why we can't have nice things

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Social Media's Influence on
Fashion, Ethics, and Property
Minh-Ha T. Pham

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Fashion, Ethics, and Property

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Cover art: Opening Ceremony bag, otherwise known as a
"China Bag."

Contents

In the broadest terms, this book can be described as a study of how collective thinking and actions—both coordinated and uncoordinated—produce material effects that don't always bring about the nice things they intend to do.

Collectives of people were also central to the writing of this book but, in this case, their impact on the ideas in it and on me as I wrote it has only been generous and generative. I'm delighted to be able to thank them here.

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I owe much of my understanding of Indigenous theories of property to the radical thinkers and artists who convened in New York City for the second Race+IP symposium in 2019. It was an honor to imagine and co-organize this meeting with my dear friend Jane Anderson and to learn from Rebecca Tsosie (fellow girl gangster), Chidi Oguamanam, Trevor Reed, and Laura Ortman.

"Share This with Your Friends":

CROWDSOURCING IP REGULATION

In January 2015, a Vancouver-based knitwear brand called Granted Clothing (hereafter, Granted) found sweaters on Forever 21's website that resembled sweaters of its own design. (The Granted sweater cost between $200 and $350; the Forever 21 sweater cost under $40.) Granted's first reaction wasn't to call its lawyers but to call on its social media followers. In a long message posted on both Instagram and Facebook, Granted accused Forever 21 of a number of offenses, including hiring people "to scour the internet to find original designs without any regard, make a profit and offer no compensation to the original designers" and selling "blatant copies" of sweaters "made here in our Vancouver design studio." The message ended with a plea to social media users "to help us take a stand" and to "share this [social media post] with your friends."[1] (Throughout this book, "social media user" refers to a heterogeneous mix of people using the internet to expose fashion copycats.) The response was immediate and pronounced. The Instagram post received 556 likes and 174 comments. The Facebook post has been shared 179 times and has 71 original comments and many more replies, rebuttals, and counter-rebuttals in the form of actual text and Facebook likes.[2] This is

an unusually high level of user engagement for the brand. Its other social media posts sometimes receive no comments at all.

Within twenty-four hours of Granted's call to online action, news about the sweaters gained wider television, radio, and print media coverage and, with it, more social media activity in the form of shares, likes, comments, and tweets from a wider constellation of users, including comic Wyatt Cenac, musician Questlove, and actor Michael Ian Black—celebrities with massive social media followings but who aren't usually associated with fashion. Although a handful of users criticized the brand's hypocrisy—pointing to the striking similarity between Granted's sweaters and the hand-knit Cowichan sweaters that Coast Salish women of Vancouver Island had been creating for generations—the vast majority of users rallied behind Granted by echoing its message or adding to it. For example, although Granted's message doesn't mention the manufacturing origins or conditions of the Forever 21 sweaters, several users assumed—and no one challenged the assumption—that the Forever 21 sweaters were made in "China" or in the "third world" in violation of US and Canadian copyright laws ("it's absolutely copyright infringement, unfair, and I'd think, quite illegal").[3] Granted's statements and hashtags emphasizing the local Canadian production of its sweaters also encouraged this geo-racial thinking in which fashion ethics is a property of the Global North and fashion copycatting is a problem of the Global South.

Facebook users who expressed anything less than full-throated support of the knitwear brand (a tiny minority) were subjected to a range of corrective actions. Those who mentioned the Cowichan sweaters were barraged with counterarguments about cultural appreciation and design inspiration. Those suggesting that copying may not be such a bad thing—that being copied by a retail giant like Forever 21 might provide significant, if unintended, upsides such as increased media attention and brand recognition—were ridiculed as naïve and illogical. Some of the dissenters eventually retracted, qualified, or deleted their statements. Nearly everyone else offered Granted their full support by sharing its social media posts, promising to buy more Granted sweaters, and/or vowing to boycott and vowing to tell others to boycott Forever 21. More than a few users urged Granted to pursue legal action, beginning with, as one user suggested, a crowdfunded campaign: "Start a Kickstarter for lawyer fees. I'm in."[4]

If Granted was concerned that the lookalike sweaters created unfair market competition, then the internet helped it recover its competitive edge. Forever 21 was dragged through the very public mud of a fashion copying scandal; Granted boosted its reputation as a small, scrappy, and ethical company standing up to a notorious retail pirate; and a critical mass of social media users raised the profile of Granted's sweaters (by devaluing the Cowichan sweaters Granted copied and the Forever 21 sweaters that were copied from Granted). Everyday social media practices—liking, tweeting, commenting on a post, and sharing a post—shaped market transactions and outcomes by influencing not only public perceptions but also consumer behavior in Granted's favor.

The Granted case is a prime example of what I refer to throughout this book as crowdsourced intellectual property (IP) regulation. These are the everyday social media activities that emerge around issues of fashion creativity and copying. They take the form of a social media post, a like, a share, a retweet, a comment, or, just as effectively, no comment at all. The lack of "social media outrage" that some forms of fashion copying receive is also doing regulatory work and reveals as much about the rules, norms, and logics of crowdsourced IP regulation as outrage does. Today, social media users are heavily involved in the tasks of indicting, trying, adjudicating, and excusing alleged fashion copycats. Their determinations, while informal and extralegal, have real cultural and material consequences.

As the Granted case illustrates, a broad spectrum of people, including those who may or may not consider themselves "fashion consumers," is being recruited under the subtext, if not the explicit language, of consumer social responsibility to use their social media accounts to police the boundaries of fashion IP and impropriety.[5] Answering and oftentimes anticipating calls like Granted's to "help us take a stand," social media users are naming, shaming, and demanding boycotts against fashion copycats while defending and promoting alleged copycat victims. These kinds of ad hoc, informal, crowdsourced fashion trials by social media— as much as consumption itself—are now understood as ordinary functions of consumers' role in and responsibility to fashion design, the most profitable and valued sector of the global fashion industry.

Crowdsourced IP regulation represents the latest phase of fashion's digital and economic restructuring. It also marks the expanding nature

and scale of fashion's unpaid, underpaid, and casualized labor force. In my first book, *Asians Wear Clothes on the Internet*, I examined a more limited use of crowdsourced fashion labor: personal style blogging. Using the global ascendance of Asian superbloggers as an entry point, I analyzed how race, gender, and class shaped fashion work in this informal and casual labor market. I explained how fashion's new system of indirectly and directly sourcing out marketing and promotion services to social media users (e.g., fashion bloggers) overlapped with and departed from the older system of outsourcing manufacturing work to women and girls living in or from the Global South. I was especially concerned with understanding how and why Asians (from very different geo-socioeconomic backgrounds) were disproportionately represented in these externalized labor markets. *Asians Wear Clothes on the Internet* provides an account of the various factors—cultural, economic, and technological—that created the conditions for some Asians to rise to the top of this digital labor market.

Fashion's *latest* digital labor system doesn't enlist only fashion bloggers (a small and self-selected group of social media users); it also encourages anyone with even a passing concern about fashion ethics to provide crowdsourced IP regulation services. This includes fellow designers, online journalists, legal bloggers, and macro-, micro-, and noncelebrities.

The broad base of participation points to several key differences between *outsourced* and *crowdsourced* fashion labor. Whereas outsourced apparel manufacturing is established, secured, and formalized by a legal contract between a brand and a specific factory or factories, crowdsourced IP regulation is underpinned by an informal social market contract. Participants aren't legally bound to do this work; they're bound by ideals and values of ethical fashion. The private nature of outsourced apparel manufacturing—private, in both the sense of "not public" and corporate—renders this work invisible. The terms of the legal contract are not publicly accessible and the work and work conditions are hidden by long, convoluted supply chains and powerful branding. In contrast, the social and public nature of crowdsourced fashion labor is pervasive and hypervisible. In fact, brands benefit from this work only when the work is visible. This is why Granted encouraged consumers to share its social media post with friends. Sharing—or making the post more visible— amplifies Granted's message and sharpens its market-competitive edge

at a time when consumers are increasingly basing their purchasing decisions on a brand's ethical credentials. Brands work at and benefit from being seen as ethical. And now social media users are a productive part of these corporate efforts.

But as visible as crowdsourced IP regulation is, it's paradoxically invisible in the sense that it's often illegible as *work*. Online practices of policing the market for fashion knockoffs are so embedded in the everyday practices of social media users that they usually go unnoticed or misidentified. Like fashion blogging, crowdsourced IP regulation is generally seen as a "social media pastime."[6] The mainstream media refers to it as "social media shaming," a practice associated with the internet's broader "call-out" and "cancel" cultures. "Shaming" isn't an inaccurate term but it is inadequate. It implies a reactive stance that doesn't capture the full breadth and impact of the productive work that social media users are doing when they're policing the market for "fake" fashion.

To recognize social media users' regulatory services *as* digital labor—akin to the kinds of work already represented in internet studies—is to highlight how everyday social media activities are being mobilized in the service of fashion capital accumulation.[7] It also allows for a more careful consideration of the various kinds of work social media users are doing when they're "shaming" fashion copycats. Generally speaking, this work involves defining and policing the boundaries between "authentic" and "fake" fashions *that may or may not be illegal*. More specifically, we can divide the work that internet users are doing into three different but interlocking categories.

First, users are doing extralegal work—extralegal, because most social media users who are liking, commenting on, and sharing social media content about fashion copycats aren't IP experts. Their determinations aren't based on legal doctrine and aren't backed by legal enforcement mechanisms. Instead, they're creating and circulating a common sense of legality about fashion design, property, and impropriety that is influencing corporate and consumer behaviors. As I explain later, the extralegal quality of these social media trials is a strength, not a disadvantage, when it comes to regulating the fashion market.

Second, consumers' regulatory actions are doing the work of social reproduction. The crowdsourced regulation of fashion creativity and copying more often than not reproduces and secures Western standards of

fashion ethics, taste, and intellectual property. Thus, regulating fashion copycatting—its meanings and practices—is also a means of reinforcing the dominant social, market, and geoeconomic relations that underpin global fashion. Together, the extralegal and social reproductive work that crowdsourced IP regulation does constructs not only a common sense of fashion ethics but also an ideal ethical fashion subject in racialized, gendered, and classed terms. Accused copycats may or may not have violated the law but they're always perceived as having offended mainstream Western, middle-class, and tacitly white sensibilities about fashion ethics. Today, this offense is generally interpreted as a sign of a nonnormative capacity or a racialized incapacity for creativity, for appreciating Western notions of property rights, or for having and exhibiting good taste.

We see the racial aspects of contemporary ethical fashion discourse most clearly in stereotypes about Asians, fashion knockoffs, and their underdeveloped fashion tastes and sense of ethics. Ethical fashion's social contract dictates that consumers share in the responsibility of protecting the purity of the (Western) fashion-design market from the flood of illegitimate/fake Asian products threatening to encroach on and corrupt it.

This leads to the third kind of work that crowdsourced IP regulation does: race work. Popular ideas and attitudes about, say, Asian copycats, Indigenous and ethnic inspiration, and the universality of Western property logics are reproduced and perpetuated anytime social media users call out or defend fashion designers for copying. The callouts and their effects—the uneven distribution of outrage or protection and sales or boycotts they generate—follow racial and colonial patterns. The naming and shaming of fashion copycats do race work by organizing and maintaining relationships to global fashion capitalism along racialized lines. Through crowdsourced IP regulation, social media users have become deeply implicated in global fashion's racialized processes of value creation and value extraction—processes from which they don't benefit as workers or as consumers. That is to say, the idea that there's inherent virtue in choosing to buy the more expensive copy—Granted's copy of the Cowichan sweaters instead of Forever 21's copy—is bad for consumers.

To be clear, recognizing crowdsourced IP regulation *as work* is not the same as celebrating or affirming this work. In fact, the reason to acknowledge it as work is to critique the ways that ethically minded social media practices can serve to perpetuate and legitimize global capitalism's racial and economic inequalities. These inequalities are starkly displayed in the Granted example. Social media users—including the Granted designer—railed against Forever 21's unethical sweaters by racializing them through direct and indirect associations with cheap labor, China, and the "third world." An example of the indirect racialization of Forever 21's sweaters is the designer's repeated emphasis on the superiority of the Granted sweaters' local Canadian production—a tacit way of suggesting the foreignness and inferiority of the Forever 21 sweaters. (In fact, Forever 21 is based in Los Angeles and works with a number of factories in Southern California.)

While internet fashion watchdogs accused Forever 21 of foreign and deviant business practices, they rationalized the similarities between Granted's sweaters and the Cowichan sweaters as admirable (and normative) expressions of multicultural appreciation and inspiration. Cultural inspiration defenses, especially with regard to fashion, often function in neocolonial ways. The Granted example is no exception. In their defense of the Granted sweaters, social media users—again, including the designer—consign Indigenous and ethnic works to the status of a natural resource ("inspiration") or raw material, there for the use and benefit of Western creative output and capitalist accumulation. Consistently, users' assessments of the Granted sweaters' cultural, aesthetic, and ethical value were couched in racial and colonial concepts of creativity, ethics, and property that have been widely accepted as fashion copynorms.

Racial Myths and Copynorms

The popular understanding of what differentiates fashion innovation from imitation has always been underpinned by a set of informal but pervasive copynorms. While professionals in the fashion-design, legal, and media sectors historically have had a heavy hand in constructing and perpetuating these norms, social media has made it possible for nonprofessionals

and nonexperts to join these efforts. Today, copynorms serve to cohere highly decentralized and individualized activities of crowdsourced IP regulation. Their function in the broadest terms is to determine which fashion objects and practices to endow with value and which to deny or extract value from.

Fashion copynorms take many forms but there are several dominant ones. An overarching copynorm is the idea that there's an actual, if not easily definable, distinction between fashion knockoffs and fashion originals. The reality though is that fashion copycat disputes rarely involve original designs. (Fashion is, after all, a copy culture.) The direction and outcome of fashion trials by social media often come down to the different meanings and values given to different fashion *copies*, not the difference between an original design and a copy. In other words, internet fashion watchdogs generally are not protecting legally defined original works of authorship. The determinations they make about ethical and unethical fashion design are rarely based on formal statutes about legally protected property but instead on informal cultural rules and standards (or fashion copynorms) that delineate between what are acceptable and unacceptable forms of fashion copying.

That said, we shouldn't draw too sharp a distinction between copynorms and property laws. As scholars like Rosemary J. Coombe and Laikwan Pang have argued, IP law is itself constituted by legal, cultural, and social norms and fictions.[8] One of these is the fiction, as Coombe puts it, that local knowledge is "mere data" and Western intellectual properties are data that have been processed through "the 'information-intensive industries' of a postindustrial economy."[9] (Her use of a computational analogy is nicely apt in this discussion of crowdsourced IP regulation.) Going on, Coombe writes, "Whether represented as nature or as ideas lying in a global commons, the resources and knowledges of non-Western others were regarded as merely the means and material with which Western authors could produce expressive works. . . . Products of nature thus become products of human culture through Western authorship."[10] As it'll become clearer throughout this book, what distinguishes copynorms from IP laws is not their content but who is now doing the work of defining and enforcing the norms. Rather than pay legal experts, fashion brands depend on social media users to do this work—most of whom have no professional training in international or domestic property law

and no meaningful understanding of the history and politics of property regimes.

This leads me to a second copynormative idea that needs dispelling or at least clarifying. Fashion trials by social media aren't struggles over formal property rights but instead informal rights to copy or "copy rights" (written as two words). Crowdsourced IP regulation is extralegal work. Social media users—acting as amateur IP and market watchdogs—are determining, enforcing, and distributing informal copy rights, the culturally constructed and socially communicated rights or entitlements to copy based on norms that tacitly prescribe whose designs may be copied (because they're deemed to be traditional or heritage resources that are part of the global commons) and whose designs warrant protection (because they're valued as "property" whether they fit the legal definition of property or not). Although fairness is the intended goal in these ad hoc IP trials, the copynorms that inform them are freighted with cultural assumptions and biases that have the power to shape corporate-fashion and consumer decisions. That is to say, fashion copynorms are social and cultural constructions that have material effects and produce material realities.

We see the evidence of their material force when crowdsourced IP litigation leads to, for example, a fashion brand gaining or losing consumers; a fashion product suddenly flying off or, just as abruptly, being pulled from shelves; or the enhancement, tarnishing, or recuperation of a brand name's or designer's reputation. We can also see it in the production and circulation of racial stereotypes about where innovation and imitation are located and where inspiration can and cannot be mined. The materiality of copynorms is evident in less obvious ways too. Mainstream fashion copynorms are responsible for the lack of outrage and unequal protection given to Indigenous and nonwhite designers who have long been copied by North American and European brands. When fashion copying is defended as cultural inspiration, we see how copynorms and their unequal distribution of informal copy rights follow colonial lines of value creation and value extraction. Finally, the materiality of fashion copynorms can be seen in the coercive force that compels consumers to avoid budget brands for more expensive brands—perhaps more than they can afford—for fear of being seen as and/or internet-shamed for having uneducated or undeveloped ethics, tastes, and desires. It is the same sort

of ethical coercion that compels social media users to provide free regulatory services to a trillion-dollar fashion-design industry.

My use of *copynorms* differs from other uses of the term. Mark F. Schultz has defined copynorms as "the social norms regarding the copying, distribution, and use of expressive works."[11] K. J. Greene understands copynorms as a general social attitude toward copyright law and against piracy.[12] For Schultz and Greene, copynorms bear on copyright law in some way—by moderating, reinforcing, extending, or undermining copyright law. (An example of copynorms undermining copyright law is the general social acceptance of downloading music for free.) Positively and negatively, copynorms typically mediate the effectiveness of copyright law. But fashion copynorms, unlike, say, music and literary copynorms, don't stem from or refer to copyright law. They operate in the absence or inadequacy of copyright law.

For all the emphasis the media and public place on the illegality of fashion copies, the legal status of fashion design is far more ambiguous and inconsistent. In many countries, including the United States, Mexico, and Viet Nam, fashion design, in its entirety, is not protected under existing copyright statutes.[13] In other places like Canada, Nigeria, and the United Kingdom, fashion designs may be copyrighted as works of artistic craftsmanship unless they're intended for mass production, in which case they no longer qualify as original works. And, finally, there are countries where all fashion designs are copyrightable as long as they meet certain—and highly variable—originality prerequisites. As Johanna Blakley has explained, the "novelty standard" for fashion copyright is so low in places like France and Italy that a design that differs only slightly from another design may still qualify for copyright whereas the novelty standard is so high in Japan that very few can prove their designs are thoroughly original.[14] In most cases, the law is unusable. But what the law can't do or won't do, social media users are doing very efficiently.

Unlike the glacial pace of the law, the quick-fire communications and rapid proliferation of content on the internet are better equipped to respond to fashion's breakneck cycles. In the time it takes a lawsuit to be filed, to make its way through the discovery and litigation phases, and to reach a courtroom (if it ever does), the particular garment would likely be "out of fashion" and no longer in need of protection. Or as Andrew Goodman, co-owner of Bergdorf Goodman, puts it, "By the time

something is copyrighted it's dead."[15] In the same amount of time, social media users can and have compelled designers to issue public apologies for copied garments, pressured retailers to pull stock from their physical and online shelves, and organized the consumer public in impromptu boycotts against alleged fashion copycats.[16] What can take months and years (and tens of thousands of dollars) in legal limbo takes hours and days online—and costs the (accusing) brand virtually nothing. In fact, brands that actively encourage or just benefit from crowdsourced regulation often gain more in cultural and commercial value than those that attempt to resolve these disputes quietly through legal channels.

Crowdsourced IP regulation is so effective that (as we saw in the Granted example) brands are increasingly turning to social media users before—and sometimes instead of—their lawyers to adjudicate design disputes. As Edgardo Osorio, the founder of Italian luxury brand Aquazzura, puts it, "You just have to go public because that's the only way that hopefully somebody will pay attention and something will happen. Because going through lawyers doesn't work."[17] Fashion law professor Susan Scafidi agrees. As she told *Market Watch*, "Designers have little legal protection and instead have to appeal to social norms against copying. . . . In other words, they have to try the case in the court of public opinion and hope that social pressure forces the alleged copyist to do the right thing."[18] Today, it's not uncommon for fashion brands that believe they've been copied to appeal to the public's sense of social consumer responsibility, an implied social market contract that stipulates consumers have both the social media power and *the ethical duty* to protect fashion brands and the global fashion market from copycats. The ethos of consumer social responsibility animates fashion's latest unwaged and informal labor practice even as it obscures its reality *as work*.

As the Granted and Forever 21 example illustrates, it isn't enough that consumers feel bad for Granted. They're being called on in their capacity as internet fashion watchdogs to give their personal time and resources to creating and sharing social media content, mainstream fashion ethical principles, and copynorms. Contemporary fashion ethics discourse links together an ethics of fashion conduct ("be aware of your purchases") with an ethics of social media practice ("share this with your friends"). To be a good fashion consumer is to be a good content producer. As such, strategies for confronting the "fashion knockoff problem" typically involve

both market and media-based actions (e.g., boycotting and social media shaming fashion copycats). Internet users serve as a first-line moral, market, and media defense against those who flout fashion copynorms and the racial and capitalist property logics they represent.

This is another reason why "social media shaming" is an inadequate description. It fundamentally misunderstands media's role in online fashion-copycatting disputes. The expression suggests that social media is just a set of tools for protecting the market against fashion copycats. In fact, social media platforms but also many other digital media (e.g., digital cameras, smartphones, 3D printers, etc.) often serve as the means, site, and object of struggle over the meanings and value of legitimate and illegitimate fashion copying.

As many have observed, anxieties related to globalized markets and digital media have paradoxically increased the significance of borders in an era of supposed borderlessness. In the fashion context, these anxieties have found expression in the race-based and class-based stigmatization of fashion knockoffs as material expressions and evidence of an array of border crossings or transgressions. (These include social, market, and media transgressions, the kind hinted at in Granted's accusation that Forever 21's sweaters are products of internet misuse, of "scouring" the internet.) Crowdsourced IP regulation and their social media networks help to reestablish the racialized market relationships, borders, and hierarchies that digital globalization has ostensibly dissolved. As Raymond Williams presciently observed in 1980, "The means of communication are themselves means of production."[19] Social media is not incidental or peripheral to crowdsourced IP regulation; it is the very thing at stake in these online trials. As will become clearer, especially in chapter 2, the contemporary struggles over fashion copynorms are also struggles for control over social media tools, practices, and environments.

Will the Real Copycat Please Stand Up?

In the Granted and Forever 21 example, the rounds of accusations, condemnations, shaming, and sharing that social media users engaged in are typical of the kinds of regulatory work that internet watchdogs are doing for fashion brands. Yet it would be a mistake to understand the case as

representative of the many types and incidences of fashion copying that exist. Fashion copying is an ordinary part of the fashion business. It exists in every fashion-market sector from luxury to budget brands. It also has a significant place in fashion education. Fashion students and interns are routinely asked to copy (or "take inspiration" from) others' designs and looks as a part of their professional training. Yet, as the lack of outrage over Granted's unauthorized copies of the Cowichan sweaters exemplifies, only certain kinds of copying are stigmatized and only some disputes go viral. The selectivity of news and social media outrage paints a very narrow picture of what a fashion knockoff is and who is producing it.

Typically, fashion-copying disputes that draw the most news and social media attention involve what can be described as "bottom-up copying," where the alleged copycat has significantly less prestige than the brand being copied (e.g., a "fast fashion" brand like Forever 21 copying a luxury or designer brand like Granted). In instances of bottom-up copying, accusations are issued from above and bristle with moral indignation about the theft of creative property, hard work, and sales. As I detail in chapter 2, today these accusations are also underpinned with racial and specifically techno-Orientalist associations that implicitly or explicitly associate fashion copying with foreign codes of digital ethics and fashion conduct.

"Top-down copying" receives much less attention. In fact, the most common forms of top-down copying often go unrecognized as copying. Popular euphemisms for top-down copying like *creative inspiration*, *homage*, and *cultural appreciation* rebrand what are actually copies into original works of authorship. This was on full display in the Metropolitan Museum's 2015 exhibition *China: Through the Looking Glass*, a show dedicated to highlighting Chinese influence on Western fashion. Almost any one of the featured pieces (fashions by the likes of Alexander McQueen, Givenchy, Valentino, Dior, and Balenciaga) could have been thought to be the work of an Asian designer. Yet those Western designers and collections weren't subject to social media regulation. Words like *copying*, *knockoff*, *piracy*, and *counterfeit* didn't enter into the mainstream news and social media discourse about the exhibition. The social media public that had just six months earlier skewered Forever 21 for copying Granted's sweaters (and which gave Granted a pass to copy

the Cowichan sweaters) didn't raise any objections to the luxury-design copies. Instead, professional and lay reviewers generally embraced *Looking Glass* as a reflection of Western sartorial mastery over Asian cultural resources.[20]

This is perhaps the greatest privilege informal copy rights confer: the power to copy without being branded a copycat. Elite Western fashion copycats suffer little to no damage to their reputations or businesses despite the public exposure of their copying. What's more, copying doesn't damage their moral credibility in the fight against fashion piracy.[21] I'm no longer surprised to learn that a vocal antipiracy advocate has single pieces, if not whole collections, "inspired by" East African (frequently, Maasai), Indigenous, and/or Asian aesthetics. The distinctions between (or judgments of) who can copy, whose copies should be protected from being copied, and whose designs are available or appropriate for copying are at the very heart of the system of copynorms that ordinary individuals now play a crucial role in producing and regulating online.

In the exceptional cases where "top-down copying" is publicly acknowledged, the copying is often excused as an isolated lapse in judgment rather than a reflection of a broader cultural or racial pattern of immorality and unoriginality. We saw this happen when Nicolas Ghesquière (at the time, the head designer at Balenciaga) was caught copying a patchwork vest created by the late Chinese American designer Kaisik Wong. An article about the incident published in *New York* magazine actually begins with "Poor Nicolas Ghesquière" and then goes on to describe him as "the beautiful boy wonder" targeted by a naïve and overeager "fashion police" (per the article's title).[22] Others openly defended Ghesquière's right to copy. In one fashion journalist's words, "[Ghesquière's] jacket is actually nicer—so, what's not to like?"[23] There were no articles or blog posts that used the incident to draw broader cultural conclusions about Ghesquière or Balenciaga. For example, no one chalked up the copycat design to the creative shortcomings of French, Spanish, or European cultures. The media and public ultimately shrugged off the incident as nothing more than a designer making use of an "inspiration supply"—a euphemism that manages to both minimize and elevate Ghesquière's copying.[24] (I say more about this incident in chapter 1 in my discussion about the racial and media constructions of fashion property and copy rights.)

Horizontal fashion-copying disputes, say, between two luxury brands or two budget brands, also tend not to attract much public notice at all. They lack the drama of a "David and Goliath" confrontation, and when they're contained to the luxury sector, these disputes may be intentionally kept quiet by those invested in avoiding bad publicity. Highly publicized disputes like Yves Saint Laurent against Ralph Lauren in 1994 and then against Christian Louboutin in 2012 are few and far between.[25] Social media users tend to focus on copying disputes between vertically polarized brands, particularly cases of bottom-up copying. In these instances, the media portrays luxury brands as fighting an ethical battle—rather than engaging in market-competitive conduct—with mass-market brands. The popular "David and Goliath" framework uses morality to assert class and market hierarchies. By associating the (smaller) luxury market with high ethical standards and the (larger) budget market with low ethical standards, luxury and designer brands are constructed as righteous underdogs in a global industry in which they're actually dominant cultural and economic forces.

Selective press coverage and social media outrage have distorted public perceptions not only of fashion ethics and ethical fashion but also of fashion knockoffs—what they are and where they come from. Yet popular perceptions of design legality and criminality (rather than the law) are the primary factors that influence how fashion producers and consumers view, treat, and respond to different kinds of fashion copies. By "legality," I am drawing on Patricia Ewick and Susan S. Silbey's book *The Common Place of Law* and their conceptualization of "legality" as a resource and process that people draw on in their everyday lives. Ewick and Silbey argue that "social interactions within neighborhoods, workplaces, families, schools, community organizations, and the like" are "the common places of the law" and are more influential than legal documents like court decisions, briefs, and legislation.[26] These social spaces produce "a sense of the legal" that shapes people's behaviors, attitudes, and beliefs in relation to the law.[27] In the early twentieth century, powerful fashion companies used the trade and popular press to create the popular sense of fashion legality (the subject of chapter 1). Today, social media users and environments do this work. But how did social media users come to take the role and responsibility of online fashion IP watchdogs? To answer this, we need to review some history.

The History of Crowdsourced Fashion Labor

Fashion's history of crowdsourcing begins around 1999 when ordinary people were invited into the fashion industry through *Sex and the City* (which made Jimmy Choo, Manolo Blahnik, and other luxury labels household names), *Project Runway*, and *The Devil Wears Prada*. These types of shows and films made the rarefied world of high fashion relatable. They also encouraged people who might never shop for luxury fashion to become conversant in its language and culture and to form opinions about the luxury fashion world. At the same time, early blogging platforms like OpenDiary, LiveJournal, and Blogger emerged and gave fashion TV fans the tools and space to express their fashion opinions and assert themselves as amateur fashion experts.

In 2006, fashion bloggers were given, for the very first time, press passes to cover New York Fashion Week. The presence of a tiny and elite group of bloggers was widely viewed by the industry, the media, and bloggers themselves as a magnanimous gesture from an industry that had always held "exclusivity" as a core value. By 2009, superbloggers weren't just being invited to fashion shows: they were courted with premium front-row seats alongside—and sometimes in place of—media and retail heavyweights. (A writer reporting on this phenomenon in 2009 observed in the *Wall Street Journal* that "at the D&G runway show in Milan last week, the chief executives of Saks Fifth Avenue, Neiman Marcus and Bergdorf Goodman were relegated to second-row and third-row seats."[28]) By the end of the 2000s, the telltale signs of the most fashion-forward shows weren't celebrities but instead A-list bloggers, tweet decks, and blogging stations. But those whom the *Financial Times* characterized as the new "cool kids" (with their new cool gadgets) were actually a new class of workers whose largely unwaged internet activities generated enormous value for fashion brands.[29]

For the majority of social media users who weren't granted physical access to Fashion Week, brands provided them with virtual access. In 2010, a long list of designers (including Calvin Klein, Marc Jacobs, Michael Kors, Tommy Hilfiger, and Proenza Schouler) livestreamed their shows to their websites, social media pages, and even, in Alexander Wang's case, a Times Square billboard. Other designers posted minute-by-minute photos and commentary on Facebook and Twitter. Some forewent the live show altogether. Marc Bouwer, Temperley London, and

Reem Acra prerecorded their shows and shared them on YouTube during Fashion Week.

The fashion industry's willingness to provide the public with digital access to exclusive shows and collections can be explained by political and commercial factors related to the aftermath of the September 11 terrorist attacks and a particular ethos of political consumerism that dominated that period. Almost immediately after the attacks on New York City, politicians from George W. Bush to Rudy Giuliani and Willie Brown (the mayors of New York City and San Francisco at the time) portrayed shopping as a civic act of counterterrorism.[30] As Bush put it in a news conference one month after the attacks, "Now, the American people have got to go about their business. We cannot let the terrorists achieve the objective of frightening our nation to the point where we don't conduct business, where people don't shop. That's their intention."[31] Bush didn't specifically mention fashion but the racially gendered implications and narratives of the War on Terror—particularly as they cohered around the figure of the oppressed, burqa-clad Afghan woman in need of specifically gendered forms of saving by the West (whether by military intervention or humanitarian aid)—gave fashion a central place in the popular understanding of everyday counterterrorism. One week later, Giuliani formalized the link between fashion and counterterrorism in a press conference with members of the Council of Fashion Designers of America (CFDA). The press conference launched the public-private partnership called "Shop for America."

These and other similar events reinforced the idea that widespread access to Western fashion was a necessary condition for the possibility of liberal democratic freedoms of self-expression, self-determination, and choice. It was in this moment that celebrity designers introduced a slate of "democratized fashion" that promised to make fashion (the clothes and the industry) accessible to more consumers. One notable effort was Isaac Mizrahi's collaboration with Target—also in 2003. Although Mizrahi didn't invent the "high-low" fashion-line concept, his was the first to achieve general consumer and industry acceptance.[32] This period also saw the rapid expansion of European "fast fashion" brands into US markets. Like the high-low collections, budget fashion trends were widely embraced as material signs and means of democracy. A San Francisco Bay Area resident who was interviewed in a news story about the impending

grand opening of the first H&M store in the area characterized it as "'one of the best things about America—we are one of the Western countries of opportunity. . . . I think it's great that someone can say, you know what, I can be great. I can get the elegant car at the cheaper price. I can get the elegant brand name at a good price."[33]

In this period, the "democratization of fashion" was not only a buzzy new media term but also a key cultural value in the popular discourse about fashion ethics. Terms like "cheap chic," "recession chic," and "credit crunch chic" were widely used to describe budget versions of designer fashions sold at stores like Target, Zara, and H&M. These expressions capitalized on wider cultural political sentiments that saw market access and participation as constitutive features of Western democracy—that viewed (fashion) shopping as a democratic right. In this period, those inside and outside the fashion industry believed that market barriers should be overcome, not strengthened. Even the conservative *New York Times* columnist David Brooks promoted "an aggressively democratic sensibility to the world of fashion" where "the distinction between upscale and downscale is exploded."[34] "Cheap chic" was as much a political fashion statement then as sustainable fashion is today. In the early 2000s, "accessible" fashion was both good politics and good business. It provided a new consumer base and renewed cultural relevance for an industry reeling from the cultural and economic impact of the terrorist attacks.

By the end of the 2000s, the mainstreaming of social commerce or the growing use of social media in commercial activities increased the public's access to fashion. But if the phenomenon widely known as fashion's digital democratization gave consumers greater access to fashion brands and designers, it also gave fashion companies greater access to consumers. In particular, social media provided brands access to consumer attention and engagement, highly valued resources of capital accumulation in the internet fashion economy. The livestreams, tweet decks, blogging stations, and front-row seats that gave social media users an insider view of the clothes also cleared a path for them to photograph, write about, share, link to, and otherwise help publicize and endorse fashion brands and fashion collections in and through their social media networks. Fashion's digital democratization created the conditions for fashion's crowdsourcing labor. By inviting consumers to participate in

the culture of fashion, digital democratization encouraged consumers to align themselves with the fashion industry, to imagine themselves as a part of the exclusive world of influential fashion editors, designers, models, and tastes.

Rachel Roy's rationale for sharing videos of her 2010 show on Facebook and Twitter offers some insight into the cultural and economic dimensions of the industry's emergent relationship to consumers. Roy says in an interview that the videos were meant to "give people a more 360-degree view of my presentation. It lets people feel like they are on this journey with me and creates excitement and anticipation. . . . Access is important . . . and bloggers help add a level of intimacy and access to my collection."[35] Roy's offer of consumer access offers a chance at upward mobility, a chance to participate in the exclusivity of fashion ("lets people feel like they are on this journey with me"), in exchange for the unpaid labor of fashion blogging. If social media provided new ways of accessing fashion brands, designers, images, and products, then it also created new expectations that consumers participate in the productive activities of the fashion business. In the Roy example, we can see how crucial social media has been as a catalyst for resignifying fashion labor (so that it includes social media engagements with brand messages and messaging channels), for expanding fashion's productive capacities, and for increasing its cultural economic influence on consumers. In short, the development of global fashion has gone hand-in-hand with the rise of social media.

Today, fashion bloggers no longer garner the same headlines or get the same levels of industry attention they used to. One reason is that blogging has been absorbed into the normal business of fashion. Virtually every designer and brand has at least one social media account that enables them to produce and control the kinds of everyday, intimate connections between brands and consumers that fashion bloggers invented. What's more, the work that was once the province of bloggers (which was once the province of journalists, photographers, marketers, advertisers, models, and so on) is now normalized and distributed across a larger population of social media users. Newer and established brands like Betabrand, Everybody World, J. Peterman, and Timberland crowdsource design work from social media users through online design contests and competitions under the pretense of consumer outreach and engagement. As well as design crowdsourcing, brands crowdsource their

market research and advertising from consumers by tacitly and explicitly encouraging them to engage in everyday social media activities (e.g., liking, sharing, retweeting, commenting, and reposting). But these kinds of online activities are no longer associated with fashion's digital democratization.

In fact, "democratization" no longer defines the priorities or values of the fashion industry or the fashion public. "Cheap chic fashion" has been displaced by "investment fashion." Whereas budget fashion a few years earlier was celebrated as an ethical fashion good, as a channel for bringing fashion to the people, now it's seen as an ethical fashion disaster contributing to the worst excesses of the industry: environmental devastation, labor exploitation, and, most significantly for this book, fashion copying. Today, economic investments in our closets have become tantamount to cultural political investments in the ethical issues related to fashion production and consumption (an idea captured by the phrase "vote with your dollars"). The conventional wisdom on ethical fashion now dictates spending more, not less, on clothes. (Ironically, designs created from unwaged, crowdsourced consumer labor are more expensive than those that aren't. A plain T-shirt from one of the above crowdsourced brands costs between $40 and $58.)

Mainstream fashion's turn from cheap chic to investment/sustainable fashion wasn't so much an ideological shift as a rhetorical one. The language of democratization, as I've already suggested, obscured but didn't transform fashion's implicit aspirational class politics. In the mid-2000s, the popular rhetoric about fashion's digital democratization offered an aspirational vision to fashion consumers that their unpaid, consistent, and abundant production of fashion-related social media content could lead to, among other rewards, a front-row seat at an exclusive fashion show. The success of a few highly visible Asian superbloggers seemed to evidence the fact that, through this system of crowdsourced labor, anyone could join the ranks of the fashion elite. In the 2010s, with the resurgence of interest in fashion piracy, thanks to campaigns like "You Can't Fake Fashion" (a CFDA and eBay partnership) and "Fakes Are Never in Fashion" (a *Harper's Bazaar* enterprise), fashion's aspirational framework included a moral dimension.[36]

Today, the ideal fashion subject is also a moral authority of fashion ethics. She—still "she"—pays more, not less, for clothes on principle (and,

often, on credit). She follows and shares ethical fashion's rule of thumb that a high-priced garment was probably ethically produced in the United States or Europe and that a low-priced garment was probably illegally made in China or "the third world." The conflation of budget fashion with "fake" fashion, and "fake" fashion with an array of legal and moral crimes from creative disrespect and brand diminishment to the theft of labor, sales, and IP to drug wars and terrorism, is so pervasive it appears as commonsense.[37] Formal antifashion piracy campaigns are no longer active but not because the industry's ethical focus has shifted. To the contrary, its concerns have expanded and been distributed to social media users who now constitute a sprawling network of crowdsourced regulators that provide fashion brands fast, free, extralegal, and effective IP support services.

Whether designers recruit social media users to take up their copycat fight or whether users undertake these fights on their own, the work of crowdsourced IP regulation is always irregular, spontaneous, and distributed across everyday internet and social media routines. It is also an unwaged, remote, flexible, and on-demand (or market-responsive) form of digital fashion labor. Social media users engage in voluntary regulatory activities by creating or responding to a social media post, often in between checking emails; while scrolling through Twitter or Instagram; while "liking" Facebook friends' political, personal, and professional updates; and while reading online content as a temporary distraction from their paid jobs.

The casualized arrangements of crowdsourced IP regulation obscure the reality that social media users are doing *work*, activities that produce fashion cultural and economic capital. In fundamental ways, crowdsourced fashion IP regulation evidences the continued encroachment of work and property logics into people's everyday lives. They mark the ever-more-blurred line between enjoyment and exploitation that Tiziana Terranova identified as a characteristic feature of free digital labor—and now this free labor is being done under the rationale of protecting the ethical standards of the global fashion market.[38]

The fashion industry, in particular, has contributed significantly to redefining work beyond traditional forms of waged labor. From unpaid fashion interns to unpaid models or models that are "paid" in cultural capital (prestige) and/or "trade" (e.g., clothes, shoes, handbags) to fashion

bloggers who work for likes, much of the work that supports this $1.5 trillion-dollar global industry is unpaid, and many of these workers aren't recognized as part of any labor category, labor history, or labor movement.[39] Crowdsourced IP regulation is the latest phase in the development of fashion labor and global fashion capitalism. Social media users, by investing their time, energy, and attention to defining and regulating legitimate and illegitimate fashion copies, are doing work that shapes market competition, market hierarchies, and market outcomes.

This book results from my long-standing interest in the shifting nature and future directions of fashion work, particularly for what it reveals about how race, gender, and class structure fashion labor markets—and vice versa—under globalization and digital capitalism. Too often, fashion is left out or considered an afterthought in discussions about globalization, digital labor, and the gig economy even while the industry exemplifies these phenomena. As I hope this book makes clear, the global fashion industry and its expanding reliance on social media, crowdsourced labor, and informal labor (both digital and physical) are not only central but critical to these discussions. Crowdsourced fashion IP regulation crystallizes how inequality is continuously reproduced and transformed under different forms of capitalism even as it's obscured by capitalist ideals about creativity, property, and ethics.

This book is also a response to some of the more popular claims, assumptions, and norms regarding how to think about and do ethical fashion. Topmost among these is the idea that crowdsourced IP regulation—a grassroots practice of building popular awareness and support for the IP issues and challenges designers face—makes the global fashion industry more ethical. But in most cases where the public has spoken, the public has gotten it wrong. Because fashion IP discourse is fraught with racist, colonial, and classist assumptions and norms about creativity and copying and property and impropriety, crowdsourced regulation isn't simply "flawed." It can and often does support oppressive structures of power. (This is the focus of the first two chapters of this book.) Without an interrogation of these oppressive legacies, crowdsourced IP regulation can't provide us nice things like *actually* ethical fashion (clothing produced, distributed, and sold under nonabusive, nonracist, and nonsexist trade and labor conditions): it can only reproduce and legitimize these legacies as the common sense on fashion ethics.

The book is organized in two parts. Chapters 1 and 2 highlight the unequal power relations and structures that underpin fashion IP discourses and regulatory norms and practices. Chapters 3 and 4 explore how social media users counteract IP's unequal power structures. Together, these chapters elaborate the overarching thesis of this book that "original fashion" isn't a *thing* but instead a site of struggle over value systems and market competition under the cover of fashion ethics. As we'll see, authentic and fake fashion, creativity and copying are racialized categories, not neutral facts. Historically, fashion brands, international IP governing bodies, and "free trade" arrangements defined and policed the racial boundaries of these categories. Today, social media users have taken up and expanded this work into extralegal areas.

Chapter 1 begins with an analysis of fashion's first large-scale antipiracy effort, a campaign led by the Fashion Originators' Guild of America (FOGA) in the 1930s. Highlighting FOGA's strategic use of the media and consumer guilt, this chapter demonstrates the prehistory of "social media shaming." FOGA's campaign, tactics, and motivations also reveal the corporate roots of mainstream Western fashion ethics. As this chapter explains, contemporary understandings of fashion ethics emerged from US corporate activist efforts to define and enforce intellectual property for the benefit of corporations. FOGA encouraged white bourgeois women to take up its cause by appealing to their class status as guardians of culture and respectability and exploiting their class-based racialized fears about losing this privileged status. Buying FOGA-approved fashions came to be understood and articulated as a civic act of feminist empowerment (reserved for white bourgeois women).

I conclude chapter 1 by considering the contemporary relevance of FOGA's copynorms in both legal and extralegal contexts. Drawing on analyses of more recent disputes involving US and European brands and Indigenous groups in North America, Latin America, and Africa, I demonstrate how fashion IP regulation is a racial project, a means for unevenly distributing rights and rewards—here, the right to copy (with all the benefits and protection that entails)—along racial lines.[40]

Chapter 2 extends the scope of the discussion in chapter 1 to consider how fashion IP regulation is not only a racial project but also a civilizing project. Today's antipiracy efforts are especially focused on the cultural and ethical primitiveness of Asian fashion copycats—a racial stereotype

that's sustained in large part in and through social media environments. While this racial formation has new features specific to the digital era (the contemporary Asian fashion copycat is a strange and threatening hybrid of fashion pirate and media pirate), it derives from deeply rooted ideas about, on one hand, Asians' technical superiority and, on the other hand, their cultural and ethical inferiority.

Today, social media users and environments play a pivotal role in producing and spreading this stereotype. To put it another way, the online discourse about ethical fashion is helping to maintain global fashion's racialized hierarchies. The Asian fashion copycat is ethical fashion's quintessential racial other. It's both a target of ethical fashion's civilizing projects and a backdrop against which ethically minded consumers and brands assert the superiority of Western brands and industries—just as Western fashion is losing its cultural economic primacy.

Fashion trials by social media tend to maintain global fashion's status quo but this isn't always the case. Chapters 3 and 4 provide examples of social media users doing crowdsourced IP regulation *otherwise*. In these cases, crowdsourced IP regulation is a practice that challenges dominant notions of creativity and copying, and with it some of the extractive processes of the fashion design industry.

Chapter 3 presents a detailed case study of an unusual social media trial. In 2016, social media users in Thailand succeeded in calling out the Paris-based luxury fashion house Balenciaga for copying the popular Thai "rainbow bag." Using various social media platforms and a practice that I call "hashtag jamming," Thai users co-opted Balenciaga's hashtags—now important branding channels—in an internet meme that exposed the design source of Balenciaga's bag. The meme effectively, if temporarily, reversed the extractive flow of global fashion. As I explain in this chapter, the Thai hashtag action effectively draws payment from Balenciaga (in the forms of attention and information capital) for its unauthorized and uncredited use of the Thai design.

Chapter 4 focuses on the most influential internet fashion watchdog in the world, an Instagram account called Diet Prada, created by Tony Liu and Lindsey Schuyler. (Its Instagram bio simply says "Ppl knocking each other off lol.") Diet Prada is a force in the social media landscape that attracts as much contempt as it does adoration. (At present, it has 2.4 million followers.) But what both its fans and critics

miss is the political significance of its critiques about the problem of people "knocking each other off." Diet Prada's refusal of mainstream ethical fashion frameworks, logics, and niceties, I suggest, reflects an alternative—but not perfect—value system for assessing the problem of fashion copycatting.

Almost all matters of fashion ethics are now discussed, negotiated, and carried out online. And, generally, social media activities pursued in the name of ethical fashion are seen as forces for good. But if the work of crowdsourced IP regulation is obscured by its irregular, casual, and voluntary nature, then the harms it reinforces and sustains are often obscured by the internet's neoliberal conceits or what Jodi Dean calls the neoliberal fantasies of communicative capitalism. She defines these fantasies along three lines: abundance ("the inclusion of millions upon millions of voices or points of view into 'the conversation' or 'public sphere'"), participation (the act of "contributing to the media environment"), and wholeness (the idea that the internet is an "open, smooth, virtual world of endless and equal opportunity" for information sharing).[41]

For Dean, the internet's political promise as a tool of participatory democracy is undermined by its capitalist structures—from its corporate owners to its neoliberal valorization of individualism, market-based freedom, and popularity/virality. Online, political messages "become mere contributions to the circulation of images, opinion, and information . . . trying to catch and hold attention, to push or sway opinion, taste, and trends in one direction rather than another."[42] This is the trap of communicative capitalism. "The use value of a message is less important than its exchange value, its contribution to a larger pool, flow, or circulation of content. A contribution need not be understood; it need only be repeated, reproduced, forwarded."[43] It isn't the significance of the message that makes them "stick," Dean writes, it's the volume or virality of the message. "Sufficient volume (whether in terms of the number of contributions or the spectacular nature of a contribution) gives these contributions their dominance or stickiness."[44] This is a perfect distillation of social media's effect on the public understanding of fashion creativity and copying. Copynorms and copynormative assumptions circulate and gain traction online by appealing to a racialized commonsense about the ethical basis of IP protection in general and fashion IP in particular, about public/heritage resources and private property, about Asians and

creativity, and about the moral virtue of elite markets. And their repetition and wide circulation—thanks to social media—lend them greater legitimacy. *Nice Things* aims to unsettle the racialized commonsense that structures the mainstream regulation of "ethical fashion" to move toward a critical framework for evaluating not only fashion property and impropriety but also, indeed, the very ethics of fashion and property themselves.

INTRODUCTION. "SHARE THIS WITH YOUR FRIENDS"

1 Granted Sweater Company (@grantedsweatercompany), Instagram post, January 6, 2015, https://www.instagram.com/p/xhqXtKIoAV/.

2 Granted Sweater Company, Facebook post, January 6, 2015, https://www.facebook.com/grantedsweaters/photos/pb.28973649640.-2207520000.1465225497./10152939439194641/?type=3&theater.

3 These quotes are from comments on the Facebook post.

4 This quote is from a comment on the Facebook post.

5 I use "fashion consumers" and "social media users" as shorthand terms that name broad, overlapping, and heterogeneous groups of people whose relationships to the fashion industry may be formal or informal, close or distant.

6 Radin, "How a Copyright Loophole Gave Birth."

7 Some examples of digital labor include cultural content production (Lazzarato, "Immaterial Labor"), online community managing (Nakamura, "The Unwanted Labour of Social Media"; Jarrett, *Feminism, Labour, and Digital Media*), content moderation (Chen, "The Laborers Who Keep Dick Pics"), data sanitation (Irani, "Justice for 'Data Janitors'"), social media influencing (Marwick and boyd, "To See and Be Seen"; Duffy, *[Not] Getting Paid to Do What You Love*), and fashion blogging (Pham, *Asians Wear Clothes on the Internet*).

8 Coombe, "Culture"; Pang, *Cultural Control and Globalization in Asia*.

9 Coombe, "Culture," 262.

10 Coombe, "Culture," 263.

11 Schultz, "Copynorms," 201.

12 Greene, "'Copynorms.'"

13 In the United States, more than eighty bills to extend the Copyright Act to include fashion design have been proposed, introduced, and reintroduced in Congress since 1914 (Colman, "The History and Principles of American Copyright Protection"). None have passed. The most recent ones were a Bill to Provide Protection for Fashion Design, introduced by Representative Robert Goodlatte in 2006. The bill sought to include fashion design as a protected category under the Vessel Hull Design Protection Act of the Digital Millennium Copyright Act. In 2007, Representative William Delahunt proposed a similar bill called the Design Piracy Prohibition Act (DPPA). In 2009, Delahunt reintroduced a revised version of the DPPA. In 2010, Senator Charles Schumer

introduced the Innovative Design Protection and Piracy Prevention Act (IDPPPA or ID3PA), then revised it in 2012 to require that a written notice be given before beginning legal action. Despite more than a century of industry lobbying and corporate and media activism, fashion design is not copyrightable in either the United States or Canada. Specific and purely decorative features like nongeneric fabric prints, logos, brooches, and belt buckles—things that are separable, if only conceptually, from the utilitarian function of the fashion product—are protectable under US and Canadian copyright, trademark, trade dress, and design patent laws.

14 Blakley, "Lessons from Fashion's Free Culture."

15 Quoted in Pouillard, "Design Piracy," 341.

16 It's worth noting that while there are legal distinctions between an actual counterfeit, an item that infringes on a trademark, and a "knockoff," parsing them doesn't occupy a significant place in the public discourse. For that reason, they don't occupy a significant place in this book. What I'm interested in is the conflation of these terms, how they operate in the public discourse not as legal terms but as cultural idioms and economic forces of racialized entitlement, power, and exclusion.

17 Quoted in Pike, "The Copycat Economy."

18 Quoted in Paul, "Is Social Media the New Court of Law?"

19 Raymond Williams, *Culture and Materialism*, 50.

20 Despite the exhibition's expressed Chinese theme, the featured pieces drew on a mix of Chinese, Japanese, and European chinoiserie. For more on the exhibition, see my essay "*China Through the Looking Glass*."

21 Nicolas Ghesquière (see the discussion in this introduction) became a prominent signatory to an amicus brief in support of Apple's lawsuit against Samsung because of its implications for fashion designers.

22 Larocca, "Fashion Police."

23 Frankel, "Ready to Wear."

24 Larocca, "Fashion Police."

25 See Spindler, "A Ruling by French Court," and Boyle, "Christian Louboutin Sues Yves Saint Laurent."

26 Ewick and Silbey, *The Common Place of Law*, 20.

27 Ewick and Silbey, *The Common Place of Law*, 22.

28 Binkley, "From the Runway to Your Laptop."

29 Copping, "Style Bloggers Take Centre Stage."

30 I write about the politicization of fashion after September 11 in "The Right to Fashion in the Age of Terrorism."

31 Bush, "A Nation Challenged," B4.

32 Halston's JCPenney line predates Mizrahi's Target line by two decades, but it was much less successful. The collaboration also damaged Halston's professional ties and reputation: "Not wanting a secondary association with the masses, Bergdorf Goodman dropped him . . . and the name Halston itself

became a joke, even providing what is now depressing fodder for *Saturday Night Live*" (Odell, "From the Disco to JCPenney").

33 Murphy, "Mass Couture."

34 Brooks, "Stuff and Nonsense," A25.

35 Quoted in Stephenson and Strugatz, "Social Media."

36 Both campaigns launched in 2011.

37 In "The High Cost of High Fashion," I wrote about the prevalence and problems of these race- and class-based ethical fashion truisms. Examples of the budget fashion / fake fashion conflation can be found in almost any discussion about "fast fashion" or fashion copies. Three cases in point are Lieber, "Why the $600 Billion Counterfeit Industry Is Still Horrible for Fashion"; *Business of Fashion*, "What Are the Consequences of Copycats?"; and Coscarelli, "12 Fashion Knockoffs."

38 Terranova, "Free Labor."

39 See Elizabeth Verklan's article "Doing What You Love in the Age of Mass Debt" for an important discussion of the exploitative nature of fashion internships.

40 See Omi and Winant, *Racial Formation in the United States*.

41 Dean, *Democracy and Other Neoliberal Fantasies*, 26, 32, 43.

42 Dean, *Democracy and Other Neoliberal Fantasies*, 24.

43 Dean, *Democracy and Other Neoliberal Fantasies*, 27.

44 Dean, *Democracy and Other Neoliberal Fantasies*, 21.

I. REGULATING FASHION IP, REGULATING DIFFERENCE

1 Since 1931, more than sixty bills have been introduced and reintroduced to Congress; each of them, including the most recent bill, named the Innovative Design Protection Act of 2012, failed to pass. (For more, see note 30 in Schmidt, "Designer Law.")

2 For discussions of this point, see Nystrom, *Economics of Fashion*, and Meiklejohn, "Dresses."

3 Kal Raustiala and Christopher Sprigman's analysis of the piracy paradox is detailed and comprehensive. They developed this thesis in numerous mainstream and scholarly articles, including "The Piracy Paradox" and "The Piracy Paradox Revisited" (a rebuttal to C. Scott Hemphill and Jeannie Suk's criticism of their main thesis), as well as in their book, *The Knockoff Economy*. Other scholars like David Bollier and Laurie Racine (in "Ready to Share"), Jennifer Jenkins (quoted in E. Klein, "Copycats vs. Copyrights"), and Renee Richardson Gosline (in "The Real Value of Fakes") have argued similar points.

4 Quoted in Marcketti and Parsons, "Design Piracy and Self-Regulation," 217.

5 The standard markup percentage for retail fashion is between 55 and 62 percent. My estimate for the 2021 value is roughly based on a 50 percent markup. I used the officialdata.org inflation calculator to determine what in 2021 would be the equivalent purchasing power of $22.50 in 1932.