.com/2015/10/24/fashion-copycat-lawsuits/>
- Ellis, Sara R. "Copyrighting couture: An examination of fashion design protection and why the DPPA and IDPPPA are a step towards the solution to counterfeit chic." *Tennessee Law Review*. No. 78 (2011): 163-212. <http://ssrn.com/abstract=1735745>.
- "Facts & Figures" *Europa.eu*. Last updated February 25, 2014, [http://ec.europa.eu/internal\\_market/20years/singlemarket20/facts-figures/what-is-the-single-market\\_en.htm](http://ec.europa.eu/internal_market/20years/singlemarket20/facts-figures/what-is-the-single-market_en.htm).
- "Fast Fashion." *Macmillan Dictionary*. Accessed January 8, 2016, <http://www.macmillandictionary.com/us/dictionary/american/fast-fashion>.
- Fischer, Frindolin. "Design law in the European fashion sector." *WIPO Magazine*. Last updated February 2008, [http://www.wipo.int/wipo\\_magazine/en/2008/01/article\\_0006.html](http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html)



“Four ways to get the truth out of respondents.” *The Social Research Newsletter from Ipsos Mori Scotland* (2012): 1-2. [https://www.ipsos-mori.com/\\_emails/scotland/approach/autumn2012/SRI\\_Scotland\\_Newsletter\\_Four\\_ways\\_to\\_get\\_the\\_truth\\_out\\_of\\_respondents.pdf](https://www.ipsos-mori.com/_emails/scotland/approach/autumn2012/SRI_Scotland_Newsletter_Four_ways_to_get_the_truth_out_of_respondents.pdf)

“Haute Couture.” *Google.com*. Accessed January 8, 2016, <https://www.google.com/search?q=Haute+couture>.

Hocking, John E., Stacks, Don W., and McDermott, Steven T. *Communication Research, Third Edition*. Boston: Pearson, 2003.

“Jeremy Scott & Moschino are being sued for copying.” *Fashion Law & Business*. Last updated August 4, 2015, <http://www.fashionlawbusiness.com/flb/jeremy-scott-moschino-are-being-sued-for-copying>

Kim, Hyejeong and Karpova, Elena. “Consumer attitudes toward fashion counterfeits: Application of the theory of planned behavior.” *Clothing and Textiles Research Journal* 28.2 (2010):79-94. doi: 10.1177/0887302X09332513

“Knockoff.” *Google.com*. Retrieved from <https://www.google.com/search?q=knockoff>.

Landers, Amy. “The anti-economy of fashion: an openwork approach to intellectual property protection.” *Media & Entertainment Law Journal* 22, no. 2 (2014): 427-508. <http://ssrn.com/abstract=2296769> or <http://dx.doi.org/10.2139/ssrn.2296769>

Laugel, Kelsey. “Why retailers like Nasty Gal and Forever 21 get away with knockoffs.” Last modified June 8, 2015, <http://www.amdlawgroup.com/why-retailers-like-nasty-gal-and-forever-21-get-away-with-knockoffs/>

Maloney, Carolyn B. “The Economic Impact of the Fashion Industry.” United States Congress Joint Economic Committee, February 6, 2015. Accessed March 23, 2016, [https://maloney.house.gov/sites/maloney.house.gov/files/documents/The Economic Impact of the Fashion Industry -- JEC report FINAL.pdf](https://maloney.house.gov/sites/maloney.house.gov/files/documents/The_Economic_Impact_of_the_Fashion_Industry_-_JEC_report_FINAL.pdf).

Mendes, Valerie and De la Haye, Amy. *20th Century Fashion*. London: Thames & Hudson. 1999.

Montalvo, Francesca. “Protecting fashion: A comparative analysis of fashion design protection in the U.S. and Europe.” *Cardozo Arts and Entertainment Law Journal*. September 19, 2014. <http://www.cardozoaelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe/>

“Online processing fees.” *UKCCS: The UK Copyright Service*. Accessed January 8, 2016, [http://www.copyrightservice.co.uk/services/price\\_list](http://www.copyrightservice.co.uk/services/price_list)

Palmer, Alexandra. “What is Haute Couture?” Last updated October 2013. <http://fashion-history.lovetoknow.com/fashion-clothing-industry/what-is-haute-couture>.

“Patent.” *Dictionary.com*. Accessed January 8, 2016, <http://dictionary.reference.com/browse/patent>.

Phipps-Rufus, Tania. “Yves Saint Laurent has been accused of copying: Is the role of creative directors changing?” Last updated October 9, 2015, [http://www.huffingtonpost.co.uk/tania-hippusrufus/yves-saint-laurent\\_b\\_8114668.html](http://www.huffingtonpost.co.uk/tania-hippusrufus/yves-saint-laurent_b_8114668.html)

“Protection for Fashion Design (H.R. 5055).” *Washington, DC: U.S. Copyright office*. March 22nd, 2007.

Raustiala, Kal and Sprigman, Christopher. “The Knockoff Economy.” *Oxford University Press*. 2012.

Schickl, Lena. "Protection of industrial design in the United States and in the EU: Different concepts or different labels?"

*The Journal of World Intellectual Property* 16.1-2 (2013): 15-38. doi: 10.1002/jwip.12004.

Skarda, Erin. "All-time 100 Fashion Icons," *TIME Magazine*, April 2, 2012. Accessed March 23, 2016, <http://content.time.com/time/specials/packages/0,28757,2110513,00.html>

Schmidt, R. Designer law: Fashioning a remedy for design piracy.  
*UCLA Law Review*, 30 (1983): 861-880.

Sherman, Lauren. "Mansur Gavriel responds to 'proof' of copying." *Businessoffashion.com*. Last updated September 21, 2015, <http://www.businessoffashion.com/articles/news-analysis/mansur-gavriel-responds-to-proof-of-copying>

"Text of the Trademark Dilution Revision Act of 2006." (September 27th, 2006).  
*Govtrack.us*. Accessed November 23, 2015, <https://www.govtrack.us/congress/bills/109/hr683/text>

"Textiles and Clothing in the EU." European Commission, February 2, 2016.  
[http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/eu/index\\_en.htm](http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/eu/index_en.htm)

"The Economic Impact of Counterfeiting and Piracy," *Organisation for Economic Co-Operation and Development*. 2007. <http://www.oecd.org/sti/38707619.pdf>.

"The History of the European Union" *Europa*. Last updated December 10, 2015,  
[http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm).

Trademan, Mark. *Basic facts about trademarks: Trademarks, patents, and copyrights*. Video file, run time 10:15. Published September 30, 2014.  
[http://helix-1.uspto.gov/player/BasicFacts\\_TrademarksPatentsAndCopyrights\\_508.html](http://helix-1.uspto.gov/player/BasicFacts_TrademarksPatentsAndCopyrights_508.html)

"Trademark." *Cornell University Law School*. Accessed January 8, 2016,  
<https://www.law.cornell.edu/wex/trademark>.

"U.S. Trademark law: Rules of practice and federal statutes." *Washington, DC: Office of Patent Legal Administration*. July 11, 2015.

"United States Code Title 35-Patents, Appendix L: Patent Laws." *Washington, DC: Office of Patent Legal Administration*. October 2015.

Siebert, Valerie. "Luxury fashion label Yves Saint Laurent accused of 'ripping off' a \$23 Forever 21 dress design – and selling its own version for more than 150 times the price." *Dailymail.com*. Last updated September 4, 2015.  
<http://www.dailymail.co.uk/femail/article-3222796/Luxury-fashion-label-Yves-Saint-Laurent-accused-ripping-23-Forever-21-dress-design-selling-version-150-TIMES-price.html>

Weisberg, Brent. "Adidas Portland sues Forever 21 over branding." *Koin.com*. Last updated August 19, 2015, <http://koin.com/2015/08/19/adidas-portland-sues-forever-21-over-branding/>

Wong, Tedmond. (2013). To copy or not to copy, that is the question: The game theory approach to protecting fashion designs. *University of Pennsylvania Law Review*, 160, 1139-1192. Accessed November 7, 2015,  
[http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1055&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1055&context=penn_law_review)

Zerbo, Julie. "Chanel accuses e-retailer of counterfeiting, stealing its "style of doing business." *The Fashion Law*. Last updated January 8, 2015.

