
PROTECTING FASHION DESIGNS THROUGH COPYRIGHT VS. DESIGN PATENTS: A COMPARATIVE STUDY OF THE US, EU, AND INDIA

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ABSTRACT

The fashion industry is a high-speed world that never seems to sit still in its drive for creativity, novelty and creating endless consumer demand for a new look. Fashions come and go in cycles that operate orders of magnitude faster than the legal institutions intended to protect them. Unlike in, say, pharmaceuticals or technology — fields where products are frequently afforded long lifespans — fashion designs have short lives but echo susceptibility to copying. This article undertakes a comparative analysis of copyright and design law in three key jurisdictions (the United States, European Union [with a focus on Italy] and India) with an admittedly cynical intention of exposing the efficacy of these mechanisms in protecting fashion designs from unauthorized use.

Of these, the EU stands out for its double-sheltering system of registered and unregistered community designs. The system of protection pursues the evanescent nature of fashion, for it provides protections that are instantaneous and temporary and yet permits longer-term monopolies; it is both limber and protective. The United States, by contrast, relies on design patents, a system widely considered ill-fitting to fashion given its expense (each application costs hundreds or thousands of dollars), cumbersome timeline (up to three years) and often little utility in a world where styles can be passé in the space of a season. India is a mix of the two: it has opted for copyright protection for artistic works along with compulsory design registration. Despite its ‘catch all’ appearance, this hybrid model has proved very uncertain and patchy in application.

As a small step in that direction, the following paper asks whether these legal regimes strike the proper balance-encouraging creativity and opening markets while allowing practicable enforcement against pirates-suggesting context-driven answers by examining doctrine, decisional law and facts. A recurrent theme is the balance between providing fast, efficient protection

and facilitating longer-term exclusivity. In the United States and India this void is especially apparent, in which inflexible systems have a hard time synchronizing with fashion's heartbeat. Thus, following the (flexible) model of the EU might enable these legal systems to come closer to a system which affords an answer better tailored to the challenges that are facing today's fashion businesses—one balancing innovation with protection and reasonable competition.

Keywords: Fashion Law, Intellectual Property Rights, Copyright Protection, Design Patents, Community Designs (EU), Comparative Legal Study, Design Protection Mechanisms

1. Introduction

1.1 Background and Context

Fashion is not only a global cultural industry worth over \$2.5 trillion; it is also a field where law and creativity constantly collide. At its heart, fashion is driven by rapid cycles of innovation, but these same cycles expose designers to the constant risk of imitation and unauthorized reproduction. Designs can be copied almost instantly, sometimes hitting shelves before the originals even get a chance.

The real problem is that the law hasn't caught up. Intellectual property protections were designed for slower, steadier industries. Fashion is anything but steady. Trends vanish as quickly as they appear, and designs straddle a tricky line between being useful and being art. Trying to squeeze all of that into rigid legal boxes? It just doesn't fit.

Fast fashion makes this gap even wider. Retail giants like Zara, H&M, and Shein have built entire business models on speed—turning runway looks into mass-market items in record time. For many designers, this isn't just competition; it's survival.

So, does the IP Laws ever offer a solution for these problems faced by the designers? Even the World Intellectual Property Organization (WIPO) recognizes that intellectual property rights are key to fashion's survival, allowing designers to maintain uniqueness and establish brand equity. The matter remains unresolved, however. Legal scholars like Raustiala and Sprigman point to "piracy paradox," and contends that copying is far from killing creativity and it only encourages the creativity. This paradox makes old intellectual-property theories difficult to

accommodate and forces lawmakers to question whether higher protections are really needed—or whether fashion flourishes because of its delicate equipoise between protection and copying.

1.2 Statement of the research problem

At the centre of this study lies the natural incompatibility of ongoing IP protection instruments and the fashion industry's special mode of operation. In the US, EU and India, legislatures provide disparate responses to protecting fashion design under copyright law and through design patents; however, not one offers a direct answer for the industry's fundamental dilemmas.

Within the United States, copyright law's "useful article" doctrine would seemingly pose substantial barriers to entry for designers seeking protection given cases like *Star Athletica v. Varsity Brands* (2017)¹. Designers must show that the aesthetic features of a garment can be separated from functional aspects of it to meet the separability test — a standard that most clothing designs fail. Design patents, on the other hand, provide replacement protection, and have stringent novelty standards and long registration times that are incompatible with fashion's quick turnaround.

The EU provides a second approach in the form of its two-level system of "registered" and "unregistered community design" under Council Regulation 6/2002², which automatically protects original designs without requiring registration. But the effectiveness of such a system in thwarting mass copying by fast fashion giants is open to question, as evidenced by ongoing legal battles between heavyweight European fashion names.

India's legal frame-work, which is primarily controlled by the Designs Act 2000 and the Copyright Act 1957³, faces a considerable challenge to balance protection for traditional textile design but also its outward looking into fashion innovation. Jurisdictional uncertainties stemming from the entanglement between copyright law and design protection under Section 15 of the Copyright Act make enforcement difficult.

¹ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

² *Council Regulation 6/2002*, 2002 O.J. (L 3) 1 (EC).

³ The Copyright Act, No. 14 of 1957, INDIA CODE (1957).

1.3 Research Gap

There are a few important voids that this study seeks to fill in relation to the fashion design protection. To start with, most comparative studies narrow down to bilateral comparisons between two legal regimes. An in-depth three-way comparison would bring to light systemic trends and guide policy decisions accordingly.

Secondly, theoretical bases of legal regimes have never been properly researched in the current studies, with particular focus being given to enforcement costs, registration time, and economic impact as against some market players.

Third, on the manner in which emerging technologies, including 3D printing, digital pattern sharing, and AI-generated design, somehow disrupt existing IP categories and necessitate new legal responses. Fourth is the assertion in the literature that there is a lack of research that examines how cultural and economic dynamics impact the usability of specific models of protection in jurisdictions with different levels of fashion industry development.

Lastly, although a look into harmonization opportunities or creating a sui generis protection specifically with fashion design attributes in mind would appear relevant, this topic does not seem to have even been approached in the literature.

1.4 Research Objectives

This study aims to achieve the following objectives:

- To focus comparatively on the protection of fashion design in copyright law and other design-protection regimes in the United States, European Union and India.
- The extent to which each jurisdiction's legal regime is best-designed to address the fundamental problems of fashion designers—originality, artistic authorship and defeasibility.
- To find out the legal practices and protection models in India that seek to borrow from the 'strong' effectiveness found in the US, EU and comparing this with 'weaker' forms of implementation; and evaluate if lessons drawn can help inform new strategies for India.

1.5 Research Questions

The following primary research questions are aimed by this study:

- 1) In what ways do the US, EU and Indian copyright/design patent/right systems vary in how they each protect fashion design, and what are the strengths/weaknesses of each system?
- 2) How well do existing laws capture the unique threats of a fast fashion business model and quick design turnover cycles?
- 3) What are the lessons for bridging cross-jurisdictional comparison to achieve optimal fashion designs IP protection policy?

1.6 Scope of the Study

This study, specifically, is confined to intellectual property protection in fashion designs through copyright and design patent/right regimes of three principal jurisdictions – the United States, the European Union (with special emphasis on the harmonized Community design system) and India. The temporal range includes laws adopted from 2000 to the present, major cases issued by low courts and supreme courts across the nation, as well as industry practice.

1.7 Methodology of the Study – Doctrinal Research Approach

This research uses a doctrinal legal research method which “involves analysis of case law, ordering and systematising propositions as well as the study of legal institution through legal reasoning or rational deduction”. The doctrinal methodology is attractive for comparative intellectual property research especially in that it facilitates structured comparison of legal doctrines, case law and statutory provisions in distinct jurisdictions.

1.8 Significance of the Study

The comparative nature of the study, however, fills crucial voids in fashion IP scholarship with the first three-way comparison of copyright and design protection systems between the United States, EU and India. The findings provide recommendations for evidence-based policy to drive legislative reform and international harmonisation: at a point in time where fast-fashion business models and digital design sharing have increased pace copying practices within the

\$2.5 trillion global fashion industry. Looking closely at seminal cases like *Star Athletica v. Varsity Brands*⁴, *Karen Millen v. Dunnes Stores* and significant Indian precedents the author offers practical advice for courts, legislators and practitioners who are increasingly faced with the reality of multi-jurisdictional fashion IP disputes. The results have practical implications for aspiring creative economies (like India) trying to boost their creative industries through sound IP policy and also contribute to a wider debate about whether specialized sui generis protection systems could be more appropriate in addressing the requirements of fashion industry, than copyright or design patent regimes. In conclusion, this study contributes to addressing current global discussions considering the level of protection given to creators vis-à-vis the access allowed by public authorities within fast growing and dynamic businesses while managing short innovation cycles, and large cross-border trade.

2. Literature Review

Fashion design protection is a fascinating intersection of legal specialists and artistic expression. In the U.S., the case of *Star Athletica v. Varsity Brands*⁵ (2017) required courts and academics to determine whether artistic components in apparel could be disjointed from the functional purpose of the garment. The response was that most designs did not satisfy the threshold for copyright protection, and fashion designers have no other option but to pursue design patents, if they have the time and financial means, which can be slow, expensive, and simply impractical in an industry reliant on rapidity of design.

By contrast, Europe offers a distinct method for protection. In the 2014 United Kingdom case *Karen Millen v. Dunnes Stores*⁶, the dual system of registered and unregistered Community designs that the UK follows was further explained. While this system has inherent flaws, it offers designers immediate and adaptable protection, as compared to the U.S. model. It is a superior framework that can reward fast-moving fashion cycles with both short-term trends protected and longer-term rights with rights for distinctive works. The U.S. protection systems face challenges in accommodating this level of flexibility.

India operates a hybrid framework for fashion design protection, combining the Designs Act, 2000, with Section 15 of the Copyright Act. Cases such as *Ritika v. Biba*⁷ (2011) highlight

⁴ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

⁵ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

⁶ Case C-345/13, *Karen Millen Fashions Ltd. v. Dunnes Stores*, ECLI:EU:C:2014:2013 (July 17, 2014).

⁷ *Ritika Private Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Delt 6321.

enforcement challenges stemming from this overlap. The legislation is designed to protect both contemporary fashion creations and traditional textile designs. However, ambiguities in the law often complicate its practical effectiveness. Designers and legal practitioners must carefully navigate this terrain, balancing artistic expression with statutory compliance while attempting to safeguard their creative and commercial interests.

The issue is further complicated by technology. AI-generated patterns, computer-aided design software, and 3D printing are rapidly changing how fashion is produced and disseminated. However, academic and legal analysis has barely begun to imagine the implications for intellectual property review, particularly in relation to empirical and comparative scholarship across the U.S., the EU and India, which assesses how intellectual property accommodates innovation.

2.1 Identified Literature Gaps

The current body of work on IP law in the context of fashion reveals numerous gaps. There is a lack of empirical investigations that examine the effect of IP on innovation and speed of enforcement. There is a dearth of comparative works across the United States, the EU and India; any exploration of the Indian context are largely descriptive. There is not much longitudinal knowledge regarding the impact of key cases such as *Star Athletica v. Varsity Brands*⁸ or *Cofemel*. There is still underdeveloped research into emerging technological disruptions, including AI, 3D printing, and the phenomenon of sharing patterns digitally, as there is almost no economic evaluation work, excluding the benefits/costs of proposed IP reform options. There is almost no understanding of differentiation across the sector, for example luxury fashion, fast fashion, traditional or digital sectors. Further and more vigilant scholarship is required on the practical realities and issues regarding enforcement, including the costs of litigation, cross border enforcement, and other challenges in the actual world. These gaps indicate the critical need for more thorough, comparative, and empirical research into fashion law and IP law in general.

3. Conceptual and Legal Framework

⁸ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

To conceive the concept of fashion design protection, it is first necessary to understand originality and creativity as well as recognize a crucial difference between functional aspects and aesthetic expressions. Originality standards vary: copyright requires only some minimal amount of originality in the expression, while design patent and registered designs also require novelty. The separability/art-functionality divide relates to the question of whether a garment's aesthetic features may legally be disentangled from its utilitarian elements—a test foregrounded by the US *Star Athletica* doctrine (and echoed in EU and Indian legal analysis).

3.1 Intellectual Property Law Sources

The legal system is based on codified and case law and is supplemented by administrative contracts, which originates from international agreements. In the United States, expressive and design patents are covered in the Copyright Act (17 U.S.C.) and Patent Act (35 U.S.C. §§ 171–173). The EU has registered and unregistered designs protection based on the Community Design Regulation (EC No 6/2002) and Design Directive (98/71/EC). In India, the regime is based on Copyright Act 1957 (Section 15 that provides for overlap) and Designs Act 2000. Three landmark cases, namely *Star Athletica*, *Karen Millen v. Dunnes Stores*⁹, and *Ritika v. Biba* (dealing with issues concerning shape) set the interpretations, building up guidelines from U.S., EUIPO and Indian IP Office to define examination and enforcement all under obligation of TRIPS, Paris Convention and Berne Convention.

3.2 Types of Intellectual Property Related to Fashion

The definition of work subject to copyright protection is limiting: It extends only to original works of authorship, and does not include useful articles except to the extent that such articles incorporate pictorial, graphic or sculptural features that can be identified separately from their mechanically dictated utilitarian shape. Design patents (US) and registered designs (EU/India) confer exclusivity over novel aesthetics following an official application, valid for 15–25 years. The automatic, short-term protection without registration provided by the EU's unregistered design rights is an example. Trademarks and trade dress protect brand names, logos and how a product or service appears. *Sui generis* proposals, such as the US Innovative Design Protection and Piracy Prevention Act, propose industry specific regimes to address fast fashion's speed.

⁹ Case C-345/13, *Karen Millen Fashions Ltd. v. Dunnes Stores*, ECLI:EU:C:2014:2013 (July 17, 2014).

3.3 Jurisdictional Specifics

In the U.S., the combination of the useful-article doctrine, separability test, and design patents strikes a particular balance between aesthetics and functionality. The EU community design system offers registered and unregistered rights under a single application process alongside exhaustion for cross-border enforcement. 23 India's structure deals with the copyright–design overlap as referred to in Section 15; it addresses both use of traditional textile motifs as well as modern fashion designs but struggles with low awareness, delay in procedures and enforcement challenges.

3.4 Enforcement Mechanisms and Remedies

The three provide access to civil redress – injunctions, damages, accounts of profits and border seizures—but vary in terms of procedure cost. Litigation is complemented by pre and post-opposition, customs measures and ADR. The filing costs, time to prosecution and court docket backlog condition the designers' strategic choices and have an impact on the actual enforceability of IP rights.

3.5 Role of International Agreements

The backdrop is one of international treaty harmonization. Minimum standards for design protection and enforcement are established under the TRIPS¹⁰ Agreement. The Paris Convention allows for priority and national treatment, allowing multiple jurisdiction filings. Policy Guidance: WIPO's Policy Directive provides a best practices guide to global supply chains and cross-border responses.

3.6 Comparative Analysis Model

A framework for comparison modelled in a structured approach includes four large dimensions: effectiveness (speed of protection and dissuasion); adaptability (fast-fashion alignment and technological development based); access and fairness (impact on emerging designers, SMEs and traditional artisans), as well as aligning tracking potential with respect to the feasibility of

¹⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

harmonizing the various legal systems under similar standards. This structure is the basis for the subsequent comparison.

4. Comparative Legal Analysis

4.1 United States

4.1.1 Copyright Protection

In the U.S., the fashion design copyright law is narrow, and generally falls under useful article doctrine. Under this standard, clothing is considered a "useful article," meaning that it has an intrinsic utilitarian concept on which its design is based other than to depict the appearance of the article or to convey information. Herein lies a vast hindrance to fashion designers who are working against the clock for copyright protection.

The other major copyright ability test is the separability test, which was significantly clarified in *Star Athletica v. Varsity Brands*¹¹ (2017). The Supreme Court created a two-part test for aesthetic features of useful articles to be copyrightable: the design features must (i) be capable of existing as a graphic or sculptural work apart from the useful article; and (ii) be able to exist as a PGS work if created without an underlying functional object.

In *Star Athletica*, the Court held that designs of wet suit type uniforms which include chevrons, colors and stripes can be copyrighted because they could be conceived of separately from the function of the uniform and used elsewhere. Justice Thomas clarified that the useful article need not be in serviceable condition after it is removed from the Whyte as a threshold matter.

When it comes to speed and cost vs. real-world wear ability in fast fashion, design patents pose obstacles for the ever more quickly turning wheels of the fashion industry. The extended process of examination conflicts with the seasonal cycles in fashion, and designs risk becoming outdated before a patent is issued. Design patents, though, offer stronger protection than copyright does because they cover independent creation and don't require evidence of copying.

Some of the case law using design patents in fashion include *Puma v. Forever 21* (2017), in which Puma managed to secure an injunction for infringement of their Creeper sneakers

¹¹ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

designed under the Fenty collection's colourway. [Merit Decision] The court held that the variations in the shoes were not enough so that a casual observer would have recognized the designs to be different. This matter is an example of the value of a design patent when it is properly acquired and protected.

4.1.3 Combined Implications

US fashion design IP—blessings and burdens The U.S. protective environment for fashion designers is a complex one. Strong trademark, trade dress protection and design patent coverage of the overall appearance are highlights for well-established brands. But weaknesses are few, such as terribly weak copyright overall because of the useful article doctrine, expensive and slow design patent system in place today, and no protection for those budding designers who only want or can afford one off patents.

The American system privileges heritage labels with ample resources, meanwhile leaving independents open to being knocked off. This has resulted in some calls for reform, with multiple failed attempts to pass industry-specific legislation like the Innovative Design Protection Act.

4.2 European Union

4.2.1 Community Design System

The EU is making an addition to its more thorough design protection system in the form of Council Regulation 6/2002¹² which brought the Community Design into being. This results to a centralized system whereby there is registered & unregistered community design available across the European Union.

The EU model is better at accommodating fast fashion than the US does. Immediate unregistered design protection, without the need for formal requirements, is well adapted to short design turnovers. The choice of a three-year protection option reflects the seasonal nature of fashion, with the registered-option responding to concerns from luxury brands regarding long-term protection.

¹² Council Regulation 6/2002, 2002 O.J. (L 3) 1 (EC).

The potential of unregistered rights for immediate protection has been illustrated from successful enforcement. The system discourages illegal copying but enables lawful inspiration and imitation without diminishing competition. The EU's system understands the specificities of fashion and gives it the right legal tools in consequence.

4.3 India

4.3.1 Legal Framework

Fashion design protection in India comes through two statutes – the Designs Act, 2000 and the Copyright Act, 1957. The Designs Act 2000¹³ defines in detail how design protection be available for an industrial design which has been applied to an article by industrial process. Provided, however, that registration under this Act shall give the exclusive right to the use of such trade-mark or name for a period of ten years which may be renewable for periods not exceeding five years as long as such trade-mark or name remains in use.

Section 15 of the Copyright Act, 1957 results in intricate relationships between copyright and design protection. This is provided under of copyright act section 15(2), that the copyright in a design, which is registered or capable of being registered under the designs act (16A) [193] shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by reproduction process [194]. This provision avoids double protection and promotes the registration of design for commercial use.

The Designs Act extends only to features applied to articles, and can be features of shape, configuration, pattern or ornament which are judged by the eye alone. Remedies include civil suits for injunctions, and for damages not exceeding ₹25,000 per contravention (maximum: ₹50,000) and destruction of infringing goods.

Other strengths are broad protection afforded in numerous IP systems, low filing costs and well-established case law. Shortcomings There is a bevy of statutes with which many designers must grapple, the 50-reproduction threshold is arbitrary, and there are few enforcement teeth for novices' designs.

¹³ The Designs Act, No. 16 of 2000, INDIA CODE (2000)

4.4 Comparative Summary

They show divergent philosophical views on protection of fashion design -- and in some cases parallel viewpoints. The United States has limited copyright protection under the useful article doctrine and strong design patent protection for those who can afford it. Protection in the EU is therefore very broad, whether under registered or unregistered designs right, with coverage being immediate and lasting only a short time. India is the median with copyright as well design protection and ambiguity of the Section 15(2) constraint. papers.

The types, duration, enforcement and costs of protection differ widely:

US: Limited copyright (life + 70 years for qualifyin), design patents (15 years), high fees (\$2,500-10,000).

EU: Unregistered designs (3 years), registered designs (25 years), low cost and common

India: Copyright (60 years + life capped by Section 15(2)), designs (15 years), low costs (₹1,000-4,000),

By discussing which system is more effective in different fashion sectors, this article finds that the EU unregistered protection period is suitable for fast fashion and longer registered protection period work for luxury fashion. The US system works to protect big companies with resources for design patents and fails emerging designers. India's system offers low-cost access, but is less certain about commercial applications.

Digital All created designs introduce new challenges in all of the jurisdictions. Part of the problem with exclusive human authorship being a requirement for copyright is that it leaves natural language generation systems like both ours and India's in a gray area. EU law's design system can offer greater comfort for AI works (somewhat) in being concerned less with authorship and more with originality, but this has not been tested.

The comparative analysis reveals that no single system perfectly balances all stakeholders' interests, but the EU approach most effectively addresses fashion industry needs through its flexible, comprehensive framework that recognizes fashion's unique characteristics and business cycles.

5. Emerging Challenges and Technological Impacts

The fashion design ecosystem is being exposed to disruptive technological change that challenges existing IP paradigms at all layers of the IDV process: creation, distribution, and safeguarding. With the development of artificial intelligence, 3D printing and digital platforms, design imitation is now quicker than before – a challenge for old-fashioned domain name law authorities across questions of authorship, ownership and enforcement.

5.1 AI-Generated Fashion Designs

The rising role of AI in fashion design Creativity processes the advent and use of artificial intelligence as a source of creativity in the field present pressing legal questions regarding work ownership and authorship. Under contemporary copyright paradigms, the question "who is the author?" becomes an issue when the design development is carried out by AI systems independently. The US Copyright Office has stated that AI-generated works may receive copyright protection only if "there is some person who can be considered the author or, at least, a co-author, and that predominantly created by this person," meaning designers will have to document persuasive traces of human creativity. In the United Kingdom, the Copyright, Designs and Patents Act, 1988 cover work made by generative computers with authorship attributed to "the person by whom the arrangements necessary for the creation of works was undertaken." This provision however predates modern generative AI and it's unsure that this would be sufficient for a contemporary usage.

Jurisdictional roadblocks further exacerbate these issues, with conflicting AI authorship approaches among different legal systems. Presently, Indian copyright law does not provide for the copyrightability of AI-created content unless it is possible to identify an individual (human) as its author/bookkeeper—poses a gaping hole where AI systems are trained and operated with minimal human involvement. European courts are now faced with the question of how to apply classical enough originality tests, while the algorithms produce outputs that demonstrate creativity traits without having human consciousness. Prior to the use of AI, fashion designs were relatively protected from copyright infringement, but now AI systems relying on copywritten patterns pose an additional layer of complexity when setting and enforcing norms for use of models that may learn inappropriately to include protected content on their own without specific instruction and furthering liability concerns where fashion brands run these tools to create outputs.

5.2 3D Printing and Digital Pattern Sharing

3D printers have returned the means of production to the masses even as they have opened up new paths for design theft through digital copying. When a digital design of a fashion piece is created in the format of CAD (Computer Aided Design) file, it can be copied and transmitted around the globe; it can also be downloaded in other countries and printed using local 3D printers. This shift in technology fundamentally changes enforcement, as mass production of fake goods is replaced with counterfeiting that emanates from individual 3D-printers around the world, leading to increased difficulty of detection and interdiction.

Enforcement issues are especially problematic across borders since CAD files can be transferred electronically without the exchange of physical goods. The historical methods of customs seizures and factory busts which have been used in the past to disrupt infringement are far less successful when infringing transactions take place in intangible file exchanges. A design file prepared by a designer in one country might be downloaded in another, printed in a third and sold in a fourth, resulting jurisdictional questions with respect to: when infringement occurs; which court is competent to settle the dispute.

The present IP systems need to be reformed substantially in order to successfully fight the threat posed by 3D printing. The EU has begun to look at reforming its Designs Directive to further clarify the coverage of traditional protection systems for additively manufactured designs, and other jurisdictions are suffering from an increase in litigation as courts need to deal with the application of century-old doctrines to new technology. Proposed technological solutions would be blockchain-driven CAD file creation and distribution tracking systems allowing designers to keep digital trails in order to prove ownership and detect infringements.

5.3 Fast Fashion Dynamics

Increasing the speed of fashion cycles through digital channels and social media has made these issues around IP protection all the more complex. Fast fashion operators can copy runway looks in days, not months, and the time available for which a designer is capable of locking in protection and undertaking enforcement has been shortened. Temporal compression like this renders traditional registration-based protection systems increasingly anachronistic, as design patents and registrations so often are simply not available fast enough to combat accelerated copying.

And while most mass copying nowadays takes place on digital marketplaces, through channels like Amazon (which has influenced festival vendors far more than they realize), TikTok and the rise of direct-to-consumer sites have normalized an era during which designs can be easily replicated and disseminated. And now the trend of “dupes” — which are duplicitously marketed replications of luxury pieces — has been turbo-charged by social media influencers, who endorse (with monetary incentives) cheaper versions of designer goods and in some cases see web searches for knockoffs surpass those for the original items. This sets up a feedback loop in which copying is not only permissible, but encouraged by the culture of consumption.

A hot topic in recent discussions of reform has been the role of digital platforms in facilitating and benefiting from IP infringement. Platforms make money on the traffic and commerce flowing through infringing goods, while enjoying safe harbour’s thin shield of plausible deniability. Recent case law, including UNIQLO’s suit against Shein in its violation of Japan’s Unfair Competition Prevention Act, evidences an emerging trend of brands taking on platform-enabled knockoffs head-on. But given the worldwide reach of these platforms and their transaction workload, comprehensive oversight becomes nearly impossible.

Fast fashion and its impact on strategies related to IP protection Fast fashion is a significant driver for IP protection strategy. Designers find themselves with a growing SuDS-like choice between costly, slow formal protection and acknowledging that copying is part of business. The calculus can’t work out in Favor of believing that with designs being ripped off potentially off the market before a case becomes resolved we’re going to systematically see too little enforcement.

Fast fashion dynamics have a great impact on IP protection strategies from an economic point of view. Increasingly, designers are forced to choose between expensive, slow formal protection measures and the acceptance of mass copying as part of doing business. So, if we view enforcement actions under this sort of cost-benefit analysis, they suddenly look inefficient once copied designs might be off the market before litigation even completes --resulting in systematic underenforcement of actual IP rights. This leads to perverted incentives under which subsequent investment in developing new designs may be discouraged in favour of copycat trend capitalization, all at the expense of diminishing inspiration incentives that IP law is supposed to protect.

6. Lessons and Recommendations

6.1 Learning from US, EU and India

Strengths to Emulate

The fly in the ointment of US system are Strong trademarks protection and well-developed design patents. Even though the *Star Athletica* decision is limiting as a whole, it does clarify the separability requirements for designers to know where they stand in terms of protection. Lessons from the U.S. trade dress regime as applied to protecting unique product designs outside of conventional copyright protection parameters.

Regarding the EU design model, excellence is achieved in its registered/unregistered splitting system. It addresses ephemeral design and fast fashion cycles through immediate, unregistered protection while protecting long-term commercial interests a la registered protection. Instead, harmonisation that provides both copyright and design protection for such designs in places like France represents the optimal level of protection for creators.

The Indian model provides interesting examples of low-cost registration procedure and well-defined court precedents. For The Designs Act 2000, reasonable charges (₹1,000-4,000) ensure that it is a protection within reach of upcoming designers. *Ritika v. Biba*¹⁴ is an important case and settles some of the critical issues between Copyright law and Design law.

Weaknesses to Address

The US useful article doctrine restricts FM protection to fashion design in an exceptionally problematic way, artificially dividing the aesthetic and the functional. And the time-consuming, costly design patent process does not align with the fast pace of fashion. They're hard on brand-new designers in favour of established brands. The weakness of the EU system is its divergent enforcement among member states and intricate jurisdictional conditions for unregistered designs. Cross border enforcement remains difficult despite harmonisation of design rights.

India's Section 15(2) fetter is an arbitrary "either-or" where the designers are caught between

¹⁴ *Ritika Private Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Del 6321

copyright and design protection. The 50-copy restriction is not practically defensible, and its application is uncertain for business uses. 6. 2 Sui Generis Protections for Fashion

Feasibility and Advantages

An IP regime tailored for the fashion industry has several advantages over current paradigms. The model of the proposed Innovative Design Protection and Piracy Prevention Act (IDPPPA) offers proof-of-concept in its standard, "exceptionally original", which strikes a balance between protection and public domain liberation.

This model could be replicated internationally to develop fashion-focused structures which acknowledge the industry's economic and creative distinctiveness.

How to define "exceptional originality" standards, create international enforcement mechanisms and support industry interests while allowing access by consumers are challenges. But the \$2 trillion that the fashion industry is worth globally calls for specialized protection regimes.

6.3 International Harmonization

Role of TRIPS¹⁵, Paris Convention and WIPO Guidelines

The TRIPS¹⁶ Agreement: Basis for Harmonization Minimum standards of protection related to industrial designs are founded under the TRIPS Agreement. Article 25 requires the protection of "independently created new or original industrial designs", with flexibility for a fashion-specific exception. TRIPS, however, gives ample flexibility to member nations in terms of the how.

The industrial property system under the Paris Convention¹⁷ includes design protection, but does not include specific provisions for fashion. Recent Developments Recent developments also include the Riyadh Design Law Treaty (2024) that harmonizes and simplifies international

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

¹⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

¹⁷ Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305.

design applications, yet provides for disclosure requirements for traditional knowledge. The agreement is a step forward to unified design protection systems.

Increasing Role of WIPO The growing role of WIPO includes the promotion of international design registration under the Hague System and creation of guides for new technologies. It provides models for international frameworks specifically related to fashion.

Cross-Jurisdictional Protection and Enforcement

Today enforcement problems include broken legal systems, clash of jurisdictions, and different IP standards between countries. The example of the EU's common policy via the Unregistered Patent Court has certainly regional implications. Among proposed solutions are enforcement technologies using AI, authentication systems based on blockchain and strengthened international cooperation mechanisms. The international supply chains of the fashion industry demand coordinated enforcements that do not stop at national borders.

Practical barriers remain in countries with limited IP enforcement capacity, and divergent cultural positions towards the protection of IP. "Licensing across borders" entails navigating several legal regimes with disparate criteria.

6.4 Practical Recommendations

6.4.1 Faster Registration Processes

Fashion industries should advocate for expedited examination processes similar to the USPTO's "Rocket Docket"¹⁸, a design patent processing term of 6-7 months instead of traditional 20 months. Given fashion's seasonal concerns, faster design registration processes are necessary. The DOI already exhibits a potential framework beneficial to the fashion industry.

6.4.2-Tiered Protection for Short-term vs Long-term Designs

Multi-tier frameworks tailored for seasonal fashion designs, the ones that require only 1-3 years protection, and the fashion investment longevity designs with 10-25 protection. India's dual

¹⁸ U.S. Patent & Trademark Office, *Suspension of Expedited Examination of Design Patent Applications* ("Rocket Docket") (37 C.F.R. § 1.155), Office of the Commissioner for Patents, Apr. 14, 2025.

approach to registered and unregistered designs also showcases that such frameworks can be implemented within an integrated system.

6.4.3 Emerging Technology Integration

With the emergence of AI tools, new authorship frameworks for AI-generated fashion designs are required. The existing IP frameworks cannot be used to regulate AI-generated designs. Design provenance tracking using blockchain systems should be employed across all fashion industry sectors, including designing and manufacturing. Likewise, smart manufacturing integration should have its own protection laws.

A pragmatic approach should involve AI industry-specific guidelines, digital asset protection norms and technology-agnostic regulations that can accommodate new developments in the future. Fashion Law 4.0 frameworks need to be mindful to create the right equilibrium between technological progress on one hand and protecting creators (as well as consumers) on the other.

The collision of fashion, tech and IP law requires a proactive response from regulators. For effective global fashion IP protection in the digital age, international cooperation via WIPO, improved bilateral treaties and specific industrywide enthusiast treaties will be critical.

7. Conclusion

7.1 Summarized Findings from Comparative Analysis

This cross-jurisdictional comparative analysis demonstrates sharp contrasts in the fashion industry's design regime under these three leading laws. The United States functions under a broad framework in which the useful article doctrine and separability test articulated in *Star Athletica v. Varsity Brands*¹⁹ drastically curtail copyright coverage for fashion designs. Protectable are only surface decorations which can be conceptually separated from the discretion, and thus most garment designs remain unprotected from copying. Design patents are much stronger but take significant time (12-18 months) and money (\$2,500-\$15,000), which is incongruous with fashion's speed.

¹⁹ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

The European Union offers one of the better solutions with the hybrid Community Design system I and II under Council Regulation 6/2002²⁰. There is immediate three-year protection for unregistered designs which is so useful for fast fashion, and up to 25 years protection of registered designs, ideal for commercial investment over time. With cases including *Karen Millen v Dunnes Stores* receiving hand-down decisions and *Cofemel v G-Star RAW* promoting the flexibility of the system to protect fashion with balance in competitive markets.

India's hybrid system of substituted registrations and rated design registration (₹1,000-4,000) with overlaid copyright protection is read and rendered ambiguous by Section 15(2)'s capricious limit of 50 reproductions. The precedent set by *Ritika v. Biba*²¹ is that industrial application beyond this level provides a cutoff for copyright protection, and ---- a designer will have to rely on design registration or lose all his rights. It's extremely cost-effective but it also erects essentially artificial barriers, which is particularly not necessarily aimed at, let's say, the new designer.

7.2 Emphasize Remaining Gaps in Existing IP Regimes

Large technical holes exist across all regions for AI design, 3D printing and digital pattern exchange. The current set of laws assumes that a human created and then transcribed the design to physical form and AI-created designs are in a legal grey area. The growth of virtual fashion and NFTs questions our traditional ideas about the materiality of goods and territorial enclosures.

Enforcement is still an issue, especially when it comes to cross-border infringement in the international fashion supply chain. Although the EU grants harmonized protection, enforcement quality differs between member states. And as it stands, the US system naturally favour's big brands that can run up a bill by metering their opponents into submission, whereas India is once again mired in procedural delays and has an ineffective enforcement structure in place.

7.3 Highlight for Designers, Policymakers and Global Science

For designers, there are important strategic implications to be found in this analysis. New

²⁰ Council Regulation 6/2002, 2002 O.J. (L 3) 1 (EC)

²¹ *Ritika Private Ltd. v. Biba Apparels Pvt. Ltd.*, 2016 SCC OnLine Del 6321.

designers would be wise to focus on jurisdictions where they can obtain cheap and instant protection such as the EU's unregistered designs or India's design registration. Factors to consider: The pros of international protection for luxury brands are numerous and obvious; whereas, fast fashion companies should develop trademark/trade dress rights in light of restrictions on design protection option.

There are also pressing legislative imperatives to update IP systems for business needs. The US Congress may need to take a good, hard look at design-specific legislation such as the launched-and-failed Innovative Design Protection Act and take a leaf out of the EU's book on balanced protection. Indian legislators need to address the arbitrary constraints in Section 15(2) and make enforcement mechanisms more robust. The second priority is that all jurisdictions require technology neutral frameworks of AI authorship and digital infringement.

Policy Coordination Among Countries: Fashion is global, while IP protection is largely territorial. The place of WIPO in the harmonization process under, inter alia, the Riyadh Design Law Treaty and under prospective fashion-specific protocols may provide for such a key standardization. Fashion-specific specialization should be included in bilateral agreements, with an emphasis on enforcement cooperation specifically around counterfeiting and digital piracy.

The results do suggest the appropriateness of designing sui generis protection mechanisms that take into account fashion's specific traits: short commercial lifecycles, co-created production dynamics and trend-induced creativity. These types of niche structures might be more effective in striking the right balance between incentivizing creation and leaning back towards competitive dynamics than the alternative approach that would fit fashion into existing categories of traditional IP.

A misalignment of duration is a core disconnect in which its protection periods do not line up with the commercial realities of fashion. With a duration of life plus 70 years, Copyright is irrelevant to fashion and design protection can be insufficient for heritage brands with iconic designs demanding extended protection.

There continue to be definitional uncertainties concerning protectable fashion design versus unprotectable functional features. The US separability test is unstable, and Indian artistic work

definitions intermingle with design categories in confusing ways. These voids can lead potential infringers to hedge on scope, and so too might the uncertain about infringement.

7.4 A Word on Future Research Direction: AI and Digital Disruption in Particular

AI-created fashion works are the current hot point of research where epitome of original authorship, originality and protection scope itself need to be revisited. Perhaps further studies might explore how various legal systems modify their IP regimes to centralize machine creativity, the division of rights between AI developers and users, as well as the overlap between own IP over training data in AI and protection of designs in fashion.

Digital Fashion and Virtual Goods requires immediate academic attention as meta verse platforms expand and NFT markets mature. Research into protection of digital-only fashion, cross platform portability rights and the enforcement hurdles relating to infringement of virtual goods needs to be pursued. The integration of block chain technology in fashion IP authentication creates both opportunities and challenges that call for empirical investigation.

3D printing & on-demand manufacturing will change the way fashion is produced and consumed, requiring research to explore how design protection responds to distributed manufacturing, consumer-level production capabilities, and the enforcement implications of digital file sharing versus physical goods reproduction.

Effective cross-border enforcement mechanisms should be analysed with a view to platform liability, jurisdictional coordination and the adequacy of existing international IP enforcement treaties in addressing fashion-specific issues.

Future research must integrate these perspectives in an interdisciplinary way, which should involve legal analysis of fashion business studies, technology assessment and empirical enforcement data. Comparative research also needs to go beyond developed jurisdictions and address emerging fashion markets in Asia, Africa and Latin America which involves various protection requirements and enforcement capacities giving rise to different policy challenges.

To begin accepting this challenge that IP in the fashion/tech/global marketplace context presents, academic dialogue should move away from mere doctrinal scholarship to one that is of direct interest to the industry and ultimately useful to policymakers for effective policy responses in a progressively creative environment.