



# STRIKING THE BALANCE: DESIGN V COPYRIGHT IN THE FASHION INDUSTRY

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## ABSTRACT

In this research endeavor shall be led to examine the complexity between the Copyright Act and Design Act protection in the fashion industry. It examines the duration and scope of protection offered by each mechanism, the unique challenges posed by the industry's rapid trends, the cumbersome registration process for designs, and the instances of overlapping aspects between copyright and design protection. The judicial role in interpreting the law and resolving disputes is also considered. To strike this delicate balance, recommendations are made, including the need for legal clarity, streamlined registration processes, and awareness initiatives. The abstract underscores the importance of recognizing the distinct needs of the fashion industry and the necessity of international standardization to facilitate global operations. The ultimate goal is to foster an environment that nurtures creativity, innovation, and competition while preserving the rights of designers in the ever-changing world of fashion.

**KEYWORDS: COPYRIGHT PROTECTION, DESIGN ACT, FASHION INDUSTRY, CONFLICT, INTELLECTUAL PROPERTY RIGHT, ROLE OF JUDICIARY, BALANCE.**

## I. INTRODUCTION

The fashion industry encompasses a vast and diverse array of products and services, including apparel, footwear, accessories, textiles, and beauty products. This diversity contributes to its immense economic scale. It includes a wide range of businesses, from small, independent designers and local boutiques to large multinational corporations. It is a significant contributor to the GDP (Gross Domestic Product) of many countries. It plays a vital role in both developed and developing economies. Fashion is a major driver of economic growth, with contributions ranging from manufacturing and retail to tourism and creative services. So, Protection for fashion designs is of significant importance, Protection encourages fashion designers and creators to invest time, effort, and resources into developing unique and original designs. Knowing that their

creations are safeguarded, they are more likely to take risks, experiment with new ideas, and push the boundaries of fashion, ultimately driving innovation within the industry and providing legal protection, the fashion industry incentivizes designers to invest in their designs and product lines. This, in turn, supports economic growth and job creation, as the fashion industry is a significant source of employment and revenue. It plays a pivotal role in promoting innovation, cultural expression, and sustainable practices within the dynamic and influential fashion industry. Counterfeiting and knockoffs of fashion designs are being protected through various legislations under Intellectual Property Rights. Copyright and design protection are essential aspects of intellectual property law that play a pivotal role in the fashion industry. They provide legal frameworks for safeguarding the creative works and innovations within this sector, offering designers and creators a means to protect their original designs and maintain a competitive edge in the market. This introduction will provide an overview of the concepts of copyright and design protection in the context of the fashion industry and will include footnotes for reference to specific legal provisions. Copyright is a form of intellectual property protection that covers original works of authorship, including literary, artistic, and creative expressions.<sup>1</sup> In the fashion industry, copyright applies to specific elements of a design that can be considered original artistic creations. These may include patterns, textile prints, graphics, and other creative aspects that are incorporated into clothing, accessories, and other fashion-related products. Design protection, on the other hand, focuses on safeguarding the unique visual appearance or design of a product. In the context of fashion, design protection can be obtained through various legal mechanisms, such as design patents, industrial design rights, or registered designs, depending on the legal framework of a particular jurisdiction. Design protection aims to preserve the distinctive and ornamental characteristics of a fashion design, preventing others from replicating or imitating those features. This article will further talk about the overlap and distinction between the Copyright and Designs Act.. While copyright and design protection serve similar purposes in the fashion industry - preserving and promoting creativity and innovation - they operate differently. Copyright protects the artistic and original aspects of a fashion design, while design protection safeguards the visual configuration and functional aspects. This creates an interesting interplay in fashion, where a single design may be eligible for both forms of protection, depending on the specific elements involved. This article will further discuss the challenges and ambiguities of the relationship between copyright and design protection in fashion. Determining what elements of a fashion design qualify for copyright protection and what aspects fall under design protection can be complex and is subject to interpretation and evolving legal precedents. Fashion designers must carefully navigate this legal landscape to ensure their creations are adequately protected while respecting the boundaries of intellectual property law. In the fashion industry, where creativity and innovation are paramount, the synergy between copyright and design protection is crucial for both designers and consumers, helping maintain a thriving and competitive market while respecting intellectual property rights.

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<sup>1</sup> See 17 U.S.C. § 102 (U.S. Copyright Law) for a comprehensive definition of copyrightable works

## I. RESEARCH PROBLEM

The overlap between the collection of rights that an owner has over a single subject matter is inevitable due to the nature of intellectual property. It is challenging for enforcement organizations to ensure peaceful coexistence between these rights and establish a precedent that applies to everybody. If a design is registered under the Design Act, copyright protection is explicitly prohibited by Section 15(1) of the Copyright Act. Additionally, Section 15(2) specifies that if a design qualifies for registration under the Designs Act but has not yet been registered it will lose its copyright protection as soon as it is applied to an article more than 50 times by a third party. This has been perceived as a problem for designers because they frequently exhibit their creativity at fashion shows, shops, and other public venues, forfeiting their rights under the Design Protection Act in the process. So, copyright does not give protection whose purpose is functional and clothing is considered functional so only the design that comes under the criteria of artistic work in a design fabric can be given copyrighted, and not the whole of the fabric on the other hand in designs act only the outer appearance would be protected. This creates an overlap between the two acts which creates problems and for the designers to protect their design at once.

## II. RESEARCH QUESTION

1. How does the issue of originality, functionality, and artistic expression affect the eligibility of fashion designs for protection under the Copyright Act and Design Act?
2. What challenges do fashion designers and businesses face due to the complex interplay between copyright and design protection?
3. What is the judicial perspective in dealing infringement of copyright in the fashion industry?

## III. RESEARCH OBJECTIVE

1. To understand the idea of protection of fashion design under the Copyright Act and Fashion Design Act
2. To identify strategies and best practices that fashion designers and businesses can employ to maximize their intellectual property protection, taking into account both copyright and design rights.
3. To explore the judicial decisions and precedents to protect fashion designs against piracy.

## IV. HISTORICAL EVOLUTION: THE COPYRIGHT LEGISLATION

Internationally, the historical journey of copyright law can be traced through The Berne Convention 18of 86, for the Protection of Literary and Artistic Works stands as an early landmark in international copyright agreements. This treaty introduced the principle of national treatment, ensuring that foreign authors received the same rights as domestic authors in member countries. It laid the groundwork for the global harmonization of copyright laws and the protection of authors' works across borders.<sup>2</sup> And the Universal Copyright Convention (UCC) emerged as an alternative to the Berne Convention. It offered a more adaptable framework

<sup>2</sup> detailed exploration of the Berne Convention's history and content, refer to the World Intellectual Property Organization (WIPO) website, "*Berne Convention for the Protection of Literary and Artistic Works*" (<https://www.wipo.int/treaties/en/ip/berne/>).

for copyright protection, especially for countries not part of the Berne Convention. The UCC extended international copyright protection beyond the confines of Berne Convention membership.<sup>3</sup> However, in India, The inception of copyright protection in India can be traced back to the British colonial period. The earliest Copyright Act was instituted in 1847, with subsequent acts following in 1914 and 1957. These initial legislations extended copyright safeguards to literary and artistic creations, forming the basis for copyright regulation within the nation. The Copyright Act of 1957 holds particular significance as a landmark legislation in India. It served to consolidate and modernize copyright law by recognizing and granting protection to a wide array of creative works, encompassing literary, dramatic, musical, and artistic expressions, as well as cinematic productions and sound recordings.

Over time, the Copyright Act has undergone revisions and updates to tackle evolving challenges and align with international agreements. Notable amendments in 1994 and 2012 broadened the scope of copyright protection, introduced provisions relevant to the digital landscape, and adapted copyright law to the era of digital technology. India's engagement in international copyright treaties, such as the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), has significantly influenced the shaping of copyright legislation within the country, ensuring compliance with global standards. It has also embraced a tradition of balancing copyright protection with the promotion of public access to knowledge and culture. Measures like fair dealing and compulsory licensing have been implemented to guarantee access to copyrighted materials for educational and research purposes. The advent of digital technology and the internet has posed new challenges related to online piracy and the enforcement of copyright in India. Consequently, endeavors have been made to address these challenges through amendments to the law and the introduction of legal mechanisms.

### THE DESIGN ACT LEGISLATION

The historical development of the Design Act, encompassing both its international and national dimensions, signifies its role in establishing legal safeguards for industrial designs, including their aesthetic and functional aspects. This evolution is particularly conspicuous in India and within the global context:

- ***The Paris Convention (1883)***: A pivotal milestone in the international protection of industrial designs was achieved through the enactment of the Paris Convention for the Protection of Industrial Property in 1883. This convention, embraced by numerous nations, laid the groundwork for recognizing and safeguarding industrial designs across national borders, fostering a path toward the worldwide harmonization of design protection.<sup>4</sup>
- ***The Hague Agreement (1925)***: The Hague Agreement Concerning the International Deposit of Industrial Designs introduced a mechanism for the international registration of designs. This

<sup>3</sup> UNESCO provides information on the Universal Copyright Convention at "Universal Copyright Convention" (<https://en.unesco.org/themes/copyright>)

<sup>4</sup> For comprehensive information and the text of the Paris Convention, please refer to the World Intellectual Property Organization (WIPO) website, "Paris Convention for the Protection of Industrial Property" (<https://www.wipo.int/treaties/en/ip/paris/>).

streamlined procedure facilitated the protection of designs in multiple countries and promoted the global exchange of design rights.<sup>5</sup>

## NATIONAL HISTORICAL PROGRESSION

- **Design Act, 2000:** In India, the historical evolution of design protection reached a pivotal juncture with the introduction of the Design Act, 2000. This legislation supplanted the earlier Designs Act, of 1911, aligning Indian design law with international standards and treaties, thus modernizing the framework for design protection within the country.
- **Amendments to the Design Act:** India has implemented substantive amendments to its Design Act, enabling it to adapt to evolving design practices and contemporary times. These amendments have incorporated provisions for design registration, the protection of original and novel designs, and the recognition of both aesthetic and functional attributes.
- **India's Engagement in International Treaties:** India's active participation in international treaties, notably the Hague System for the International Registration of Industrial Designs, simplifies the process of registering designs on a global scale. This international engagement bolsters the acknowledgment and protection of Indian designs beyond its borders.

In conclusion, the historical development of the Design Act, at both international and national levels, accentuates the vital role of design protection in the context of industrial designs. International agreements and domestic legislation have evolved to establish legal frameworks for the protection of designs, fostering creativity and innovation across diverse sectors, including manufacturing and consumer products.

## V. THE DUALITY OF ART AND UTILITY IN INTELLECTUAL PROPERTY LAW

Most recent research on the topic of fashion and intellectual property protection has either shown the ways in which fashion designs are not works of art and, therefore, should only be eligible for possible patent protection<sup>6</sup> or demonstrated how fashion designs are works of art and, as such, ought to be protected by copyright<sup>7</sup> Apart from trademark law, the structure of intellectual property protection revolves around this functional duality, which compels products possessing both artistic and utilitarian potential to "select a side" on the usefulness spectrum established by existing copyright and patent laws<sup>8</sup>. If an object is put on the utilitarian side of the spectrum, patent protection becomes the only possible viable recourse. On the other hand, copyright protection is made available if the item is positioned on the artistic end of the range. The

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<sup>5</sup>"Hague Agreement Concerning the International Deposit of Industrial Designs"

(<https://www.wipo.int/treaties/en/registration/hague/>).

<sup>6</sup> See Kari Heyison, Comment, *If It's Not Ripped, Why Sew It? An Analysis of Why Enhanced Intellectual Property Protection for Fashion Design Is in Poor Taste*, 28 TOURO L. REV. 255, 274-82 (2012).

<sup>7</sup> See Laura C. Marshall, Note, *Catwalk Copycats: Why Congress Should Adopt a Modified Version of the Design Piracy Prohibition Act*, 14 J. INTELL. PROP. L. 305, 310-11 (2007).

<sup>8</sup> See Susan Scafidi, *Intellectual Property and Fashion Design*, in 1 INTELLECTUAL PROPERTY AND INFORMATION WEALTH 115, 118 (Peter K. Yu ed., 2007).

coexistence of artistic expression and practical functionality in intellectual property law, especially within the context of copyright legislation and the Design Act, illustrates the dynamic interaction between aesthetic innovation and functional utility. These two legal systems provide unique means of safeguarding creative works and work in synergy to accommodate the diverse facets of artistic creations across multiple sectors, including the fashion industry.

### A. The Copyright Protection Act 1957

The copyright law protects artistic works of the art and is at the other end of the intellectual property usefulness spectrum.<sup>9</sup> Original works of authorship that are permanently affixed to any tangible media are protected by copyright. However, copyright protection is limited to particular types of artistic objects that meet certain requirements, just as patent protection. A specific object must satisfy the requirements of separability and originality in order to be protected by copyright. The requirement of separability dictates that an object's aesthetic and functional components exist separately from one another. The separability requirement essentially assures that "useful articles," or those having intrinsic utilitarian objectives beyond exhibiting an article's look or disseminating information, are not covered by copyright protection. In other words, "the artistic aspects of a work cannot be said to be conceptually separable from the utilitarian elements if design elements reflect a merger of aesthetic and functional considerations." Originality, the other key condition for copyright protection, is a prerequisite that calls for a work to be sufficiently distinct and different from earlier works.<sup>10</sup> The capacity of fashion designs to adhere to both copyright rules is a topic of intense discussion. In India, Copyright law primarily pertains to artistic and literary works, safeguarding original expressions of ideas. In the realm of fashion, copyright protection extends to artistic elements of clothing and accessories, such as fabric patterns, graphics, and ornamentation. Section 13(1)(a) defines Original works of art, music, drama, and literature are included in the definition of copyright in this area. Fashion designs that display uniqueness on a purely aesthetic level may qualify as artistic works protected by copyright. Trying to secure fashion designs with copyright reveals how inherently utilitarian each and every fashion design is.<sup>11</sup> Fashion designs demonstrate how they can never fully separate themselves from their utilitarian functions, no matter how contextually insignificant they may be, by failing to meet the criterion of separability. Copyright and design protection frequently converge within the fashion sector, giving rise to a mutually beneficial association. Copyright serves to shield the artistic and inventive components of fashion creations, while the Design Act offers safeguarding for the visual and utilitarian characteristics of an article, encompassing aspects like the form, structure, motif, or embellishment employed in a fashion item, all without infringing upon intellectual property rights.

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<sup>9</sup>See Kristin L. Black, *Crimes of Fashion: Is Imitation Truly the Sincerest Form of Flattery?*, 19 KAN. J.L. & PUB.POL 'Y 505, 507 (2010); Potter, supra note 30, at 76; Wong, supra note 44, at 1144-45 ("Even if a fashion designer can meet the statutory requirements, the patent system presents a further obstacle to protecting f

<sup>10</sup> Brandir Int'l, Inc. v. Cascade Pac. Lumber Co., 834 F.2d 1142, 1145 (2d Cir. 1987);

<sup>11</sup> But see Arielle K. Cohen, *Designer Collaborations as a Solution to the Fast-Fashion Copyright Dilemma*, 11 CHI.-KENT J. INTELL. PROP. 172, 177 (2012).

As a result, Indian fashion designers often describe their artistic creations, including their fashion designs, as works of art that they wish to preserve. Nevertheless, Indian courts have developed justification to determine when a design is an "artistic creation" and when it is a "design" in the sense of the Designs Act, of 2000, through a number of cases. The first and most crucial step in establishing that approach was the Division Bench of the Delhi High Court's ruling in *Rajesh Masrani Vs. Tahiliani Design Pvt. Ltd*<sup>12</sup>. In this case, the court decided that registering the work was not necessary in order to file a claim for damages due to copyright infringement.

## **B. The Designs Act 2000**

The Design Act in India primarily safeguards the aesthetic and functional characteristics of a design applied to an article, whether it's a two-dimensional or three-dimensional feature. It is concerned with how a design appears and functions in a practical sense. section 2(d) defines "design" as encompassing the characteristics of the form, arrangement, motif, embellishment, or combination of lines and colors applied to any object, whether it exists in two or three dimensions. This comprehensive description includes design elements used in fashion products and in section 22 grants exclusive rights to the registered owner of a design, prohibiting others from utilizing the design without proper authorization. This provision offers essential legal protection for the aesthetic aspects of a design, and its duration is specific, rendering it a vital component of intellectual property safeguarding for the fashion industry. The Designs Act provides protection exclusively to registered designs and does not extend this safeguard to unregistered designs. Consequently, fashion designers who have not duly registered their designs are disqualified from benefiting from the Act's privileges. They lack the capability to pursue compensation and obtain an injunction to halt the recurring unauthorized replication of their designs. Considering the swift and ever-evolving pace of the fashion industry, characterized by the periodic release of new collections each season by fashion design houses, there is a pressing need for immediate and automatic protection for designs that is not contingent on formal registration.<sup>13</sup>

The coexistence of artistic and utilitarian considerations in intellectual property law allows both copyright and design protection to function concurrently within the fashion industry. Copyright law is geared toward safeguarding the creative and distinctive aspects of fashion, such as unique fabric patterns, while the Design Act places emphasis on the aesthetic and functional attributes of a design as applied to a product. Fashion designers and businesses face the task of navigating these legal systems and making a choice between copyright and design protection based on the specific characteristics they aim to secure.

This coexistence results in a well-balanced approach that honors the ingenuity of designers while simultaneously addressing the practical and functional dimensions of fashion designs. It sustains the fashion industry by promoting both creative innovation and consumer diversity, acknowledging fashion's multifaceted role as both a medium of artistic expression and a utilitarian commodity.

<sup>12</sup> *Rajesh Masrani v. Tahiliani*, 2008 SCC Online Del 1283: (2009) 107 DRJ 484(DB): AIR 2009 Del 44: (2009) 39 PTC 21

<sup>13</sup> *Baltic Journal of Law & Politics* 15:4 (2022): 1064-1077 DOI: 10.2478/bjlp-2022-004096

## VI. THE JUDICIARY'S INFLUENCE ON DETERMINING THE ARTISTIC OR DESIGN SIGNIFICANCE OF AN OBJECT:

- *Microfibers V. Girdhar Case*<sup>14</sup>

The case's facts were that the plaintiff owned the copyright to floral designs, and the defendant had violated that right by using those motifs on upholstery fabric made by them. The plaintiff is not entitled to copyright protection for the artistic work since the defendant argued that it is a design related to textile items and falls under the purview of the Designs Act. The plaintiff was also asserted to be ineligible for any relief under both legislations since the claimant neglected to apply for registration under the Indian Designs Act. In this instance, the petitioner argued in court that artistic works fall into two distinct categories: those covered by the Designs Act and the Copyright Act. Furthermore, it was argued that copyright on creative works is permanently lost if they are used for industrial purposes, underscoring the significance of creating original works. The defendant argued that while copyright is still applicable to artistic works, restricted monopolies would apply to their industrial applications. As a result, section 15 of the copyright legislation restricts this protection to the extent that it relates to industrial applications.

Furthermore, the defendant contended that provision 15 was construed as tying the Designs Act, 2000, and the Copyright Act together since, in the absence of section 15, a design may have longer protection under the Copyright Act. Determining whether the plaintiff is entitled to copyright protection for his artistic work was the question on the court's agenda. In that case, the court used the "object test" to ascertain the nature of the work and concluded that, in order to evaluate whether a particular piece of material is an artistic work or design, it is necessary to give proper consideration to the object behind it.

The court determined that because the work consisted of floral motifs and its purpose was to be applied to upholstery fabric—that is, for industrial use—it did not possess any independent value and would instead be classified as a design. The plaintiff's work is covered by the Designs Act and has been produced more than fifty times, thus the court further decided that the copyright in the work has ceased to exist. Furthermore, the Privy Council ruled in *Interlogo v. Tyco Industries* that the entire goal of the design legislation was to safeguard creations that lacked autonomous creative value and only gained significance when applied to a particular object.

### *Aga Medical Corporation V. Faisal Kapadi Case*<sup>15</sup>

The Delhi High Court ruled that a piece of content cannot be copyright-protected if it qualifies for registration under the Designs Act but this has not yet been done. The case established the fundamental principle that a design applied to a product that is manufactured more than fifty times via an industrial process loses its copyright protection.

<sup>14</sup> Microfibres Inc vs Girdhar And Co. And Ors. 128 (2006) DLT 238, 2006 (32) PTC 157 Del

<sup>15</sup> Aga Medical Corporation vs Mr. Faisal Kapadi And Anr. 003 IIAD Delhi 351, 103 (2003) DLT 321, 2003 (26) PTC 349 Del, 2003 (2) RAJ 86



So, Courts hold a pivotal role in defining the parameters of copyright and design protection within the fashion sector. They establish legal precedents and interpretations, offering guidance to designers and businesses on the protectable aspects of their creations. This can involve decisions on whether specific elements, like fabric patterns, are better suited for copyright or design protection. Copyright and design protection conflicts regularly surface in the fashion industry. When disputes arise concerning the infringement or validity of intellectual property rights, the judiciary intervenes to provide resolutions. This encompasses situations where one party alleges their copyright is violated by another designer's creations or when disputes emerge over registered designs.

Furthermore, the judiciary bears the responsibility of striking a balance between fostering innovation and promoting healthy competition in the fashion realm. Robust intellectual property protection encourages creative endeavors but should not hinder the flow of ideas and design influences. Courts review cases to ensure that intellectual property rights are not exploited to an extent that unjustly restricts competition and creativity. Given the dynamic legal context in which the fashion industry operates, influenced by both domestic and international laws, the judiciary interprets and applies these regulations. They must consider the ever-evolving nature of the fashion industry, including emerging technologies like digital designs and 3D printing, and determine how these developments fit within existing legal frameworks. However, decisions made by the judiciary become legal precedents that shape future cases. These precedents can have a significant impact on how designers and businesses approach the protection of intellectual property, fostering a consistent and predictable legal environment that clarifies the rights and responsibilities of parties in the fashion industry. In cases of intellectual property rights infringement in the fashion industry, the judiciary is responsible for implementing remedies. This may involve issuing injunctions to prevent further infringements, awarding damages to the aggrieved party, or ordering the removal of counterfeit or infringing products from the market. Adapting to Technological Changes is an evolving duty. The fashion industry is increasingly shaped by technological advancements, such as e-commerce and digital design tools. The judiciary must adapt to these changes and render decisions that reflect the ever-transforming landscape of the fashion industry.

## VII. INTERPLAY OF COPYRIGHT ACT 1957 AND DESIGN ACT 2000

Copyright protection is automatically conferred without the need for formal procedures or fees once a design is created, provided it meets the criteria of being deemed "original." Nevertheless, a challenge with this approach lies in the determination of "originality," which ultimately falls under the jurisdiction of the court, placing a significant burden on the designer to demonstrate their authorship. Additionally, the responsibility of identifying any potential infringements of one's designs rests squarely on the designer's shoulders. However, it is worth noting that copyright protection endures for an extended duration, safeguarding the designer's rights both during their lifetime and for an additional period of fifty to sixty years following their demise, depending on the specific legal system in the country where protection is sought. An essential point to bear in mind is that copyright law exclusively shields designs that qualify as works of art.

Industrial designs, in contrast, receive protection upon their registration in the relevant country. The eligibility criteria for such protection are generally less stringent than those stipulated under copyright law, thereby

encompassing a broader spectrum of designs. These designs must meet the criteria of novelty and individual character, as opposed to the originality requirement in copyright law. Industrial designs are safeguarded for a duration ranging from ten to twenty-five years. However, it's worth noting that Unregistered Community Designs benefit from a more limited protection, extending for a duration of one year, occasionally three years. Moreover, the right conferred by the registration of an industrial design is considered an absolute right, signifying that any infringement, regardless of whether it occurred intentionally or inadvertently, is still subject to legal action.

Copyright offers an extended duration of protection, whereas design legislation provides a form of exclusive rights. Naturally, each system possesses its own set of advantages and drawbacks, and the choice between the two should be determined by specific circumstances. The challenge with fashion designs lies in their propensity to align with fleeting trends, which have a relatively short lifespan. Consequently, the protection required must be both substantial and swift, commencing from the very first day of public presentation and extending until the design's cessation. While both of these legal frameworks aim to safeguard fashion designs, their efficacy is somewhat limited as designers are often obliged to fulfill various prerequisites to secure protection through the registration process. This process can pose difficulties for emerging designers seeking protection. Hence, it becomes imperative to broaden the scope of design protection to accommodate the unique needs and challenges of the fashion industry.

As evident from the previously discussed points, copyright law, and industrial design regulations function in tandem to provide designers with a broader and more robust level of protection. The synergy between these two legal frameworks is vital for achieving comprehensive protection, allowing designers to reap the advantages offered by both sets of laws. Consequently, in instances of infringement, designers possess the ability to assert their rights under both legal regimes, selecting the most appropriate approach for the given circumstances. For instance, when addressing unintentional infringements, the designer should invoke the rights granted by design law. This is because copyright law requires the creator to establish that their design has been directly or indirectly reproduced for it to be enforceable.

In this instance, the court made a reference to a well-known 2009 judgment<sup>16</sup> from the Delhi High Court. This judgment established that copyright protection for an original artistic work, like a painting, remains intact even if a design derived from that painting is used in more than fifty articles. In such a scenario, only the copyright concerning the design applied to the articles would cease to exist. However, this interpretation is problematic since the Copyright Act does not explicitly acknowledge a distinct copyright for the 'design' incorporated into an article. In the aforementioned 2016 Delhi High Court case, the court went further and denied the plaintiff's claim for copyright infringement regarding their original artistic work. The court based this decision on the reasoning that, as the defendant was manufacturing dresses using an industrial process, there was no infringement of the plaintiff's copyright.

<sup>16</sup> Ritika Pvt. Ltd. v. BIBA Apparels Pvt. Ltd

Nevertheless, crafting an interpretation that results in the gradual erosion of the enduring rights held by copyright owners in their original works is not a favorable precedent to establish within India's intellectual property framework. This is particularly significant from the perspective of foreign investors who might question India's suitability as a market for commercializing copyright-related assets. The current imperative is to introduce a comprehensive legal framework that addresses the aforementioned concerns, thereby relieving the courts of the responsibility of deciphering unclear and contradictory provisions within the statute.<sup>17</sup>

## VIII. CONCLUSION

The fashion industry, characterized by its dynamism and constant evolution, poses a multifaceted challenge when it comes to intellectual property protection. Achieving the right equilibrium between copyright and design protection is paramount in order to both nurture creativity, spur innovation, and foster healthy competition, while also upholding the rights of designers and creators. This intricate balance is contingent on a set of fundamental considerations. Copyright provides an extended period of protection but with certain limitations in its scope, whereas design protection offers a more comprehensive monopoly over a design albeit for a finite timeframe. The selection between the two mechanisms depends on the characteristics of the creative work and its implications in the commercial landscape. Design protection hinges on a formal registration process, which can be an obstacle for emerging designers. Simplifying this registration process, reducing associated costs, and extending support to emerging talents can significantly enhance the efficacy of design protection. Copyright and design protection often intersect, necessitating a clear comprehension of when each form of protection is applicable. Well-defined legal guidance in these scenarios is of paramount importance.

## IX. SUGGESTIONS

The effectiveness of the existing laws has come into question, and this issue is exacerbated, particularly for small enterprises and indigenous fashion artisans. They often face insurmountable challenges in accessing legal services to defend their creations or assert their rights. The registration process for legal protection, as stipulated by these laws, is both time-consuming and financially burdensome, dissuading many from seeking the necessary assistance. The need of the hour is to adopt a more stringent approach in addressing these cases and to raise public awareness regarding the pervasive problem of piracy. Educating both the general public and designers themselves about the critical importance of adequately protecting their intellectual creations is essential. In terms of tackling fashion design piracy, it is essential to begin with comprehensive definitions for both "fashion design" and "fashion design piracy." Given the vast scope of the fashion design domain, establishing precise definitions that identify the specific elements meriting protection is imperative.

Furthermore, clear differentiation should be established between registered and denied designs. Unregistered designs should be eligible for protection under the fashion design piracy model, which can extend for a duration of 11 to 13 months. Diverging from the current regulations, such safeguards should only be granted

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<sup>17</sup> Achyuth Rao N, *Interface between Copyright and Design Rights in India*, 2019. <https://www.sc-ip.in/post/interface-between-copyright-and-design-rights-in-india>

for a limited period, considering the transient nature of fashion trends. This protection period could span from seven to ten years, but not extend beyond that. In light of technological advancements and contemporary adaptation, it is imperative to reapply our existing laws with a fresh perspective. Flexible and adaptable legal frameworks are indispensable for thriving in the competitive landscape of today's society.

