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Fashion Victims
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High-end designers from Louis Vuitton to Lanvin descended on the Paris fashion shows this month. They were joined, as they are every year, by those looking to steal their work. Design piracy, in which cheap manufacturers knock off high-end clothing designs and quickly offer them for sale, has a long history in the fashion world. Even the best designers copy the work of others--though they usually call it "referencing." Now the development of digital photography has made piracy simpler and faster than ever before. Designs displayed on the runway today can roll out of Chinese manufacturing plants in a matter of days--often before the originals ever hit the marketplace.

You would think rampant piracy would infuriate designers, and the large corporations that employ them, leading them to demand the same kinds of intellectual-property protections that a wide range of creative industries have lobbied for. Pharmaceutical, music, motion picture, publishing, and biotechnology companies have all fought hard in Congress and the courts to win ever-more expansive protections for their products. Without strong intellectual-property rights, they argue, innovation would grind to a halt; creators will not engage in creation in the first place if they fear their work will be stolen by others. Congress has generally agreed--without much reflection or study--that strong intellectual-property rights are essential to innovation. In 1998, for instance, it extended existing copyrights by 20 years. Some argued that Congress acted at the behest of Disney, which feared that iconic characters such as Mickey Mouse would fall into the public domain.

And yet fashion, an industry where innovation is high and copying is rampant, is for the most part not covered by U.S. copyright law, meaning that innovators have no real property rights to their designs. So why don't luxury apparel corporations agitate for stronger intellectual property protection? There are many reasons, but one stands out: The odd economics of the fashion industry dictate that knockoffs do not actually victimize designers. Rather, they help them.

Outside of humanities departments, the fashion industry has received scant academic attention, in part because it can seem so fluffy. The conventional view among the legal scholars who have considered the issue of apparel design is that the

industry's lack of intellectual-property rights is a terrible mistake that ought to be rectified. Several academic articles have been published advocating changes to the copyright code. "The denial of copyright protection in garment designs," one writer argues, "sanctifies the outright theft of a designer's creative work." Fashion designers, these commentators claim, are no less creative than musicians, artists, or writers--and they deserve the same degree of protection against the theft of their designs. On occasion designers say the same thing. But the head of the design department at the Fashion Institute of Technology in New York notes that in practice they rarely fight piracy. Rather, "designers just let the copies go." Perhaps fashion designers are too busy dreaming up new collections to devote much attention to the problem of property rights. Either that, or they've come to understand how having their ideas stolen helps them in the long run.

Unlike most consumer goods, high-end clothing is what economists call a "positional good," items whose value derives from their scarcity and their status-conferring benefits. In other words, buyers value a particular dress from Dolce&Gabbana in part because others don't have it. Leading-edge fashion enables its wearers to stand out from the crowd. The more widespread a given design, the less valuable it becomes to the customers of high-end designers. Once a style ends up on ordinary suburbanites getting on the 5:45 to Asbury Park, fashionistas want nothing to do with it. Indeed, they've already moved on--to the next look.

In short, copying drives the fashion cycle. Unlike areas such as software or cellphones, which exhibit positive externalities--the more people who use your software or the more callers on your network, the better off you are--fashion designs become progressively less attractive as they saturate a market. Trademarks and logos help distinguish the originals from the knockoffs, which is one reason they are so prominent on many clothes and accessories. But the hunger for design distinctiveness drives fashion lovers back into Barneys, Bergdorfs, and the boutiques on a regular (and ever-quickenning) basis. Indeed, if cheaper companies weren't copying the styles of high-end designers and making them widely available, the appetite among wealthy consumers for the latest creations would be considerably reduced. Hence it is no surprise that calls for strengthening copyright protection in fashion design have been weak.

Fashion's paradoxical relationship to piracy could be written off as a minor aberration (though the apparel industry in the U.S. alone is a \$100 billion enterprise). Yet it illustrates a larger point about intellectual property: that intellectual property protection is not *necessarily* a precondition for innovation. Rather, innovation can be spurred by many factors--and in some cases it may be the speed of the product cycle that determines how much protection is needed.

This point has more bite when the costs of intellectual-property rights are taken into account. These rights are typically justified as necessary to incentivize innovators. But many scholars are skeptical of recent expansions of intellectual-property rights, arguing that they place far too much into private hands and unduly shrink the public domain--that is, the set of songs, inventions, books, and so forth that are freely available for all to copy. This, in turn, can inhibit further innovation by rendering the building blocks of new creations off-limits. Since no creation is completely new, overly extensive intellectual-property rights can undermine, rather than incentivize, innovation. The key is to strike the proper balance between the public domain and private rights. The economics of the fashion world suggest that, in some industries, the proper balance may be much further toward the public domain

than is commonly thought.

That said, calls for stronger protection for fashion design may soon grow louder. Technological change has made copying easier and faster than ever before. With the general lowering of tariffs on goods from abroad, and the recent elimination of quotas on Chinese textiles and apparel, the process may hurt high-end manufacturers much more in the future. Globalization has led other creative industries to seek strong intellectual-property protection in international agreements, such as those of the World Trade Organization. The fashion industry, which is increasingly global, may start to do the same. But as yet, there is little sign that the downside of design piracy outweighs the upside. The current situation works too well for too many players.

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