In 1989, the Cincinnati Bengals were led by legendary and controversial head coach Sam Wyche. Looking to improve his team’s chances, he made a groundbreaking innovation: the no-huddle offense. Disposing of the bedrock principle that every offensive football play should be preceded by a huddle, Wyche instead instructed his offense to rapidly run a pre-scripted series of quick plays that would both confuse and fatigue the larger, slower players on the opponent’s defense. Buffalo Bills coach Marv Levy, another legend, cried foul and claimed that the Bengals were in effect cheating. But lo and behold, the next season Levy’s Bills adopted the no-huddle offense and went on to play in four straight Super Bowls.

The NFL is often called a “copycat” league. When a coach develops a system that works, other coaches are bound to follow suit. American intellectual property (IP) law offers inspired, creative coaches no recourse against copiers. Yet football, like many other industries that remain largely unprotected from copying, continues to thrive and produce new and fresh ideas.

With *The Knockoff Economy: How Imitation Sparks Innovation*, law professors Kal Raustiala and Christopher Sprigman use examples ranging from Sam Wyche to Korean tacos to deliver a well researched, thoroughly convincing, even iconoclastic
case that the spirit of American IP law may be misguided, or at least in need of some tweaking. Investigating an array of creative markets such as fashion, cuisine, football, and comedy (all legally unprotected, for practical purposes), they put forth the argument that a proper dose of imitation and copying does not deter creation. To the contrary, it may just be a healthy, necessary component of the innovative process.

*The Knockoff Economy* jumps off from the premise that American copyright and patent protections are in place to prevent would-be infringers from copying the original work of others. The underlying idea is that society wants writers to write, inventors to invent, composers to compose, and so on. If these innovators and creators had no protection from the law as against imitators and charlatans, they would lose the incentive of profitability and stop creating. Progress would slow to a crawl, and society at large would suffer. Or so goes the venerable and widely accepted old theory. But then why is it that industries like fashion and cuisine are hotbeds of creativity and innovation when the law does little to protect them from copiers?

Chapter by chapter, industry by industry, Raustiala and Sprigman attempt to answer this question. Each industry has its own set of answers. The first chapter focuses on fashion. Companies like Faviana and Forever 21 bring knockoff versions of high-end dresses to market within days of seeing them, selling them for a fraction of the price of the original. On Oscar night, these designers and seamstresses are hard at work studying and reproducing red carpet fashions. Yet the industry thrives, and the revenues of the high-end designers continue to climb. *The Knockoff*
Economy posits that copying accelerates the fashion cycle. As the authors point out, the fashion cycle is nothing new; in Shakespeare's Much Ado About Nothing, Conrade notes, “I see that the fashion wears out more apparel than the man.” Raustiala and Sprigman, though, contend that copying in the fashion industry leads to what they call induced obsolescence. A new dress comes out from a high-end designer. Those who want only the best, and have the money to spend, go out and buy the original. The knockoff artists quickly make cheap versions. And the general public, wanting to stay with the trends, consume them voraciously. Marketplace saturation of the same look dilutes the expressive act of wearing the newest dress and within months or even weeks, everybody is out looking for the next new look. Without the copiers, the fashion cycle would be slower and the high-end designers would have to wait longer before the public wanted something new. The fashion industry does not merely tolerate copying, or even continue to innovate in spite of it. Creativity is more pervasive and more profitable because of the copying.

While trends, fads, and status go a long way towards explaining the fashion industry’s ability to remain vital and innovative in the presence of legal copying, other industries require different explanations. The authors explain that in cuisine and comedy, social norms are a big part of the equation. While copyright law protects a word-for-word joke or routine, it does not protect the underlying funny idea. Instead of relying on the law, the comedy business self-regulates through social norms. Comedians know that stealing another comic’s ideas will draw the ire of the standup world and tarnish one’s reputation, so they usually refrain from

doing it. The authors detail an infamous controversy in which megastar Dane Cook allegedly stole some of “comic’s comic” Louis C.K.’s material. After years of being outcast by other comedians for doing so, Cook did a guest appearance on an episode of C.K.’s buzz generating TV show, Louie. The episode contains a scene in which each standup gives his side of the real-life story. No hug-it-out resolution is reached, but it is a good example of how social norms go a long way towards deterring would-be copiers. Even though the law offers little protection, the unwritten rules and self-policing nature of the business are generally sufficient.

The same is true, to a lesser extent, with top chefs. Copyright law does not protect recipes, and copying is part of the landscape of high cuisine. Many of the most respected and original restaurateurs in the country share the view that copying is not a big problem. In an interview for the book, David Chang of the New York’s ultra-hip Momofuku admitted “[t]here is nothing new under the sun. Our job is just to make [existing dishes] better.”2 All chefs do not share this viewpoint, but the authors discovered that cuisine’s dominant ethos is one in which progress is a collective, shared endeavor; copying is just part of the process. Whether or not a specific dish or recipe crosses the line from acceptably derivative to unacceptably similar is dictated by the social norms of the profession. Cuisine also requires skills and techniques that cannot simply be copied. They must be learned, practiced, and mastered. Even though the law does little to protect chefs’ creativity, American cuisine is arguably more innovative, successful, and respected than it has ever been.

2 Id. at 76.
The book advances several more reasons that suggest that copying is not always a bad thing, including an eye-opening investigation into the open-source revolution, which essentially turns IP law on its head: copying is encouraged and ownership is prohibited. I will leave some of the mystery for those of you who go out and read it, which I strongly encourage you to do. The Knockoff Economy is a timely challenge to the long-standing tenets of American IP law. Open-source operating systems are currently proliferating the computing world. Most people under twenty-five have never used any encyclopedia other than the completely free and user-generated Wikipedia. Original songs are widely shared, sampled, and mashed up. Bit torrent websites allow anyone to easily (if illegally) watch pretty much anything they want free of charge. If there were ever a time to reconsider our intellectual property laws, it is now. Rauschala and Sprigman deliver a well thought out, eminently readable, and engaging treatise that will capture the interest of readers with no prior interest in law or IP. Fashion, comedy, football, food, and the other industries investigated in the book provide a relatable and accessible platform for the layperson to understand the basics, while the deeper, thought-provoking questions of substantive law make it a must-read for even the most learned of IP scholars.