

*Ready to Share:  
Creativity in Fashion & Digital  
Culture*

By David Bollier  
and Laurie Racine



A Norman Lear Center Conference

Annenberg Auditorium

USC Annenberg School for Communication

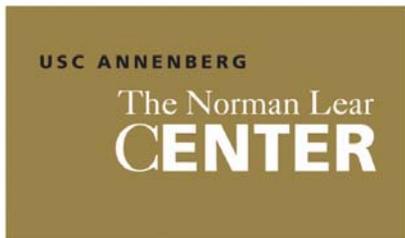
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**USC ANNENBERG**

The Norman Lear  
**CENTERTAINMENT**  
Exploring Implications of the Convergence of Entertainment, Commerce, and Society

### *The Norman Lear Center*

Founded in January 2000, the Norman Lear Center is a multidisciplinary research and public policy center exploring implications of the convergence of entertainment, commerce and society. On campus, from its base in the USC Annenberg School for Communication, the Lear Center builds bridges between schools and disciplines whose faculty study aspects of entertainment, media and culture. Beyond campus, it bridges the gap between the entertainment industry and academia, and between them and the public. Through scholarship and research; through its fellows, conferences, public events and publications; and in its attempts to illuminate and repair the world, the Lear Center works to be at the forefront of discussion and practice in the field.



### *Ready to Share: Fashion & the Ownership of Creativity*

On January 29, 2005, the Norman Lear Center held a landmark event on fashion and the ownership of creativity. "Ready to Share: Fashion & the Ownership of Creativity" explored the fashion industry's enthusiastic embrace of sampling, appropriation and borrowed inspiration, core components of every creative process. Presented by the Lear Center's Creativity, Commerce & Culture project, and sponsored by The Fashion Institute of Design & Merchandising/FIDM, this groundbreaking conference featured provocative trend forecasts, sleek fashion shows and an eclectic mix of experts from fashion, music, TV and film. Discussion sessions covered fashion and creativity, intellectual property law, fashion and entertainment and the future of sharing.

### *Creativity, Commerce & Culture*

When art is created for commercial purposes, who owns it? Once it's in the hands of consumers, what rights do they have to change it? Headed by Lear Center senior fellows David Bollier and Laurie Racine, Creativity, Commerce & Culture explores the new digital environment and the impact of intellectual property rights on innovation and creativity.



### *The Fashion Institute of Design & Merchandising/FIDM*

The Fashion Institute of Design & Merchandising/FIDM is an internationally recognized college that prepares students for leadership in the global industries of Fashion, Visual Arts, Interior Design and Entertainment. As an accredited institution granting Associate of Arts degrees and providing Advanced Study programs in 14 industry-specific majors, FIDM has equipped more than 30,000 students over the last 30 years to become skilled professionals. FIDM is headquartered in a state-of-the-art campus in downtown Los Angeles, with additional campuses in Orange County, San Diego and San Francisco. The FIDM Museum houses one of the nation's finest costume collections dating from the 18<sup>th</sup> century, as well as ethnic costumes and selections from top fashion designers.

## Author Biographies



### David Bollier

David Bollier is a senior fellow at the Norman Lear Center and co-founder of Public Knowledge, an advocacy group dedicated to defending the commons of the Internet, science and culture. Since 1984, he has been a collaborator with television and film producer Norman Lear on a wide variety of projects. Bollier also works as an independent strategist and journalist specializing in issues of progressive public policy, digital media and democratic culture. Bollier's recent work has focused on developing a new vocabulary for reclaiming "the commons." The commons refers to the diverse array of publicly owned assets, gift-economies and natural systems that are available to everyone as a civic or human right. Bollier's critique of the commons is set forth in his 2002 book, *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge), and in a number of essays and reports. He has developed the notion of the information commons as a new paradigm for understanding the public interest in the digital, networked environment. His latest book related to the subject is [\*Brand Name Bullies: The Quest to Own and Control Culture\*](#) (Wiley, 2004). Educated at Amherst College (B.A.) and Yale Law School (M.S.L.), Bollier lives in Amherst, Massachusetts.



### Laurie Racine

Laurie Racine is a senior fellow at the Norman Lear Center and co-director of the Lear Center's Creativity, Commerce & Culture project. Racine is the President of the Center for the Public Domain, a private foundation endowed by the founders of Red Hat, Inc. The Center is devoted to exploring the balance between intellectual property rights and freely reusable knowledge that is the basis of our cultural and scientific heritage. During her tenure, she co-founded Public Knowledge, a Washington, D.C.-based public interest group that is working to sustain a vibrant information commons. She is also President of Doc. Arts, Inc., which produces the Full Frame, in Durham, North Carolina, the largest exclusively documentary film festival in the country. Racine previously was the Director of the Health Sector Management Program in the Fuqua School of Business at Duke University. She has served as a strategist and consultant to several for-profit and not-for-profit enterprises and serves on the Board of Directors of Public Knowledge, Lon Capa, Documentary Arts and Ibiblio. Racine is the author of *The Classroom Companion: A Teacher's Guide to DoubleTake Magazine*. She received her B.A. from New York University and conducted coursework for a Ph.D. in Human Genetics at the University of California, Berkeley.

## *Ready to Share: Creativity in Fashion & Digital Culture*

Anyone who ventures onto the Internet quickly discovers that the creative spirit is riotously alive. On any given day, 8 million bloggers forage the deep forests of the World Wide Web for twigs and leaves of information, which they weave into personal nests. Remix musicians sample snippets of music and ambient sounds, synthesizing them into startling new musical creations. Tens of thousands of software programmers collaborate in building soaring cathedrals of code, which run operating systems, Web sites, document archives and much more. Filmmakers and photographers pore through archives of public domain and privately owned material searching for the perfect images from which to create new visual works.

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**Is this environment of  
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The open, participatory culture found on the Internet and other digital media is perhaps the defining crucible of creativity in our time. Guided by a sensibility that appropriates from irregular materials that exist in other contexts and forms, the Internet has redefined the way we express ourselves and relate to culture. Structuralist Claude Levi-Strauss once described this recombinant creative process as *bricolage*,<sup>1</sup> a concept that refers to the constant mixing and morphing of incongruous “found” elements into a new synthesis.

But is this environment of open borrowing and transformation a liberating place for the imagination – or simply a state of lawless anarchy in which pirates prey upon the work of the truly creative and hard-working? Can a cultural milieu truly flourish without strong intellectual property rights and market control over creative work? Or, to the contrary, is a deliberately unstructured, uncontrolled environment one of the most powerful ways to nurture innovation?

We believe that the world of fashion – known for its embrace of appropriation, derivation and imitation *and* for its ferocious attention to the bottom line – can shed light on these questions. It can help us understand the social and cultural wellsprings of creativity as well as the plasticity of the marketplace. There are, in fact, many ways that the raw social and human energy known as *creativity* can be refined and packaged as it travels from the human mind and social groups to the marketplace. This reality is not only on display in the world of fashion, but also in the growing universe of digital culture. The “ecologies of creativity” in both realms are strikingly similar.

In sharp contrast, other creative sectors like music and film remain committed to business models that value ownership and control of content above all else. To listen to music and film executives, much of what passes for “creativity” in the digital world is nothing less than theft. These business leaders argue that strict copyright controls are necessary if anyone is going to have sufficient incentive to create new works. Yet to many artists who live and create via electronic networks, creativity has never been more robust and innovative precisely because, thanks to new technologies, copyright protections are relatively lax.

The core issue in this debate between intellectual property protectionists and cultural renegades is the control of creativity. Does creativity need to be controlled strictly through copyright law in order to thrive? Or can creativity actually flourish in a milieu of open appropriation and derivation, without destroying the potential for a healthy, competitive market? Although the fashion business usually does not engage in this sort of self-examination, this paper argues that the fashion business reveals a great deal about the “cultural hydraulics” of creativity and the novel ways in which intellectual property law can foster, and not restrict, creative freedom.

Fashion is a quicksilver mode of creativity that many people dismiss as trivial and ephemeral. It is, after all, the demimonde of celebrities, high society, supermodels and decadent flamboyance. Yet fashion is also one of the most high-profile creative sectors of our time, with earnings that vastly exceed those of the music or film industries.

It is difficult to find reliable numbers to describe the scale and scope of the fashion industry. It is a sprawling global enterprise consisting of many specialty clusters (apparel, accessories, fabric, etc.) with many interconnected and irregular players (designers, manufacturers, merchandisers, marketers, etc.). Yet one can get an idea of the industry's size when one considers that the international trade of textiles and apparel accounts for some \$495 billion.<sup>2</sup> In the United States alone, apparel sales in 2003 supported an estimated 80,000 garment factories and generated \$192 billion, according to the Chicago research firm Euromonitor International.<sup>3</sup> The American film and video-DVD industry, by contrast, had revenues of \$60 billion in 2003, according to the U.S. Census Bureau.<sup>4</sup> The music industry reported revenues of \$12.6 billion in that year, according to the Recording Industry Association of America.<sup>5</sup>

While the economic footprint and splashy styles of fashion may attract the most attention, fashion's distinctive "ecology of creativity" may be its most important attribute. Indeed, the cavalcade of beautiful clothes and accessories, and the unpredictable new styles and attitudes that burst forth every so often, are products of a very special social and economic system. With great speed and flexibility, fashion constantly expresses shifting cultural moods, social demographics and personal identities with new apparel designs and accessories. This remarkable and turbulent drama is, in turn, seamlessly integrated into a complicated market apparatus of global production, marketing and distribution.

The result, rare among creative industries, is a highly robust, churning tide of innovation. Fashion is a vital, vigorous creature living in an open, always evolving environment. It is no accident that fashion permits and even celebrates the appropriation and modification of other people's creative designs; these practices are an indispensable part of the process. Designers do not need to ask permission or pay fees in order to make their own interpretations of hip-hugging denims, leopard

-skin bikinis or black evening dresses. They just do it. The ferment of new ideas and innovation is literally out of control, and beyond the ability of any single player to manipulate or dominate. Since strict market control is generally impossible, nearly everyone strives to stay ahead of the competition through the sheer power of one's design and marketing prowess.

Metaphorically, fashion is all about black and white and gray. Designers use black and white shades as basics – sometimes incorporating them as the grounding for a season's lines; other times using them as accents to highlight an expression or mood. The two absolutes serve as a kind of default to which fashion often reverts before venturing forth to explore a broader, more subtle spectrum of color.



**Metaphorically, fashion is all about black and white and gray.**



Figuratively speaking, black-and-white also symbolizes the fixed boundaries of intellectual property law, which aims to set clear rules for what sorts of innovation are permissible and which are not. And black-and-white represents the boundaries within which the business of fashion must operate, with profitability being of paramount importance.

But black-and-white must be seen as simply the *framework* for the real work of fashion – the constantly changing permutations of gray. Gray can be considered the shade that drives creative innovation because creativity is a process, not a final destination. It is made up of pathways and linkages that are neither fixed nor immutable. There are no absolutes, like the shades of black and white. Fashion's real mission and its most memorable achievements are seen in its explorations and the *filling in* of everything that can exist between the black and the white. Fashion is all about novelty and experimentation, and about striving to be as daring and original as possible.

Paradoxically, the unfettered freedom and pace of fashion can exist only because the black-and-white frame does not interfere with the sector's open "creative space." In fashion, most design innovation is immediately available to everyone. Indeed, there is a long history in fashion of "knocking off" haute couture garments and selling them as quickly as possible at lower price points. The past is constantly being plundered for "new" ideas. Stylistic elements are routinely appropriated from the most unlikely places – Polynesian islands, urban street corners, stock-car races, bowling alleys – and transformed into new trends. In fashion, nearly every design element is available to anyone for the taking. Any fashion design, one might say, is "ready to share."



**Why is it that the “borrowing” that is a standard practice in fashion is denounced as “theft” when it occurs in music or film?**



The term is, of course, a play on the fashion industry's bread-and-butter market, "ready-to-wear." But we use it here to reference fashion's rough-and-tumble approach to the ownership of creativity. This complex dynamic warrants investigation. Why is it that the "borrowing" that is a standard practice in fashion is denounced as "theft" when it occurs in music or film? Why should sampling and even exact garment replications be considered acts of genius in fashion, or at least respectful homage, while the titans of most other creative fields regard such appropriations as scurrilous acts of piracy?

Answering these conundrums requires that we probe the deeper sources of creativity itself – and the ways that different market structures can be built atop the social communities responsible for innovation. It also requires that we recognize those attributes of garment design and marketing that are unique to fashion, and that may or may not apply to other creative sectors.

### *A New Grand Narrative for Creativity*

We believe that the styles of creative bricolage exemplified by fashion and new digital environments embody a new grand narrative for creativity, born of ancient tradition. This new story of creative innovation cannot be understood by the traditional premises of copyright law, which are fixated on individual creativity. Rather, this new story sees individual genius in the context of evolving social relationships and community practice. Creativity is not just a matter of individual creativity, but a conversation between individuals and larger communities of people and creative traditions.

The traditional story laid out by copyright law sees creativity as more or less an individual product and a static product; works must be instantiated in a physical medium, for example, in order to earn protection. But the new grand narrative that we see in fashion is, like online creativity, inherently social and dynamic. Creativity not only is given wide leeway to change and evolve in whatever directions it wishes, but the marketplace also is structured to respond to consumers in more organic, flexible and rapid ways. The predictable and unpredictable churn of styles, and the fairly open and decentralized marketplace, enable talented and resourceful newcomers to enter the market and succeed. No style is ever fixed and consummated, once and forever; no market franchise lives forever. Creative design is always in flux.

In this sense, fashion has many striking resemblances to digital environments that work through the Internet. Creative ideas are available to all through an open commons. Creators enjoy access to a bottomless reservoir of possibilities. Consumers enjoy unparalleled choices. Despite limited copyright protection, companies continue to rise and fall and make money. The ecology gives rise to a centrifugal spiral of innovation and new businesses. It is an environment in which the open and the proprietary are more or less aligned, not clashing, and creative freedom can flourish without onerous legal restrictions. It is hard to imagine a more compelling, responsive, sustainable milieu for creativity.

In the bricolage world of fashion and digital culture, creativity is a fragile and ephemeral essence. The legendary designer Coco Chanel once observed: “Fashion is not something that exists in dresses only; fashion is something in the air. It’s the wind that blows in the new fashion; you feel it coming, you smell it ... in the sky, in the street; fashion has to do with ideas, the way we live, what is happening.” It is tempting to focus on the tangible “containers,” but fashion is simply the “clothing” for a deeper creative spirit.

What is so captivating about the ecology of creativity in fashion is its ability to host the protean spirit of the imagination, and to build profitable businesses around it, without becoming sterile and rigid. This same sensibility prevails in the digital world. Although we may associate creative artifacts with their tangible forms – CDs, DVDs and countless electronic appliances – their real essence is immaterial and versatile. It is always in flux – moving, replicating and morphing – through the virtual channels of the Internet. While it is tempting to see the products of digital creativity as instances of “intellectual property” – a fictional object defined by law – in truth the creativity of digital media is far too elusive, abstract and mercurial to be confined easily. Like a virus that locates a hospitable “host” to replicate itself, human creativity uses digital technologies as cheap and easy hosting facilities for its relentless bricolage.

### *Fashion and the Ownership of Creativity*

Before exploring the similarities between creativity in fashion and the culture of bricolage, we must explore how creativity originates, circulates and is transformed in the world of fashion design. It is worth probing this issue because it suggests something about how creativity and markets can inter-relate in a healthy, vigorous way. Fashion shows how appropriation and sharing is necessary in any creative community and how it can also contribute to a robust, competitive marketplace.

Fashion is one of the few creative industries in which it is usually impossible to claim copyright protection for one’s work. Two-dimensional fabric designs and ornamental features such as buttons are entitled to copyright protection, and newly developed manmade fabrics can be

patented, but otherwise, most aspects of garment design cannot be owned. Only one's business name and logo can be protected, as trademarks. Despite perennial calls for extending copyright protection to more aspects of fashion, the lack of such protection has not hurt the overall fortunes of fashion in the least. Indeed, the industry as a whole has flourished.

The ecology of creativity in fashion features an open design commons, limited copyright protection, a focus on marketing and branding, and competitive markets that reward innovation and speed. Intellectual property rights are not unimportant in this regime, to be sure, but neither do they obstruct new sorts of creativity and competition. Businesses still enjoy proprietary advantages – their brand name and reputation – but no one is allowed to privatize and lock up design itself. Fashion recognizes that pleasing a diverse, constantly changing consumer base in a timely way is the key to a profitable bottom line, and that staying one step ahead of fickle style trends that last months, not years, is imperative to success.

The evolution of styles in fashion may seem quixotic and arbitrary, and indeed it is, at a certain level, mysterious. One only can venture theories. Yet it is clear enough that apparel design has its own rudimentary “physics”— a rough set of principles that seem to explain how new styles emerge, develop and are embraced by consumers.

One must, at the outset, distinguish the traditional hierarchy of fashion from today's more democratic ecology of fashion. For most of the 20<sup>th</sup> century, haute couture in Paris, Milan and New York was the fountainhead of new styles. A handful of prestigious fashion houses were the recognized arbiters of taste, their styles trickling down to the masses in irregular cascades. Department stores followed the lead set by Paris, for example, making their own adaptations of the season's popular styles. Traditional fashion involved designers catering to well-heeled clients, whose tastes in clothing and style were forged, if not dictated, by recognized fashion magazines.

While the vestiges of this system remain, a far more open, competitive and dynamic fashion industry has arisen over the past 40 years. Teri Agins describes this evolution in her landmark 1999 book, *The End of Fashion: How Marketing Changed the Clothing Business Forever*,<sup>6</sup> and in

her reporting as fashion commentator for *The Wall Street Journal*. She suggests that as more women entered the workforce in the 1960s and 1970s, the cultural appeal of high fashion waned. Working women needed a different type of wardrobe, and department stores and boutiques began to offer fashionable clothes at cheaper prices.

In the open and democratic fashion environment that developed in the following decades, the aura of the catwalk was replaced by the spectacle of the red carpet. Styles were no longer driven by elite fashion shows, but by movies stars and celebrities wearing couture clothes chosen by professional stylists. Rather than a twice-a-year fete in select cities around the world, fashion became a year-round, ubiquitous passion.

The industry's evolution also was fueled by the marketing genius of Ralph Lauren, who in the late 1960s brilliantly introduced the idea of integrating fashion with lifestyle. He launched a campaign associating his clothing lines with a largely imagined lifestyle of affluent, landed-gentry WASPs living in a world of country estates, travel and equestrian sports. He splashed his lifestyle fantasy across the pages of magazines and on billboards and buses and, in the decades that followed, the branding of clothing and marketing of lifestyles became merged. As a result, designers began offering apparel and accessories that reflected and resonated influences from music, film and the street. Retailers, in turn, reinterpreted those influences and offered them back out to the larger culture from which they originally emanated.

Throughout this shift in emphasis from high fashion to today's more ecumenical fashion marketplace, however, there has been one significant constant: the appropriation and derivation of other people's creativity. If fashion is going to be culturally relevant, it must be constantly on the move, and no one can be allowed to own it.

### *The Durability of Homage*

If Ralph Lauren was a pioneer in linking an elite lifestyle to a line of clothes, and marketing it to the masses, he was, at bottom, aping someone else's work. Lauren's creations drew upon a body of accumulated fashion design by the venerable fashion houses, which continue to hold great cachet. Such fashion houses as Chanel, Yves Saint Laurent, Givenchy and Balenciaga long have been pacesetters for "original" design.

These elite brands are not frozen in amber; they repeatedly have been built and rebuilt around an ethic of homage, the respectful referencing and imitation of other people's creativity. The great designers of today routinely incorporate and adopt aspects of their mentors' work, refining basic elements and adding new design aesthetics. Ungaro was the protégé of Balenciaga; Lagerfeld drew upon Chanel. Tom Ford incorporated the traditions of Gucci, and Alexander McQueen recognized the style of his sponsor, Givenchy.



**Elite brands are not frozen in amber.**



Fashion, in this sense, always has been a form of creativity based on lineage. The individual designer may have his own distinctive talents, but he also participates in a recognized tradition. Indeed, young designers freely incorporate aspects of house tradition – an affinity for draped jersey here, an attraction to certain color palettes there – into their own personal styles. Inevitably, when protégés later go off to start their own named line, they take certain stylistic leitmotifs from their former patrons while developing their individual signature look.

The adage "what goes around comes around" is perfectly suited to fashion. In 2003, Oscar de la Renta candidly admitted that his designs

derived from famous peers. Cathy Horyn of *The New York Times* reported: "In his studio last week, [de la Renta] pointed with amusement to a picture of a Balenciaga shift with a draped back and then to a dress he took from his wife, Annette's, closet, a virtually identical model made for her in the 90s by Saint Laurent. On Monday, Mr. de la Renta sent out his version, in vivid melon."<sup>7</sup>

As creativity migrates the continuum from originality to outright imitation, the very idea of "originality" begins to appear more problematic. Guy Trebay, a fashion reporter for *The New York Times*, wryly noted: "Adolfo builds a wildly successful business on an interpretation of a boxy suit by Coco Chanel; lucky for him Ms. Chanel, being dead, is unable to litigate. Tom Ford becomes famous copying Halston, Alexander McQueen for aping Vivienne Westwood. Half of fashion, in fact, seems to owe its professional existence to a single truism: one is as original as the obscurity of one's source."<sup>8</sup>



**"Fashion is in some ways like a worm going from one apple into the next..."**



In an environment of constant emulation, it can be difficult to separate "originality" from "imitation." The two blur together so seamlessly that it often doesn't make sense to try to sort them out. Such conclusions are jarring to anyone steeped in the orthodoxy of copyright law, which presumes that it is in fact possible – and perhaps urgently necessary – to ascertain the authorship and "originality" of a work.

While there is little question that individual artists bring their own distinctive talents to bear on any creation, it is worth recalling Salvador Dali's puckish admonition: "Those who do not imitate do not create anything new." Or as fashion journalist Cathy Horyn playfully put it, "Fashion is in some ways like a worm going from one apple into the next ...."<sup>9</sup>

One must wonder how important “originality” truly is if a “derivative” rendition can attract its own separate following. Consider the daisy chain of creative transformation that bobs and weaves from British sports and military tradition through a series of designers to culminate in Tommy Hilfiger. Cayce Pollard, the protagonist of *Pattern Recognition*, a thriller by novelist William Gibson, frankly is repulsed by the dilution of a style through imitation. She laments:

My God, don't they know? This stuff is simulacra of simulacra of simulacra. A diluted tincture of Ralph Lauren, who had himself diluted the glory days of Brooks Brothers, who themselves had stepped on the product of Jermyn Street and Savile Row, flavoring their ready-to-wear with liberal lashings of polo knit and regimental stripes. But Tommy is surely the null point, the black hole. There must be some Tommy Hilfiger event horizon, beyond which it is impossible to be more derivative, more removed from the source, more devoid of soul. Or so she hopes, and doesn't know, but suspects in her heart that this in fact is what accounts for his long ubiquity.<sup>10</sup>

However derivative his clothing, Hilfiger remains a popular fashion brand. The most important point may be that one person's etiolated style is another generation's fresh feedstock. What seems like a derivative dead-end from one vantage point frequently turns out to be, decades later, the direct inspiration for a fashion revival. Today's styles become the compost for tomorrow's new growth. And so the cycle continues.

### ***How Fashion Builds Upon the Past***

Contemporary fashion always is engaged in a spirited dialogue with the past and culture. The homage that prevails within fashion is but a microcosm of a larger, more bracing dialogue in all creative art, between design and earlier styles, particularly artistic traditions and recognized cultural symbols. The intimate affinity between fashion and culture plays itself out as bricolage; meaning and beauty are drawn from whatever elements are at hand, which designers then transform into something “new.”

A dramatic explication of this premise can be seen in the celebrated Goddess Exhibit mounted by the Costume Institute of Metropolitan Museum of Art in New York City in 2003.<sup>11</sup> The show presented the goddess as both an iconic artistic image and a tradition of dress design. Drawings, sculptures and paintings depicting ancient “goddess” images showed how recurrent motifs were used in apparel spanning the ages, from ancient Greece and Rome to the 19<sup>th</sup> century and modern dress. The exhibit showcased the classic “goddess” style in three distinct dress forms of Grecian and Roman eras, and tracked their development through modern-day couture interpretations. Remarkably, little has changed. Reinterpretations by Halston, Donna Karan and John Galliano, sometimes line for line, easily could be recognized as emanating from classic civilization.

The Goddess Exhibit depicted how originality and imitation actually can coexist in seamless harmony. Novelty is built atop an archetype. Separating the two may be theoretically possible – copyright law protects expression, not ideas – but in practice innovation and archetype are inextricably fused. Indeed, that is precisely why some designers gravitate toward archetype; such designs seem to resonate at a certain timeless, fundamental level, while still proving amenable to contemporary adaptation.

The fusion of fashion and art is a natural convergence, of course. Both are dedicated to seeking out that which is new, provocative and beautiful. Fashion and art also have natural commercial synergies, as most designers realize. For the last five years, Madison Avenue, world-renowned home of designer boutiques and art galleries, has mounted a week-long exhibition titled “Madison Avenue: Where Fashion Meets Art.” Sales have supported such institutions as the Whitney Museum of Art, as the promotional campaign is a yearly acknowledgement of the inexorable link between fashion and fine art, aesthetic refinement and upscale prestige.

Artist and designer Elsa Schiaparelli was a pioneer in fusing fashion and art in the 1940s and 1950s. She is credited by reviewer Roberta Smith with being “the first modern fashion designer to collaborate with artists while also thinking like one .... We owe to her the idea, so prevalent today, of the fashion designer as an art-smart provocateur and promotion-minded celebrity.”

Schiaparelli made dresses inspired by the Surrealists, transplanting trompe l'oeil techniques from paintings to dresses. Her motifs often drew upon the playful, Conceptual art of such painters as Marcel Duchamp and Paul Poiret. One of Schiaparelli's dresses – a gown worn by Zsa Zsa Gabor in the 1952 film *Moulin Rouge* – is an exact copy of a dress in a Toulouse-Lautrec lithograph.<sup>12</sup>

Fashion designers do not only embrace classic artistic forms or historical artifacts to create new lines. Fashion routinely borrows from itself. Building a new season's collection on designs from years past is an essential component of fashion praxis. Today, evidence of fashion raiding its own closet abounds in the success of vintage clothing dealers. Cameron Silver, the owner of Decades, Inc., a vintage clothing chain in Los Angeles and London, said that 60 percent of his business comes from designers. In New York City, designers constantly trek to Gallagher Paper Collectibles, a small East Village grotto that owns a rich archive of vintage fashion magazines. Proprietor Michael Gallagher told a reporter: "We get them all, Hedi Slimane, Karl Lagerfeld, Marc Jacobs, big time, John Varvatos, Narciso Rodriguez, the Calvin assistants, the Gucci assistants, Dolce & Gabbana, Anna Sui – you name it. They all come here for inspiration. At least that's what we call it."<sup>13</sup>

Seth Weisser, co-owner of What Comes Around Goes Around, told a reporter: "Remember that Celine double-wrap belt with the metal on the outside? The original was from us. It's exactly as it was." Weisser admits that "when the good stuff comes in, there are about five designers who get the call."

What fashion may borrow from art and from vintage styles, it certainly returns in a coin of equal value. This is an elemental part of culture: Ideas and designs must flow constantly like water. Fashion and art both share an ethic of borrowed inspiration. If such unmeasured circulation of design offends the guardians of intellectual property, creators and aesthetes have few qualms. They consider it the heart of culture. "A culture could not exist if all free riding were prohibited," writes legal scholar Wendy Gordon. "Culture *is* interdependence, and requiring each act of dependency to render an accounting would destroy the synergy upon which cultural life rests."<sup>14</sup>

### *The Street as a Source of Fashion*

“Everything in fashion begins in the street,” the fashion designer Diane von Furstenberg once said.<sup>15</sup> Although an overstatement, von Furstenberg’s claim points to an open secret of fashion design: “The street” is one of the richest, most fertile sources of innovation. It may take an insightful designer to identify and adapt a fugitive style seen on the street, but designers readily acknowledge that the street has a creative vitality that no one can ignore.



**“Everything in fashion begins in the street.”**



The street is forever dedicated to the renegade and unpredictable, and to styles that are jarring, improbable and surprising. “Has there ever been a designer’s catwalk that produced better fashion than a city sidewalk?” asks Guy Trebay. “Is there a style, high or low, that has not felt the influence of Fifth Avenue, or Bushwick Avenue in Brooklyn, or the Rue Bonaparte ...?”<sup>16</sup> *New York Times* fashion photographer Bill Cunningham has made a career chronicling the emerging styles that he detects on the streets of New York City. His weekly photo essays, “On the Street,” announce the ubiquity of pink, fur, bare-midriff T-shirts or broaches.

While some trends can be pushed successfully by fashion-forward designers, the street is a fractious animal. It often insists upon making its own defiant statements. Some of the biggest trends of recent decades – cargo pants, lowriders, frayed jeans, do-rags – originated among the musicians, night-clubbers and bohemian vanguard of urban America.

Urban fashion pioneers, hip-hop artists have become one of the great engines of new fashion trends. Hip-hop played a major role in converting track suits, wrestling shoes (and boxing and soccer shoes),

designer sneakers, outsize denims, prison-style jumpsuits and underwear worn above the trouser waistband into fashion must-haves.<sup>17</sup> Leading hip-hop artists took notice when established Italian fashion houses like Dolce & Gabbana and Versace appropriated urban streetwear for their new collections. Several decided it was time for them to build on their personal musical brands and launch their own clothing lines: Sean Combs began the Sean John label, Russell Simmons started Phat Farm, Eminem has his Shady Ltd. Line and Jay-Z started Rocawear.

Female rappers like Mary J. Blige, Foxy Brown and Lil' Kim, too, have capitalized on their celebrity image and music to call attention to their clothing collections – a cross-media synergy, as it were. (Lil' Kim once posed nude on the cover of *Interview* magazine with her body painted with Louis Vuitton logos.) “Hip hop artists today are the icons,” said Peter Ferraro, associate publisher of *Source* magazine. “In the past, they were using supermodels.”<sup>18</sup>

■ ■ ■  
**Lil' Kim once posed nude on the cover of *Interview* magazine with her body painted with Louis Vuitton logos.**  
■ ■ ■

The popularity of hip-hop – the music, the video images, the lifestyle of its stars – propelled its move into fashion. “The bottom line is that urban sells way more than high fashion,” Emil Wilbekin, editor of hip-hop magazine *Vibe*, told a reporter. “Sean John sells way more than a Donatella Versace.”<sup>19</sup>

The great fashion writer Holly Brubach once wrote, “Fashion is one of the means by which we dream collectively,” calling it “a feminine counterpart to architecture.” If fashion is a language by which we express ourselves, then, said Brubach, “it is incumbent on every generation to remake the world in its image.” The street performs this function. It is a theater in which our culture expresses itself and remakes its identity. Fashion is the medium.

“A strong street style is the healthy sign of a society that is enthusiastic about itself,” said artist Ruben Toledo. “Immigration is vital to its survival. The fertilization of style is enhanced by the rare and new, by the cross-pollination of ideas. It is also a sign of a society that values freedom of interpretation – underwear becomes outerwear, overcoats become dresses, extra small on me is extra large on you.”<sup>20</sup> The street is a key reason why fashion remains so creatively alive. Fashion could not renew itself without the uncontrolled cultural space that the street represents. As one observer put it, “Street fashion can afford to make mistakes, to change its mind overnight, because it’s cheap or on sale or found on the curbside like an orphan.” The street is a living proof that creativity is too large and dynamic for anyone to own.

No one really has a protected market franchise. Every market participant constantly must be on the prowl for the “new,” and even classic styles must be updated periodically. To be sure, companies can and do seek to gain some proprietary control over new trends. They try to become the first to market, for example, or to cultivate a marketing identity closely associated with a lasting trend. Many fashion houses also employ “cool hunters” to forage through urban subcultures in search of the next big trend,<sup>21</sup> and subscribe to “trend research” newsletters like the *Tobe Report* and other tip sheets.<sup>22</sup>

The makers of clothing, sneakers and accessories feel compelled to identify if and when a geeky, forgotten product – Converse sneakers, Hush Puppies casual shoes, pink menswear – are going to catch on as new fads. Designers look to the street both as a source of inspiration and as a benchmark against which they must compete. An important factor in creativity in fashion, then, is insecurity. ***No one can really know in advance just what styles the street will embrace and ratify as a trend.***

“Cool” is always moving on, just out of reach. But it cannot be ignored if only because it embodies a spirit of cultural authenticity and validation that commercial fashion today ***needs***. Fashion therefore constantly must draw upon the street if it is to renew itself. The street has

panache and credibility precisely because its sensibility is uncontrolled and wild; the commercial machine has not yet domesticated it through mass marketing. Styles from the street are seen as expressions of “real feelings”; they elude (for now) the calculated marketing gambits of major corporations.

Designers sit astride this tension between the street and the market. They recognize the creative energy and mass appeal of “street styles,” yet they also know that commercialization ineluctably will take the bloom off the rose. They pursue a paradox: to create designs that connote social exclusivity ... and then reinterpret them for their customers. The very act of selling tends to vitiate the exclusivity being sold.

Much of fashion is about negotiating this tension between the popular and the exclusive. A fashion reporter profiling Marc Ecko, a street-inspired designer, concluded: “What the Eckos of the world cannot combat is the manner in which trends often emerge organically and unpredictably from the street. Here, young people are powerfully swayed by and averse to marketing at the same time.”<sup>23</sup>

In truth, the street encompasses “all of culture.” Nearly all aspects of culture are routinely used as feedstock for new fashion designs. The most unlikely backwater in the U.S. or anywhere in the world is regarded as a plausible source of new styles. The fashion houses Imitation of Christ, Preen and Jessica Ogden have built collections around thrift-store clothing.<sup>24</sup> Some designers have seized upon tacky souvenir T-shirts to produce their own faux-down-home T-shirt designs.<sup>25</sup> Clothing inspired by NASCAR stock-car racing – checkered tops, splashy graphics, leather jackets with logos for Budweiser and Quaker State Motor Oil – enjoyed a brief vogue in 2001.<sup>26</sup> At one point in 2002, reported *The New York Times*, younger designers were “rediscovering the early renegade work of Vivienne Westwood, whose collection drew inspiration from pirates, peasants and American Indians.”<sup>27</sup>

All this stylistic imitation and transformation is not necessarily faddish. Sometimes a design’s original function specifically is utilitarian and, through circumstance, genius or trend, evolves into

an iconic fashion element, actually creating a new archetype. For example, when Levi Strauss made Levi's denim trousers from tent canvas, introducing rivets to prevent the pockets from tearing, he had no idea that denim jeans would become the fashion staple of the last 50 years. Likewise, Coco Chanel's 1926 coinage of the little black dress as a symbol of urban sophistication – a uniform suitable for cocktail parties and concerts, not just funerals – truly was inspired.

The trench coat originated, quite literally in the trenches of WWI. The clothier Thomas Burberry, who already had invented the fabric, called gabardine, submitted the original design to the British War office in 1901. The coat was modified and given to the troops to protect them from the muck and the mire of European winters. It later went on to become a standard raincoat design. In the last several years, the trench coat has re-emerged as a trendy staple, with Burberry once again leading the charge.

The ecology of creativity in fashion that we have sketched here points to a deep and abiding principle about creativity: It requires freedom. It can endure only so much private control before it careens into a downward spiral of sterile involution. If it is to be fresh, passionate and transformative – if it is to express a cultural moment and speak to our aspirations – fashion must have the room to breathe and grow.

So far we have focused on the “spectacular shades of gray” — the innovation, the experimentation, the sharing – that color fashion, and not on the “black-and-white” frame that contains its energies. As suggested earlier, in order to leverage the powers of the marketplace, creativity also must exist within a regime of business profitability and intellectual property law. We turn now to the intellectual property rules that enable creativity in fashion to be so seemingly boundless yet still capable of supporting a robust marketplace.

### *The Ethics of Imitation in Fashion, or the Difference Between Counterfeits, Knockoffs and Plagiarism*

A key reason why the ready-to-share ethic can survive in fashion is that companies are able to claim property rights, albeit through the use of two important legal tools – trademark and trade dress. These intellectual property protections enable businesses to leverage brand names, logos and certain aspects of three-dimensional design that usually are applied to handbags. The locus of piracy is thus shifted. As a result, copying a garment design is entirely legal, and even respectable, but copying a brand name or logo is considered an act of piracy and the resulting products are called counterfeits.

The legal distinction between a *counterfeit* and a *knockoff* is crucial. It is what enables the fashion world to sustain its wide-open creative ethic while maintaining its profitability. A counterfeit dress is one that falsely bears the label of another designer even though no license has been paid. A knockoff is a dress that may be almost identical to a brand-name dress, but it does not purport to be anything but what it is: a nearly identical knockoff produced by someone else.

Counterfeiting is wrong not because it imitates design elements, but because it steals from the repository of value in fashion – the trademarked name and logo. Designers have credibility, stature and profitability because their name comes to represent a look and an artistic standard.

The moment designs appearing on the runways of Paris were mimicked and mutated for the tastes and budgets of a larger audience, the knockoff culture was born. Over the last 60 years, the demand for knockoffs has increased exponentially as women have come to embrace the idea that one can look like a million bucks without having a million in the bank. The demand for knockoffs only has grown with the rise of cheaper production technologies, faster logistics and shorter fashion cycles.

Initially, department stores primarily were responsible for harnessing and carefully reproducing the couture look. Stores felt no compunction about offering both couture label garments and store-

label imitations. A pivotal moment in the history of knockoffs occurred in 1957, when Seventh Avenue garment makers copied Christian Dior skirts for Macy's before Dior's own clients had received the originals. Dior's response was brilliant and prescient. He proceeded to introduce his own label, non-couture, ready-to-wear line. The idea was to profit from both ends of the market – those who could afford couture and those who wanted to look like they could. Today, most major designers have developed multiple market price points.

The fashion world has become so acclimated to knockoffs that insiders trade countless anecdotes about the lineage of an idea or the blatant imitation of a distinctive article of clothing by someone else. The storytelling ripens into lore that serves to reinforce and validate the knockoff ethic. Legendary fashion photographer Manuela Pavesi once told a friend (who later told *New York Times* reporter Guy Trebay) that her Prada coat was a copy of an original Balenciaga coat that Miuccia Prada had found at a vintage-clothes dealer in Paris. "Miuccia loved this coat so much," Pavesi said. "So much that she took it and copied it. But I mean copied it exactly."<sup>28</sup>

Occasionally, the designer credited with the "original" fights back. In 1982, Giorgio Armani called off his fashion show because the press refused to delay publishing reviews and pictures of his new lines of clothes until the merchandise was in stores. He wanted to thwart imitators from making knockoffs in the interim period. And Ralph Lauren famously sued Yves Saint Laurent in 1994 for making a \$1,000 sleeveless tuxedo gown that he claimed was a rip-off of his \$15,000 couture version<sup>29</sup> (Lauren and Saint Laurent later settled.)

Attention to design detail has become more refined in the knockoff culture of the last decades, and price points now range from high-end "bridge" collections to chain-store merchandise. There is now a flourishing, above-ground segment of the industry expressly devoted to producing replicas of dresses worn by major entertainment celebrities. ABS, started by Allen B. Schwartz, the most visible and successful of these companies, assiduously copies the designer gowns worn by stars at the Academy Awards ceremony, churns them into production within hours and has them on the department store floors within days. Other knockoff entrepreneurs such as Victor Costa and AnyKnockoff.com, a Los Angeles-based maker of "designer-inspired products," also give

credence to this independent industry form. AnyKnockoff.com declares (figuratively, one assumes), “We tear out the designer label and save you money.”

In our time, the knockoff ethic has become so consuming and ubiquitous that it is reinforced and validated by all manner of media. The fashion magazine *Marie Claire*, has a standing feature called “Splurge vs. Steal.” *InStyle* magazine invites readers to “Steal This Look.” Daytime television programs run regular segments devoted to knockoff dressing, as do the burgeoning cable fashion channels. There are also many Web sites devoted to knockoff fashion (among them: fashionknockoffs.com, knockoffs.com, edressme.com, fivestarreplicas.com and anyknockoff.com).



**There is value – for companies and for innovation – in sanctioning imitation.**



There is value – for companies and for innovation – in sanctioning imitation. The elite designers can charge a premium for their perceived superiority and “originality,” and imitators can make money by catering to mid-market and lower-tier consumers who are not likely to buy the elite brands. While a counterfeit garment clearly steals revenue from a name-brand company, knockoffs paradoxically affirm the elite status of the original brand while having few harmful financial effects. Consider the vintage Valentino gown that Julia Roberts wore to the 2001 Oscars: Victor Costa knocked it off and sold hundreds of the gowns. Anyone who saw or owned the knockoff referenced its “original” designer, Valentino, even though none of the imitators purported to be a Valentino.

A brand name is, in essence, the commodification of socially created value. The “goodwill” of a brand represents a social consensus that a brand “means” certain things and ensures certain standards of quality.

Knockoffs help stabilize the lexicon of meanings in fashion, albeit inelegantly, while undercutting the counterfeiting that would surely result otherwise. The little black dress by Chanel, the wrap dress by von Furstenberg, the Izod knit shirt – each retains its brand-name value, in part, because knockoffs indirectly affirm the brand franchise of the “original.”

If counterfeiting is the illegal copying of someone else’s brand name or logo, and knockoffs are copycat designs that are sold to different market tiers, how shall we regard the verbatim copying of designs just for the hell of it? Some critics call it genius, others call it plagiarism. While few question the legality of verbatim rip-offs, fashion mavens have mixed feelings about the ethics of such practices.

A celebrated instance of plagiarism-inspired genius is the case in which Nicholas Ghesquière, a star designer at Balenciaga, knocked off a highly idiosyncratic 1973 vest by a little-known, deceased San Francisco designer, Kaisik Wong, as part of Balenciaga’s 2002 collection. The “borrowing” was disclosed by the “Chic Happens” column of the Web site Hintmag.com after the co-option of the design was discovered by an intern.<sup>30</sup> Ghesquière said that his design technique resembles sampling in the music business, and admitted that he had indeed copied the vest. Without embarrassment, he said, “I’m very flattered that people are looking at my sources of inspiration.” The novelist Tom Wolfe, who was a friend of Kaisik Wong’s, interpreted the incident rather differently; he complained that the stigma of copying should not be removed simply by calling it “referencing.” On many occasions, wags have quipped that homage is merely French for stealing.

When Harold Koda, the costume curator at the Met, was asked whether it was fair for a celebrated designer to steal from an obscure innovator and pass it off as his own without credit, Koda replied, “What about all the famous designers today whose collections are designed by anonymous assistants? Is that any more unfair?”<sup>31</sup>

The line between ordinary creative transformation and plagiarism virtually can be nonexistent in apparel. “Right now at Karen Millen you can find gold trousers remarkably similar to those at

Prada,” wrote Charlie Porter of *The Guardian* (UK), “while Marks & Spencer are very proud of its animal-print kaftans which echo the ones shown at Yves Saint Laurent.”<sup>32</sup> Indeed, a great many fashion experts believe that the best, most innovative work comes from the artful recombination of existing work. Vanessa Friedman noted in the *Financial Times*: “It’s ironic then that the designers who face the plagiarism issue full-on are those who have produced the most thought-provoking and inventive work, in much the same way hip-hop artists about 20 years ago borrowed drumbeats from chart-topping tunes and created a new music genre.”<sup>33</sup>

In fashion, at least, this debate is a matter of professional ethics, not a matter of law. The issue in the Ghesquière case was chiefly about the etiquette of crediting, or not crediting, an artistic source. In truth, the appropriation of a prior work is not just about the work itself; the *recontextualization* is at least as important in the creation of meaning. That’s why contemporary revivals of decades-old styles have a very different meaning than they originally did; the context is completely altered.

This is the strategy that designer Russell Sage played upon when he made clothes decorated with trademarked logos. Sage’s Fall 2000 collection included halters made from the linings of old Burberry trench coats, pleated skirts with Prada and Hilfiger ads photo printed onto them, and a Victorian evening gown with sequined Chanel and Vuitton logos. Sage’s point was to step out of the discourse of traditional fashion, as exemplified by elite fashion logos, and call attention to the ways in which designer clothes are associated with certain social tribes. He called the collection “So Sue Me.” Burberry did, in fact, threaten legal action and force Sage not to mention the word “Burberry” in the collection (his substitute, “reclaimed check.”)<sup>34</sup>

A similarly playful commentary upon the elite brands was made by companies issuing rubber knockoffs of the famous Hermès Birkin handbag. Should the colorful bags be considered a counterfeit of a trademarked bag design or a fully protected satire on fashion? Hermès obviously believed the former, and threatened legal action against anyone making or selling the bags. But the case caused some frisson because the creative norm in garment design is that anything is fair game. Fashion is part of an ongoing conversation, and therefore *of course* the “jelly bags” should

be considered legal.<sup>35</sup> But since fashion accessories *can* be trademarked, Hermès had considerable legal leverage in banishing the send-ups.

Such collisions between trademark law and fashion's free-wheeling creative spirit lead to perennial controversies. In 2003, for example, some clever imitations of Louis Vuitton handbags started appearing. They did not use the famous Vuitton logos (which would have constituted counterfeiting), but they did feature clever, suggestive imitations of the trademarked logos.<sup>36</sup> The copycats clearly were trying to evoke the Vuitton handbags without stepping over the line.

So goes the homage of imitation, which necessarily cuts both ways. When Anya Hindmarch used logos of food products on satin evening bags, the trademark owners actually paid her to use their logos. They considered it great visibility for their brands. It didn't hurt that foods don't compete with clothing in the marketplace. By contrast, Burberry has no desire for other designers to use the copyrighted Burberry plaid on other designers' clothing.

It is a timeless tension: proprietary companies seeking control and subversive designers using bricolage to come up with "something new." Unlike most other creative sectors, fashion has chosen the open-ended horizon for itself. Innovation cannot be squelched simply because the first mover is fearful that his market franchise might be diminished. Fashion has thrown its fate with George Bernard Shaw's aesthetic ethic: "In art, the highest success is to be the last of your race, not the first. Anybody, almost, can make a beginning; the difficulty is to make an end – to do what cannot be bettered."

### *The Future of Creativity*

There is little doubt that fashion presents a distinctive milieu for creative endeavor, one that illuminates the market benefits that can flow from a "ready to share" creative environment. But do its dynamics hold lessons for other creative sectors?

We are struck by the remarkable similarities between the creative ecology of fashion and those of digital media. While the creative milieu of fashion is unique in many respects, the success of its framework for creativity suggests that it might have broader lessons for the digital age. It is striking, for example, to observe how in both fashion and many digitally based creative communities, new ideas arise and circulate with few impediments of either market access or intellectual property law. Sharing, collaboration and modification of other people's works occur naturally, almost automatically, and at a breakneck pace.

Open-source software may be the most celebrated example of this creative dynamic. In open-source communities, hundreds and sometimes thousands of creators openly appropriate and modify a shared body of software code to build new programs that suit their purposes. Like the design archetypes of fashion, which serve as shared models for constant innovation, open-source software has any number of shared scripts of code that are the basis for customized applications. The GNU-Linux computer operating system may be the most prominent example, but there literally are thousands of sophisticated open-source programs that are functionally competitive with proprietary software, but with a key difference: They invite anyone to change, modify and improve the existing code.

The Internet itself fosters this sort of creativity because of its structural architecture. It relies upon open technical protocols for communicating among countless computer networks, so there is no central authority dictating how creativity may or may not occur on the Internet. All activity is radically decentralized, which means that most creative innovation emerges from "on the edge" of the system, not from the center. Anyone with a new idea can launch it and transmit it to a global community with few impediments.

In this respect, the Internet functions much like "the street" in fashion. It is a rich and important source of creative inspiration. Recall that the street is an open, bustling place filled with unpredictable new ideas. It is a constantly churning world of innovation and surprise that the proprietary world depends upon for new ideas, and against which they compete.

One can find a parallel between fashion and the street on the one hand, and Web logs (or “blogs”) and the mainstream media. Blogs are a form of personal diaries and news platforms for individuals and communities of shared interest. More than a way of “broadcasting” individual views, blogs have extensive links to other bloggers who are like-minded and admired. This cross-linking – among an estimated 8 million bloggers – has created a fantastically powerful network for the viral diffusion of information.

In many respects, the mainstream media must keep pace with bloggers in much the same way that Levi's or the Gap must keep pace with the street. In both instances, the proprietary businesses look to the creative commons for potentially important new ideas. There may be a lot of dross – bad ideas, unsubstantiated facts – but the aggregated power of large numbers of people on the street, or in the blogosphere, is a creative force that cannot be ignored.

There are, in fact, many instances of this dynamic on the World Wide Web. Many Web sites are vehicles for collaborative creativity or archiving of community information. Genealogical Web sites assemble vast quantities of research data, for example. The Wikipedia project is a massive “encyclopedia” consisting of more than 500,000 entries written entirely by users. Many smaller “wiki” projects work on the same dynamic of pooling the work of thousands of voluntary contributors. There are fan communities that share their fictional stories about Star Trek characters and television stars. There are peer-to-peer file sharing communities of scientists (having nothing to do with illegal music downloading) who share documents and databases as a group.

It is difficult to generalize about the eclectic types of sharing going on over the Internet, but one rough common denominator is a bricolage model of creativity. While there are nominal boundaries for ownership of content (copyright law still applies in an official sense), in practice these communities tend to appropriate, modify and share digital materials with great abandon. In this, the creative process used by digital artists and authors resembles that of fashion: Each innovator-imitator freely draws upon the building blocks of the past and, indeed, all of culture.

The quick-and-easy excerpting of content in digital media fuels the viral diffusion of creativity in the networked environment. The similarity to fashion is obvious, as a new fashion style quickly sweeps the culture and the marketplace in a matter of weeks. Because there are few barriers to participating in the decentralized marketplace – either from high costs or intellectual property restrictions – creative innovations can proliferate with remarkable speed. Some styles turn out to be fads and die out; others prove useful, and persist and grow. No one could have predicted that Levi's jeans or the Chanel black dress would become new archetypes. Fortunately, the creative environment allowed them to emerge and find consumers. So too, on the Web, no one could have predicted that MoveOn.org would attract 2 million contributors and become a major force in the 2004 presidential election, or that blogs like Boing Boing, with a daily readership of nearly 1 million Internet users, exceeds that of many mainstream magazines. Who could have predicted that the *Grey Album*, an artist's mash-up of The Beatles' *White Album* and Jay-Z's *Black Album* – would be downloaded 1 million times, more than the sales of the best-selling album at the time, Norah Jones' *Feels Like Home*.

There are significant differences, of course, between the viral diffusion of content and the viral diffusion of fashion. Apparel is a physical product, and requires fabric and manufacturing for production, and still further expense to distribute. Digital content can be distributed for virtually nothing over the Internet. But the larger point is that creativity in both "ecologies" is fairly fluid and unimpeded. While it is probably premature to adopt a theoretical model for innovation in fashion or the Internet, the similarities between the two are clear enough to suggest that it is time to develop a new narrative about creativity. Forays into both realms reveal that creativity is by its very nature a messy process that flourishes in open environments with minimal limitations. The best creativity is elusive, unpredictable and ungovernable. It loses its vitality if it is forced to remain static, and it cannot be defined easily. It thrives without borders and suffers from having to live within boundaries.

We are drawn back to the metaphor – of black, white and shades of gray. The worlds of business and the law prefer the absolutes of black and white. Investors and lawyers are in the business of minimizing risk; they prefer legal rules that are clear and business models that yield predictable

results. Companies that wish to thrive in fashion, digital media or any other field therefore strive to enthrone the black-and-white framework – and to minimize the “gray zone” of creative endeavor – by rationalizing it as much as possible.

This creates a structural tension with the creative spirit, however, because authentic creativity is about following one’s passions and emotions without regard for official boundaries. If the world of “ready to share” in fashion reveals anything, it is that a delicate rapprochement must be negotiated between the champions of black and white absolutes that business and lawyers embrace to compete in the marketplace, and the blended tones of gray that are the preferred domain of creators. Finding new ways to balance intellectual property law and embedded business practices with the free-wheeling spirit of creatives is of the utmost importance. We believe that the fashion industry offers many constructive lessons for how this challenge can be met.

### Notes

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- <sup>4</sup> U.S. Census Bureau, “[2003 Service Annual Survey: Information Services – Motion Picture and Sound Recording Industries](#),” as reported in Jon Friedman, “Revenues Increase 6% for Movie Companies,” *CBSMarketWatch.com*, Dec. 1, 2004.
- <sup>5</sup> Recording Industry Association of America [statistics](#).
- <sup>6</sup> Teri Agins, *The End of Fashion: How Marketing Changed the Clothing Business Forever* (New York: William Morrow, 1999).
- <sup>7</sup> Cathy Horyn, “Sophisticated and Evergreen,” *New York Times*, Sept. 16, 2003.
- <sup>8</sup> Guy Trebay, “Imitation Is the Mother of Invention,” *New York Times*, July 7, 2002.
- <sup>9</sup> Horyn.
- <sup>10</sup> William Gibson, *Pattern Recognition* (New York: Putnam, 2003).
- <sup>11</sup> “[Goddess](#),” Metropolitan Museum of Art, April 28-Aug. 3, 2003.
- <sup>12</sup> “Shocking! The Art and Fashion of Elsa Schiaparelli,” The Philadelphia Museum of Art, 2003, reviewed by Roberta Smith, “Making Serious Fashion from Visual Jokes, and Doing It Like an Artist,” *New York Times*, Oct. 31, 2003.
- <sup>13</sup> *Ibid.*
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- <sup>19</sup> Ibid.
- <sup>20</sup> *New York Times*, Oct. 27, 2003.
- <sup>21</sup> See, e.g., Malcolm Gladwell, “Annals of Style: The Coolhunt,” *The New Yorker*, March 17, 1997.
- <sup>22</sup> *Wall Street Journal*, Sept. 19, 2003.
- <sup>23</sup> Ginia Bellafante, “What New Urban Wear Trend Will Step Off the G Train?” *New York Times*, Aug. 7, 2001.
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- <sup>25</sup> Shalia K. Dewan, “Never Been to Hawaii? Just Get the T-Shirt,” *New York Times*, July 21, 2001.
- <sup>26</sup> Bellafante, “It’s Off to the Races for Stock Car Fashion,” *New York Times*, July 24, 2001.
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