

# Position Points for Arguments Against Copyright Law in Fashion Design By Shirley Willett

*Prepared for Panel, Copyright Society, June 9, 2008*

**1. Copying has always been an integral and accepted practice in the American fashion industry.** (*Learned from 60 years experience: apprenticing in 1940s factories, owning 3 corporations (one design & manufacturing), & research in National Science Foundation grants.*)

In the 18<sup>th</sup> century, dolls with French fashions were sent to American dressmakers to copy. In the 19<sup>th</sup> century fashion magazines printed “patterns” for American dressmakers to copy and cut. At the turn of the 20<sup>th</sup> century, Jewish tailors in Boston *innovated production pattern making*, and American fashion apparel, as *an industry*, was born. These technical designers still *copied creativity*. Mid-20<sup>th</sup> century, fashion schools and colleges started – teaching French dressmaking methods, with design creativity, but with no production pattern knowledge. Toward the end of the 20<sup>th</sup> century, *big* fashion brand labels hired young designers to exploit their ideas, with fast turnovers, and *big* name retailers set up their own product development departments to copy, and with most doing offshore production. Young, creative, designer entrepreneurs (DEs) struggle for survival, with no respect from big business, little practical production knowledge, and very little availability to get small production lots made in America anymore.

\* A graphic in all of my grants, “**The Wall Between Design and Manufacturing**”, shows the separation is getting increasingly worse, caused by the lack of communication between the two. Kurt Salmon Associates, 1989, reports, “*Merchandising, what manufacturers call designing, is the least-effective function apparel companies perform...a process of creativity and luck. ... Requirements can change as many as 50 times [from design to making].*” The chart, (late 1980s) shows Brand Name Manufacturers as top control. Today that would change with Retailer Brand Names as top control.

\* CFDA (Council of Fashion Designers of America) (big names) started the battle for a copyright law. Their president, Diane Von Furstenberg, says, “*My job is to protect the [big name] designers, but the clothing manufacturers want something else.*” – validating the bigger wall between design and manufacturing, as well as between big and small designers.

\* I fought for these DEs against “big business” as a delegate to the White House Conference on Small Business in 1986, and again as an evaluator of Manufacturing Technology Centers for the National Research Council in 1992.

\* Chris Sprigman, in Virginia Law Review, adds: “*The global fashion industry produces a huge variety of creative goods without strong IP protection. Copying is rampant as the orthodox account would predict. Yet innovation and investment remain vibrant.*”

**2. A copyright law in fashion design would further smash young design entrepreneurs’ hopes, because every idea would have to be tested against all existing ideas.**

\* AAFA- American Apparel & Footwear Association (manufacturers), has come out in opposition to the legislation and sent a letter to each member of the House and Senate explaining these concerns. *If enacted, these bills would make legitimate companies, and their legitimate designs, vulnerable to a litany of excessive litigation and bogus claims. The inherent subjectivity in both the “substantial similarity” standard for infringement and the “distinguishable variation over prior work” standard for protection would expose footwear and apparel companies, retailers, designers and ultimately the consumer to unneeded costs and uncertainty that could stifle fashion design innovation. Moreover, we believe there are practical logistical considerations that would make such a design registry difficult, if not impossible, to operate.*

*Design (fashion or any industry) must not be separated from its technical design and manufacturing. Young DEs are the future of America and its free enterprise system. Please, let's not force every young designer to be controlled by big brands, or by a government that only works for big business and does not understand entrepreneurship and innovation.*

**3. Copying great art and design is critical for students to learn what “excellence” is, especially technical and production excellence.**

In the Renaissance all learning was by apprenticeship to the great art masters, and is the way fashion apparel, as an *industry*, started at the end of the 19<sup>th</sup> century, learning from pattern design masters – and in *Boston!!* It is the way I approach it today when guiding creative protégés who already have active and successful small business enterprises, but need continual help with technical design and production. My number one protégé, Teresa Crowninshield, is a rising design star in New England. Her cashmere and silk coats and jackets are exquisitely innovative, but she builds each one by copying my fundamental pattern templates, and by copying, for study purposes, other designers' shapes of myriad parts. In the 1970s on Seventh Ave., New York, pattern makers from different firms would exchange and copy each other's specific patterns, such as a collar or sleeve, to assure excellent shaping.

**4. The attention that fashion design innovation is getting is a positive even though I am against a copyright law for it.**

What lawyers, academics, and business people – on both sides of the argument, and for all industries - can do is, first, *clearly define what design innovation really is*; and second, *attempt some methodologies for measuring/evaluating design innovation*. On the New York Times Freakonomics Quorum, April 25, “How Can We Measure Innovation?”, John Seely Brown was quoted and names 4 types: “**Incremental innovation, cheaper, thinner, faster and, of course, more features. ... Architectural innovations, involve a restructuring of the very building blocks of a product family, industry, or infrastructure. ... Disruptive innovations, from a societal point of view... . institutional innovations, enable society to function.” Because apparel is 3D, great fashion design through history are architectural innovations. But, like architecture itself, it cannot be separated from its tangible building and production processes. My very successful evening gown in suede in the 1970s is an example of architectural innovation. The production process of setting up images on the machines so the stitchers could make the shell of the gown in 15 minutes was even more innovative than the unique patterning of seams. No one ever copied this gown or any other successful style, because – as I learned – they could not copy my efficient production system. My **Stylometrics image language**, for which I received 3 NSF grant awards, and today I call “Foundation Pattern Templates”, is an architectural innovation, involving building blocks for fashion apparel designs.**

**Please let's learn how to solve our design and business problems without government controlling our lives and our businesses.**