



An Expensive, Confusing, and Ineffective Suit of Armor: Investigating Risks of Design Piracy and Perceptions of the Design Rights Available to Emerging Fashion Designers in the Digital Age

Alice Janssens & Mariangela Lavanga

To cite this article: Alice Janssens & Mariangela Lavanga (2018): An Expensive, Confusing, and Ineffective Suit of Armor: Investigating Risks of Design Piracy and Perceptions of the Design Rights Available to Emerging Fashion Designers in the Digital Age, Fashion Theory, DOI: [10.1080/1362704X.2018.1515159](https://doi.org/10.1080/1362704X.2018.1515159)

To link to this article: <https://doi.org/10.1080/1362704X.2018.1515159>



© 2018 The Author(s). Published by Taylor & Francis



Published online: 26 Oct 2018.



Submit your article to this journal [↗](#)



Article views: 127



View Crossmark data [↗](#)

 OPEN ACCESS

An Expensive, Confusing, and Ineffective Suit of Armor: Investigating Risks of Design Piracy and Perceptions of the Design Rights Available to Emerging Fashion Designers in the Digital Age

**Alice Janssens and
Mariangela Lavanga**

Alice Janssens is a Ph.D. candidate and lecturer at Erasmus University Rotterdam working on the thesis “The Rise and Fall of Berlin as a Fashion

Abstract

The fashion industry is digitizing, enabling faster creation, production, distribution, and consumption, as well as design piracy, but the structures that exist to support and protect designers are yet to adapt to these

Capital: 1924–1939". She holds a Master's degree in Cultural Economics from Erasmus University Rotterdam, for which she conducted research on intellectual property and fashion, and has professional experience in the creative industries. Janssens@eshcc.eur.nl

Mariangela Lavanga is assistant professor in Cultural Economics at Erasmus University Rotterdam. Her work brings together cultural economics and economic geography. She has researched and published on the relationships between the creative industries, the economy, and cities; her most recent research interests focus on temporary clusters and intermediaries in the fashion industry. Lavanga@eshcc.eur.nl

developments. There is much debate about the rampant piracy within the sector and its impact upon fashion businesses. However, there is little academic research regarding piracy's effect upon emerging fashion designers.

This study investigates: (1) the risk of piracy; (2) perceptions of the registered and unregistered design rights available to fashion designers, considering the case of UK-based emerging fashion designers; and (3) how the risk of piracy and design rights impact fashion designers' strategies in online and offline environments. Employing qualitative analysis, we argue that significant ignorance and low usage levels render the design rights available to UK designers irrelevant. Furthermore, we suggest that emerging designers are hesitant to digitize their businesses due to concerns surrounding the protection of their products. This is reflected in the growing interest in sustainable textiles and local production, which may be employed to circumvent threats of piracy.

KEYWORDS: fashion, intellectual property, design rights, design piracy, business strategies

Introduction

According to United Kingdom (UK) government statistics, in 2016 the fashion industry contributed £28bn to the UK economy and accounted for 880,000 jobs (Department for Exiting the European Union 2017). The industry, which fits within the design economy's 7.2 percent total of gross value added, is recognized internationally as a key sector, representative of UK creativity, innovation, and design (Design Council 2015). However, there is a significant issue both within the UK and more broadly in international fashion industries—that of counterfeit products. According to the IP Crime and Enforcement Report for 2016–2017, clothing is the second most-counterfeited product after cigarettes and tobacco. In 2016–2017, counterfeit clothing and accessories items accounted for 2,154,046 article seizures at EU borders and held an original product retail value of €55,455,790. The Anti-Counterfeiting Group presented figures indicating that in 2016, on UK borders alone, customs and border officials working with the trade body seized “more than 80,000 counterfeited items with a total street value of £3.5 million” (Shannon 2017).

These figures demonstrate the high impact not only of the fashion and clothing industries, but also of global fashion piracy, which negatively impacts original creators by “stealing sales and diluting hard-fought brand reputations” (Shannon 2017). The data suggests that copying remains an enduring threat to the global fashion industry, continuing an activity traced from the nineteenth century (Pouillard and Kuldova 2017).

While original creators can benefit from a first mover advantage by selling a large number of fashion products before counterfeits can be made and released on the market, Raustiala and Sprigman (2006) argue that piracy is paradoxically beneficial to fashion companies. The authors maintain that it induces rapid turnover and additional sales while fostering innovation—what they refer to as the “piracy paradox” (1691). Piracy may accelerate the diffusion of a particular trend or style, but it can also induce obsolescence of the original designs due to the prevalence and accessibility of copycat and “inspired by” products. When that trend or style dies out, innovation is stimulated as fashion designers and companies must create new products. We argue that while this still seems to be true for established fashion brands which can rely on extensive legal advice, the high speed of the contemporary fashion system, its internationalization and mediatization may curtail the first mover advantage of emerging fashion designers, putting their businesses under threat. In this respect, it appears that the Intellectual Property (IP) protections available to fashion companies, especially smaller ones, are not functioning as they are supposed to; they provide too much “liberty” and not enough “license” to the creators of fashion products (Caves 2000, 202). In addition, as Pouillard and Kuldova (2017) emphasize in the introduction to their edited issue of the *Journal of Design History*, “despite the fact that fashion and design are objects of global exchange, the legal system has up until now been dominated by national differences.” This “means that fashion and industrial designs are protected under different and partly overlapping legal regimes in different parts of the world” (2)—a “web of rights,” according to Carter-Silk and Lewiston (2012, 6).

At present, a number of UK Intellectual Property Office (UKIPO) and European Union Intellectual Property Office (EUIPO)-supported appropriation mechanisms that engage with fashion exist. Copyright, trademarks, and patents may apply, yet they do not address the design elements of fashion works (CFE 2012). Artistic copyright may similarly provide protection; however, it only applies to “highly artistic” (Derclaye 2010, 328) pieces, and as such, “functional, although original, clothes are much less likely to be protected, simply because they are not artistic” (329). Therefore, the rights that appear most appropriate are Registered and Unregistered Design Rights, which address the design nature of items (Derclaye 2010; Carter-Silk and Lewiston 2012). However, the applicability of these design rights to the fashion sector is poorly studied.

Acknowledging the lack of empirical research on design rights, our paper wishes to investigate the risk of piracy and the perceptions of the registered and unregistered design rights available to UK-based emerging fashion designers. It aims to reflect on the strategies emerging designers use to protect themselves against piracy. We define emerging fashion designers as recent graduates of fashion and textile design programs

who own or partially own fashion businesses (in other words, independent fashion designers). These designers are often self-employed, or running one-person businesses or micro firms with few employees. Within the sample, our definition of emerging designer fits within both the United Kingdom and European Commission definitions of small and medium size enterprises (SMEs), and more specifically micro firms, as firms with less than 10 employees (Ward and Rhodes 2014; European Commission 2003).

This paper first presents an outline of the academic debate concerning design piracy and the design rights available to emerging designers. It highlights the definitions of fashion, design, and piracy used in this study, describes the challenges to the industry that digitalization poses, and discusses the design rights available to UK-based designers. This is followed by an overview of the methodology employed and the results of the study. After exploring the risk of piracy, the use and perceptions of design rights of UK-based emerging fashion designers, we provide a discussion of the range of strategies they employ to deal with piracy in their supply chain, from the design phase (e.g., idea formation, sketching, mocking-up, and sampling) to manufacturing, distribution, and promotion phases. The paper concludes with a general overview of the role and relevance of design rights and discusses avenues for future research.

Fashion, Design, and Piracy

Though fashion may be defined more broadly as the “cultural construction of the embodied identity” (Fashion Theory, n.d.), for the purpose of the following analysis this study will accept two specific definitions. The first will refer to all forms of apparel that fashion companies have created for consumption or business purposes, formed of all materials and for all gender identities and ages. “Fashion” will be interchangeably employed with the terms “garment,” “apparel,” and “clothing.” The second definition will address items that are currently considered to be socially appropriate, relevant, or even cutting edge—what is “in fashion” or “fashionable.” Within this study, “design” will refer to “the appearance of the whole or a part of a [fashion item or garment] resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation” (IPO 2015, 1) expressed in sketches, samples, or final products. It will also refer to the initial phase of the creation process of a garment which encompasses idea formation, sketching, mocking-up (the creation of toiles, muslins, or similar), and sampling.

Piracy in the fashion industry will be identified as the use of a design or aspect(s) of a design without credit being given to the original owner or creator, or the creation of a design in such a manner that it is difficult to identify whether it was the first design of its form or a copy (Beltrametti 2010). When studying piracy, it is compelling to examine

Hemphill and Suk's argument that "derivation, inspiration, and borrowing are valuable and central to fashion and innovation" (2009, 1180), which echoes the work of Raustiala and Sprigman (2006). Such views are confirmed by Caves (2000), who argues that innovation and development within creative industries are not based on product improvement, but often on popularization. The author also states that any creative product that does not exactly replicate its original may be seen as an innovation. This indicates an issue with appropriability, highlighting the query of what piracy is within an industry where almost all creation may be development.

As such, it is important to address the difference between "close copying on one hand and participation in common trends on the other" (Hemphill and Suk 2009, 1153). Hemphill and Suk differentiate between copy and interpretation by their goals and effects: "close copies can substitute for and reduce the value of the original ... interpretations may even be complements" (1160). The differentiation between copy and interpretation becomes foggy when items that transcend fashion trend cycles, such as bridal gowns or the little black dress (LBD), are considered. There is little literature that overtly addresses the innovative, utilitarian, or social nature of such items. Blackmon (2007) cites David Wolfe's testimony argument about originality:

bestowing copyright to a designer for the 'little black dress', ubiquitous in the wardrobe of every woman ... would be unfair because there is no originality in a design for the little black dress. Designer Coco Chanel is credited with introducing the dress in 1926 as a symbol of urban sophistication, and every designer for the past eighty years has copied, reinterpreted and reintroduced the dress. (113 footnote 25)

Yet Wolfe's comment appears itself to differentiate between copying and reinterpretation or remixing, which may have differing effects on original designers, secondary creators or remixers, and consumers. Moreover, the classic nature of wedding dress or LBD designs is difficult to address in legislation, which generally hinges on the utilitarian or functional nature of an item. In addition, traditional fashion theory presents fashion as social in nature, stating that designs cannot be separated from the ideological and physical environments within which they are created (Hemphill and Suk 2009; Carter 2005; Baudrillard 1994). This interpretation, supporting the above case of the LBD, indicates the key role of "remixing" and context to the process of designing. This interpretation questions the role of piracy and design protection, as it states that designs are always inspired by their contexts. While this may be the case, mass copying may undermine the market of the copied good, decreasing the profit of the original, negatively impacting the reputation of the creator, if they are less established, and possibly

reducing their incentive to innovate (Beltrametti 2010; Hemphill and Suk 2009; Collopy et al. 2017). Thus, the question arises as to whether piracy may benefit all participants within the system, or predominantly established and large fashion firms.

Piracy in the Digital Age

To exacerbate the impact of piracy, augmented technological access—specifically the use of digital tools—means that works can be recreated almost instantaneously. This intensifies piracy's impact, as copied products may appear on the market before they have been released by their original creators, and leads to the perception of piracy as a disincentive to future innovation (Silverman 2014; Doeringer and Crean 2006; Scafidi 2006; Collopy et al. 2017). The most noticeable form of piracy takes place within fast fashion companies, which make designer and haute couture styles accessible to the masses at low prices (Beltrametti 2010; Hemphill and Suk 2009). These firms “[copy] the most attractive and promising trends spotted at fashion shows ... and [transform] them into products that can be put on the market immediately” (Segre Reinach 2005, 48), rendering design piracy their core business model (Beltrametti 2010). The argument rests on the assumption that the quality of pirated goods will never be the same as the originals, especially within the field of fashion, where the goods are imperfect substitutes (Landes and Posner 2003; Raustiala and Sprigman 2006). This imperfect substitution supports the claim that piracy may increase demand for the originals and develop consumption habits by increasing the popularity and dissemination of a design (Smiers 2002; Fischer 2008; Varian 2005; Liebowitz 2003). Nonetheless, the diffusion of a particular design often renders the piece unpopular with fashion aficionados, who drop it in favor of new forms (Raustiala and Sprigman 2006; Sproules and Burns 1994; Acerbi, Ghirlanda and Enquist 2012).

The speed and short-lived nature of trends, together with the growing digitization of the fashion industry, adds another level of complexity to the protection of fashion designs from piracy. New developments within the field of production, such as laser cutting, 3D knitting, and 3D printing, together with mass customization, are the hallmarks of a nascent revolution in the fashion sector (Brooke 2013; Valtas and Sun 2016; Vanderploeg, Lee and Mamp 2017). While the number of designers and brands that engage with these developing technologies remains small (although increasing), it is in the promotion and distribution of fashion that the new digital revolution has been most fully embraced. E-retailing is on the rise, digital media is flooded with images of new products and of bloggers, celebrities, and fashionistas wearing them. Rocamora (2017) argues that the mediatization of fashion disrupts fashion practices, with some designers developing collections specifically to look good on screens. Fashion shows can be broadcast live and products sold

immediately after them (the “see now, buy now” or “runway to reality” phenomenon) (Zerbo 2016a). While this mediatization of fashion may in principle provide more visibility to new designers and brands and increase their consumer bases, it can also raise the risk of piracy enormously. The IP Crime and Enforcement report for 2016–2017 emphasizes the key role of social media (specifically Instagram and Facebook), e-commerce and mediatization in supporting the global trade of counterfeit goods (IP Crime Group 2017). Similarly, the 2017 Intellectual Property Office, Share and Share Alike report identifies sales of deceptive clothing copies on social media, referencing both closed and open social media consumer groups (Collopy et al. 2017).

Yet, as McRobbie et al. (2016) suggest in their report on fashion micro firms in London, Milan, and Berlin, social media can also be a powerful tool for shaming copyists and highlighting piracy. While Tony Liu and Lindsey Schulyer’s Diet Prada Instagram account highlights copying by a range of designers (The Fashion Law 2017b), some pirated designers have personally employed social media as a shaming mechanism. The 2016 case of designer Tuesday Bassen and 2017 case of Bonnie Cashin archivist Dr. Sarah Lake are indicative of this. Bassen took to Twitter to call out copying of her designs by the fast fashion chains Zara and Bershka, while Lake set up an Instagram account which showcases pirated designs and calls out the copyist designers. The actions of both have been featured on a number of media outlets, including *Women’s Wear Daily*, *The Guardian* and *Dazed*. Even though it appears that little monetary reward or recognition has resulted, Lake’s and Bassen’s actions were significant in raising attention and fostering discussion within the broader fashion world (Conlon 2016; Feitelberg 2017; Puglise 2016). Thus, naming and shaming may be seen as an effective strategy to call attention to piracy (though its direct impact on the revenues or markets of pirated fashion designers is questionable).

Intellectual Property Protections and Appropriability

IP protection refers to the legal rights that creators may use to protect the creations of their minds: “inventions, literary and artistic works, and symbols, names, images, and designs used in commerce” (EUIPO 2018a). Given the definition of appropriability as the means that “an economic agent may use to profit from its inventions or innovations by temporarily enjoying some kind of monopolistic power” (López 2009, 2–3), formalized IP protection provides an appropriability mechanism often enabling monopoly creation. IP protection within the fashion industry has played a key role since the early twentieth century, specifically in the protection of Parisian fashion designs from copyist firms in the developing American market (Pouillard 2011; Pouillard and Kuldova 2017). In consideration of the broader field of IP protection, however, a number of multidisciplinary studies (Blind et al. 2006;

Arundel 2001; Hanel 2005; López 2009) indicate alternative appropriation strategies. Blind et al. (2006) differentiate between formal protections, inclusive of legal forms, and informal mechanisms such as lead times, contracts, secrecy, and exclusive relationships. Several of these informal mechanisms of protection have been identified as relevant to smaller firms, while legal rights are more effective for large and established fashion companies as a result of their extensive financial resources (Arundel 2001). It is possible that emerging fashion designers may consider the use of informal mechanisms either along with or instead of more formalized protections.

The academic debate on fashion protection predominantly focuses on the United States of America (U.S.) IP system, and it is generally divided between scholars who advocate for stronger or redeveloped protections (e.g., Hemphill and Suk 2009) and those who argue that appropriation mechanisms are not relevant to the fashion industry (e.g., Beltrametti 2010). Much of the debate considers litigation cases of large or established fashion companies. There is little UK-focused discussion of fashion and IP protection, and almost none on the design rights available with respect to fashion in particular. Studies compare UK and EU systems (Derclaye 2010, 2018a) or consider the UK IP protections, design rights included, in relation to the broader design industries (Carter-Silk and Lewiston 2012; Hargreaves 2011; Howe 2010; Bascavusoglu-Moreau and Tether 2011; Ahmetoglu and Chamorro-Premuzic 2012; Derclaye 2018b). These studies remain critical of the system in place, often calling for an increase in information accessible to designers and a decrease in registration costs of protections, including design rights. Bascavusoglu-Moreau and Tether (2011) argue specifically that registered design rights are irrelevant, as rights holders do not gain a significant performance benefit from registering their designs. This is echoed in Derclaye's (2018a) analysis of EU and UK unregistered design rights. The author states that "if litigation is an indication of the use of the right, CUDR [Community Unregistered Design Right] is not used/relied on much" (328) by UK designers. She provides several explanations for this:

Designers are not aware of it, or if they are aware, the right is so short that it makes less sense to litigate, or CUDR is clearer than the UKUDR [UK Unregistered Design Right] so less likely to need litigating. But the explanation may also be that the scope of CUDR, CRDR [Community Registered Design Right] and UKRDR [UK Registered Design Right] has been so curtailed by the UK courts that it is no use litigating: even if the design is found to be valid, it will not be found to be infringed. (328)

Not only are the existence of variant and partially overlapping legal regimes and the low number of fashion-related studies on design rights

becoming evident, but so is scholars' emphasis on the differing impact and effectiveness of protections based on firm size.

Hargreaves (2011) indicates that small firms, in particular, lack information about available protections. Similarly, the *Gowers Review* (Gowers 2006) mentions the restrictive nature of IP enforcement costs for small firms. Both authors use the terms "small firm" and "SME" interchangeably, but do not provide a sufficient definition of these. Carter-Silk and Lewiston (2012), who employ the European Commission definition of small enterprises as those with fewer than 50 employees and a turnover of under 10m euros, suggest that "smaller companies are currently at a disadvantage in the protection of their designs" for similar reasons (104, 128). The latest UK Design reform of 2014 introduced a number of developments, including changes to the definition of ownership and the introduction of "Design Opinions Service" that can provide advice prior to litigation (IPO 2014, 11). However, this service still appears cost restrictive and has been critiqued due to difficulties surrounding the identification of infringement, specifically for the unregistered rights often employed by smaller firms (IP Federation 2015). In the Crime and Enforcement Report 2016/17, the IP Crime Group (2017) similarly mentions the issue of "lone, micro and SMEs, who cannot afford protracted legal correspondence to get to court" (21). Focusing on the fashion sector, Pouillard and Kuldova (2017, 21) indicate a contrast between fashion firms that can "symbolically demonstrate their power in the market by publicly suing design and copyright infringers," terming them "big players," and those that cannot. The authors cite the public suing of infringers as a marketing tool, "pointing to the company's originality or creativity and to its corporate power" (3). Hemphill and Suk (2009) emphasize the threat of fashion piracy to "smaller, less established, independent" designers in the United States without clarifying how they characterize these firms (1153). Ruff (2017) refers to "local" or "local-based" fashion firms and their struggle with "large" corporations that can "mass produce garments at a low cost" (277).

What clearly appears, both within and outside of the fashion sector, is the contrast between large or established corporations that have high control of access to (inter)national markets and are able to afford court proceedings and to sue infringers, and a swarm of small and micro firms who may have predominantly localized networks, are less established, smaller in net worth, or independent. While acknowledging the existence of differences related to the size of the firms, these studies often do not directly address how they identify the firms. They further do not explore how the practices of independent fashion designers and micro and small fashion firms have been shaped by the high risk of piracy and lack of means to pursue expensive registration and lawsuits against large or established copyists. This paper intends to address this gap and engage with the design rights available to UK-based fashion designers.

UK and EU Design Rights

Currently, there are four forms of design right available to UK-based fashion designers: UK Unregistered Design Right, UK Registered Design Right, Community Unregistered Design Right, and Community Registered Design Right (see [Table A1](#)).

UK Unregistered Design Right (UK UDR) is defined under “design right” within the Copyright, Designs and Patents Act 1988 c.48 (revised version, sections 213–263) as amended in the Intellectual Property Act 2014 c. 18 (revised version, sections 1–4). UK UDR protects “the shape or configuration (whether internal or external) of the whole or part of an article,” but does not cover “a method or principle of construction, features of shape or configuration of an article” for connection to or arranged to match another article (i.e., those which relate to its function), and surface decorations (Copyright, Designs and Patents Act 1988 c. 48, section 213). UK UDR is fettered by the requirements that the design is original, which is defined as not “commonplace in a qualifying country in the design field in question at the time of its creation” (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 213). Qualifying country means UK, EU, or certain specific countries which have reciprocal agreements with the UK Design right does not subsist “unless and until the design has been recorded in a design document or an article has been made to the design” (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 213), where a design document “means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise” (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 51). UK UDR is available to:

- (a) an individual habitually resident in a qualifying country, or
- (b) a body corporate or other body having legal personality which
 - (i) is formed under the law of a part of the United Kingdom or another qualifying country, and
 - (ii) has in any qualifying country a place of business at which substantial business activity is carried on. (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 217).

In other words, UK UDR is only available to UK and EU nationals, as well as a select band of other nationalities which provide reciprocal protection to UK rights holders, and hinges on criteria related to residency location, location of company formation, and location of substantial business activity. The right provides automatic protection of a design for:

- (a) fifteen years from the end of the calendar year in which the design was first recorded in a design document or an article was

first made to the design, whichever first occurred, or (b) if articles made to the design are made available for sale or hire within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred. (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 216)

However, during the last five years of the term, the effect is reduced, as the owner must grant a license for the design if requested (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 237). UK UDR is not a monopoly right, rather it provides the owner

the exclusive right to reproduce the design for commercial purposes, (a) by making articles to that design, or (b) by making a design document recording the design for the purpose of enabling such articles to be made. Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially to that design. (Copyright, Designs and Patents Act 1988 c. 48, revised version, sections 226)

In other words, UK UDR provides the right to prevent a third party from copying and reproducing the design in the UK or importing or dealing with the infringing article in the UK for commercial purposes. UK UDR defends specifically against designs made in bad faith (not those independently created) as it is infringed by “a person who without the licence of the design right owner does, or authorises another to do, anything which by virtue of this section is the exclusive right of the design right owner” (Copyright, Designs and Patents Act 1988 c. 48, revised version, sections 226) and

a person who, without the licence of the design right owner (a) imports into the United Kingdom for commercial purposes, or (b) has in his possession for commercial purposes, or (c) sells, lets for hire, or offers or exposes for sale or hire, in the course of a business, an article which is, and which he knows or has reason to believe is, an infringing article. (Copyright, Designs and Patents Act 1988 c. 48, revised version, section 227)

The UK Registered Design Right (UK RDR) protects “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation” (Registered Designs Act 1949 c. 88, consolidated version, section 1). Similar to UK UDR, RDR does not cover “features of appearance of a product which are solely dictated by the product’s technical function” (Registered Designs Act 1949 c. 88, consolidated version, section 1C), such as zippers and folding chairs, or features which are required to allow the product “to be mechanically

connected to, or placed in, around or against, another product so that either product may perform its function” (Registered Designs Act 1949 c. 88, consolidated version, section 1C). The design must be novel and possess individual character. A design is new “if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date,” while individual character is held if “the overall impression [the design] produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date” (Registered Designs Act 1949 c. 88, consolidated version, section 1B). UK RDR provides protection for up to 25 years, in five-year renewable installments (Registered Designs Act 1949 c. 88, consolidated version, section 8), with the first registration of one design costing £50 online or £60 by post, and renewal costing £70 (GOV.UK 2018). In contrast to UK UDR, it is a monopoly right, as it provides the owner the exclusive right to “use the design and any design which does not produce on the informed user a different overall impression”; by “use” the reference is made to “(a) the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied; or (b) stocking such a product for those purposes” (Registered Designs Act 1949 c. 88, consolidated version, section 7). In this regard, a person commits an offense if:

(a) in the course of a business, the person intentionally copies a registered design so as to make a product – (i) exactly to that design, or (ii) with features that differ only in immaterial details from that design, and (b) the person does so – (i) knowing, or having reason to believe, that the design is a registered design, and (ii) without the consent of the registered proprietor of the design. (Intellectual Property Act 2014 c. 18, revised version, section 13)

In addition, offense occurs “if in the course of a business, the person offers, puts on the market, imports, exports or uses the product, or stocks it for one or more of those purposes” (Intellectual Property Act 2014 c. 18, revised version, section 13). Infringement involves the undertaking of any of the above activities; however, the right is not infringed by acts done for non-commercial, experimental, or teaching purposes, or by

an act which relates to a product in which any design protected by the registration is incorporated or to which it is applied if the product has been put on the market in the European Economic Area by the registered proprietor or with his consent. (Registered Designs Act 1949 c. 88, consolidated version, section 7A)

In other words, UK RDR cannot be used to control the movement of goods in the European Economic Area by the registered proprietor or with their consent.

Akin to UK UDR, the Community Unregistered Design Right (CUDR) is not a monopoly right in the sense that it constitutes a right only to prevent copying, where protection is excluded if copying results from “an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder” (Council Regulation EC No 6/2002, title II, section 4, article 19). CUDR provides its owner the right to prevent unauthorized copying of the design throughout the EU. Contrary to UK UDR, and similarly to UK RDR and Community Registered Design Right (CRDR), it covers “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation” (Council Regulation EC No 6/2002, title II, section 1, article 3). It excludes features of a design linked to the article’s technical functionality or related to its connection to other articles so that each of them performs its function (Council Regulation EC No 6/2002, title II, section 1, article 8). The design must be novel (“no identical design has been made available to the public ... before the date on which the design for which protection is claimed has first been made available to the public. Designs shall be deemed to be identical if their features differ only in immaterial details.” Council Regulation EC No 6/2002, title II, section 1, article 5) and it must possess individual character (“the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public ... before the date on which the design for which protection is claimed has first been made available to the public.” Council Regulation EC No 6/2002, title II, section 1, article 6). While more similar to UK RDR, CUDR provides only three years of automatic protection from when the design was disclosed to the public within the European Community (Council Regulation EC No 6/2002, title II, section 1, article 11). Design disclosure means that the design has been “published, exhibited, used in trade or disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the Community” (Council Regulation EC No 6/2002, title II, section 2, article 11). Confidentiality and non-disclosure agreements are excluded. The pursuance of infringement litigation necessitates detailed information about how the design was copied, but the coverage of protection is broader than the UK UDR counterpart.

The Community Registered Design Right (CRDR) follows a similar pattern to UK RDR and CUDR in terms of what is protected as well as the characteristics of the article. It covers not only the appearance of the whole or part of the article, but also arises from the lines, contours,

colors, shape, texture, or material of the article or ornamentation. The right excludes features of a design linked to the article's technical function or related to its connection to other articles so that each of these can perform its function (however, a design which allows for the assembly of modular products may in fact be protected) (Council Regulation EC No 6/2002, title II, section 1, articles 3 and 8). CRDR requires the design to be novel, which means

no identical design has been made available to the public ... before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details. (Council Regulation EC No 6/2002, title II, section 1, article 5)

The design needs to possess individual character, which arises

if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public ... before the date of filing the application for registration or, if a priority is claimed, the date of priority. (Council Regulation EC No 6/2002, title II, section 1, article 6)

The CRDR is a monopoly right, as it provides the owner the exclusive right to:

use it [the design] and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes. (Council Regulation EC No 6/2002, title II, section 4, article 19)

A design can be registered for five years for a fee of €350, renewable for up to 25 years from the date of filing the application, with the renewal fees increasing each period from €90 to €180 (EUIPO 2018b). Both UK RDR and CRDR allow a grace period of 12 months from the disclosure of a design within which registration can be applied for, which gives the creator the opportunity to assess the commercial potential of their design (Council Regulation EC No 6/2002, title II, section 1, article 7). In other words, UK RDR and CRDR make sense when the fashion designer believes their design to be long-lasting (e.g., more than one season) and likely to become an iconic or signature piece. In addition, CRDR allows for deferred publication. An application can be filed

to defer publication of the registered design for up to 30 months, thus allowing the owner of the right the possibility of obtaining protection without divulging the design to the public (Council Regulation EC No 6/2002, title V, article 50).

It is clear to anyone involved in product creation that design rights and general IP rights in the UK are in flux. The Brexit process will precipitate a significant change in the available systems, yet there is little hint of what developments will result (The Fashion Law 2016, 2017a; Derclaye 2018a). Governmental reports indicate that “Brexit offers an existential threat because of the possible loss of EU laws,” which will leave UK designers “severely disadvantaged if they lose EU unregistered design rights” (IP Crime Group 2017, 22). However, UK RDR and UK UDR are not impacted by the decision to leave the European Union, and recent governmental news states that “once the UK leaves the EU, UK businesses will still be able to register community designs which will cover all remaining EU member states” (GOV.UK 2016). Derclaye (2018a) suggests both positive and negative effects of the Brexit vote—the positive being that there will no longer be an overlap between UK and EU design rights. The negative consequences include the fact that UK UDR is not as broad in its coverage and that, therefore, some of the key protections of CUDR may be lost. Similarly, as CUDR requires disclosure in the EU, designers who wish to employ CUDR will be unlikely to want to disclose their designs in the UK, which may have a negative impact on events such as London Fashion Week. A further negative impact revolves around the qualifying nationality and business location aspects of UK UDR. Questions can be posed about whether and how these problems may be resolved, yet there is currently little clarity on the answers (Derclaye 2018a). Given the impending changes to design protections, an understanding of designers’ current interactions with piracy and the design rights available seems even more relevant.

Methodology

This study proffers a view into the practices and processes of independent fashion designers who face a high risk of piracy and lack the means to pursue expensive lawsuits. In particular, it aims to assess the relevance of the current design rights available to UK-based emerging fashion designers and explore the strategies they use to cope with the risk of piracy. To do so, a qualitative methodology is employed, allowing for a deeper and more profound understanding of practices and processes. The empirical analysis is based on data collected from a self-completion survey and semi-structured interviews conducted in 2016 with emerging fashion designers based in the UK. Emerging fashion designers are defined as individuals who graduated from B.A. or M.A. fashion and textile design programs within the UK within the previous ten years and who own or partially own a fashion business registered in the UK—

usually one-person businesses or micro firms with few employees. These emerging fashion designers were contacted through the alumni networks of Universities and Colleges Admission Service (UCAS)-accredited universities, the online fashion designer directory platform Not Just a Label (NJAL), the Graduate Fashion Week Awards archive, the British Fashion Council Showroom Designers listing for A/W 2016, fashion-related Facebook and LinkedIn groups, and by snowball sampling methods.

The questionnaire, featuring Likert scales, multiple choice and open questions, was disseminated to graduate fashion designers and sample universities via the Qualtrics online platform. The contacted universities shared it with their alumni by email and social media and the resulting 23 valid responses were thematically coded and analyzed qualitatively. Fourteen interviews were held with emerging fashion designers. Questions focused on educational backgrounds, business development, experience with piracy, knowledge and use of design rights. The interviews lasted approximately an hour each and were tape-recorded, transcribed, and coded (see Table A2). Verbatim quotations are used throughout this paper to convey the views and experiences of the participants. All interviews are confidential and treated as anonymous.

Results

Piracy and Emerging Fashion Designers

When examining how UK-based emerging fashion designers view and experience piracy, our findings from both the semi-structured interviews and the open-ended survey questions suggest that emerging fashion designers believe that design piracy is a result or requirement of the current nature of the fashion industry. Eight of the 14 interviewed designers highlighted that piracy is frequently undertaken either by accident, or due to the speed at which firms are required to create. Four interviewees emphasized piracy's inevitability, with statements such as "you will be copied if you're an extremely talented designer" (Interviewee 8) and "things will just be copied whatever you do" (Interviewee 6) clearly indicating this perspective. Respondents shared anecdotes of copying from either their own or friends' experiences, one of the most interesting of which featured a designer employed by the fast fashion firm ASOS who was requested to copy a design from his personal collection.

Not only does this indicate the prevalence of piracy and how it functions within the industry, but also the relationships between larger and smaller firms, as highlighted in the works of Hemphill and SUK (2009), Ruff (2017), and Pouillard and Kuldova (2017). Interviewees view the divide between the power of large, copyist firms and smaller, innovating firms as too wide to enable successful design protection, though there was little indication of where the line between smaller and larger firms

fell, as in the case of much literature on the subject. It became evident that emerging fashion designers strongly believe that the current system features a monopoly held by large businesses, for whom the legal system does not create a boundary. In the words of one designer, less-established firms have “no chance in hell” (Interviewee 12) of defending their designs against established businesses, while action from larger firms could cause designers such as herself to “lose everything,” were the situation reversed. Another designer reflected these sentiments, arguing that piracy is “taken as a given and you just hope that your whole collection is not copied” (Interviewee 5). This comment not only highlights the fatalistic view among emerging designers, but also indicates their perception of high competition within the industry, specifically against the designs and practices of established firms. This results from their lack of recognition within the industry, as well as the increased level of piracy taking place within several showcasing events and locations, such as Graduate Fashion Week, entry-level job interviews, and universities, as mentioned by three interviewees.

Two interviewees shared concerns about the unfortunate fate of smaller firms. This aligns with the studies of Beltrametti (2010), Hemphill and Suk (2009), and Ruff (2017), who stated that design theft negatively affects designers. Five questionnaire respondents similarly referenced graduate, smaller, single ownership, and young designers when asked whether piracy was an issue. These comments support the debate surrounding the Tuesday Bassen case, where the designer stated that Inditex claimed that she “had no base” as a small artist with “90k followers on Instagram, [while] they are a major corporation with 90 million customers” (Zerbo 2016b).

Concerns regarding the impact of piracy were rife. Nonetheless, statements emphasizing the importance of piracy, as well as ideological and physical contexts to the process of designing, were also presented. This was typified within the phrases “everything is a copy” (open answer from survey respondent) and “the job of a designer is to take visual information and ... assimilate it, filter it and work with it and produce something new” (Interviewee 10)—in essence, the remixing or reinterpretation referenced by David Wolfe (Blackmon 2007). The question of “to what extent something can be copied” further expressed this (Interviewee 10). One designer even admitted that he could be “a bit of piracy person” but, as he stated, “if you’re not getting your ideas from culture slash somewhere else then, you know, where are you getting it from?” (Interviewee 4). This not only emphasizes the social nature and key role of context within fashion creation (Hemphill and Suk 2009, Baudrillard 1994, Carter 2005), but also provides evidence for Raustiala and Sprigman’s (2006, 2009, 2012) piracy paradox argument that copying may not necessarily be detrimental. Even so, the negative effect upon original creators and unsustainability of Beltrametti’s (2010) piracy business model were a major focus.

As the above analysis indicates, there is a concern and an existing relationship between emerging firms and piracy. This accords with a vast amount of previous literature and provides a valid and clear context for the analysis of the design rights available to UK-based fashion designers.

Knowledge of Design Rights

Following its analysis of piracy, this paper intends to understand how emerging fashion designers perceive and interact with the design rights available to them. Given calls by Bascavusoglu-Moreau and Tether (2011), Hargreaves (2011), Howe (2010), and Ahmetoglu and Chamorro-Premuzic (2012) for increased accessibility of information about the rights available, it was considered important to assess the awareness of our interviewees. The majority of designers' familiarity with the protections are encapsulated within the statement: "I'm not really sure that there is an Intellectual Property system for designers" (Interviewee 12). During the interview process, most respondents stated that they had little or no knowledge of their design rights, even though copyright, trademarking, and the disclosure procedure were mentioned. Of the 14 designers interviewed, only one mentioned design rights. Design disclosure's link to design rights (both European and UK-based) was predominantly unrecognized by all but one respondent, who was nevertheless unaware of the name of the procedure. The majority of interviewees were either ignorant of the design rights available to them, or of their details. Furthermore, the topic sparked two respondents to comment upon the ease of counterfeiting. This focus upon piracy instead of protection strongly indicates that designers lack knowledge of the design rights available.

A high level of dissatisfaction with the broader formalized appropriation system was found in the respondents' opinions, as demonstrated in comments such as "I think that if it was successful then more people would know about it" (Interviewee 6) and "I don't think by implementing it, it would ... do much to deter someone from copying" (Interviewee 5). Most interviewees reflected on the complicated nature of the system, terming it "extremely confusing and complex" (Interviewee 12). These comments echo the argument of Pouillard and Kuldova (2017) and Hargreaves (2011) regarding the web of rights available. The selectivity of the rights' protection was also highlighted by one designer's argument that the rights are relevant to designers who "need" (Interviewee 10) them—established fashion houses. However, this yet again introduces the debate surrounding firm size and establishment.

Designers also expressed concerns regarding the restrictions that design rights may create. This was voiced in the comment "if you put too many rules then you start cutting all the creativity that people can have, because today—what are you going to launch?" (Interviewee 9). Not only does this imply that designers believe the predominant number

of products are reinterpretations of previous styles, but it also voices a concern that design rights are restrictive to innovation. This argument overtly supports the conclusions of Raustiala and Sprigman (2006, 2009, 2012), linking them to UK fashion and proposing questions about design rights and, more generally, IP protections' applicability to the fashion sector.

The irrelevance of design rights to emerging designers was also discussed in relation to the disparate speeds of the fashion industry and the legal system. While seven interviewees highlighted the velocity of the industry, four argued that current protections are not applicable to fashion due to this rapidity, its seasonal nature, and its tendency to foster Raustiala and Sprigman's (2006) induced obsolescence. It therefore appears that design rights may be more applicable to designs that are crafted for extended lifetimes or signature works, as indicated by the grace period available for UK RDR and CRDR (CFE 2012). Yet, given that the current focus of the fashion industry is upon fast products (Carter-Silk and Lewiston 2012; Segre Reinach 2005) and emerging designers' need to establish their brands within this context, such rights appear somewhat irrelevant.

Fashion's social nature further appeared in the discussion of the irrelevance of design rights. Three interviewed designers stated that design rights were not applicable due to the traditional nature of their products (including bridal dresses and sportswear), which were augmented with ornamentation that the designers believed to be unprotected by the current system of rights. This confirms that there may be certain designs and even segments in the fashion industry, such as the bridal sector, to which design rights are less relevant. As one bridal designer stated, "there are some designs that I don't really think belong to anyone" (Interviewee 3). This not only illustrates design appropriation issues and the debate surrounding remixing, but also industry segmentation—a key consideration for the future development of rights.

Moreover, the designers mentioned the difficulty of assessing the independent creation of a product. One designer stated, "you can never say that [another designer] copied, because they might just have thought up the same thing" (Interviewee 7). This is an issue that makes tracing and protecting designs online even more complicated and highlights the importance of collecting design documents in order to provide evidence against infringement.

Strategies for Dealing with the Risk of Piracy

Considering the arguments presented within the literature review and the results illustrated above, it is clear that emerging designers' use of design rights is low due to its lack of suitability for small firms, the absence of easily accessible information upon its functions, and its questionable relevance to the fashion industry. How do emerging designers

deal with the risk of piracy in their design, manufacturing, promotion, and distribution strategies?

Design Phase

Within the design phase, three respondents acknowledged the need to disclose their designs with a dated record and an image. This action would signify ownership. The method would enable respondents to employ UK UDR, depending on their nationality, and CUDR. However, there was no recognition of this connection. The procedure, when identified by two respondents, was described as copyrighting, which involves a similar method but does not typically defend fashion works (UK Copyright Services 2004).

Another strategy identified as a means of protection was the maintaining of an audit trail of date-stamped envelopes, yet again identified as a “cheap way of copyrighting” (Interviewee 4). This would act as future evidence of independent creation and novelty of design, thus constituting design documentation for all four design rights. This was only cited by two of the 14 designer interviewees. Furthermore, this method was not deemed “foolproof” (Interviewee 4). The procedure is a form of protection that functions to support both copyrighting and design rights, but its connection to the rights was, yet again, unacknowledged by the interviewees.

A compelling theme apparent within the interviews was the designers’ use and perception of formal and informal classification for appropriation strategies. One designer stated that they employed “nothing formal” (Interviewee 3), while another referred to the method that they use as feasible “if you can’t afford proper copyrighting” (Interviewee 4). A third stated that they “don’t know any proper ways of protecting” (Interviewee 11), despite previously discussing design disclosure. The use of the words “formal” and “proper” indicates a number of levels of protection: the formalized and proper system, or the less formal and unofficial—a classing of the protection strategies within the views of the designers which has been highlighted by Blind et al. (2006). In the first designer’s statement, it is not clear whether the formal or informal system is preferable; however, the second appears to derogate their actions by stating that they are either not respected or not as effective. It appears that these secondary strategies are a more feasible option for firms with less spending power.

Manufacturing Phase

Within the manufacturing phase, one strategy employed to guard against piracy was sustainability. Seven of the 14 interviewees emphasized the sustainability ethos of their collections in terms of fabric selection and

manufacturing. Given the recurrence of this topic across a number of interviews, it was deemed to be an important inductive code. Textiles and materials as manifestations of sustainability and informal protection mechanisms were a key focus for two designers. One designer cited his production of sustainable fabrics as the key form of innovation of his business:

I guess it's a kind of technical innovation in natural fabrics and in putting new things together and I'm working with people who ... are growing different kinds of plants in the UK which have never been grown before here in order to autonomously make fabric.

(Interviewee 5)

This focus was vital to the ethos of his firm and acted as a guard against piracy. As the interviewee stated, “the kind of material choices ... would be very difficult for somebody else to replicate and very difficult for somebody to manufacture” (Interviewee 5), be they a reputed producer, manufacturer, or maker at home. The use of material as a form of appropriation mechanism is evident, but were the material itself to be protected for its technical innovation, patent, rather than design rights, may apply (WIPO 2005). In this case, though UK RDR, CUDR, and CRDR can protect the appearance of the entire or part of a product resulting from the texture or material of the object, such protections seem irrelevant.

Not only the textile and materials employed in manufacturing, but also the production location was seen as a strategic platform for protection against design piracy. Three designers mentioned the fear of outsourcing their production to Indian and Asian markets, with one stating “I don't want to manufacture anything in China because I don't want anyone getting hold of my designs” (Interviewee 2). This, the designer suggests, results from the fact that “you can't track where your design is going if you're manufacturing it abroad” (Interviewee 2). One designer even mentioned the role of manufacturing locations in piracy in relation to shared factories, as her friends had “found like someone else who manufactures in their factory basically using ... their patterns” (Interviewee 1). For this reason, the designer only manufactures in her own location, ensuring that she and her employees have complete control over the process.

Sustainable production was identified by a number of designers as a reaction to the current nature of the fashion industry, viewed as an unsustainable incubator of consumerism, fast fashion, and design piracy. Two designers expressed their disgust with the current industry, calling it “boring” (Interviewee 5) and critiquing the speed and quality of products, in accordance with the views of Beltrametti (2010) and Hemphill and Suk (2009). Yet, along with this critique, another interviewee called

sustainability an aspect of the trend-focused nature of the industry, stating “sustainability came as a result of the design piracy trend ... sustainability in itself is a trend in response to the consumerism” (Interviewee 10). This indicates not only the reactionary nature of sustainable fashion firms, but also presents a somewhat negative view of the movement and its longevity. The argument contextualizes the above comments regarding manufacture location, the use of materials, and also the lack of appeal of the current industry for the interviewed designers. Nonetheless, it bypasses the control and protection aspect of the sustainability ethos upon which its participants focus.

Promotion and Distribution Phase

Within the promotion and distribution phases, protection strategies related most often to digitization—its importance to the contemporary fashion market and the relationship between fashion piracy, intellectual property, and digital tools. Of the 14 designer interviewees, nine mentioned the role of digitization or digital technology. Designers highlighted their importance in relation to marketing and brand development, their interrelationship with piracy, and use as an appropriation mechanism or tool for addressing the risk of piracy.

The importance of digitization to emerging designers appeared through respondents’ focus upon marketability and the role of brand stories. These, according to one interviewee, can be succinctly represented through the use of websites and applications such as Pinterest and Instagram, media which allow for designers “not just to present a product” (Interviewee 10). One designer highlighted this extended use by explaining that their company’s blog involves information about “repair, reuse [and] laundering” (Interviewee 1). Social media tools, this designer emphasized, are some of the best mechanisms for marketing and communication for smaller firms.

Interviewees also emphasized the indispensability of digital tools for the publication of designs, a strategy against piracy. In the discussion of design disclosure, though unrecognized for its connection with the rights, two interviewees emphasized the importance of digital mechanisms and social media (e.g., newsletters, Facebook, Instagram, Pinterest).

However, the mediatization of fashion, cited by Rocamora (2017), has also increased the risk of piracy. One designer addressed her fear of sharing her designs on social media due to the threat of piracy, while being encouragement to do so by representatives of fashion design education during degree programs. As she stated:

At university they very much encourage you to share your work online, on social media platforms, and to share your design process ... even before your collection was finished ... However,

... I didn't really want to share all of that information before I'd even put my collection out because ... it's easy for somebody else to copy that straight away. (Interviewee 6)

This view was shared by two other interviewees, who stated that some designers will start posting images of their work online in their first year of study, which raises issues of design protection. A cogent suggestion for design students to be taught to "at least ... put a watermark on a picture" (Interviewee 7) highlights the need for education about design protection and care for the work of emerging designers. This indicates a similar disparity between the role of fashion design education and students' awareness of piracy to that discussed above. It becomes apparent that the education system for emerging fashion designers does not focus on the importance of retaining designs, but instead on their publication. This may be useful for reputation development, but similarly detrimental to the future careers of those students. This indicates the issues raised by defending designs and marketing young firms while ensuring their protection.

A cogent concern presented in the open response section of the survey was that piracy "stunts the desire to promote online" (open answer from survey respondent). Not only does this allude to the impact that design piracy may have upon firms' actions, but it is pertinent given the growing importance of digital tools to the fashion industry. The comment suggests that the locus of piracy may not just be the physical market, but also online mechanisms, limiting designers' freedom upon a potentially key sales platform. One interviewed designer highlighted the fact that she had retracted a number of her works from online platforms. She "was just putting [her] stuff everywhere ... and now [she's] very careful," as she realized that "once you put something on the internet you can't really get rid of it" (Interviewee 2). This not only threatened her designs, but was exacerbated by the lack of credit given on websites such as Pinterest where members can pin things without giving credit. Another designer had experience of finding a similar design appearing and a number of her followers recognizing the similarity, but there not being a course of action she could follow to protect the design, typified by the phrase "there's nothing I could have done about it" (Interviewee 7). This resignation indicates the negative power of digitization on fashion design protection as, due to the depth of the digital world, it is almost impossible to keep track of image use. This resulted in one designer expressing that they will never display a full design on their website, but instead share "close-ups of some finishing and ... the inside of a garment to show the quality of the workmanship rather than the whole design" (Interviewee 12). This was expressed as a limiting, but necessary, precaution to protect their designs and firm.

Nonetheless, one designer cited social media as a shaming mechanism, according with the findings of McRobbie et al. (2016). The designer argued that "naming and shaming" (Interviewee 1) on social

media may be the only way to combat pirating brands. This comment was supported by another interviewee, who stated that “social media is cruel, but very good” for highlighting piracy where smaller designers can “absolutely harass” (Interviewee 2) pirating firms, as evident in the abovementioned Bonnie Cashin case. Reference was also made to the case of Mati Ventrillon, the Shetland Islands Fair Isle designer who staged a successful social media campaign against Chanel in 2015 (Stansfield 2015). However, as the designer stated, this sort of action is quite difficult. Such a comment clearly indicates the difficult balance that currently exists between promotion and protection and the concerns of young fashion designers entering the market.

Conclusion

This study set out to understand how UK-based emerging fashion designers deal with piracy in the digital era, their use and perception of design rights available, and in particular their strategic choices in terms of design, production, promotion, and distribution phases. Considering the impact of fashion design piracy, strategies employed to avoid it, and the role of UK and EU registered and unregistered design rights in safeguarding designs, it posed the question as to how the risk of piracy and the available protections against it impact designers’ strategies within both online and offline environments. More broadly, it queried to what extent design rights are relevant to independent fashion designers. It was not the aim of this paper to generalize the results, but to proffer insight into the practices and strategies UK-based emerging designers may use to cope with the risk of piracy.

From the above analysis, it is evident that the design rights available are not relevant to all fashion design firms, specifically to the practices of emerging fashion designers. Piracy is predominantly viewed as the action of large firms, while the design rights available are also deemed to be better suited to large, or more established, firms which have the resources and opportunity to employ expert legal assistance. Emerging fashion designers lack knowledge of the rights available to them, and generally regard the current design rights as irrelevant to their firms. This view is supported by their belief in the inevitability of piracy, which is considered detrimental to emerging designers’ practices, but also key to fashion innovation. Some designers use aspects of the available design rights without recognizing them for what they are, or employ informal protection mechanisms to abet piracy. These included the keeping of design documentation, online and offline disclosure of designs, selection of high-quality textiles and materials, use of local or private manufacturing locations, selectivity in online presence, balancing of protection and promotion online, and use of naming and shaming strategies.

Along with the Raustiala and Sprigman's (2006) "piracy paradox," two new paradoxes have emerged in the discussion of designers' strategies to deal with piracy. The first is the "digital paradox," whereby digital tools and platforms are viewed as threatening aids to piracy, but also act as protection mechanisms and tools for implicating pirating firms. The second is the "sustainability paradox," whereby sustainable fabrics and designs, due to their potential for extended lead times (Beltrametti 2010) and frequent disassociation with the fast trend cycles of fashion, may be the fashion products most likely to suit the current design rights available, but that these items, due to their materials, designs, or motivation, may in turn be the least likely to require design protection.

Disclosure Statement

The authors certify that they have no affiliations with or involvement in any organization or entity with any financial interest, or non-financial interest in the subject matter or materials discussed in this manuscript.

References

- Acerbi, A., S. Ghirlanda, and M. Enquist. 2012. "The Logic of Fashion Cycles." *Plos One* 7 (3): 1–9 doi:10.1371/journal.pone.0032541.
- Ahmetoglu, G., and T. Chamorro-Premuzic. 2012. "Design Rights and Innovation: A Psychometric Analysis." In *The Development of Design Law Past and Future: From History to Policy*, edited by A. Carter-Silk and M. Lewiston, 99–149. Intellectual Property Office Report. Newport: Intellectual Property Office. ISBN: 978-1-908908-36-0. <https://www.gov.uk/government/publications/the-development-of-design-law-past-and-future>
- Arundel, A. 2001. "The Relative Effectiveness of Patents and Secrecy for Appropriation." *Research Policy* 30 (4): 611–624.
- Bascavusoglu-Moreau, E., and B. Tether. 2011. *Design Economics Chapter Two: Registered Designs & Business Performance — Exploring the Link*. Intellectual Property Office Report. Newport: Intellectual Property Office. doi:10.2139/ssrn.2707111.
- Baudrillard, J. 1994. *Simulacra and Simulation*. Ann Arbor: University of Michigan Press.
- Beltrametti, S. 2010. "Evaluation of the Design Piracy Prohibition Act: Is the Cure Worse than the Disease? An Analogy with Counterfeiting and a Comparison with the Protection Available in the European Community." *Northwestern Journal of Technology and Intellectual Property* 8 (2): 145–173.

- Blackmon, L. 2007. "The Devil Wears Prado: A Look at the Design Piracy Prohibition Act and the Extension of Copyright Protection to the World of Fashion." *Pepperdine Law Review* 35 (2):107–159.
- Blind, K., J. Edler, R. Frietsch, and U. Schmoch. 2006. "Motives to Patent: Empirical Evidence from Germany." *Research Policy* 35 (5): 655–672.
- Brooke, E. 2013. "Why 3D printing will work in fashion." *TechCrunch*. July 20. <http://techcrunch.com/2013/07/20/why-3d-printing-will-work-in-fashion/>
- Carter, M. 2005. *Fashion Classics from Carlyle to Barthes*. Oxford: Berg.
- Carter-Silk, A., and M. Lewiston. 2012. "The Development of Design Law Past and Future: From History to Policy Executive Summary." In *The Development of Design Law Past and Future: From History to Policy* edited by A. Carter-Silk and M. Lewiston, 5–12. Intellectual Property Office Report. Newport: Intellectual Property Office. ISBN: 978-1-908908-36-0. <https://www.gov.uk/government/publications/the-development-of-design-law-past-and-future>
- Caves, R. 2000. *Creative Industries: Contracts Between Art and Commerce*. Cambridge, MA: Harvard University Press.
- CFE (Centre for Fashion Enterprise). 2012. *Intellectual Property in the Fashion Design Industry: Design Rights*. London: Centre for Fashion Enterprise. <http://www.fashion-enterprise.com/wp-content/uploads/2015/05/CFE-IP-DesignRights-Download1.pdf>
- Collopy, D., T. Drye, F. Koempel, P. Jenner, and C. Carey. 2017. *Share and Share Alike: The Challenges from Social Media for Intellectual Property Rights. Intellectual Property Research: IP in general and IP Crime and Enforcement for Businesses and Consumers*. Newport: Intellectual Property Office.
- Conlon, S. 2016. "Zara's Owner Responds to Artist's Copy Claims." *Vogue*. July 21. <http://www.vogue.co.uk/article/zara-responds-copy-right-claims-tuesday-bassen>
- Copyright, Designs and Patents Act 1988 c. 48 (revised version). London: Parliament of the United Kingdom. <https://www.legislation.gov.uk/ukpga/1988/48/contents>
- Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs (OJ EC No L 3 of 5.1.2002, p. 1) (amended version) The Council of the European Union. https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/cdr_legal_basis/62002_cv_en.pdf
- Department for Exiting the European Union. 2017. "Walker praises Britain's booming fashion industry." *GOV.UK*. February 22. <https://www.gov.uk/government/news/walker-praises-britains-booming-fashion-industry>
- Derclaye, E. 2010. "Are Fashion Designers Better Protected in Continental Europe than in the United Kingdom? A Comparative

- Analysis of the Recent Case Law in France, Italy and the United Kingdom.” *The Journal of World Intellectual Property* 13 (3): 315–365.
- Derclaye, E. 2018a. “CUDR and CRDR post-Brexit from a UK and EU perspective — Will all unregistered rights become history?” *Journal of Intellectual Property Law and Practice* 13 (4): 325–331.
- Derclaye, E. 2018b. “Protection of Designs on the Basis of Use.” In *Research Handbook on Design Law*, edited by H. Hartwig, Cheltenham: Edward Elgar. http://eprints.nottingham.ac.uk/38825/1/11_Protection%20of%20Designs%20on%20the%20Basis%20of%20Use_FINAL%20ssrn.pdf
- Design Council. 2015. *The Design Economy: The value of design to the UK*. London: Design Council.
- Doeringer, P., and S. Crean. 2006. “Can Fast Fashion Save the US Apparel Industry?” *Socio-Economic Review* 4 (3): 353–377.
- EUIPO (European Union Intellectual Property Office). 2018a. “Understanding IP.” <https://euipo.europa.eu/ohimportal/en/web/observatory/understanding-ip>
- EUIPO (European Intellectual Property Office). 2018b. “Fees directly payable to EUIPO.” <https://euipo.europa.eu/ohimportal/en/rcd-fees-directly-payable-to-euipo>
- European Commission. 2003. “Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises C(2003) 1422)” In *Official Journal of the European Union*, 36–41. Brussels: European Commission. <http://data.europa.eu/eli/reco/2003/361/oj>
- Fashion Theory, n.d. “Aims and Scope.” *Fashion Theory*. Taylor & Francis. <https://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=rfft20>
- Fischer, F. 2008. “Design Law in the European Fashion Sector.” Geneva: WIPO Magazine. http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html
- Feitelberg, R. 2017. “Bonnie Cashin Archivist Takes Issue with Designer Copies.” *WWD*. September 21. <http://wwd.com/fashion-news/fashion-scoops/bonnie-cashin-archivist-calvin-klein-spring-2018-poncho-10995407/>
- GOV.UK. 2016. “IP and Brexit: The facts.” <https://www.gov.uk/government/news/ip-and-brexit-the-facts>
- GOV.UK. 2018. “Register a design.” <https://www.gov.uk/register-a-design>
- Gowers, A. 2006. *Gowers Review of Intellectual Property*. Norwich: Her Majesty’s Stationary Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228849/0118404830.pdf
- Hanel, P. 2005. “Current Intellectual Property Protection Practices on Manufacturing Firms in Canada.” In *Intellectual Property and*

- Innovation in the Knowledge-Based Economy*, edited by J. Putnam, 1–61. Toronto: Industry Canada.
- Hargreaves, I. 2011. *Digital Opportunity: A Review of Intellectual Property and Growth*. Newport: Intellectual Property Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/ipreview-finalreport.pdf
- Hemphill, C., and J. Suk. 2009. “The Law, Culture, and Economics of Fashion.” *Stanford Law Review* 61: 101–151.
- Howe, M. 2010. *Russel-Clarke and Howe on Industrial Designs*. London: Sweet & Maxwell.
- Intellectual Property Act 2014 c. 18 (revised version). Parliament of the United Kingdom. <http://www.legislation.gov.uk/ukpga/2014/18/contents>
- IP Crime Group. 2017. *Crime and Enforcement Report 2016/17*. Newport: IP Crime Group. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642324/IP_Crime_Report_2016_-_2017.pdf
- IP Federation 2015. *Consultation on IPO’s new Design Opinions Service*. Policy Paper PP07/15. London: IP Federation. <https://www.ipfederation.com/download/consultation-on-ipos-new-design-opinions-service-2/?wpdmdl=11502>
- IPO (Intellectual Property Office) 2014. *Business guidance on changes to the law on designs*. Newport: Intellectual Property Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/323145/changes-to-designs-law.pdf
- IPO (Intellectual Property Office) 2015. Registered Designs Act 1949: An Unofficial Consolidated Version of the Registered Designs Act Produced by the Trade Marks and Designs Directorate. Order 2006. SI 2006/1229. Newport: Intellectual Property Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407080/Registered_Designs_Act_1949.pdf
- Landes, W., and R. Posner. 2003. *The Economic Structure of Intellectual Property Law*. Cambridge, MA: Belknap Press.
- Liebowitz, S. 2003. “Back to the Future: Can Copyright Owners Appropriate Revenues in the Face of New Copying Technologies.” In *The Economics of Copyright: Developments in Research and Analysis*, edited by W. Gordon and R. Watts, 1–25. Cheltenham: Edward Elgar.
- López, A. 2009. “Innovation and Appropriability: Empirical Evidence and Research Agenda.” In *The Economics of Intellectual Property: Suggestions for Further Research in Developing Countries and Countries with Economies in Transition*, edited by World Intellectual Property Organisation, 1–40. Geneva: World Intellectual Property Organization.
- McRobbie, A., D. Strutt, C. Bandinelli and B. Springer. 2016. *Fashion Micro-enterprises in London, Berlin, Milan*. London: CREATE.

- Pouillard, V. 2011. "Design Piracy in the Fashion Industries of Paris and New York in the Interwar Years." *Business History Review* 85 (2): 319–344.
- Pouillard, V., and T. Kuldova. 2017. "Interrogating Intellectual Property Rights in Post-war Fashion and Design." *Journal of Design History* 30 (4): 343–355.
- Puglise, N. 2016. "Fashion Brand Zara Accused of Copying LA Artist's Designs." *The Guardian*. July 21. <https://www.theguardian.com/fashion/2016/jul/21/zara-accused-copying-artist-designs-fashion>
- Raustiala, K., and C. Sprigman. 2006. "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design." *Virginia Law Review* 92 (8): 1687–1777.
- Raustiala, K., and C. Sprigman. 2009. "The Piracy Paradox Revisited." *Stanford Law Review* 61 (5): 1201–1226.
- Raustiala, K. and C. Sprigman. 2012. *The Knockoff Economy: How Imitation Sparks Innovation*. Oxford: Oxford University Press.
- Registered Designs Act 1949 c. 88 (Regnal. 12, 13 and 14 Geo. 6) (consolidated version) Parliament of the United Kingdom. <https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/88/contents>
- Rocamora, A. 2017. "Mediatization and Digital Media in the Field of Fashion." *Fashion Theory* 21 (5): 505–522.
- Ruff, E. 2017. "If the Shoe Fits: The Effects of a Uniform Copyright Design Text on Local Fashion Designers." *The John Marshall Review of Intellectual Property Law* 262: 263–277.
- Scafidi, S. 2006. "Intellectual Property and Fashion Design." *Intellectual Property and Information Wealth* 1: 115–131.
- Segre Reinach, S. 2005. "China and Italy: Fast Fashion Versus Prêt à Porter: Towards a New Culture of Fashion." *Fashion Theory* 9 (1): 43–56.
- Shannon, S. 2017. "Fighting the \$450 Billion Trade in Fake Fashion." *Business of Fashion*. March 2. <https://www.businessoffashion.com/articles/intelligence/fighting-the-450-billion-trade-in-fake-fashion>
- Silverman, I. 2014. "Copyright and Fashion: A UK Perspective." *WIPO Magazine*. 3: 30–34. June. http://www.wipo.int/wipo_magazine/en/2014/03/article_0007.html
- Smiers, J. 2002. "The Abolition of Copyrights: Better for Artists, Third World Countries and the Public Domain." In *Copyright in the Cultural Industries*, edited by Ruth Towse, 119–139. Cheltenham: Edward Elgar.
- Sproules, G., and L. Burns. 1994. *Changing Appearances: Understanding Dress in Contemporary Society*. New York: Fairchild.
- Stansfield, T. 2015. "Chanel Accused of Plagiarism, Apologizes." *Dazed Digital*. December 14. <http://www.dazeddigital.com/fashion/article/28792/1/chanel-accused-of-plagiarism-and-apologises>
- The Fashion Law. 2016. "The Good, the Bad and the Ugly of Brexit for Intellectual Property Law in Fashion." *The Fashion Law*.

- December 20. <http://www.thefashionlaw.com/home/the-good-the-bad-and-the-ugly-of-brex-it-for-intellectual-property-law-in-fashion>
- The Fashion Law. 2017a. "How will Brexit Affect Your Intellectual Property Rights?" *The Fashion Law*. March 29. <http://www.thefashionlaw.com/home/how-would-brex-it-affect-your-intellectual-property-rights>
- The Fashion Law. 2017b. "Meet Tony Liu and Lindsey Schuyler: The Duo Behind Diet Prada" *The Fashion Law*. October 19. <http://www.thefashionlaw.com/home/meet-tony-liu-and-lindsey-schuyler-the-duo-behind-diet-prada>
- UK Copyright Services. 2004. "Fact sheet P-15: Designs and Design Rights." https://www.copyrightservice.co.uk/protect/p15_design_rights
- Valtas, A. and D. Sun. 2016. "3D Printing for Garments Production: An Exploratory Study." *Journal of Fashion Technology & Textile Engineering* 4(3) doi:10.4172/2329-9568.1000139
- Vanderploeg, A., S. E. Lee, and M. Mamp. 2017. "The Application of 3D Printing Technology in the Fashion Industry." *International Journal of Fashion Design, Technology, and Education* 10 (2): 170–179.
- Varian, H. 2005. "Copying and Copyright." *Journal of Economic Perspectives* 19 (2): 121–138.
- Ward, M., and C. Rhodes. 2014. Small businesses and the UK economy. Research Brief SN/EP/6078. Parliament of the United Kingdom. researchbriefings.files.parliament.uk/documents/SN06078/SN06078.pdf
- WIPO (World Intellectual Property Organization). 2005. *A Stitch in Time: Smart Use of Intellectual Property by Textile Companies*. Geneva: WIPO.
- Zerbo, J. 2016a. "VETEMENTS and Tom Ford join Burberry to reject show system." *Dazed Digital*. February 6. <http://www.dazeddigital.com/fashion/article/29687/1/vetements-and-tom-ford-join-burberry-to-reject-show-system>
- Zerbo, J. 2016b. "How Come the High Street Can Blatantly Steal Designs?" *Dazed Digital*. July 21. <http://www.dazeddigital.com/fashion/article/32143/1/how-come-the-high-street-can-blatantly-steal-designs>

Appendix

Table A1: *Main characteristics of unregistered and registered design rights in UK and EU* (source: own elaboration from Copyright, Designs and Patents Act 1988 c. 48, revised version; Council Regulation EC No 6/2002, amended version; Derclaye 2018a; EUIPO website; Intellectual Property Act 2014 c. 18, revised version; GOV.UK website; Registered Designs Act 1949 c. 88, consolidated version)

	UK UDR	UK RDR	CUDR	CRDR
Design	Original (not commonplace in the design field in question in UK, EU and other selected countries)	Novel and individual character (different overall impression)	Novel and individual character (different overall impression)	Novel and individual character (different overall impression)
Protection	Shape or configuration of the whole or part of the article	Appearance of the whole or part of the product, e.g., lines, colors, ornamentation	Appearance of the whole or part of the product, e.g., lines, colors, ornamentation	Appearance of the whole or part of the product, e.g., lines, colors, ornamentation
Applicability	UK	UK	EU	EU
Infringement	Substantially copying, reproducing, importing, or dealing with the article for commercial purposes in UK (bad faith)	Making, selling, exporting, importing in UK any article that use the design for commercial purposes (good faith; bad faith)	Copying to create a similar overall impression (bad faith)	Making, selling, exporting, importing in EU any article that use the design for commercial use (good faith; bad faith)
Test	Person to whom design is directed	Informed user	Informed user	Informed user
Duration	15 years since design is made or recorded in a design document / 10 years since article made available for sale or hire (license of right possible during the last 5 years)	25 year (5 years per time renewal) Grace period of 12 months from disclosure	3 years since design first made available to public (disclosure can happen everywhere but those events, e.g., trade fair, should be within the radar of the relevant circles in EU)	25 year (5 years per time renewal) Grace period of 12 months from disclosure Deferred publication for up to 30 months
Price	zero	50-60 pounds per design per 5 years	zero	350 euro per design per 5 years

Table A2: Demographic details of qualitative units of analysis (source: own elaboration)

Interviewee	Interview Time	Gender	Age	Location	Educational Background	Firm Start Up Year
1	34:03	F	32	Bristol	BA, MA	2006, restart 2010
2	39:17	F	23	London	BA	2014 / 2015
3	39:15	F	37	Bath	BA, MA	2008
4	1:00:30	M	26	Crawley	BA	2014
5	1:01:06	M	26	London	BA, MA	2016
6	38:31	F	24	London	BA	2015
7	53:17	F	24	London	BA	2015
8	59:14	F	30	Berlin (UK-based company)	BA, MA	2010
9	1:16:07	F	36	London	BA, MA	2015
10	59:14	M	36	Singapore (UK-based company)	BA, BA, MA	2011
11	47:40	F	26	London	BA, MA	2013, restart 2016
12	1:10:52	F	56	Southampton	BA	2011
13	n/a (online)	F	32	Lancashire	BA	2015
14	n/a (online)	F	– ^a	Wolverhampton	BA	2015

^aNote: Respondent did not wish to answer this question.