

# 18 *COUTURE ET ÉCRITURE*: WHAT THE FASHION INDUSTRY CAN TEACH THE WORLD OF WRITING

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“Fashion has always been about inspiration. Designers are inspired by nature, by culture, by events, by other designers. But there is a difference between inspiration and plagiarism.”

stopfashionpiracy.com

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In “Framing Plagiarism,” Linda Adler-Kassner, Chris Anson, and Rebecca Moore Howard (2008) stated that “plagiarism is *hot*. Nor is that heat limited to the popular media; colleges, faculty, and students are equally consumed by the notion that plagiarism is widespread and uncontrollable” (p. 231). Plagiarism has now found application and resonance in the world of fashion. The above epigraph is taken from the opening narration of an approximately 10-minute video decrying the ills of fashion piracy and advocating increased intellectual property protection, specifically copyright, for clothing design. Indeed, the use of the word “plagiarism” to describe copied fashion design should be viewed as rhetorical and deliberate. As Moore Howard (2007) reminds us elsewhere, “plagiarism is a discourse developed with that of copyright;” and although it is an ancient term, it was not until the rise of the printing press and its “monetary opportunities” in the 18<sup>th</sup> century did the term become common (p. 7). As such, it is the perfect word selection for those wishing to excoriate pirates in the name of “protecting” originality when profits are concerned. However,

as Jessica Litman (1994) argued, “the model suggesting that production and dissemination of valuable, protectable works is directly related to the degree of available intellectual property protection is much too simplistic. In fact, history teaches us a more equivocal lesson” (p. 46).

Delving into that history and intellectual property’s ambiguity, law professors Kal Raustiala and Christopher Sprigman (2006) argued convincingly that the “fashion industry flourishes despite a near-total lack of protection for its core product, fashion designs” (p. 1762). The absence of protection runs counter to how we typically understand the role intellectual property “should” play when a creative work such as design is involved. Cutting-edge designs parading down a fashion runway in Paris or New York are digitally photographed and emailed off to design houses where they are reverse engineered (or perhaps more appropriately, reverse designed) and then mass produced at a discounted rate for the general public. Celebrities showing off exclusive *haute couture* on the red carpet generate the same results. However, rather than stifling innovation, the missing copyright protection for fashion designs creates what Raustiala and Sprigman called a “piracy paradox” where the rapid proliferation of copied artifacts actually benefits designers by making trends obsolete faster, thus pushing innovation and increasing sales. The process of shortening the shelf-life of new designs and quickening what is known as the “fashion cycle” is called “induced obsolescence” in the fashion industry (p. 1722). Fashion design thrives in this largely unexplored “negative space” within intellectual property law (Raustiala & Sprigman, p. 1776).

This chapter details my experience in this negative space—teaching a business and professional writing course where the student body was comprised almost entirely of Textile, Apparel, and Merchandizing (TAM) majors. When we arrived at the portion of the course that dealt with the intersections of writing, intellectual property, and ethics, the students took a keen interest in learning more about copyright law’s minimal sway within fashion design. In the academic setting, students receive constant reminders regarding the ills of plagiarism and copying and the importance of citing sources as inherent to upholding academic integrity. The opportunity to explore academic integrity and issues of intellectual property by pairing them with the current debates from the world of fashion was, I thought, too good of a teaching opportunity to let go by. In the middle of the semester, I adjusted the course readings and assignments and asked student groups to prepare to argue for or against fashion “piracy.”

The trouble with “teaching” plagiarism is that “many cases of so-called plagiarism occur at the borders where one set of (typically academic) values and practices blurs into another (typically public) set of values and practices”

(Adler-Kassner et al., 2008, p. 239). Along with Adler-Kassner and her colleagues, I do not condone blatant plagiarism of another writer's work, but I do believe the world of fashion stages an effective teaching environment by contrasting an academic context with this unique professional space. In this chapter, I argue that the deliberate introduction of intellectual property issues and this specific fashion debate offer an effective means of reaching the goals and objectives for a business and professional writing course. In the first section, I briefly introduce course goals and examine class dialogue surrounding intellectual property. This beginning portion of the chapter serves as a backdrop for untangling some of the relationships knotting together plagiarism, copyright, and trademark. That untangling also necessitates a brief overview of the protection that intellectual property law provides for the world of fashion and how those protections are minimal in the United States as compared to Europe. I then examine a bill introduced twice to the U.S. Congress, the Design Piracy Prohibition Act, written to extend Title 17 of U.S. Code to grant copyright protection to fashion designs for 3 years. After discussing several student projects that argued for and against the passage of the bill, I claim ultimately that students left the writing class with more than just a set of rules regarding what they cannot do and instead developed more nuanced conceptions of intellectual property and plagiarism.

### EXPLORING “NEGATIVE SPACES” IN THE WRITING CLASSROOM

Maybe not in large enough quantities, but curriculum yoking writing instruction and intellectual property exists; this chapter is just one small exploratory offering (Howard, “Syllabi”; see, also, other chapters in this volume). The course and curriculum discussed here relate to a business and professional writing course enrolling juniors and seniors from a wide range of majors. Because the course satisfies a university general education requirement, it is not uncommon to find science, engineering, and humanities majors of all kinds taking the course. This particular semester happened to enroll a large majority of TAM majors—19 of 22 students.

Course goals for business and professional writing classes emphasize fostering critical thinking skills as students evaluate rhetorical situations, assess audience needs, and compose and revise work (see Herrington, 1981; Knoblauch & Brannon, 1983; Odell, 1980). A persistent challenge to any number of writing courses, but especially courses like business and professional writing or technical writing, is that they attempt to prepare students for communicative

contexts governed by value systems and protocols often much different from academic standards. According to Jessica Reyman (2008), “a division between workplace practices and academic expectations distances our classrooms from the workplace and presents students with an unclear picture of what is allowable and in what contexts it is allowable” (p. 64). In reflecting on my own professional experience as a software engineer responsible for a great deal of writing, much of the work our team produced was highly derivative and, by academic standards, “plagiarized.” For a group of software engineers developing new applications for the medical market, our company had established a particular professional ethos and its technical and promotional documentation helped support that ethos. It would have been presumptuous, if not foolish, for each of us to compose materials in such a fashion that strove to demonstrate “authenticity” or “original authorship.” The goal was to appear as a unified front of products and services; for our writing to accomplish that goal, we borrowed and patch wrote. Indeed, George Pullman (2005) suggested that technical and professional communicators would be wise to become accustomed to “thinking about text as reusable chunks of information” (p. 50).

Responding to these variances in professional writing contexts and practices, one of Reyman’s (2008) proposed curricular solutions integrates “discussion of legal definitions of authorship” explicitly into her course (p. 64). Rather than just preaching plagiarism guidelines, Reyman advocates expanding on the legal guidelines for what constitutes work-for-hire as well as examining the fair use doctrine. Finally, she is a proponent of pushing students to apply critical thinking skills to intellectual property and authorship:

Introducing scenarios, both in the classroom and in textbooks, that ask students to wrestle with understandings of the legal and ethical implications of copying and re-use allows for exploration of plagiarism as a context-specific concept. Scenarios addressing such concerns might include nontraditional acts of composition, such as ghostwriting, work-for-hire, collaboration, and using boilerplates, that challenge the single-author model. (p. 65)

Her solution is admirable, but for many of us it may mean stepping outside our classroom comfort zones. That said, addressing what Moore Howard (2007) called the “widespread hysteria” over Internet plagiarism will require facing these challenges. Again, this is no easy task; from legal scholars like Litman we do not exactly get words of encouragement. Litman noted, “the moral of the story: some things are easier to teach than others. The current

copyright statute has proved to be remarkably education-resistant. One part of the problem is that many people persist in believing that laws make sense” (p. 50).

My attempt to introduce students to a more nuanced understanding of intellectual property and its relationship to writing was by way of using the current debates within the fashion industry as a scenario. The scenario is fortuitous in that we are witnessing the law while it is attempting to make sense of itself. Or, rather, we are witness to industry executives and their legal teams lobbying for greater protection for an industry that may or may not be best served without that protection. My approach was to prepare students to take part in that discussion with short readings and research and then ask them to argue for or against the Design Piracy Prohibition Act.

The first step was to select readings that would outfit students with the necessary vocabulary to participate in a conversation about intellectual property. Common textbooks used in business and professional writing or technical writing courses will often have sections dedicated to ethics and writing and some may even quickly cover fair use or the fundamentals of copyright. Textbooks, however, do not typically take the opportunity to provide students with an adequate overview of intellectual property, or a discussion that even begins to parse its complexity. To compensate, I supplied students with the introductory chapter from *The Law of Intellectual Property* (Nard, Barnes, & Madison, 2006). Although this book is designed for law students and contains a dense offering of legal cases in later chapters, the first chapter is an excellent overview of the mainstays of intellectual property: copyright, trademarks, patents, and trade secrets.<sup>1</sup> Even better for my purposes, the section of the introduction dedicated to trademark law contains a news story on a police raid in New York City’s Chinatown confiscating counterfeit merchandise by Louis Vuitton, Kate Spade, and Fendi, and a quick overview of a logo infringement case. I also asked students to read the details of the proposed Design Piracy Prevention Act on the Open Congress Web site. The site traces the progress of the bill and shows members of Congress backing the proposal. Students also watched the 10-minute video supporting the bill on the Web site [stopfashionpiracy.com](http://stopfashionpiracy.com). Finally, there is a useful, although very brief, summation of Raustiala and Spriegman’s (2006) article available from *The New Yorker* online titled “The Piracy Paradox” (Surowiecki, 2007).

Student groups were allotted 12–15 minutes to argue their cases in front of the class. Presentations surpassed my expectations regarding overall quality and insightfulness, but also surprised me in that the dominant stance argued *against* the passage of the Design Piracy Prohibition Act. The class was divided into six teams comprised of three to four students. Of those six teams, only one

advocated for the passage of the bill. As I kept reminding students, I was not there to judge right or wrong on the bill, but to assess the rhetorical maneuvers made within their arguments. I also reminded them that in addition to demonstrating their abilities to conduct research and analyze data, the goals for the course insist that they demonstrate their aptitude with comprehending and evaluating potential ethical and legal dilemmas associated with writing and research. While I am not suggesting these goals are in any way exceptional for a writing course, asking students to address the dilemma posed by a pairing of intellectual property law and the fashion industry's plea for protection did provide a unique learning scenario for students. More importantly, it changed the subjects of intellectual property and plagiarism from lecture-driven segments of the course to a dialogic one where students were engaged with critiquing the present and future reach of the law. As a class, we set out to make sense of this "negative space."

## UNTANGLING INTELLECTUAL PROPERTY AND FASHION

### *Trademarking Fashion*

Protection for fashion comes primarily from trademark law and not copyright. Under the Federal Trademark Act, otherwise known as the Lanham Act, a trademark is "any word, name, symbol or device or any combination thereof used by a person...to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown" (15 U.S.C. sec. 1127). These provisions benefit both the consumer and the trademark holder. First, consumers are spared confusion between brands. Consequently, the time required to identify a particular product and make a decision regarding its associative quality is shortened. That is, it is easy to distinguish Coca-Cola from other competing colas because trademark law prohibits other companies from assimilating Coke's appearance. Coke consumers have come to rely on a particular quality, consistency, and taste associated with its brand identity. As a result, consumers receive a second benefit in that companies have an incentive to maintain these levels of consumer expectations. Companies can spend a great deal of time and money developing what is known as "good will" with their consumers; although good will is intangible, for many companies it is often valued at "millions of dollars" (Nard et al., 2006, p. 2). Finally, companies use trademark protection to prevent competitors from abusing or trading on their established consumer good will. A competitor's sub-par offering that uses, for

example, a counterfeit trademarked logo to create an incorrect brand association, can lead to a dilution of the original brand.<sup>2</sup>

Trademark goes into effect as soon as an individual or company uses a mark to “identify goods or services for sale to the public. Therefore, federal or state registration of a trademark is not necessary in order for a company to own, use, or even enforce a trademark” (ASME, 2001, p. 32). Most individuals and companies serious about protecting their trademarks, however, do register with the U.S. Patent and Trademark Office. Unlike copyrights and patents, trademarks can be held in perpetuity so long as the trademark holder continues to use their mark. Registering with the U.S. Patent and Trademark Office helps signal the desire for continued protection and serves as a warning to others wishing to compete in the same market. According to the Lanham Act, violations constitute the following:

Any person who shall, without the consent of the registrant—  
 (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;  
 ... shall be liable in a civil action by the registrant for the remedies hereinafter provided. (15 U.S.C. sec. 1114)

Despite the real threat of litigation, counterfeit products have plagued the fashion industry for years; perhaps the most common form of abuse is the replication of trademarked logos.

Logo misappropriation is one of the easiest methods to capitalize on an established brand’s good will. Counterfeit or “knock-off” goods are a cheaper—often both in terms of price and quality—impersonation of a desirable, higher-end consumer product. For example, Gucci and Louis Vuitton handbags and purses bearing the company’s respective logos are valued by consumers because their ownership suggests or even confers a particular social status: “These are goods whose value is closely tied to the perception that they are valued by others” (Raustiala & Sprigman, 2006, p. 1718). As Brian Hilton, Chong Ju Hoi, and Stephen Chen (2004) argued, “who is buying and from whom is what gives a product its credibility. In the absence of a means to assess quality directly people use ‘surrogate’ indicators of quality” (p. 347). However, there is an even better reason that these designs are so quickly copied: Trademark rarely succeeds in protecting fashion designs when a logo or product-differentiating mark is not part of that design. Raustiala and Sprigman pointed out instances

where designers strived to integrate their logo pervasively into a complete product design; Louis Vuitton or Coach handbags that have their logos repeated all over the bag in a wallpaper-like pattern are examples. There are other unique instances where protection is upheld, such as Burberry's trademarked plaid, but on the whole, the uses for trademark law in the world of fashion are "quite limited" (Raustiala & Sprigman, p. 1701).

### *Copyrighting Fashion*

The limitations of trademark law have led advocates for fashion design protection to explore copyright as an alternative method. Currently, the wide array of creative works that copyright protects—including art, sculpture, and other pictorial works—does not extend to any item that may be classified as a "useful article." Title 17 of the U.S. Code elaborates on what may and may not qualify as a copyrightable work:

Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. (17 U.S.C. sec. 107)

Raustiala and Sprigman (2006) clarified that a fashion designer's sketch would qualify for copyright protection as an artistic work. However, the final product (whether it be a jacket, shirt, skirt, or pants) that emerges as a result of the sketch does not retain any protection, as that final product is deemed "useful." Similarly, utilitarian designs cannot be protected within the scope of trademark law either. According to U.S. law, therefore, the cuff of a shirt or the shape of a lapel can almost always be associated with some functional aspect of a garment, which results in those designs being left open for copying.

As advocates for increased fashion protection will point out, the European community does possess legal means to deter copying designs. Arguing for increased protection for U.S. fashion designers, Karina Terakura (2000) recounted a 1994 lawsuit where Yves St. Laurent sued Ralph Lauren in a French court for copying. The garment in question was a sleeveless tuxedo gown. The



Yves St. Laurent version sold at a much higher price point of approximately \$15,000, where the Ralph Lauren version was a \$1,000 offering. Models wore the gowns in the courtroom for the judge, who, after examining them, said, “clearly there are differences ... [Lauren’s] buttons aren’t gold, while Mr. St. Laurent’s are. The St. Laurent dress also has wider lapels and I must say is more beautiful, but of course, that will not influence my decision” (Terakura, pp. 613-614). Ironically, and without mention of a potential conflict of interest, Terakura reported that the judge herself owned two fashion boutiques in Paris. The original ruling dictated that Ralph Lauren pay a fine of \$411,000, but that fine was later reduced to an undisclosed sum. Although Terakura judged the original sum as “relatively low,” she did find the ruling in favor of Yves St. Laurent “comforting” (p. 614).

Terakura’s (2000) stance is set on a traditional incentive model that predicts more protection begets more innovation; she worried that “without the original creators of fashion styles, the world would not be provided with an array of beautiful clothing” (p. 618). And according to the traditional model, the only way to ensure that these “original creators” keep producing is to provide protection for their work. Terakura continues, “Imitation is a form of flattery, but when imitators continuously benefit from other’s work, creativity diminishes. Creators need protection from imitators” (p. 618). Indeed, this is what Jonathan Barnett (2005) referred to as the “standard incentive thesis that pervades much academic, judicial, and policy discussion of intellectual property” (p. 1381). It is also this line of thinking that is the backbone of the Design Piracy Prohibition Act.

## THE DESIGN PIRACY PROHIBITION ACT

The Design Piracy Prohibition Act was a twice-proposed bill that would have amended Title 17 of the U.S. Code to extend copyright protection to fashion designs. The bill “excludes from such protection fashion designs that are embodied in a useful article that was made public by the designer or owner more than three months before the registration of copyright application” (Open Congress). The bill would have provided copyright protection for 3 years and it would have been the responsibility of the Register of Copyrights to evaluate the originality of a design. The bill had sponsorship from several well-known Senators including Barbara Boxer, Hillary Clinton, and Charles Schumer. At the time of this writing, the Design Piracy Prohibition Act had been introduced in the 109th and the 110th Congress; in both instances, the bill lapsed without a vote. Given the current economic climate, it is uncertain whether or not the

bill will be re-introduced into the 111th Congress and, even if it is, whether or not Congress will take time to address the bill.

In the bill's first instantiation, labeled H.R. 5055, it was referred to the House Subcommittee on Courts, the Internet, and Intellectual Property. Committee members heard expert testimonies from fashion designers, lawyers, and the United States Copyright Office. Serendipitously, many of these statements are available online and there was no shortage of fodder for students as they built cases for or against the bill. Students found the U. S. Copyright Office's statement on the bill with ease. The final paragraph concludes:

The Office does not yet have sufficient information to make any judgment whether fashion design legislation is desirable. Proponents of legislation have come forward with some anecdotal evidence of harm that fashion designers have suffered as a result of copying of their designs, but we have not yet seen sufficient evidence to be persuaded that there is a need for legislation. (U. S. Copyright Office)

However, students discovered just as quickly that there was no shortage of bill defenders. For example, Susan Scafidi is a law professor who has written on fashion and intellectual property and also keeps a blog called Counterfeit Chic. In her opening statement on H. R. 5055, delivered to the House Subcommittee on Courts, the Internet, and Intellectual Property, she advocated for the bill's passage:

At this point in our history, America should not be a safe haven for copyists. The failure to protect fashion design is both inconsistent with our international policy and a disadvantage to our own creative designers—especially the young designers who represent the future of the American industry and who are particularly vulnerable to copying.

The stopfashionpiracy.com Web site has also amassed testimonials from American and European designers representing major corporations like Armani, Chanel, and Hermès, all advocating for the Design Piracy Prohibition Act. The U.S. and U.S. design houses, they argue, are at a severe disadvantage in a growing global economy without fashion copyright. Many of the testimonials warn that this multi-billion dollar industry could atrophy in the U.S. and that the decline would come, at least in part, as a direct result of technology and globalization. Before the days of the Internet, copying a design could take months or as long as a year to perfect. Designers are now working and showing

their wares in environments where they know little can remain secret for long. According to a testimonial by Giovanna Ferragamo, a member of the board of directors for the well-known Italian designer Salvatore Ferragamo, copied designs appear in stores at the same time and in some cases *prior to*, the release of the originals. In an effort to promote awareness for the dilemma and the Design Piracy Prohibition Act, designers have started describing design piracy as “counterfeit without the label”. Proponents argue that so long as the model, shape, and overall design cannot be protected, then their hard work will continue to be “stolen in plain sight” (Stop Fashion Piracy).

In addition to technology’s influence on design piracy and the fashion cycle, the global economy brings inescapable competitive realities. For example, Eastern countries have undeniably lower production costs. Many of the companies producing pirated fashion take advantage of these lower costs, which, in turn, lowers the costs to consumers enticed to buy the cheaper imitated designs. Short of inspecting a garment’s label for its authenticity, a consumer would need to be a fashion expert in many cases to distinguish the copy from the original design. Frustrated and fearing the potential of huge profit losses, design houses are turning to copyright to protect designs and hold onto a competitive edge. Copyright’s protective reach, as noted in this collection’s introduction, has been extended significantly over the last several decades, to a degree where copyright reform activists and legal scholars question whether or not the law in its current form continues to serve its original purpose.

## COPYRIGHT’S PURPOSE: THE POWER TO PROMOTE PROGRESS

More important than the need to protect, if copyright law was derived from the Constitution granting Congress the right “to promote the progress of science and the useful arts,” it is difficult to imagine *more* law doing a better job than the fashion industry’s existing system. Despite the compilation of testimonials advocating for fashion’s right to copyright protection, it is also hard to ignore the evidence of a thriving fashion industry whose gross U.S. revenues exceed \$173 billion and globally are estimated at over \$784 billion annually (Raustiala & Sprigman, 2006). With a tongue-in-cheek delivery, Litman (2008) imagined what our lives would be like if we did *not* have copyright for fashion designs:

Imagine for a moment that some upstart revolutionary proposed that we eliminate all intellectual property protection

for fashion design. No longer could a designer secure federal copyright protection for the cut of a dress or the sleeve of a blouse...The dynamic American fashion industry would wither, and its most talented designers would forsake clothing design for some more remunerative calling like litigation. And all of us would be forced to either wear last year's garments year in year out, or to import our clothing from abroad. (pp. 44-45)

Litman does eventually remind her readers that, "of course, we don't give copyright protection to fashions...We never have" (p. 46). For those in opposition to the Design Piracy Prevention Act, the rampant copying of competing designs appears only to spur more innovation and more revenue for an industry that is constantly rolling out new merchandise to the public. Some legal scholars, such as Barnett (2005), have gone so far as to make arguments that even *trademark* infringement behooves a brand. Barnett contended that introducing counterfeit goods allows designers to charge what he called a "snob premium" to fashion-conscious consumers who desire to set themselves apart from the "non-elite" (p. 1384). The result is a hyper-inflated popularity for the brand that has more consumers setting their sights on acquiring the "real" item. Although there is not a major initiative afoot to strip fashion of its trademark protection, legal scholars are questioning the efficacy of applying copyright to an industry that survives by blending and borrowing ideas from a rich history of past designs. Representing a rare "negative space" within intellectual property law, fashion's missing copyright protection counter-intuitively promotes huge levels of productivity, innovation, and profit.

Legal scholar Lawrence Lessig has written extensively on copyright law's stifling effects on cultural progression and argues that the law has expanded to the point of deterring its original purpose of promoting innovation. In *Free Culture: The Nature and Future of Creativity*, Lessig (2004) recounted a legal anomaly similar to fashion's missing intellectual property protection from the world of Japanese comics. He described the phenomenon of *doujinshi* comics, which are a kind of "copycat" work created based on existing, often mainstream, comics. *Doujinshi* comics are clear violations of copyright law in that they are derived from other works. Even though *doujinshi* works have come to take up a large portion of the Japanese comics market, there is no active effort to shut them down. Similar to Raustiala and Sprigman's (2006) argument against fashion copyright, Lessig cited research that suggests the copycat comics actually make the entire market "more wealthy and productive" (p. 27). In an effort to understand why, exactly, the comics are allowed to exist in the first

place, Lessig himself seemed most satisfied with the reality that there simply are not enough lawyers to enforce what would amount to an overwhelming number of cases. He posited that “regulation by law is a function of both the words on the books and the costs of making those words have effect” (p. 27). To rephrase a cliché, then, the so-called cure for fashion’s perceived illness may be much worse than the illness itself.

## WRITING INSTRUCTION AND PLAGIARISM

### *Plagiarism Detection*

Fashion’s anxiety over the perceived illness of rampant copying in the age of the Internet and globalization resembles what Moore Howard (2007) described as a “sense of impending doom” brought on by a perceived technological threat poised to “undo the entire educational enterprise” (p. 3). Moore Howard provided examples from scholars and critics whose work she believes advances the less-than-critical assumption that there is a causal relationship between technology and plagiarism. While the fashion industry is lobbying for extending copyright to protect designs from plagiarism, many instructors (or at least their institutions) are resorting to protectionist methods by purchasing licenses for plagiarism-detection services such as Turnitin.com. Among the many critiques leveled at such services is Lisa Emerson’s (2008) concern that in the wrong hands, “Turnitin becomes a blunt instrument to accuse those struggling to grasp a complex intellectual skill of moral failure—with huge repercussions for those students” (p. 190).

To a great degree, embracing plagiarism-detection services has been the response of my institution. As part of an effort to promote “Digital Literacy” on campus, the university library posted a number of learning modules and tutorials on their Web site. One of those tutorials is dedicated to stopping plagiarism. The introductory page informs students and instructors that “the word plagiarism comes from the Latin *plagiarius* meaning ‘kidnapper’” and offers a cartoon rendering of a thief in a black mask making off with a sack full of “writing,” “words,” “knowledge,” and “ideas” (WVU Libraries Plagiarism Tutorial). A second cartoon depicts a student being literally kicked out of the dean’s office with a paper labeled “plagiarized” having fallen to the floor. (In the tutorial’s defense, it does offer some useful basics on paraphrasing and citing source materials.) It closes, however, with yet another cartoon image, this one of a gold badge with the words “plagiarism detective.” This portion of the tutorial reads:

Plagiarism detection services, such as Turnitin.com, use specialized technology to compare student papers with information found on the Internet as well as their own databases of previously submitted papers. Your professor may ask you to submit your papers electronically to Turnitin.com. Turnitin.com will create an “originality report” that shows how much of your paper is original and how much, if any, is plagiarized. (WVU Libraries Plagiarism Tutorial)

The computer-generated originality report brings George Landow’s (1997) “Ms. Austen’s Submission” immediately to mind—a dystopian tale of a future where “Amateur Authors” submit their work to an all-knowing computer called the Evaluator that serves as the arbiter of authorship at the Agency of Culture. This machine has the power to advance an Amateur to the status of “Author” or even a “Mass” or “Serious” author. Although the story concludes with a hypertextual array of possibilities for Ms. Austen, ranging from worldwide success to complete rejection, Landow ends by providing a somber reflection: “machine intelligence necessarily reproduces *someone’s* ideology” (p. 296).

Buried not too deeply in plagiarism-detection software is an ideology that the kidnappers are our students, who will remain guilty until verified as adequately “original.” Subtle and not-so-subtle encouragement to use Turnitin comes in surprising forms. For example, I just completed a university-mandated audit for one of the English department’s writing courses. These audits offer “proof” to the university curriculum committee that a course meets set guidelines for what constitutes a writing-intensive course. The paperwork asks for a sample syllabus and assignments, and requires that the instructor respond to a series of questions. Among the many questions is: “How do you ensure that written work does in fact reflect the student’s own work? (i.e. Turnitin or Safe Assign).” Given all of the opportunities to elaborate on course goals and how writing is integral to those goals, I was surprised by the question and the suggested possibility of Turnitin. It is as if integrating multiple drafts and revisions along with peer and instructor evaluations would not begin to serve as a satisfactory answer to this question. Why couldn’t the question instead suggest, “i.e. demonstrably innovative curriculum and engagement with students?” I view my university’s prompt as a signal that the field of writing has come to a point where it must evaluate what role technology’s “protection” plays in the instruction of writing. Rather than flashing the badge of “plagiarism detective,” students may be better served with curriculum that employs a deliberate introduction of intellectual property law and its many ambiguities to set a stage for a dynamic writing classroom. I am

suggesting that any writing classroom will benefit by shifting from offering lecture-based coverage of plagiarism “laws” to a student and teacher dialogue probing intellectual property and its more ambiguous and negative spaces. Giving students the opportunity to research and formulate their own ideas regarding intellectual property produced thoughtful presentations and conversation in my own class.

### *Creating Dynamic Dialogue*

Again, in my class, it surprised me that there was little support for copyright protection for fashion designs. The one and only group that made an argument for the passage of the Design Piracy Prohibition Act took the position that as fashion design majors they had hopes of working not for a big design house but striking out on their own with small, boutique-like labels. The group made a convincing case that without protection, the big design houses could appropriate or “steal” (as they put it) their designs and bring them to market faster and with more marketing-driven attention. They also made the point that unlike writing, they do not have the option of citing sources of inspiration. The group was uncomfortable with the idea that it becomes the consumer’s responsibility to be informed about fashion to the degree that he or she could recognize a pirated design and then make an informed decision on whether or not to buy. The Design Piracy Prohibition Act not only gives entrepreneurial designers a fighting chance in fashion, they argued, but copyright for new designs would improve on trademark law by serving as another marker of authenticity to would-be consumers.

The five remaining groups did not support the bill. All of the groups did, however, make a point to include a short reaffirmation for trademark law and its very necessary role in fashion. One of the groups began their presentation by circulating two Coach wallets—one authentic and one a counterfeit. Taking a cue from Barnett (2005), I asked if instead of being a problem for the world of fashion, that perhaps the presence of the fake wallet increased the value or desirability of the original. A student responded that it may be possible for a fake to have the reverse effect, however. She classified the counterfeit wallet as “true plagiarism” but did add that, “all the people that I care to impress do know the difference anyway.” The remainder of their presentation was an informative side-by-side comparison of the shape and style of the wallets’ designs which demonstrated subtle differences and near exact similarities between the two. The group maintained that they were against trademark infringements, such as the Coach knock-off, but concluded it would be detrimental to the progress of the industry if Coach could, for ex-

ample, copyright the wallet's closure strap or overall shape. They pointed to the language of the proposed Design Piracy Prohibition Act, which states it would be the responsibility of the Register of Copyrights to process and pass judgment on the applications submitted for a registered copyright. That task alone, they speculated, would take many experts from the field and an enormous amount of time. Indeed, those wishing to litigate would use an enormous amount of resources to do so. Although we did not have time to read selections from Lessig (2004), the deductions by this student group appear to coincide with Lessig's observations of the *doujinshi* comics phenomenon mentioned earlier and the number of lawyers it would require to prosecute all of the so-called violations.

It is worth noting that the student group that was not comprised of TAM majors also opposed the Design Piracy Prohibition Act, but approached their case with a much different example. The students enjoyed sampled or remixed music and all of them remembered the controversy surrounding the release of DJ Danger Mouse's (2004) *The Grey Album*. The tracks on this album were a combination of an a cappella recording of Jay-Z's *The Black Album* and instrumental tracks from the Beatles' *The White Album*. Shortly after the release of *The Grey Album* in 2004, the record label owning the rights to the Beatles' music served cease and desist orders to DJ Danger Mouse and all stores and Web sites selling his album. The student group played excerpts from *The Grey Album* and argued that what the class was hearing was actually an original work that distanced itself adequately from both of the other albums it sampled. In short, copyright was impeding music's progress. The group suggested to the fashion majors in the room that they felt the music industry should serve as a warning for the world of fashion and that the Design Piracy Prohibition Act would be equally stifling.

## CONCLUSION

In many respects, the worlds of fashion and writing instruction are undeniably different. Fashion's seasonal design cycles guarantee a fast-paced industry that moves today's most desired clothing to a store's sale rack tomorrow. Yet, the quest to identify, validate, and lay claim to originality feels remarkably familiar to a writing instructor. Naturally, copying makes many of us anxious, and according to the testimonials from major designers, copy-prevention policies should be written into U.S. code. Raustiala and Sprigman (2006), however, seem to suggest that fashion houses should recognize an exercise in futility when it is in front of them:



Original ideas are few, and the existence of fashion trends typically means that many actors copy or rework the ideas of some originator (or copy a copy of the originator's design). Some may originate more than others, but all engage in some copying at some point—or as the industry prefers to call it, “referencing” (pp. 1727-1728)

Conversely, if not ironically, perhaps Raustiala and Sprigman would find the academic discussions from the world of rhetoric and composition found in the scholarship of Lisa Ede and Andrea Lunsford (2001), Cheryl Geisler et al. (2001), and James Porter (1996) on the subjects of intertextuality and authorship useful for their research. In his “Intertextuality and the Discourse Community,” Porter (1986) suggested that “referencing” is an inescapable condition of text: “Not infrequently, and perhaps ever and always, texts refer to other texts and in fact rely on them for their meaning. All texts are interdependent: We understand a text only insofar as we understand its precursors” (p. 34). For fashion, the problem is what to do when a garment's interdependence is instead utterly dependent on past work. That is, what is an appropriate response when referencing moves to blatant copying? As writing instructors, we call it plagiarism, and fashion has now taken up the term. For both fashion and writing, degrees of acceptable “referencing” remain a hot debate. In a very real and practical sense, the challenge to arrive at an acceptable equilibrium is an arduous task (if not more so for writing instructors), as writing contexts vary greatly between academic to professional settings. Reflecting on the need to understand these variances, especially as they pertain to business and professional writing and technical communication, John Logie (2005) posited that, “teachers have a special obligation to encourage students to engage with, examine, and critique the policies that will intersect with and impinge on their professional work” (p. 224). For the TAM majors in my business and professional writing course, proposed legislation in the form of the Design Piracy and Prohibition Act stood poised to implement major changes to industry policies and practices; another iteration of the bill is certainly possible.

Although I am willing to confess my bias against the Design Piracy Prohibition Act, this chapter is not necessarily an argument for or against its reintroduction and passage. Instead, the controversy within the fashion industry about whether or not copyright protection should be afforded to fashion designs presents a window of opportunity for students to explore the reach and limits of intellectual property law in a manner that goes beyond simplified discussions of plagiarism policies. These overt introductions and discussions of the law and its effect on other professions and industries outside of the

classroom need to become more of the norm than the exception. Plagiarism policies, academic integrity, research methods, and source citations are all important to writing instruction. However, once students enter the workforce and the academic values of the writing classroom collide with a different professional context, the real question will be whether or not students possess the critical thinking skills to assess their situation and respond in an appropriate, professional fashion.

## NOTES

1. For courses like technical writing that more often enroll students pursuing science and engineering degrees, I have recommended elsewhere (Ballentine, 2008) using the American Society of Mechanical Engineers' handbook, *Intellectual Property: A Guide for Engineers*. Despite its title, this 70-page text is useful for a range of audiences.

2. Related to the concept of dilution are trademark blurring and tarnishment. Blurring is the "diminution of the uniqueness and individuality of the mark caused by another's use of the same or similar mark" (Nard et al., 2006, p. 190). Tarnishment is a trademark infringement in which the violator creates a "negative association" by employing a deceptively similar mark or slogan. See *Chemical Corp. of America v. Anheuser-Busch, Inc.*, 306 F.2d 433 (5th Cir. 1962) and *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 604 F.2d 200, 205 (2d Cir. 1979).

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