

**TESTIMONY OF STEVE MAIMAN
CO-OWNER, STONY APPAREL
LOS ANGELES, CALIFORNIA
IN OPPOSITION TO H.R. 2033
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY
PRESENTED FEBRUARY 14, 2008**

1. My name is Steve Maiman. I am the co-owner of Stony Apparel, an apparel design and manufacturing firm based in Los Angeles, California. I have worked in the fashion business for more than 30 years. We employ 140 people designing, manufacturing, and distributing womens and children's apparel to many of the stores in which Americans shop - Sears, J.C. Penney, Dillard's, Belk, and many other retailers. I know this business - it is my life. And I am here today to tell you that extending the copyright laws to the fashion industry is a thoroughly bad idea. I oppose H.R. 2033, which proposes to do just that. This bill is misguided, for several reasons.

2. First, the proposed legislation is unnecessary. Over many years, the fashion industry has done very well - it has grown into a huge industry, a competitive industry, an innovative and vibrant industry - all without any help - or interference - from copyright law. The clothing business is currently thriving in the United States, and from my perspective, nothing new has occurred in the recent past to cause there to suddenly be a need for copyright protection of the design of apparel. Unlike the music industry or the movie business, digital improvements in communications have not contributed to any revolutionary changes in the way apparel is designed, distributed or marketed. The internet is not destroying my business, or anyone else's in this industry. You can see this for yourself. Come visit my business. You will see people working hard to put affordable apparel in the department stores. And then go take a look at a fancy boutique - there you will see designer clothes selling for hundreds and even thousands of dollars. I don't see them cutting their prices to respond to the so-called "copyists" - if anything, the prices people are willing to pay for the top designers is going up. There is no problem to fix.

3. Second, and very importantly, I know - based on my experience - that the proposal will harm the fashion industry, reduce designers' creativity, and hurt consumers and the economy. This bill threatens my firm and the entire fashion industry in several ways:

a. First, this bill will make it very difficult for firms like mine to obtain financing. When a manufacturer sells merchandise that later is alleged to be infringing, retailers will return it, no matter what the truth. Manufacturers' invoices for that merchandise, which serve as collateral for loans most fashion firms rely on (factoring), will be rendered valueless. This will undermine the value of invoices as collateral and make financing of apparel companies much more difficult. Additionally, if this bill should pass, when a designer or manufacturer sells apparel through to a retailer, that retailer is going to demand indemnification - because the bill, as I understand it, also says that retailers can be liable. Given the millions of dollars in damages that are possible in cases of copyright infringement - damages which, as I understand it, this bill seeks to raise *further* for fashion designs - retailers will refuse to do business unless a firm like mine can provide effective indemnification. This demand for indemnification will create a large and difficult-to-finance risk for designers and manufacturers. It will impose an additional layer of risk on the industry as a whole and make it even more difficult and costly for fashion firms to obtain financing - because my financial backers and everyone else's in this industry will have to reckon with the possibility of frivolous lawsuits, injunctions, and ruinous damages.

b. Second, this bill will raise uncertainty and costs across the fashion industry. Every designer, every manufacturer, every distributor, every retailer, will be worried that he or she is going to get sued because there is no way of knowing reliably what design has and hasn't been copyrighted. The technology for computer searches for visual objects like fashion designs is not at a point where the industry can rely on the copyright registry that is supposed to be established under this bill. And even if the technology were to improve in the future, everyone in the industry will be forced, before approving any design, to hire lawyers to interpret whether the proposed design is likely to violate any one of potentially millions of new designs claimed to be copyrighted. If a designer wanted to avoid copyright infringement, how would he/she do it? Will

the Copyright Office create a system that enables a person to look up "sheath dresses" or "wrap dresses"? A firm like mine may consider hundreds of designs a year. Any registry, to be practical, would have to allow a designer - or, more likely, the designer's lawyer - to find the relevant needle in a potentially gigantic haystack, and to do so quickly and cheaply. Just exactly how is that going to work? What will it cost to create this system, if it can even be created? Who will pay for it? How long will it take to implement? How will that designer access the system and at what cost? If Congress wants to load search and legal costs onto the fashion industry, if Congress wants to raise the costs of apparel for consumers, if Congress wants to put the brakes on growth and innovation in the fashion industry, and cost the taxpayers more money, it should pass this bill. Otherwise, it should leave well enough alone.

c. Third, this bill will interfere with one of the most important sources of innovation in the fashion industry - the practice of designers interpreting a trend. Every time a designer wants to work with a current trend, she will be afraid that such a new look is somehow "owned" by another designer. (Would every fraction of an inch of a lower hemline belong to a different designer?) And as I understand the law, even designs that were created before the new law aren't entirely safe. My understanding is that someone could claim a copyright even in a design that's been around a while - they'll just claim that they didn't copy it from the pre-existing design but re-invented it themselves! What's clear to me is that if this bill passes we've got a looming litigation nightmare in the fashion industry. And - very importantly - if designers are prohibited from interpreting trends - or are too afraid to do so - we cut off one of the most important ways in which the fashion industry appeals to customers and gets them to buy clothes.

d. Fourth, this proposal will benefit rich, well-established designers at the expense of new designers. The rich designers have the money to pay for the legal support to create a copyrighted line of products. The young and poor designers won't be able to afford to do that, or, more importantly, to defend themselves against claims of infringement. Additionally, the rich designers and large design firms will be better able to deal with retailers' demands for indemnity. The young and poor designers won't. I have heard some people who support this bill claim that

it will help young, new, and small designers. Exactly the opposite is true - this bill will hurt young and small designers and manufacturers the most. If this bill passes, the fashion industry could lose a generation of young designers with fresh ideas. And the fashion manufacturing business that's left in this country could move out to China and elsewhere.

e. Fifth, but no less importantly, this bill will hit consumers right in the pocket - and given the state of the economy right now, in my opinion this is no time to be passing laws that will raise the price of clothing. New fashions have been interpreted by companies such as Stony Apparel to enable ordinary middle-class and working-class Americans to dress in up-to-date styles. The fashion industry is competitive, and competition encourages lower prices and better quality. The big point here is that competition in the fashion industry benefits consumers. We can measure those benefits in dollars saved by shoppers, but there's more to it than that. The availability of inexpensive but fashionable clothing allows every American to feel worthy, hip, and stylish. It's a matter of pride and the clothes produced by firms like mine give people with a limited budget a sense of self-worth. But if this bill passes, we could see a future where only the wealthy will look up to date. This legislation threatens to split America into two classes of people: those with money who can buy copyrighted designs, and those who can't afford them.

At this point the problems with this bill should be clear. Extending the copyright laws to the fashion industry is unnecessary. It also threatens real harm. Fashion copyright will hurt designers. It will hurt manufacturers. It will hurt distributors, retailers, and consumers. There's only one group I can think of that's going to win out of this - and that's the lawyers. If we turn the fashion industry over to the lawyers - and that's what this bill will do - firms like mine are going to slowly but surely disappear. Firms like mine are the backbone of this industry. We are in this business to make good clothes, and sell those clothes for a fair price that people can afford to pay, and hopefully make some money in the process. If this bill passes, that hope will also dwindle. I'm not in this business to sit in depositions in copyright lawsuits arguing with lawyers over who invented a particular design of a kids shirt for \$14.99 retail before it goes on sale. If that's the way the business is going

to be, I and many others like me are going to be forced out. And thousands and thousands of jobs will be lost in the process. Many designers will lose their jobs, not because they are bad designers, but because they are good designers, knowing what the American consumer wants next.

I can't think of any reason why Congress and the American people would want that to occur.

Thank you.