I. INTRODUCTION

“There was an old woman who lived in a shoe, she had so many children she didn’t know what to do; She gave them some broth with plenty of bread, she kissed them all fondly and sent them to bed.” The popular English nursery rhyme about the woman who lived in a shoe has been passed down for generations, but what about the woman who lives in her shoes? Under American copyright law, the shoe the old woman lived in would be subject to different protections than the shoes the old woman wore on her feet. If the old woman decided to shrink her livable shoe house down to a wearable shoe, she’d be shrinking the copyright protection as well.

Copyright Law in the United States originates in the U.S. Constitution, which grants Congress the power “[t]o 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.” Federal copyright law, codified under Title 17 of the United States Code, provides protection for an illustrative, yet not exhaustive, list of categories, including pictorial, graphic, and sculptural work, and works of architecture.
Unlike architecture, Title 17 does not list articles of clothing as its own category of copyrightable subject matter. Accordingly, articles of clothing are subject to a different copyright analysis, and thus, different protections, than architectural works in the United States. The reason for the difference in analysis and protection stems from the Architectural Works Copyright Protection Act of 1990. Before the 1990 Act passed, architectural works could only be protected through the lens of pictorial, graphic, and sculptural works (“PGS Works”), or the category under which articles of clothing continue to be analyzed. However, the Architectural Works Act of 1990, which grants greater protection for architecture, was passed in order to bring the United States into compliance with the Berne Convention. While the difference in treatment can easily be explained by a glance into the legislative history, the difference nevertheless posits the key question: what if we treated articles of clothing like we did pieces of architecture?

This paper seeks to explore how articles of clothing would be analyzed and treated differently if they were subject to the same copyright protections as architectural works. To reach this analysis, this paper will first examine how architectural works were analyzed under federal copyright law before being statutorily recognized as a distinct category of copyright protection. This paper will then analyze current copyright protection of architectural works following the Architectural Works Copyright Protection Act. This paper will then explore how articles of clothing are treated and analyzed under federal copyright law. Section

sound recordings, and architectural works as works of authorship subject to copyright protection).

For further discussion of the categories of copyrightable subject matter listed in Title 17, see supra note 6 and accompanying text.


See Natalie Wargo, Note: Copyright Protection for Architecture and the Berne Convention, 65 N.Y.U.L. Rev. 403 (1990) (explaining architectural works copyright protection act was passed to meet minimum level of protection as proscribed by the Berne Convention once the United States joined in 1988-89).

See https://www.copyright.gov/reports/copyright-amendments-act-of-1990.pdf (“Second, Title II places the United States in full compliance with its multilateral treaty obligations as specified in the Berne Convention for the Protection of Literary and Artistic Works with respect to works of architecture, by creating a new category of copyright subject matter for the constructed design of buildings.”).

See infra section II(A)(1).

See infra section II(A)(2).

See infra section II(B)
III of this paper will analyze how articles of clothing would be copyrighted if U.S. copyright law treated articles of clothing like they did architectural works, subject to the same analysis.\textsuperscript{13}

\section{II. Background}

A. Architectural Works


   a. Statutory Regime

   Prior to the 1990 Architectural Works Copyright Protection Act, architectural works were never explicitly recognized as a distinct category of copyrightable subject matter.\textsuperscript{14} However, architectural works were not completely unprotected: certain aspects were reached and thus protected under other statutorily recognized categories of copyrightable subject matter.\textsuperscript{15}

   Under the 1909 Copyright Act, blueprints of architectural works were protected as “drawings or plastic works of scientific or technical nature.”\textsuperscript{16} Under the 1976 Copyright Act, and up until 1990, the United States extended copyright protection to architectural works through the statutory prong containing pictorial, graphic, or sculptural works (“PGS works”).\textsuperscript{17} This limitation stemmed from the understanding that buildings were “useful articles,” which meant that only parts of a building that could be identified separate from, and exist independent of, the building could be copyrightable as pictorial, graphic, or sculptural works.\textsuperscript{18}

   Despite providing protection for blueprints, actual, constructed buildings remained largely unprotected under the 1909 and 1976 Acts.\textsuperscript{19}

\textsuperscript{13} See \textit{infra} section III.
\textsuperscript{14} See David Shipley, \textit{The Architectural Works Copyright Protection Act at Twenty: Has Full Protection Made a Difference?} (https://digitalcommons.law.uga.edu/fac_archop/711/) (noting architecture was not mentioned in copyright statutes until 1990).
\textsuperscript{15} For further discussion of how architectural works received some copyright protection through statutorily enumerated categories, see \textit{infra} notes 16-21 and accompanying text.
\textsuperscript{16} See Shipley, \textit{supra} note 14 (explaining blueprints were recognized as technical drawings eligible of copyright protection under the 1909 copyright act).
\textsuperscript{17} See 1 Nimmer on Copyright § 2A.09 (LexisNexis 1995).
\textsuperscript{18} For further discussion of how the only copyrightable aspects of a building that were those that could be separate pictorial, graphic, or sculptural works, see \textit{infra} notes 22-26 and accompanying text.
\textsuperscript{19} See Shipley, \textit{supra} note 14 (emphasizing architect’s rights did not extend to actual building constructed from the blueprints).
Act, nor the 1976 Copyright Act provided protection for the actual constructed buildings derived from two-dimensional plans. Therefore, an architect copying the design of another architect’s plans or building did not constitute copyright infringement.

b. Analyzing Copyrightability

Prior to being recognized as a distinct category worthy of copyright protection, buildings or other habitable structures were considered useful articles. Section 101 defines “useful article” as “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” Thus, only features that could exist separate and independent of the useful article—or the building—were deemed copyrightable. A prime example is gargoyles on a building. Gargoyles are three-dimensional statues or sculptures on the top of a building that could exist separately from the building and would be eligible for protection as a sculptural work under 17 U.S.C. §102(a)(5).


On October 31, 1988, President Ronald Regan signed the Berne Convention Implementation Act, and on March 1, 1989, in Geneva, the U.S. was formally accepted, thus joining the most influential world copyright body. For over one hundred years, the United States remained independent of the international

20 See Shipley supra note 14 (explaining copyright protection did not cover the actual buildings themselves).
21 See id. (emphasizing constructing a building based on another architect’s plans did not constitute copyright infringement).
22 For further discussion of how buildings were considered useful articles ineligible for copyright protection as a whole, see supra note 18 and accompanying text.
24 See Shipley, supra note 14 (emphasizing only works that could be identified separate of and independent from the building as PGS works were eligible for copyright protection).
25 For further discussion of how gargoyles on a building could be protected as separate pictorial, graphic, or sculptural works, see infra note 26 and accompanying text.
26 See Leicester v. Warner Bros., 1998 U.S. Dist. LEXIS 8366 at *25 (C.D. Cal. 1998) (providing gargoyles and stained-glass windows as examples of separate, non-utilitarian aspects of architectural works that would have been copyrightable prior to the 1990 amendments); see also Vanessa N. Scaglione, Building Upon the Architectural Works Protection Act of 1990, 61 FORDHAM L. REV. 193, 194 Fn. 12 (listing gargoyles and murals as separate artistic works on buildings).
27 See Wargo, supra note 8 (restating history of Berne Convention Implementation Act).
convention, largely due to differential treatment over moral rights, duration, formalities. However, the passing of the 1976 Act narrowed the gap on a lot of these issues, making it easier for the U.S. to ultimately join the Berne Convention. However, one potential barrier to entry remained: how the United States treated architecture.

While the Berne Convention allows differences over IP regimes among the member countries, there remains a minimum of protection a country cannot fall below. Therefore, while the United States offered some protection for Architecture, it was arguable whether there was enough protection to meet the Berne standard. The Berne Convention was not a self-executing treaty, meaning that the treaty was not automatically implemented into United States law once signed. Rather, the United States had to pass federal legislation to incorporate the requirements of the Berne Convention into United States law. In response, the Architectural Works Copyright Protection Act soon followed.

3. Architectural Landscape Changes: Examining the Changes of Copyrightability of Architectural Works Following the enactment of the 1990 Architectural Works Amendment

a. The Act:
   i. Authorship

The Architectural Works Copyright Protection Act of 1990 ("AWCPA") defines "architectural work" as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or

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28 See id. (listing several reasons the United States had not joined the Berne Convention sooner).
29 See id. (emphasizing 1976 act removed barriers to entry).
30 See generally id. (analyzing what the Berne Convention meant for architecture).
31 See id. ("Though the individual laws of member countries may vary in scope and detail, article 5 of the Convention provides for a minimum level of protection below which an individual country may not fall.").
32 See id. (questioning whether U.S. copyright law, as it pertained to architecture, surpassed the Berne Convention threshold).
34 See id. ("The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.").
drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features. Only humanly habitable, permanent, stationary buildings—such as houses, churches, offices, or museums—are eligible for protection. Inhabitable structures—such as bridges and tents—are ineligible for such protection. Unlike the 1909 and 1975 Copyright Acts, the AWCPA protects the physical, three-dimensional buildings themselves, not just the blueprints or technical drawings. Many courts have held that the 1990 Act does not affect statutory provisions covering blueprints or other architectural drawings that were enacted prior to the AWCPA. This means that a constructed building can be protected under the AWCPA, and the corresponding blueprints, charts, and other architectural plans can be protected as pictorial, graphic, or sculptural works under § 102(a)(5). For the first time in U.S. copyright history, the enactment of AWPCA allowed an architect to sue another architect who constructs a building from the original architect’s constructed building or blueprints.

36 See id. (defining “architectural work”).
38 See id. (defining architectural works).
39 See id. (declining to protect uninhabitable structures).
41 See Scholz Design, Inc. v. Sard Custom Homes, LLC, 691 F.3d 182, 189 (2d. Cir. 2012) (agreeing with the First Circuit that the AWCPA does not affect protection for architectural plans as pictorial, graphic, or sculptural works); see also T-Peg, Inc. v. Vt. Timber Works, Inc. 459 F.3d 97, 109 (1st Cir. 2006) (stating the legislative history makes it clear that the AWCPA does not affect protection for architectural plans as pictorial, graphic, or sculptural works); see also Morgan v. Hawthorne Homes, Inc. 2009 U.S. Dist. LEXIS 31456* (W.D. Pa. 2009) (finding copyright owner of an architectural work has two forms of protection, one as an “architectural work” under the AWCPA, and the other as a pictorial, graphic, or sculptural work under 17 U.S.C. § 102(a)(5)); see also Nat’l Med. Care, Inc. v. Espiritu, 284 F. Supp. 2d 424, 434 (S.D. W. Va. 2003) (“The primary effect of the AWCPA is to provide copyright protection to physical architectural works. The enactment of the AWCPA did not affect the scope of copyright protection afforded to architectural works registered only as technical drawings. A work can obtain protection as both an architectural work and a technical drawing only if the work is registered under both categories.”).
42 See Chen, supra note 40; see also Nat’l Med. Care, Inc. v. Espiritu, 284 F. Supp. 2d 424, 434 (S.D. W. Va. 2003) (emphasizing architectural works can be protected as architectural works under AWCPA or as a pictorial, graphic, or sculptural works under 17 U.S.C. § 102(a)(5)).
43 See Scaglione, supra note 26 (highlighting actual, contracted buildings were not protected until 1990 AWCPA).
ii. Statutory Limitations

Section 120(b) of the Architectural Works Act of 1990 codifies exclusions that pertain to pictorial representations and alterations or demolitions of architectural works. More specifically, section (a) precludes the copyright holder of an architectural work from preventing any “making, distributing, or public display” of pictorial representations—such as photographs or paintings—of the architectural work, when the architectural work is visible to the public. Moreover, section (b) grants the owner of the architectural work to make alterations or to destroy the architectural work without express permission of the copyright holder.

iii. Are Statutory Limitations at Odds with Moral Rights?

The right to alter or destroy the architectural work without permission of the copyright holder can run afoul moral rights. Moral rights are derived from the French “droit moral” and are understood to maintain the connection between the author and her work, specifically by allowing the author to maintain her personality and message in her creation. In a way, moral rights are the natural rights an author has over the creation she made and keeping it that way, independent or economic or exploitation rights. While not recognized to the full extent as Europe, U.S. copyright law does address certain moral rights, including the right to attribution.

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44 For further discussion of section 120, see infra notes 45-46 and accompanying text.
45 See 17 U.S.C. §120(a) ("Limitations; Scope of Exclusive Rights (a) Pictorial representations permitted. The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.").
46 See 17 U.S.C. §120(b) ("Alterations to and destruction of buildings. Notwithstanding the provisions of section 106(2) [17 USCS § 106(2)], the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.").
47 For further discussion on moral rights, see infra notes 48-54 and accompanying text.
49 See id. (asserting moral rights are authors’ personal or humanitarian rights over their artwork that exist because of authors’ role in creation, as opposed to economic rights or rights to exploit authored work).
and the right of integrity.\textsuperscript{50} The attribution right provides authors with the right to attribute their name with their work.\textsuperscript{51} The integrity right protects the work from destruction, mutilation, or changes to the author’s message without the author’s consent.\textsuperscript{52}

Because the primary goal of copyright law in the United States is to “promote the progress of science and the useful arts,” the bundle of rights given to authors in the U.S. (codified in section §107 – exclusive rights) contain mainly economic rights that are meant to incentivize authors to create work.\textsuperscript{53} On the other hand, moral rights—which are recognized to a fuller extent in civil countries—focus on the author’s dignity and rights to her own work, rather than creation for public benefit at large.\textsuperscript{54}

b. Analyzing Copyrightability under the 1990 Act

i. Two-Prong Analysis

Because the AWCPA expanded protection for architectural works, courts would need a new test for analyzing copyrightability. While enacting the 1990 Act, the House Report envisioned a two-step analysis to determining copyrightability of architectural works: “(1) Determine whether there are original design elements present, including overall shape and interior architecture.\textsuperscript{55} If so, (2) examine whether the design elements are functionally required; if not functionally required, work is copyrightable without separability.”\textsuperscript{56} This analysis to determine the copyrightability of architectural works differs from the analysis under the 1976

\textsuperscript{50} See Wargo, supra note 8 (highlighting strong respect for moral rights in France); see also White, supra note 48 (characterizing Germany “[a]s one of the foremost protectors of moral rights . . . ” while the “United States is lagging behind the rest of the world in providing strong moral rights for authors”).

\textsuperscript{51} See White, supra note 48 (defining author’s moral right of attribution).

\textsuperscript{52} See id. (defining author’s moral right of integrity).

\textsuperscript{53} See id. (juxtaposing goal of copyright in the U.S. against traditional moral rights).

\textsuperscript{54} See id. (contrasting moral rights from economic incentives).


\textsuperscript{56} Id.
Act. Notably, analyzing an architectural work after the 1990 enactment leads to more protection over the architectural work.\textsuperscript{58}

\textit{ii. Shine v. Childs}\textsuperscript{59}

One of the prominent cases analyzing copyrightability of buildings under the AWCPA is \textit{Shine v. Childs}.\textsuperscript{60} In \textit{Shine}, the United States District Court for the Southern District of New York was asked to determine whether defendant’s constructed tower infringed upon the copyright of another architect’s blueprints.\textsuperscript{61} While obtaining his Masters in Architecture at Yale, Plaintiff Shine enrolled in a class on skyscrapers. During the course, Shine first developed a tower (“shine 99”) that tapers with "two straight, parallel, roughly triangular sides, connected by two twisting facades, resulting in a tower whose top [is] in the shape of a parallelogram."\textsuperscript{62} Later that semester, Shine produced a more developed final product, which he named “Olympic Tower.”\textsuperscript{63} Shine described Olympic Tower as "a twisting tower with a symmetrical diagonal column grid, expressed on the exterior of the building, that follows the twisting surface created by the floor plates' geometry."\textsuperscript{64}

At the end of the semester, Shine presented his plans in front of a jury of experts for evaluation. Defendant Childs was sitting on the board during Shine’s presentation and publicly praised Shine for his design.\textsuperscript{65} Shortly after, Childs constructed a tower similar to Shine’s. In fact, the tower was so similar, Shine’s professor at Yale retrieved Shine’s original blueprints and presented them to the Dean. Shortly after, Shine filed suit.\textsuperscript{66}

Despite Defendant Childs asserting Shine’s tower was unoriginal and ineligible for protection, the court found Shine’s tower designs eligible for

\textsuperscript{57} See Scaglione, \textit{supra} note 26 (explaining building themselves were not copyrightable prior to the 1990 amendments; merely the drawings and features that were conceptually separate could receive copyright protection as pictorial, graphic, or sculptural works); \textit{but see} Architectural Works Copyright Protection Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990) (providing copyright protection over physical buildings, including designs).

\textsuperscript{58} See Shipley, \textit{supra} note 14

\textsuperscript{59} 382 F. Supp. 2d 602 (S.D.N.Y. 2005).

\textsuperscript{60} For further discussion of \textit{Shine v. Childs}, see \textit{infra} notes 61-68 and accompanying text.

\textsuperscript{61} See Shine, 382 F. Supp. 2d at 604.

\textsuperscript{62} See \textit{id.} (stating key issue of case).

\textsuperscript{63} See \textit{id.} (relaying facts of case).

\textsuperscript{64} See \textit{id.} (relaying facts of case).

\textsuperscript{65} See \textit{id.} (relaying facts of case).

\textsuperscript{66} See \textit{id.} (relaying facts of case).
protection under the AWCPA. The Shine court pointed out that individual standard elements such as the twists of the building may not receive individual protection, but the “arrangement and composition” of elements do constitute a building design under the AWCPA.

B. Copyright Protection for Clothing and Fashion Designs in the United States: A Glance into Copyright Protection for Clothing Following Star Athletica

Unlike architecture, clothing is not protected as a whole. United States Copyright Law currently extends to articles of clothing through the PGS works prong. The leading case on copyright analysis as it applies to articles clothing is Star Athletica. The Court in Star Athletica examined cheerleading uniforms, specifically whether the designs, including lines and chevrons, on cheerleading uniforms were eligible for copyright protection. In reaching its conclusion that the designs were copyrightable, The Court gave us a two-prong test for copyright analysis with respect to clothing: (1) Can be perceived as a 2D or 3D work or art separate from the useful article; and (2) Would qualify as a protectable PGS work, either on its own or in some other tangible medium of expression if it were imagined separately from the useful article to which it is incorporated.

The ultimate separability question for articles of clothing is “whether the feature for which copyright is claimed would’ve been eligible for copyright

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67 See id. at 609 (explaining arguments and holding of case).
68 See id. (emphasizing combination of elements may be protected as a whole).
69 See John Zarocostas, The Role of IP Rights in the Fashion Business: a US Perspective, WIPO MAGAZINE (Aug. 2018), https://www.wipo.int/wipo_magazine/en/2018/04/article_0006.html (“Only design features that can be separated from a garment or other utilitarian or useful item, so to speak, qualify for copyright protection in the United States. The whole issue has been a major source of frustration for designers in the United States for some time because it means that only certain aspects of their garments, and not the garment as a whole, are protectable.”).
70 See Star Athletica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002, 1005 (2017) (“[C]opyright protection extends to pictorial, graphic, and sculptural works regardless of whether they were created as freestanding art or as features of useful articles.”).
71 See generally Star Athletica, 137 S. Ct. at 1010 (finding elements incorporated in or on an article of clothing that would qualify as a PGS work separate or independent from the article of clothing are copyrightable).
72 See id. at 1007 (deciding whether various two-dimensional designs on cheerleading uniforms were eligible for U.S. copyright protection).
73 See id. (providing two-prong test for determining copyrightability of clothing).
protection as a PGS had it originally been fixed in some tangible medium other than a useful article before being applied to a useful article.”

In reaching its holding, the Court discusses its prior holding in *Mazer v. Stein,* which held that copyright protection subsists in a feature that “can be identified separately from,” and is “capable of existing independently of,” the article’s “utilitarian aspects.”

Notably, as the Court in *Star Athletica* pointed out, the copyright holder of the designs on the cheerleading uniforms “have no right to prohibit any person from manufacturing a cheerleading uniform of identical shape, cut, and dimensions to the ones on which the decorations in this case appear.” They may prohibit only the reproduction of the surface designs in any tangible medium of expression—a uniform or otherwise.” This reiterates the fact that a copyright holder has no protection over the shape or cut of article of clothing itself—merely the design on the article of clothing.

C. Differences of Copyrightability Between Architecture and Clothing under Current Law

The key difference with respect to copyright protection in architecture versus clothing is how utilitarian or functional aspects are protected. *Star Athletica* explicitly tells us that the utilitarian aspects of clothing are not eligible for copyright protection. However, utilitarian aspects of architecture are capable of

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74 See id. (clarifying elements of clothing that would have been eligible for copyright protection as two or three dimensional works had they been fixated on a medium other than a useful article are eligible for copyright protection).
75 347 U.S. 201 (1954).
76 See *Star Athletica,* 137 S. Ct. at 1010 (quoting *Mazer v. Stein,* 347 U.S. at 214).
77 See id. (emphasizing copyright holder of a cheerleading uniform design cannot prevent others from using exact dimensions, shape, cut of uniform).
78 See generally id. (illustrating copyright holders of designs on clothing may only protect the PGS works on the clothing).
79 See id. (finding only pictorial, graphic, or sculptural aspects of useful articles that can be separate and independent of said useful article copyrightable); see *Circular 41: Copyright Registration of Architectural Works,* U.S. COPYRIGHT OFF., (rev. Mar. 2021), https://www.copyright.gov/circs/circ41.pdf (explaining authorship in architectural works extends to the overall form of the building as viewed from the exterior, including arrangement or composition of internal features such as walls or other permanent structures, but authorship does not extend to purely functional features) (emphasis added).
80 See John Zarocostas, *The Role of IP Rights in the Fashion Business: a US Perspective,* WIPO MAGAZINE (Aug. 2018), https://www.wipo.int/wipo_magazine/en/2018/04/article_0006.html (explaining garments such as dresses, shoes, bags, are useful articles that are not eligible for copyright protection as a whole; merely design features that can be identified
protection, so long as they are not functionally required. In the next section, I will analyze how clothing would be protected if it were treated like architecture.

III. ANALYSIS

A. Analyzing Articles of Clothing like Architecture

If articles of clothing were treated like architecture under U.S. Copyright law, clothing would likely consist of “the design of a garment as embodied in any tangible medium of expression, including a garment, pattern, or drawings.” The work includes the overall form as well as the arrangement and composition of spaces and elements in the design but does not include individual standard features.

1. The Two-Prong Test

As discussed above, the House of Representatives envisioned a two-part test of analyzing which features of architectural works would be copyrightable when enacting the AWCPA. “(1) Determine whether there are original design elements present, including overall shape and interior architecture. If so, (2) examine whether the design elements are functionally required; if not functionally required, work is copyrightable without separability.” Parties in disputes, as well as courts themselves, often cite to this analysis during litigation. If clothing were treated like architecture, this would be the foundational test for determining whether an article of clothing or accessory would be copyrightable. I will apply this test to clothing below.

2. Functionality Limitations

The legislative history of the AWCPA suggests that only buildings intended to be humanly habitable are eligible for protection. Bridges and barns are not separately or independently from the useful article are eligible for copyright protection.

See infra section III.
See id. (defining architectural work).
For further discussion of the two-prong analysis envisioned in the House Report, see infra note 89 and accompanying text.
See Scaglione, supra note 26 (reviewing legislative history of the AWCPA).
afforded copyright protection because they are purely functional.\textsuperscript{89} Humanly habitable structures—such as houses, office buildings, museums, and churches—are also functional, yet they are eligible for copyright protection.\textsuperscript{90} In addition, courts have interpreted “building” to include only free-standing structures, and those that can be “occupied.”\textsuperscript{91} Where do we draw the line for clothing? Are shirts houses, but belts bridges?

It is easier to see how articles of clothing such as shirts, pants, skirts, or dresses are analogous to houses: humans occupy them for shelter. In addition, there are a lot of creative variations in both houses and clothes. It is more difficult to determine whether belts are buildings or bridges. Like buildings, belts are occupied by humans. A person physically wears a belt. There can be creative, artistic variations of belts, and a person can use a belt to accessorize an outfit.

On the other hand, belts are inherently functional: they are used to keep pants up. Some scholars assert that the reason bridges or other structures deemed “purely functional” were excluded from protection under the AWCPA was to prevent copying standard, unartistic structures like interstate highways.\textsuperscript{92} This viewpoint mirrors the well-established doctrine of not providing protection for standard features or industrial designs. However, as copyright scholars point out, some bridges are highly artistic.\textsuperscript{93} Even if the famous Rialto Bridge in Venice had been constructed in the United States after 1990, the bridge would not be copyrightable under the AWCPA.\textsuperscript{94} Creativity of design is still not enough to make a bridge copyrightable under the AWCPA. Therefore, if belts were considered purely functional, even the most creative belt used as an accessory—not out of necessity—would be ineligible for copyright.

Even treating clothing like architecture would leave uncertainty: it is arguable whether belts are bridges or buildings, and thus copyrightable.

\textsuperscript{89} See Architectural Works Copyright Protection Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990) (declining to include purely functional, inhabitable structures such as bridges, barns, to architectural works eligible for copyright protection).

\textsuperscript{90} See id. (codifying express protection for humanly habitable buildings, including houses, office buildings, museums, churches).

\textsuperscript{91} See Yankee Candle Co. v. New England Co., 14 F. Supp. 2d 154 (D. Mass. 1998) (finding a candle store within a mall not to be a “building” under the AWCPA because it was not “free standing); see also Viad Corp. v. Stak Design, Inc., 2005 WL 894853 (E.D. Tex. 2005) (finding kiosk in a mall could not be considered a building because it could not be “occupied” by humans).

\textsuperscript{92} See Scaglione, supra note 26 (asserting Congress was concerned about interstate highways, dams, and bridges being copyrighted).

\textsuperscript{93} See id.

Another key question regarding functionality that must be addressed is whether design components that serve to make a garment more flattering would be precluded from protection on the basis that the design is functional. However, the architectural works statute does allow for some functionality. A house is functional, yet a house can be protected. The same way that the statute allows for some functionality would lend itself to the treatment of clothing. Treating clothing like architecture would allow some functional aspects to be created. A functional aspect that is not standard but is part of the design feature would be protected if clothing were treated like architecture.

The House report specifically addresses this type of concern. The second part of the house report allows for functional aspects to be protected, so long as they are not “functionally required.” A design that makes a dress more flattering—while functional—is not functionally required to make a dress work. The dress still functions as a dress, even if the design element were to be removed. Therefore, this type of “functionality” would still be copyrightable within the architecture framework.

Look at fashion designer Roland Mouret’s Harlow One-Shoulder Colorblock Hammered Silk dress featured below:95

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Roland Mouret’s dress serves several purposes. As a whole, it functions as a dress a person can wear. But what about the design on the dress? Under Star Athletica, or a traditional clothing analysis, the designer or copyright holder would argue that the black colorblock juxtaposed against the white would qualify as a two-dimensional piece of artwork that would have been copyrightable had it been affixed to medium other than a useful article. However, the overall shape of the dress would not be protected—the thin, one-shoulder strap, the dimensions, or the split at the bottom.

But how would this look under an architecture analysis? The dress is a house: a humanly habitable structure eligible for protection. Therefore, the fact that the dress is functional as a dress does not preclude the dress from receiving protection as an article of clothing under AWCPA clothing analogy.

Here, the dress’s features make it functional in more ways than just functioning as a dress. The slits at the bottom make it easier for the person wearing the dress to walk. The design allows for airflow and allows more movement than a tight dress. The black itself produces a slimming effect: when you look at the model, a slim, black figure pops out first. Does the fact that the way the black colorblock is engineered to look like a conventionally flattering woman’s figure qualify the color and design as functional? Does the fact that the slits allow for easier movement qualify as functional aspects, precluding from protection?

Under the AWCPA, these features would likely be copyrightable. Even if you concede the black colorblock is aesthetically functional by providing a flattering effect, the colorblock is not functionally necessary. The dress can still function as a dress if you made the entire dress monochrome black. The AWCPA effectively addresses the aesthetic functionality issue that Star Athletica leaves open.

Congress and courts are reluctant to protect aesthetic functionality, as seen overwhelmingly in trademark and trade dress jurisprudence. However, the principle of a design having value because of the function it serves can also be relevant in the copyright setting. In fact, several designers have attempted to obtain

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97 For further discussion of how the cut, shape, and dimensions cannot be copyrighted, see supra note 80 and accompanying text.
trade dress over their clothing designs, likely because of the lack of protection copyright affords to clothing designs.99

What about the slits? They provide airflow and an opening for the legs to walk through. Is the dress no longer copyrightable because it is functional? If we apply the two-prong approach envisioned by the house, we would first look at whether there are original design elements present, including overall shape and interior architecture. As we know from other areas of copyright law, original typically means originates with the author.100 The creativity threshold is also low.101 Here, it is likely that the shape of the dress—the asymmetric, one-shoulder combined with the slits, is not a common dress shape and leads to the conclusion that there are original design elements present.102 Moreover, this combination of elements is analogous to the elements in the Shine case, that when combined together, constituted an original building design.103 Proceeding to the second step, we look to whether the design elements are functionally required; if not functionally required, work is copyrightable without separability.

Here, the slits are not functionally required: the dress functions as a dress with or without them. While they serve multiple functions, they are not required to make the dress a wearable dress. If you took them away by cutting them off or by sewing the slit in the middle, you would still have a wearable gown.

Under the AWCPA, these design elements, including the overall shape can be protected, while under Star Athletica, only the separate and independents PGS works are copyrightable, not the useful article itself.104

3. Standard Features

100 See Weissmann v. Freeman, 868 F.2d 1313, 1321 (2d Cir. 1989) (“In the copyright context, originality means the work was independently created by its author, and not copied from someone else’s work. The level of originality and creativity that must be shown is minimal, only an 'unmistakable dash of originality need be demonstrated, high standards of uniqueness in creativity are dispensed with.”).
101 For further discussion of the threshold, see supra note 103 and accompanying text.
103 For further discussion of Shine, see supra notes 61-68 and accompanying text.
While the AWCPA allows for constructed buildings to be copyrighted, it does not include “standard features.” What are standard features in the clothing and fashion world? In the architectural sphere, standard features typically include “windows, doors, and other staple components.”105

Under this analogy, standard features in clothing and fashion design sphere likely include zippers and their normal placement on pants, as well as buttons and their normal arrangement on a shirt or coat. In addition to being regarded as standard features, buttons and zippers would probably also be disqualified from being protected under the functionality analysis. Stepping beyond zippers and buttons, other standard features in the clothing realm could be standard silhouettes or cuts—such as shift dresses, a collared shirt, or a v-neck. These shapes, hems, and necklines are standard features that are used to make up a significant number of garments—they are essentially standard in the clothing industry.

While standard features are not individually protected in architectural works, the architectural work as a compilation of these standard features can be copyrightable as a whole.106 For example, in the clothing context, this could mean a dress with standard neckline or silhouette, in combination with a unique bodice, such as the slits featured in Roland Mouret’s dress shown above, could be protected. However, because an original combination of standard features is viewed as a compilation, the combinations would be subject to *scenes a faire* and the idea/expression dichotomy.107 Under these limitations, a classic button up shirt—which has been around for well over a century and has become a worldwide wardrobe staple—would likely be precluded from protection as *scenes a faire.*108

4. Other Limitations

a. Photography

Taking photographs of a copyrighted work can result a violation of an author or copyright holder’s exclusive rights to reproduce or create derivative

106 See Shipley, *supra* note 14 (explaining features that would be unprotected individually can be protected together as a whole).
107 See Shipley, *supra* note 14 (emphasizing an architect’s arrangement of standard designs is analogous to compilations).
works. In addition, depending what a user does with the photographs, the right to display the work publicly could be infringed upon. However, unlike other copyrightable subject matter, the AWCPA specifically allows photographs to be taken of architectural works in public spaces. The United States Court for the District of Puerto Rico applied this section of the AWCPA in Landrau v. Solis-Betancourt. In Landrau, an architect and her firm filed suit against the publisher of a magazine, among others, that published photographs of a home the architect claimed to have designed. Applying section 120(a), the District Court found that publishing photos of the copyrighted house did not constitute copyright infringement because there was no evidence to suggest the photograph was not taken from a public area.

This limitation of the AWCPA provides a clear exception that would be applicable to articles of clothing, if articles of clothing were treated like architectural works. Under the 120(a) exception, taking photographs of a person wearing copyrighted clothing in public would not be a violation of the clothing designer’s, or author’s, exclusive rights. In the current day and age, it is easy to snap a photo of a person and post it on social media within seconds. The 120(a) exemption would be imperative to avoid opening the floodgates of litigation.

b. Alterations and Destructions

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109 See 17 U.S.C. § 106(1)-(3) (codifying copyright holder’s exclusive right to reproduce the work, prepare derivative works, distribute copies of the work); but see 17 U.S.C. § 107 (codifying fair use exemption).
110 See 17 U.S.C. 106(5). (“[I]n the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.”).
111 See 17 U.S.C.A. § 120(a) (photographs of an architectural work that is visible to the public do not constitute copyright infringement).
113 See id. at 107 (litigating several claims, including copyright infringement, when an architect and her firm alleged Architectural Digest published photos of a house in Puerto Rico and improperly credited another architect for the design of the home).
114 See id. at 100-11 (announcing holding of the court).
116 Cf Shipley, supra note 14 (emphasizing there have been for more architecture copyright suits following the AWCPA than when architecture was treated as a PGS, suggesting plaintiffs will sue when a new cause of action emerges).
i. Alterations

The 1990 Architectural Works Copyright Protection Act specifically carves out exclusions to the author’s right to approval of destruction and alterations. This express limitation would be particularly relevant in the fashion context, if clothing copyrightable like architecture, but subject to the same Section 120 limitations.

Clothing is not one-size fits all. Many people alter clothing off the rack in order to fit their bodies. In fact, many men’s suits are sold without the hemline sown to the bottom, so they can be specifically altered to fit each customer. Therefore, a limitation to an author’s right to alter would be highly useful—almost imperative. It would be impossible to gain author approval before any small alteration would be made.

Moreover, a significant number of alterations to a garment may run afoul the copyright holder’s exclusive right to prepare derivative works. Upcycling,” or taking old clothing and turning them into something new, is a common trend in the industry. Although the phenomena has been around for decades, it has recently surged in popularity due to its positive environmental impact. The fashion industry is one in particular that has gotten a lot of heat recently for its pollution

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117 See generally Eliana Dockterman, One Size Fits None: Inside the Fight to Take Back the Fitting Room, TIME, https://time.com/how-to-fix-vanity-sizing/ (last visited Dec. 29, 2021) (detailing struggles shoppers face with vanity sizing; asking “why is it so hard to find clothes that fit?”).


119 See The GQ Editors, The GQ Guide to Suits, GQ (Sept. 29, 2021), https://www.gq.com/story/gq-guide-to-suits (“Most off-the-rack suits come with long, unfinished hems so even if you aren’t interested in perfecting the fit of a jacket or the length of sleeves, this is one part of your suit that will require a trip to the tailor.”).

120 See David Marshall, Why Upcycling Clothes is the Next Big Thing in Sustainable Fashion, IMMAGO, (May 6, 2021), https://immago.com/upcycling-clothes/ (defining upcycling as “to take old, worn out, or damaged clothing and transform it into something new”); see id. (calling upcycling clothing “the next big thing in fashion”).

121 See id. (attributing rise in upcycling to sustainability efforts).
and wastefulness. Upcycling can be a sustainable alternative. On a small scale, it often involves consumers purchasing used items from thrift stores and completely changing them. Moreover, on a larger scale, some companies base their entire brand or certain lines off of upcycling.

Upcycling in fashion is analogous to remodeling in the architectural sphere. However, whether these alterations constitute derivative works, or just mere alterations as allowed by section 120 is not an issue many courts have faced. When the Southern District of Texas was faced with this issue of determining whether alterations to a home constituted copyright infringement, the court cited the legislative history, which explained that Section 120 intended to prevent the copyright holder—who has the exclusive right to prepare derivative works—from interfering with alterations to habitable architectural works. Because the law surrounding alterations and derivative in the architectural sphere is minimal, it is difficult to determine how this would apply if the U.S. treated fashion like architecture.

ii. Destruction

In addition to allowing alterations without the copyright holder’s approval, Section 120 provides for destruction without the author’s approval. The right to “destroy” a work, in the clothing context, is analogous to throwing the article or clothing or accessory away. Again, this limitation would be imperative in the fashion context, as it would be nearly impossible to monitor destructions by individual consumers.

iii. Intertwinement with Moral Rights

While destruction and alterations without author’s approval are statutorily authorized, certain types of changes may run head-on into the issue of moral rights—namely attribution and integrity. If an article of clothing is destroyed or

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122 See id. (highlighting apparel industry is second to oil industry in amounts of pollution); see also id. (reporting textile industry is responsible for 10% of global emissions).
123 See id. (asserting upcycling clothes can be a sustainable option over buying new clothes).
124 See id. (explaining how upcycling works).
125 See id. (listing Eileen Fisher, RE/DONE, Urban Outfitters, ASOS as companies who have built their brands around upcycling).
126 See Chen, supra note 40 (characterizing case law on this topic as “dearth”).
127 See Javelin Investments, LLC v. McGinnis, 2007 WL 781190 (S.D. Tex. 2007) (applying section 120(b) exemption to a house).
129 For further discussion of moral rights, see supra notes 47-54 and accompanying text.
altered to the point where it becomes unrecognizable, would that violate an author’s right to integrity? Because the AWCPA specifically allows for these types of changes and the U.S. does not prioritize moral rights the same way Europe does, it is likely that the rights to alter and destroy would outweigh moral rights.130

D. Implications of Treating Clothing Like Architecture

As explored above, treating articles of clothing like architectural works would subject articles of clothing to a greater level of copyright protection.131 What are the consequences of increasing copyright protection over clothing?132 Are these consequences good or bad?133 These questions have been analyzed by prominent copyright scholars, and two opposing viewpoints have been articulated.134 I will explore the strongest arguments for each side below:

1. Increased Protection for Clothing and Fashion Designs is a Good Thing

Since 2009, three bills aiming to increase copyright protection over clothing and fashion design have been introduced to Congress.135 Proponents for increasing

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130 See generally White, supra note 48 (emphasizing European civil law countries respect moral rights more than the United States).
131 For further discussion of how treating articles of clothing like architectural works would subject to clothing to more copyright protection, see supra notes 86-111 and accompanying text.
132 For further discussion of the hypothesized consequences of increasing copyright protection for clothing, see infra 138-148 and accompanying text.
133 For further discussion of the hypothesized consequences of increasing copyright protection for clothing, see infra 149-170 and accompanying text.
134 See generally C. Scott Hemphill & Jeannie Suk, The Law, Culture, and Economics of Fashion, 61 STANFORD L. REV. 1147 (2009) (asserting increased protection of fashion designs is a good thing, as it increase creativity within the industry); see generally Kal Raustiala & Christopher Sprigman, Response: The Piracy Paradox Revisited, 61 STAN. L. REV. 1201 (2009) (asserting low intellectual property protection, and thus prevalence of copying, is helpful, not harmful, to fashion cycle).
copyright protection assert that unregulated copying threatens innovation.\textsuperscript{136} Because copies threaten the market for originals, low copyright protection decreases the incentive to create new clothing and fashion designs.\textsuperscript{137} Thus, increasing copyright protection is a good thing, as it fosters creativity and spurs innovation, meeting the goals of copyright as a whole.\textsuperscript{138} Those who believe that fashion needs more protection believe that “low protection breeds an environment to create knock-offs and fails to protect designers.”\textsuperscript{139} When knock-offs are created, the would-be infringer reaps the benefit of the original creator’s work.\textsuperscript{140} Although copyright protection helps original authors reap the fruits of their labor, that is not the target of United States copyright law.\textsuperscript{141} In fact, \textit{Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.}\textsuperscript{142} effectively got rid of the “sweat of the brow doctrine.”\textsuperscript{143} However, reaping the fruits of labor is one economic incentive that can induce authors to create.\textsuperscript{144} Moreover, two copyright and fashion scholars, Kal Raustiala & Christopher Sprigman, wrote a response to Hemphill & Suk’s argument

\textsuperscript{136} See Hemphill & Suk, \textit{supra} note 137 (“Fast-fashion copying, by contrast, threatens the amount of innovation and pulls the direction of innovation toward fashion’s status conferral aspects and away from its expressive aspects.”).

\textsuperscript{137} See \textit{id.} at 1174 (“Mass copyists undermine the market for the copied good. Copies reduce profitability of originals, thus reducing the prospective incentive to develop new designs in the first place. The predicted result, a reduced amount of innovation, is familiar from copying in other creative industries, such as file sharing of copyrighted music and films.”).

\textsuperscript{138} See Martin, \textit{supra} note 138 at 1193-94 (asserting more protection will promote innovation because manufacturers who copy will shift production to creating original designs); see also \textit{id.} at 475 (“By amending copyright law to include fashion design, creative minds will be free to focus on design rather than continuing to fear copycat designers).

\textsuperscript{139} Martin, \textit{supra} note 138 at 1194.

\textsuperscript{140} See \textit{id.}

\textsuperscript{141} See \textit{Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.}, 499 U.S. 340, 354 (1991) (rejecting “sweat of the brow” doctrine). “Protection for the fruits of such research . . . may in certain circumstances be unavailable under a theory of unfair competition. But to accord copyright protection on the basis alone distorts basic copyright principles in that it creates a monopoly in public domain materials without the necessary justification of protecting and encouraging the creation of ‘writings’ by ‘authors.” See \textit{id.} (quoting Nimmer § 3.04) (citation omitted).


\textsuperscript{144} See Aaron D. White, \textit{supra} note 27 (discussing economic incentives of copyright law to reach goal of promoting sciences and useful arts).
explaining that, “it is enhanced creativity and innovation, not reduced copying” that is the goal of copyright law.145

2. Increased Protection for Clothing is a Bad Thing: Fashion Cycles Work Because of Low Intellectual Property Protections

Interestingly, scholars who vehemently oppose increasing copyright protection believe that lower copyright protection spurs innovation.146 This viewpoint is summarized as “The Piracy Paradox.”147 The crux of the argument is that “a lower intellectual property regime speeds up the fashion cycle by diffusing designs more quickly, and then driving them towards exhaustion.”148 While less protection may “weaken individual designers” it “paradoxically, strengthens the industry and drives its evolution”149 Two noteworthy copyright scholars, Raustiala & Sprigman, argue over time, copying is helpful, not harmful.150 Raustiala & Sprigman break this phenomenon down into two parts, to which they call “Induced Obsolescence” and “trend anchoring.”151

To expand upon “induced obsolesce,” Raustiala & Sprigman assert that fashion is “status-conferring,” and specific garments are often purchased because of the status they provide, rather than out of necessity, such as comfort or warmth.152 As soon as the status of what is “new” is lost by easily-accessible copies in the marketplace, consumers want to chase a new design, thus, inducing the old into obsolescence.153 “Copying helps to diffuse designs into the mainstream, where they

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145 See Kal Raustiala & Christopher Sprigman, Response: The Piracy Paradox Revisited, 61 STAN. L. REV. 1201 (2009) (responding to Hemphill & Suk’s arguing that more protections are needed over fashion designs to decrease copying).

146 See Kal Raustiala & Christopher Sprigman, Response: The Piracy Paradox Revisited, 61 STAN. L. REV. 1201 (2009) (arguing lower intellectual property protection over clothing is what drives the fashion cycle, pushing designers to create new clothing designs when theirs are copied).

147 See id. (naming phenomena of copying driving creation, rather than disincentivizing creation “The Piracy Paradox”).

148 See id. (expanding upon piracy paradox).

149 See id. (emphasizing paradoxical nature of lower protection driving creativity).

150 See id. at 1210-11(“Copying, in other words, signals a trend, solidifies it, and then exhausts it. Why does it exhaust the trend? Because the early adopters/relatively powerful desire for differentiation is retriggered soon after the ordinary consumer’s relatively powerful flocking inclination leads to wider adoption of the previously vanguard design.”).

151 See id. at 1207 (naming theories).

152 See id. at 1206 (emphasizing motivation behind clothing purchases is often not out of necessity).

153 See id. (explaining induced obsolesce).
lose their appeal for fashion cognoscenti”154 Essentially, “fashion-conscious consumers seek to follow trends; copying helps the industry create trends and communicates to consumers what these new trends are, thereby allowing consumers to follow them”155

The theory of anchoring trends can be interpreted by a mathematical ratio: the Differentiation/Flock Ratio (“D/F Ratio”).156 A D/F ratio indicates where an individual consumer’s desire to flock and desire to differentiate as located on a continuum.157 The differentiator, represented as the numerator, quantifies the amount a person desires to differentiate themselves from the crowd in terms of fashion trends.158 The flock quantity, represented as the denominator, quantifies the amount a person desires to flock to the group, or blend in.159 Those with a high D/F ratio—the differentiators—seek to stand out, they want to wear what no one else is wearing.160 Those with a low D/F Ratio—the flockers—desire to blend in, or wear what everyone else is wearing.161 The D/F ratio is a continuum, and consumers someone who is neutral or indifferent would be represented as 1 (1/1).162 In addition, the ratio is flexible—an individual’s ratio can change over time.163

It is the differentiators who drive innovation. The market is driven by the high D/F ratio consumers, who tend to discard their old clothes and buy new designs when too many ordinary consumers buy the copies.164 Because they seek to stand out, they demand new designs.165 As soon as copied designs are widespread, the differentiator’s demand encourages designers to create new designs, thus driving the new trend cycles.166 Induced obsolescence and trench anchoring work together: when copies are made and status is lost, differentiators chase the next thing, and the cycle is reborn.167

154 See id. (quoting authors).
155 See id. (quoting authors).
156 See id. (quantifying theory of trend-anchoring).
157 See id. (defining “differentiators” as those who seek to stand out, thus driving the innovation cycle)
158 See id. (defining flockers as those who “seek to stand out as little as possible”).
159 See id. (quantifying flockers in D/F ratio).
160 See id. (asserting differentiators, or those who desire to stand out much more than blend in, drive the fashion innovation cycle).
161 See id. (explaining role of flockers).
162 See id. (characterizing ratio as a continuum).
163 See id. (asserting social circumstances such as age, wealth, and marital status can change a consumer’s D/F ratio).
164 See id. (explaining how differentiators drive trend cycles).
165 See id. (explaining how differentiators drive trend cycles).
166 See id. (explaining how differentiators drive trend cycles).
167 See id. (noting induced obsolescence and trend anchoring work well together to explain “the otherwise-puzzling persistence of continuous fashion creativity in the face of extensive copying”).
Notably, scholars on both sides of the debate argue that their view will spur innovation.\textsuperscript{168} Since the AWCPA was passed, courts have seen a noteworthy increase architecture copyright suits.\textsuperscript{169} This suggests that holders of copyrights over architectural works are active in defending their work. Despite expanding protection to include actual architectural works, rather than just separate PGS works, many copyright scholars believe that copyright protection over architecture is still thin.\textsuperscript{170} While treating clothing like architecture would increase protection over clothing and fashion designs, it is Thus, Raustiala & Sprigman would likely view this increased, but still relatively thin regime insufficient to stifle innovation.\textsuperscript{171}

IV. CONCLUSION

Prior to the 1990 Architectural Works Copyright Protection Act, both architecture and clothing and fashion designs were treated as useful articles and thus only eligible for copyright protection for those aspects that were eligible for copyright protection separate and independent of the useful article.\textsuperscript{172} However, the 1990 Act carved out architecture as a new, explicit category worthy of copyright protection, thus chancing the analysis of what aspects of an architectural work could be protected with copyright.\textsuperscript{173} This shift posed the question: what would happen if we treated clothing and fashion designs like architecture following the 1990 enactment?

\textsuperscript{168} Compare Hemphill & Suk, supra note 137 (asserting increased copyright protection over fashion and designs will spur innovation and creativity) \textit{with} Raustiala & Sprigman, supra note at (asserting low intellectual property protection over clothing designs drives creation in the fashion industry).

\textsuperscript{169} See Shipley, supra note 14 (emphasizing increase in copyright suits over architecture since 1990).

\textsuperscript{170} See Shipley, supra note 14 (“Other than benefiting, to some degree, relatively unique, custom-designed structures, the AWCPA has not had a substantial impact on architects and architecture because the scope of copyright protection for most architectural works is thin.”).

\textsuperscript{171} See generally Raustiala & Sprigman, supra notes at 149-169.

\textsuperscript{172} See Shipley, supra note 14 (explaining copyrightability of architecture was limited to PGS works prior to AWCPA).

Under this analysis, articles of clothing and accessories would receive more protection than they do currently under Star Athletica. Instead of receiving protection over only PGS works that can be identified separate of, and exist independent of the useful article, or article of clothing, the actual shape and cut of clothing could be protected, if original and not functionally required. Moreover, this increased, but still relatively low level of protection, would likely not disrupt creativity and innovation in the fashion world.

174 For further discussion of how treating clothing like architecture would result in increased protection over clothing, see supra notes 86-137 and accompanying text.
175 For further discussion of how treating clothing like architecture would result in increased protection over clothing, see supra notes 86-137 and accompanying text.
176 For further discussion of protection and innovation, see supra notes 145-170 and accompanying text.