Haute Couture

as a work

protected by copyright

Eleni Koutsopoulou

SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION AND LEGAL STUDIES

A thesis submitted for the degree of

Master of Arts (MA) in Art, Law and Economy

January 2017
Thessaloniki – Greece
Student Name: Eleni Koutsopoulou

SID: 2202140004

Supervisor: Dr. Marc Weber

I hereby declare that the work submitted is mine and that where I have made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

January 2017

Thessaloniki - Greece
Abstract

This dissertation was written as part of the MA in Art, Law and Economy at the International Hellenic University.

The research is focused on application of Copyright on haute couture creations due to their specificity. Being the art of supreme technical mastery and virtuoso execution that is illustrated on the haute couture apparel. Thus, the haute couture products are more close to the concept of art in comparison to the prêt-à-porter apparel where attention is put on their utilitarian status and their lack of originality. When haute couture products embody the element of originality, Copyright law is applicable as they depict the artistic talent of designer and their uniqueness not only in the shape but also in the construction. Therefore, for applying Copyright law it should be examined whether haute couture products fall within the definition of works, as defined and indicatively referred to the Copyright laws in Europe and the U.S.A. and the research is focused on Copyright Law and on examining the different approaches in several legal systems in Europe and U.S.A. In Europe, the protection of haute couture apparel is closer to Copyright law, compared to US law which is closer to trademark, trade dress and industrial design. Finally, it is examined whether introduction of 3D-printing in the area of haute couture affects the application of Copyright law, as well as if there is a need for amending the existing provisions, so as to deal with the challenges of the new technologies in this business area.

Keywords: haute couture, prêt-à-porter, fashion design, 3D-printing, copyright.

Eleni Koutsopoulou

24/01/2017
Preface

The key issue of my work is whether Haute Couture can fall into the notion of work of Copyright law in order to receive the relative protection. It has been written to fulfill the Master of Arts (MA) in Art, Law and Economy at the International Hellenic University. I was engaged in researching and writing this dissertation from September 2016 to January 2017.

The project was undertaken due to my personal interest in fashion. I was motivated during the coursework for the purposes of the Copyright Law course about “The protection of fashion design under the Greek Copyright Law”. I was intrigued on whether haute couture may be approached differently compared to ready to wear (prêt-a-porter) due to the fact that haute couture is the artistic form of fashion design and has different purpose and criteria in construction. My research question was formulated together with my supervisor, Dr. Marc Weber. The research was difficult, but conducting extensive investigation has allowed me to answer the question that we identified. Fortunately, Dr. Weber was available and willing to offer his help to achieve it, so I would like to thank him for his guidance during this process.

In this point, I would like to thank my family and friends and all my fellow students from the two years attending this Master, as well as my colleagues in the Legal Division of Eurobank Ergasias S.A. for the support and their enthusiasm all shared during the preparation of this dissertation, which made it a much more easier work than it would be without it. If I ever lost interest, you kept me motivated. However, each member of my family deserves a particular note for the faith they show in me all these years in whatever I do, as well as my director, Georgia Mattheopoulou, for her practical and moral support and understanding during this Master.

I hope you enjoy your reading.

Eleni Koutsopoulou

Athens, January 2017
Contents

ABSTRACT ...........................................................................................................................III
PREFACE .............................................................................................................................II
CONTENTS ...........................................................................................................................III
INTRODUCTION....................................................................................................................4
I. HAUTE COUTURE...............................................................................................................6
    1. HAUTE COUTURE IN FASHION HISTORY .................................................................6
    2. HAUTE COUTURE VS PRET-A-PORTER .................................................................10
    3. HAUTE COUTURE AS A WORK OF ART .................................................................12
II. INTELLECTUAL PROPERTY LAW AND FASHION INDUSTRY.................................16
    1. INTRODUCTION [COPYRIGHT, PATENTS, INDUSTRIAL DESIGN, TRADEMARKS] .......16
    2. COPYRIGHT PROTECTION OF HAUTE COUTURE ..................................................18
        A. Europe ................................................................................................................20
        B. U.S.A. ................................................................................................................31
    3. COMPARISON IN APPROACH .................................................................................39
III. HAUTE COUTURE’S FUTURE: 3D-PRINTING ............................................................42
CONCLUSION ......................................................................................................................47
BIBLIOGRAPHY ..................................................................................................................1
Introduction

Haute couture designs are both made-to-order for a specific customer and made of high-quality, expensive and often unusual fabric and sewn with extreme attention to detail and finished by the most experienced and capable sewers, often using time-consuming, hand-executed techniques. It is a discipline of ultimate imagination, unaccountable to cost with the paradox of being the fashion most cognizant of its ideal clients. It is, as it began, a dream of quality in an era of industry and its succession. Haute couture is by definition compared to ready-to-wear fashion design.

Work of applied art encounters several difficulties when Copyright protection is to be applied. the threshold for examining aesthetic value of such work is difficult to be set up, “since examination of aesthetic value is subjective and varies among different judges”. Then, the separability of the functional part from the aesthetic value is difficult to determine as the courts use various approaches and yet there is no consistency in resolving this issue.

Originality, as a necessary element in Copyright Law, seems applicable in haute couture designs and consequently this type of fashion design to be protected easier subject to Copyright Law compared to ready-to-wear designs. Moreover, haute couture can be defined as the business of making “expensive clothes of original design and high quality” and protection of fashion designs is a core future of its cultural identity and legal resumes.

References

1 Peuvion, 2015.
3 supra note 1.
7 Montalvo-Wiltzburg, 2016.
In the European Union, national and community Copyright law offers protection to fashion products— including traditional apparel categories—that contain an aesthetic value and originality. Moreover, haute couture apparel aborts the ephemeral character of clothing as it depicts the artistic talent of designer and their uniqueness and originality not only in the shape but also in the making.

In contrary, this ephemeral character of fashion and the fast-paced world of fashion, usually leads to questions about it, in combination with the utilitarian feature of apparel that tends to diminish the aesthetic value of haute couture and make it the prevailing feature that deprives fashion design from Copyright protection.

Based on the aforementioned, what it is interesting is the different approaches in Europe an U.S. when it comes to fashion design, notably in haute couture apparel. In particular, Copyright law is more possible in Europe for a fashion design compared to U.S.A. where trademark, trade dress and industrial design protection is the only choices the designers may have, as long as they meet the requirements the respective laws set. Europe’s copyright regime protects haute couture apparel designs, namely the expensive clothes of original design and high quality.8

Finally, the introduction of 3D-printing in the haute couture section of fashion industry is important to be examined as it is the upcoming method in creation of such apparel and there are questions raised about the application of Copyright as well as the need of amendments to the existing provisions so as the protection to be fulfilled.

8 Montalvo-Wiltzburg, 2014.
I. Haute Couture

This chapter focuses on the notion “Haute Couture” as a work of art, its appearance and evolution through the past two centuries and its comparison to prêt-à-porter.

1. Haute Couture in fashion history

Haute couture, as a notion, is closely connected with wealth, craftsmanship, glamour and France. The term is used to define high-quality clothing and its exclusive creation system. It was first used in the late 19th century by Charles Frederick Worth, an English haute couture designer in Paris who was highly praised at the Great Exhibitions. He set the basis for the development of the present haute couture system and he was the first to present his works in a fashion show, as couture is still presented nowadays.

In 1910, Chambre Syndicale de la couture Parisienne, the association to promote Parisian Haute Couture, has been founded. Among its activities are the organization of collections press relations, the defense of copyright and the operation of vocational schools. The couturier justifies the development of the creation of fashion in the context of a seasonal industry: haute couture offers, at first, this expression of the personalization of fashion, reflecting the label.

---

9 Onozuka, 1993, p.15.
12 The term means “Syndicate Chamber of Parisian fashion” in French.
13 supra note 10, p. 723.
14 Milleret, 2015, p. 10.

-6-
In order a fashion house to be granted the label as haute couture house and use this term in its marketing and advertising or in any other way, it has to meet the qualifications set by Chambre Syndicale\textsuperscript{15}, as established by Règlement intérieur de la Commission de Contrôle et de Classement “Couture Création” in 1945 which consequently updated in 1992\textsuperscript{16}. Accordingly, the appellation is done by the French Ministry of Economy and Finance (General Direction of Enterprises)\textsuperscript{17} after examining the qualifications described in this Règlement. This includes the following: the apparel designing is made-to-measure for private clients and offer personal fittings, the couturier maintains a workroom in Paris that employs no fewer than fifteen or twenty full-time workers and presents twice a year\textsuperscript{18} a collection of at least 35 designs for day and evening apparel in special fashion shows that are held in Paris\textsuperscript{19,20}. Last but not least, the main qualification is that the apparel has to be hand-constructed\textsuperscript{21}.

The Chambre Syndicale has institutionalised the formula that first Worth called as “special home for new fabrics” which encamps the posture of the great couturier who creates its models that will be resold to professionals or be reproduced tailor-made for a wealthy customer\textsuperscript{22}. Thus, in order a house to qualify as the Maison de

\textsuperscript{17} “La Chambre syndicale de la couture a établi un règlement intérieur de la Commission de classement déterminant les modalités de fonctionnement, le mode de présentation des candidatures, les conditions à remplir par les candidats, la procédure d’examen (contrôles et enquêtes), ainsi que les effets matériels de l’agrément (validité et utilisation de l’appellation).”, General Directorate for Enterprises Ministry of Economy and Finance of Republic of France, \url{http://www.entreprises.gouv.fr/secteurs-professionnels/appellation-haute-couture}.
\textsuperscript{18} In January the fashion show presents the creations for the the next year’s spring/summer season and in July for the next year’s autumn/winter season.
\textsuperscript{19} supra note 15, p.p. 7-8.
\textsuperscript{20} Zerbo, J. (ed.), 2014.
\textsuperscript{21} ibid.
\textsuperscript{22} supra note 14, p. 10.
Haute Couture\textsuperscript{23}, it should prove its activity to consist of “creating models of women’s clothing for the purpose of reselling them to a clientele of professionals, including reproduction, while reserving the right to carry out repetitions of these same models in order to satisfy the demands of its private customers”\textsuperscript{24}.

Couturiers are the protagonists of this procedure that is assisted by their talented collaborators, but also their suppliers, manufacturers of fabric and other artisans\textsuperscript{25}. Haute couture designs are both made-to-order for a specific customer and made of high-quality, expensive and often unusual fabric, as well as are sewn with extreme attention to detail and, often, using time-consuming, hand-executed techniques\textsuperscript{26}. It has been the hunger for novelties that led to the development of haute couture expressed by the wealthy clients and the foreign buyers in the past and chroniclers, bloggers and editors of fashion nowadays\textsuperscript{27}. The ingenuity and opinion of the couturiers themselves, supported by the artistic intelligentsia of the time, transformed into a true rebirth in order to offer a barrage of honors which, against all expectations\textsuperscript{28}. It is a discipline of ultimate imagination, unaccountable to cost with the paradox of being the fashion most cognizant of its ideal clients\textsuperscript{29}.

However, this limiting definition of an haute couture house in France excludes notable houses that are not based in Paris, such as exquisite Italian couturiers, despite their exquisite work and/or other old established French haute couture houses that do not qualify because, although their workrooms are in Paris, they do not present a collection\textsuperscript{30}.

\textsuperscript{23} This term means “Haute Couture House” in French.
\textsuperscript{24} supra note 14, p. 10.
\textsuperscript{25} supra note 14, p. 11.
\textsuperscript{26} supra note 1.
\textsuperscript{27} supra note 14, p. 11.
\textsuperscript{28} ibid.
\textsuperscript{29} supra note 2, p. 13.
The indubitable excellence of the Italian couturiers can be demonstrated by the development in fashion and style that took place in Italy and several efforts made so as to organize the fashion sector since 1935. However, in 1958, the competition between the ruling fashion cities led to the establishment of "Camera Sindacale della Moda Italiana", the forerunner of the current association "Camera Nazionale della Moda Italiana".

*Camera Sindacale della Moda Italiana* was founded by the most important haute couture houses in Italy, including some private houses, which, then, played a crucial role in the promotion of fashion sector. Its establishment aimed “at the protection, and the increase in value and discipline of the moral, artistic and economic interests of the professional activities carried out by the different categories of the numerous sectors involved with fashion, towards both the Public Institutions and the other national and foreign Associations.”

Besides this, the *Camera Sindacale* promoted the co-ordination, study and running anything associated to individual and collective fashion shows, which were held either in Italy or abroad. Another undertaking was the gradual setting up of the sectors of expertise among which are the Establishments for the creation of Haute Couture for Women and Men.

Later on, in 1962, the association of "Camera Nazionale della Moda Italiana" created by Centro Romano Alta Moda, so as to be the self-regulatory body to which

31 The four ruling Italian cities has been Turin, Milan, Rome and Florence.
33 The founders were Maria Antonelli in Borrello, Roberto Cappucci, Princess Caracciolo Ginnetti, Alberto Fagiani, Giovanni Cesare Guidi, Germana Marucelli in Calza, Emilio Federico Schuberth, Simonetta Colonna Di Cesare in Fagiani, Jole Veneziani, Francesco Borrello, Giovanni Battista Giorgini and the Lawyer, Pietro Parisio.
34 supra note 32.
35 ibid.
36 The term means “Centre for Haute Couture in Rome” in Italian.
all the fashion houses adhered spontaneously. Since then, its aim is to "represent the highest values of Italian fashion, and to protect, co-ordinate and strengthen the image of Italian fashion in Italy and abroad, as well as the technical, artistic and economic interests of its Associates".

2. Haute Couture vs Prêt-à-Porter

In order to reach a complete sense of what haute couture is, it is inevitable to collate haute couture with prêt-à-porter as they are by definition compared to each other.

Fashion industry is divided into approximately twelve different segments. Each segment presents unique developmental processes and is addressed to different type of purchaser. However, all twelve segments fall into one of two basic distinct categories: haute couture or prêt-à-porter.

Following the model of the two essential markets, at the opposite side of haute couture stands prêt-à-porter which contains all series apparel designed by a fashion designer and seasonally presented and are cut according to standardized measures. The main difference between the two categories is shown in the design process. More specifically, in haute couture apparel, "the design process is analogous

\[\text{supra note 32.}\]
\[\text{ibid.}\]
\[\text{The term means "ready-to-wear" in French.}\]
\[\text{supra note 1.}\]
\[\text{supra note 42.}\]
\[\text{Williams, Laing, Warwick, 2014, p. 104.}\]
\[\text{http://www.linternaute.com/dictionnaire/fr/definition/pret-a-porter/}\]
\[\text{supra note 42, p. 116.}\]
to creation of art” 47. The couturiers create and produce original designs that compose a collection of several pieces for the production of which the use of expensive fabrics and hand-finishing details and, to the time and skill involved in design, each piece is unique48. In addition to this, the couturier will take custom orders for specific apparel from each collection49. On the other hand, prêt-à-porter apparel, available as term from the end of 19th century, defined cheap and poorly made in comparison to the luxurious haute couture50.

In the 1960s, the fast approaching age of mass-consumer society takes place and leads to the development of prêt-à-porter which arrived to meet the needs of a large market with good quality products even if haute couture still controlled the trends of world fashion at that time. The advance of mass culture and manmade materials led to the respect of prêt-à-porter and to the popularization of fashion as introduced by designers such as Sonia Rykiel, who created both stylish and suited apparel “for everyday life counter-cultural aspect of the era by focusing on daily, relaxed designs”51.

Therefore, the main distinction between the two categories is the nature of their production as well as the time and cost consumption in creating each garment. Couture is hand-sewn and costlier compared to prêt-à-porter that is mass-produced and less costly52.

Since the nineteenth century, the number of designer designers in Paris has been impressive, as have their continuity and quality53. Furthermore, the presence of renowned fashion designers is an indicator of a creative environment. There is also an

47 ibid.
48 ibid.
49 ibid.
50 supra note 10, p. 512.
51 ibid.
52 supra note 42, p. 116.
53 Barrère, Santagata, 2003, p.3.
increasing internationalization of fashion designers, combined with a constant spatial concentration over time in Paris. Organisational creativity of fashion industry is based on the dipole of haute couture and prêt-à-porter. This division is even spatially placed: in U.S.A. prêt-à-porter is more popular to the haute couture that is closely connected in Europe and more specifically to Paris.\textsuperscript{54}.

Although the two categories are significantly different, designers do not always limit themselves to one category or the other\textsuperscript{55}. It is actually common for almost all haute couture houses to produce prêt-à-porter collections in addition to their haute couture ones\textsuperscript{56}. Furthermore, it is common to use the term "couture" in the fashion industry by fashion designers "to impart an elite ambiance to their apparel collection"\textsuperscript{57}. However, it is noteworthy to state that self-labelling alone would not make the apparel couture because if it is mass-produced and not custom fit for an individual client, it is in fact prêt-à-porter\textsuperscript{58}.

\textbf{3. Haute Couture as a work of art}

Haute couture is “art of supreme technical mastery and virtuoso execution”\textsuperscript{59} that is illustrated on the haute couture apparel which is acknowledged as “the art objects of fashion”\textsuperscript{60}. In some circumstances, haute couture apparel is used to address other visual arts\textsuperscript{61}. Modern art has affected haute couture as much as has affected other fine arts and their development has taken place alongside in the same generation\textsuperscript{62}.

\textsuperscript{54} ibid., p.3.
\textsuperscript{55} supra note 42, p. 116.
\textsuperscript{56} ibid.
\textsuperscript{57} supra note 42, p. 117.
\textsuperscript{58} ibid.
\textsuperscript{59} supra note 2, p. 9.
\textsuperscript{60} ibid.
\textsuperscript{61} ibid.
\textsuperscript{62} ibid.
Besides, applied arts describe “two- and three- dimensional ornamentation or decoration that is affixed to otherwise utilitarian objects”\textsuperscript{63} and this “design or decoration of functional objects so as to make them aesthetically pleasing”\textsuperscript{64}. Despite the fact that is thought to be distinct to fine arts, there is often no clear dividing line between the two areas\textsuperscript{65}. While fine art provides intellectual stimulation to the viewer, applied art creates utilitarian items using aesthetic principles in their design. Applied art includes among others fashion design\textsuperscript{66}.

While executing a strong, innovative design of haute couture, a couturier implements his ability to interpret the mood of the time for the mode of the world\textsuperscript{67}. “As the self-proclaimed king of clothing, ruler of that murky territory spanning the border between fashion and art, haute couture is a place to explore changing ideas of beauty, developments in design, tailoring techniques and fabric, shifting conceptions of femininity.”\textsuperscript{68}.

The creator of haute couture, with his imagination and his fantasy, but also with his reading of society and the history of men, their manners and beliefs, is the real two ex machina of the workshop, remote place looks and where fashion finds the beauty of its forms\textsuperscript{69}. His haute couture creations can be easily determined because its discriminating details disclose the privileges of craft and the couturier visual acumen.\textsuperscript{70} No matter which style the couturier has chosen for his couture designs, they “rely on such basic design principles as proportion, balance, color, and texture, and they conform to the image of the couture house”\textsuperscript{71}. Moreover, he “can also see mundane

\begin{itemize}
\item \textsuperscript{63} Merryman, Elsen, Urice, 2007, p.475.
\item \textsuperscript{64} Chilvers, I., (ed), 2004, p. 29.
\item \textsuperscript{65} ibid.
\item \textsuperscript{66} \url{http://www.visual-arts-cork.com/art-definition.htm#forms}.
\item \textsuperscript{67} supra note 15, p.9.
\item \textsuperscript{68} supra note 9, p.15.
\item \textsuperscript{69} supra note 53, p.3.
\item \textsuperscript{70} supra note 2, p. 9.
\item \textsuperscript{71} supra note 15, p.9.
\end{itemize}
materials maneuvered with the proficient and perfecting skills of haute couture to become unequivocally beautiful garments and can appreciate with the connoisseur’s gratification the illusions of trompe l’oeil (optical illusion) and the secret satisfactions of hand-sewn detail unmatched in conventional dress” 72. Maintaining the integrity of a design while making an adjustment to suit a client’s figure and personal preferences is a delicate balancing act 73.

However, there is a great debate on the notion of haute couture as applied art with “a group composed primarily of designers and creative directors working for couture fashion houses” who fight for this 74.

Furthermore, the creative design process is not as simple as it may seem. It is “a labor of both love and commitment of time, as the process usually needs nearly two years to turn the visionary concept of a designer into a physical object” 75. During this process the designer has to predict the trends to “be popular nearly two years into the future or which color and textile trends will be” 76. To achieve this ability, the designer seeks for inspiration “from studying street fashion, visiting art museums, traveling to other nations, keeping track of other design industries, and, most importantly, using their imaginations” 77.

When this stage of “collecting” inspiration is completed, the crafting of the new design begins by using “designer’s knowledge on apparel construction and unique sense of creativity to create a two dimensional sketch dictating the physical creation of the design” 78 and start to look for fabrics and materials that “will not only enhance the

72 supra note 2, p. 9.
73 supra note 15, p.9.
74 Miller, 2014, p. 1618.
75 supra note 74, p.p. 1618-1619.
76 ibid.
77 ibid.
78 ibid.
aesthetic appearance of the design but also will physically support the actual creation of the garment.”

Subsequently, by using his sewing skills and artistic knowledge, the designer creates a mock version of the garment on the appropriate fabric, so as later to be inspected and tailored by him and his creative team. This innovative effort and technical labor has as a result the designer’s approval for the manufacturing of his article of apparel. Then, a new creative circle starts.

In support to the above, it is not rare for fashion designers to describe themselves and their work in artistic terms: “they speak of their vision, their inspiration, the craftsmanship of their clothing, and the theme or message of a particular collection.” Fashion is art and it matters.

In order haute couture to be granted with the proper Intellectual Property protection, what shall be examined is in which side of the protection spectrum the haute couture objects should be placed: In a spectrum that covers the distance from the utilitarian side, where only patent protection can be awarded, to the artistic side that focuses on illuminating how haute couture works are works of applied art that consequently they receive copyright protection, given that in both cases the other prerequisites of the respective law is met.

__________

79 ibid.
80 ibid.
82 ibid.
II. Intellectual Property Law and Fashion Industry

Intellectual property laws offer protection to the creators of products of fashion industry—both haute couture and prêt-à-porter. Apart from the other kind of protection offered for haute couture, in this Chapter it will specifically examined whether copyright protection is offered for haute couture products in most “fashion-forward” countries in the world and the differences appeared among them.

1. Introduction [Copyright, Patents, Industrial Design, Trademarks]

The Intellectual Property rights offer unique protection to the creators, or owners, of patents, trademarks or copyrighted works so as they may benefit from their work or investment in a creation. Their protection is outlined in Article 27 of Universal Declaration of Human Rights, which provides for the right to benefit from “the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions”\(^8^4\). The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Protection (1883, as revised and amended) and the Berne Convention for the Protection of Literary and Artistic Works (1886 as completed, revised and amended). Both treaties are administered by World Intellectual Property Organisation (WIPO)\(^8^5\).

A sound understanding of Intellectual Property, as applied to fashion objects, is at the heart of fashion law. A company that knocks off another company’s apparel design must be wary of copying any design elements that are protected as Intellectual Property\(^8^6\). Due to the imitative and trend-based characteristic of fashion industry, the first issue to address is the prevalence of “knocking off” which despite of its

---


\(^8^5\) ibid.

\(^8^6\) Jimenez et al., 2014, p. 11.
commonness it can represent infringement of another company’s Intellectual Property.  

Comparing American and European Union legal practice, EU offers legal protection for original fashion designs. However, such protection extends only to original designs, and the vast majority of clothing design do not qualify as such due to lacking of originality. Consequently, most fashion designs can be freely imitated even in those countries that protect original designs. Despite this, it is imperative to differentiate the treat of haute couture as the element of originality is more possible to its products because of its categorisation among the applied arts.

In the U.S.A., though, fashion designs generally cannot be legally protected, but many other aspects of fashion products can be, for example fabric designs, surface designs on shoes and jewelry and accessories designs may be copyrighted, or ornaments features on fashion products may also be protected by design patents. “Brand names, logos and design elements that are associated in the consumer’s mind with a given brand can be protected as trademarks or trade dress.”

Essentially, creativity may be protected with patents, confidentiality, copyright, trademarks, trade dress, designs and reputation (goodwill). The protection is limited to some facets of fashion. Conceptually, the creative process of a fashion designer may attain some form of protection when meeting its own individual requirements to this protection.

88 supra note 86, p. 11.
89 supra note 84.
90 supra note 86, p. 11.
91 ibid.
93 ibid.
2. Copyright Protection of Haute Couture

Within the framework of this dissertation the research will be focused on the application of Copyright Law on haute couture designs, that is based on the division of the two basic essential markets of haute couture and of prêt-à-porter, as described above, as well as the premise that haute couture is a work of applied art.

As aforementioned, there are three main difficulties in applying Copyright protection to a work of applied art as haute couture products. Firstly, the threshold for examining aesthetic value of such work, that varies among different judges due to subjective examination of aesthetic value\textsuperscript{94}, secondly, the separability of the functional part from the aesthetic value, that is difficult to determine due to the variety in approaching by the courts and the inconsistency in reaching one common solution\textsuperscript{95}. Finally, “to decide substantial similarity as a matter of copyright infringement, as comparison between the original and the alleged infringing products will cover both their aesthetic and functional parts and it is important to decide the substantial similarity of which part results in copyright infringement”\textsuperscript{96}.

Copyright law applies internationally through the Berne Convention for the Protection of Artistic and Literary Works (1886). Even if the international conventions establish forms of protection, its terms of protection as well as “the ability to infringe” vary and depend “on differing rules and national interpretations of the law”\textsuperscript{97}. For example, haute couture fashion in France is governed by rules set by the Chambre Syndicale de la Couture Parisienne. However, these rules do not apply to non-members in Milan or New York or elsewhere\textsuperscript{98}.

\textsuperscript{94} supra note 4.
\textsuperscript{95} ibid.
\textsuperscript{96} ibid.
\textsuperscript{97} supra note 44, p.p. 104-105.
\textsuperscript{98} ibid.
Despite the aforementioned difficulties in applying copyright in fashion designs, haute couture apparel due to their specificity and their recognition as a form of applied art should lead to protection of Copyright Law. Firstly, a house shall prove the originality of its creations that are fixed in a tangible medium, so as to enjoy the copyright protection against any copies that are substantially similar to the original for as long as the designer is alive plus 70 years after the his death. Due to the fact that the haute couture creations are usually owned by corporations such protections length for 95 years after publication or 120 years after creation, whichever comes first\(^99\).

Garments are not generally considered as works for applying copyright due to their highly utilitarian significance. Only in very few cases this significance may be overcome, namely in instances where the garment components contribute to the aesthetic part of the clothing product and those components should be protected due to the fact that it is not possible to protect whole per se as a whole. The differentiation between several legal systems with regard to fashion design is that in countries, such as France and the United Kingdom, the concept of couture as an art form has been chosen to prevail to its functional use for body protection, which was selected in the U.S.A. legal system\(^100\).

France has been the first country to organize a complete system for haute couture since the 19th century and is the only law system that specifically includes haute couture in the list of works protected by Copyright Law. In other European countries’ legal systems, even to countries that fashion sector is developed, haute couture apparel has not been specifically included to the list of the works protected by Copyright Law. The creations of haute couture are usually classified as works of applied art or as industrial design with a creative or inherent artistic character.\(^101\).

\(^99\) supra note 86, p. 25.
\(^100\) Ovadias, Griba, 2005.
\(^101\) Derenberg, 1955, p.23.
France, Italy, United Kingdom and United States of America are the most “fashion-forward” countries in the world\textsuperscript{102} that have approached haute couture differently so as to consider it a copyright protected work as explicitly analysed further below.

A. Europe

i. European Union

The European Union firstly introduced the Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights in order to achieve the harmonization of copyright protection and certain related rights, which consequently has been repealed and replaced by Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives, and their application. A total harmonization of the period of protection for each type of work is established by this Directive in the Member States, e.g. 70 years after the death of the author for works. For scope of this Directive, in article 1 par. 1, a literary or artistic work falls within the meaning of Article 2 of the Berne Convention\textsuperscript{103}, which includes indicative list of works to be protected among which is the works of applied art, enabling countries to determine the extent of

\textsuperscript{102} Quilichini, 2013, p. 229.

\textsuperscript{103} Article 2 (1) of Berne convention reads: “The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science”.
the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected (article 2 par. 7).

As it concerns the design protection the EU was motivated to sign Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs in order to confront disparity amongst its members-states’ respective laws so as to resolve the disparity affected internal markets and distorted competition and to create a uniform system. It has a wide scope and includes designs registered with the central offices of Member States, the Benelux Design Office, or under international arrangements.

The prerequisites for registration are originality, meaning that there are no identical designs previously filed for protection, and individuality, when the overall impression it creates on an informed user is different from the general impression created on said user by any other design made available to the public while taking into account the “freedom of the designer in developing the design”. The Directive explicitly denies protection to designs that are “purely utilitarian”. The term of protection is for a period of five years, renewable up to a total term of twenty-five years. When a design owner registers her design, she granted the exclusive right to use it and to prevent a third party from using said design.

Fashion designs fall into the scope of protection of this Directive, granting fashion designers minimum protection within the borders of the European Union, that is the bare minimum that each Member State has to provide. Community design rights can also be protected under national copyright laws, but the conditions to obtaining copyright protection, including the level of originality required, are determined by each Member State.

104 supra note 102, p.p. 244-245.
105 Article 96 par.2 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs reads: “2. A design protected by a Community design shall also be eligible for protection under the law of
The copyright protection to be granted under France, Italy, and U.K. national laws are separate and distinct from the sui generis design rights designated under the Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs\textsuperscript{106} and EU Designs Protection Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998. Therefore, dual protection (copyright and design protection) over a fashion design may sometimes confuse courts and cause them to conflate the novelty requirement for design protection with the originality requirement for copyrights\textsuperscript{107}.

ii. France

Historically, France has been at the forefront of the fashion industry. It is no surprise that as the home to some of the most prominent haute couture fashion houses\textsuperscript{108}, it was one of the first countries to set in place a system of copyright protection for fashion designs\textsuperscript{109} and the only country that has a copyright protection system for haute couture apparel.

All the laws pertaining to intellectual property in France are contained within the Intellectual Property Code. The French Intellectual Property Code\textsuperscript{110} protects original works of the mind, including those that “reflect the personality of their author” and expressly lists “the creations of the seasonal industries of dress and articles of” as a protected work of the mind in Article L. 112-2\textsuperscript{111}. The challenge faced

---

\textsuperscript{106} Published in OJ L3/1 of 5.1.2001.
\textsuperscript{107} supra note 8.
\textsuperscript{108} ibid.
\textsuperscript{109} supra note 102, p.p. 245-247.
\textsuperscript{111} Gauss, Guimberteau, Bennett, Litt, 2013.
by design owners is showing the original character of their designs, because fashion
designs usually follow the current trends and therefore may lack originality. The
design is granted protection on the date of creation, regardless of registration.

When referring to copyright, there is a list of works protected. Within the list
there is a specific provision for fashion design as well as haute couture. It reads:

“14°. Creations of the seasonal industries of dress and articles of fashion. Industries which, by reason of the demands of fashion, frequently renew the form of their products, particularly the making of dresses, furs, underwear, embroidery, fashion, shoes, gloves, leather goods, the manufacture of fabrics of striking novelty or of special use in high fashion dressmaking, the products of manufacturers of articles of fashion and of footwear and the manufacture of fabrics for upholstery shall be deemed to be seasonal industries.”

The Code explicitly extends copyright protection to “articles of fashion” and includes a special provision for novelty of haute couture. However, there is a type of double protection under French law. The first is the aforementioned copyright protection and the second type of protection comes from industrial design protection. The design of an article, its lines, colors, textures and materials, among other features, are protected as “designs”. No distinction is made between the actual product and the

112 supra note 7.
113 ibid.
Sont considérés notamment comme œuvres de l'esprit au sens du présent code :

14° Les créations des industries saisonnières de l'habillement et de la parure. Sont réputées industries saisonnières de l'habillement et de la parure les industries qui, en raison des exigences de la mode, renouvelent fréquemment la forme de leurs produits, et notamment la couture, la fourrure, la lingerie, la broderie, la mode, la chaussure, la ganterie, la maroquinerie, la fabrique de tissus de haute nouveauté ou spéciaux à la haute couture, les productions des paruriers et des bottiers et les fabriques de tissus d'ameublement.
features that are purely ornamental. Like most copyright and design statutes, protection is limited to designs that are original and distinctive\textsuperscript{115}.

The French courts tend to adhere more strictly to the originality requirement for designs and typically will deny copyright protection over a design that could be considered commonplace\textsuperscript{116}. For example, on the case Yves Saint Laurent (YSL) vs. Ralph Lauren in 1994, Yves Saint Laurent sued Ralph Lauren for copyright infringement alleging that the latter had copied a black tuxedo dress from their line\textsuperscript{117}. The French court ruled in favor of Yves Saint Laurent, awarding them $395,000 in damages, even if later Yves Saint Laurent was ensued, eventually found guilty of defamation and then ordered to pay damages to Ralph Lauren\textsuperscript{118}.

French law offers the designer both moral and patrimonial rights over his or her design at the moment the original work is created\textsuperscript{119}. Patrimonial rights offer the author “the exclusive rights to represent, reproduce, sell or otherwise exploit the copyrighted work of art and to derive a financial compensation therefrom”\textsuperscript{120}. Under section L. 121-9 of the French IP Code the designer has four main branches of moral rights: (1) the right of attribution of a work\textsuperscript{121}, which is designer’s right to be identified as the author; (2) the right of integrity\textsuperscript{122}, which is the designer’s right to prohibit the modification or destruction of his or her work; (3) the right of disclosure\textsuperscript{123}, which is the designer’s right to choose when and how to publicize his work; and (4) the right of

\textsuperscript{115} supra note 102, p.p. 245-247.
\textsuperscript{116} supra note 111.
\textsuperscript{118} supra note 8.
\textsuperscript{119} supra note 81, p.p. 305-331.
\textsuperscript{120} ibid.
\textsuperscript{121} The term in French is “le droit de paternité”.
\textsuperscript{122} The term in French is “le droit au respect de l’intégrité de l’œuvre”.
\textsuperscript{123} The term in French is “le droit de divulgation”.

-24-
withdrawal\textsuperscript{124}, which allows the designer to take back works that have been already publically disclosed\textsuperscript{125}. New fashion designs can be protected not only under copyright, but also under the sui generis design rights as discussed above\textsuperscript{126}.

The Paris Court of Appeals held that a shoe model was original (in favor of the copyright protections) but also novel and possessing individual character (relating to the design protection requirements) because no identical model was disclosed to the public and the overall impression it imposed upon the consumer was different from the other models disclosed to the public\textsuperscript{127}. There is an effort to distinguish copyright and design rights. Thus it may be possible for a fashion creation to be denied copyright protection but granted design protection in France, as illustrated by a recent French Supreme Court decision, which rejected the protection of a shoe because it had the same characteristics as a preexisting model, but upheld the design rights because the models were not identical\textsuperscript{128}.

iii. Italy

Italy is one of the most developed countries when it comes to fashion. Despite the lack of developing a system for “alta moda”\textsuperscript{129} like the French one, the Italian houses have been present in creating special shows exhibiting their “alta moda” creations.

\textsuperscript{124} The term in French is “le droit de repentir ou de retrait”.
\textsuperscript{125} supra note 7.
\textsuperscript{126} ibid.
\textsuperscript{127} ibid.
\textsuperscript{128} ibid.
\textsuperscript{129} The term “haute couture” in Italian.
Due to such development, Italian Copyright law\textsuperscript{130} includes provision for protection of fashion designs. More specifically, in Chapter I (articles 1 and 2)\textsuperscript{131} the Italian Copyright Law refers to the works protected, namely it protects “works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theater or cinematography, whatever their mode or form of expression, shall be protected in accordance with this Law,” and “[i]n particular, protection shall extend to . . . industrial design works that have creative character or inherent artistic character”\textsuperscript{132}.

The originality of such work is a prerequisite in order to gain copyright protection in Italian legal system.

Recently, the specialized section in the field of Intellectual Property of Civil Court of Milan issued an order 11/12/2014 that ruled and recognized the moral right of the creator of high fashion clothes, who has the authorship of his works in online publications. The court has recognized that, even if not registered as industrial design, the high fashion garment can receive protection under Copyright law as "original works of creative character which somehow express the personality of the author" and that it does not have a "typical standardization of joint heads of a whole different

\begin{footnotesize}
\begin{enumerate}
\item Law No. 633 of April 22.1941 for the protection of Copyright and Neighbouring Rights, as amended up to Legislative Decree No. 154 of May 26.1997 (Italian title: “Protezione del diritto d’ autore e di altri connessi al suo esercizio.”).
\item CAPO I Opere protette Art. 1 “Sono protette ai sensi di questa legge le opere dell’ingegno di carattere creativo che appartengono alla letteratura, alla musica, alle arti figurative, all’architettura, al teatro ed alla cinematografia, qualunque ne sia il modo o la forma di espressione…”.
Art. 2 “In particolare sono comprese nella protezione: …
4) le opere della scultura, della pittura, dell’arte del disegno, della incisione e delle arti figurative similari, compresa la scenografia;…” available at \url{http://www.interlex.it/testi/l41_633.htm#1}.
\item \url{http://www.wipo.int/wipolex/en/text.jsp?file_id=128286#LinkTarget_2269}.
\end{enumerate}
\end{footnotesize}
clothing and destined not to a serial production and that the placing on the market of final consumers indefinite” 133

In this case, the designer had made particularly valuable corsets - with elements coordinated with each other, the Court considered "unique items" - on commission of a famous model who, after being worn for a photo shoot, had used those pictures on their website, but omitted to state the name of the "creative seamstress" is in the credits either side of the photographs. Specifically, the Court has recognized the "moral right pursuant to Article 20 of Copyright law, of the designer who may claim his work to be recognized and to oppose against any deformation or processing prejudicial to the honor and reputation”134. Then it ordered the defendants in court (i.e. the model, the fashion stylist, the principal enterprise of the photo shoot and the site owner) to "put the name of the designer on the sidelines of the images of the clothes or between the credits site as well as condemning them also to pay all costs. 135

Due to the fact that under Italian Copyright Law registration is not a prerequisite in order of an author to hold its right on his creation “fashion designers can seek an ex parte interim injunction to seize any copy of their designs that have creative and artistic value from the Italian courts and then ask for a permanent injunction and damages for unregistered works”136 The creator’s copyright lasts for a lifetime plus seventy years after the designer’s death. 137

134 ibid.
135 ibid.
136 supra note 7.
137 ibid.
iv. United Kingdom

In the United Kingdom, haute couture designs are thought to be original “artistic works” obtain automatic copyright protection under the Copyright Designs, and Patents Act of 1988\(^\text{138}\). Due to the fact that high fashion apparel meet the irrespective artistic quality and are works of artistic craftsmanship are qualified under this Act to be protected by copyright.

In order a work of high fashion to obtain automatic copyright protection, the creative idea must be fixed in tangible form, they must be original, and the designer must be a U.K. citizen or domiciled in the United Kingdom or a country that belongs to the Berne and Universal Copyright Conventions or to the WIPO Copyright Treaty\(^\text{139}\). Apart from copyright protection, high fashion design may obtain design protection under the Copyright, Designs, and Patents Act of 1988, as long as it meets the prerequisites of originality set on this Act and to be “recorded in a design document or an article has been made to the design”\(^\text{140}\). Otherwise, if the design is thought to be a “commonplace in the design field in question at the time of its creation”, the designer cannot obtain the relevant design right\(^\text{141, 142}\).

The protection of copyright in works of artistic craftsmanship, such as the high fashion apparel, lasts for the lifetime of the designers plus 70 years after his death, but the copyright protection is diminished in just 25 years from the first marketing of the apparel in case of its industrial application\(^\text{143}\).

Despite the automatic protection of Copyright and design right as soon as a work takes some form from which it can be reproduced (including storage in a

\(^\text{138}\) ibid.
\(^\text{139}\) ibid.
\(^\text{141}\) ibid.
\(^\text{142}\) supra note 7.
\(^\text{143}\) http://www.britishcopyright.org/information/design/fashion-design/.
computer) and the lack of necessity “to establish, secure or maintain copyright, though it is advisable to mark the work (as a warning to others) with the standard copyright formula: © + name of copyright owner + year of creation” without any additional costs for the beneficiary.

v. Greece

In contrary to the aforementioned European countries, it is a fact that in Greece fashion industry, in general, is not as developed as in others traditionally “fashionable” countries.

However, under the auspices of the Greek Intellectual Property laws, there is a chance to protect an haute couture design. Most of these laws implement EU Directives. The main statute dealing with Copyright Law is L. 2121/1993 and Article 8 of Law 2257/1997 harmonizing Greek legislation with European Community Directives mentioned in the respective Chapter.

Concerning the copyrightable works, Article 2 of L. 2121/1993 provides for the following:

144 ibid.
145 ibid.
146 The Greek text of Article 2 Law 2121/1993: “1. Ως έργο νοείται κάθε πρωτότυπο πνευματικό δημιουργήμα λόγου, τέχνης ή επιστήμης, που εκφράζεται με οποιαδήποτε μορφή, ιδίως τα γραπτά ή προφορικά κείμενα, οι μουσικές συνθέσεις, με κείμενο ή χωρίς, τα θεατρικά έργα, με μουσική ή χωρίς, οι χορογραφίες και οι παντομίμες, τα οπτικοακουστικά έργα, τα έργα των εικαστικών τεχνών, στα οποία περιλαμβάνονται τα σχέδια, τα έργα ζωγραφικής και γλυπτικής, τα χαρακτικά έργα και οι λιθογραφίες, τα αρχιτεκτονικά έργα, οι φωτογραφίες, τα έργα των εφαρμοσμένων τεχνών, οι εκκονομαγρίες, οι χάρτες, τα τρισδιάστατα έργα που αναφέρονται στη γεωγραφία, την τοπογραφία, την αρχιτεκτονική ή την επιστήμη. 2. Νοούνται επίσης ως έργα οι μεταφράσεις, οι διασκευές, οι προσαρμογές και οι άλλες μετατροπές έργων ή εκφράσεων της λαϊκής παράδοσης, καθώς και οι συλλογές έργων ή συλλογές εκφράσεων της λαϊκής παράδοσης ή απλών γεγονότων και στοιχείων, όπως οι εγκυκλοπαίδειες και οι ανθολογίες (παραλείπονται λέξεις) εφόσον η επιλογή ή η διευθέτηση του περιεχομένου τους είναι
"The term “work” shall designate any original intellectual literary, artistic or scientific creation, expressed in any form, notably … works of applied art..." 147.

It offers an indicative enumeration of intellectual creations that are considered “works”, which may be the basis of the author’s rights. Thus the term “work” indicates any original intellectual, literary, artistic or scientific creation expressed in any form (among which are artworks and works of applied art) and of course ideas are not protected148. Works of applied art is used for objects that are utilitarian or produced industrially. However, they have specificity based on their artistic formation of high aesthetic quality which exceeds the usual forms or their combinations, or the public taste and seasonal lines of fashion. The requisite level of creativity for these works shall be high149, so as to the label of the artist to be recognisable150. Under this meaning or work of applied art within which haute couture falls, therefore it may obtain copyright protection under L. 2121/1993.

Greek Copyright Law provides for the author moral and economic right. that includes the right to permit or prohibit a) fixation and direct or indirect, temporary or permanent reproduction of the work, in whole or in part in any form or by any means, ... c) the arrangement, adaptation and alteration of the work, d) the distribution of the original work or its copies, e) its rental or public lending, f) its public performance, ... h) its communication to the public by any means and, i) the import of its copies produced without the consent of its creator or the import of copies from a country outside the Community, when the right over such imports has been retained by the author through contract. “As for economic rights, they may be transferred inter vivos or πρωτότυπη. Η προστασία των έργων της παρούσας παραγράφου γίνεται με την επιφύλαξη των δικαιωμάτων στα προϋπάρχοντα έργα, που χρησιμοποιήθηκαν ως αντικείμενο των μετατροπών ή των συλλογών.”

149 Kotsiris, L., 2011, p.p. 82-83.
150 supra note 149, p. 65.
The protection offered for both moral and economic rights exclusive and absolute.

The moral right is of a personal character protecting the personal link between the author and his work in comparison to the economic right that gives the author the opportunity to exploit its creation. The author may enforce its rights in case of infringement against any third party and allows actions for those. Moral rights are not transferable, but economic rights can be transferred, according to certain rules that are intended to protect the author from the economically more powerful counterparty.

Protection of the moral rights includes the right of paternity to the work, the right of divulgence, the right of integrity, the right of access and the right of rescission. Protection of the economic rights includes the right of fixation and reproduction, the right of translation, the right of adaptation, arrangement or alteration, the right of distribution, the right of rental or public lending, the right of public performance, and broadcasting rights.

B. U.S.A.

Copyright in the United States is a form of a quasi-property authorized by the Intellectual Property Clause, Article I, Section 8 of the Constitution. Copyright is provided also in Copyright Act of 1976 contained in Section 101, chapters 1 to 8 and 10 to 12 of Title 17 of the United States Code.

Copyright protection is extended to original works of authorship fixed on a tangible medium of expression where they are perceived or can be perceived with the

\[ \text{footnotes:} \]

\begin{itemize}
  \item \footnote{supra note 148, p.620.}
  \item \footnote{ibid.}
  \item \footnote{ibid.}
  \item \footnote{Public Law 94-553 of October 1976 available at: \url{https://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg2541.pdf}.}
  \item \footnote{Title 17 of U.S.A. Constitution, \url{https://www.copyright.gov/title17/92preface.html}.}
\end{itemize}
help of a device\textsuperscript{156} and this protection is only extended to certain types of works of authorship in the section 102 (a) of chapter 1. This protection is limited in order to protect the public domain and the flow of innovation\textsuperscript{157} meaning that artworks are excluded from protected works.

In order to consider a work original, it need only be “independently created by the author (as opposed to copied from other works), and possess at least some minimal degree of creativity.”\textsuperscript{158}

The Copyright Act of 1790, the first U.S. copyright statute, used to grant 14 years of protection (with a possible 14-year renewal term) to eligible “authors” of “any map, chart, book or books”. In the following years this protection has extended to for life of the author plus 70 years, “expanded the scope of eligible subject matter, and removed most of the formalities that once served as barriers to protection and enforcement”\textsuperscript{159}.

Fashion design remains outside the scope of copyright protection in U.S.A. legal system when it comes to apparel because other aspects, that the designers is work on, is taken into account. Only those who dabble in fabric design or jewelry lines obtain the Copyright protection, in contrary to apparel that “does not fit into any of the categories of works protected”\textsuperscript{160}.

Despite the aesthetic level of creativity, the “fashion designer may meet several difficulties in encountering in attempting to protect his creations using copyright law only to few categories of fashion design elements”\textsuperscript{161}. So, copyrightable are the fabric

\textsuperscript{156} supra note 102, p. 240.
\textsuperscript{157} supra note 102, p.p. 240 et seq.
\textsuperscript{158} supra note 7.
\textsuperscript{159} supra note 86, p.45.
\textsuperscript{160} supra note 102, p. 241.
\textsuperscript{161} supra note 86, p. 49, “For example, under drawings, photographs, jewelry, editorial content, and design software are fully copyrightable, as well as an image or drawing on a T-shirt, a fabric pattern, a photograph of a model wearing an article of clothing, or a piece of jewelry”.

-32-
designs that are attached to the article of clothing, such as the floral design repeated on a blouse,162 but no such protection is obtained for a dress design that “graphically sets forth the shape, style, cut, and dimensions for converting fabric into a finished dress or other clothing garment”163. Especially, the principle that jewelry is “work of art”, meaning that it is “undisputed that it is included within the sculptural works classification of Section 102 (a) (5)”164 was firstly expressed in the case DBC of New York, Inc. v. Merit Diamond Corp., adopted by U.S.A. courts, and based on this principle the copyright protection was expressly acknowledged to jewelry by the Court165. Thus, “fashion designs, strictly speaking, as well as three-dimensional articles of fashion apparel have never been fully brought into the copyright fold in the United States”166, however, they may meet the requirements to other types of intellectual property protection, such as design patent or trade dress.167

This unfavorable treatment derives from the Copyright Act’s exclusion of useful articles: “the design of a useful article... shall be considered a [copyrightable] pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. To the chagrin of many designers, “it is well settled that articles of clothing are “useful articles” not protected by the Copyright Act.”168

The meaning of separable aspect of fashion design is defined by courts. They bring out the so-called “conceptual separability” test169 in order to overcome the unhelpful as the “physical separability” test and the obstacle of the fact that in many

162 supra note 8.
163 ibid.
164 supra note 102, p. 241.
165 ibid.
166 supra note 86, p. 49.
167 ibid.
168 supra note 86, p. 50.
169 ibid.
cases the artistic and the utilitarian aspects of fashion design are inextricably intertwined. This means that if the “aesthetic” elements removed by the fashion design then the result achieved is only to destroy both the aesthetic and the functional parts of the design\textsuperscript{170, 171}. However, copyright protection extends only to specific kinds of artistic objects that possess certain prerequisite features. In order to receive copyright protection, a given object must meet the requirement of separability and the requirement of originality. Separability is a prerequisite that requires the functional and aesthetic elements of an object to exist independently of each other that haute couture may reach but at the same time the separability requirement ensures that copyright protection does not extend to “useful articles” or those having intrinsic utilitarian functions that go beyond portraying the appearance of an article or conveying information\textsuperscript{172}. It seems, though, to be ignored that haute couture items are a “a merger of aesthetic and functional considerations, the artistic aspects of a work cannot be said to be conceptually separable from the utilitarian elements.”\textsuperscript{173}

Courts have construed this separability requirement to mean both “physical” and “conceptual” separability.\textsuperscript{174} Physical separability is demonstrated when the decorative elements “can actually be removed from the original item and separately sold, without adversely impacting the article’s functionality.”\textsuperscript{175} Conceptual separability is when the garment “invoke[s] in the viewer a concept separate from that of the [garment’s] ‘clothing’ function,” and if its “addition to the [garment] was not motivated by a desire to enhance the [garment’s] functionality qua clothing.” For example, a fabric design—the repeated floral print—is capable of existing separately from the actual skirt, but the dress design—the tailoring and the shape the skirt—

\textsuperscript{170} ibid.
\textsuperscript{171} ibid.
\textsuperscript{172} supra note 74, p. 1630.
\textsuperscript{173} ibid.
\textsuperscript{174} supra note 8.
\textsuperscript{175} ibid.
cannot exist separately from the skirt. For certain articles of clothing that may appear to serve an added function other than usefulness—e.g., costumes, prom dresses, or worker’s uniforms—the actual dress designs may or may not be copyrightable.

In 2005, the Second Circuit in Chosun Int’l, Inc. v. Chrisha Creations, Ltd. held that Halloween costumes may be protected by copyright if the costume’s design elements can be separated from the overall function of the costume as clothing. In a 2012, Jovani Fashions v. Fiesta Fashions, the Second Circuit denied copyright protection to the designs of a prom dress, specifically “the arrangement of decorative sequins and crystals on the dress bodice; horizontal satin ruching at the dress waist; and layers of tulle on the skirt.” Citing Chosun as precedent, the court held that Jovani failed to meet the separability requirements: for physical separability, “Jovani has not alleged, nor could it possibly allege, that the design elements for which it seeks protection could be [physically] removed from the dress in question and separately sold.” Towards conceptual separability, the Court added “that clothing, in addition to covering the body, serves a ‘decorative function,’ so that decorative elements of clothing are generally ‘intrinsic’ to the overall function, rather than separable from it.”

The Fifth Circuit in Galiano v. Harrah’s Operating Co. denied copyright protection for uniforms of casino workers, because the clothing designer could now show that “its designs [were] marketable independently of their utilitarian function as casino uniforms,” despite the court’s admission that the case law on costume
design is unfair\textsuperscript{184}, meaning that in any case and by using any standard test, the protection of a fashion article as a whole would be unachievable regardless of which standard test a court may use to find valid separability. “Copyright protection would still be limited to the portions of the fashion”\textsuperscript{185}. In a case for shoe designs the court has acknowledged that “the line between protectable separable design elements and unprotectable inseparable functional elements is not always clear”\textsuperscript{186}.

Despite the fact that it is acknowledged that dress design may have aesthetic value, they cannot be considered to have no artistic elements that can be separated from its utilitarian elements. It would be useful through comparison of fashion design and architectural design to come up to the conclusion that as architectural design can be “protected as pictorial, graphic or sculptural works, mentioned in Section 102, so would the fashion design. However, as jurisdiction in the past considered that no protection should be received to any structure built out of architectural plans “because it has an intrinsic function that is not merely to portray the appearance of the article or to convey information”\textsuperscript{187}, the same is considered for fashion designs that are manufactured in apparel when applying Copyright, “due to its utilitarian function as defined in Section 101 of the Copyright Act” \textsuperscript{188}. On the basis of the same case law, apparel “serve a decorative function and therefore they considered functional” \textsuperscript{189}. Due to this high threshold for copyright protection in apparel, no designer would ever obtain copyright protection\textsuperscript{190}.

Moreover, the probability for the haute couture fashion designs to achieve the requirement of originality is high as their creating operation is the same with the other

\textsuperscript{184} ibid.
\textsuperscript{185} ibid.
\textsuperscript{186} supra note 86, p. 50.
\textsuperscript{187} Title 17, Section 101 of United State Constitution.
\textsuperscript{188} supra note 102, p. 242.
\textsuperscript{189} ibid.
\textsuperscript{190} ibid.
To such result someone may conclude by comparing literature and fashion designs. “Designers draw from a preexisting vocabulary of color, pattern, form, and shape, and some talented designers are able to craft these elements together in ways that create works that are unmistakably original in overall design.”

However, it is the inability to meet the requirement of separability that leads to fail in applying copyright protection to fashion designs, as they are unavoidably utilitarian despite the fact that their utilitarian function is “contextually inconsequential.”

Therefore, according to U.S.A. courts, copyright is unavailable for apparel because they promote solely the utilitarian objects that exist to cover our bodies from nudity and have secondary aesthetic features and even if some fashion objects “are art objects that may happen to serve utilitarian functions but are created for solely non-utilitarian reasons,” however “copyright protection is currently unavailable under U.S.A. Copyright Law because it also serves unavoidable utilitarian purposes.”

Even if the second prerequisite for copyright protection is originality, that requires a sufficient level of uniqueness of the work, as well as dissimilarity to previous works, copyright protection would be acceptable as the U.S. courts do not consider fashion designs as “original” in nature. As aforementioned, this view is applied to any type of apparel even to haute couture garments, despite “their particular manner

---

191 supra note 74, 1632.
192 ibid.
193 ibid.
194 supra note 74, p. 1633.
195 supra note 74, p. 1624.
196 ibid.
197 supra note 74, p. 1630.
198 i supra note 74, p. 1625.
of assembling and being tailored” 199, they remain unprotected under current U.S. copyright law200.

The only way for an apparel to acquire copyright protection is if its design “can be identified separately from, and [is] capable of existing independently of, the utilitarian aspects of the article,” as set out in Section 101 of the Copyright Act201.

Since the originality requirement for copyright is a lesser hurdle than the “novelty” threshold required for a design patent, copyright appears to be the most practical intellectual property regime to protect fashion designers202.

Recently in U.S.A., a debate commences in order to expand copyright protection to apparel by the Legislative Initiative to Extending Copyright Protection to Fashion Designs. This suggested the amendment of the Copyright Act’s definition of “useful article” to include apparel203 as have done with the Innovative Design Protection Act of 2012204 according to which fashion designs should get a three-year protection prohibiting a claim for a fashion design that was copied from a protected design if it ““(1) is not substantially identical in overall visual appearance to and as to the original elements of a protected design, or (2) is the result of independent

199 supra note 8.
200 ibid.
201 The part referred hereto reads: “Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” https://www.copyright.gov/title17/92chap1.html#101.
202 supra note 8.
203 ibid.
204 ibid.
creation.”205 This proposals “also revises the state infringement remedy by declaring
the beneficiary can sue for design infringement after the design is made public and
after a twenty-one day notice period”206.

3. Comparative approach

It is hardly a surprise that in countries where haute couture is at the forefront
the protection of such designs is extensive. However, the approaches differentiate,
namely “European approach is more innovative, going to great lengths to protect their
designers, comparing to U.S.A. where the protection is meager for them”207.

The intellectual property utility spectrum found in U.S.A. legal system annuls
the copyright protection to objects artistic in nature, as haute couture apparel. As
aforementioned, pursuant to this legal system, even though “[C]opyright protection
extends to original works of authorship fixed in any tangible medium.”, it extends only
to specific kinds of artistic objects that possess certain prerequisite features: a given
object must meet the requirement of separability and the requirement of originality.

In order to meet the requirement of separability, the functional and aesthetic
elements of an object should exist independently of each other and prevent the
extension of copyright protection to “useful articles” or “those having intrinsic
utilitarian functions that go beyond portraying the appearance of an article or
conveying information”208.

This absolute division of the articles that U.S.A. courts follows leads to
ineffective results for articles, such as haute couture ones, that reflect a merger of
aesthetic and functional features. In such articles the artistic aspects of the work

207 supra note 102, p. 245.
208 supra note 74, p. 1630.
cannot be considered separable from the utilitarian ones\textsuperscript{209}, especially because, both as a whole, these reach the originality that is the other major requirement for copyright protection\textsuperscript{210}. Despite the fact that courts have openly granted copyright protection to certain categories of fashion design, e.g. fabric designs, however they deny to extend this protection “along with the cautioning caveat that fashion designs, that, when taken as a whole, are considered utilitarian in nature\textsuperscript{211}.

Furthermore, it is accepted that “all arts are inherently useful in some way”\textsuperscript{212}. This division in “art” and “utilitarian object” is “necessarily abstract”\textsuperscript{213} and so is the introduction of haute couture object in the pile of the utilitarian objects. Such a work includes “the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features”\textsuperscript{214}.

Finally, it is clear that in U.S. legal system, “fashion designers are left with no realistic legal defense with which to protect themselves against the growing mass-market trend of blatantly copying couture designs” \textsuperscript{215}. This is based on “strict dichotomy between useful and artistic objects” which leads to vicious circle meaning that if “fashion designs deemed primarily utilitarian in nature can never escape their artistic potential in order to receive a relevant design patent”\textsuperscript{216}, but at the same time if “fashion designs deemed artistic in nature can never escape their potentially utilitarian functions in order to receive copyright protection”\textsuperscript{217}.

\begin{flushright}
\textsuperscript{209} ibid.
\textsuperscript{210} ibid.
\textsuperscript{211} supra note 74, p. 1631.
\textsuperscript{212} supra note 74, p. 1635.
\textsuperscript{213} ibid.
\textsuperscript{214} supra note 74, p.p. 1637-1638.
\textsuperscript{215} supra note 74, p. 1633.
\textsuperscript{216} ibid.
\textsuperscript{217} ibid.
\end{flushright}
However, since originality appears to be “a lesser hurdle than the “novelty” threshold” that design patent requires, and it is achievable for apparel, copyright appears to be the most practical intellectual property regime to protect fashion designers and their works.\(^{218}\)

In contrary to U.S.A. legal system, European legal systems approach differently the haute couture designs as well as the rest fashion designs under their copyright law, both in E.U. law and national law. Bearing in mind the notion of haute couture as a work of applied art, due to the high level of its aesthetic character is captured in the provisions of works in the European Countries’ Copyright Law, either explicitly (France), or industrial design with a creative character (Italy) or as a work of applied art (UK and Greece). Thus, in Europe the fashion designers may obtain copyright protection for their haute couture creations as the aesthetic aspect is prevailing and the haute couture notion as an art is indubitable. This is because it is recognised that these creations reach a high aesthetic level that on the one hand differentiates them from the prêt-à-porter apparel and on the other hand, their use is far more than to protect the indecent human body parts to be exposed.\(^{219}\)

\(^{218}\) supra note 8.

\(^{219}\) supra note 74, p. 1624.
III. Haute Couture’s future: 3D-printing

Following haute couture’s golden ages, the fashion industry has tried to overcome several crises through concentrating on what it knows best: to maintain the undisputed crucibles of a certain idea of excellence in the workshops, so as haute couture to become again in fashion using its tools, i.e. love, gesture and beautiful material, the good cut for a better door, the invisible finish like a secret slips in a lining\textsuperscript{220}. In this direction Haute Couture moves to with 3D-printing process.

“3D-printing is the additive manufacturing and the process of making three-dimensional solid objects from a digital file by laying successive layers of material until the entire object is created; each of these layers can be seen as a thinly sliced horizontal cross-section of eventual object”\textsuperscript{221}.

This is one of the most exciting new tools for designers\textsuperscript{222}. Nowadays, 3D-printing is applicable to several areas of activities, and fashion, in both haute couture and prêt-à-porter, is one of these, applicable to all objects from all sections of fashion\textsuperscript{223,224}. Creation of 3D-printed apparel is “futuristic but eminently wearable”\textsuperscript{225}, allowing designers to create complex designs, print hard and soft at the same time, and exactly replicate garments that once might have used hand needlework\textsuperscript{226}.

Until now, the materials used are mainly plastic derivatives and metal, however due to rapid development in producing new materials for 3D-printing, the specialists

\textsuperscript{220} supra note 14, p. 187.  
\textsuperscript{221} Sedhom, 2015, p. 866.  
\textsuperscript{222} Gwendolen, 2014.  
\textsuperscript{223} supra note 221, p. 867.  
\textsuperscript{225} supra note 222.  
\textsuperscript{226} ibid.
have achieved by providing the appropriate elasticity and pliability will be provided so as to achieve the perfect fit to the human body\textsuperscript{227}.

Given that haute couture is the innovative section of fashion, the use of 3D-printing seems inevitable in the future by the designers as they- in order to be widen-, have keep up-to-date on relevant technologies\textsuperscript{228}. 3D-printing has a dynamic presence in the fashion industry, mostly in haute couture\textsuperscript{229}.

In 2015, Chanel house presented during Paris Fashion Week a show using 3D-printing in producing the classic Chanel suit, which looks eminently wearable and very chic. The garments were constructed initially by 3D-printing and then “hand embroidered and embellished into the beautiful suits”\textsuperscript{230}. In this show, the final garments are haute couture with significant hand work and embroidery done post printing, without being clear the amount of 3D-printing incorporated in this entire collection of suits\textsuperscript{231}. Apart from Chanel, other designers such as Iris van Herpen and Francis Bitonti\textsuperscript{232} have created haute couture garments\textsuperscript{233}.

3D-printing affects fashion industry crucially both in production and consuming level, as it offers easier and more accurate design with simultaneously lessening production and delivery costs. Note that in the future due to 3D-printing expansion the houses will not only sell their 3D-printed creations but also their collections in CAD files.\textsuperscript{234}

\textsuperscript{227} supra note 221, p. 866.
\textsuperscript{228} Chios, 2016.
\textsuperscript{229} ibid.
\textsuperscript{230} Nelson, 2015.
\textsuperscript{231} ibid.
\textsuperscript{232} Francis Bitonti has designed a 3D-printed form hugging dress for Burlesque actress Dita von Teese to her specific measurements, fully articulated with moving joints in most of its length \url{http://studiobitonti.com/ditas-gown/}.
\textsuperscript{233} supra note 230.
\textsuperscript{234} supra note 228.
However, this method raises important legal issues, such as piracy on fashion printed objects in household or commercial scale\textsuperscript{235} and infringement of Intellectual Property rights. The proliferation of 3D-Printing technology renders new technological challenge for Intellectual Property Law. 3D-printed creations are subject to the rules already set for the protection of non-printed fashion creations despite the double medium of the creations, i.e. the CAD file and the printed object, meaning that are protected both by copyright and/or industrial design rules when they meet the requirements provided in each country’s law\textsuperscript{236}.

In case of 3D-printed fashion creations- including input from the consumers-, there are additional issues raised mostly in applying copyright law, pertaining to the issues of authorship as it is possible for consumers to get involved in the designing or production of original 3D-printed creations, and this contribution to imply joint ownership issues on this creation\textsuperscript{237}.

Mostly viewed under Greek Copyright law, the relatively new and self-sufficient economic and technical manner exploitation of 3D-printed fashion creations constitute a sub-power supplied by law on the exploitation monopoly. Given the aforementioned, the beneficiaries will be able to independently exploit such power of exploitation on 3D-printed fashion apparel, regardless of the 'traditional' reproduction and distribution rights through concession copyright licenses, which relate exclusively to the production and distribution of 3D-printed creations\textsuperscript{238}. Contracts between designers and a house or another employer so as copyright is granted over creations, will not include the power on the 3D-printing of these designs because it has been an unknown mode of

\textsuperscript{235} supra note 221, p. 866.
\textsuperscript{236} supra note 228.
\textsuperscript{237} ibid.
\textsuperscript{238} ibid.
exploitation at the time of the signing pursuant to Article 15 par. 5 Law 2121/1993\(^{239}\).

The private reproduction and generally the private use of protected items is legitimate in principal, as long as they legally acquired, it is acceptable to copy them for private use and the opposite if they are used for commercial purposes\(^{241}\). There is no obligation for licensing from the beneficiaries and for paying any remuneration as it is out of the protection provided by Copyright Law\(^{242}\).

However, 3D-printing brings on changes in reproduction of a fashion apparel at home by an average consumer. Accordingly, the private reproduction has made an appearance in the fashion industry and concerns both the CAD file and the fashion creation itself, the reproduction of which is simplified by 3D-printing and scanning technology. Thus, in the future the consumer will reproduce the fashion creations by acquiring the CAD file in as many copies as he wishes. Despite the difficulty in determining the legitimacy of the source of private reproduction proliferation of 3D scanners, i.e. in stores, will easily allow scanning of fashion objects\(^{243}\).

In practice this will have detrimental results for the rights of the beneficiaries, as the 3D-printed creations will be identical to the original ones as far as it concerns both their aesthetic and functional aspects, and the infringement seems inevitable according to Copyright Law. For avoiding such issues, there should be a limitation of private copying based on the argument of preventing "normal exploitation of the

\(^{239}\) It reads: “(5) The contract or license may in no circumstance confer any total right over the future works of the author, and shall never be deemed to refer also to forms of exploitation which were unknown on the date of the contract.”

\(^{240}\) supra note 228.

\(^{241}\) ibid.

\(^{242}\) In Greek Copyright Law (L. 2121/1993) this is provided in Article 18 par. 1 of L.2121/1993 for Copyright Law and Article 26 par. 3a of P.D. 259/1997 for designs.

\(^{243}\) supra note 228.
work\textsuperscript{244}. The list of devices should be amended and explicitly include 3D printers and scanners for the resulting end equitable remuneration\textsuperscript{245} and a series of technical measures should be designed in order to restrict or control the private copying of CAD files\textsuperscript{246}, along with end-user licenses for those 3D printers that do not integrate technology that prohibits impermissible printing of protected files\textsuperscript{247}.

All the above, along with the issue of the unlicensed illegal 3D-printing fashion creations, should be taken into account to prevent the spread of 3D-printing from causing enhancement of the counterfeits in both haute couture or prêt-à-porter apparel., by getting equivalent protection as this given to music industry and Mp3 files\textsuperscript{248}.

A new aspect of non-licensed use of protected creations will be faced and associated with the production of derived objects by consumers, which in principle requires a license from the author of the original project and the proprietor\textsuperscript{249}. The counterfeit products will easily be flourish by the spread of 3D printers at home, plus the effortless sharing of CAD files via Internet. Therefore, as far as it concerns luxury market and haute couture products, it seems that 3D-printing development will significantly affect the protection obtained under trademark law “mainly because 3D-printing expected to impair the function of the origin and the quality performing signs”\textsuperscript{250}.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{244} In Greek Copyright Law (L. 2121/1993) it is provided in Article 18 par. 2 and 28C.
\item \textsuperscript{245} In Greek Copyright Law (L. 2121/1993) it is provided in Article 18 par. 3.
\item \textsuperscript{246} In Greek Copyright Law (L. 2121/1993) it is provided in cf. Article 66A.
\item \textsuperscript{247} supra note 228.
\item \textsuperscript{248} ibid.
\item \textsuperscript{249} ibid.
\item \textsuperscript{250} ibid.
\end{enumerate}
\end{footnotesize}
Conclusion

Fashion design is defined as “the appearance as a whole of an article of apparel, including its ornamentation,” which in turn includes original and not original elements that are unique and original and stem from the designer’s creative process.\textsuperscript{251}

Haute couture is the special sector in fashion industry in which the couturiers are creating unique designs and signature styles that are their imaginative components. The innovation and careful production process valued by the couturiers, as aforementioned in the Introduction, is the element that distinguish haute couture to prêt-à-porter and transfuse to it the character of an artwork.

Despite its utilitarian functions that for legal systems, such as U.S.A. one, exclude copyright protection to haute couture objects, the aesthetic function is dominant in a haute couture object as the latter is supposed to be an original works of creative character which somehow express the personality of the author.

Moreover, in order to satisfy its aesthetic and functional purposes when incorporated in a tangible product, industrial designs at the crossroads of art and technology, since the couturiers of industrial products strive to create products, the condition of which will satisfy both the aesthetic preferences of a consumer and their expectations on their functional performance\textsuperscript{252}. Based on this, the notion of works of handicraft or artistic craftsmanship may be broader than the one of works of applied art or even simply works of art\textsuperscript{253}. Thus, by the time work of handicraft or artistic craftsmanship is identified as work of applied art or of art, the protection under Copyright law shall be undeniable\textsuperscript{254}.

\textsuperscript{251} supra note 102, p. 252.
\textsuperscript{252} WIPO, 2002, p.3.
\textsuperscript{253} supra note 252, p.9.
\textsuperscript{254} supra note 252, p. 10.
In addition to the above, no one can support convincingly the opinion that haute couture garments are to be used just to cover the nudity of one’s body or such design could not be regarded as “an artistic expression to the extent that it responds (at least in part) to an aesthetic preoccupation of the designer” 255, the personality of which is originally expressed and captured on his work as any other artist 256.

However, the fact that an industrial design, even if regarded as an artistic expression, is embodied in the shape of a useful, functional object, raises the need to decide between the functional or the artistic aspect of one haute couture object. This leads to the thought of retaining one aspect for protection under intellectual property, “or if both can be retained cumulatively or alternatively” 257.

The lack of copyright protection has led to the unrestrained counterfeit of haute couture products resulting in the offense of originality and creativity of the couturiers and their rights to their creations 258.

Moreover, each of element of a haute couture creation standing on its own may not be “original” meaning they may have characteristics such as being long and flowy, having thin straps, plunging V-necks or elaborate floral detailing. Although, despite this unoriginality in mind, it is also possible that no other dress has combined the individual elements in this way before, so the dress taken as a whole design is original 259.

It is important to note that even if someone may argue that not every fashion design would be original enough to get copyright protection as it may happen to other protected works such as of architectural designs, it is crucial to evaluate each design on its own merits. There is a basis though to determine a haute couture design as a

255 ibid.
256 ibid.
257 ibid.
258 supra note 74, p. 1619.
259 supra note 74, p.p. 1639-1640.
protected work subject to copyright protection due to the new and distinct combination of its elements.\textsuperscript{260}

To sum up, it is proven that haute couture garments are a form of applied art and that their protection should be approached differently compared to the prêt-à-porter and get protected by Copyright Law. Even in Europe where despite France there is no explicit protection of haute Couture’s objects, the protection should be based on the perception that haute couture is an applied art as despite its functionality haute couture objects are aesthetically pleasing.

\textsuperscript{260} ibid.
Bibliography

Books

**Articles**


8. Hua, Jerry Jie, Copyright Protection of Works of Applied Art: Rethinking Conceptual Separability and Aesthetic Requirement for Copyrightability,


Cases


5. Chosun Int’l, Inc. v. Chrisha Creations, Ltd. 413 F.3d 324 (2d Cir. 2005)


Legal Texts

1) International:

 a. Universal Declaration of Human Rights

 b. Paris Convention for the Protection of Industrial Protection (1883, as revised and amended) Berne Convention for the Protection of Literary and Artistic Works (1886 as completed, revised and amended)
2) EU Law

3) National Law
   a. France
   b. Italy
      i. Law No. 633 of April 22.1941 for the protection of Copyright and Neighbouring Rights, as amended up to Legislative Decree No. 154 of May 26.1997 (Italian title: “Protezione del diritto d’ autore e di altri connessi al suo esercizio.”),
   c. United Kingdom:
   d. Greece
      i. Law 2121/1993 Copyright Law, Related Rights and Cultural Matters.
iii. Presidential Degree 259/1997 for industrial designs available at:


e. U.S.A.:

i. Title 17, Section 101 of United States of America Constitution, available at: https://www.copyright.gov/title17/

Useful sites


2. British Copyright Council, on design http://www.britishcopyright.org/information/design/fashion-design/.


