8-1-2017

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The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability

CASSANDRA ELROD

ABSTRACT

This note discusses an unexplored problem at the nexus of fashion and intellectual property law: how "fast fashion" leads to unsustainability of global resources and human rights issues pertaining to overseas manufacturing facilities. This unnecessary chain of events could be avoided if fashion designers were granted more substantial intellectual property rights rather than an overall lack of protection. Instead of turning a blind eye to the consequences of consumer demand and "fast fashion," Congress needs to address these issues head on through legislation that mirrors some of the copyright protections afforded fashion designers overseas.

INTRODUCTION

Each fall women and men alike eagerly anticipate the arrival of the infamous September Vogue. The crisp, glossy pages reveal the newest prints, furs, designs, and other fashion trends and designs spotted on runways across the world. But the new season ends just as quickly as it began, and the once idolized couture designs are out of style. As a consequence of televised award shows, movie premieres, and Fashion Week coverage, designer fashions are repeatedly copied and sold to consumers at discounted prices—a process known as "fast fashion."¹ The

¹ See Annamma Joy et al., Fast Fashion, Sustainability, and the Ethical Appeal of Luxury Brands, 16 FASHION THEORY 273, 273–74 (2012) (discussing the idea of "fast fashion" as a process that mimics luxury fashion trends and then selling similar "low-cost" collections in retail stores).
copied designs are often available at retail stores before the original designer has even begun to sell his clothing on the market. This affordable means of obtaining luxury fashion is possible due to the inadequacy of intellectual property protection granted to the fashion industry. But who actually bears this cost of cheap fashion? While many shoppers view the trend as a convenient and affordable way for younger consumers to obtain the ever-changing trends of couture fashion, the negative consequences of this immediate-gratification clothing system are far-reaching.

Part I of this Note will provide the history behind the fast fashion retail industry. Part II will focus on the various forms of intellectual property protection afforded to the fashion industry. Next, Part III will consider the fast fashion industry’s effect on global sustainability from the perspective of both environmental as well as human rights impacts. In Part IV, this Note will address Congress’ role in the promulgation of intellectual property laws, and how intellectual property protection would substantially curtail the effects of fast fashion. As a solution to this problem, this Note proposes that Congress pass legislation granting greater intellectual property protection to the fashion industry as a means of combating the extreme consequences of fast fashion. Specifically, I offer the idea of mirroring similar intellectual property regimes that already offer this elevated protection as a possible solution.

I. BEHIND THE SCENES OF THE FASHION INDUSTRY

A major source of global business, the fashion and clothing industry is a $1.2 trillion market worldwide. In the United States alone, roughly $250 billion is spent each year on manufacturing and sales. Additionally, the industry provides 1.9 million people with jobs. In an effort to highlight their new designs each season, many high-end designers participate in Fashion Week shows around the world.

The beginnings of what we now know today as “Fashion Week” originated in Paris in the 1850s when Charles Frederick Worth showed...
clients a prepared selection of his designs.\footnote{7} Decades later, many big department stores in New York City started holding their own design shows to promote interest in their fashion lines, mimicking the fashion shows in France.\footnote{8} As a result of World War II and the inability to travel to Paris for fashion inspiration, the first “Press Week” showcase of American designers was held in 1943.\footnote{9} Over the years, this idea turned into an art form that encompassed all facets of the industry (designers, manufacturers, consumers, journalists). Beginning in the 1970s, designers began showcasing their collections and designs twice a year in September and February—which eventually became known as “New York Fashion Week.”\footnote{10}

Today, Fashion Week occurs in New York twice a year as well as in cities such as Berlin, Milan, London, Australia, and Istanbul.\footnote{11} The event draws in numerous celebrities, big-named sponsors including Mercedes-Benz, and numerous designers across the globe. The fashion shows provide a cornucopia of style and trends for those in the fashion industry, those fashion-obsessed, and those fast fashion retailers looking to quickly mimic the catwalk designs and sell them at a much lower price range. Due to increasing technology and social media applications, fashion designs can be seen more easily and readily at all ends of the globe.

\textbf{A. Fast Fashion}

Amidst the growing obsession with couture fashion—and against a backdrop of silence as to intellectual property protections—a new branch of the industry arose known as fast fashion. Consumers flipping through their special edition fashion magazines could now point to a most-adored fashion trend and find a mimicked, cheaper copy in a local retail store—often before the original designer's version even hit stores. The instant gratification mentality of eager consumers leads buyers to want to purchase the latest fashion trends as soon as possible.\footnote{12} As a result, retailers have extended the number of “seasons” in a given year, 7. See Laura Cohen, \textit{Celebrating Style: The History of Fashion Week}, MARIE CLAIRE (Aug. 15, 2014), http://www.marieclaire.com/fashion/a10274/history-of-fashion-week/.
8. See id.
9. Id.
10. Id.
and frequently change an entire store's merchandise to keep up with the cyclical nature of the fashion industry.\textsuperscript{13} For example, the fashion calendar used to consist primarily of two seasons: Spring/Summer and Autumn/Winter. However, as retailers started to update their products more frequently to keep up with fashion trends and demand, they added an additional three to five mid-seasons to the calendar.\textsuperscript{14} Retail stores such as H&M and Forever 21 receive daily shipments of new merchandise in order to perpetuate the feeling that styles are "out of trend" as quickly as they came in.\textsuperscript{15} This process is set up to deliberately make the consumer feel that their clothes are out of style after only the first wear.\textsuperscript{16}

After a designer showcases her seasonal line, fast fashion retailers contact overseas manufacturing companies with plans to mimic the garments—a process that can be done more and more quickly as technology and smart phones improve. Because this practice is legal, lower quality retailers have little incentive to hire designers to create an entirely original line.\textsuperscript{17} Due to lower quality materials, lower design costs, and popularity amongst consumers, these retailers reap large profits each quarter.\textsuperscript{18} Notably, H&M, Zara, and Forever 21 are the most prominent retail players in this arena.\textsuperscript{19} These stores boast a "low quality / high volume" business model in which their merchandise are typically priced much lower than their competitors.\textsuperscript{20}

This cyclical nature of the industry is well represented by the infamous belt scene in the 2006 blockbuster featuring Meryl Streep, The Devil Wears Prada.\textsuperscript{21} In the movie, a young fashion assistant (Andy

\begin{itemize}
\item \textsuperscript{13} For example, Liz Claiborne developed six seasons as opposed to her usual two. Id. at 167.
\item \textsuperscript{14} Id.
\item \textsuperscript{16} As a result, consumers throw away more and more clothing each year, which makes its way into already overflowing landfills, and further adds to the theory that the fashion industry is growing to the detriment of the environment. For a fuller discussion of this consequence, see infra Section III.A.
\item \textsuperscript{17} Amy L. Landers, The Anti-Economy of Fashion; An Openwork Approach toIntellectual Property Protection, 24 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 427, 499–500 (2014) (discussing the legality of cherry-picking the most interesting designs seen on the runway and copying them at a much lower development cost).
\item \textsuperscript{20} Whitehead, supra note 15.
\item \textsuperscript{21} THE DEVIL WEARS PRADA (Fox 2000 Pictures 2006).
\end{itemize}
Sachs) to the editor-in-chief of a high profile, Vogue-esque magazine scoffs at the fashion industry and is completely oblivious to the intricate complexities behind the process. In the below scene, Streep's character is working with assistants to decide between two similar belts for an outfit. Andy sniggers as a result of the conversation because she sees no difference in the belts.

**Miranda Priestly:** Something funny?

**Andy Sachs:** No. No, no. Nothing's . . . .You know, it's just that both those belts look exactly the same to me. You know, I'm still learning about all this stuff and, uh . . .

**Miranda Priestly:** This . . . stuff? Oh. Okay. I see. You think this has nothing to do with you. You go to your closet and you select . . . I don't know . . . that lumpy blue sweater, for instance because you're trying to tell the world that you take yourself too seriously to care about what you put on your back. But what you don't know is that that sweater is not just blue, it's not turquoise. It's not lapis. It's actually cerulean. And you're also blithely unaware of the fact that in 2002, Oscar de la Renta did a collection of cerulean gowns. And then I think it was Yves Saint Laurent . . . wasn't it who showed cerulean military jackets? I think we need a jacket here. And then cerulean quickly showed up in the collections of eight different designers. And then it, uh, filtered down through the department stores and then trickled on down into some tragic Casual Corner where you, no doubt, fished it out of some clearance bin. However, that blue represents millions of dollars and countless jobs and it's sort of comical how you think that you've made a choice that exempts you from the fashion industry when, in fact, you're wearing the sweater that was selected for you by the people in this room from a pile of stuff. 22

This scene eloquently demonstrates the top-down process of copying from high-end fashion designers and then trickling down to lower

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quality retail stores and eventually the clearance bin in order to make room for new merchandise—a process made possible due to the inadequacy of intellectual property rights in the fashion industry realm. Unknown to most, this consumer-driven process, while favored by the younger population, actually has extreme environmental, human rights, and global implications, and this note gives these implications ample discussion.

II. INTELLECTUAL PROPERTY RIGHTS PERTAINING TO THE FASHION INDUSTRY

Before delving into the global ramifications of fast fashion, it is important to discuss the various levels of intellectual property rights afforded to designers. The fashion industry has long received a cold shoulder from the intellectual property sphere of law, with strong arguments for and against certain protections. Despite lobbying attempts made by numerous fashion industry firms, the intellectual property protections given to the industry remain minimal. This, in effect, leaves designers with almost no way to prevent copying and little recourse when their designs are eventually copied. This portion of the note will survey the various forms of intellectual property protections in this industry, highlighting some of the pivotal arguments for and against protection.

A. Patents

The United States Constitution vests the power upon Congress to promote the progress of "[s]cience and the useful [a]rts." As a result, patent law protects new, useful, and nonobvious technologies and inventions. Creators of new designs may seek patent protection to limit the mimicking of designs abundant in the industry. Although, in the fashion industry, obtaining a patent is generally not practical since what is in style changes so frequently and applying for a patent is time


24. U.S. CONST. art. I, § 8, cl. 8 (The full text of the article is: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.").

consuming, expensive, and not necessarily fully protective. If and when designers do opt for the patent protection route, their choices include both design and utility patents.

Design patents, which protect the "ornamental look of a useful item," are generally easier to obtain than utility patents. Typically, a patent attorney prepares and files a patent application with the United States Patent and Trademark Office. The patent office then examines the application for novelty and obviousness—if no issues arise as to either aspect, the patent office issues the patent. Design patents last for a term of fifteen years from the date of grant. While a design patent affords the fashion industry the most protection, obtaining one is still difficult for designers. In order to qualify for this type of patent, the design must be a new invention and must present a "non obvious improvement over prior art." These qualifications are burdensome since many courts have stated that the majority of fashion designs are not substantially different from previous designs and as such are not new inventions.

Utility patents are even harder for fashion designers to obtain. These types of patents are granted for twenty years from the date the application is filed. The purpose of the utility patent is to protect the functional aspects of a product. For example, improvements to the functionalities of brassieres or sunglasses would fall under this type of patent. It is possible to obtain both design and utility protection on an invention if it satisfies both the ornamental appearance and utility requirements.

26. See id. at 250 (discussing the idea that patent applications in the fashion industry might be an inefficient use of time since protection may not be guaranteed at the end of the process due to time limitations).
27. Id.
29. See id.
32. See id.
34. See Mullin, supra note 28.
An example of a company taking out multiple design patents on its clothing involves the yogawear-maker, Lululemon. In recent years the company has taken out thirty-one patents on its yoga attire and then sued its competitors for patent infringement.\textsuperscript{36} One dispute arose when the company sued Haneswear alleging that they had infringed on their patent for a tank top with a built-in sports bra.\textsuperscript{37} The two companies eventually settled out of court. Some in the industry see this as Lululemon attempting to control the market as a “patent troll”\textsuperscript{38} while others see it as a way to encourage innovation since it pushes brands to create rather than copy.\textsuperscript{39}

B. Trademark

Although not applicable to most apparel in the fast fashion industry,\textsuperscript{40} trademark law is still a beneficial form of protection for those wishing to protect the brand from outright counterfeits.\textsuperscript{41} Trademark protections exist to assist consumers in distinguishing products within the marketplace and accurately identifying the source of particular goods.\textsuperscript{42} This type of intellectual property is a beneficial avenue for fashion designers due to the length of the term—which lasts as long as the trademark is used in commerce\textsuperscript{43}— and lack of a

\begin{footnotesize}
\begin{enumerate}
\item[37.] Id.
\item[38.] Patent troll is a term used in the patent world to describe a person or entity that attempts to enforce certain patent rights against infringers beyond the patent’s actual value. See Katelyn Crawford, Lululemon, the Patent Troll of the Fashion Industry?, CREATIVE ARTS ADVOCATE, http://creativeartsadvocate.com/lululemon-the-patent-troll-of-the-fashion-industry/ (last visited Mar. 17, 2017); Sapna Maheshwari, Lululemon Is the Fashion Industry’s Biggest Patent Troll, BUZZFEED (July 22, 2014, 9:00 PM), https://www.buzzfeed.com/sapna/lululemon-patent-troll?utm_term=.adnG5eKrK#.ff2ALZ04W.
\item[39.] Lululemon’s Patent Battles Point to a New, Uncertain Road for Fashion, supra note 36.
\item[40.] See Raustiala & Sprigman, supra note 23, at 1700–01 (explaining that copied designs sold by “fast-fashion” retail stores such as H&M, Zara, and Forever 21 are not “counterfeits” in terms of trademark).
\item[41.] See Alissandra Burack, Comment, Is Fashion an Art Form That Should Be Protected or Merely a Constantly Changing Media Encouraging Replication of Popular Trends?, 17 VILL. SPORTS & ENT. L.J. 605, 612 (2010) (defining “counterfeiting” as “passing products off as other brands”).
\item[42.] See Blackmon, supra note 2, at 123–24 (discussing the three levels of intellectual property rights in the fashion industry and which one affords the best protection).
\item[43.] See How Long Does Patent, Trademark or Copyright Protection Last?, supra note 33.
\end{enumerate}
\end{footnotesize}
registration requirement. This avenue of intellectual property rights offers the most consistent mechanism of protection for companies whose designs incorporate a symbol or logo.

Notable designers who have creatively used trademark law to protect certain design elements include Coach’s “COACH” logo and Yves St. Laurent’s famous “YSL” letters. Using trademark law to protect design elements such as these is a creative way to ensure protection in a field where very little exists. However, this practice leads designers to feature their logos in designs as prominently and frequently as possible which hinders creativity in the industry and receives slight push-back from consumers.

Additionally, trade dress operates as another form of protection within this industry. Trade dress “includes the total look of a product including its packaging, and even includes the design and shape of the product itself.” In order for a product to qualify for trade dress protections, it must be distinctive or acquire a secondary meaning. The most notable example of trade dress protection in fashion is Christian Louboutin’s infamous red-soled heels. However, it is very difficult for a product to obtain the “secondary meaning” status necessary to obtain this protection. Such a determination is only afforded when “in the minds of the public, the primary significance of a [mark or dress] is to identify the source of the product rather than the product itself.”

C. Copyright

A fashion design consists of the “particular manner a garment is

44. See Blackmon, supra note 2, at 123. Unlike design patents, trade dress does not require the product be registered in order to enforce claims against infringers, which makes trade dress an efficient form of protection for designers. Tiffany Mahmood, Note, Design Law in the United States as Compared to the European Community Design System: What Do We Need to Fix?, 24 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 555, 563 (2014).
45. See Landers, supra note 17, at 464–65.
47. See Blackmon, supra note 2, at 125 (explaining that if the trade dress is inherently distinctive, it does not have to acquire a secondary meaning in order to obtain the protection).
Copyright protection for the fashion industry has been an increasingly debated topic in the United States. This form of intellectual property protects "original works of authorship fixed in any tangible medium of expression." Design protection under copyright law exists for pictorial, graphic, or sculptural work subject matter—creating a problem for the fashion industry because the law does not recognize fashion as an art form under that definition. Additionally, protection is not extended to works considered to be mere "useful articles." For example, a picture on a shirt would be eligible for copyright protection but the whole shirt itself would not be because it is considered functional. As a result, many designers do not apply for copyright protections since only a portion of the design would be protected. That being said, some limited protection may be afforded when an individual element of a fashion design is "physically or conceptually separable" from the underlying product. Separability occurs when it "can be identified separately from, and is capable of existing independently of, the utilitarian aspects of the article." Regardless, this protection through the separability analysis does little
to ward off copiers in the retail world, and, as of yet, full intellectual property protections have not been applied to the fashion industry.\(^{58}\)

Regardless, copyright law is still the most logical path for fashion designers to obtain protection for their works. With regard to time constraints, copyright protections can be obtained immediately when the design is produced in a concrete form, rather than waiting for months as is the effect under patent protection.\(^{59}\) As will be discussed later, a quick filing process would greatly hinder the design theft caused by the fast fashion phenomenon.

III. FAST FASHION’S EFFECT ON SUSTAINABILITY

As a result of the cyclical nature of fast fashion and inadequacy of intellectual property protection, the mimicked copies of designer trends are widespread and easily accessible to younger consumers. This overabundance of product then pushes trendsetters to seek out the “next ‘new’ thing,” and fashion designers then come up with new designs.\(^{60}\) This cyclical process has led many scholars to the conclusion that copying in the fashion industry actually leads to innovation and acceleration of creativity in fashion.\(^{61}\) However, this continual need for ever-newer fashion and low costs has led many to also question the environmental impact of the fashion world. To keep consumers happy, retailers routinely mimic designer trends and purchase new stock on a weekly basis in order to replenish the store’s merchandise.\(^{62}\) Bluntly stated, Earth’s natural resources cannot sustain consumers’ increasing demand for cheap, fast fashion.\(^{63}\)

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58. Burack, supra note 41, at 609–14 (discussing copyrights, patents, and trademarks as they pertain to the fashion industry and explaining that US intellectual property law is “woefully incomplete” when it comes to the “soul” of the clothing design due the low level of protection).

59. Elavia, supra note 19, at 19.

60. DEBORAH TUSSEY, COMPLEX COPYRIGHT: MAPPING THE INFORMATION ECOSYSTEM 129 (2012).

61. See id.; see also Landers, supra note 45, at 493–94 (stating that some retailers are now showing anywhere from two to eight collections a year to keep up with demand).

62. See Joy et al., supra note 1, at 275 (discussing the idea of “fast fashion” as a process that mimics luxury fashion trends and then sells similar “low-cost” collections in retail stores).

A. The Environmental Impact

The effects of fast fashion coupled with the demand for “must-haves” created by the fashion magazines each season have a negative impact on the environment. To illustrate, cotton and polyester are two of the most popular and widely used fibers in the manufacturing industry.\textsuperscript{64} According to the USDA, the United States is the largest exporter of cotton in the world.\textsuperscript{65} Due to demand, the crop accounts for nearly a quarter of all pesticides used in the United States each year.\textsuperscript{66} Additionally, the production of cotton significantly relies on capital, vast amounts of water for irrigation, large amounts of land, and ultimately results in pollution to land, water, and air.\textsuperscript{67} As the largest source of fiber on a global scale, these sorts of consequences yield a direct impact on global environmental systems. Particularly, the maintenance of cotton alone accounts for roughly 3 percent of the global water use each year.\textsuperscript{68} Manufacturing a T-shirt and a pair of jeans can require upwards of five thousand gallons of water.\textsuperscript{69} With an already critical balance between water supply and demand, studies show that water demand will exceed the amount supplied by 40 percent by the year 2030.\textsuperscript{70} While it is true that solely high-end fashion designers and fast fashion retailers do not use cotton, it remains that the industry’s use of the crop has a substantial environmental effect due to high demand and quick turnover rates.

Furthermore, due to the rise in production in the fashion industry, the demand for manufactured fibers such as polyester has doubled in


\textsuperscript{65} Cotton & Wool Overview, U.S. DEPT AGRIC., ECON. RES. SERV., https://www.ers.usda.gov/topics/crops/cotton-wool/ (last updated Oct. 6, 2016) (“The United States, which ranks third in production behind India and China, is the leading exporter of cotton. . . . The U.S. cotton industry accounts for more than $21 billion in products and services annually. . . .”).

\textsuperscript{66} Claudio, supra note 64, at A450.

\textsuperscript{67} See Hermes, supra note 63.

\textsuperscript{68} COTTON CONNECT, MORE CROP PER DROP: WATER REPORT ON THE COTTON INDUSTRY 4 (2014).

\textsuperscript{69} See Fast Fashion Is the Second Dirtiest Industry in the World, Next to Big Oil, ECOWATCH (Aug. 17, 2015, 1:51 PM), http://ecowatch.com/2015/08/17/fast-fashion-second-dirtiest-industry/ (discussing the environmental effects of the water-intensive manufacturing of cotton and explaining that while cotton use seems like the smart choice, the fiber is in nearly 40% of the world’s clothing—a number that has great implications on water usage).

\textsuperscript{70} In her online blog post, Jennifer Hermes emphasizes the global environmental impact the fashion industry makes See Hermes, supra note 63.
the last fifteen years. But this demand comes at a high cost, as production of polyester is extremely energy-intensive and involves large amounts of crude oil. The byproducts of this production process—hazardous emissions, volatile monomers and organic compounds, and acidic gases—are then emitted into the wastewater surrounding polyester manufacturing facilities.

The dyeing and treatment of textiles further add to the water pollution problem implicated as a result of fast fashion. Earth Pledge, a nonprofit organization promoting sustainable lifestyles, has estimated that roughly eight thousand different synthetic chemicals are used to turn raw materials into textiles suitable for the fashion industry. Furthermore, the textile dyeing industry alone accounts for 17-20 percent of industrial water pollution seen each year. Untreated wastewater from the dyeing process is often disposed of into nearby rivers—eventually reaching the sea and contaminating global waters. Many of the chemicals used in the fashion textile industry are bioaccumulative—meaning they can build up in aquatic life (which was previously exposed to the chemicals) and pass up the food chain all the way to human consumption. Due to these staggering figures, and under the Resource Conservation and Recovery Act, the Environmental Protection Agency (EPA) considers many textile-manufacturing plants as hazardous waste generators.

In addition to the harms previously discussed, the chemicals used in the fabrics and dyes used by fast fashion companies contain cancer-causing toxins. In Greenpeace's investigatory report entitled Toxic Threads: The Big Fashion Stitch-Up, the group tested 141 samples of

71. See Claudio, supra note 64, at A449–50.
72. See id. at A450.
73. See id.
76. Id.
77. See Fast Fashion Is the Second Dirtiest Industry in the World, Next to Big Oil, supra note 69. For example, the Citarum River in Indonesia is considered one of the most polluted rivers in the world. Hundreds of textile manufacturing plants line the river, causing adverse health effects to the 5 million people and animals living along the river basin. When the textile industry first came to the region, manufacturers often dumped their disposable chemicals into the river—contaminating the water with numerous toxins such as lead, mercury, and nonylphenol. See id.
79. Claudio, supra note 64, at A450.
80. See GREENPEACE INT’L, supra note 78, at 24–25.
clothing from 20 different brands. The results found that every one of the brands sampled contained traces of hazardous toxins—the worst offenders being Calvin Klein, Levi's, and Zara. The chemicals found included nonylphenol ethoxylates, toxic phthalates, and animes found in azo dyes. Many of these chemicals are illegal in the United States, but other countries, such as China, have lax regulations with regard to them. To combat this dangerous phenomenon, Greenpeace called for a Detox Campaign in order for brands to commit to zero discharge of hazardous substances by January 2020. The campaign demanded that designers stop using harmful, toxic chemicals and be more transparent about their manufacturing processes. The initiative stated, “The reality is, there are no ‘environmentally acceptable’ or ‘safe’ levels of use and discharge for inherently hazardous substances, and the sooner companies eliminate all uses, the better the environmental and health outcomes can be.” Notably, H&M, a leader in the fast fashion industry, is one of the retailers that has committed to the zero discharge pledge and has taken steps to implement this procedure. Retailers with little or no reputation for chemical management programs include Esprit and Victoria’s Secret.

The culture behind the fast fashion movement is also contributing to massive amounts of waste each year. Purchases from lower retail stores are often discarded after only being worn once or twice due to the poor quality of workmanship put in to manufacturing the cheap garment. Additionally, the deliberate technique of making the consumer feel that their clothing is out of style after just one wear adds to the amount of waste each year, since the consumer will likely throw the cheap and “out of style” garment away. The disposed items eventually make their way to the already over-crowded landfill sites across the country. As an illustration, the average American generates approximately eighty-two pounds of textile waste each year.

81. Id. at 9.
82. Id. at 14.
83. Id. at 9.
84. See id. at 20.
85. Id. at 5.
86. Id. at 35.
87. Id. at 33.
88. Id.
With new trends running their course faster each season, and retailers freely copying designs in order to keep up with demand, it is clear that the inadequacy of intellectual property rights and the resulting fast fashion phenomenon are not conducive to sustaining global resources. Changes in copyright law specific to the fashion industry would significantly lower the environmental impact of the industry. The current protection allows for direct copying in the design process, which fuels retailer demand and ultimately contributes to the vast amounts of industrial water pollution and waste each year. Specific fashion industry copyright law equipped with an efficient and quick filing process would greatly hinder the design theft caused by fast fashion and reduce the catastrophic environmental impact.

B. The Human Rights Impact

Another consequence of the fast fashion phenomenon is an increase in forced labor. In May 2015, the documentary “The True Cost” was released. Sparked as a result of a factory collapse in Bangladesh, which is discussed later in this note, the film attempts to illustrate the true story behind the clothing industry and where our clothing comes from. The motivation behind the film was to shed light on the vast human and environmental implications the fast fashion industry is producing. “The price of clothing has been decreasing for decades, while the human and environmental costs have grown dramatically.”

Although 97 percent of items purchased in the United States are made overseas, these workers are among the lowest paid in the world and are often exploited for cheap labor.

The film follows a twenty-three-year-old worker in a Bangladeshi garment factory who made the equivalent of ten dollars a month when she first took the job. When workers at the factory gave the owner a

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The list of demands for safer conditions and wages, they were severely beaten. The film portrays the structurally decrepit buildings that house these manufacturing factories as well as the dangerously hot and chemical-ridden environment workers encounter each day. Despite these complaints, the workers were required to enter into the structurally unsound buildings day after day.

Many countries do not have significant labor laws, and those that do not always enforce them. As a result, over-worked laborers are exposed to toxic chemicals and unsafe work conditions each day. As one author has put it, “Less than 10% of what we’re wearing . . . was made in factories where people were paid a living wage and working in safe and legal conditions.” Nike’s 2010 Corporate Responsibility Report alluded to this by stating that the demand for continuously new styles leads to mandatory overtime in many overseas factories. Moreover, when workers are subjected to long working hours without breaks, accidents are more likely to occur—a gloomy reality considering many of these accidents could have been avoided if standard building and workplace regulations were implemented and enforced.

Children are often the victims of these cheap labor exploitation methods. The book Human Trafficking Around the World: Hidden in Plain Sight highlighted one such story of a government-sanctioned work program in China. The program exchanged school-aged children to factories for forced labor, where they were subjected to grueling hours and extremely dangerous factory conditions. Parents of the children stated that they were forced to use identification cards that made the children appear older than they were. Adding to the problem is the clear link between low wages for adult workers and the prevalence of child labor in countries where adult workers do not earn enough wages.

96. Id.
97. Id.
100. STEPHANIE HEPBURN & RITA J. SIMON, HUMAN TRAFFICKING AROUND THE WORLD: HIDDEN IN PLAIN SIGHT (2013) (exploring the effect of forced labor on the fashion industry).
102. See id.
103. Id.
Unfortunately, the media rarely sheds light on the conditions in overseas manufacturing facilities unless tragedy strikes. With poor electrical wiring and insufficient safety measures, such as firefighting equipment or numbers of exits, overseas manufacturing factories are frequently the sites of catastrophic accidents. In 2013, a manufacturing building, known as Rana Plaza, collapsed in Bangladesh, killing more than eleven hundred factory workers who had been inside and injuring at least two thousand more. Calls for reform were made for a brief period afterward. The International Labor Rights Forum, a human rights advocacy group, urged merchants to help pay for safety procedures in approximately forty-five hundred Bangladesh factories. Global interest eventually faded and consumers returned to their previous purchasing behavior. However, a change in copyright law pertaining to the fashion industry would help diminish the human rights violations caused by this fast fashion phenomenon. Specifically, increased protections in this area would decrease both demand and how frequently fast fashion retailers are requesting shipments from overseas manufacturers that exploit human labor in order to provide cheaper goods with a quick turnover rate.

IV. INTELLECTUAL PROPERTY COULD RESHAPE GLOBAL SUSTAINABILITY

While some designers have made minor adjustments in order to minimize their contributions to harmful environments and working conditions, the real champion of this problem needs to be Congress. Some suggest that consumers themselves have the power to break this chain by refusing to purchase merchandise from these fast fashion retailers, but those stating these claims are unrealistic about the

105. Clare O'Connor, These Retailers Involved in Bangladesh Factory Disaster Have Yet to Compensate Victims, FORBES (Apr. 26, 2014, 5:29 PM), http://www.forbes.com/sites/clareoconnor/2014/04/26/these-retailers-involved-in-bangladesh-factory-disaster-have-yet-to-compensate-victims/ (discussing how many victims' families have still not received compensation from the retailers a year after the accident to further highlight the exploitation of cheap labor overseas and lax regulation).
106. Dudley et al., supra note 99.
107. Designer Stella McCartney spoke out to The True Cost film director Andrew Morgan in order to promote awareness in the fashion industry. About, supra note 92. However, some questioned her motives when considering her past collaborations with "fast fashion" brands such as H&M, Gap, and Target. See Stella McCartney: Ethical Fashion, WORDPRESS (Nov. 19, 2012), https://stellamccartneyethicalfashion.wordpress.com.
modern purchasing behavior of young consumers.\footnote{108} As evidenced by the large profit margins experienced by fast fashion retailers,\footnote{109} consumers want more for their money and exhibit a preference of quantity over quality.\footnote{110} As such, Congress is the only entity with the power to drastically change the absolute mess that fast fashion has created on a global scale.

As a permanent solution, I propose that the United States pass legislation that mirrors some of the protections afforded designers overseas and extends intellectual property rights in an attempt to limit the extreme consequences of fast fashion. The European Union has historically granted greater intellectual property protection to the fashion industry than the United States has. In the EU, copyright protection is offered to fashion designs in the form of registered and unregistered designs that are “new” and have “individual character.”\footnote{111} This protection, available through the EU Designs Protection Directive,\footnote{112} provides a unified design rights system that allows for the protection of an entire garment.\footnote{113} Under the directive, a “design” is 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.”\footnote{114} As such, fashion articles are generally encompassed

\footnote{108. See Jeff Grabmeier, The Ugly Consumer: Ridiculing Those Who Shop Ethically, OHIO STATE UNIV. (Jan. 4, 2016), https://news.osu.edu/news/2016/01/04/ugly-consumer/. In a study at Ohio State University 174 students were given a pair of jeans and information regarding the price, wash, and style. Id. They were additionally able to choose whether to receive information on ethical issues related to the jeans, such as whether child labor was involved, or whether the jeans would arrive on time. Id. The study revealed that when given the option, most of the participants chose the information regarding delivery time. Id.}


\footnote{111. Anya Jenkins Ferris, Real Art Calls for Real Legislation: An Argument Against Adoption of the Design Piracy Prohibition Act, 26 CARDOZO ARTS & ENT. L.J. 559, 573 (2008) (discussing why the DPPA should not be passed by Congress to grant greater copyright protection for fashion designs in the United States).}


\footnote{114. Woods & Monroig, supra note 57.}
in the EU directive's wide definition and designers in such countries have an easier time protecting their original work. If similar protections existed in the United States, one of the biggest players in the fast fashion industry, it would severely hinder the global consequences seen today as a result of the pirating of fashion designs.

Throughout the years there have been constant attempts by the fashion industry to protect designs through copyrights, but all have failed. The Innovative Design Protection Act, the most recent attempt, was introduced in 2012.115 This bill proposed extending copyright protection to fashion designs for three years if "they were the result of the designers own creative endeavor" and provided a "unique, distinguishable, non-trivial and non-utilitarian variation over prior designs for similar types of articles."116 Many who opposed the bill did so by falling in line with the "piracy paradox" reasoning. This paradox states "piracy is paradoxically beneficial to the fashion industry in the long run" and as such may explain why copyright protection has not been afforded to the fashion industry.117 The theory suggests that when a low intellectual property environment exists in the fashion industry, copying reduces the status of new designs and therefore consumers quickly demand new innovative designs at a constant rate.118 According to this view, if intellectual property rights were put in place to ban piracy (copying), clothing would not lose its status as quickly, consumer demand would decrease, and designers would ultimately lose incentive to innovate.119

However, just because the fashion industry remains innovative and successful despite a lack of intellectual property protection does not automatically undermine the need to protect this industry. From the outside looking in, the quarterly numbers suggest that the fashion industry is booming regardless of design copies—but those numbers do not represent the full story. When consumers pick up garments at retail stores, most are oblivious as to how that piece of clothing got there, nor do they care. On the environmental side, thousands of gallons of water and numerous toxins were released into the environment as a result of the manufacturing and dyeing process of that article of clothing. With

115. Id.
116. Id.
119. See id.
regard to the human rights perspective, many purchasers remain ignorant of the ramifications of their consumer choices. The demand for quick turnaround and new designs leads retailers to use overseas manufacturing plants known for cheap, exploited labor and lax regulations. As a result, many overseas workers are subjected to extremely dangerous working conditions, with no hope for reform in the foreseeable future.

Had the Innovative Design Protection Act passed, the fast fashion industry—while not being completely derailed—would still have experienced a crucial setback as copycatting of certain designs would be legally prohibited and met with significant fines as a consequence. In effect, the environmental and human rights violations that are occurring today as a result of the industry would be drastically reduced as these fines and legal fees would serve to deter the potential copiers who have earned millions profiting off the fast fashion industry. It is clear that the positives that flow from extending copyright protection outweigh any of the arguments posed by its opponents. Worries over a potential decline in designer creativity or an increase in apparel costs for consumers are second-tier when considered against the sustainability of earth's natural resources and the livelihood of human laborers abroad.

**CONCLUSION**

My argument on why the fashion industry needs intellectual property protection is simple. The analysis should not be focused on whether legislation would severely harm designer innovation or whether it would restrict consumer purchasing power. Instead, intellectual property protection, such as copyright, should be extended to include the fashion industry in order to avoid the domino effect we are seeing on global sustainability and human rights. Inadequate intellectual property protection in fashion designs leads to retailers mimicking styles seen on runways. The consumer purchasing behavior portrayed by the younger generation leads buyers to purchase the newest trends as quickly as possible. Due to demand, retailers seek out the cheapest and most efficient manufacturing facilities, which ultimately lead them overseas. Manufacturing and textile plants in poorer countries are known for exploiting labor and submitting workers to dangerous working conditions. Additionally, this high volume in production due to consumer demand leads to excess amounts of chemicals from textile dyes being dumped into rivers that eventually lead to the ocean.
This excessive and unnecessary chain of events is severely impacting both the global environment and economy. Instead of turning a blind eye to the consequences of "fast fashion," Congress needs to address them through copyright protection similar to that of the European Union. If legislative efforts continue to be ignored, the downhill spiral of toxic pollution and labor exploitation will turn our planet into an unrecognizable environment, and a far cry from what is humanly acceptable.