
DIGITAL FASHION, REAL RIGHTS: CAN VIRTUAL CLOTHING IN THE METAVERSE BE PROTECTED UNDER THE DESIGNS ACT, 2000?

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ABSTRACT

This paper considers whether virtual fashion images designed for use in the metaverse can be protected as a “design” under The Designs Act, 2000. To do so, it carries out a detailed statutory reading of the definitions of “article” (section 2(a)) and “design” (section 2(d)), charting the Indian courts’ recent and rapid evolution culminating in the Calcutta High Court’s 2026 decision in *NEC Corp v Controller of Patents* from a physical, literal and mechanical reading of these provisions to their more purposive, technology neutral counterparts in the context of graphical user interfaces. The paper concludes that such a development provides strong, but not definitive reason to believe that virtual fashion may be enjoying design protection, and identifies the critical conceptual crisis, that is, the complete absence, in a virtual fashion garment, of any tangible, hybrid “article” upon which such design is applied at which existing Indian authority ceases to be persuasive. Drawing on how the interaction between the Designs Act and section 15 of the Copyright Act, 1957, the Supreme Court’s two-way test in *Cryogas Equipment v Inox India*, and the developments in the European Union, the UK and the US, the paper concludes that Indian law currently stands at a midway position: it already protects some digitally assisted or embedded creations, but remains uncertain as to the protection of entirely digital, platform-independent fashion, and would benefit from codified legal certainty, as recently introduced in the EU’s 2024 legal reform.

1. Introduction

Fashion has always been a matter of surfaces of shape, line, colour and ornament applied to a wearable object. The Designs Act, 2000, was designed to protect exactly those surfaces: “Features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article” features that appeal exclusively to the eye¹, that are judged solely by it. This article centred architecture has worked wonderfully for saris, shoes, buttons and bottle shapes for more than a century, because the object to which the design is applied has always been a physical thing that can be manufactured, sold, and worn. But the metaverse throws all those design assumptions out of the window. Digital fashion houses like The Fabricant, DressX and RTFKT sell clothes that exist only in the form of three-dimensional data files; clothes that are rendered on the body of an avatar inside a virtual world, that are worn by no one in the physical sense at all.² In 2022, luxury houses like Gucci, Balenciaga and Dolce & Gabbana held runway shows inside digital platforms like Decentraland and branded as “Metaverse Fashion Week”. And this is not merely a fashionable question, but also relates to doctrine. A registered design under the Act does not constitute a freestanding right in an aesthetic idea; it is a right in features applied to an article, where “article” itself is: any article of manufacture and any substance, artificial, or partly artificial and partly natural.³ And since there is (for present purposes) no manufacture, substance, or separate embodiment of a virtual garment, the file encoding itself is all there is. It is the doctrinal question asked here whether those words in the statute can apply to it. It’s tempting, of course, to apply the same reasons because of which the Indian courts have only begun to deal with the registrability of the graphical user interface (“GUI” which is a related but not quite the same issue), to the issue of virtual clothing. This paper is cautious of this leap. In every litigation case to date, a graphical user interface is a visual set of images that appear on a tangible device; and the article to which the design is being applied is that device, and the GUI is essentially an internal, animate adornment.⁴ An article of digital clothing worn by an avatar within a persistent virtual world, however, has no physical carrier at all that a consumer can buy, wear and touch. The two problems are similar but not

¹ The Designs Act 2000, s 2(d).

² See, e.g., *Trademarks in the Metaverse*, WIPO Mag., Jan. 2022, https://www.wipo.int/wipo_magazine/en/2022/01/article_0006.html (last visited Sept. 2026) (discussing the description of digital-only garments offered by The Fabricant and DressX, NFT-based wearables offered by RTFKT following its acquisition by Nike Inc., and the wider phenomenon of branded virtual goods, of which digital fashion is a species). The description of specific platforms in this paragraph reflects widely reported industry practice rather than a single authoritative source and is offered only as background context.

³ *Id.* § 2(a).

⁴ See *infra* Part IV (discussing *UST Global (Singapore) Pte. Ltd. v. Controller of Patents & Designs*, AID No. 2 of 2019 (Cal. HC Mar. 20, 2023) and *NEC Corp. v. Controller of Patents, Designs & Trademarks* (Cal. HC 2026)).

interchangeable, and the paper treats the GUI case law more as a persuasive analogy than as a non-negotiable formula.

1.1 Research Problem and Research Question

The Design Act, 2000 was also drafted in an analogue register, when “article” obviously was a manufactured tangible product. Digital fashion was not a commercial class when the statute or Rules were enacted in 2001. The doctrinal issue is at the point of encounter: an article-based, industrial-process-oriented statute encountering an object class- purely virtual, computer-generated digital fashion- that perhaps might not sit comfortably in its inherited lexicon. The core research question at hand is whether digital fashion objects, such as the wearing of digital art forms that can be used in the metaverse will be eligible to be protectable as a “design” under The Designs Act, 2000, and if not, what statutory or doctrinal reform is needed.

1.2 Objectives

The paper will therefore:

- (a) undertake a close textual analysis of sections 2(a) and 2(d) of The Designs Act, 2000 as it relates to purely digital objects;
- (b) assess the Indian judicial trend of the related question of graphical user interfaces, and to what extent that reasoning extends to virtual garments;
- (c) highlight the interface between The Designs Act and The Copyright Act, 1957 as pertains to the digital fashion assets;
- (d) compare the international and comparative legal scenery, especially the new EU design law reform, UK and US practices, and the Locarno Classification; and
- (e) trace with precision the statutory or doctrinal cause of the legal gap and suggest appropriate reform.

1.3 Methodology and Scope

The paper employs a doctrinal close reading of the text of the statute, the Rules and relevant case law, supplemented by comparative legal analysis of the United States, United Kingdom and European Union design systems and referencing to related international instruments

(TRIPS, Paris Convention, Locarno Agreement and Hague System). It does not carry out empirical research into the design industry or attempt to resolve questions of contract, contract based blockchain property, or online consumer protection that predominate incidental to NFT based fashion; these are only mentioned where necessary to exemplify the IP trait of the underlying digital asset. Indian design law is the focus and copyright and trademark law are mentioned only to place design law in the IPR protection ecology.

2. Understanding Digital Fashion and the Metaverse

Here, we use the term “metaverse”, without technical correctness and with legal caution, to refer to a persistent, shared, three-dimensional, online universe where users are represented by avatars and can communicate with one another as well as interact with the virtual environment.⁵ And we use “digital fashion” to mean digital clothing, accessories and skins for avatars in the metaverse which are created with 3D design software (such as CLO3D or Blender) or generative algorithms, and offered as either in platform-native in-game assets or as files for use on compatible platforms, or as nonfungible tokens (“NFTs”) recorded on a blockchain.⁶ One digital garment may be represented on multiple different layers of copyright and intellectual property protection: a 3D mesh and texture files (a digital artwork or technical drawing); a rendering engine to create the appearance of the item on a three-dimensional avatar; the avatar; the platform client software that renders avatars; and, where used, the NFT token that tracks its chain of custody without containing the artwork.

There are two things I need to clarify before any design law analysis can even begin, because the standard industry commentary uses the same words to refer to various different objects. First, it is an important fact of the NFT market that an NFT is not any copyright or design: ownership of a token does not mean ownership of the intellectual property in the corresponding image, mesh or code unless and until it is assigned or licensed.⁷

Second, digital fashion is not one legal object: a 3D downloadable file which can be tried on to allow a person to see how a garment would fit them is different from platform native

⁵ The term lacks a single settled legal definition; this paper deliberately avoids relying on any one definition for legal consequence and uses the term descriptively only.

⁶ See generally *Trademarks in the Metaverse*, *supra* note 2.

⁷ This distinction is now widely accepted in IP commentary; see, in the trademark context, *Trademarks in the Metaverse*, *supra* note 2 (noting that brand owners have had to file fresh applications and licences specifically for virtual goods because rights in physical-goods marks and NFT-referenced content do not automatically overlap).

cosmetic skins within a closed virtual economy, which is different again from a photorealistic AI rendered sketch of a garment with no mesh to wear at all. The following analysis under the Designs Act will be different for each of these objects, and I note those differences where they are relevant, mainly in Part 4.

The key legal point constantly repeated throughout this article is that ownership of a digital asset (whether it be an asset consisting of a downloaded file or a blockchain token) is not the same issue as ownership of intellectual property rights in the underlying creative work, and none of that is necessarily the same issue as whether the work in question is a “design” which can be registered as such under The Designs Act, 2000. Separating these three issues is a necessary starting point for understanding the other points made below.

3. What is “Design” under The Designs Act, 2000?

The definition of “design” in section 2(d) includes only the “features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye”.⁸

It explicitly excludes “any mode or principle of construction or anything which is in substance a mere mechanical device”, trademarks, property marks and artistic works as defined in clause (c) of section 2 of the Copyright Act, 1957.

Thus, the word “only” appears to be used as a legislative signal of the narrow ambit of “design”. Dividing the definition into its constituent parts, there are at least eight distinct requirements, which a claimant must meet in the aggregate:

- (i) articles of subject matter must be made up of lines or of colours or the shape, contour or configuration of lines or of colours;
- (ii) these must be applied to articles;
- (iii) the articles must be conceived of in two, three or both dimensions;

⁸ The Designs Act, 2000, § 2(d).

- (iv) the application must occur by means of, or through the agency of, one or other industrial process, whether by hand, by machinery or by chemical reaction;
- (v) the process may be used solely or conjointly with others;
- (vi) the appeal must be to the eye in the finished article;
- (vii) the appeal must be to the eye alone; and
- (viii) the subject matter must not be brought within the statutory exclusions, as discussed below.

A virtual garment is likely to meet all of the above requirements of shape, configuration and colour, in either two or three dimensions, but not necessarily the process or application (ii and iv) requirement, which will be discussed in Part 4, 5 and 6.

As regards the industrial process issue, the traditional view has been that in using the phrase “manual, mechanical or chemical”, the legislature was “obviously referring to physical manufacture”. But this assumption has now been derailed by the Calcutta High Court. In the recent 2026 batch of appeals which involved graphical user interfaces, the Court has maintained that as the statutory enumeration is illustrative only, the word “any” before “industrial process or means” requires “a technology neutral reading which does not restrict the meaning to physical means”.⁹ If this approach is upheld on appeal, and if it travels beyond the GUI scenarios, this would decisively eliminate one of the two major textual barriers to the notion that digitally fabricated garments constitute “designs” (though this doesn’t itself solve the more elusive and arguably more important “article” issue).

4. Is a Virtual Garment an “Article”?

Section 2(a) states that “article” means “any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately”.¹⁰ Plainly, the on its face reading of the definition, reveals its existence on a metaphysical continuum. The phrase “article of manufacture” echoes nineteenth century

⁹ NEC Corp. v. Controller of Patents, Designs & Trademarks (Cal. HC 2026) (Kapur, J.) (*discussed further infra* Part IV.C).

¹⁰ The Designs Act, 2000, § 2(a).

patent and design statute language, issued for an industrial economy of goods; “substance, artificial, or partly artificial and partly natural” echoes the physical register. There is no mention of anything that could exist only in the form of computer readable data.

4.1 The Restrictive Reading

At the most basic level and most historical reading, “article” implies mere physical existence and industrial production. It is not just an argument from silence: the Indian design statute, as it evolved from the Patents and Designs Act, 1911, was deliberately taken to conform to the UK Registered Designs Act, 1949, when “article” in that earlier tradition referred to a manufactured commodity, both sold and tangible.¹¹ For decades, the Design Office consistently applied this very definition to a closely related set of digital objects, graphical user interfaces, repeatedly rejecting GUI and icon applications on the express reasoning that a GUI “does not follow any “industrial” manufacturing process but was created by a software development process” and that it “cannot be treated as a design of any article” because it is only visible with the device switched on.¹² The Design Office’s repeated rejection of Amazon Technologies Inc’s 2011 application for a “graphic user interface for providing supplemental information of a digital work” (for a visual interface for designing a digital map) on the grounds that it was not an article under sections 2(a) and 2(d) typified this narrow conception and was for over a decade the Office’s settled position.¹³

4.2 The Purposive/Expansive Reading

However, a purposive approach illustrates that the legislature did not intend the statutory definition of “article” to cover digital phenomena at all, and that the courts should exercise some restraint before interpreting the silence on a technology that did not even exist in 2000 as an intent by the legislature to exclude that technology. This is the exact kind of statutory construction that is gradually becoming more common in other common law jurisdictions. In the United States, the Federal Circuit, in the realm of design patent law, held that a computergenerated icon displayed on the screen could itself constitute an “article of

¹¹ See Statement of Objects and Reasons, The Designs Act, 2000; see generally P. Narayanan, Law of Copyright and Industrial Designs (4th ed. 2007).

¹² UST Global (Singapore) Pte. Ltd. v. Controller of Patents & Designs, AID No. 2 of 2019 (Cal. HC Mar. 20, 2023) (recording and ultimately rejecting these grounds of the Assistant Controller’s original order).

¹³ Amazon Technologies Inc., Design Application No. 240305 (Design Off. 2011), discussed in Stratjuris Law Partners, Registrability of GUIs in Design Law (Apr. 26, 2024).

manufacture” for purposes of a design patent claim, despite the fact that it did not have its own physical form.¹⁴ Indian courts that have considered GUIs have gone even further, and rejected the notion that “article” must be rooted to an inherently tangible object, finding instead that the Act requires that a design be applied to an article meaning that the article and the design are two separate things, and that a literal one-to-one equation between “article” and tangible hardware would permanently exclude from the statute’s coverage entire categories of visual excellence.¹⁵

4.3 The 2026 Turning Point: NEC Corp v Controller of Patents

The leading recent Indian decision is a batch of orders (February March 2026) of the Calcutta High Court in consolidated appeals, including NEC Corp v Controller of Patents, Designs and Trademarks (Tsunenaga/Linea), TVS Motor Company Limited (Tsunenaga/Linea), and Abiomed Inc (ESD or black/white/Magenta, when device is on) all on refusal of GUI related design applications.¹⁶ The Design Office and the Controller refused these applications (on three recurrent grounds) that, as a GUI is not a “finished article” that can be judged only by eye, it has no “sense of touch”; that GUIs do not originate from an industrial process because they are “software effects”; and, since a device has to be switched on to see a GUI, it can never have the permanence necessary for a registrable design.

Justice Kapur dismissed all three grounds. As to “article”, the Court observed that the Controller’s continued demand that the design be anchored to a physical article was “misconceived”, since the Act directed that the “design” must be applied to an article (and if the visual feature was the design, the thing to which it was applied should be an article) and in any event, a categorical negative would mean GUIs, icons and animations could never be registered and thus the Court would be in conflict with India’s accession to and administration of the Locarno Classification.¹⁷ As to “industrial process”, the Court noted that section 2(d) referred to “any” industrial process and should be read so as to not exclude “any” processes which are electronic rather than mechanical/chemical/manual. As to “permanence”, the Court found that the text of section 2(d) was devoid of any requirement that a design be permanently

¹⁴ *Ex parte Strijland*, 26 U.S.P.Q.2d 1259 (B.P.A.I. 1992); the broader principle that software or a GUI can be an article of manufacture is associated in commentary with the line of authority including *Microsoft Corp. v. Corel Corp.*, and was expressly relied upon by the Calcutta High Court: see NEC Corp., *supra* note 8.

¹⁵ NEC Corp., *supra* note 8.

¹⁶ NEC Corp. v. Controller of Patents, Designs & Trademarks, AID No. 2 of 2019 & connected appeals (Cal. HC Mar. 9, 2026) (order of Kapur, J.).

¹⁷ *Id.*; see also *infra* Part VIII.D (discussing the Locarno Classification).

visible (not accessible to a person except when in use) and many well established registrations would be precluded if “permanence” demanded permanent visibilities.

Of critical importance to this paper, the Court found that the Locarno Classification headings, Class 14-04 (“Screen Displays and Icons”) and Class 32 (“Graphic Symbols and Logos, Surface Patterns, Ornamentation”), do not per se determine registrability (classification being just administrative filing system, and therefore cannot alter section 2(a) and 2(d) tests) but their presence and India being part of the Locarno Agreement reflect a demonstrated legislative and administrative intention to include visual work output of digital creatives in the design system.¹⁸ In addition, the Court pointed to the Supreme Court’s twofold Cryogas Equipment Pvt Ltd v Inox India Ltd approach, that an original artistic work does not lose its eligibility to also be used as a design once applied to an article and achieved through an industrial process, and the lack of settled guidance, to hold that the recognition of a GUI as a registerable design does not amount to double (monopoly) protection¹⁹. The Court remanded the matters for fresh consideration on the merits and urged either legislative clarification or Controller-level guidelines, rather than purporting to lay down a final, comprehensive rule.

4.4 What NEC Corp Institutes and what not- for “Virtual Garments”

NEC Corp is a significant break with a decade of strict Design Office practice and its reasoning on “article” and “industrial process” may be directly applied, by analogy, to any visually portrayed creation, including virtual garments. But certain qualifications should prevent the hasty assumption that virtual clothing can be considered protected.

In every GUI case decided so far, the article (if we can call it that) is displayed on a physical device, a smart phone, a car dashboard, a screen that is the console of a piece of medical equipment. The “article” is not devoid of all physical content; the visible thing is the solid, finished, article on which the GUI appears and of which the GUI forms part. The GUI forms a feature or part of that finished article, just as the jack-in-the-box’s mechanism was previously considered part of the overall finished article, even though it would not be visible from outside

¹⁸ NEC Corp., *supra* note 8.

¹⁹ Cryogas Equip. (P) Ltd. v. Inox India Ltd., 2025 INSC 483 (Surya Kant & N. Kotiswar Singh, JJ.) (*discussed infra* Part VII.A).

of it.²⁰ When there is no physical article, but only a virtual one a garment displayed on an avatar in a metaverse platform there is no physical object acquired by the consumer, and nothing to attach the virtual (graphic) “design” onto. Similarly, there is no physical article onto which

“design” has been applied in the abstract, when one considers whether the “article” and the “design” are “conceptually distinct” in accordance with NEC Corp The NEC Corp Argument that the two concepts are conceptually distinct does not help to reason that the document, furniture, or any other article is, in some way, actually present in the item that the consumer will acquire. What article might actually be in the other items? That the IT device with which a user is equipped might be the article in question helps us no more in the VR garment scenario than in the GUI scenarios; in the latter, the device was readily available as the actual article on which the GUI was shown.

Second, it is a ruling by a Single Judge of Calcutta HC on remand from Design Office refusal and is not binding on other High Courts, an appeal, a judicial divergence from another coordinate or larger bench, or legislated roadmap each could change the scene substantially before we approach settled law.

Third, and above all, the order itself recognises “lack of clarity” in digital designs and calls upon the legislature and Controller to find a way out, an unstated judicial acceptance that the present statutory language, with its real interpretive space, may be narrowed but cannot be closed off.

The most reasonable and cautious conclusion, and the conclusion the paper takes, is that NEC Corp establishes that India’s courts are now prepared to interpret “article” and “industrial process” purposively and without bias to technology where a visual feature of digital content is applied to some recognized article (physical or perhaps, digital) but what NEC Corp does not establish, and it has not been tested on the more difficult question of a garment that exists only in the virtual world and not in front of any article at all. That question is next.

4.5 The Avatar, the Platform and the Absent Article

If the virtual item is not “applied” to a physical device, then there are four potential “articles”

²⁰ See *Gramophone Co. v. Magazine Holder Co.* (1910) 27 RPC 152 (HL) (relying on the Calcutta High Court’s reliance on this authority, as noted in *S.S. Rana & Co., GUI Registration in India – Calcutta High Court* (Sept. 27, 2023)).

which can be canvassed: the actual virtual article (the garment file); the avatar; the entire software platform; or the physical device used by the end user (their headset, phone or monitor). There is no easy fit here. The garment file cannot be the article to which the design is applied because the file is the design (or, more precisely, the drawing/representation of the design)- a thing cannot, without circularity, be applied to itself. The avatar is a standing, but purely virtual, depiction of the thing with no physical presence or other separate status as a manufactured good other than that created by the code of the platform; there is little clear authority in Indian cases or any Indian Court to treat an avatar as an “article” (a step required in this route) and, in any event, this would move the courts far beyond previous Indian doctrine, since even NEC Corp retained the physical device in the analytical frame. The platform’s software is arguably more akin to a “computer programme”, but this raises another exclusionary problem discussed further in Part 5. It remains to be seen whether the end user’s device can be reckoned as the other possible article, but this appears to be a stretch: the garment is not applied to the device per se in the sense of being affixed or attached to it in a way that would bring the design law into play, the only thing that happens is that the design is displayed to the user among many thousands of other images just as the screen is displaying a photograph without that photograph being a design applied to the screen.

From this assessment, it appears that the most defensible current position on Indian law is the following- partial protection, with some digitally assisted or platform embedded fashion features protectable but purely virtual, platform independent garments left doctrinally uncertain, subject to a good case on virtual clothing.

5. Handling Design, Digital Embodiment and the Exclusion of the Computer Programme

5.1 Is “Applied to an Article” Implies Physicality?

The phrase “applied to any article” in section 2(d) is subject to the requirement that the “applied” feature be “applied”. Printing onto fabric, carving a shape into plastic and etching a design onto metal have all traditionally been described by the word “applied” and we are dealing here with a different category of applied thing, namely a rendering of a garment mesh on a computer screen. When you apply a rendered garment mesh to an avatar you do not press it down or stick it on like a sticker, you generate pixel by pixel an image of that garment and send the image to the computer’s display.

Since a rendered garment can be drawn and erased without any physical residue, and copied without losing any information, there is a question whether this computation can be construed as the “application” of the garment in the terms used in section 2(d).

The decision in the NEC court that for the purposes of the “hydraulic press” industry there was no distinction between physical and computational application argues in favour of holding that in this context it is the application by mechanical means in the physical world that matters; the difficulty is that NEC Corp was still dealing with a physical article.

5.2 The Computer Programme Exclusion, Properly Confined

Unlike, say, the Patents Act, 1970²¹, the Designs Act itself includes no express, stand-alone exclusion, for “computer programmes”. One has to derive the so called “practical exclusion” from the combination of the “industrial process” test (as the restrictive interpretation requires it), coupled with the Design Office’s long standing holding that all creations of “software development processing” rather than “industrial manufacturing” are outside the scope of s 2(d).²² As argued in this paper, adopting the approach indicated by the Design Office’s drafting instructions for this paper, the fact that a virtual garment is generated by (say) 3D modelling software does not mean that the garment itself is a computer programme, any more than the fact that a photograph is Photoshopped onto a model does not mean that the resulting image itself is a programme, or that a printed textile pattern has been by means of computer assisted design in a real mill. The programme is the means, not the end; the garment mesh, texture map and visual output are their own. NEC Corp’s disallowing the programme under the ground of “software development processing” effectively confirms what the distinction we have been exploring means in practice.²³

A more challenging form of the same issue involves dynamic, interactive digital fashion, that is, a garment that changes colour according to the avatar’s movement, or that responds to a game event occurring on the platform. In these cases, the visual result is truly indistinguishable from the code underlying it, and more importantly, the boundary between “a design generated by a computer programme” and “a computer programme which happens to create a visual

²¹ Cf. The Patents Act, 1970, § 3(k), No. 39, Acts of Parliament, 1970 (India) (excluding “a computer programme per se” from patentable subject matter—a provision often invoked by analogy in design-law discourse, though it is not itself part of the Designs Act).

²² See Design Office’s stated ground of refusal recorded in UST Global, *supra* note 12.

²³ NEC Corp., *supra* note 8.

appearance” is blurred to the extent that it is much harder to delineate.

As explained in Part 8.3 below, the 2024 EU reform to the design regime preserves this line by specifically extending the product definition to include “movement, transition or any other form of animation” without extending protection to computer programmes.²⁴ This conceptually neat way of protecting animated visual appearances while excluding the underlying code is something that Indian law has yet to grapple with explicitly, although NEC Corp’s analysis appears to take us there.

5.3 Rendering as “Application”: A Provisional View

All things considered, my tentative conclusion for the moment in this paper is that a static digital garment mesh, purely as a 3 dimensional visual design, can theoretically meet the “shape, configuration... Judged solely by the eye” limb of section 2(d), and that the problem imposed by the industrial process, following NEC Corp, is no longer a barrier to registration. The problem which still remains genuinely insoluble, however, is the article requirement examined in Part 4.5: a design must be applied to an article, and Indian law has yet to explain what that article might be when the “article” is a wholly virtual avatar and not a physical object.

6. Copyright, Trademark and the Protection Gap

6.1 The Copyright Act, 1957: Artistic Works and Section 15

Per section 2(d) of the Copyright Act, 1957, “artistic work” refers to “a painting, a sculpture, a drawing (including a diagram, map, chart or plan), a engraving or a photograph, whether or not any such work possesses artistic quality”, “a work of architecture” and “any other work of artistic craftsmanship”.²⁵

Copyright automatically subsists in original artistic works (section 13) and gives the author exclusive rights (section 14), including the right to authorise reproduction of the work in any material form (for artistic works). Prima facie, the avatar of a digital garment, as a work of art made by an identifiable human (or human AI), captured in a digital file, falls within this

²⁴ Regulation 2024/2822, of the European Parliament and of the Council of 23 October 2024 on Community Designs, art. 3(1), 2024 O.J. (L); Directive 2024/2823, of the European Parliament and of the Council of 23 October 2024 on the Legal Protection of Designs (Recast), art. 2(3)–(4), 2024 O.J. (L).

²⁵ The Copyright Act, 1957, § 2(c), No. 14, Acts of Parliament, 1957 (India).

category.²⁶

The key complication is section 15 of the Copyright Act, which deals with how to delineate the boundary between copyright and design protection. Section 15(1) says copyright shall not subsist in any design registered under the Designs Act, 2000; and 15(2) says copyright shall cease to subsist in any design capable of registration under the Designs Act, 2000 if any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or with his licence, by any other person.²⁷

The Division Bench of the Delhi High Court in *Microfibres Inc v Girdhar & Co* explained the policy in its concluding observations: “the mischief section 15 addresses is not copying as such, but a design proprietor's attempt to secure the far longer copyright term (the author's life plus sixty years) for what is, in substance, an industrially-exploited design that Parliament intended to receive only the shorter ten-plus-five-year design term, subject to registration formalities and Registry scrutiny.”²⁸

Furthermore, as regards virtual fashion in section 15(2), it asks the question to what extent does “industrial process” cover the high volume digital copying of a garment file through thousands of avatars on a metaverse platform’s server?

If “industrial process” is adopted in the Designs Act in the NEC Corp sense (technologically neutral and not limited to physical manufacture) into the similar phrase in section 15(2) of the Copyright Act and there’s no reason of statutory construction to do otherwise, since both sections use similar language to address the copyright/design divide then a computer-generated garment viewable through many avatars even though it could be “capable of being registered” as a design but hasn’t been registered might suddenly forfeit copyright, just as a mass produced physical textile pattern would. Both copyright and designs can suffer a productive design protection gap if intellectual property law in virtual fashion, like in physical fashion, can be gamed by high volume copying.²⁹

²⁶ *Id.* §§ 13, 14.

²⁷ *Id.* § 15(1)– (2).

²⁸ *Microfibres Inc. v. Girdhar & Co.*, 2009 (40) PTC 519 (Del.) (DB) (affirming and refining the reasoning in *Microfibres Inc. v. Girdhar & Co.*, 2006 (32) PTC 157 (Del.) (Single Judge)).

²⁹ *Rajesh Masrani v. Tahiliani Design (P) Ltd.*, AIR 2009 Del. 44 (applying the *Microfibres* framework to a fashion designer’s garment prints).

6.2 The Supreme Court's Test in Cryogas on the Two Requirements for Valid Transfer of Property Under the Act

The Supreme Court's most recent authoritative pronouncement on the contrast between copyright and design protection was delivered in the case of Cryogas Equipment Pvt Ltd v Inox

India Ltd³⁰, which concerned proprietary engineering drawings of LNG semi-trailers. The Court found that in a section 15(2) enquiry, it was not appropriate to adopt a thinking process which assumes that if a work is not an "artistic work", it is necessarily eligible for design protection or vice versa. Instead, the Court provided a "two test" paradigm, whether, (a) the work is a purely artistic work or an artistic work and limited to its use in the industrial art to produce a design; and

(b) the dominant use of the article is the utilitarian or the aesthetic.³¹

Now, if we apply the Cryogas approach to digital fashion, then a key focal point becomes the purpose of the digital garment: a designed (created and marketed) as a wearable "functional" asset for avatars is much closer to the type of "design" category envisaged by the Cryogas test, than, for example, a purely narrative or illustrative work of digital art with no application to any wearable object.

6.3 Trademark, Trade Dress and Passing Off

Trademark and passing off should be also brought into line with design law because owners of brands entering the metaverse are often seeking overlapping rights. The five judge bench of the Delhi High Court in Carlsberg Breweries A/S v Som Distilleries and Breweries Ltd settled a procedural issue that a single composite suit may combine infringement of a valid registration for a design, with a claim for passing off against the same defendant, thus making enforcement easier where a fashion house enjoys both a registered design and goodwill in the shape of a garment.³² The subsequent Crocs Inc USA litigation showed the opposite tension: a single judge first decided that a shape protected by registration as a registered design cannot be asserted as an unregistered trademark/ trade dress for passing off purposes without further

³⁰ Cryogas Equipment (P) Ltd v Inox India Ltd, 2025 INSC 483.

³¹ *Id.*, as summarized in *Two-Pronged Approach to Address Conundrum by Section 15(2) Copyright Act*, Verdictum (Apr. 15, 2025).

³² Carlsberg Breweries A/S v. Som Distilleries & Breweries Ltd., AIR 2019 Del. 23 (FB) (5-judge bench) (overruling *Mohan Lal v. Sona Paint & Hardwares*, 2013 (55) PTC 61 (Del.) (FB)).

evidence of distinctiveness, but the later Division Bench restored Crocs suits, concluding that registration under the Designs Act does not disqualify a common law claim for passing off after secondary meaning accrues to the shape as a source identifier.³³

The issue for virtual fashion would be relevant because a digital asset's shape could, for the same shape, be registered as a design, asserted as a trade dress, and separately registered as a trademark in the class "downloadable virtual goods" or "virtual clothing" (the classification increasingly invoked in trademark filings worldwide for the metaverse).³⁴

The design law operates in this space narrower and more particular than these broad rights: it protects only shape, seen by the eye, for a non-renewable term, without the same extendible duration as trademark rights or the different requirements of copyright, the paper's central question being whether that specific, article-bound protection extends to virtual clothing, is not answered by, and should not be conflated with, the availability of copyright or trade mark protection for the same asset.

7. The Indian Judicial Perspective towards Protection of Designs: Synthesis

Synthesising the case law mentioned above, I identified four intelligible claims about the doctrinal trend in Indian design law, which I can state (subject to exceptions) as follows:

- (1) the Court has consistently underlined that the purpose of registering designs to remunerate the labour and research spent in formulating a new and non-obvious visual design, and that novelty exists on a worldwide scale;³⁵
- (2) the copyright/design boundary is genuinely porous but is now governed by the refined, purpose-oriented two-pronged test in *Cryogas*, superseding earlier mechanical readings of *Microfibres* that risked treating every industrially-exploited artistic work as automatically excluded from copyright;³⁶

³³ *Crocs Inc. USA v. Aqualite India Ltd.*, (2019) 78 PTC 1 (Del.) (Single Judge), *rev'd in part and suits restored*, *Crocs Inc. USA v. Bata India Ltd.*, CS(COMM) connected appeals (Del. HC Div. Bench 2025), *cert. denied*, Supreme Court of India (Nov. 2025).

³⁴ See *Trademarks in the Metaverse*, *supra* note 2 (describing the emerging practice of filing for virtual goods under conventional international trademark classifications).

³⁵ *Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd.*, (2008) 10 SCC 657.

³⁶ *Cryogas Equip.*, *supra* note 19; *Microfibres Inc.*, *supra* note 28.

(3) the Indian courts have, as late as 2017, held that by now, there's no copyright in a design, which is indeed registerable (but not registered, yet) under The Designs Act, once the registration threshold in section 15(2) is crossed, which case involves a technical drawing for a three dimensional industrial artefact, directly analogous to 2D digital artwork for a 3D avatar;³⁷

(4) and the most significant point for this paper, in terms of potential biases towards platform native virtual garments, judges' treatment of the "article" and "industrial process" requirements, has shifted in just three years, from a rigid literalism that failed to grasp why a device embedded GUI was non-registrable, via the 2019 UST Global remand, to a more flexible purposive, technologically neutral reading in NEC Corp, 2026, a trend that, if allowed to continue, and not reversed by the Court of Appeal, appears to be an extremely incentivising trend for digital fashion until the question is thrown open on a fact pattern which involves a platform native virtual garment, rather than an artefact embedded within a GUI.

Equally valuable is the noting what the case law has not established. No Indian authority has held that a solely virtual piece of clothing worn by an avatar without any physical device is a "design" to which it is applied on an "article" within the scope of section 2(a) and 2(d). The analogous GUI cases which continue to prefer a physical device as the article mark the point where extrapolation into doctrine must pause for honest reflection of a lacuna, as explained in Part 9.

8. International and Comparative Approaches

8.1 TRIPS Agreement

Article 25.1 of the TRIPS Agreement obliges WTO Members to "provide for the protection of independently created industrial designs that are new or original", and permits Members to exclude designs "dictated essentially by technical or functional considerations".³⁸ Article 26 requires Members to grant the right to prevent unauthorised making, selling or importing of articles "bearing or embodying" a copy of a protected design for commercial purposes, and

³⁷ Holland Co. LP v. S.P. Indus., CS(COMM) 1419/2016 (Del. HC July 27, 2017).

³⁸ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 25.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

mandates a minimum protection term of ten years.³⁹ TRIPS is technology-neutral on its face: it nowhere requires that an “industrial design” be embodied in a physical article, and nowhere excludes digital or virtual products from its scope. It follows that TRIPS does not compel the restrictive reading of India’s own “article” definition; the restriction, to the extent it exists, is a product of India’s domestic drafting choices in 2000, not of any international obligation. This matters for the reform discussion in Part 10: India retains full TRIPS-compliant latitude to extend “article” to digital objects, exactly as the European Union has now done.

8.2 Paris Convention and the Hague System

There are two sources of protection for industrial designs on an international level: the Paris Convention for the Protection of Industrial Property, which provides conventions of national treatment and priority to other contracting states⁴⁰, and the Hague System for the International Registration of Industrial Designs, administered by the WIPO (the Patent Cooperation Treaty is another convention that offers some protection).⁴¹ The Paris Convention does not define “article” or “industrial design” for each contracting state and leaves that task to national law, whereas the Hague System is a filing and administrative system to which a single international filing can be assigned to a number of Contracting Parties; again, the destination states decide whether or not an image is a genuine design in each case (design protection in India would be governed by Indian law). India is currently not part of the Hague Agreement, but the Hague System can usefully be compared with Indian practice for filings for digital designs, most Hague members now accept digital and animated images (including the EU).

8.3 The Locarno Classification & India’s 2021 Accession

The Locarno Agreement Creating an International Classification for Industrial Designs is an administrative classification scheme with 32 classes and 237 subclasses.⁴² A Locarno Class 1404 (“Screen Displays and Icons”) was added to the Locarno scheme and, following the 2008 amendment, onto India’s Third Schedule to the Designs Rules, 2001; on India’s accession to

³⁹ *Id.* arts. 26.1, 26.3.

⁴⁰ Paris Convention for the Protection of Industrial Property arts. 2, 4, Mar. 20, 1883, *as revised at Stockholm on July 14, 1967*, 21 U.S.T. 1583, 828 U.N.T.S. 305.

⁴¹ *See Hague – The International Design System*, World Intell. Prop. Org., <https://www.wipo.int/en/web/haguesystem> (last visited Sept. 2026); *see generally*, on India’s non-membership, discussions of India’s design filing strategy in comparative IP commentary.

⁴² World Intell. Prop. Org., *International Classification for Industrial Designs (Locarno Classification)* (13th ed. 2021).

the Locarno Agreement on 25 January 2021, the Locarno Class 32 (“Graphic Symbols and Logos, Surface Patterns, Ornamentation”) was incorporated into Indian practice through the Designs (Amendment) Rules, 2021.⁴³ In spite of the Design Office’s decade long refusals practice, and NEC Corp’s own warning that the existence of a class heading does not amount to an indication of registrability (sections 2(a) and 2(d) of the Act), classification is only an internal administrative housekeeping that does not create the notionally eligible class of protectable subject matter.⁴⁴

The key comparative takeaway from that lesson is that even on the administrative level, India signalled and has subsequently begun implementing a policy to balance competing priorities by registering non article but still screen display digital subject matter, an implicit policy preference for GUIs which has been embraced by the courts but not yet legislatively expressed in a specific amendment to “article” itself.

Absent from the current scheme is a Locarno subclass for avatar worn virtual garments, specific to virtual adornment, as is present for screen display and graphic symbol/ornamentation in general.

8.4 European Union: The 2024 Design Law Reform

The most immediate comparative development is the wholesale overhaul of the European Union’s design legislation (Regulation (EU) 2024/2822 on the European Union design (recast of Regulation (EC) 6/2002), and Directive (EU) 2024/2823 recasting the Designs Directive (98/71/EC)) which was published in the Official Journal on 18 November 2024, to be applied from 1 May 2025 with further provisions from 1 July 2026.⁴⁵ It defines “product” as “any industrial or handicraft item, other than computer programs, regardless of whether it is embodied in a physical object or materialises in a non physical form”, and expressly identifies, among illustrative examples of non physical products, graphical user interfaces and “the spatial arrangement of items intended to form an interior or exterior environment.”⁴⁶ The definition of “Design” itself is expanded to include “the movement, transition or any other type of animation of the features of the product”, directly addressing the animated, moving character of a lot of

⁴³ Designs (Amendment) Rules, 2021, r. 10 (India); see *India Formally Adopts Locarno Classification for Designs*, Mondaq (Feb. 2, 2021).

⁴⁴ NEC Corp., *supra* note 8.

⁴⁵ Regulation 2024/2822, *supra* note 24; Directive 2024/2823, *supra* note 24.

⁴⁶ Regulation 2024/2822, *supra* note 24, art. 3(2); Directive 2024/2823, *supra* note 24, art. 2(2) & recitals.

digital fashion.⁴⁷ The European Union Intellectual Property Office has clarified that this reform aims to explicitly include NFT certified virtual items, objects in the metaverse, and digital only designs within the EU design regime while still excluding computer programmes as such.⁴⁸ Importantly for this discussion, the European reform demonstrates three takeaways. Firstly, that such an amendment, which alters the scope of a product concept, appears both administratively achievable and consistent with the TRIPS Agreement through the European Union's analogous jurisdiction of "design law" under the same TRIPS regime as India. Secondly, that such an amendment can be a strong illustrative example of an effective product delineating technique (namely that "computer programs" are not included in the relevant product category, but their visual output is).

This looks similar to the rationale of the argument as defined in Part 5.2 of this analysis- that which is protectable (a garment) differs from that which creates it (the software).

Third, more tentatively, that this reform suggests that the European Union had clearly exhausted the potential for incremental judicial evolution of its existing "product" scope. Despite the EUIPO's attempts to circumvent this by issuing guidelines rather than legislation, a full legislative overhaul was necessary to cover animated, dynamic, and platformindependent virtual goods. This will be an important control data point when contemplating the potential for relying on judicial evolution in India.

8.5 United Kingdom

Having exited the EU's unified design system as part of Brexit, the UK has moved more cautiously on a more progressive path. The UK Intellectual Property Office's Design Practice Notice DPN 01/26 on graphic symbols, GUIs and animated designs, updated and clarified UK practice on what constitutes a graphic symbol or GUI, and whether the GUI can be registered, clarified that such GUIs are subject to the same approach as other types of designs, are eligible for registration; simple, well defined animated images are protected; computer programs themselves remain non registrable; and the output of computer programs, being merely screen

⁴⁷ Regulation 2024/2822, *supra* note 24, art. 3(1).

⁴⁸ *EU Design Reform*, Eur. Union Intell. Prop. Off., <https://www.euipo.europa.eu/en/designs/design-reform-hub> (last visited Sept. 2026).

displays, remains capable of registration.⁴⁹

Experts have noted that the practice-notice is a stopgap and that the United Kingdom's approach, by not piggybacking the entire 2024 legislative package on to the EU's comprehensive legislation, will more than likely require the UK to have its own comprehensive statutory amendment to reach the same higher level of statutory recognition of digital/non physical products as presently exists in the EU, US, and other larger markets⁵⁰. The UK's willingness to use non-legislative pronouncement based on existing statute exemplifies an approach falling between legislative reform in the EU and straight-up case law amendments in India. This is an administrative practice notice based solely on the statutory language in the absence of an amendment to the Registered Designs Act of 1949.

8.6 United States

US design patent practice has long recognized that a computer-generated icon or graphical user interface (GUI) can be a protectible "article of manufacture" under 35 U.S.C. 171, despite its virtual lack of physical form, and Indian courts have explicitly relied on this fact.⁵¹ USPTO, according to its own International Design Forum material, has recently relaxed some of the more strict presentational requirements previously enforced on GUI and icon design patent applications, thus joining the UK and EU reforms in the same direction.⁵² The comparative lesson for India is that the broad digital design coverage in the United States does not come from EU style statutory redefining of "product"; it comes from a much more measured judicial and administrative reconsideration of the broad "article of manufacture" language, an approach closer in generic structure to the path the Calcutta High Court has begun to follow in *NEC Corp* than to the statutorily broad EU approach.

8.7 What India Can Learn: A Synthesis, not a Verdict

The comparison survey does not lend its weight to an easy story: "other jurisdictions have

⁴⁹ U.K. Intell. Prop. Off., Designs Practice Notice DPN 01/26 (effective Apr. 21, 2026); see Abel + Imray, *New Guidance on Protection of Digital Designs in the UK* (May 13, 2026).

⁵⁰ UKIPO *Updates Graphic Symbols, Interfaces and Animated Designs Practice*, GJE (Apr. 23, 2026).

⁵¹ USPTO, *supra* note 14; GJE, *supra* note 50 (noting recent USPTO relaxation of GUI/icon presentational requirements).

⁵² See reliance placed on *Microsoft Corp. v. Corel Corp.* by the Calcutta High Court in *NEC Corp.*, *supra* note 8; see generally USPTO, Presentation Materials for the International Design Forum: Design Protection for New and Emerging Technologies: Current Global Discussions (May 7, 2025) (noting that GUIs and digital designs are "widely protectable" internationally and that jurisdictions including Singapore, Japan, Israel, Canada, China, Korea, the European Union, and Brazil have updated design laws or practices specifically for digital designs).

protection already, and India should copy them”, for no reported Indian court or statutory guidance yet exists on a distinct avatar worn, platform native, non GUI virtual apparel claim line, either.

It does offer a more narrow, more tenable set of lessons: that a purposive, technology neutral construction of “article” (followed by the US and increasingly in India) can extend design covering non physical visual elements without contravening TRIPS or the underlying incentive rationale for visual design in the first place; that legislation based reform (EU) may be preferable to litigation based caution (US) in terms of administrative simplicity, particularly for radically new classes of non physical objects like avatar clothing that do not sit comfortably within the extendable GUI model; and that reform on the Indian front should strike a similar cautious angularity with an exclusionary software base and a protectable output that shares its visual but not its functional attributes.

9. Legal Gaps in the Indian Framework

Merging all the sections from 3 to 8, the specific origins of the legal uncertainty can be identified more analytically than the generic “the law is outdated”.

9.1 The Article Gap

The analysis in section 2(a) that “article” is founded on a physical article and substance has been built on the NEC Corp case that establish that even when the “design” and the identity of the physical article can be disconnected, there is a “physical device” which is the carrier. No Indian authority, however, has held in what article (if any) the “avatar wearing virtual dress” native to the platform is used. This is not just about the old application of principle to new facts; this is about an open doctrinal question that case law has not got to and does not say.

9.2 The Application Gap

Even if an article can be found, “applied to” signifies adhesion or impression in a physical sense, something that the computer rendered experience does not easily encompass. NEC Corp’s technologically neutral interpretation of “industrial process” helps, but the reasoning has not been challenged with a fact scenario where there is no actual manufacturing component at all in the transaction (creation, dissemination, and presentation).

9.3 The Classification Gap

Locarno Class 14-04 for display characters and Class 32 for surface design are intended for screen display, icons, graphic symbols and surface patterns. No current Locarno class, including the subclass now adopted in India, precisely covers three dimensional, avatar embodied, platform agnostic digital garments, a wholly new subgenre of digital design that the international system has not yet managed to grapple with even at the administrative level.

9.4 The Copyright Design Interface Gap

Whether “industrial process” under section 15(2) of the Copyright Act, 1957 extends to digital mass reproduction for transport onto any server of a metaverse platform remains untested. If so (again, per NEC Corp’s reasoning for construction of the similar phrase in the Designs Act), then digital fashion houses that depend on copyright, absent design registration, face the unforeseen consequence of copyright nullity upon the “reproduction” of any of its garments more than fifty times digitally, a number easily and trivially exceeded within minutes on any viable metaverse platform, quite conceivably eliciting doubts of proportionality that the legislature could not have possibly envisioned when setting that number.

9.5 The Novelty and Publication Gap

Under section 4(b), a design is not registrable if “it has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way” prior to the date of application.⁵³ Virtual showing of the garment at an event like Metaverse Fashion Week, or virtual showing in a platform’s marketplace before the formal registration application, presents a tricky issue as to whether such virtual, short term, borderless “publication” or “use” is publication and use for section 4(b), and whether the industrial/international grace period for exhibitions in section 21 intended for physical exhibition halls notified by the Central Government is even theoretically workable for entirely virtual fashion weeks.

9.6 The Infringement Across Platforms Gap

Section 22 criminalises the use of a registered design, or an imitation which is “fraudulent, or

⁵³ The Designs Act, 2000, § 4(b).

an obvious imitation”, “to any article ... for the purpose of sale” without a licence.⁵⁴ In the context of the omnipresent replication of an identical digital garment mesh element and its deployment across many technically different metaverse worlds likely individually regulated as different “articles”, or perhaps with no article at all, given the gap in legal regulation identified above in Part 9.1, it is difficult to understand how anyone design piracy would be identified, measured and curbed, especially in the face of the slightly less limited statutory damages ceiling of fifty thousand rupees under section 22(2), set long before digital virtuality expanded massively.

9.7 Functionality and AI Authorship

Additionally, there are more and more digital garments with interactive or AI generated material (variable/AI/gen animation textures, AI/Gen variation from one render to another). When a garment’s look is not fixed but algorithmically generated anew for each new avatar, the presumption that features have to be “judged solely by the eye” in “the finished article” conflicts with an aesthetics that has no fixed finished state (a functionality adjacent problem that is distinct from, but related to, the functional/aesthetic antinomy that both Indian design jurisprudence and the Cryogas test has long flagged).⁵⁵ And questions of authorship/ownership of AI assisted and AI generated digital garments introduce challenges in both copyright and design claims, that this paper largely eschews but that further complicate any digital fashion house that might want a shot at IP protection.

10. Changing Design Law in India for the Digital Age

Reform suggestions should be scaled to the actual gaps found in Part 9, be technologically practical, and be consistent with India’s existing TRIPS obligations and domestic intellectual property (IP) system. This paper does not suggest change on the basis of technology alone, each suggestion below addresses a particular gap identified above.

10.A Legislative Amendment to “Article” and “Design”

In the wake of the EU (Part 8.4), Parliament could limit the definition of “article” in section 2(a) by clarifying that this includes a computer generated, rendered visual object, or image,

⁵⁴ *Id.* § 22(1).

⁵⁵ Cryogas Equip., *supra* note 19.

that can be “displayed, reproduced or transmitted” whether or not it has an independent physical existence, and without prejudicing the original intention of excluding the actual computer programme or code by continuing to limit section 2(d)’s concept of “design”. This directly addresses the Article (9.1) and Application (9.2) Gaps without upsetting the settled position of excluding software, reflecting how carefully the EU separates “product” (extended to cover non physical items) from “computer program”.

10.B Rules and Classification Amendment

The Designs Rules, 2001, as amended, can create either a special, or entirely new, Locarno subclass for avatar worn digital garments and accessories that’s separate from the screen display and graphic symbol classes so that our administrative machinery catches up to the specific object class this paper is concerned with, rather than shoehorning digital fashion into categories for GUIs or surface patterns more generally. This will remedy the Classification Gap (9.3) at the level the Locarno system itself functions: procedurally, and until any hypothetical international consensus emerges at WIPO’s Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications.

10.C A Digital Design Registration Mechanism

Instead of requiring Digital Fashion to fit the mould of the existing registration route based on physical objects and their representation, the Controller could be enabled, by rule, to accept animate/dynamic digital representations (as the EU and, latterly, the UK Designs Practice Notice DPN 01/26 now allow) in lieu of the still drawings or photographs presently envisaged by the Rules, acknowledging that the garment’s movement and motion on an avatar could be viewed as part of its protectable visual impression.

10.D Clarifying the Copyright Design Interface

In order to deal with the Copyright Design Interface Gap (9.4), the issue should be clarified that: Parliament/courts intend that, for the purposes of s 15(2) Copyright Act 1957, “industrial process” either-

- (i) does not extend to digital/electronic copying across computer networks, allowing digital houses of fashion to make use of copyright without necessitating registration of every design, or

- (ii) if it does, the fifty reproduction figure should be adjusted for digital use (for instance, by referencing commercial exploitation on a significant scale, rather than counting the number of copies) since five hundred digital copies can be taken minutes after the system provides successful access to the website, which obviously did not seem to be meant by Parliament when they set that number.

10.E Publication, Novelty and Virtual Disclosure

Section 21's industrial exhibition grace period to establish if it may, by rule or amending legislation, be amended to enable recognised virtual fashion occasions (which still need to be filed within six months of the event and require notice in writing before the event) to provide designers participating in events like Metaverse Fashion Week with garments that did not destroy the novelty of their subsequent filed design patent, thus creating the Novelty and Publication Gap (9.5).

10.F Infringement Across Platforms

Given the impossibility of attributing any piracy of cross platform digital designs to any specific "article" (Part 9.6), any amendments to section 2(a) ought also be accompanied by renunciation of section 22 to make clear that the digital redeployment of any visual feature of any registered design in any platform, network or environment is piracy, whether it is rebroadcast on the platform in which it was originally registered or exploited, and in light of the relic of a statutory damages ceiling in section 22(2).

10.G AI Generated Fashion and Interoperability

Any reform so made, of course, should be cautiously and separately directed to the narrow question of AI generated or AI assisted garments, in light of the unsettled and evolving Indian law on AI authorship in general (without proposing a particular rule on that narrower question of garment authorship, except to note that whether a garment is a registrable design under sections 2(a) and 2(d) is, in theory, separate to who (or what) authored it, and that improvement of the former should not be held hostage to nebulous debate on the latter). Interoperability of garments across different metaverse platforms- the fact that the same digital garment can be reused and resold (whether authorised or not) on more than one metaverse platform ironically supports the case for reform under 10.F but does not, by itself, call for any change to the

substantive criteria of what is eligible for design registration.

10.H Proportionality: What Reform Should Not Do

But two warnings caution these proposals. First, while a “digital” fashion may extend the scope of design protection, this must not be a license for cumulative protection of the same subject matter, playing the “digitally exploited design” game when copyright and trademark law already play copyright and trademark law; the “discipline” Cryogas imposes for physical goods must apply to digitised goods, with the same consequences, so a digital fashion house cannot claim the longer copyright period for a garment that is, in function and form, an industrially exploited (digital) design.

Second, while digitising design should protect all aesthetically “pleasing” images from registration, the “judged solely by the eye” and “finished article” conditions should require a fixed visual scheme, in line with the functional/aesthetic divide in Cryogas, to avoid design registration becoming just another general image database.

11. Conclusion

Drawing our evidence back towards the three positions articulated at the beginning of this enquiry-

Position 1: The current legal framework is flexible enough to cater for virtual fashion; Position 2: Some digitally-flighted/ platform-infused works are currently eligible for protection whereas solely digital (non-platformed) works are on shakier ground; or

Position 3: The “article” requirement and the “application of a design” requirement are inherently difficult to reconcile with non physical digital fashion without legislative action.

This paper’s evidence privileges Position 2 as the most accurate appraisal of Indian law in 2026. It also reveals a trend towards Position 1, even if this is outpaced by the judiciary and not government.

Post-NEC, this currently remains a matter of more-or-less reasonable certainty in Indian law: digital visual features are registrable (screen display and icon may also warrant registration and are indeed explicitly registered) and, by extension, avatar-worn garments, provided that they

are actually applied to and/or incorporated in a discernible article (of whatever nature) in terms of Industrial-Process and Eye-Appeal, in a non-restrictive mode of technology-neutral interpretation. It can be submitted that an entirely platform-native virtual garment, directly applied to the avatar and not any physical or hybrid device, then by parity of reasoning meets the “article” and “application” requirements for use under parts of sections 2(a) and 2(d) to a graphical user interface (GUI). This argument is based on an analogous application of the “article” and “application” components of especially the GUI decisions to the virtual garment—an argument that in look but not yet in law finds considerable textual opposition in the caselaw, not settled by a direct ruling to date.

The downstream questions of copyright/design overlaps (Part 6.1), cross-platform infringement (Part 9.6) and virtual-event novelty (Part 9.5) emanating from this analysis are immediately apparent but far from certain.

No legislative change but judicial permission would be needed to arrive at a platform-native virtual-garment stable, administratively workable solution similar to the EU 2024 VR and Directive. This involves express statutory recognition that “article” or “product” includes non physical, neither computer hardware nor computer software, digitally-rendered, non physical virtual objects, in a sensible and carefully-delineated fashion excluding the software itself as suggested.

The deeper question that this line of thought raises is that the Designs Act, 2000, designed for an economy of manufactured objects, is being called upon to grapple with a question that its authors never imagined. Indian courts, most clearly reflected in the Calcutta High Court decision of 2026, have indeed displayed a thoughtful and well-meaning willingness to interpret the language of the statute in a purposive way. They have tried to keep physical-world presuppositions out of the protection of a type of commercial visual art that previously did not exist, simply because it now lives behind a screen.

The deeper lesson of this inquiry is that the Designs Act, 2000, drafted for an economy of manufactured objects, is being asked, through litigation it was never designed to anticipate, to answer a question its drafters did not pose. Indian courts, most visibly in the Calcutta High Court’s 2026 intervention, have shown a genuine and welcome willingness to read the statute’s language purposively rather than to let inherited physical-world assumptions foreclose protection for legitimate visual creativity simply because that creativity is now expressed in

code rather than cloth. But judicial purposivism, however well-reasoned, is not a substitute for the legislative clarity that a genuinely new category of protectable subject-matter, virtual fashion in the metaverse, ultimately deserves, both to give digital fashion houses the certainty needed to invest in original design, and to give the courts a settled textual anchor rather than a series of case-by-case extrapolations from a statute that, on this question, was silent by historical accident rather than by legislative design.

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