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## Is Anything Ever New? Fashion Design Students' Perceptions of Piracy

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## **Abstract**

Design piracy is the unauthorized copying of another designer or manufacturer's work. While controversial, it is an institutionalized practice in the apparel industry. The purpose of this study was to better understand student perceptions of design piracy, particularly as it is one they will encounter in their future careers. The authors interviewed twenty-four apparel design students at a land-grant Midwestern University. Data was analyzed using theme analysis. Three themes developed including: 1) Expressions of cognitive dissonance in statements expressing enjoyment of the practice of design piracy as a consumer; yet disappointment when (and if) their own design work was copied. 2) Concerns regarding the definition of originality and the logistics of enforcing a plan against design piracy. 3) Differences of opinion regarding the prevalence of the practice, particularly if the students had industry experience or not. Advice for professors from students regarding piracy is included.

## **Keywords**

design, piracy, education, designers, students, fashion

## **Disciplines**

Business Law, Public Responsibility, and Ethics | Fashion Business

## **Comments**

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# Is Anything Ever New?

## Fashion Design Students' Perceptions of Piracy

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**Abstract** *Design piracy is the unauthorized copying of another designer or manufacturer's work. While controversial, it is an institutionalized practice in the apparel industry. The purpose of this study was to better understand student perceptions of design piracy, particularly as it is one they will encounter in their future careers. The authors interviewed twenty-four apparel design students at a land-grant Midwestern University. Data was analyzed using theme analysis. Three themes developed including: 1) Expressions of cognitive dissonance in statements expressing enjoyment of the practice of design piracy as a consumer; yet disappointment when (and if) their own design work was copied. 2) Concerns regarding the definition of originality and the logistics of enforcing a plan against design piracy. 3) Differences of opinion regarding the prevalence of the practice, particularly if the students had industry experience or not. Advice for professors from students regarding piracy is included.*

**Key words** *design, piracy, education, designers, students, fashion*

### Introduction

Design piracy is the unauthorized copying of another designer or manufacturer's work. Design piracy proliferates within the United States, in part, because intellectual property rights do not adequately protect clothing designs (Cox & Jenkins, 2005; Magdo, 2000). As early as 1910, *Women's Wear* (now *Women's Wear Daily*) described design piracy as the "copying evil." Since the early nineteen hundreds, over eighty bills were submitted to Congress to limit piracy. Based on their failure to gain legislative approval, industry groups such as the Fashion Originators' Guild of America (FOGA) were created during the 1930s, in part, to end the practice (Marcketti & Parsons, 2006). In recent years, The Council of Fashion Designers of America (CFDA) and the American Apparel and Footwear Association have taken up the fight to curb piracy. First introduced to the U.S. Congress in 2006 as the "Design Piracy Prohibition Act" and then reintroduced in 2010 as the "Innovative Design Protection and Piracy Prevention Act" these bills proposed to give fashion design short term protection (Ellis, 2012a). Some in the apparel industry believe that the practice of piracy "provide good value and style," while others suggest the possi-

bility that at least some apparel firms producing pirated apparel “fund organized crime and terrorism” (Wood, 2003, p.17). The speed of fashion change, and the apparel industry’s reliance on repetition of ideas at various price points makes design protection difficult (Marcketti, 2007).

Intellectual property protection includes copyright, trademarks, trade dress, and patents, (Garner & Keiser, 2012). While copyright protection may be obtained for two-dimensional fabric designs, knit, lace, and quilt patterns, the U.S. courts have consistently decided that copyright protection would create potential monopolies in the industry; thus, on the whole, copyright law affords little protection for clothing designs (Hartman, 1934). Trademarks protect words, names, symbols, and devices. In the United States, trademark laws provide protection against counterfeiters that create look-alike products passed off as the true original; they do not protect the design of the goods themselves (Ellis, 2012b). Trade dress refers to characteristics of the visual appearance of a product or its packaging that signify the source of the product to consumers. Trade dress cases have been very challenging for apparel companies to win, however (Ramey, 2000). Design patents protect intellectual property that falls between purely artistic works and inventions which rely entirely on function. For garments, only the appearance of the product is protected rather than the underlying construction techniques that create the look of the garment. Because clothing relies so heavily on ornament, design patents may seem to apply perfectly, but there are challenges to their use (Smith, 2013). The amount of time needed to determine patentability and the costs of obtaining a patent makes this form of intellectual property protection an impractical source for protecting clothing design, particularly for manufacturers that create hundreds of different styles in just one season (Casabona, 2006; Clark, 2011). Limitations to all forms of intellectual property include the fact that in order to use them one must actively monitor, and then sue or threaten to sue anyone who trespasses on your rights (Allen, 1944; Raustiala & Sprigman, 2006). There are also suggestions that protection provides unfair advantage to more established designers who have larger financial and legal resources at their disposal (Steigard, 2010).

Design piracy is controversial as there is debate regarding the benefits and detriments of the practice to the apparel industry. To some, piracy is a foregone conclusion. According to David Wolfe, Creative Director of the Doneger Group, a trend forecasting business, the industry is a “well balanced system which succeeds by integrating a complicated blend of original ideas, individual creativity, and copying” (Wolfe, 2006). Piracy, which often reinterprets costly high fashion into lower price brackets, provides consumers of all economic levels access to and participation in the fashion system. According to author Kenneth Hutchinson in *The Harvard Business Review* (1940, p. 197), “Those who complain about copying fail to realize that without the social process of imitation, the lucrative business of fashion could not exist.” In endorsement of piracy, fashion magazines such as *Marie Claire* regularly publish “splurge versus steal” comparisons of high-priced designer garments with the lower-priced, near identical knock-offs. These steals are presented as economically smart decisions for consumers. However, there are claims that piracy threatens the future of the health of the apparel industry in the United States (Ellis, 2010). Cementing the continuation of piracy, aspiring designers are often taught techniques for duplicating others’ works as a component of apparel construction courses and patternmaking textbooks (Glock &

Kunz, 2004; Hollen & Kundel, 1993; Hollahan, 2010).

Because design piracy is so institutionalized within the apparel industry, yet fraught with controversy, the authors sought to understand fashion design students' beliefs regarding design piracy. Students' perception of a practice, particularly one that is ethically ambiguous, provides opportunities for understanding the future of the industry (Duarte, 2008; Pasricha & Kadolph, 2009). Furthermore, understanding students' viewpoints may help inform the ways in which we educate these students regarding ethical decisions (Landgren & Pasricha, 2011; Lee, Halter, Johnson, & Ju, 2013). For example, Marcketti (2007) found that there was a positive, significant relationship between new thinking and initial attitude towards design piracy. This finding suggested that students' initial attitude toward design piracy impacted whether new thinking occurred after participation in a constructive controversy pedagogical exercise.

Research questions that guided the present study included:

As consumers, what are apparel design students' perceptions of design piracy?

As designers, what are apparel design students' perceptions of design piracy?

What advice do apparel design students have for professors regarding teaching design piracy?

### ***Method***

To better understand student perceptions of design piracy in their consumption and apparel design work, the authors interviewed twenty-four apparel design students at a land-grant Midwestern university. The students were identified by an academic advisor in the program as high-performing junior ( $n=9$ ), senior ( $n=9$ ), or graduate standing students ( $n=6$ ) with an identified concentration in apparel design (Table 1). The students were contacted via email and asked to participate in the study. Participating students were provided with a \$5 gift card to the local coffee shop. The interviews were conducted in person by a graduate research associate (second author) and undergraduate intern (third author) so that the interviewees did not feel pressure to give the "right answer." The study received university Institutional Review Board exemption status.

**Table 1.**  
Description of Participants.

Pseudonym	Classification
Allison	Senior
Aubrey	Junior
Brenda	Senior
Catherine	Junior
Cassie	Junior
David	Graduate Student
Elise	Junior

Faye	Graduate Student
Gabby	Junior
Hailey	Senior
Jocelyn	Senior
Kristine	Senior
Lois	Graduate Student
Melinda	Junior
Nancy	Senior
Natalie	Graduate Student
Neil	Graduate Student
Peter	Junior
Reagan	Senior
Samantha	Junior
Sheila	Senior
Tori	Graduate Student
Violet	Senior
Willow	Junior

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The interview protocol included 20 questions developed by the authors, and divided into three sections: demographics and knowledge (i.e., how did you decide to major in fashion design; what is design piracy?); consumer information (i.e., have you ever purchased a garment knowing it was a pirated copy of an original design? what did you think about doing this?); and designer information (i.e., do you want your work to be pirated? have you ever been tempted to copy someone else's work?). The interview was pilot-tested with a student (responses not included in the results section) with interview questions modified for clarity. Length of interviews ranged from 20 minutes to over one hour, with an average of 35 minutes per interview. All informants answered each of the 20 questions.

All interviews were audio-taped, transcribed, and then analyzed by the first author using theme analysis. In theme analysis, themes that emerged from the interviews were pieced together to form a comprehensive picture of the collective experiences of the apparel design students. According to Leininger (1985, p. 60) themes are identified by "bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone." The authors decided to stop data collection once data analysis revealed saturation in which concepts became redundant, with concepts thoroughly explained and reiterated by the interview participants (Corbin & Strauss, 2008). The interviewees were given pseudonyms following interview transcription to protect their anonymity.

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## ***Results***

Three themes developed from analysis of the data: 1) Expressions of cognitive dissonance (or discomfort when simultaneously holding two or more conflicting beliefs, values, and ideas, Festinger, 1957) in statements expressing enjoyment of the practice of design piracy as a consumer; yet disappointment when (and if) their own design work was copied. 2) Concerns regarding the definition of originality and the logistics of enforcing a plan against design piracy since it would be difficult to determine at what point an original [if there was one] became a copy. 3) Differences of opinion regarding the prevalence of the practice, particularly if the students had industry experience or not. Advice for professors to give to students was also asked of the informants and is provided in the results section.

### ***Cognitive Dissonance***

According to Festinger (1957), cognitive dissonance explains the discomfort individuals feel when they hold two conflicting ideas at the same time. Nearly all of the interviewees stated happiness when they, as stated by junior Kristine, “scored a bargain” obtained through pirated merchandise. However, when asked how they felt as designers about piracy, most of the respondents stated they would be upset if their own work was pirated. Consistent with the cognitive dissonance theory, once participants expressed these beliefs, they sometimes felt uneasy with their responses.

Hailey, a senior, related the story of design piracy while shopping in a local mall.

This summer I went to the mall and I was just looking for some basic tops and stuff and I went in Charlotte Russe and Vanity and they both had very similar styles, it was that peplum trend, like a shirt and then it had that little thing that juts out at the waist, and there were two shirts at both of them (laughing) almost identical. The same color, the same mint green...they both looked very similar, the same idea. I was thinking more as a consumer rather than thinking about okay, ‘what if this was my work?’ ...but as a consumer I was thinking like, ‘Oh, I guess this must be the trend right now. I’m seeing a lot of it so people must like it.’ You know, that’s what I was thinking as a consumer but as a designer if I was selling in one of the stores I would be frustrated.

Hailey later relayed a story about purchasing pirated shoes at Target. She bought a pair of flats with a gold emblem and only later realized the pair was a pirated version of designer Tory Burch’s signature ballet flats. She stated: “It just made me think ‘wow this isn’t a very creative idea anymore.’ It made me feel negative about my purchase. I was thinking this was a really new great idea and it turned out it was just a copy of something else. It really lessened the value to me of the cheaper product.” In these statements, Hailey held multiple sentiments regarding piracy.

Peter, a junior, stated that he would rather buy the “original,” but had purchased pirated merchan-

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dise because “the real deal was too expensive.” Later in the interview when asked if he had ever experienced design piracy of his own work, Peter replied: “Someone else took the exact same idea and her project and my project looked so similar...I was just like, angry because that’s like, my idea, that’s my job...how could you, just take it and make it yourself?” When asked if he had ever been tempted to copy another person’s work, Peter replied, “of course” but that “it’s not right to do because it’s stealing someone’s idea.” This ambivalence regarding the practice: happiness as a consumer, yet disappointment, and even anger if their own work was copied, was continuously repeated by the interviewees.

Aubrey, a junior, stated:

In the price ranges I like to stay in? I like it [piracy]. In the market I shop in, it’s not a problem, it’s almost a solution. Because then I can afford the ‘hot’ items. But when I get into the industry and if I work for a company that sets those trends, then it probably would upset me because they are taking ideas and stealing business.

She then discussed how when shopping online if she saw something cheaper or more expensive than her purchase she would be “either really excited that you got a good deal or mad at yourself that you didn’t look harder.”

Graduate student Neil, who entered academia from several years in the designing world, stated numerous instances in which his work was copied. Neil talked about seeing his un-credited work on the Internet and stated frustration with the practice:

It sucks but you can’t really do anything about it. You just keep doing good work and don’t let people see your best work. You don’t get too upset when your designs that you’re not too crazy about get used, but it’s just dishonest, pure dishonesty. It’s a lie. It’s stealing. I personally would never do it, have never done it.

Despite his assertions, Neil later stated that, “I’ve copied stuff when I purchased a new bedding set I wanted to make matching curtains so I copied their embroidery pattern. I could have bought curtains to match but I didn’t have the extra money so I just made them. So I guess I have done it.” In this example it is clear that Neil does not approve of his own design work being copied. However, in his personal life he has engaged in design piracy, claiming that because he was not personally profiting the practice was acceptable. This excuse, when applied to current copyright laws regulating the piracy of music and films, is invalid, however, as even if one does not make a profit, there may be criminal liability (Copyright, piracy, and file sharing, 2013).

To summarize the concept of cognitive dissonance, Tara, a graduate student stated: “As a consumer, design piracy is not a problem. I think it is maybe a good thing because I have more choices to buy. Bust as a designer, it is very difficult and harmful.”

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There was only one clear exception to the cognitive dissonance belief statements. Allison stated: My mother wanted me to knock off a wedding dress instead of buying it. And I got very angry with her. She wanted me to go home and create the \$3,400 dress, pattern it and sew it all by myself and I was just like, 1) No, I'm not doing that and spending the time to do that and 2) How would I feel if someone did that and took a piece I designed and made it themselves so they wouldn't have to pay for it. I just really don't feel good doing that.

Allison also stated that she dressed very "basically" and often bought at second-hand merchants so she doubted her typical outfit of jeans, t-shirts, and sweaters would be copies of other products.

### ***Logistical Concerns***

Design piracy has continued, and thrived, arguably, in part, because of the logistical concerns of 1) what constitutes an original, adaptation, or copy; and 2) how to regulate original or copied merchandise (Hemphill & Suk, 2013). Students, even if they stated design piracy should not be allowed to continue, struggled with, as Allison stated, "Is anything ever new?" Students routinely mentioned the cyclical nature of the fashion industry as a reason why design piracy enforcement would be impossible. Violet, a junior, stated: "One thing that is so great about the fashion industry is that trends repeat themselves, so there's a very fine line and it may be very difficult [to protect fashion]." Similarly, Cassie, a junior, contended: "Everyone obviously looks on current trends but I feel like it's kind of hard to completely change something; especially older historical garments."

Majoring in fashion design means that students have an interest in fashion, trends, and inspiration. Brenda related the story of how she conducted trend research and then designed a garment based on her research. She stated, "Then the next season I see similar things in the stores and I'm like 'I designed something exactly like that.' I found that trend." This illustration highlights how challenging it is to regulate design piracy, particularly as some trends seem to be the zeitgeist or "in the air." Natalie, a graduate student, reinforced this idea, when she said: "Piracy is unavoidable in the apparel industry because everyone copies and learns from each other, particularly once something turns into a trend."

Although most of the students stated design protection would be nearly impossible, many designers discussed the ways in which they protected their own work from being copied. Neil commented that he "adds touches into some of my designs that other people may not notice, but I'll notice." Prior to posting images to the Internet, Allison, a senior, watermarked and placed a signature in lighter opacity on all of her work.

Unfortunately, most of the students discussed hiding their work from others based on a prior experience in which their work was copied by a fellow student.

Hailey told the following story:

In one of my line development classes you had a target market and you developed a line and a brand for them, and the way I presented it was kind of unique. On my board, the

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mannequins stayed the same but the style slowly shifted. Someone else saw me working on my board and did the exact same thing and it really bugged me because that's unique. That's not something out on the Internet. It's specific to me. Someone took my idea.

When asked by the interviewer, "Did that experience make you think how to prevent the copying of your work?" Hailey replied: "Yeah, I remember I just didn't work on my project in class anymore. And you just don't talk about what your ideas are anymore. You just kind of wait until the end and then wow everybody with your product." Since the design process often feeds on input and reiterations of ideas, it was disappointing to hear how many students hid their work for fear of piracy. Students also mentioned working with hard-to-recreate digital prints and difficult construction or surface-design techniques to avoid their work being copied.

### *Prevalence of the Practice*

The majority of students interviewed had at least minimal experience in the apparel industry. Not surprisingly, those students with more extensive internship experience or employment in the industry were far more knowledgeable about the practice than those students with little to industry experience.

Graduate students Valerie and Neil stated the prevalence of design piracy in the apparel industry was one reason influencing their decision to return to academia. Valerie stated in industry:

Everything's rushed. We don't have time to create new things or like, if you are very creative maybe your pattern maker cannot do it. So, you have no choice, you have to copy. Even if you don't want to copy, your boss does. He purchases something from another brand and tells you: just change the button, change the trim, just copy. That's one of the reasons I left the industry.

For Neil, while working in New York City: "I was doing spec packets that were identical in size, shape, color, pattern, fabric, everything, to items bought at a high scale home store. It paid the best, and had the best office, and the best sample sales, but I wasn't challenged there, it was a boring job." They both ultimately left the industry, in favor of education related careers.

For other students, the process of piracy within their industry experiences was quite similar. Natalie, a graduate student told the story of at her internship: "First off they go shopping and they buy like hundreds of clothes. And then they put a rack (gesturing right in front of us) and I just copy exactly, all the same lines everything. I just copy it in Illustrator and then they return all the products a couple weeks later." Willow, a junior, stated: "One of my jobs as an intern was to go online, I was given three specific websites, and I was supposed to take those images and put them in Photoshop and try different colors with them. So that...was my job." These experiences provided first-hand engagement with the piracy practice.

In contrast, Catherine, a junior, with no industry experience, presented a limited understanding of

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the prevalence of piracy. She stated:

Hopefully I'll be working for more of a higher end company. You hear about cases all the time when people talk about some designer suing some guy who is selling rip-offs but that is probably in the lower end departments. I haven't really experienced it, it's not a major concern for me...and I wouldn't ever like, do it. I'm sure that if some piracy [of my work] happened I would let them know that it was illegal and what you can do instead...be inspired but not...copy...

This limited understanding of the practice of piracy was reiterated by Peter. When asked by the interviewer if piracy would play a role in his future career he stated: "No, and if someone copies I would tell them it's really wrong to do."

#### **Advice to Professors**

Most students stated generalities when asked what advice they would give to students about piracy if they were the professor. Sheila, a senior, stated "students need to take the essence of an artist or designer's idea but not take the exact shape, form, and construction, and make it their own, own it." Gabby, a senior, stated: "take an idea or shape from someone but rework it into your own plan and aesthetic." Aubrey suggested while it is easy to copy, she would inform students "it's not going to help you grow at all:" her stated purpose for getting an education.

Graduate students offered more concrete suggestions of ways to instruct students regarding the piracy practice. David suggested students modify their designs so that they are "communicating your point of view as a designer and not someone else's." To do this, professors should provide evidence of historic references, enough diversity of techniques for students to draw inspiration from, and then encouragement and steps to "brand" and "put their stamp on the product."

Valerie, a graduate student, had an even more nuanced perspective of what to inform undergraduate students. According to Valerie:

For freshman, you have to knock off other people's work because you don't know how to design and how to sew. But for a junior or senior, you have to be creative. If they want to go to industry, however, I want to share my experience because I don't want them to be disappointed. Before I became a designer I imagined I can create beautiful things and then go to the store and realize it's my work. But when I found a job as a designer I realized that's a dream. Just a dream. In industry, you pirate someone every day.

Valerie's perspective underscores the complexity of the design piracy topic and the dilemma of what and how to teach the practice to students. This complexity was highlighted by Allison when she stated frustration with the conflicting messages she received from professors.

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They always say 'don't' but at the same time we've got the knock off project so I feel like it's a very mixed message. And at the same time I feel like our major is geared toward big corporate designers rather than small boutique or runway designers. So, you go into it with this mindset of 'well, you're going to be knocking off anyways'. So I don't know...I feel very conflicted about it through our major because we aren't allowed to do it for senior line or anything but... I feel like all the professors just assume we will be, in the next five years, knocking off garments, yet they still expect us to be original.

This statement reflects numerous participants' beliefs that while it is possible to design without knocking off another designer, in reality, if you work for a large fashion corporation, you can expect it to happen all the time as companies try to keep up with the latest trends.

#### **Discussion and Conclusions**

Based on analysis of the data, three themes emerged: 1) cognitive dissonance regarding design piracy: most students expressed positive feelings as consumers, yet negative thoughts from the designer perspective; 2) The respondents expressed logistical concerns regarding the practice; how would an original, adaptation, and copy be discerned and by whom; 3) Knowledge and prevalence of the practice depended largely on students' exposure and experience in the apparel industry. Perhaps mirroring the complexity of the subject, students, for the most part, suggested educators inform students "to be honest" and not copy other students' work; but most also suggested the practice was inevitable in their future design-related careers.

While the design piracy practice may be a foregone conclusion, it is clear that educators need to discuss the practice of design piracy with their students. Most of the students for this study said professors inform them "do not copy" but do not discuss the pros and cons of the practice. Student Brenda found this surprising, particularly since: "every business class I have ever taken they talk about ethics in every chapter and every one of the classes. I feel like piracy should be talked about in a design related class as well." Indeed, in addition to design courses, the practice of piracy could be discussed in dress history courses as it pertains to industry-specific attempts to regulate the practice and merchandising and product development courses as it pertains to forecasting. Underscoring the lack of discussion, Faye, a graduate student said: "They [the professors] don't tell us it's wrong ethically they tell us it's wrong creatively."

Perhaps, an enhanced discussion of the ethical components of piracy would help students better understand the practice before they enter the industry and not feel "disappointed" as did graduate student Valerie at the prevalence of piracy. Past studies have reported on various strategies to assist students in thinking about ethics in the fashion industry. The results of a constructive controversy activity in which students research and debate positions from a pro and con position indicated gains in new thinking regarding design piracy and a positive learning environment (Marcketti, 2007). The use of problem-based learning, in which students were challenged to develop ethical fashions from design development through

final fashion garment in collaboration with industry groups resulted in both industry-specific knowledge and enhanced communication skills (Orzada & Cobb, 2011). The website “Labour Behind the Label” has additional resources for teaching ethics to fashion students.

This study was limited to students from one large, Midwestern land-grant university. To account for possible geographic and industry involvement variances, students from across the United States, particularly New York City and Los Angeles, enrolled in private, fashion-focused institutes, could be interviewed. The present study sought to understand student perceptions of the practice, design faculty members could also be interviewed to better understand teaching practices regarding design piracy.

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