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VOGUE JURIDIQUE & THE THEORY CHOICE PROBLEM IN THE DEBATE OVER COPYRIGHT PROTECTION FOR FASHION DESIGNS

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I. INTRODUCTION

As a growing commentariat swarm has consistently pointed out in recent years, fashion designs, rendered as garments, present an intriguing puzzle to copyright law. Although creative expressions in tangible form, fashion designs do not receive copyright protection. Conventional theories of copyright—derived mainly from utilitarianism and classical Lockean labor theory[1]—predict that this copyright null zone *should* detrimentally effect creative incentivization, resulting in significant diminishment of designer innovation. The copyright null zone is, therefore, heretically and savagely anomalous if we agree (as seems to be the case with the scholarly preponderance) that fashion design innovation rates appear high. How can this be explained?

Professor Kal Raustiala and Professor Christopher Sprigman's seminal treatment[2] of this copyright conundrum and Professor C. Scott Hemphill and Professor Jeannie Suk's subsequent, substantially divergent analysis[3] collectively constitute a rich theoretical engagement with the issue.[4] Still,

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1. *See generally* William W. Fisher, *Theories of Intellectual Property*, *in* NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY 168 (Stephen R. Munzer ed., 2001).

2. Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687 (2006) [hereinafter R&S, *Piracy Paradox*]; Kal Raustiala & Christopher Sprigman, *The Piracy Paradox Revisited*, 61 STAN. L. REV. 1201 (2009) [hereinafter R&S, *Revisited*].

3. C. Scott Hemphill & Jeannie Suk, *The Law, Culture, and Economics of Fashion*, 61 STAN. L. REV. 1147 (2009) [hereinafter H&S, *Economics of Fashion*]; C. Scott Hemphill & Jeannie Suk, *Reply: Remix and Cultural Production*, 61 STAN. L. REV. 1227 (2009) [hereinafter H&S, *Reply*].

4. *Cf.* Megan Williams, Comment, *Fashioning a New Idea: How the Design Piracy Prohibition Act Is a Reasonable Solution to the Fashion Design Problem*, 10 TUL. J. TECH. &

the analytical trench separating these two treatments begs a theory choice: which has the greater explanatory power, which makes better predictions, which is more "progressive" from disciplinary and/or social perspectives?[5] Weighing this double-barreled discourse[6] and following up with complementary research and legislative prescriptions,[7] we aim to encourage a refinement of this discourse through the creation of more robust theory choices for framing copyright null zones in fashion design and elsewhere.

II. THEORY CHOICE

A. Basic Theoretical Frames & Prescriptions

Our analysis begins with a basic overview of each theory. Professors Raustiala and Sprigman ("R&S") seek to explain the apparently high degree of innovation in the copyright null zone of fashion design by way of a "piracy paradox."[8] They assert that the dissemination of original *and* pirated fashion designs through apparel purchases generates a perpetual engine of creativity.[9] According to R&S, fashion trends are consumed mainly for "status-conferral," and as the early adopter, "fashion-conscious" consumers witness a trend disseminating to more plebian consumers, those hyper-fashionistas look for the next wave and for design innovators to oblige them with new designs.[10] This phenomena—R&S dub it "induced obsolescence"—interacts synergistically with "anchoring," the communication of a trend via the production of original, derivative, and copied designs.[11] According to R&S, "anchoring and induced obsolescence help explain the otherwise-puzzling persistence of continuous fashion creativity in the face of extensive copying."[12] In other words, the paradox of fashion design piracy is that rapid, widespread copying is an innovation inductor. And since R&S imagine a "low-IP equilibrium"[13]

INTELL. PROP. 303, 304 (2007) (highlighting the lack of legal protection afforded fashion in the United States).

5. *See generally* DAVID J. HESS, SCIENCE STUDIES: AN ADVANCED INTRODUCTION 39–45 (1997) (using "social studies of science" to engage the "problem of justifying theory choice" and examining, specifically, the role of universalistic and particularistic value orientations in regards to how social scientists make a "theory choice," or choose between competing theories).

6. *See infra* Part II.

7. *See infra* Part III.

8. R&S, *Piracy Paradox*, *supra* note 2, at 1691.

9. *Id.* at 1691, 1721–22.

10. *Id.* at 1718–22.

11. *Id.* at 1692, 1717, 1728–29; R&S, *Revisited*, *supra* note 2, at 1206–08;

12. R&S, *Revisited*, *supra* note 2, at 1208.

13. R&S, *Piracy Paradox*, *supra* note 2, at 1692.

characteristically underwriting the fashion world,[14] they do not advocate extending copyright protection to fashion design.[15]

Professors Hemphill and Suk's ("H&S") theory differs fundamentally. It describes the essential dynamic of the fashion world as "differential flocking": Producers and consumers seek to move within the same trend wave as others (that is, to flock) while expressing a degree of individuality with garments that incorporate distinguishing elements setting them apart *within* that trend wave (differentiation).[16] H&S distinguish borrowing, allusion, and other means of trend-enablement from "close copying" since the former involve innovation while the latter simply serves flocking without contributing innovatively.[17] Unsurprisingly, H&S support the extension of copyright law to protect design innovators from "close copying."[18]

B. Assessments

The principal virtue of R&S's piracy paradox theory is its tolerance of anomaly. By resisting the simple, tradition-bound move of *assuming* that rates of innovation must be suffering due to the absence of protection against copying, this theory enables novel predictions *contra* traditional theories of intellectual property. The fundamental utilitarianism animating those conventional theories asserts that without the offer of limited monopolies over their creations, innovators will be discouraged by free riders and that innovation will be diminished; the piracy paradox posits the opposite outcome. If R&S's theory is valid, it represents a radical shift in theoretical discourse and a challenge to a basic element of intellectual property.

In our opinion, however, a significant flaw undermines R&S's position. The proposition of a "low-IP equilibrium" (or "regime") is both terminologically problematic and empirically misleading.

R&S initially articulate the concept in an uncontroversial fashion that clarifies their position: "When we use [the phrase 'low-IP equilibrium'], we mean that the three core forms of IP law—copyright, trademark, and patent—provide only very limited protection for fashion designs, and yet

14. We prefer the term "fashion world" to "fashion industry" because the former more readily suggests a denser, more diverse, more complex collection of human activities than the econocentric "fashion industry" conceptualized by R&S. We also want to avoid falling into the subtly paradoxical deployment of R&S's phrase: it simultaneously acknowledges the importance of techno-scientific artifacts to fast fashion while marginalizing the patents, trademarks, trade secrets, and copyrights that presumably enabled them, thereby also enabling fashion design dissemination. *Id.* at 1714–15; R&S, *Revisited*, *supra* note 2, at 1208;

15. R&S, *Piracy Paradox*, *supra* note 2, at 1744–45.

16. H&S, *Economics of Fashion*, *supra* note 3, at 1152–53.

17. *Id.* at 1153.

18. *Id.*

this low level of legal protection is politically stable."[19] But in later deployments, the low-IP concept morphs into a more objectionable form: now the "fashion industry" is said to operate "best in an environment of comparatively weak IP rules," now the piracy paradox theory explains "fashion's unusual low-IP regime."[20] R&S undermine their position through such loose terminological use. Even if we accept the debatable contention that fashion designs are the signal creative element of the fashion world—as opposed to, say, the spectacular arena in which R&S's hyper-fashionistas strive for distinction against the passé fashion masses—it would not follow logically to say that since fashion design occurs in a copyright null zone, the fashion world operates in a low-IP regime.

This synecdochic move (strategy?), while not necessarily factitious, *is* obscurant. The low-IP aspect of R&S's position radically marginalizes the gaggle of enabling devices and systems protected by patents and/or copyrights, without which designers could hardly do their work: the design software systems, computer-assisted design ("CAD") systems, custom-made clothing methods, garment grading systems, material coloration and washing techniques, and, critically, the presumably numerous patented artifacts that enable fast fashion.[21] The assertion that a low-IP regime

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19. R&S, *Piracy Paradox*, *supra* note 2, at 1699.

20. R&S, *Revisited*, *supra* note 2, at 1205, 1206.

21. *See, e.g.*, Clicdesign Suite for Adobe Photoshop, AMS's Cutplan, and Kenneth Kuk-Kei Wang, Method and Device for Viewing, Archiving and Transmitting a Garment Model over a Computer Network, U.S. Patent No. 7,039,486 (filed Mar. 24, 2003); Thomas Rapoza et al., Method for Aligning a Spatial Array of Pattern Pieces Comprising a Marker Method, U.S. Patent No. 6,580,962 (filed Aug. 10, 2001).

Another more integrated example can be taken from the intellectual property portfolio of Gerber Technology, a company that has been called the world's leader in automated CAD, computer-assisted manufacturing ("CAM"), and product lifecycle management solutions for the apparel and flexible materials industry. *See generally* Gerber Tech., *Gerber Celebrates AccuMark's 20th Anniversary*, TENLINKS.COM (July 23, 2008), http://www.tenlinks.com/news/PR/gerber/072308_accumark_20.htm.

GERBERcutter refers to Gerber's "[e]quipment for automatically cutting, drilling and/or notching fabrics and similar sheet materials, namely, mechanized cutting tables." GERBERCUTTER, Registration No. 2,612,417. CutWorks refers to Gerber's computer "software for operating automatic sheet material cutting equipment." CUTWORKS, Registration No. 2,712,066. CutWorks, the "brains" behind GERBERcutter, is feature-rich software designed to "[i]mprove cutting precision, maximize material utilization, and optimize throughput of [a] GERBERcutter." GERBER SCI. INT'L, INC., CUTWORKS: FOR APPAREL, COMPOSITES, INDUSTRIAL FABRICS, FURNITURE, AND LEATHER (2009), *available at* http://www.gerbertechnology.com/downloads/pdf/CutWorks_E.pdf. CutWorks uses an advanced software and overhead projection system. GERBER TECH., CUTWORKS: MATCHING AND IDENTIFICATION SYSTEMS (2006), *available at* http://www.gerbertechnology.com/pdf/MatchHiResE.pdf. The software and projection system is able to "automatically move parts containing match points to the nearest intersection of the fabric repeat gridlines," "[s]upport[] piece-to-fabric and piece-to-piece matching," "[n]est parts on the cutter for real-time repeat variations or bow/skew adjustments," and "deliver[] unparalleled matching of plaid and stripe fabrics." GERBER SCI. INT'L, INC., *supra*.

permeates the fashion world discounts the significance of trademark protection. Based on our perusal of the United States Patent and Trademark Office's trademark database, Gucci owns no less than thirty-four trademarks; Prada has at least twenty-four; and Dolce & Gabbana has at least sixteen.[22] Miramax Film Corporation owns the service mark "Project Runway" that covers the notoriously popular television show.[23] And while designers such as Anna Sui, Marc Jacobs, Oscar de la Renta, Calvin Klein, and Vera Wang qualify as famous designers, R&S's low-IP regime concept

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Gerber also owns the patent on the "[m]ethod for aligning a spatial array of pattern pieces comprising a marker method," a method of positioning pattern pieces relative to each other for optimal alignment so that the separate pieces are matched together and cut in accordance with the original pattern. U.S. Patent No. 6,580,962 abstract (filed Aug. 10, 2001). As "sheet-type work material" is processed, "one or more layers of fabric are typically spread onto . . . a spreading table [and t]he fabric is then moved, often via a conveyor, onto a support surface forming part of a fabric processing apparatus . . . ." '962 Patent background of the present invention. Oftentimes, "stretching and misalignment" takes place, which "is especially problematic when the fabric contains a pattern as any pattern pieces cut from the stretched and misaligned fabric will likewise have the pattern misaligned therein." *Id.* Usually, "pattern pieces are positioned on the spread fabric in a spatial array of garment segments positioned in a cutting sequence." *Id.* This spatial array, or "'marker,'" "optimize[s] piece pattern density" and "minimize[s] the waste of fabric or other spread material." *Id.* Arguably, the cloth cutting machine described is a GERBERcutter and the description of computer-generated markers refers to CutWorks. Further, CutWorks is designed to facilitate piece-to-piece matching of, for example, plaid and stripe fabrics to maximize the use of fabrics by minimizing cutting waste; CutWorks is specifically designed to allay the problem of misalignment by maximizing material utilization and optimizing throughput. GERBER TECH., *supra*.

In addition, the method for aligning the patterns requires "selectively capturing images . . . of the work material in the area surrounding and including a match point corresponding to a point on the marker where a matching pattern piece is initially positioned." '962 Patent summary of the present invention. CutWorks software utilizes an overhead video projection system and is designed to "automatically move parts containing match points." GERBER SCI. INT'L, INC., *supra*. The overhead projector is used to display a match point and outline of the parts onto the fabric, and the operator aligns the projected image of a pattern piece with a computer trackball. GERBER TECH., *supra*.

Accordingly, as far as we can discern from evaluating the patent description in relationship to the aforementioned trademarked technologies, the patent integrates Gerber's CAD/CAM software (CutWorks) with its manufacturing equipment (GERBERcutter). Although the patent does not expressly mention these trademarks, one can easily infer that the patent implicitly refers to them in its descriptions and claims. More importantly, it is clear that a low-IP regime badly characterizes the fashion world from the perspective of an actor holding such trademarks and patents over enabling technologies.

22. *Trademarks*, U.S. PAT. & TRADEMARK OFF., http://www.uspto.gov/trademarks/index.jsp (last visited June 29, 2010). To verify: (1) follow "Search Marks" hyperlink; (2) follow "New User Form Search (Basic)" hyperlink under "Select the Search Form" (3) select "Plural and Singular" button under "View Search History"; (4) select "Live" button under "View Search History"; (5) enter "Gucci" in the "Search Term" box; (6) select "Submit Query" button. This search will generate thirty-four results, representing the number of trademarks owned by Gucci. Similar searches for "Prada" and "Dolce & Gabbana" will generate twenty-four and sixteen results, respectively, representing the number of trademarks owned by each fashion house.

23. U.S. PAT. & TRADEMARK OFF., *supra* note 22 (following the aforementioned instructions, but searching for "Project Runway" will turn up Serial Number 78445470, Registration Number 3173086 for the service mark covering "Project Runway," the television program).

suggests that the celebrity right of publicity in the fashion world lacks relevance.

As our observations should now clearly convey, we perceive the fashion world as turning in a dense and strong IP regime. In addition to being imprecise, R&S's low-IP regime concept occludes a hypothesis deserving of examination: namely, that the apparently high rate of fashion design copying does not lead to massive reduction in design innovation because of effective high-IP seepage into the copyright null zone of fashion design. In other words, it is possible that this productive copyright null zone results from a *surplus* of IP protection in adjacent, enabling domains. This alternate theory of null zones is absolutely blocked by R&S's insistence on a low-IP regime.

H&S's differential flocking theory should be lauded for its descriptive scope, its relative empirical richness, and its embrace of legal consistency.

Differential flocking depicts a fashion world of much more diverse human actor[24] behavior as compared to the piracy paradox theory. The H&S description posits a fashion world populated by significantly less superficial actors whose collective motivations and activities are arguably more conducive to the enrichment of polyvocal democratic culture.[25] Differential flocking can explain the Sneetchian[26] behavior of R&S's hyper-fashionistas[27] while allowing for many other possible communicative usages of fashion.[28] In these primarily *descriptive* regards, differential flocking subsumes the piracy paradox while privileging a crucial aspect of democratic political culture.

Unsurprisingly, the virtue of H&S's theory likely to garner the most commonsensical adherents is the one that requires the least effort in restating: legal consistency. It simply feels like fair play to argue that the same concerns we have for incentivizing innovators in numerous other fields *should* guide us in the field of fashion design.[29] In this light, H&S's proposal of a new copyright protection for fashion designs would seem to

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24. In keeping with our broadened, more accurate terminology, reflected in the use of "fashion world" over "fashion industry," *see supra* note 14, we also refuse to rely upon the term "consumer" as it limits and oversimplifies the complex relationship between creators and purchasers of fashion to those that lead and those that follow. In doing so, it marginalizes the increasingly complex dynamics of human actors within the fashion world.

25. *See* H&S, *Economics of Fashion*, *supra* note 3, at 1179 ("[T]here is much more to fashion than signals about status. In light of the broader and more varied communicative and expressive aspects of fashion, status is only one of a wide variety of signals that fashion makes possible.").

26. DR. SEUSS, THE SNEETCHES, AND OTHER STORIES (1961).

27. *See* H&S, *Economics of Fashion*, *supra* note 3, at 1182–83 (critiquing "R&S's 'induced obsolescence' . . . assumption of profitability" as reminiscent of Dr. Seuss's fable of the Sneetches).

28. *See id.* at 1179. A beneficial by-product of this quality—H&S's arguments also rest on a larger mound of empirics than R&S's.

29. *Id.* at 1180.

grow directly from a theory commendably bent on treating innovators equally.

H&S's romantic vision of weakly resourced, independent designers who are competing with designers of well-established fashion houses curbs our enthusiasm. The idea that "[a]ffording design protection would level the playing field with respect to protection from copyists and allow more such designers to enter, create, and be profitable"[30] is starkly simplistic compared to the bulk of H&S's arguments and concepts. Though they anticipate critiques based on the likelihood of unintended consequences from the creation of a new property right in fashion design,[31] H&S appear indifferent to the likelihood that the same resource differential that advantages established designers generally will tend to advantage them specifically with regard to any new right. Upon its violation, where will the poorly armed, not-yet-established designer get the funds to hire the lawyers to act on this new right? Will she even have time to spend away from her core business of design? These questions, while treated fairly superficially by H&S, underwrite our opposition to proposed sui generis copyright protection for fashion design.

C. Critical Abstinence

Having considered these relative attributes, we are unwilling to choose between the R&S and H&S theories as each appears significantly deficient. H&S's theory of differential flocking seems a superior description of the fashion world's human actors' actual and potential activities, but the connective tissue between this description and the mechanics of fashion design innovation seems relatively attenuated. H&S's description of the uses of fashion is as robust as their description of the link between fashion's fluxing and designers' incentivization is logically unnecessary. The piracy paradox describes a relationship between the behavior of the fashion world's human actors and innovation within the fashion world that is immediate, even if as aforementioned problematically so.[32]

H&S's conventionally powerful argument for the creation of a new copyright protection for fashion design is their strongest argument.[33] The desirability of consistency of application in law is a given. But the further

30. *Id*. at 1153.

31. *Id*. at 1193.

32. *See also* Randal C. Picker, *Of Pirates and Puffy Shirts*, VA. L. REV. IN BRIEF (2007), http://www.virginialawreview.org/inbrief.php?s=inbrief&p=2007/01/22/picker (critiquing *The Piracy Paradox* and proposing that the historical evidence "is more complicated than . . . suggest[ed]" and that the paper's "driving mechanism" of induced obsolescence "faces powerful limits").

33. *See* H&S, *Economics of Fashion*, *supra* note 3, at 1184–90 (describing a new proposed right that extends copyright protection to original works of apparel but denies the same to works that are "'substantially similar'" yet also "substantially different").

study and testing of intellectual property null zones outweighs this consistency concern. It is more important for the development of better theory and policymaking to understand the mechanics of highly innovative null zones. R&S's explicit embrace of an experimental approach to intellectual property[34] trumps H&S's conventionalism.[35] Instead of eliminating anomalies in accord with H&S, intellectual property scholars, practitioners, and policymakers need to better understand these anomalies. Eschewing the grossly ham-handed and clichéd move of melding these two theories into one, a better approach would encourage the forging of new theoretical approaches to copyright null zones in general, and fashion design specifically.

III. FURTHER RESEARCH

Future research focused on the intellectual property anomaly of fashion design would benefit from a greater degree of reflexivity by the community of legal scholars. Gaining a better sense of how academics participate in the larger cultural discourse on the fashion world would provide a more nuanced position from which to offer policy proposals. Far from navel gazing, reflexive intellectual property research is richer intellectual property research.

One approach to greater reflexivity might entail more comprehensive mapping of fashion discourse—broadly understood—and a positioning of legal discourse within those larger currents. Even a cursory glance at the fashion world over the last decade suggests that in the absence of such mapping, important contextual information is missed. During that period, a conflux of pop-cultural,[36] economic,[37] techno-scientific,[38] juridical,[39]

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34. *See* R&S, *Piracy Paradox*, *supra* note 2, at 1717–18 (explaining the "continuing viability of fashion's low-IP equilibrium"); *see also supra* Part II.B (explaining R&S's approach as initially uncontroversial but becoming "more objectionable").

35. *See* H&S, *Economics of Fashion*, *supra* note 3, at 1184–85 (acknowledging that they are "join[ing] other scholars who have urged industry-specific solutions to the regulation of innovation" in "recommending tailored protection for the fashion industry"); *see also supra* Part II.B (opining on the approach of H&S as "legal[ly] consisten[t]" and "simplistic").

36. *E.g.*, CANDACE BUSHNELL, SEX AND THE CITY (1996); LAUREN WEISBERGER, THE DEVIL WEARS PRADA (2003). Candace Bushnell's column "Sex and the City," which appeared in *The New York Observer* beginning in 1994, and HBO's translation of them into the comic-drama of the same title, airing from 1998 to 2004 before going into syndication, are possibly the fountainhead of pop-cultural forces of ascendancy. *See generally Biography* of Candace Bushnell, CANDACE BUSHNELL (2008), http://www.candacebushnell.com/bio.html; *Sex and the City* (HBO television series broadcast 1998–2004). The phenomenon dovetails with another major pop-cultural vector, namely Lauren Weisberger's *The Devil Wears Prada*, which was adapted to the 2006 film starring Meryl Streep and Anne Hathaway. *See* THE DEVIL WEARS PRADA (Twentieth Century Fox 2006).

37. Globally, the fashion world was estimated to be the site of revenue production in excess of $700 billion in 1999. *See* R&S, *Piracy Paradox*, *supra* note 2, at 1689 n.1 (citing Safia A. Nurbhai, *Style Piracy Revisited*, 10 J.L. & POL'Y 489, 489 (2002)). In 2004, the United States's apparel industry reported gross revenues that exceeded $173 billion. *Id.*

political,[40] and academic forces[41] have imbued the fashion world with an amplified cultural cachet. From congressional hearings to politico-legal reportage, bar meetings to law blogs, courtroom litigation to law firms' in-house catwalks, the fashion world's advances over the terrain of American legal thought have intensified. Let's call this tendency in concern and discourse *vogue juridique*. We might hypothesize vogue juridique as a manifestation in legal circles of this larger cultural fascination—a heightened fashion consciousness of sorts—now transposed into the subculture of legal thought and practice. Adjusting our prescriptions for the effects of the fashionability of legal discourse on the fashion world might be advisable.

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38. The recently departed and sorely missed Alexander McQueen, to whom we dedicate this Article, captured the potential of the techno-fashion subculture aptly when he noted that "[a]s for the future, technology is what will move fashion forward, the new fabrics and engineering. I cannot wait to do a seamless suit, where you just climb in and that's it." BRADLEY QUINN, TECHNO FASHION 2 (2002) (internal quotation marks omitted).

39. Judges at the May 2009 panel discussion during the Seventh Circuit Bar Association meeting engaged in a spirited conversation over courtroom fashion, discussing the slow decline of conservativism in attorneys' courtroom attire and the impact of contemporary trends upon legal proceedings. *See* Lynne Marek, *Federal Judges Grouse About Lawyers' Courtroom Attire*, NAT'L L.J., May 21, 2009, http://www.law.com/jsp/article.jsp?id=1202430875593. (describing the meeting and discussion about courtroom attire); John Schwartz, *At a Symposium of Judges, a Debate on the Laws of Fashion*, N.Y. TIMES, May 22, 2009, http://www.nytimes.com/2009/05/23/us/23lawyers.html (same).

40. Barack Obama's election victory rekindled a connection between fashion and culture perhaps not seen since John F. Kennedy's tenure. First Lady Michelle Obama's fashion sensibility and sensitivities not only garner great attention as a result, but they are also leveraged by her and a coterie of favored fashion designers-turned-lobbyists to make the case for greater legal protection of design innovators. Alongside Steven Kolb, Executive Director of the Council of Fashion Designers of America, Jason Wu, Narcisco Rodriguez, Maria Cornejo, and Thakoon Panichgul (four of Michelle Obama's favorite designers) have all lobbied Congress. *See* Robin Givhan, *First Lady's Designers Want a © Change*, WASH. POST, Apr. 26, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/04/24/AR2009042402207.html (noting that the designers traveled to Washington to "lobby[] Congress to pass a law that would allow designers to copyright their work, at least long enough for them to reap the benefits of their often expensive research and development before it enters the public domain"); Amy Odell, *Michelle Obama's Favorite Designers Seek Fashion Bailout*, N.Y. MAG., Apr. 23, 2009, http://nymag.com/daily/fashion/2009/04/michelle_obamas_favorite_desig.html (same); Eric Wilson, *A Little Help From My Fashionistas*, N.Y. TIMES, Apr. 23, 2009, http://www.nytimes.com/2009/04/23/fashion/23ROW.html (same).

41. See DEBORAH JERMYN, SEX AND THE CITY (2009) for an analysis of the impact of Bushnell's work on popular perceptions of fashion and more.