Escola das Artes da Universidade Católica Portuguesa

Mestrado em Gestão de Indústrias Criativas

The Impact of Copyright and the Creative Industries: Analysis, Strategic Use of Policy, and Education within Commercial Design

MSc Management for the Creative Industries, 2014

Caroline M. Cavanaugh

Supervisor: Prof. Ricardo Morais

Co-Supervisor: Prof. Alexandra Fonseca

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Dedication

I would like to dedicate this work to all of my creative peers to whom I have the utmost respect. I only hope that with this study of copyright from the perspective of a creative professional, light may be shed into the current situation of intellectual property rights and the education thereof within the creative community. As both a commercial and fine artist, I felt it an incredibly pertinent topic to be addressed.

This dedication would not be complete without mentioning my family, friends, colleagues, supervisors and mentors of whom, with their continuing support, have kept me motivated and positive throughout the research and writing of this dissertation.

Caroline Cavanaugh

Acknowledgements

Acknowledgment is especially due to the Copyright Society of the United States of America to which much of my research has been discovered, as well as the Volunteer Lawyers for the Arts for its tireless work in arts advocacy. These are two organizations that I am proud to be an active member of.

I would like to also express my gratitude to all the people of Universidade Catolica Portuguesa (UCP) that were directly involved with this work, or which have contributed to its success. Special mention must be given to Mr. Austin Kenneth Lee, Attorney, NY/PA Bars, for proofreading.

Caroline Cavanaugh

Summary

Intellectual property policy and surface design have been closely linked since the beginning of mass manufacturing and the commercialization of the earliest protectable applied art – printed textiles. This paper humbly attempts to explore the history of both and the undeniable impact on the current state of copyright law that it has had. Furthermore, the author suggests how the individual creator or organization can strategically protect itself within the framework of existing policy, as well as the importance of increasing ones own education on the subject of maintaining and exploiting ones own intellectual property.

Here it is theorized, that much of the cause of both infringement and missed opportunities for fear of infringement, has to do with a general misunderstanding of intellectual property law within the creative professional community. It is felt that by advancing education of the topic specific to its industry needs, those who are designing or creating said products would be more proactive in prevention.

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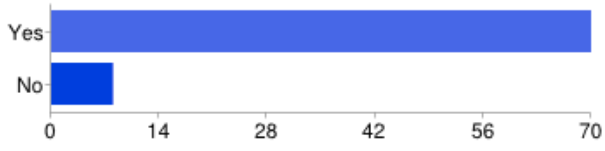
Tables

TABLE I **Survey data collected by author, original form may be viewed in Appendix C.*

'Intellectual Property, Education, and the Creative Industries' Survey Results

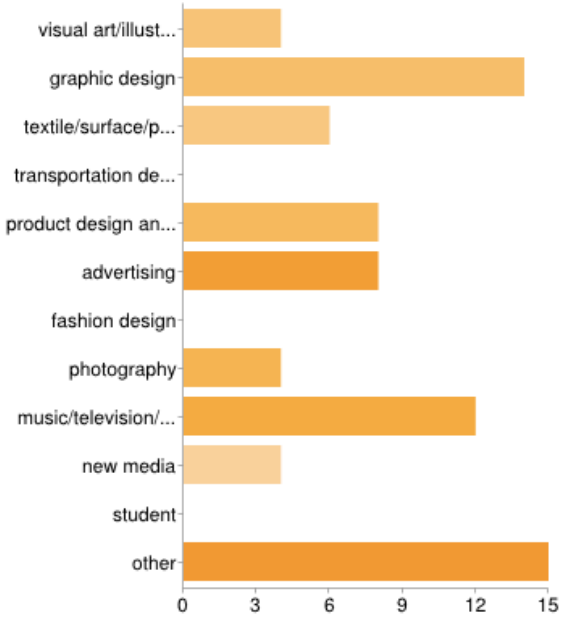
1. Do you work in the creative industries?



Yes	**70**	90%
No	**8**	10%

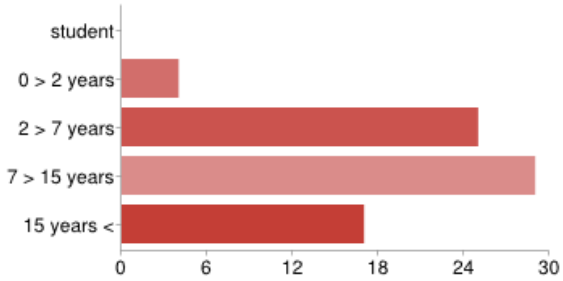
People may select more than one checkbox, so percentages may add up to more than 100%.

2. If yes, what discipline do you work in?



visual art/illustration	**4**	5%
graphic design	**14**	18%
textile/surface/pattern design	**6**	8%
transportation design	**0**	0%
product design and/or development	**8**	10%
advertising	**8**	10%
fashion design	**0**	0%
photography	**4**	5%
music/television/film	**12**	15%
new media	**4**	5%
student	**0**	0%
other	**15**	19%

3. How many years of professional experience do you have?



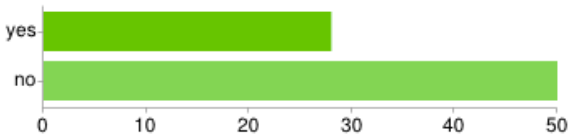
student	**0**	0%
0 > 2 years	**4**	5%
2 > 7 years	**25**	32%
7 > 15 years	**29**	37%
15 years <	**17**	22%

Intellectual Property, Education, and the Creative Industries' Survey Results

4. How would you rate your knowledge of copyright, trademark, trade dress, design patent and/or patent knowledge or other legal issues pertaining to your industry?

1 -	little to no knowledge	**9**	12%
2		**11**	14%
3		**11**	14%
4		**19**	24%
5		**16**	21%
6		**10**	13%
7 -	advanced	**2**	3%

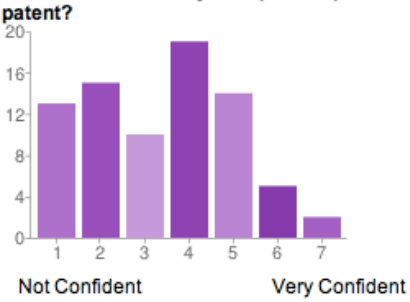
5. Have you had a formal education on the topic of intellectual property or legal issues in regard to your industry?



yes	**28**	36%
no	**50**	64%

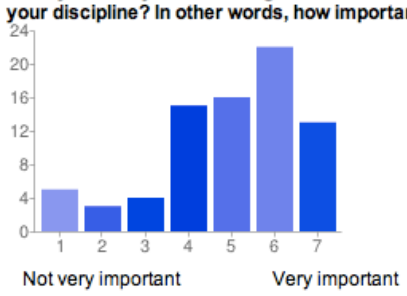
People may select more than one checkbox, so percentages may add up to more than 100%.

6. How confident are you to put into practice your knowledge of copyright, trademark, trade dress, design patent or patent?



1 -	Not Confident	**13**	17%
2		**15**	19%
3		**10**	13%
4		**19**	24%
5		**14**	18%
6		**5**	6%
7 -	Very Confident	**2**	3%

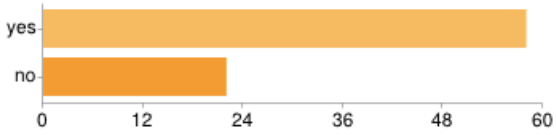
7. Do you wish your knowledge were more extensive on the topic of intellectual property or other legal issues specific to your discipline? In other words, how important is this topic to you and your work?



1 -	Not very important	**5**	6%
2		**3**	4%
3		**4**	5%
4		**15**	19%
5		**16**	21%
6		**22**	28%
7 -	Very important	**13**	17%

Intellectual Property, Education, and the Creative Industries' Survey Results

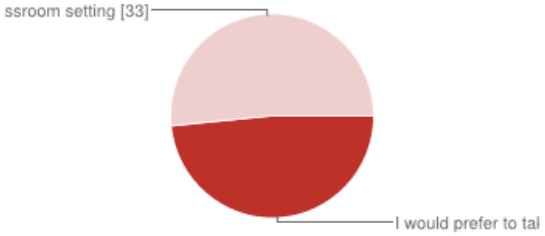
8. Would you have any interest in attending a workshop or course focused on these issues, either sponsored by your company, local community center or university?



yes	**58**	74%
no	**22**	28%

People may select more than one checkbox, so percentages may add up to more than 100%.

If yes, would you prefer an online platform or to attend in person?



I would prefer to take the workshop/course online	**31**	40%
I would prefer a traditional classroom setting	**33**	42%

TABLE II **Survey data collected by the College Art Association[1]. Newly formatted to show relevant information in relation to authors own survey/topic.*

Comparable Data from College Art Association (CAA) Issues Report to Authors Survey	Survey Results Conducted by The CAA
Number of Participants	avg. 2800
% of arts professionals with little to no knowledge of copyright (as a result have abandoned opportunities in their field)	33% ***(Comparable to the 33% found in Author's Survey)***
Use of Copyrighted Works	37.3%
Payment of Licensing Fees	Rarely-Never 82.9% Frequently-Occasionally 17.1%
Permissions Practices by Artists	Secure 6.6% Sometimes 13.4% No Permission 15.1% No Third Party Use 64.8%
Importance of Asserting Copyright	Very-Fairly Important 80.7% Not Important 19.3%
Copyright Education of Artists	Informal or No Education 70.4% ***(Comparable to the 64% of respondents in the authors survey)*** Formal Education 29.4% ***(Comparable to the 36% of respondents in the authors survey)***

[1] [1] Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

Glossary

Key Words

Intellectual Property, Copyright, Design Rights, Commercial Design, Surface Design, Printed Textile Design, Pattern (also referred to as a repeatable motif design), Education

Legal Definitions:

Common Law: A type of legal system, often synonymous with "English common law," which is the system of England and Wales in the UK, and is also in force in approximately 80 countries formerly part of or influenced by the former British Empire. The foundation of English common law is "legal precedent" - referred to as stare decisions meaning, "to stand by things decided."[2] The American legal system is a derivative of the English Common Law system.

For purposes of this paper, it is felt important to distinguish that the United States legal system is of *Common Law* origin and not of the Civil Legal System which governs much of continental Europe.

The common law constitutes the basis of the legal systems of: England and Wales and Northern Ireland in the UK, Ireland, federal law in the United States and the law of individual U.S. states (except Louisiana), federal law throughout Canada and the law of the individual provinces and territories (except Quebec), Australia (both federal and individual states), Kenya, New Zealand, South Africa, India, Myanmar, Malaysia, Bangladesh, Brunei, Pakistan, Singapore, Hong Kong, Antigua and Barbuda, Barbados, Bahamas, Belize, Dominica, Grenada, Jamaica, St Vincent and the Granadines, Saint Kitts and Nevis, Trinidad and Tobago, and many other generally English-speaking countries or Commonwealth countries (except the UK's Scotland, which is bijuridicial, and Malta). [3]

Copyright (US Definition): Copyright is a form of protection provided by U.S. law to authors of “original works of authorship,” including “pictorial, graphic, and sculptural works.” The owner of copyright in a work has the exclusive right to make copies, prepare derivative works, sell or distribute copies, and display the work publicly. Anyone else wishing to use the work in these ways must have the permission of the author or someone who has derived rights through the author. [4] Copyright terms for works created after 2002 are; 70 years after death of the author, and for corporate authorship, 95 years after publication or 120 years from creation

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[2] United States Government, Central Intelligence Agency (CIA). (2014). *World Factbook*. n.d. https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html.

[3] United States Government, Central Intelligence Agency (CIA). (2014). *World Factbook*. n.d. https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html.

[4] United States Copyright Office. (2013). *Circular 40, Copyright Registration for Pictorial, Graphic, and Sculptural Works*. 40.0613. P. 1, 2, 3.

(whichever expires first). There are various terms for works which were created prior to 2002, unpublished works, foreign works, orphan works and works in the public domain.[5]

A work is automatically protected by copyright when it is created, that is, "fixed" in a copy or phono-record for the first time. Neither registration in the Copyright Office nor publication is required for copyright protection. There are, however, certain advantages to registration, including establishment of a public record of the copyright claim and the ability to receive statutory damages, should one bring a claim to court.[6]

Copyright in relation to pattern and surface design [7]*:* Copyright protection is available for a work that contains sufficient originality and expressive elements. A pattern, for example, can be protected by copyright if it is; 1) independently created, and 2) possesses a spark or minimal degree of creativity, even if parts of the pattern (circles, squares, etc.) existed previously.

Copyrights can give pattern owners protection for things that may not otherwise have protection under other Industrial Property Rights. Unlike trademarks, copyrights do not depend on use. Copyrights can even extend outside of the U.S., as many countries recognize and offer protection to foreign copyrights under certain conditions through treaties and conventions such as the Berne Convention.

Additionally, a copyright can cover instances where the copied pattern appears on many different types of product, so long as they don't compete with products in the same category. Further explained, if a print is licensed to a company for use on window drapery, it may also be licensed to a company whom produces fashion products as these are non competing consumer categories. Finally, the copyright application process is inexpensive and usually non contentious, unlike the United States Patent and Trademark Office (USPTO) trademark registration process.

Trademark: The purpose of a trademark is to identify the particular source of goods or services. A trademark can be a word, symbol, design, or even color (TIFFANY blue, for example). In the United States, trademark rights are created by use of the mark, not registration. One may register one's trademark prior to usage but this is sometimes discouraged dependent on the scope of the business.

Trademark in relation to pattern design: Patterns that are not registered by copyright, but which serve as trademarks, may be protected under federal law which prohibits false representations, false descriptions, and false designations of origin in the sale of goods and services. They are also protected under common law in all states, and most states have laws

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[5] Further information regarding terms of copyright may be found here: https://copyright.cornell.edu/resources/publicdomain.cfm

[6] United States Copyright Office. (2013). *Circular 40, Copyright Registration for Pictorial, Graphic, and Sculptural Works*. 40.0613. P. 1, 2, 3.

[7] Lieberstein, M. A., Garris, K. G. (2013). Should the Pattern Be the "Brand"?: A Potential Revenue Generating Bonanza. *Kilpatric Townsend Stockton LLP.* SRR Guest Article, p. 2, 3, 4, 5.

governing deceptive trade practices, fair business practices, or false advertising statutes that prohibit unfair competition, including trademark infringement.' An example of a well known pattern which is protected under trademark law is the classic Burberry plaid.[8]

Trade Dress: Trade dress consists of all the various elements that are used to promote a product or service. For a product, trade dress may be the packaging, the attendant displays, and even the configuration of the product itself. For a service, it may be the decor or environment in which a service is provided—for example, the distinctive decor of the Starbucks cafe chain.

As with other types of trademarks, trade dress can be registered with the U.S. Patent and Trademark Office (USPTO) and receive protection from the federal courts.
To receive protection, both of the following must be true:

a. The trade dress must be inherently distinctive, unless it has acquired secondary meaning.
b. The junior use must cause a likelihood of consumer confusion.[9]

Secondary Meaning (In relation to Trademark and Trade Dress): When a trademark that is not distinctive acquires a meaning within the marketplace such that consumers associate it with the product or service.

Industrial Design Rights [7]*:* an intellectual property right that protects the visual design of objects which are not purely utilitarian. In a lay or general sense, it refers to the creative activity of achieving a formal or ornamental appearance for mass-produced items that, within the available cost constraints, satisfies both the need for the item to appeal visually to potential consumers, and the need for the item to perform its intended function efficiently. In a legal sense, industrial design refers to the rights pursuant to a registration system, to protect the original ornamental and non-functional features of an industrial article or product that result from design activity.

Design Rights in Relation to Copyright: Objects qualifying for protection under the law of industrial designs might equally well receive protection from the law of copyright. Thus, industrial designs law has relations both with copyright law and with industrial property law. Supposing a particular design embodies elements or features which are protected both by the copyright law and the industrial design law, may a creator of an industrial design claim cumulatively or simultaneously the protection of both laws? If this question is answered affirmatively, protection is cumulative. Cumulation of protection means that the design is protected simultaneously and concurrently by both laws in the sense that the creator can invoke the protection of either or both, the copyright law or the industrial design law, as

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[8] Lieberstein, M. A., Garris, K. G. (2013). Should the Pattern Be the "Brand"?: A Potential Revenue Generating Bonanza. *Kilpatric Townsend Stockton LLP.* SRR Guest Article, p. 2.

[9] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

he chooses. It also means that if he has failed to obtain the protection of the industrial design law by failing to register his design, he can claim the protection of copyright law, which is available without compliance with any formality. Finally, it means that after the term of protection of the registered design expires, the creator may still have the protection of the copyright law. (2.670, USPTO)

The difference between protection by the copyright law and protection by the industrial design law: under the industrial design law, protection is lost unless the industrial design is registered by the applicant before publication or public use anywhere, or at least in the country where protection is claimed. Copyright in most countries subsists without formalities. Registration is not necessary. Industrial design protection endures generally for a short period of three, five, ten or fifteen years. Copyright endures in most countries for the life of the author and fifty years after his death. (2.673, USPTO)[10]

Design Patent: An intellectual property right granted by the Government of the United States of America to an inventor "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for a limited time in exchange for public disclosure of the invention when the patent is granted. [11]

License: art licensing entails any creative image that is contractually licensed to appear on any manufactured product or entertainment vehicle.

Licensor: the creative image makers, the holders of Intellectual Property (IP), or licensable images.

Licensee: the company, product manufacturer, the entertainment provider, and the middle man between the licensor and the retailer who provides the public with the IP on either products or entertainment content.

License Agreement: An agreement made between two parties as "an authorization (by the licensor) to use the licensed material (by the licensee)." A license under intellectual property commonly has several components beyond the grant itself, including a term, territory, renewal provisions, and other limitations deemed vital to the licensor. Crafting license agreements (contracts) to address these issues carefully is important in protecting the pattern, and ensuring a long and valuable revenue stream for years to come.[12]

[10,] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

[11] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

[12] Lieberstein, M. A., Garris, K. G. (2013). Should the Pattern Be the "Brand"?: A Potential Revenue Generating Bonanza. *Kilpatric Townsend Stockton LLP.* SRR Guest Article, p. 5.

Design Related Definitions:

Pattern (otherwise known as a 'repeatable motif design' or simply, 'repeat'): A repeated decorative design, classic examples include the stripe, polka dot, plaid or herringbone.
There exists four families of pattern:
1. Floral,
2. Geometric,
3. Conversational,
4. Ethnic.

Motif: the most important factor in any design, determines the family to which the pattern belongs. This is its basic image, for example: a rose, a square, a clown, a paisley, etc.

Layout: describes the arrangement of the motif–whether it is spaced widely or closely on the ground, in neat order or apparently at random..

Color: designs are so classified when a particular dye–indigo, madder, or Turkey red, say– is the strongest element

Textile Printing Techniques: for example, ombré or warp printing, reproducing a pattern while imposing a certain visual style on it.

1 Introduction

Today's society is a global society – although most intellectual property (IP) laws are written country specific, creating a jurisdiction issue for intellectual property rights (IPRs) holders, there are strategic means to protect ones IP on both national and international levels. In order to do this however, one must understand the origins of policy in order to fully appreciate and maximize profits using today's legal framework. Which, in the authors opinion, is the most important finding of all – that the education of the legal history and policies in relation to the creative professional should be further explored.

1.1 Presentation of Work Proposal

Initially, it was the author's attempt to find a strategy that could work completely -almost as a theorem- to protect ones intellectual property. Through countless hours of research however, it is clear that there is not one cure to a systemic problem. The very nature of case law and art are always evolving, progressing and trying to fulfill the needs of the market - to discover one full proof way of protection simply does not exist. It was to this end, that the author had to explore all of the protective options available on an international, national and company/ individual level. Through these options, one may choose the course to which they want (or do not want) to have full control over their work. This, the author finds, is where the true beauty of IP policy lies – through both its flexibility and multitude of options.

Historically, commercial pattern design has been closely linked to the textile industry, one that has a unique and rich history of its own. As we are fully aware of today, patterns are not limited to textiles but can be found gracing the surfaces of many different types of materials and products. For purposes of this paper and to focus the research, the author has decided to narrow this discussion to the printed textile industry as there is more historical and current documentation in relation to its impact on policy than any other industry related to surface design. It is implied that by honing in on commercial surface design and textiles specifically, an understanding of its IPRs and methods of protection may be interpolated within all industries related to which it is linked.

The current state of copyright law can be used strategically and concurrently with other forms of IP laws in order to protect not only domestically but internationally the owners intellectual property. It should be noted that policy is a means to not only control or protect the usage of ones works of art, but also the means to exploit said works for profit (or not, depending on their intentions of use). This is a generalization, however many creative professionals are unaware of which IPRs are appropriate to their work specifically.

What the reader can deduce from the research topic, *'The Impact of Copyright and the Creative Industries: Analysis, Strategic Use of Policy, and Education within Commercial Design'* is by obtaining a thorough knowledge and usage of ones domestic policy, the artist or organization can fully maximize and find multiple opportunities in their protectable works of art. This requires an interdisciplinary approach to design education, one that includes intellectual property as a core requirement. It is deduced by the author that between the desire

of professionals in the creative sector to learn more on the subject, and the availability of the information; infringements can be prevented, and protection may be better utilized.

Objectives and Limitations of the Research Project

The main limitation of this research project is the lack of infringement cases that make it to Federal Court in the United States. What is widely accepted and known throughout the industry is that the majority of these cases are settled outside of the court system by way of cease and desist or monetary compensation agreed upon by both parties[13].

Additionally, the data which has been gathered by participants within the creative industries can be skewed for a multitude of reasons that generally plague the forum of market research sampling (location, institutional, and chain-referral, respectively).

1.2 Structure – Organization and Topics Covered in this Report

This paper begins by exploring the historical nature of both textile design and IP policy. The development of each plays a vital role in the overall understanding of our current political, commercial and legal situation. Repeatable motif designs or patterns are protectable under United States copyright law. The legal system of which the United States operates under is that of Common Law, a derivative of the English Common Law that will be further discussed in Section 2.1. Appendix A shows a timeline which both the textile industry and IPRs are shown in parallel to one another, which allows the reader to see visually how the commercialization of goods directly (or indirectly) then effected policy change.

As the paper continues into present day -and as both topics of commercial design and IPRs are extremely complex- it is the United States intellectual property policies -rather than the multiple countries that are analyzed in Section 2.1- that are defined later in Section 2.2. It continues by discussing various IPRs and strategies are utilized singularly or in combination. Part of these strategies include copyright, trademark, trade dress, design patents, licensing, cease and desist, border control, online monitoring and other practical means of protection.

An explanation of these various means of rights protection is exemplified by three main themes: globalization, domestic policy and the education of the creative professional. With this breakdown, it is clear how impactful intellectual property policy is to commercial design – from a global perspective all the way to the practicing individual.

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[13] Grochala, K. (2014). Intellectual Property Law: Failing the Fashion Industry and Why the "Innovative Design Protection Act" Should be Passed. *Seton Hall Law*, Student Scholarship. Paper 133, p. 1-26. http://erepository.law.shu.edu/student_scholarship/133.

Section 3 discusses the methodology for which the research was conducted, both by analyzing scientific articles as well as through survey results.

Continuing into Section 4.1, the focus is then placed on the education of IPRs within the creative industries as well as other industries for which the knowledge would aid. It addresses this through various case studies and scientific articles. The author also examines design education generally, which leads to the more current and future need of the legal/ethical training of the creative community.

In Section 4.2 survey results are examined, both from the author as well as from a recent survey given by the College Art Association. They are compared as a means to show parallels between the findings from Institutional Sampling (CAA Results) and Chain-Referral Sampling (author results). This is important due to the difficult nature of finding accurate market results regarding creative professionals (further explanation of various sampling techniques are found in Section 3).

Concluding remarks on the entire research project from historical findings to the need of legal training of the creative community may be found in Section 5.

Schedule and description of the different steps

Specific time planning pertains only to the survey that was conducted. It was placed online for one week in order to gather the results that are shared in Section 4.2.

Attending lectures, additional courses, and gathering research has been ongoing. It should be noted that the author is an active member of the Copyright Society of the United States, Volunteer Lawyers for the Arts, and the Surface Design Association which aids in remaining current on all related topics.

Pertinent lectures and courses attended for additional research are as follows:

8.26.13 Volunteer Lawyer for the Arts: Copyright Basics Workshop

9.20.13 Copyright Society of the USA-NY Chapter: Beyond Berne Borders: Cross-Border Harmonization (or Not) of Digital Music Rights

10.24.13 Copyright Society of the USA-NY Chapter: Content Aggregation: Fair Use or a Use Too Far?

11.4 .13 Copyright Society of the USA: The Forty-third Annual Donald C. Brace Memorial Lecture, Shira Perlmutter

11.20.13 Copyright Society of the USA-NY Chapter: U.S. Copyright Office's Report on Copyright Small Claims: Big Thoughts about Small Claims

1.14.14 Copyright Society of the USA-NY Chapter: Copyright and the Changing Political Environment in Washington: A View from the Inside

4.08.14 Volunteer Lawyers for the Arts: Intellectual Property & Counterfeit Goods Lecture

4.24.14 Copyright Society of the USA-NY Chapter: The Essentials of Valuation of Copyrights in Transactions and Litigation

7.16.14-7.17.14 Volunteer Lawyers for the Arts: MediateART Mediation and Negotiation Certified Training

2 State of the Art Review

It can be seen that there exists three main points to be addressed; the first being that consistently throughout history, globalization and industry practice have advanced faster than policy.[14] This is somewhat of a trend we will see in Section 2.1 which analyzes the historical implications of policy and printed textile design (*see also,* Appendix A).

The second being that there are many ways in which to protect ones IPRs while fitting within todays legal framework. This requires education, time and remaining constantly on top of current events (and court cases) both domestically and abroad. In the realm of fashion, there exist very minimal design rights protection over articles of clothing in the United States[15] – which is argued as a positive point by way of pushing innovation and creating products that are salable per season. Copyright and trademark laws are part of the few available means for fashion designers to protect at least the motifs that grace the surface of their designs.

Furthermore, these notions of globalization and domestic policy lead into the third major point in question; how does the global economy and domestic policy affect the individual or organization? Logically one can deduce that the individual is clearly affected by the laws in which he or she is governed. However, it is also believed that current state of infringement -or the fears thereof- are due to minimal knowledge within the creative community on the subject.

2.1 Historical Review of the Impact of Copyright and the Applied Arts

To begin, one must understand the history of the development of copyright and industrial design rights policy in parallel to textile innovations. As art, design, and law are ever changing, it is important to understand the root of their commonalities. Firstly, it is extremely important to realize that the idea of copying is not at all new within the industry, nor did it begin with the advent of the internet. It reaches as far back as the beginning of trade between Egypt and Persia, where the "borrowing" or "copying" of stylistic elements began in our collective psyches and is well documented. Policies which advocate the protection of the expression of ideas did not arrive until over one thousand years later. This is an impressive concept to grasp.

Additionally, the industrial revolution which sparked the valuation of intellectual property is a beautiful point of history to understand in its context and importance. This is the period in which artists -though mostly manufacture and business reaped the benefits- could profit on the intangible. It is at this point in history that the law made it possible to receive continuous income upon art which had been created prior and commercially placed onto products.

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[14] As exemplified regarding the creative industries during the Copyright Society of the United States. *Big Thoughts About Small Claims*. Lecture. New York, NY. November 20, 2013.

[15] Grochala, K. (2014). Intellectual Property Law: Failing the Fashion Industry and Why the "Innovative Design Protection Act" Should be Passed. *Seton Hall Law*, Student Scholarship. Paper 133, p. 1-26. http://erepository.law.shu.edu/student_scholarship/133.

However, through study of the education of commercial designers of the time, one can see that it is very few creatives who took advantage of said rights. Interestingly, this continues among many artists and designers today.

Globalization: Early Trading Until the Time of the Industrial Revolution and Its Influence on Domestic Policy in Common Law England

The international aspect of the textile trade in its relation to Western Europe and the United States predates the development of commercially printed textiles by hundreds of years and is recorded in history as the following:

'It goes almost without saying that textile design reflects trading history. Egyptian textiles from the sixth and seventh centuries AD employ motifs borrowed from Persian silks. Many oriental silks are mentioned in medieval European church inventories, and Italian silks of the fourteenth century were clearly influenced by the motifs on Chinese silks. The influence of the textile trade with India is evident throughout Indonesia, whilst the impact of Indian textiles on European textile design after the setting up of the various East India Companies is reflected in the many Indo-European motifs which have become part of the textile designers's repertory in the West.'[16] (Harris, 1993)

This clearly shows how international trade has had an incredible influence on the stylistic 'borrowing' between cultures upon commercialized goods – well before legal ownership of said artwork and policies were ever in place. It was only natural that through exploration and trade, cultural influence would find its way onto products between the trading nations and partners. Oftentimes, explorers would return to their home country with goods from another country and the public would find the motifs, colors and materials exciting, new and exotic – further driving demand for said fabrics. An example of this is seen during the 1600s -upon returning from India with beautifully decorated and brightly colored fabrics- there was suddenly a huge demand for this style in England, France and the Netherlands. Because this style became a major trend, it sparked the development of manufactured 'indiennes' and a patent was granted to William Sherwin of England in 1676 for, 'the only true way of East Indian Printing.'[17] This clearly shows that upon stylistic popularity, domestic producers would then try to emulate designs from trading partners in order to capitalize on these trends.

The original intent of a patent was not to recognize the individual creator per se, but moreso to benefit those to whom assisted in the development of British manufacturing.[18] 'Historically, the emergence of protection for industrial designs is intimately connected with the growth of industrialization and methods of mass production. In the United Kingdom, the first law giving protection to industrial designs [in relation to pattern] was the Designing and Printing of Linens, Cotton, Calicoes and Muslins Act of 1787, which gave protection for a period of two

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[16] Harris, J. (1993). *Textiles, 5000 Years: an international history and illustrated survey.* New York, NY: Harry N. Abrams, Incorporated.

[17] Bowrey, K. (1997). Art, Craft, Good Taste and Manufacturing : The Development of Intellectual Property Laws. *Law in Context*, Volume 15, Number 1, p. 78-104.

[18] Bowrey, K. (1997). Art, Craft, Good Taste and Manufacturing : The Development of Intellectual Property Laws. *Law in Context*, Volume 15, Number 1, p. 78-104.

months to "every person who shall invent, design and print, or cause to be invented, designed and printed, and become the Proprietor of any new and original pattern or patterns for printing Linens, Cottons, Calicoes or Muslins."[19] This can be seen as a direct response to invention of the rotary printer in 1783, which allowed for an increase of production comparable to that of 40 hand block workers and of printing between 5,000 and 20,000 meters of cloth a day.[20]

The Invention of Rotary Printing During the Industrial Revolution and the Valuation of Surface Design As a Result of Copyright Policy

Between the 18th and 19th centuries it is shown that the great increase in output due to rotary printing had also enhanced the demand for designs, thus giving manufacturers a reason to lobby for design protection over their patterns in England. Kilburn, an employer of Charles O'Brien (a prominent calico designer at this time), had 'gave great service to the trade by securing copyright on designs for three months.'[21] It was this sort of pressure by manufacturers -and influential designers alike- to secure their ownership over their intellectual property. *This is the important point in time when surface designs gained a comprehensive commercial value.*

Parallel to this, just across the English Channel in France, *The Law on Literary and Artistic Property of 1793* was applied in certain cases to the protection of designs. The growth of the textile industries, in particular, soon led to the enactment in 1806 – a special law dealing with industrial designs. The *Law of March 18, 1806*, established a special council (*Conciliation Board or Conseil de Prud'hommes*) in Lyon, responsible for receiving deposits of designs and for regulating disputes between manufacturers concerning patterns. While initially for businesses based in Lyon, particularly those manufacturing silk, the system of deposit and regulation by special council was extended to other cities. It was then amended through judicial interpretation, to two-and three-dimensional designs in all areas of industrial activity.[22]

Within the scope of Western Europe and the United States, many of the policy changes were affected by mass production and the international aspects of the industry. There exist historical accounts of manufacturers from England copying designs from other domestic manufacturers, as well as from France[23] – and employees of manufacturers from the United States who would travel to England and France, bringing home 'inspiration' from both countries and making exact copies to reproduce in America[24] (19th Century, post

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[19] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

[20] Harris, J. (1993). *Textiles, 5000 Years: an international history and illustrated survey.* New York, NY: Harry N. Abrams, Incorporated.

[21] The Victoria & Albert Museum. (1992). *The Victoria & Albert Museum's Textile Collection, Design for Printed Textiles in England from 1750 to 1850.* London, United Kingdom: Victoria & Albert Museum.

[22] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

[23] The Victoria & Albert Museum. (1992). *The Victoria & Albert Museum's Textile Collection, Design for Printed Textiles in England from 1750 to 1850.* London, United Kingdom: Victoria & Albert Museum.

[24] Bowrey, K. (1997). Art, Craft, Good Taste and Manufacturing : The Development of Intellectual Property Laws. *Law in Context*, Volume 15, Number 1, p. 78-104.

Revolutionary War). Those whose work was copied quickly understood that policy was important to protect profits for their successful designs.

During this time in the United States, the textile industry was totally controlled by Britain until the end of the Revolutionary War, which lasted until 1783. Up until this point there was very little domestic textile manufacture. It was after the country gained independence from Great Britain, that a strong nationalistic pride emerged and manufacturing began to take shape in America[25].

How Globalization Effected Domestic Copyright and Design Rights Policy from the 19th Century Until Today

During the year 1831 in America, there was a revision to the *Copyright Act of 1790* -modeled after the *Statute of Anne (1710*)- that extended the term of copyright to 28 years with the possibility of a 14 year extension in order to give US Authors the same protection as those in Europe. Just eight years later, England passed the *Copyright and Design Act of 1839* considerably increasing the protection given to textiles by extending the law into fabrics composed of wool, silk or hair and other mixed fabrics.

When the Design Act of 1842 was instated, it extended legal protection to "any new and original design whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modeling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined."[26]

Design was thereby recognized as a fundamental element of all production and manufacture.

Forty years after this, the Berne Convention was the result of international recognition in regards to copyright policy that began to emerge in Europe in the latter part of the 19th century. It was created to promote the development of international norms within Europe in regards to copyright protection and to replace the need for separate registration in each country. The very important treaty has been revised five times since its inception in 1886.

It was not until 1988 that the United States became a Berne signatory which allowed greater protection for proprietors, new copyright relationships with twenty-four countries, and the elimination of a mandatory copyright notice in order to employ protection. *This cooperation with sovereign nations indicates the necessity of international relations in copyright, due to globalization which had been shaping itself since the first recorded trading of goods. Counter to this however, the U.S. only complied with its minimum requirements. The rights and*

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[25] Peck, A. (2013). *Interwoven Globe*. New York, NY: Metropolitan Museum of Art.

[26] United States Patent and Trademark Organization (USPTO), *Evolution of Design Protection*; 2.641., 2.642.

responsibilities relating to copyright matters are now to be resolved under domestic law, not under the provisions of the international treaty.[27] *(Mencken, 1997)*

The Surface Designer: Acceptance and Education Before and After the Industrial Revolution

An interesting point to note that prior to the Industrial Revolution in England, it is recorded that surface designers were generally not as respected as their contemporaries in France. [28] The artists whom created the repeat patterns and adornments for fabric were thought of only as carrying out the wishes of the mills and drapers by directing the artwork to be made. This could be in response to the general feeling at the time in England that printed textiles were seen as less valuable due to their extensively mass produced nature. As a historical account taken from an 18th century guide to apprenticeship stated [of printed calico design]: "This requires a fruitful fancy, to invent new Whims to please the changeable Foible of the Ladies" ... "It requires no great Taste in Painting, nor the Principles of Drawing... and if a Boy is found to have any scrawling Disposition, he may be bound as soon as he has learned to read and write".[29]

It may or may not also be related to a less (comparatively between the two countries) comprehensive legal protection of the artwork. It should be noted that during this time period in France, the artists who were creating patterns were generally held in a high regard. The designers would work directly in all points of business from trends suggested by retailers to the final manufacture of goods (in a technical capacity to ensure envisioned production of the prints) to the venues in which the product would be sold. It is the authors theory that due to the earlier established harmonious nature of the industry, French designs during this time period were also the highest regarded in the Western textile trade[30], often copied and inspiring print trends in other countries.

During the industrial revolution and coincidentally after the *Linens Act of 1787* was put into law – in stark contrast to the earlier, rather demeaning account, Charles O'Brien is documented as stating: *"a good Pattern Drawer... possesses a fertility of invention.. He should likewise have a knowledge of the business in every stage of its process, and... how every intended effect may be obtained."*[31]

Historically throughout Europe, artists studied via apprenticeships rather than formal institutions. During the 18th century, schools for design began to emerge, however they did not integrate an education of business, ethical/legal foundations, strategy, or production.

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[27] Mencken, J. (1997). A Design for the Copyright of Fashion. *Boston College Intellectual Property & Technology.* F. 121201.

[28] Bowrey, K. (1997). Art, Craft, Good Taste and Manufacturing : The Development of Intellectual Property Laws. *Law in Context*, Volume 15, Number 1, p. 78-104.

[29] The Victoria & Albert Museum. (1992). *The Victoria & Albert Museum's Textile Collection, Design for Printed Textiles in England from 1750 to 1850.* London, United Kingdom: Victoria & Albert Museum.

[30] Bowrey, K. (1997). Art, Craft, Good Taste and Manufacturing : The Development of Intellectual Property Laws. *Law in Context*, Volume 15, Number 1, p. 78-104.

[31] The Victoria & Albert Museum. (1992). *The Victoria & Albert Museum's Textile Collection, Design for Printed Textiles in England from 1750 to 1850.* London, United Kingdom: Victoria & Albert Museum.

In response to the high level that were achieved in France, England created schools of design to help hone the skill of the designers. However, all other aspects of business were left to the artisans to learn while working professionally.

Education of the Commercial Designer: Rethinking since the Bauhaus

In the 20th century, the original Bauhaus was formed and had a radically different approach to design education. It can be described as a unifying course structure between the areas of art, technology and science. This is in stark contrast to the schools that came before it. The schools of art that had preceded the Bauhaus polarized each subject, meaning rather than integrating science and technology into the core curriculum, it considered each to be taught separately, if at all.

Maholy-Nagy, one of the founders of the Bauhaus, moved to the United States in 1937. Basing the ideals of the original school, he erected the New Bauhaus in Chicago. One of its core professors, philosopher Charles Morris considered the act of designing to be more of a semiosis where 'he drew a parallel between syntactic, the semantic, and the pragmatic dimensions of a sign... and, the artistic, the scientific, and the technological dimensions of design.'[32] Unfortunately to this day, Morris' ambitions have not been satisfactorily achieved.

**Note: As of the 20th century until now, it is felt by the author that America had become its own independent industrialized nation -with its own set of complex laws- so it is United States copyright and design rights policy that will be further analyzed in this paper. However, in Appendix A, one may find nuances and parallels between notable European and American policies until today.*

2.2 Innovation and Trends in Copyright and Commercial Design

In relation to commercialized product and design, todays global society is more complex than ever before in its long aforementioned past. With the advent of the internet -which allows merchants to have a worldwide customer base and an increased access to foreign manufacturers- the importation and exportation of goods is at an all time high. The speed at which one can take images online or in-store with a mobile device and place them onto products can be completed in a matter of days. Regulation of said goods is absolutely imperative for the larger companies, as much as for the independent artist who may find their designs on another's manufactured product for sale.

How may one remedy such a situation when the producer is across the world and the products are on the shelves or available for purchase on the web? The measures are available to take in order to protect ones company or personal artwork from infringement. At least by preventing counterfeit goods from being sold in ones own country where the offense took place. There

[32] Findeli, A. (2001). Rethinking Design Education for the 21st Century: Theoretical, Methodological, and Ethical Discussion. *Massachusetts Institute of Technology, Design Issues.* Volume 17, Number 1, Winter 2001, p. 5-17.

are also strategic means in which one can prevent the copying of artwork *before* the products are found in the market.

Globalization and its function in the manufacture and availability of textiles and fashion product

The U.S. Chamber of Commerce estimates that intellectual property violations cost the U.S. economy $250 billion a year, with the apparel industry losing over $12 billion a year, $2 billion which is attributable to Chinese counterfeiting and piracy.[33] The global leader in exporting apparel is China, who has a near monopoly in the textile industry at 74% of the market.[34] One can deduce that where there is clear dominance within an industry, it is imperative to be aware of the IPRs in relation to it.

Textile design is a global endeavor. To continue with the theme of textiles and surface treatment design, it is overwhelming in the amount a product moves around the globe from the raw fiber material that is initially sourced until the final product.

During the process of the modern day manufacture of textiles, it is most often that the raw material which makes up the fabric will originate in one country and then be sent to another country to be cleaned, treated, and made into special fibers that are prepared to become thread. The thread is then put into another mechanical weaving process to create the woven gray goods that the surface designs are then printed upon (generally in yet, another country). The color dyes which are specific formulas and dye types, to the clarity of the pattern, is carefully analyzed and designed (again, usually in another nation). The designer must create the artwork and prepare the technical files to be sent to factories that are usually half way across the world - which requires good communication, patience, and trust that the factory will not use or sell the artwork to any of their other customers. Upon the goods being printed and finished, the fabric may be sent to another country for product assembly. By product assembly, the author means products that are made from the printed or woven textiles, such as clothing, home furnishings, etc.

Once the products are constructed, samples for approval are received in the nation where the product development originated. This takes time to perfect the product in order to find a balance between the designers initial vision and budget constraints. Once the artwork, quality and final product sample is approved, the total quantities of product are made and then scheduled for shipment.

Described above is a typical production cycle that involves normally -at minimum- five different countries. One can assume that the amount of logistics, planning, design and development is a rigorous process, often times overwhelming. One can also assume that efforts and attempts to protect ones intellectual property in a process which stretches so extensively around the globe can be daunting to the copyright holder; either the creator or designer firm.

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[33] Morrisey, J. A. (2006). USTR Outlines Plans to Attack Piracy. *Textile World.* Textiles Industries Media Group.

34 Gray. M. (2007). Copyright Legislation and American Textile Competitiveness. Retrieved Requests for Safeguards on Apparel from China. (2005). *The American Journal of International Law*, Volume 99, Number 1, p. 257-258.

The other main issue that arises globally is the availability of goods online. The customer can simply use a search engine to seek what they desire, purchase it and have the product within days. The consumer is not at fault for purchasing counterfeit products and generally is unaware of the damage that it causes legitimate companies and the economy as a whole.

This is also true within the art departments of design companies. Art, design and products that are viewable online can be quickly copied by way of the internet. The information is so easily accessible that, without a cursory education of copyright and trademark law, one can easily find themselves or their company in a lot of legal trouble due to infringement or counterfeit claims. It is in this way that both designer and company must become aware of how to control the market use of their creative expression.

Counter arguments to copyright protection in the creative industries and fashion

Counter arguments to claims that copyright and other design rights are instated to promote creativity and science, as well as allow the creator the right to profit and control the use of said works, have risen in recent years. There is even proof of growth in certain sectors that have been founded upon open source, or that have little to no copyright protection.

It has recently been published that in the United States, low IP industries such as food (est. $1000 Billion), automobiles (est. $900 Billion), fashion (est. $225 Billion) and furniture (est. $100 Billion) have much higher profit margins than high IP industries which include film (est. $50 Billion), books (est. $20 Billion) and music (est. $10 Billion), respectively.[35] Looking at the numbers alone, one can see that the industries with the most comprehensive copyright protection have much smaller margins of profit in comparison to their unprotected counterparts.

Although these numbers may at first raise an eye brow, it is clear after a minute of analysis they are somewhat irrelevant. First of all, what is stated as the lowest IP protected industries are generally necessities of the average American's -and let's be frank, the average human- lifestyle. Food, will of course be the highest earner as people need to eat in order to survive. Let's assume that food can be seen as less of a luxury than buying the newest Harry Potter novel.

The second highest earner from this statistic grouping, the automobile, also has a logical answer. Most citizens of the United States depend heavily upon automobiles in order to go to work – as public transportation is not a standard means in most towns and cities. Due to this, it is easy to acknowledge that there is a lot of money spent on automobiles because they are a higher priced product as well as a necessity for most Americans to commute to work. Additionally, the automobile industry is extremely IP heavy in utility patent law, just not in copyright law – so the use of it in a copyright statistic is a little misleading.

The fashion industry -although recognized in the media as an industry that wants increased protection- is said to be built totally off of current versions of past trends. The U.S. legal system purposely did not give protection to the construction of fashion designs because they

[35] Blakely, J. Does Copying In Fashion Keep It Fresh?. TedTalk (audio). June 2014.

are considered utilitarian objects. This is largely due to the court not wanting to grant total rights control over a sleeve, cuff or neckline to any one designer. This is deemed far too much control over an object that is legally considered more useful in covering the human body than purely an expressive decoration.

One positive aspect of the non-protection of fashion is that designers have been forced to create more original products because of counterfeit operations and copiers. Part of their preventative methods are through product innovation which pushes the envelope – sometimes in the form of a design using a material that is extremely difficult to knock off cheaply. On such example is the Stewart Weitzman Bowden Wedge heel. It is the way that the shoe is engineered in combination with the use of a specific metal that the heel would crack in half if it were made with any other material.[36]

Additionally, the U.S. legal system does in fact allow copyright on fashion and home products for patterns, artwork and any other non-functional item that is used on its surface. The only stipulation is that it must be separate from the utilitarian aspects of the garment or product design. This is one way that fashion and home designers can strategically use IPRs in the prevention of design copies – through surface treatments that are relatively easy to register and protect under United States law.

Globalization and how to combat counterfeit goods and infringement from abroad

Every country operates in its own cultural understanding of intellectual property as well as its own set of laws. Intellectual property rights are not always easy to enforce from abroad, but there are strategies that may be implemented from ones home country.

Companies that experience large scale counterfeiting of their product, sometimes employ whole teams of legal staff which seek out counterfeit operations both abroad and domestically. Generally the staff implements notice-and-takedown programs of online auction sites, as well as various social media platforms (Facebook, Pinterest, Instagram, Tumblr, Twitter, etc) as a means to stop the sale of merchandise and misuse of intellectual property. As a part of an in-house online enforcement program, a company may collect documents and information for civil litigation or trademark matters globally. It may also work with third party service providers and outside counsel to assist with anti-counterfeiting investigations.

Most recently, a long standing international counterfeit case between the online marketplace of the American based company, Ebay Inc., and European luxury goods conglomerate Louis Vuitton Moët Hennessy (LVMH), have settled a dispute over the sale of counterfeit luxury goods that had been repeatedly happening via sellers on the Ebay website. Since 2008, the companies have been working towards the current agreement that both Ebay Inc and LVMH will be active partners in the fight against counterfeit goods. In addition, upon a court of appeals in France, it is decided that Ebay must pay LVMH 5.7 million euros in damages (this is much lower than the initial ordered amount of 500 million euros). The official court decision contributes to the credibility of both Ebay (by consumer trust in brand and service

[36] Blakely, J. Does Copying In Fashion Keep It Fresh?. TedTalk (audio). June 2014.

legitimacy) as well as LVMH (by quality control of luxury items) in their enforcement efforts.[37]

The manufacture of counterfeit goods can be dually stopped at the border of the country of origin. For smaller companies or individual designers who do not have either a team of legal staff or the budget to even consider such, there are a few steps that one may take to protect their work. As recommended by the European Commission funded project, the China IPR SME Helpdesk™ which provides free, practical advice in relation to Chinese intellectual property rights for European SMEs[38] (the same advice applies to American SMEs, as well), the first and absolute most important step is to: *register intellectual property rights within the authors home country.* There is little to no recourse in China and most other nations, without officially registering intellectual property within the country of origin.

Additionally, it is suggested that a business owner in the retail and commercial design industry should be vigilant in regularly checking b2b and b2c websites, as well as trade fairs that may attempt to sell infringing articles. If infringement is indeed identified, it is recommended to enforce ones rights. Generally speaking, factories abroad will be less apt to create counterfeit goods from a company with a reputation for being litigious.

If an individual or company does decide to move forward with litigation, it is extremely important that the correct offender is identified and the case carefully thought out. In order to bring a case in China to court, one must gather all available evidence. This can be *'in the form of a sample purchase with an official receipt. You should then instruct your lawyers to file an administrative action with the competent local AIC, at the same time as filing a civil action for trademark infringement.'*[39] Administrative actions are faster and less expensive than enforcing civil litigation. The recourse can be found in either the destruction of counterfeit goods or fines of up to three times the illegal profits earned. If the ruling is favorable, it may be used to move forward in a civil trademark case. It should be noted that administrative action does not necessarily prevent future infringements and the rights holder will not receive any compensation by way of statutory damages. In order to achieve either of these, one would have to go forward with civil litigation.

If counterfeit goods make it out of the country of origin, there are also ways to stop the product from entering into the United States. Through U.S. Customs and Border Protection, upon providing proof of copy, the border can refuse the offensive products to enter into the country, causing the counterfeit operation a lot of money in logistics and wasted product.

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[37] Geller, M. (2014 July). LVMH and eBay Settle Litigation Over Fake Goods. Reuters, July 17, 2014. http://www.reuters.com/article/2014/07/17/us-lvmh-ebay-settlement-idUSKBN0FM15G20140717

[38] As recommended by Own-It.org 'Intellectual Property Advice for the Creative Sector', a British organization that is operated through the London Institutes, the EU Commission China IPR SME Helpdesk offers 'free, expert advice on China IPR for your business', and is jointly implemented by DEVELOPMENT Solutions and the European Union Chamber of Commerce in China. There is an online portal at www.china-iprhelpdesk.eu and general email address question@china-iprhelpdesk.eu, which are answered within seven business days. ©2013

[39] the EU Commission China IPR SME Helpdesk offers 'free, expert advice on China IPR for your business', and is jointly implemented by DEVELOPMENT Solutions and the European Union Chamber of Commerce in China. www.china-iprhelpdesk.eu

A sole proprietor to medium sized company based in the United States may find it easier to keep affairs within domestic borders rather than fighting a dispute from abroad. It is important to officially register copyright in order to enforce their rights if there is any desire to receive statutory damages. If the copyright or trademark owner has registered their work, then they may notify intellectual property rights crimes first to the U.S. Customs and Border Protection (CBP) which provides seizure of pirated and counterfeit goods before it can enter the U.S. market place. Recording textile designs makes it easier for CBP officials to identify infringing goods[40] via the United States Department of Justice and the National Intellectual Property Rights Coordination Center.

If necessary, one may then consult their attorneys about filing a Section 337 with the United States International Trade Commission (USITC) for foreign infringement[41]. It is then the USITC who sends foreign copyright infringers a cease and desist order that will prevent and bar their products from being allowed entrance into the United States. This might be the most satisfying option for those who do not want to bring their dispute to court in a foreign country but also want to deter infringing or counterfeit products from entering their own. For intellectual property that has been compromised, compensation may not be received by way of statutory damages, but it will prevent damaging sales of those products in the American market.

In addition, a company must trust its manufacturers. Larger companies will often own the factory that produces their products so that design specifications and other details on the products do not leak outside of the production line. This is another way to help secure IPRs when product designs as well as surface treatments are in the hands of the producer. All too often manufacturers sell designs to other customers, or create excess goods to be sold in their own domestic market. If the company does not own the factory that they are working with, routine factory checks are helpful in preventing infringing or counterfeit goods from being made.

Domestic strategy to combat counterfeit goods and infringement

Domestically, it is argued that enforcing ones intellectual property rights can be seen as daunting, confusing or not a viable option economically to most creative professionals. In addition to this, domestic industrial design rights policy itself has not moved as fast as technology and industry[42] in regards to fashion or product design. On the topic of copyright, this misunderstanding and information within the creative community is often either provided by peers or the internet. It is also directly linked to what the author believes is an overall educational issue on the topic of intellectual property and its effects within specific creative

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[40] Office of Textiles and Apparel (OTEXA), http://www.web.ita.doc.gov, CBP website on IPR Enforcement, http://www.cbp.gov/sites/default/files/documents/ipr_guide.pdf

[41] Office of Textiles and Apparel (OTEXA), http://www.web.ita.doc.gov, United States International Trade Commission (USITC) has a trade remedy office (TRAO) that provides information to small businesses concerning the remedies and benefits available under U.S. trade laws.

[42] Copyright Society of the United States. *Donald Brace Memorial.* Lecture. New York, NY. November 4, 2013.

industries.

In the United States, copyright policy works relatively well for the protection of surface pattern designs and the applied arts. As it is defined, copyright prevents nonfunctional items from being copied. To show copyright infringement, the plaintiff must show the infringing item was copied from the original, and that the artistic expression must either be without substantial practical utility or be separable from the useful substrate.[43] It is an easy process to register works of creative expression through the copyright office website, or by post for more involved or bulky applications.

Once registered, it is easy to prove in a court of law who had created the artwork first, or if statutory damages would be awarded to the plaintiff. Statutory damages cannot be collected if the work is not registered, only actual damages can, ie. loss of profit. Pattern design applied to any surface has proved to have its litigious difficulties, however. Because a copyright infringement case is held in a Federal court of law, it is difficult for the smaller companies or independent artists to take an offender to court due to its cost and time. Due to this, many cases are then settled out of court – leaving the system without precedence. Further explained, current disputes can use previously recorded court cases to further provide support towards its own.

If a dispute does reach a court of law, often it is the "ordinary observer test" that will determine how the court will rule in an infringement case. This is a test by what would be considered the average consumer, viewing both the original and copied work, to then determine if one could be confused for the other without help or suggestion from anyone else.[44] Due to the sheer volume of pattern and artwork that exists, this is a market based determination of whether or not the original artist/company was indeed copied.

It must also be noted that if there exist different copyrightable elements within one garment or product, then all elements should be registered separately. It happens that artists and designers will think that by registering copyright of a design sketch, then all elements within that sketch are protected. However, this does not protect any or all of the elements within the illustration – just the illustration itself. Another urban legend that many have fallen prey to is the 'poor man's copyright'. This is where an author will mail him or herself their creation and the stamped postal date is thought of as 'proof' of when their expressions had been created. Unfortunately, this is a totally false assumption and would never hold up in a court of law. Extensive evidence of when the work of art is created will be necessary when filing suit, and again, without proper registration with the Copyright Office a plaintiff is granted no more than actual damages.

As briefly mentioned earlier in this section, a concern for many designers to medium sized companies in the United States, is that enforcing ones rights can be intimidating and

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[43] Hannibal, A. (speaker). (2014). *Intellectual Property and Counterfeit Goods.* Lecture. April 8, 2014

[44] Citation: 32 J. Copyright Soc'y U.S.A. 285 1984-1985.
In the case of *Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F. 2d 487, 489,124 U.S.P.Q. 154, 155 (2d Cir. 1960) (textile design). 'To sustain a claim of copyright infringement the claimant is required to demonstrate a substantial similarity between the copyrighted work and the alleged copy. This is a factual question and the appropriate test for determining whether substantial similarity is present in whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.'*

expensive. All copyright cases are held in a federal court of law. Currently, there are developments by the United States Copyright Office deemed the "Millennium Copyright Act"[45] which intends to establish a small claims court system specifically for copyright disputes. It will hear cases which would not exceed $15,000 in damages which is far more appealing in its risk aversion to pursue than the $150,000 maximum in damages plus attorney's fees[46] that the federal court may grant to either the plaintiff or defendant[47]. It may also be seen as more attractive for larger companies who are accused of copyright infringement, as the damages are comparatively small and the matters would be incidentally more discreet than when held at the federal level.

Contracts and Licensing

Legal contracts can make a big impact on an artist or companies livelihood. Diligence in maintaining legal documents or agreements gives the artist evidence to bring to court -or at least reach a settlement outside of- in the case of any wrong doing.

In the case of Greef Fabrics Inc v. Malden Mills Industries, Inc., where it was realized that within one salable fabric unit lays many copies of a registered artwork – it was decided by the court that the frequency of brand notices must be equal to the frequency of repetition of the artwork. In addition, the licensing agreement between both parties had become a central issue.[48] As described in the glossary of terms, the licensing agreement allows the creator to essentially sell the use exclusively or non-exclusively to one customer, in order to reproduce said work onto products for a mutually agreed amount of time and geographic location.

There are different types of contracts that can benefit the surface designer or organization. Most larger companies have a legal team which handles this, however licensing agreements are extremely beneficial for all levels of business, be it an independent commercial artist or or a huge corporation. Many arts professionals confide that they are too nervous to bring up the use of a contract, afraid that they may lose business by offending the potential customer. Another issue is that creative professionals do not realize that selling the rights to their work

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[45] Copyright Society of the United States. *Big Thoughts About Small Claims*. Lecture. New York, NY. November 20, 2013. *The Millennium Copyright Act proposal/report is available online: http://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf*

[46] Wilson, L. (2012). *The Pocket Legal Companion™ to Copyright: A User-Friendly Handbook for Protecting and Profiting from Copyrights.* New York, NY: Allworth Press. Pg. 98.

[47] Copyright Society of the United States. *Big Thoughts About Small Claims*. Lecture. New York, NY. November 20, 2013.

[48] Greeff Fabrics Inc. v. Malden Mills Industries, Inc., 412 F. Supp.160 (S.D.N.Y. April 13, 1976) (Canella, D.J.) Retrieved from Citation: 24. Copyright Society U.S.A. 186 1976-1977, pp. 186-187.

Two central issues: 'One, whether the prior infringer's Greeff copyright notice, affixed by a rubber stamp to hang tags on each bolt, satisfied the Act's requirement that notice be affixed to each "copy" of the work; and two, whether Greeff had "authorized" such copies.' Repeatable patterns that are then recreated commercially are interesting in that one salable unit can carry many 'copies' of the artwork. It was determined by the court that notices must be affixed in higher frequency than one time as the plaintiff had been doing. The second point was found also in favor of the defendant in that the authorization was clearly stated in the licensing agreement between both parties.

is not always necessary, or worse, they are pressured into selling. If a customer suggests this, a confidentiality agreement can be used along with a licensing agreement when anonymity or brand recognition is an issue.

Luckily, there exist arts law related organizations that help creatives with legal issues and drafting contracts. These organizations are often based in larger cities, however they may be reached by email or telephone for counsel.

Domestic Strategy: Trademark, Trade Dress and other Design Rights

In the realm of commercial product design, trademark and trade dress are also useful in protecting ones surface designs. If the print or artwork is a recognizable feature of the brand, this is a viable option. As an example, the widely recognized woven plaid by the classic British fashion house Burberry, is protected under United States Trademark law[49]. Most of the public will recognize a Burberry product just by the classic color and plaid that is used, which is what allows it to be considered a trademark.

Trade dress can be explained as simply as if a company uses a color on its product as a design decision. This can be seen in the recent case of Christian Louboutin v. Yves Saint Laurent (YSL). The company YSL was found to have infringed upon the products of Louboutin by copying the idea to color the sole of a style of shoe red. Even though the red sole of the Louboutin shoe had become so recognizable, the New York court initially refused Louboutin's request for fear that this would grant the company a monopoly over shoes painted red on the bottom. However upon appeal, the court found Louboutin to have a valid right to defend this as its trademark/trade dress. It is important to note that the legislation was not passed due to the color alone, but more as YSL had caused brand confusion by painting the soles of its shoes red.[50] Essentially, trademark and trade dress law is to prevent exactly this: brand confusion. The fashion and surface designer may use this concept to their advantage by combining elements of brand, brand image, pattern, or as shown in the case of Louboutin, the recognizable element of color on a specific area of a product.

To continue, the protection of a product design that industrial design rights entail are not as powerful as many companies would so desire. Design patents are reasonably easy to obtain but they can also be easily invalidated if someone contests the patent. Again, this is a hindrance to the smaller organization or individual designer as it is often economically unfeasible to enforce ones rights. It is for this reason that copyright, trademark and trade dress law, when used in a strategic combination, can offer more protection than a Design Patent[51]. It is yet another reason that brand and surface elements -patterns or other copyrightable

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[49] Lieberstein, M. A., Garris, K. G. (2013). Should the Pattern Be the "Brand"?: A Potential Revenue Generating Bonanza. *Kilpatric, Townsend, Stockton LLP.* SRR Guest Article, p. 2, 3, 4, 5.

[50] Laboutin v. YSL. Case, as referenced by Hannibal, A. (speaker). (2014). *Intellectual Property and Counterfeit Goods.* Lecture. April 8, 2014.

[51] To counter this however, one can reference Reed Krakoff, a Coach subsidiary, whom has several design patents for their products. One is for the 'Boxer' bag. NY District courts have sided with Reed Krakoff in several cases involving bags "inspired" by the Boxer, but were actually infringing. As referenced by Hannibal, A. (speaker). (2014). *Intellectual Property and Counterfeit Goods.* Lecture. April 8, 2014.

elements- are a more feasible and strategic way for protecting ones commercial artwork and products.

As touched upon earlier in this section, the realm of design patents and any other industrial design rights for fabric have seen little notable policy advancement in the American system for fashion designers. Many international fashion companies and the Council of Fashion Designers of America (CFDA) have been working towards changing the existing policies. The biggest effort began in 2006 as the proposed 'Innovative Design Protection Act'. It is promoted by the leaders of the fashion industry and is intended to *'finally level the playing field in the counterfeit goods and design infringement cases that have been exploding in recent years due to the ease at which individuals are able to steal designs.'*[52] The proposed IDPA was turned down by the 112th Congress for various reasons in 2013.

Domestic strategy continued: copyright infringement in the public eye, a thought on discretion

In a time where social media dominates the psyche of most Americans, the public opinion of a company or brand is extremely delicate. As an example, the public finds out that a company is willfully taking artwork from an individual, places the unattributed artwork onto products, and earns a profit off of said works. This is extremely damaging to that companies public reputation. The rate to which people 'share', 'like' or 'comment' on issues that spread on social media platforms is astounding.

There is currently a case of a relatively well known artist in Miami who had his work plagiarized by a massive fashion chain in the United States[53] – a company that went so far as to place his motif's on billboards, store signage, online, etc. This created an online media storm which 'share's of the story reaching over 100,000 on Facebook® alone. The story is especially damaging as the company has a target demographic of mid-teen to mid-twenty year olds, the generation that is extremely well versed in technology. This being the same technology that can alert them to the unethical business practices of their favorite fashion retailers.

As far as discretion is concerned, it should also be mentioned that there are alternatives to taking litigious action when pursuing an infringement or counterfeit dispute. Mediation is a way to settle disputes in an informal, confidential, neutral and collaborate environment[54]. This method is a way for two parties to come to a mutual, non-binding solution – unless a written agreement is signed at the end of the mediation. One may find recourse in many ways, not just monetary which is what is mandated by litigious action. It is allowed and often encouraged to find creative solutions such as for one party to seek damages by way of a

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[52] Grochala, K. (2014). Intellectual Property Law: Failing the Fashion Industry and Why the "Innovative Design Protection Act" Should be Passed. *Seton Hall Law*, Student Scholarship. Paper 133, p. 1-26. http://erepository.law.shu.edu/student_scholarship/133.

[53] Suarez De Jesus, C. (2014 July). Miami Artist AholSniffsGlue Sues American Eagle Outfitters for Intellectual Property Infringement. *Miami New Times*, http://blogs.miaminewtimes.com/cultist/2014/07/aholsniffsglue_vs_american_eagle_outfitters.

[54] Mediation of disputes or contract drafting specifically provided for the creative industries may be consulted by national organization, Volunteer Lawyers for the Arts, established 1969 (http://www.vlany.org).

public apology or promotion towards a future project. This is a good option for parties whom want to continue a professional relationship. This is possible when arriving to a mutually satisfactory agreement – without the stress, time and money that court requires. Various arts law organizations offer this at affordable rates for artists around the United States.

Another option available is arbitration, which is less contentious than litigation and more adversarial than mediation. It is confidential, formal, determines liability and it is binding for both parties. This can be less stressful and time consuming than taking ones dispute to a court of law, but more so than mediation sessions.

Education: an important strategy to combat counterfeit goods and infringement?

As it has been humbly attempted to explain throughout this paper that the designer is apart of a global system, to which each part is equally important in the success or failure of the final product. Through research, what the author has found to be prevalent within the creative community is a fundamental absence of knowledge regarding intellectual property and the rights that are adhered to the works[55].

Education of creative individuals as well as creative organizations is an absolute necessity in being able to exploit ones artwork for a profit without relinquishing ones IPRs. It appears that the importance of understanding policy that directly affects ones industry is not stressed enough in formal arts education or in the corporate realm.

Understandably, the task of creating original designs, an extensive production cycle, and all of the other elements that are involved in the commercial design business can make it feel totally overwhelming to also be expected to grasp the nuances of intellectual property. Even during the course of this research project, it took over a year to sift through a plethora of source material in order to communicate the information that has been written thus far.

It is understood by the author that a practicing attorney is the professional whom should handle these issues in extensive detail, as far as with specific disputes and cases. However, it is theorized here that the designer who acts in a preventative way by guarding themselves with useful knowledge, will put themselves to an advantage. In order to avoid law suits and other potential set backs, it is to secure their own livelihood as well as a means to protect the organization to which they are gainfully employed.

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[55] Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

3 Methodology

Introduction

The theory proposed by this paper is such: if the creative community employed a more comprehensive understanding of IPRs, then the industry would have a far less problem with infringement and potential gain of opportunities. The investigative research used to support the authors theory is reinforced by a mixed methodological approach.

Section 2.1 gives a historical overview of the notions and connections found between surface design and IP law. Section 2.2 explains various means of IP protection through three main themes; globalization, domestic policy, and the education of the creative professional. With this breakdown, it can be understood how impactful and interwoven intellectual property rights protection is within commercial design – from a global perspective all the way to the practicing individual. One can deduce from this section that the individual may protect their IPRs domestically and internationally by utilizing today's legal framework, as well as imparting product innovation and by taking preventative measures by online surveillance and other means. These three main streams of thought have been examined through literature, respected industry presentations, as well as scientific writing on its development throughout history and today on the topic.

The significance of explaining the relationship of the three streams of thought helps to realize that not only is the designer, industry, and global relationship systemic, but so to should the nature of education of the creative professional.

Due to the nature of the topic, this study draws upon the following type of information:

- literature review of scholarly writing, focusing upon artists, designers, education, copyright and intellectual property education
- Survey results from persons working within the creative industries, determining current knowledge of IPRs and more importantly *the desire* to gain further knowledge on the topic of IPRs as it pertains to their work *(data collected from survey results by the author as well as the 2014 College Art Association survey)*

Use of language

Up until now, this paper is primarily focused upon and interchangeably uses the terms *'commercial artist,' 'commercial designer,'* and *'surface designer.'* It is mainly due to the necessity of narrowing the broad topic of commercial artwork to that of surface design. This is in an effort to draw upon the history of surface/pattern design and its contribution to the development of copyright in the applied arts. Relevance is held today in that patterns and other applied arts continue to be widely used and commercialized.

The argument then opens up the discussion throughout the investigative study to focus upon the *commercially driven* creative industries. The term 'creative community' is also referring to all creative professionals, however implying mainly all of those whom earn a living upon the

sale, resale, license, or salary based on their creative output. This research is primarily for surface and commercial designers, however all creative professionals may benefit from its data and information.

Investigative Study

This investigative study is intended now to open up and broaden the topic of educating the creative professional on IPR topics. It is theorized by the author that an effort to positively affect and protect the designer and organization by knowledge enhancement, could be a way to help prevent infringement and other IPR related set backs. Moving forward into the research project in Section 4.1, scientific articles which express the need for industry specific IP education of professionals are discussed. Examples and quantitative data are given for both the creative and other various non legal industries.

It is felt necessary to show whether there is proof that furthering the education of the individual will have this systemic effect. A recent study issued by the Government of the UK shows direct correlations between individuals who have acquired higher education, with innovation and entrepreneurship upon society. Although the entire study is not IP specific, it is an important collection of data to which exemplifies how the educated individual makes a positive impact on society, as well as on the market. This supports the authors theory of systemic impact – which could be applied to the further education of the individual on the topic of IPRs and the impact it can then have on the creative industries (market) as a whole.

This is further shown in relation to an investigation of the impulse of creation and whether IPRs are in the psyche of the artist upon creating new or innovative works. This concept is expanded upon through a study conducted by Jessica Silbey, an attorney and scholar in the field of arts law. Her intention to focus *'... first on the early stages of the creative process and investigates the impulse to innovate, seeking to uncover its relationship, if any, to the creators' understanding of the ability or inability to protect (and possibly commercialize) their work.'*[56] An important study as generally it is shown that artists and inventors do not normally take IPRs into account when dreaming up new ideas. It also examines the artists ability to control their intellectual property or profit by it.

Diving deeper into the subject of industry specific IP training, the quantitative data gathered then focuses on statistics to give the reader an idea of IP related courses that, in comparison to other subjects, are offered in legal institutions. Furthermore, a study by Allman, Sinjela and Takagi (2008) involving approximately 20 universities throughout the world, identified the main constraints and challenges faced by academia today (specifically in regard to teaching concepts of Intellectual Property). This qualitative data set supports the theory that IP education is necessary in areas of study beyond legal institutions – it also shows that IPR education has its set backs and difficulties, which is shown through three common themes; i. difficulty in updating the programs, ii. lack of up-to-date teaching materials that address the emerging uses of intellectual property, iii. the need to strengthen curricula to make them

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[56] Silbey, J. (2010, October). Harvesting Intellectual Property: "Inspired Beginnings" and "Work Makes Work," Two Stages in the Creative Processes of Artists and Innovators. *Notre Dame Law Review*. Volume 86, Number 5. October, 2010, p. 2094, 2095, 2096, 2122, 2124, 2125, 2133.

suitable for an interdisciplinary approach. Each of these points is addressed in further detail within the section.

The subject of interdisciplinary study more specific to higher design education is then examined. It leads to the discussion Alain Findeli's theories, a scholar who focuses his research to design education, albeit not specific to arts legal education. Here his theories are explored and discussed in relation to adding ethical/legal training to the core curriculum of higher education for the arts. Findeli's in depth approach and knowledge of the history of design education lends a solid foundation for where the future of creative education should be projected.

From the research evaluation made throughout Section 4.1, deductions can be made that it is highly recommended for both higher and professional education to incorporate IP training as an interdisciplinary method.

Continuing into Section 4.2, survey results that have been gathered both by the author as well as through a survey published earlier this year by the College Art Association, offers insights into the level of pre-existing IPR understanding. It also sheds light onto the overall motivation of professionals working within the creative industries to become further educated on the topic. Published survey results comparing the College Art Association's (CAA) survey that was given earlier in 2014 are directly related to the authors own survey; which expresses both the need and desire of creative professionals to be educated on the topic of IPRs.

Considerations of discrete sampling; chain-referral sampling, institutional sampling

Although the author's survey was targeted towards creative industry professionals -which ended up spanning the globe by its respondents- it is understood that there are also set backs to this approach. Findings of discrete studies which help to balance census statistics by way of various sampling methods. Location sampling, is just as it sounds, are data collected from a very specific region or city. Institutional sampling, the method by which the CAA study was conducted, gives an example of 'the most common form of sampling in discrete artist studies'[57]. Chain referral sampling -which the author's work falls under- gathers data from respondents which are related by industry or personal connections. It is clear that one can find it difficult to consider these independent studies as a concrete representation of the creative industries as a whole. However, strong indicators can emerge when results are compared among studies with various methods.

Furthering this point of discrete studies and target group representation, 'researchers contact an initial "seed" and obtain a network of personal contacts from the seed, pursuing them as subjects... biases inherent in this method include nonrandom choice of initial subjects; masking (less cooperative subjects are under-represented); differentials in recruitment (some groups recruit more peers than others); differentials in network size (referrals occur through network links and groups with larger personal networks can be oversampled) and the tendency toward in-group recruitment and oversampling of those subjects (Heckathorn and

[57] Jeffri, J. (2004) Research on the Individual Artist: Seeking the Solitary Singer. *Research Center for Arts and Culture*. Volume 34, Number 1, p. 9, 10, 11.

Jeffri 2001, 309).[58]

This is a major consideration in that, because the survey of the author has been targeted specifically to creative professionals, it may or may not be seen as a positive aspect of the study. The survey allowed the participant to answer anonymously online, from wherever they may be located. It was a purposeful decision in the hope of acquiring honest responses.

However, it can be seen that the participants are limited to the friends-of-friends-of-colleagues chain-referral sample approach, and may not represent the creative community as a whole. Although the following data may not be seen as totally representative, it may serve as an indication of intent and desire of the creative community to further their education on the topic of intellectual property.

The CAA study was conducted via institutional sampling which relies upon institutions to draw the sample. Directories, lists, and union or organization memberships, provide the basis for this sampling method. As Jeffri laments, 'not all artists join institutions or appear on official lists. In fact, it might be said that certain kinds of artists who function on a more grassroots level are likely to be under-represented or not to be identified at all, biasing these studies towards "joiners."

Although both of these sampling methods have their set backs, strong connections can be made between both sets of data (although the author's survey had only 78 respondents in comparison to the the CAA survey which employed 2800 respondents, respectively). Percentages yielded close to the same results in main data points, especially when discovering the professional opinions of the individual participants IPR knowledge base.

The process of creating the survey

The author tried to be as logical as possible in finding through questions whether or not the respondents would be interested in learning about intellectual property rights as they pertain to their industry.

The survey was created on the Google Docs platform. The most impressive aspect of working with Google Docs Form creator is the summary of results that are produced in real time.

On the platform, the link could be sent per email and/or shared on social media. It was intended specifically to reach members of the creative industries and was sent to those individuals or friends of friends who they thought could contribute.

Ethical considerations while conducting the survey

During the process of sending the survey to colleagues, friends and placing it online to be shared among their contacts, all were notified of the terms of its use. It is clear that their

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[58] Jeffri, J. (2004) Research on the Individual Artist: Seeking the Solitary Singer. *Research Center for Arts and Culture*. Volume 34, Number 1, p. 9, 10, 11.

contribution was purely for the development of this paper and that it is not a for-profit marketing tool. The survey was purposely placed online and to be filled out anonymously. The only identifying information that the participants were required to give is their professional field within the creative industries and how many years of professional experience they have completed. All other information given was strictly related to copyright knowledge and whether or not they had any interest to increase their own knowledge of IPRs.

Selection of Case Studies

The following case studies and surveys approach the subject of the importance of multidisciplinary intellectual property education as well as design pedagogy and how it needs to move into a more integrated direction for the future.

1. Findeli, A. (2001). Rethinking Design Education for the 21st Century: Theoretical, Methodological, and Ethical Discussion. *Massachusetts Institute of Technology, Design Issues.* Volume 17, Number 1, Winter 2001. p. 5-17.

2. Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

3. Gimenez, A. M., Bonacelli, M., Machado, B. & Carneiro, A. M. (2012). The Challenges of Teaching and Training in Intellectual Property. *Journal of Technology Management & Innovation,* Volume 7, Number 4, p. 1-13.

4. Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

5. Jeffri, J. (2004) Research on the Individual Artist: Seeking the Solitary Singer. *Research Center for Arts and Culture*. Volume 34, Number 1, p. 9, 10, 11.

6. Government of the United Kingdom, Department for Business Innovation & Skills. (2013 October). The Benefits of Higher Education Participation for Individuals and Society: key findings and reports "The Quadrants." *Business Innovation & Skills Research Paper.* Number 146.

7. Cavanaugh, C. (2014, July). "Intellectual Property, Education and the Creative Industries," *Survey of creative professionals.* Survey.

4 Research Project Development

This paper thus far attempts to explain: i. the beginnings of textile trading and copyright law in relation to surface design, ii. ways in which the commercial designer can protect their work in today's global society, and iii. exploring the need of designers to be further educated on the topic of rights protection. Logically, one could ask themselves: why is there a lack of general intellectual property education within the creative sector? Is this a systemic problem within the United States and Internationally? Is the author -*who happens to be a creative professional*- the only one who has been in the dark for all of these years?

It is theorized by the author that much of the cause of infringement and lack of the prevention thereof within commercial design, has to do with a general misuse and misunderstanding of intellectual property law within the creative industries. It is felt that when there is at least a cursory education of the topic specific to industry needs, those who are designing or creating said products would be more proactive in prevention. Contrary to this but just as important, if the creator wants to share works with the public sans exploitation, knowledge of IPRs can be highly beneficial. If incorporated into design education and approached as apart of a total system, ethical standards (ie. legality, morals) could be taught and reinforced to both students and professionals alike. With a firm grasp of IPRs, the artist and designer can both protect and exploit their works of art in a manner most suitable to their needs.

4.1 Case Study - Empirical Context

Statistics proving the positive impact higher education of the individual has on the market

The government of the UK conducted a study exemplifying the positive effects that increased education had on the market, non-market, society and the individual (reinforcing the authors theory of the *systemic* effect that education of the individual can have on the market and society). Although society at large greatly benefits from a highly educated population, for purposes of this study, only topic specific information will be discussed.

A diagram was created with *'society'*, *'individual'*, *'market',* and *'non market'* on the end of each cross hair. In the quadrant representing the area between *'market'* and *'individual'* it is shown that *'higher earnings, less exposure to unemployment, increased employability and skills development, and increased entrepreneurial activity and productivity,'* are all found to be prevalent among those with higher education.

In the quadrant area of *'society'* and *'market,'* it is stated that '*increased tax revenues, faster economic growth, greater innovation and labour market flexibility, increased productivity of co-workers, and reduced burden on public finances from coordination between policy areas such as health and crime prevention,'* as the most notable attributes of a highly educated population.

Relating these findings closer to the topic at hand, in the spirit of innovation (which is what IPRs are intended to achieve), the UK Innovation Survey (2009) states that: *'By sector, firms*

in research and experimental development were found to have the greatest share of science graduates, while financial services and creative industries had the highest share of other graduates among the work force.' Additionally, the study quotes Richard Florida (2005) relating that *'..there is a positive correlation between the number of students per capita in an area and measures of talent including the percentage of the population aged 25+ who hold degrees and the percentage of employees in creative occupations (eg. management, business, legal and healthcare occupations and in super-creative occupations (eg. computing, engineering, arts/design and media occupations).'*[59]

This is important to note as it states that the increase in population of highly educated 'creative' or 'super creative' professionals is statistically shown to increase innovation in a society. This idea is reinforced by the conducted UK Innovation Survey (2009). There also tends to be a connection between individuals with higher education and higher levels of entrepreneurial activity (Bloom, 2006).[60] In this study, evidence was reported to show that between 17 different countries, individuals with higher levels of education have higher levels of entrepreneurial activity.

Discussion and analysis of the importance of international and national IP education

In recent studies it has been repeatedly stated that, 'in the past, a tendency to overlook IP rights existed, but it is emerging as one of the most important areas in the commercial and academic world today.'[61] This is further supported with statistics; it has been estimated that IP, as intangible assets, constitutes around 75 percent of the assets of publicly-listed U.S. businesses (Economist 2005). In addition, it is growing in importance within the private sector such as with SMEs (small to medium sized enterprises). It is also found 'that most of the revolutionary new ideas of the past two centuries have been—and are likely to continue to be—provided more heavily by independent innovators who essentially operate small business enterprises,' Baumol (2005). By registering IP and using the many ways in which to protect and enforce those rights -as discussed in greater detail in Section 2.2- these SMEs can acquire the most commercial advantage. However, without knowledge of the proper steps to take and how to maximize on ones IPRs, it is all for naught.

The study of intellectual property has developed only in the past 30 years. It was clearly in response to passed computer software litigation, so law schools in the UK and Europe began to add intellectual property courses to their curriculum as of the early 1980s[62]. Yet another example of industry development affecting the law, and in turn affecting education. As

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[59] Government of the United Kingdom, Department for Business Innovation & Skills. (2013 October). The Benefits of Higher Education Participation for Individuals and Society: key findings and reports "The Quadrants." *Business Innovation & Skills Research Paper.* Number 146.

[60] Bloom, D., Harley, M. and Rosovsky, R. (2006). *Beyond Private Gain: the Public Benefits of Higher Education. International Handbook of Higher Education: Global Themes and Contemporary Challenges Pt. 1*, New York, NY: Springer.

[61] Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

[62] Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

commercial interest increased, so did the demand for the education of intellectual property. Intellectual property education within United States legal institutions posted pretty shocking statistics from a 2007 study, *'...of the 183 law schools accredited by the ABA [American Bar Association], few offer sufficient IP law education. Of the laws schools ranked in the top 50 by U.S. News and World Report, only 17 offer one to five courses on IP, 21 offer six to ten courses, and 12 offer more than eleven courses. Of the remaining (not ranked) 133 schools, only 7 offer IP courses, though all 7 offer over eleven IP courses.'*[63]

According to case studies from the Journal of Academic Leadership (2007)[64], as well as the Journal of Technology Management & Innovation (2012)[65], it is communicated that typically the education of intellectual property is limited to law schools, educators, librarians and others who deal with potential IP litigation in the course of their jobs.[66] It is also shown that even a cursory education for the lay person in the United States is not always available. Or, if available, not known unless specifically sought out by the individual. This of course presents its own set of problems – when citizens rely primarily on unofficial sources from the internet or their peers when seeking information in regard to the law, the information is usually incorrect.

A general understanding of intellectual property serves the academic, creative and global communities at large. By learning the various laws and creating an active awareness of such, property rights of others would be respected on a larger scale. This is again, looking at the subject of IP education as s*ystemic* – every individual makes an impact. As Jessica Silbey, a renowned attorney and researcher on the topic states, *'Learning how the intellectual property law is perceived and applied before conflict arises may provide a new insight into the causes of the law's reported successes and failures.'*[67]

A study by Allman, Sinjela and Takagi (2008) involving approximately 20 universities throughout the world, identified the main constraints and challenges faced by academia today (with regard to teaching Intellectual Property), which are namely:

i. Difficulty in updating the programs so that they can keep up with the dynamic and rapid changes that occur in the laws of intellectual property;

ii. Lack of up-to-date teaching materials that address the emerging uses of intellectual property;

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[63] Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

[64] Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

[65] Gimenez, A. M., Bonacelli, M., Machado, B. & Carneiro, A. M. (2012). The Challenges of Teaching and Training in Intellectual Property. *Journal of Technology Management & Innovation,* Volume 7, Number 4, p. 1-13.

[66] Lakhan, S. E., & Khurana, M. K. (2007). The State of Intellectual Property Education Worldwide. *Journal of Academic Leadership* Volume 5, Issue 2, p. 1-11.

[67] Silbey, J. (2010, October). Harvesting Intellectual Property: "Inspired Beginnings" and "Work Makes Work," Two Stages in the Creative Processes of Artists and Innovators. *Notre Dame Law Review*. Volume 86, Number 5. October, 2010, p. 2094, 2095, 2096, 2122, 2124, 2125, 2133.

iii. Need to strengthen curricula to make them suitable for an *interdisciplinary approach* that takes into account the increasing role of intellectual property in areas such as business, trade, science, economics and engineering, and **the arts**.

In regards to the first and second points, what the author has found is that there is a plethora of information on the internet, in libraries, through legal and industry specific texts, associations, etc. However, the information is so disparate and widespread that it can be seen as difficult to update the programs in keeping up with the rapid changes of intellectual property law. If there was a single industry specific place where IP litigated cases were recorded, current events were reported, general information on the facts of intellectual property law and even as simple as an interactive timeline that could show how the laws evolved through history (using information such as Appendix A) – there might be a chance that this first point could be overcome. It is not surprising that the world of intellectual property can be felt as something too complex to begin studying as a non-attorney, when the information on the topic is extremely broad and disparate.

Furthermore, the practicality or the 'emerging uses' of the second point is essential when learning about intellectual property. Learning anything new is fabulous, but it is much more so when the knowledge can be put to use. It has been shown within Section 2.2 the many ways in which one can protect their IPRs. As an example, it is possible to employ a registered copyright in conjunction with other means of protection.

A successful example of this strategy is the pattern design made famous by designer Louis Vuitton (LV), does this by combining protection of a registered copyright and registered trademark. The LV logo (trademark) is inclusive in the pattern which is both protected under copyright and trademark law. Or as previously mentioned, the Burberry plaid. The classic, highly recognized pattern is also considered to be protected by both trademark and copyright law. In addition to the legal registrations, these brands also take consistent preventative measures such as factory checks, online business to business (b2b), and business to customer (b2c) searches.

Back to the study, the third point of needing to strengthen curricula to promote an *interdisciplinary* study of IP in specific industries is a pertinent finding to this research project. This reinforces earlier statements made about approaching intellectual property by way of an interrelated system. The world of commercial design combines daily at a minimum of, 'business, trade, economics.. and the arts,' – and each are interrelated. In today's economic climate, it is almost absurd *not* to consider teaching all disciplines in relation to one another.

Luckily, this interdisciplinary approach appears to be something that has been considered since the early 2000s. United States patent attorneys, Kaplan and Kaplan (2003) include IP law in their engineering classes, stating *"IP knowledge is important for engineers: engineers should try to understand IP basics to protect their creations. Also, IP searches can indicate the growth of different engineering fields. Furthermore, the proper use of IP promotes the progress of a field."* It is a positive direction for the fields of both pedagogy and intellectual property to be moving in this direction. It is increasingly important that the surface designer whose industry has such a rich, and heavily interwoven IP history include this multi disciplinary approach.

Analysis of design education and introducing the idea of IP and ethical training

Repeatedly throughout this paper it is stated that the individual can affect both the state as well as the world in something of a ripple effect. This can be shown in the manner that this paper is structured by describing and interrelating the international-to-national-to-individual relationship – each acting on its own as part of an *interdisciplinary system*. A conceptual example could be the process of the production of textile goods. From the fabric manufacturer to the construction of a final product, through its sale in a retail outlet, clearly shows the designer-to-manufacturer-to-consumer relationship. Another example may be the copyrighted fabric pattern design; the registered design is then licensed to another company, which is then produced on dresses for a fashion designer, whose collection is sold to multiple countries.

In essence, by explaining this process as a total system, it can be seen that the designer has an impact on an international scale. This being a rather bold deduction, it seems only logical that ethics and legal education *should* be highly prioritized:

'In philosophical terms, one would say that design pertains to practical, not to instrumental, reason; or else that the frame of the design project is ethics, not technology. In existentialist terms, this could sound as follows: design responsibility means that designers always should be conscious of the fact that, each time they engage themselves in a design project, they somehow recreate the world.'[68]

Believed to be what Alain Findeli is expressing in the above quotation is that contemporary design is a practical art form that should be largely based on ethical standards. This is in contrast to the more common concepts perceived of artistic creation and/or technological proficiency. Technology as it has been described above, is a means to a final product – not the essence of the product itself. What is inferred by, *'Rethinking Design Education for the 21st Century: Theoretical, Methodological and Ethical Discussion,'* is that the 21st century provides a paradigm shift which should be responded to by those in the field of commercial design, as well those individuals who work in higher arts education.

This fundamental change in approach is described in the text as moving from the traditional understanding of design education that was first introduced in the 19th century *(please refer back to Section 2.1 for further detail)* towards a more systemic approach as we continue through the 21st century. The idea is that the concepts of art, science, ethics/law, business, strategy, technology, etc., should all be brought into a harmonious pedagogy for the next generation of arts professionals.

Remarkably, very few higher institutions of art and design offer courses that explain the nature or importance of the business or legal knowledge to the commercial designer. The aesthetic instruction almost always comes first, which is understandable if one wants to be

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[68] Findeli, A. (2001). Rethinking Design Education for the 21st Century: Theoretical, Methodological, and Ethical Discussion. *Massachusetts Institute of Technology, Design Issues.* Volume 17, Number 1, Winter 2001. p. 5-17.

sought after for their creative abilities. However, it is rare that a designer or artist is *exclusively* creating art and design during their career. This is especially true for the independent artist, who may not have formal business or legal education. In addition, persons employed full time by a company for whom may *not* intercept any misunderstandings, misuse or infringements.

Many designers rely on life experience, some consult online forums or other professional persons, but very few personally have a formal education on these topics. It is this lack of business and legal education among the creative community that is in large part, the issue when analyzing the impact of copyright law on the creative industries.

4.2 Discussion and Results

It is an asset to larger companies -and almost mandatory for smaller- to employ a designer who is multifaceted in their talents and knowledge. When a designer can; i. create artwork, ii. prepare technical files for manufacture, iii. have the capacity to work directly with the customer who licenses or purchases the surface design design or product, and iv. be armed with a proficient legal understanding – that person will be regarded as extremely valuable.

Interestingly, the author has found by direct survey of the creative community, on average, the knowledge of intellectual property and the practical use of it is actually quite minimal, if at all. Additionally, it is shown by both the authors personal survey and by the CAA 2014 survey, that the individual creative professional generally does not have the confidence to impart his or her knowledge. This is a good indication as to why IPRs and other ethical topics are necessary for the creative professional to learn.

Logically this is how the author arrived at the final questions imparted in this study: *Do professionals in the creative sector have any actual interest or motivation to learn about law and ethics that affect the creative industries? Is it still thought to be better considered, 'someone else's responsibility'?*

In response to this, the author has presented a survey on the topics titled, *'Intellectual Property, Education and the Creative Community,'* to a wide variety of participants. The findings were both expected and astounding. The comprehensive question was answered thoughtfully and gave light to the sincere interest of the creative community for wanting to learn more about intellectual property, even if at a cursory level. As one respondent replied,

'Knowledge is power.'

Analysis of the data in numbers from this study

Within one week of being placed online, there were 78 respondents, 90% of whom consider themselves as working within the creative industries. When asked which discipline the respondents worked in, the top five career areas are as follows: graphic design (14, 18%),

music/television/film (12, 15%), product design/development (8,10%), advertising (8, 10%), and textile/surface/pattern design (6, 8%). The following disciplines are also represented by votes as; visual art/illustration (4, 5%), photography (4, 5%), new media (4, 5%) and, other - not listed within the top five because it isn't specific (15, 19%).

All disciplines within the creative industries are effected by intellectual property law, however it is interesting that the majority of respondents who took the time to answer the online survey were either related to commercial design (copyright/trademark/patent law effects this), advertising (copyright/trademark law effects this), and multimedia (copyright/trademark law effects this). Unfortunately, there were not any students who had filled out the survey (summer break?), however an overwhelming 69% (54) of the respondents have 2 to 15 years of professional experience, followed by 22% (17) who have more than 15 years of experience and 5% (4) with less than 2 years.

When asked to rate their own knowledge of various rights protection, on a scale of 1 (being the little to no knowledge) to 7 (advanced knowledge), 31% rated themselves between 1 and 3, 14% rated themselves in the middle, and 37% rated themselves in the higher range between 5 and 7. Interestingly, of the group surveyed, 64% hadn't had a formal education on the topic of intellectual property, 36% claimed that they have. However, when asked how confident in their knowledge they were to put it to use, the answers were a little less sure of when they were asked to rate their level of understanding; 1-3 (49%), 4 (24%), 5-7 (27%). There appears to be an average of ten percent decrease between the two questions, as it seems that about 50% of the surveyed individuals believe to have little to no knowledge of intellectual property as it effects their industry.

When asked how important it was for them to further their knowledge on the topic of rights protection, the results were overwhelming. A majority of 85% responded between 4-7 (7 being 'very important' and only 15% responded that it wasn't very important to them (between the 1-3 range).

Following this, 'Would you have any interest in attending a workshop or course focused on these issues, either sponsored by your company, local community or university?'. The answer was a 74% majority 'yes' and a 28% 'no' (this question allowed for respondents to answer both 'yes' and 'no', apparently 2 people answered to both). When asked if they would prefer the theoretical course to be attended either as a traditional classroom setting or as an online course, it was split in the middle with 52% preferring traditional instruction to 48% preferring to be taught online.

Analysis of the comprehensive data

The results of the comprehensive question, *'Do you wish your knowledge were more extensive on the topic of intellectual property or other legal issues specific to your discipline? In other words, how important is this topic to you and your work?'* were extremely interesting and indicates a majority desire -*and enthusiasm*- by creative professionals to enhance their knowledge of copyright and other IPRs. What one can deduce is that although respondents replied that almost half had mid to advanced confidence in their knowledge of IPRs, 74% still expressed their interest in attending a course to expand this knowledge base. Of the 32

responses (which were optional to fill out), showed interest in pursuing further education and only 15 responses showed disinterest. All written responses are included in Appendix B.

Interestingly, creative professionals working in advertising were most likely to defer to in-house counsel – obviously a smart decision as a lawyer will be the most knowledgable on the specifics of branding and fair use. However, it is fascinating that they *prefer* to not pursue the knowledge for themselves. Graphic Designers, textile designers, product development professionals and film/media professionals, fine artists and musicians, all expressed majority desire to further their learning on the topic of IPRs.

What one can deduce from both the survey conducted specifically for this paper as well as the 'Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Arts Communities,' 2014 Report

The key findings that have been expressed in both studies is that artist and designers experience, *'confusion and misunderstanding of the nature of copyright law,'* and that they, *'pay a high price for copyright confusion and misunderstanding. Their work is constrained and censored, most powerfully by themselves, because of that confusion and the resulting fear and anxiety.'*[69] This is also expressed in the authors survey with answers such as, *'I have shied away from developing certain ideas in the past because of my lack of knowledge of intellectual property/patent guidelines.'*

Additionally, as the author has theorized throughout this paper, and as the College Art Association had deduced from its findings, *'Although all members of the visual arts communities of practice share these problems, artists are more likely to use copyrighted material without licensing it, and less likely to abandon or avoid projects because of copyright frustrations.'*[70] This is especially interesting and can be pinpointed again to the general need of an expanded education on the topic of IPRs. It is the authors hypothesis that less infringement would happen to not only the creators work, but also those works that are 'borrowed' from other artists – when they could be easily obtainable through licensing and other agreements.

In consistency with the authors survey which found close to one third of the respondents claimed a low knowledge level of intellectual property rights as they pertain to their own work; the *College Art Association* study also found that *'one-third of visual arts professionals have avoided or abandoned work in their field because of copyright concerns.'* Arriving at the same proportion of respondents between two non-related studies can give light to the growing concern that copyright knowledge has become an issue in the creative community.

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[69] Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

[70] Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

'Uncertainty about copyright and fair use within the visual arts communities is a problem that the communities themselves can address. The biggest single issue for professionals is understanding their rights as new users of existing copyrighted material. This can be remedied not only by educational projects but by the formation of a consensus within the communities of practice about the shape of a code of best practices..'[71]

This quotation from the CAA survey is a very important statement as it is implying that a 'code of best practices,' or in other words, ethical standards, should be implemented. With this, comes education and knowledge at a level and degree that the creative community can then implement themselves. A *system* which could become of the every day professional vocabulary. It should be understood that copyright knowledge comes with benefits for those who want to share their work freely as well as those who want to protect their work for profit. It is not the author's intention to overly push for protection of work, if that is not the intention of the original creator is. *The study and thorough understanding is meant as a means for the general creative populace to make better informed decisions.*

Issues and understanding of litigation: findings

'Other copyright issues affecting visual arts museum practice appear to have gone un-litigated... This may be because... the parties in conflict have not deemed the financial stakes around those issues to be great enough to generate serious legal disputes. It may also reflect the fact that conflicts about these issues tend to be resolved through settlements or compromises that leave no public record, but that may nevertheless influence future institutional practice... Likewise, rights holders told us that their issues about unauthorized use were resolved without lawsuits. From their standpoint, as well as that of users, litigation was an undesirable outcome.'

This is case and point; no one likes to go to court. It is a long arduous process, often ruining business partnerships that could have future potential, friendships, and has high costs in both time and money. In Section 2.2, it is mentioned that mediation or even arbitration are methods that work in many instances for issues that may arise but have the potential to have a satisfactory resolution for both parties *outside* of the courtroom. It is seen that these practices are not as widely known as filing a law suit – again, an issue of an ethical code and general education. Although these methods do not set precedents in the law, they can be far less damaging for both parties to achieve dispute resolution.

It is also the authors theory that if mediation were more widespread, creatives could feel even more in control of their IPRs as a means of resolving conflicts and achieving payment. This is due to its judicial and economic feasibility. Not all cases are accepted into the federal court and many disputes can be easily reconciled with a neutral third party. It is economically more feasible as the creator can receive guidance and support with the help of a local arts advocacy association.

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[71] Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report. (2014 February). *College Art Association*, p. 7, 8, 9, 13, 15, 17, 18, 20, 23, 26, 28, 38, 47, 48, 59.

5 Conclusions and Future Prospective

Reflections on the research and major findings throughout

The earlier research which took the author back to the first recorded textile trading between Persia and Egypt (6th–7th centuries) is well documented – however, when thought of in the context of copyright, it gives this historical detail a whole new meaning. Examining how people and artists have been copying or 'borrowing' stylistic elements since the beginning of trade sheds light into how deeply ingrained the idea of copying in our collective conscious is. To conceptualize the fact that this had been going on for one thousand years without recourse is incredible to the contemporary person. When manufacturers of textiles realized the merit and *value* of printed designs, the notion of copyright for the applied arts was set into motion.

This is not to say that the legal system of the United States is perfect in protecting the IPRs of creative individuals and inventors – to the contrary, there are obvious set backs. The main issues have to deal with difficulty in enforcement, which is why mediation and other alternatives are options to explore. However, the author believes that all creative professionals should learn to work with the legal framework that is already in place. It is one that offers profit, protection, or even recognition through attribution of the work, should the creator be less concerned with exploitation of his or her works, and more occupied with gaining recognition.

Various means of IPRs and preventative infringement/counterfeit measures can be taken either singularly or in strategic combination. The amount that are available is worthwhile for artists, designers and companies alike to explore and use. One can study the habits of long established companies whose mission is to preserve its own brand recognition, maintaining product quality and the respect of its customers, and implement these strategies in their own endeavors. LVMH Group, Burberry, Louis Vuitton and Christian Louboutin are all companies with strong brands who suffer counterfeit offenses on a global scale and at an alarming rate. By studying their strategies, litigation, and habits, one may be better informed as to how to treat their own tailored means of handling these issues.

What the author had arrived to after tireless research of the various strategies available, is this: *what impact does any of this information have if the creative community is not even aware that these strategies exist and/or may be applied to their work directly?*

It was this question that drove the author into focusing the investigative study onto the higher and professional education of the creative individual, in regard to intellectual property. It is clear that the training and education of highly specialized professionals will vary and be extremely focused. However, intellectual property rights are such a prevalent part of the discussion and so tightly woven into the *economic success* of the creative industries (textiles and surface design in particular). So then, it can only make sense to integrate legal/ethical lessons with design education of the student and professional throughout ones studies and career. This is what was the driving force behind the investigative research project.

What can one deduce from the findings of the investigative research

One can study the impact of copyright and IPR law on the creative industries for a lifetime. There is an overwhelming amount of information, and due to the very nature of the United States common law system, it is forever changing with each court case. In regard to education, it may all be summed up to a theoretical 'what if' or be subject to the very practical strategies that one can impart by the laws that are currently in place. *This is dependent upon whether or not the information be put into practice by the very population in which it is intended – artists and inventors.*

'Some of the research, particularly in the communities where copyright protection dominates, tends to be less empirical and more anecdotal, grounded in policy or philosophy debates rather than systematic qualitative or quantitative analysis of innovative practices.'[72] This is an interesting stance in which Jessica Silbey has taken (and agreed upon by the author). Much of the research has less to do with the creator and how to remedy the situation of an industry which IPRs *'dominates'* – yet so little informative evidence and research is conducted as to why so many creatives are not imparting or thoroughly understanding the legal rights to their own work (and essentially, their livelihood). Much of Silbey's research is focused on the creative process and how IPRs are *not* what initially drive an artist or author to create. However, it is the author's belief that if the education of these legal rights were firmly ingrained in the consciousness of the creative individual, the impact that could potentially have on the industries in which they work *could be* huge. This is why the concepts of *systemic and interdisciplinary education* is so prevalent throughout this paper – that one small drop (a knowledgable creative or organization) can make a lasting ripple effect upon the industry as a whole.

A general knowledge base of IPRs among creative professionals *could* mean a lot less infringement and, indirectly for the artist who either works independently or is gainfully employed, this would help protect the artwork of their peers. In short, a cursory education of copyright, trademark, trade dress, design patent, as well as understanding how companies handle counterfeit claims and law suits (or mediation), will both protect and give respect to others intellectual property rights in a highly commercialized and global industry.

Success and failures of this work

As with everything in life, there are successes, and there are failures. The gathering of information and placing it into a cohesive structure creative professionals who are interested in the impact of intellectual property rights on the areas of textile and surface design, was a grave feat. This, in and of itself, took hundreds of hours of research to compile, sort through, and attempt to communicate in a way that may make sense to a potential reader. There is a lot of information that exists between text books, scientific papers, case studies and online, however it was in totally separate locations which required extensive analysis and curating.

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[72] Silbey, J. (2010, October). Harvesting Intellectual Property: "Inspired Beginnings" and "Work Makes Work," Two Stages in the Creative Processes of Artists and Innovators. *Notre Dame Law Review*. Volume 86, Number 5. October, 2010, p. 2094, 2095, 2096, 2122, 2124, 2125, 2133.

The initial failure of the work -which, in the opinion of the author turned into its most successful point- was that there is not one set way for the creative professional to protect their intellectual property rights. Each expression of an artists idea can manifest itself so differently, all with different intentions as to how one may profit or not, from said works. It is due to this variation that there is not one set theorem or strategy in which one can consider protection – it is totally dependent on the intent of the creator. This again, initially was assumed a failure of the authors own understanding of IPRs. However, it allows one to realize how wonderful the system actually is in its flexibility to the demands of each individual case.

It was this point that the author realized, *'how in fact can the creative actually profit in the way they seem most suitable to their individual needs?'* This is exactly what brought the discussion towards the direction of education rather than purely strategic means alone. One can consider the knowledge base of the creative work force as a positive strategic element in and of itself – effecting the individual, the domestic and even global economy.

A question of interest and future perspectives

What the surveys from both the author and the CAA exemplify is that there is a sincere interest by creatives to enhance their knowledge of intellectual property specific to their industry. With that, we can firmly deduce that if the correct information is put into a cohesive and aesthetically pleasing format, there is a great chance that the cursory level education of rights protection will increase. With this enhancement, the industry and the economy overall, will be better served as a whole.

Future research and endeavors should then move towards the study of *how* the creative individual learns. There are educational references online and through communities to educate general professionals on the topic of copyright and IPRs, however, it is the authors deduction that they are not conducive to the learning patterns of the creative student or professional. It is from the authors experience that interest levels of creative professionals and students wane in response to information is not presented in a thoughtful and visual manner.

The information, although seemingly dry at first, is dynamic and pertinent to the creative professional. If it is to be communicated to the arts professional or student, it must be presented as such. Visual aids which *show* creatively cause and effect, [such as Appendix A, a timeline of the textile industry in parallel to IPR legislation]. This method could give the information more context and intrigue, allowing the visual learner a means to 'see' the information come together. Giving examples by way of photographic evidence, perhaps of stylistic 'borrowing' between cultures throughout history. This can lend itself to the realization that copying works has been happening for a very long time. It may also aid in the understanding of why policy started for economic gain as well as the understanding of fair use in ones own creations. Placing data into visually proportionate charts and graphs, will also help in the understanding of the massive impact that legal and ethical issues have within their own discipline.

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APPENDIX A

Time Period	Policy Development	Commercial Development
12th - 16th Century	**1331**: **England;** Armstrong notes that **the earliest recorded English patent** was granted "in 1331 to John Kemp the Fleming so that he would be encouraged to import his **weaver's mystery.**	**12th-16th Century**: Europe: Pigments mixed with linseed oil applied to cloth by a block-printing technique. Dyes were not wash-fast which made them unsuitable for garments. Printed cloth was produced only as an inferior alternative to woven silk/velvet.
17th Century **At this time, design became increasingly important because there were not any fashion journals appearing regularly at that time, the cut of costume changed only comparatively slowly. It was the pattern on the fashionable silk dress materials that changed instead, and they changed each year.** (Thornton, 1965:18 his emphasis).	**1623**: **England; The Statute of Monopolies of 1623** restricted patents to a term not to exceed 14 years for "the sole working or making of any manner or manufactures, within this realm, to the true and first inventor". Patents did not recognize individual creativity per se, but rather rewarded those who assisted the development of British manufacturing. **1662: England The Licensing Act of 1662;** to protect against publisher monopoly which later became the Statute of Anne in 1710 **1676**: **England;** William Sherwin is granted a **patent for 'the only true way of East Indian printing** and staying... never till now performed in this kingdom' (Harris, 1993:224). Metallic oxides or minerals which were most commonly obtained from a reddish root called madder were apart of this new process.	**Early 17th Century**: **Dutch, English and French** East India Companies begin to import technically superior painted/dyed Indian silks, linens and cottons (which came into huge demand as they were exotic, lightweight and washable). **1670: Dutch, English and French** develop a successful manufacture of 'indiennes'; inspired by the successful, imported goods of India. The earliest patterns were florals "in the Indian manner", but adaptations of Chinese lacquerware, embroidery and wallpaper, 'classical' designs and English tapestry and needlework were soon utilized, especially for furnishing fabrics (Montgomery, 1970:111-142). French imitations were also extremely popular and were generally regarded in Europe as a source for the best in fashion. **1676: France;** Designers were overall very well paid, reflecting their status in the manufacturing and retailing of cloth (Thornton, 1965:24-29;78). Comparatively in England, the designer lacked status in both workplace and industrial hierarchies.

Time Period	Policy Development	Commercial Development
18th Century **From the middle to the end of the 18th century, development of copperplate printing which allowed for much larger reams of fabric to be printed upon. The designs are noted for being some of the finest printed textiles in history, although due to the nature of copperplate printing, they were largely left monochromatic.**	**1710: England, Statute of Anne;** the worlds first copyright act. 'An Act for the Encouragement of Learning, by Vefting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.' **1719-1721: England;** This petitioning led to a prohibition upon the sale, use and wear of English printed calicoes in 1721: England; '.. that the said Trade is in a very declining Condition, and many thousands of poor Families ready to perish for want of Labour; which is occasioned by the export of Wool to Foreign Markets, and by Wearing of stained linens in Great Britain. . .' (Journals of the House of Commons , 24 November 1719). **These enactments are not usually recognized as 'design laws', however the printed textile trade was largely a threat to the silk and woolen trade because of the use of designs.** Parliamentary records, though incomplete at this time, show little to suggest that a form of 'design copyright' was even considered as a possibility. The English tradition of protecting the wool trade may largely explain this. **1736: England;** Over objections, Parliament recognised the legitimacy of the practice of printed textiles, provided that the warp thread was entirely made of linen (9. Geo. II. c.4). Montgomery notes that ". . . despite legislation, the grumbling of weavers, and high taxes, cloth printing continued in England, and merchants found ready markets for these goods" (1970:17).1806-1820, vol. XVII./KET)	**1760-1800 England, France;** development of copperplate printing. It made possible, therefore, much larger designs than what could be achieved with blocks. Toiles de Jouy, **France & England**, although monochrome due to this technique, are still some of the finest printed textiles.

Time Period	Policy Development	Commercial Development
	1774: England; Donaldson v. Beckett; Copyright proceedings on the Question of Literary Property, the decision held authors, according to common law, held the exclusive right to the first publication for perpetuity, but the right was annulled once the work was published. (Cobbett's "Parliamentary History of England", London, 1806-1820, vol. XVII./KET) "...Their genius, their study, their labour, their originality, is a s great as an author's, their inventions are as much prejudiced by copyists, and their claim, in my opinion, stands exactly on the same footing." -Proceedings in the Lords, 1774 **1787: England; Designing & Printing of Linen Act,** Petitioners asked for a form of a copyright, "in the same manner as the laws now in being have preserved the properties of authors of books . . . and the inventors and engravers of historical and other prints" (as quoted in Lahore, 1971-72:185). An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited Time (this limited time was 2 months) **1787: USA; The U.S. Constitution** According to Article I, Section 8, Clause 8 of the U.S. Constitution, "the Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."	**1774: England;** restrictions upon domestic trade were lifted from printed textile manufacturers **1783: Scotland;** Thomas Bell (Scottish), is the first successful patented roller printing machine, being used to print pictorials (Toiles) as an alternative to copperplates, **before 1800.** The machine consists of a large, central pressure cylinder, around which are arranged the engraved rollers, each fed with colour from a colour-furnishing roller revolving in a tub of dye... The cloth for printing passes between the pressure cylinder and the engraved roller and receives impressions in proportion to the number of engraved rollers in use. Initially, only three or four cylinders could be combined in a machine, but this had increased to as many as twelve or fourteen by the second half of the nineteenth century.

Time Period	Policy Development	Commercial Development
18th-19th Century **First developed during the late 18th century, roller printing revolutionized the industry throughout the 19th century, being capable of doing the work of about forty hand-block printers and of printing between 5,000 and 20,000 meters of cloth a day. With modifications and refinements the cylinder printing machine has remained in use to the present day, although it was largely superseded by screen printing during the 1960s.**	**1790: USA; Copyright Act of 1790**. Implemented by the first Congress of the United States. An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies, was modeled on the Statute of Anne (1710). It granted American authors the right to print, re-print, or publish their work for a period of fourteen years and to renew for another fourteen. **1793: France; Copyright Act of 1793**, revolutionary France had enacted a general law of copyright that encompassed all pictures and design, dessins de fabrique and dessins artistiques. The protection of fashion works in France classified fashion as an applied art. Thus, under present French law, fashion and garment designs, and even fashion shows, have copyright protection. (Article L. 112-2 of the French Intellectual Property Code; specifically lists works including "creations of the fashion industries of clothing and accessories.") **1806: France;** Commercial designs could also be protected by registration from 1806, without having to demonstrate artistic quality which was necessary under the broader copyright law. The period of protection could be secured for a number of years or in perpetuity. **1831: USA; Revision of the Copyright Act**, where the term of copyright was extended to 28 years with the possibility of a 14 year extension in order to give US Authors the same protection as those in Europe.	**Between 1796 and 1840**, Roller printing drastically reduced the cost of printing and it radically increased the value of popular designs. Where it had been possible to print only six pieces a day on a single table, a steam-powered roller printing machine could print up to five hundred pieces a day. as a result of the introduction of these machines, the annual production of printed textiles in the United Kingdom increased from one million pieces to sixteen million pieces. (Forty, 1986:47). **The great increase in output also increased the demand for designs.**

Time Period	Policy Development	Commercial Development
19th Century **Interestingly enough, the assistance given to industry by government support for regional schools of design (in England) was not so that manufacturers would have access to artistically skilled employees, but was offered with a view to raising the standard of public taste (Sparke, 1986:158).** **It was suggested that consolidating design protection, allowing for a longer term of protection and design registration could assist in the production of British works of excellence.**	**1839: England; Copyright and Design Act 1839,** considerably increased the protection given to fabrics by extending the law to fabrics composed of wool, silk or hair and to mixed fabrics. **1842 & 1843: England; The Ornamental Designs Act 1842** Whilst the Act required that the design be novel or original, unlike patent law's expectation that novelty mean that the idea had not been previously published **1843: England; The Utility Designs Act 1843** **1883: England; Patents Designs and Trade Marks Act 1883,** a single consolidating and amending Act was passed to include all designs, patents, and trademarks. **1890: European Sovereign Nations; Berne Convention;** provided the basis for mutual recognition of copyright between sovereign nations and promoted the development of international norms in copyright protection. European nations established a mutually satisfactory uniform copyright law to replace the need for separate registration in every country. The treaty has been revised five times since 1886.	It was likewise a strong and striking fact that in the only country which was confessedly superior to England in all the departments of industrial art, in **France**, the copyright of designs was the most complete and effectual, giving the inventor a property in them for any term of years, from one to a perpetuity, for which he might feel disposed to claim it. Under the influence of this law the productions of French taste had attained a reputation for beauty which ensured for them a price infinitely beyond the more homely and less elegant manufactures of England. . . (Mr Emerson Tennant, Parliamentary Debates, Vol. LVI col 483). **Schools of design are established to increase the level of artisans for the textile trade in England, mid 19th century.**

Time Period	Policy Development	Commercial Development
20th Century **Roller printing revolutionized the industry, being capable of doing the work of about forty hand-block printers and of printing between 5,000 and 20,000 meters of cloth a day. With modifications and refinements the cylinder printing machine has remained in use to the present day, although it was largely superseded by screen printing during the 1960s.**	**1909: USA; Revision of the U.S. Copyright Act** A major revision of the U.S. Copyright Act was completed in 1909. The bill broadened the scope of categories protected to include all works of authorship, and extended the term of protection to twenty-eight years with a possible renewal of twenty-eight. **1946: USA; Lanham Trademark Act,** is the primary federal trademark statute of law int he United States. The Act prohibits a number of activities including trademark infringement, trademark dilution, and false advertising. **1949: England; Registered Design Act 1949,** the amendment of the definition of design and the abolition of classification, both of which materially affected the validity as well as the scope of many registered designs. **1976: USA; Revision of the U.S. Copyright Act,** Technological developments and their impact on what might be copyrighted, how works might be copied, and what constituted an infringement needed to be addressed. The revision was undertaken in anticipation of Berne Convention adherence by the U.S. It was felt that the statute needed to be amended to bring the U.S. into accord with international copyright law, practices, and policies. The 1976 act preempted all previous copyright law and extended the term of protection to life of the author plus 50 years (works for hire were protected for 75 years).	**1920s/30s** Screen printing is based on the technique of stencilling, which has a long history in the Far East, particularly in Japan. It was introduced into commercial use in Europe during the 1920s and 1930s. The screen is a shallow tray covered with nylon or polyester gauze. The dye is forced through the screen... each color requires a separate screen, though there is almost no limit to their size or number, other than that directed by practicality. **Mid 1950s:** Flatbed screen printing was automated. The fabric itself moves along under each color screen. **Mid 1960s, Europe & USA;** Rotary screen printing, has further improved upon the speed and efficiency of the technique. Finely perforated cylindrical nickel screens take the place of flat screens and dye is introduced into the screen from a hollow tube inside it. **Advantages : they can reproduce effects only possible with either woodblocks or copperplates; they are relatively cheap to initiate and thus allow short runs to be produced without too great a financial risk, and permit a manufacturer to respond more rapidly than with the other techniques to changes of fashion; and their output can compete with that of the cylinder printing machine.**

Time Period	Policy Development	Commercial Development
20th Century	**1988: USA;** United States becomes a **Berne signatory** which allowed greater protection for proprietors, new copyright relationships with twenty-four countries, and elimination of the requirement of copyright notice for copyright protection. **1988: England; Copyright, Designs and Patents Act of 1988,** an amendment to the Registered Designs Act 1949, and emended further in 2001 to incorporate the European Designs Directive. **1992: USA; Amendment to Section 304 of Title 17**, making copyright renewal automatic. **1995: USA; TRIPS Agreement**, the most multilateral agreement on IP, however, in regards to copyright, the Berne Convention for the most part, provided adequate protection. **1996: Worldwide;** World Intellectual Property Office (WIPO) is formed representing 160 nations. **1998: USA; Sonny Bono Copyright Term Extension Act,** he House and Senate passed S.505, the Copyright Term Extension Act (CTEA). The law extended protection from life of the author plus fifty years to life of the author plus seventy years. **1998: USA; Digital Millenium Copyright Act** **1999: USA; Digital Theft Deterrence and Copyright Damages Improvement Act of 1999**, congress approves a significant increase in statutory damages.	**1980s: Worldwide;** development of three-dimensional printers, becoming a huge debate in 2010's.

Time Period	Policy Development	Commercial Development
21st Century **Many of the more recent topics are related to the digital context, however, the notion of a small claim's court for the small-mid tiered company or a design protection act almost making it through to law in 2013 are also innovative and new topics for copyright and creative professionals.**	**2001: USA; Greenberg v. National Geographic Society**, two photographers claimed infringement and won on the redistributing of photographs acquired by work-for-hire per CD-ROM which NGS distributes its publications in total for all editions since 1888. Section 201(c) permits the owner of copyright in a collective work, such as a magazine or encyclopedia, to reproduce and distribute an individual author's freelance contribution "as part of that particular collective work, any revision to that collective work, and any later collective work in the same series." **2002: USA;** Senate Approves Distance Education Legislation, the "**TEACH Act**" (S. 287) benefits distance education and increased the scope of the materials allowed for such. **2003: USA; Kelly v. Arriba Soft** a photographer sues search engine company for thumbnails of and in-line linking to images hosted on his website. Thumbnails that Arriba Soft created were covered by fair use exemption. **2006: USA; 'Design Piracy Prohibition Act' (DPPA),** bill introduced to protect fashion designs for three years after initial publication. The bill was suspended after the 2006 House session, resulting in it being cleared from the agenda. **2011: USA; 'Anti-Counterfeiting Trade Agreement (ACTA)' ,** eight negotiating partners signed what will become the highest standard plurilateral agreement ever achieved concerning the enforcement of intellectual property rights.	

Time Period	Policy Development	Commercial Development
21st Century **Many of the more recent topics are related to the digital context, however, the notion of a small claim's court for the small-mid tiered company or a design protection act almost making it through to law in 2013 are also innovative and new topics for copyright and creative professionals.** **'Once we abandon the 'accidental' development thesis we can conceptualize modern intellectual property laws in a way that considers more sophisticated social relationships. Speculating about these with the benefit of some historical analysis may also help us to reflect upon our current expectations of laws, law reform and their role in structuring the future direction of our society, encouraging the development of a more critical dialogue about contemporary intellectual property laws and how they should support the process of commodification...** **However in a system of commodity relations art may be used as a model for numerous imitations. In this sense, art remains part of the broader cultural nexus of commodity relations, with copyright law mediating the translation of art into a commodified form.'**	**2012: USA; 'Innovative Design Protection Act' S.3523, (IDPA),** the latest of a series of proposed legislation backed by the CFDA. It is hailed as 'breakthrough' for high end designers and theorized to protect the lesser-known designers, who do not have a more powerful label to support them. The Act was overturned in 2013. **2014: USA; 'Millennium Copyright Act',** U.S. Copyright Office publishes a report that expresses the need for a small claims court to handle smaller scale copyright proceedings.	

APPENDIX B

Responses to the question, 'Do you wish your knowledge were more extensive on the topic of intellectual property or other legal issues specific to your industry? In other words, how important is this topic to you and your work?'

Responses confirming interest in further education:

'If I can see the legal electric fence, I don't have to be afraid I'll run into it. Is be more to push my limits and explore new creative business ideas'

'It is a very complex topic and further education is needed'

'it's always good to know these laws in order to protect yourself and prevent the preventable.'

'I have had a workshop on this topic, but could use so many more!'

'everyone needs to be smarter about their creative IP rights.'

'It's legal jargon that I wish wasn't jargon and better understandable. I just hire help when this need arises.'

'It is not that important to my job as a digital sales specialist but I could see it being a major concern for my clients.'

'I'm a sponge and like to learn. This is important. Let's do this!'

'I rely on the expertise of professionals but would benefit from a deeper understanding of the IP options available in the law today.'

'I think it's important to know that your work is legally your own and your name with it, etc.'

'I think itÂ´s very important to know who owns the copyright of your graphics you use for your designs. If i would be the owner myself i defenitly want to be mentioned.'

'Would maybe increase my business in many ways'

'knowledge is power.'

'I do wardrobe for commercials and print ads. I recently did a commercial where the clients were so sensitive to who designed the print of a floral dress on a background person. It would be good to know what prints/artwork on clothing can be sued over.'

'It is very important to know about copyright, trademark etc because if you sell things like brands, claims etc to your customers you should even advise them well'

‘I deal with varying studio policy in regards to legal clearances for fictional art work and design as it pertains to the world of film and tv’

‘You can't sell if it's not legal’

‘As a Web designer, i need to constantly update my knowledge to inform my Clients and deliver a gold product’

‘I would like to know more specifics in terms of forms and legality issues etc’

‘My life is my intellectual property and it should be protected much more than it is now.’

‘too fast changes’

‘I have shied away from developing certain ideas in the past because of my lack of knowledge of intellectual property/patent guidelines.’

‘It feels unprofessional not to be firm on these issues.’

‘I think that it is important to have at least a cursory knowledge regarding these topics.’

‘I'd like to be protected and be more confident.’

‘I have to teach students the basics of this topic, so it is important to make no mistakes.’

‘I know quite a bit. I need to understand how to protect ideas/products before they are marketed. I know enough to know that it's complicated and I don't always know enough to move forward without expensive professional consultant.’

‘Proper knowledge of author rights is fundamental not only to safeguard our relevance as content producers, but also to educate both producers and consumers alike that all content has an author, and using someone’s work without permission is not ok. Authors can very easily make their works shareable and freely available if they so wish. People generally understand very easily that they can’t steal physical items like books and DVD’s just because they don’t agree with their pricing or distribution method, but the wide availability and lack of direct consequence seem to put the unauthorised obtention of digital products in a different level when that’s really not the case. In a different but increasingly relevant aspect too, the appropriation of user generated content by social networks and similar services is also an issue that’s generally not understood enough. Proper understanding of author rights and their wavering could help in limiting the appropriation power of some organisations: no artist would use Photoshop if Adobe kept any rights for his artwork. Would users really produce so much content and reveal so very much of their lives if they really understood that Facebook does?’

‘Experience’

‘Idea thieves’

‘IP is a fact that influences how my industry grows’

Responses denouncing interest:

‘I have sufficient knowledge’

‘It's important but I would also find someone who would take care of the issue for me
Our legal department had to approve everything regardless of my comments’

‘Most of the clients that I work with are established and have a copyright. I basically ensure that the legal copy, logos etc. are used properly and consistently on various projects. If I were dealing with a new client who was interested in copyrighting or patenting, I'd refer them to a business attorney to file the proper paperwork.’

‘I'm pretty sure whoever I work for owns my ideas. And legal checks to see if say a tag line is being used by another brand.’

‘This topic is fairly important for the creative industries, but not so important for my work, at the moment.’

‘I have legal assistance in my office and I am free to ask whenever I need assistance’

‘I am an IP attorney-at-law’

‘n/a to my profession’

‘Not an immediate priority’

‘Typically, if we don’t know, we’ll ask a lawyer.’

‘Perhaps if I actually made money I would be able to afford the moments needed to protect myself. What's to explain? It's not important to me. It's best left to others.’

‘law and reality differ’

‘something to delegate for now’

‘We produce our own images for our campaigns mostly.’

‘Not so important, right now’

APPENDIX C

Original form of authors own survey.

Intellectual Property, Education and the Creative Industries

This is apart of my graduate thesis research - not for profit.
Thank you so much for taking the time to help me with this!

1. Do you work in the creative industries? *

- [ ] Yes
- [ ] No

2. If yes, what discipline do you work in?

- ◯ visual art/illustration
- ◯ graphic design
- ◯ textile/surface/pattern design
- ◯ transportation design
- ◯ product design and/or development
- ◯ advertising
- ◯ fashion design
- ◯ photography
- ◯ music/television/film
- ◯ new media
- ◯ student
- ◯ other

3. How many years of professional experience do you have? *

- ◯ student
- ◯ 0 > 2 years
- ◯ 2 > 7 years
- ◯ 7 > 15 years
- ◯ 15 years <

4. How would you rate your knowledge of copyright, trademark, trade dress, design patent and/or patent knowledge or other legal issues pertaining to your industry? *

	1	2	3	4	5	6	7	
little to no knowledge	◯	◯	◯	◯	◯	◯	◯	advanced

Original form of authors own survey (cont.).

5. Have you had a formal education on the topic of intellectual property or legal issues in regard to your industry? *

- [ ] yes
- [ ] no

6. How confident are you to put into practice your knowledge of copyright, trademark, trade dress, design patent or patent? *

	1	2	3	4	5	6	7	
Not Confident	○	○	○	○	○	○	○	Very Confident

7. Do you wish your knowledge were more extensive on the topic of intellectual property or other legal issues specific to your discipline? In other words, how important is this topic to you and your work? *

	1	2	3	4	5	6	7	
Not very important	○	○	○	○	○	○	○	Very important

Please explain your answer to the question above.

8. Would you have any interest in attending a workshop or course focused on these issues, either sponsored by your company, local community center or university? *

- [ ] yes
- [ ] no

If yes, would you prefer an online platform or to attend in person?

- ○ I would prefer to take the workshop/course online
- ○ I would prefer a traditional classroom setting