Elizabeth Haub School of Law

Environmental Law & Policy Hack Competition

The Issue: Environmental Social Governance

Fast Fashion and a Trend Towards a More Sustainable Wardrobe

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Alex is currently a second-year law student at Maryland Francis King Carey School of Law and is pursuing an environmental law concentration. In undergraduate, Alex received a Biology and Chemistry degree from Butler University. At Maryland, Alex is a member of the International Moot Court Team and is on the executive board of Students Supporting the Women's Law Center, If/When/How, and OutLaw. Her research thus far has focused on agriculture and public health issues, and she wants to continue to work in environmental policy and education to support communities faced with environmental injustice. Outside of law school, she enjoys hiking, painting, and exploring all of the restaurants Baltimore has to offer.

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I. EXECUTIVE SUMMARY

"Fast fashion" has become increasingly popular in the last decade, and it is exacerbating environmental issues that the fashion industry is responsible for. This is a concerning trend, as with the growth of the clothing industry, it has become even more unsustainable—the average garment will only be worn seven times before it is discarded by the consumer, declining by almost 40 percent over the past 15 years.[1] [2]

There is no current legislation regulating the fashion industry and the practices that cause environmental ills. The only thing that can incentivize companies to introduce more sustainable practices throughout their production, distribution, and life span of their clothing, is private governance. Consumers can influence companies to change their habits with their purchasing power. Younger generations are the most sustainability conscientious and supportive of stricter environmental laws and policies.[3] However, younger people are more likely to consume fast fashion because it is targeted towards them.

The goal of our policy proposal is to give information to this population in a form they will interact with in order to change their buying habits and induce companies to implement private environmental governance. Our specific proposal is to create an app to grade fashion companies on three different categories, with factors considered under each—environmental impact, social impact, and accessibility.

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[1] Paton, E. (2022) *The new laws trying to take the anxiety out of shopping*, *The New York Times*, https://www.nytimes.com/2022/09/30/fashion/fashion-laws-regulations.html (Lats visited Oct. 29, 2022).

[2] Changing Markets Foundation (2022) *License to Greenwash: How certification schemes and voluntary initiatives are fueling fossil fashion*.

[3] SUSTAINABLE BRANDS, *Millennials Most Sustainability-Conscious Generation Yet, But Don't Call Them 'Environmentalists'*, https://sustainablebrands.com/read/stakeholder-trends-and-insights/millennials-most-sustainability-conscious-generation-yet-but-don-t-call-them-environmentalists (last visited Oct. 25, 2022).

II. INTRODUCTION

a. Background

The fashion industry has grown significantly as the world has become increasingly globalized. This growth has been positive for making more clothing and styles available to more people, however, there has been comparatively much more negative externalities to this industry. In every facet of the fashion industry, there are environmental justice concerns—from chemicals being released in the production of fabrics to excessive fashion waste piling up in landfills.

i. Environmental Impacts from Fashion Industry

The manufacturing of textiles alone creates many of the environmental impacts that we see from the fashion industry. One of the main impacts seen is water use and pollution. The fashion industry is the second-largest consumer of water, in part due to the materials used to make clothing. Cotton is a highly water intensive plant—taking 700 and 2000 gallons of water to produce one cotton shirt and one pair of jeans, respectively.[4] [5] This use of water can devastate areas that are already susceptible to water scarcity—in Uzbekistan, the Aral Sea has almost completely dried up, in part, due to diversion of rivers feeding the lake to irrigate cotton fields over the last fifty years.[6] The production of cotton is dependent on extensive use of pesticides and fertilizers that contribute to groundwater and

[4] Drew, D. and Yehounme, G. (2017) *The apparel industry's environmental impact in 6 graphics*, *World Resources Institute*, https://www.wri.org/insights/apparel-industrys-environmental-impact-6-graphics, (Last visited Oct. 29, 2022).
[5] *Putting the brakes on fast fashion* (2018) *UNEP*, https://www.unep.org/news-and-stories/story/putting-brakes-fast-fashion, (Last visited Oct. 29, 2022).
[6] McFall-Johnsen, M. (2019) *The fashion industry emits more carbon than international flights and maritime shipping combined. here are the biggest ways it impacts the planet.*, *Business Insider*, https://www.businessinsider.com/fast-fashion-environmental-impact-pollution-emissions-waste-water-2019-10 (Last visited Oct. 29, 2022).

air pollution.[7] Textile dyeing is also a concern as it is the world's second largest polluter of water. The water used for textile dyeing is often dumped into rivers and streams that surround these factories, and much of these dying chemicals leave the factories untreated. [8] [9] This can have a severe impact on the surrounding environment and community.

In the production of textiles and articles of clothing, the fashion industry produces 10% of total global carbon emissions.[10] This number is only expected to grow for the fashion sector as a whole, jumping to 26% of the global carbon emission by 2050 if the industry continues on its current trajectory.[11] Textile manufacturing alone is expected to increase its carbon emissions by more than 60 percent by 2030.[12] Since countries that have a large manufacturing industry for textiles and clothing rely on fossil fuels, it is estimated that one kilogram of fabric produces 23 kilograms of greenhouse gases.[13] Many of the fibers produced in clothing now is polyester, found in an estimated 60 percent of garments—producing polyester releases two to three times more carbon emission than cotton, as it is a type of plastic made from fossil fuels.[14] Due to this dependence on fossil fuels, the production of these

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[7] Ndachengedzwa, S. and Stecca E. (2016) *The fashion industry and its impact on the environment and Society*, *Sense & Sustainability*, https://www.senseandsustainability.net/2016/03/02/ the-fashion-industry-and-its-impact-on- the-environment-and-society/ (Last visited Oct. 29, 2022).
[8] Yardley, J. (2013) *Bangladesh pollution, told in colors and smells*, *The New York Times*, https://www.nytimes.com/2013/07/15/world/asia/bangladesh-pollution-told-in-colors-and-smells.html (Last visited Oct. 29, 2022).
[9] Ndachengedzwa, S. and Stecca, E. (2016).
[10] McFall-Johnson, M. (2019).
[11] Ellen MacArthur. (2017) *A New Textiles Economy: Redesigning Fashion's Future*. http://www.ellenmacarthurfoundation.org/publications (Last visited Oct. 29, 2022).
[12] *Fashion Industry, UN Pursue Climate Action for Sustainable Development* (2018) *UNFCC*, https://unfccc.int/news/fashion-industry-un-pursue-climate-action-for-sustainable-development (Lasted visited Oct. 29, 2022).
[13] Remy, N., Speelman, E. and Swartz, S. (2020) *Style that's sustainable: A new fast-fashion formula*, *McKinsey & Company*, https://www.mckinsey.com/capabilities/sustainability/our-insights/style-thats-sustainable-a-new-fast-fashion-formula (Last visited Oct. 29, 2022).
[14] Cobbing, M. and Vicaire, Y. (2016) *Timeout for Fast Fashion*, Greenpeace.

synthetic fibers exceeds the annual oil consumption of Spain, and will only grow with the demand for polyester.[15] Distribution emissions are also relevant to discuss in relation to the fashion industry, as many of the factories producing textiles and manufacturing garments are not located in the same country where they are sold—China and Bangladesh are the world's leading clothing exporters, with their clothes often arriving in Europe and the United States, rather than being consumed within their communities.[16] With this added factor of transport, the emissions produced from the consumption of one article of clothing is substantial.

Emissions is not the only thing to worry about with the increase in the use of polyester and other synthetic materials. Microplastics, pieces of plastic measuring less than 5 millimeters in size, are shed from synthetic materials in their production and when washing them.[17] [18] [19] The International Union for Conservation of Nature estimates that 35% of microplastics in the ocean have come from laundering synthetic textiles.[20] When these clothes are thrown away, the breakdown of the material will create microplastics, as the synthetic material can never be entirely degraded like natural materials. Microplastics make up an estimated 35 percent of the plastic pollution in the ocean, a substantial number that, with the increase of synthetic fabrics and the expansion of the fashion industry with fast fashion, will only grow as more clothing is produced, worn, and thrown away.

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[15] Changing Markets Foundation (2021) *Fossil Fashion: The hidden reliance of fast fashion on fossil fuels*.
[16] Yardley, J. (2013).
[17] Shah, K. (2021) *Microplastics found across the Arctic may be fibres from Laundry*, *New Scientist*, https://www.newscientist.com/article/2264585-microplastics-found-across-the-arctic-may-be-fibres-from-laundry/#ixzz6kgPQw7ve (Last visited Oct. 29, 2022).
[18] Windridge, M. (2021) *Sustainable Fabrics reducing the impact of microplastics on the planet*, *Forbes*, https://www.forbes.com/sites/melaniewindridge/2021/01/27/sustainable-fabrics-reducing-the-impact-of-microplastics-on-the-planet/?sh=1aa12cd4e746 (Last visited Oct. 29, 2022).
[19] Boucher, J and D Friot (2017) *Primary microplastics in the oceans*, International Union for Conservation of Nature.
[20] *Id*.

The accumulation of fashion waste, especially these cheaply made, synthetic-based clothes, is becoming increasingly problematic. Every year, we collectively purchase tens of billions of pieces of new clothing globally, and many of these articles are thrown away quickly.[21] The average garment will only be worn seven times before it is discarded by the consumer, declining by almost 40 percent over the past 15 years.[22] [23] By 2014, clothing production had increased by about 60 percent since 2000—consumers are buying more clothing, and they are keeping them for less amount of time.[24] There is a very small amount of clothing that is recycled back into the fashion value chain, so when these articles of clothing are discarded, they end up in landfills or incinerated, contributing either to an accumulation of waste—much of which is slow or impossible to break down—or an increase in greenhouse gases produced within the fashion industry.[25]

However, the shortened timespan of clothing articles in people's closets is not the only thing that is contributing to the waste produced by the fashion industry. In the manufacture of clothing, there can be anywhere from 10 percent to 30 percent of the textile wasted in the patterning process. This waste is owned by the factory, rather than the company that is selling the clothes to consumers, so there is no financial motivation for companies themselves to reduce this waste, as the price for the excess fabric is included in the cost of the garment.[26] Additionally, with the economic impact of the

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[21] McClosker, J. (2021) *The impact of fast fashion on garment workers*, *Good On You*, https://goodonyou.eco/impact-fast-fashion-garment-workers/ (Last visited Oct. 29, 2022).
[22] Paton, E. (2022) *The new laws trying to take the anxiety out of shopping*, *The New York Times*, https://www.nytimes.com/2022/09/30/fashion/fashion-laws-regulations.html (Lats visited Oct. 29, 2022).
[23] Changing Markets Foundation (2022) *License to Greenwash: How certification schemes and voluntary initiatives are fueling fossil fashion*.
[24] Remy, N., Speelman, E. and Swartz, S. (2020).
[25] *Id*.
[26] MacGilp, R. (2021) *Why every fashion brand should start thinking about zero-waste design*, *Eco Age*, https://eco-age.com/resources/every-fashion-brand-should-start-thinking-about-zero-waste-design/ (Last visited Oct. 29, 2022).

COVID-19 pandemic, many companies overordered textiles and clothing and did not pay factories for this deadstock inventory. This overproduction led to even more fashion waste in recent years.[27] [28] Altogether, with articles of clothing thrown away and the access fabric from clothing manufacturing discarded, up to 85 percent of textiles end up in landfills each year, filling nearly 5 percent of landfill space.[29] Most clothing that does not initially end up in landfills, makes its way their eventually in the second-hand clothing trade. About 500,000 tons of used clothing is exported from the United States into low- and middle-income countries that lack the resources and support to develop and enforce effective environmental regulations. Clothing from this trade that is not sold in second-hand markets is discarded as solid waste in waterways and greenspaces of these countries.[30]

ii. Social Impacts from Fashion Industry

Impacts on the environment can cluster around the workers and the communities proximate to factories that are producing much of this pollution. Specifically, factory workers that are involved in the textile creation process are exposed to chemicals in the dyeing process or exposed to cancer causing chemicals like highly fluorinated compounds like polyesters and water-proof textiles at a much higher level compared to consumers.[31] Many garment workers that feed the fashion industry have incredibly long working hours—such as workers in China with non-stop days as long as 14 hours—in which they are exposed to these chemicals.[32] In specific production facilities—like tanneries for leather

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[27] Paton, E. (2020) *"Our situation is apocalyptic": Bangladesh Garment Workers face ruin*, *The New York Times*, https://www.nytimes.com/2020/03/31/fashion/coronavirus-bangladesh.html
[28] Parsons, S. (2021) *Introducing Fashionscapes: A living wage*, *Eco Age*, https://eco-age.com/resources/fashionscapes-a-living-wage/ (Last visited Oct. 29, 2022).
[29] Bick, R., Halsey E., Ekenga CC. (2018) *The global environmental injustice of fast fashion*, *Environmental Health*, 17(92).
[30] *Id*.
[31] The OM Collective (2019) *The negative impact of fast fashion*, *The OM Collective*, https://theomcollective.org/blogs/news/the-negative-impact-of-fast-fashion-1 (Last visited Oct. 29, 2022).
[32] *Id*.

production—chromium, formaldehyde, and arsenic is used and can cause chronic coughing, skin ailments, and other diseases.[33]

In addition to exposure to chemicals and environmental ills that cause health concerns, workers within the fashion industry are often exploited by manufacturers. They are severely underpaid and are not protected by the companies that they manufacture clothing for. The growth of the fashion industry has been built on a fast fashion model that depends on spending a minimum on work conditions and safety and low wages. This includes providing proper personal protective equipment for exposure to chemicals, and this was highlighted as well at the onset of the COVID-19 pandemic. But also spending a minimum on building suitability—an example of this was the 2013 collapse of the Rana Plaza factory building that killed more than 1100 people.[34] Depression and suicide are also concerns that should be highlighted for garment workers, due to the pressure and poor working conditions of the industry.[35]

Low wages are also essential in the growth of the fashion industries model. Over 80 percent of employees within the fast fashion industry do not earn a living wage—where a living wage, not a minimum wage, is defined as a right, recognized as a fundamental human right by the United Nations, that ensures workers "are able to live to a satisfactory standard, enabling the affordance of basic needs such as proper shelter, food, healthcare and education."[36] As of November 2020, it is estimated that as many as 77 percent of workers reported hunger on a daily basis, and 88 percent had drastically reduced

[33] *Tannery workers*, *Collective Fashion Justice*, https://www.collectivefashionjustice.org/tannery-workers#:~:text=Chemical%20harm,other%20diseases%20in%20tannery%20workers. (Last visited Oct. 29, 2022).
[34] Yardley, J. (2013).
[35] The OM Collective (2019).
[36] Parsons, S. (2021)

the amount of food they and their family members consumed, or skipped meals.[37] Many of the workers in the fashion industry are women and children, that are then locked in a cycle of poverty.[38] Labor union activist, Kalpona Akter, detailed the abuse that often incites from exploitative work in these factories, stating that, "There are no cheap clothes. There is nothing cheap, someone always needs to pay for that. And who is it? It is the workers."[39]

The environmental ills of fashion industry factories also impacts the surrounding communities. Dumping waste water from these factories, particularly from textile dyeing plants, creates a hazardous environment for the community proximate to these buildings. The chemicals from these processes can have the same effect on the factory workers as it can on these communities. Children can be especially affected by these chemicals. For example, in a town in Bangladesh, the smell of the textile factories' pollution that is dumped into water behind the school has led to children experiencing dizziness, fainting, and vomiting in the school.[40] The companies that are running and buying from these factories understand what negative impact they are having on these communities, however they are doing little to address the problems—either by providing programs to legitimately remediate the harm down, mitigate future harm, or to stop buying from factories altogether that pollute in this way.

Consumers—while they do not experience as acute harm as garment workers or communities near textile factories—are exposed to the same chemicals that can cause cancer, like polyfluorinated substances (PFAS) and phthalates. In October 21, CBC's Marketplace, a Canadian consumer watchdog investigator published a report that identified elevated levels of lead, PFAS, and phthalates in products

[37] Kyritsis, P., LeBaron, G., Nova, S. (2020) *Hunger in the Apparel Supply Chain: Survey findings on workers' access to nutrition during Covid-19*, Worker Rights Consortium.
[38] The OM Collective (2019).
[39] Parsons, S. (2021).
[40] Yardley, J. (2013).

manufactured by Shein, Zaful, and AliExpress—three fast fashion companies.[41] A environmental justice issue is created, not only when garment workers and communities are exposed to these chemical pollutions, but also when clothing bought and worn by consumers has elevated levels of hazardous chemicals. This is particularly true when you consider that the widespread popularity of fast fashion brands is because of the economic accessibility of these option, causing a disparity of exposure to these chemicals between socioeconomic groups. It is a privilege for wealthy consumers to be able to avoid clothing producers that are not meeting environmental or social standards, however, not every consumer has the choice.

iii. Fast Fashion Compounding Impacts

The industry as a whole has a significant impact on the environment and society throughout the life cycle of their clothing. These impacts have been felt significantly more as fast fashion has taken over the cultural zeitgeist for fashion consumers.

The fast fashion model rapidly designs, manufactures, distributes, and markets clothing trends and has reduced the time that fashion trends remain in style. These clothes are cheaply made and relatively available to consumers due to the more affordable price. However, as they are cheaply made and often hyper-specific to rapidly changing trends, these clothes lack longevity. This is worrying in conversations surrounding sustainability and environmental consciousness in the fashion industry as fast fashion clothing is a fast-moving cycle of trends that have increased the consumption of clothing and the subsequent discarding of clothing. The way in which these fashions are produced also has increased environmental impact, due in part to the scale at which they are being produced and have exposed even more worker's rights concerns within fashion production.

[41] Ibrahim, N. (2022) *Do Shein clothes contain unhealthy lead levels?*, *Snopes*, https://www.snopes.com/fact-check/shein-lead/ (Last visited Oct. 29, 2022).

iv. Greenwashing and Ineffective Licensing Programs

There are a lot of promising research and innovations occurring to address many of these concerns about the fashion industry, however, it is up to brands to actually implement them into their business models in order to see change. A report conducted by Changing Markets estimates that 59 percent of sustainability claims made for garments produced by 46 major European fashion brands were unsubstantiated or misleading, with an average of 91 percent of the claims from H&M and ASOS falling into this category.[42]

Many brands are reliant on synthetic fibers, and even if they do use a portion of recycled plastics, virgin synthetics fibers are blended in. Recycling synthetics into clothing does not solve the problems, as plastics are extremely costly to recycle, and the use of synthetics generally is what causes many of the environmental concerns associated with the fashion industry—the longevity of these clothes, the microplastics produced when laundering them, and their inability to breakdown when discarded are still present when a portion of the fibers used are recycled.[43]

Additionally, even though sustainability licensing schemes exist, they either are not transparent or independent enough to be effective, or they have limited management thus not allowing them to make a system-wide change.[44] "None of the schemes analyzed was found to have reported publicly any compliance violation or communicated when a company lost certification or left an initiative. This lack of honesty deadens the schemes' function as tools for continuous improvement."[45] Instead of making

[42] Changing Markets Foundation (2021) *Synthetics Anonymous: Fashion brands' addition to fossil fuels*.
[43] *Id*.
[44] Changing Markets Foundation (2022) *License to Greenwash*.
[45] *Id.*

real change, many companies utilize memberships in these licensing schemes as a way to distract consumers but have not initiated any kind of positive sustainable action.[46]

b. The Problem

There is little regulation of the fashion industry and little accountability for the companies that are producing these environmental and social harms. Even voluntary initiatives like licensing schemes more often than not lead to greenwashing, or at the very least focusing on only one aspect of the entire unsustainability of the fashion industry. A lot of companies are not transparent over how their actions are contributing to environmental or social ills, and this leaves consumers in the dark about what the best sustainable decision is. This is especially apparent with consumers that do not have the money to buy from more openly green companies whose clothing is cost-prohibitive for the majority of consumers.

Secondhand clothing stores are a more sustainable option that is accessible to most consumers, however the secondhand fashion market that exists between countries like the United States and low- and middle-income countries as well as the shortening lifespan of clothing that is bought and then donated can make relying on thrift stores less likely in the future. Unless shopping at a higher end secondhand store, like Buffalo Exchange, it is hard to find higher quality and sustainably produced clothes. With the fast fashion industry creating shorter shelf lives of clothing from the primary consumers, it can make the donation of these cheaply constructed clothes impossible or unreliable for the secondary consumers.[47]

This highlights an accessibility issue in the fashion industry, but particularly when it comes to companies that are made to have a more sustainable model. Most consumers cannot afford to purchase

[46] *Id.*
[47] Paz, I.G. (2022) *The golden age of thrifting is over*, The New York Times, https://www.nytimes.com/2022/07/06/style/thrift-stores-fast-fashion.html (Last visited Oct. 29, 2022).

their clothing, so they have to either make the decision to rely on an outright unsustainable option, or rely on secondhand clothes, most of which are these cheaply constructed clothes that will not be a wardrobe investment. The ideal goal in solving this problem would be for all types of companies—whether they are a high-end clothing company or an affordable clothing company—to introduce sustainable practices and business models that will allow for consumers to make informed decisions when purchasing their clothing.

III. EXISTING FASHION LAW

Current regulations within fashion law are largely advisory. Legislation on all levels of public governance fails to address the harm and fashion brands face little regulatory intervention.[48] Activists, consumers, and community members alike have been ringing the alarm bells and calling for more industry accountability.[49] As much as this proves so, fashion companies are not legally obligated to meet social and industry environmental targets on any level. [50]

a. State Initiatives

Individual States are taking it upon themselves to try to control how fashion manufacturers and retailers handle disclosures on their products. California, Hawaii, New York, Oregon, and Washington have all proposed some type of legislation related to fashion practices. "Consumers are not, cannot and should not be the driving force for completely changing an industry — not least because as long as it's

[48]Karis Stephen, et. al., *Pumping the Breaks on Fast Fashion*, THE REGULATORY REVIEW, https://www.theregreview.org/2022/03/19/saturday-seminar-pumping-the-brakes-on-fast-fashion/ (Last visited Oct. 27)
[49] *Id*.
[50] Elizabeth Paton, The New Laws Trying to Take the Anxiety Out of Shopping, THE NEW YORK TIMES, https://www.nytimes.com/2022/09/30/fashion/fashion-laws-regulations.html (Last visited Oct. 27, 2022)

easy, fast and cheap to buy fashion, then the sustainability aspect of the offer will always be a secondary choice." [51]

Human and environmental rights due diligence can come at every level. Two of the largest manufacturing areas in the United States have each introduced state bills to try and combat the challenges surrounding "fast fashion" practices. New York and California are two of the largest sources of manufacturing in the United States. They both are also a source of overseas importation due to their coastal locations. Both states introduced legislative efforts regulating the use of plastic in the fashion industry and labor standards for imported goods.[52] Lawmakers in California introduced a restriction to the level of perfluoroalkyl and polyfluoroalkyl substances (PFAS) found in clothing.[53] The law prohibits any person from manufacturing, distributing, selling, or offering textiles that contain PFAS for sale in the state beginning in 2025.[54]

New York introduced a bill that would require fashion retailers and manufacturers to disclose environmental and social policies within their companies.[55] The Bill would further impose monetary penalties for noncompliance.[56] The most novel idea coming out of this Act is that the noncompliance penalties would go towards environmental justice communities—communities that are the most vulnerable to the impacts of fashion exploitation. The Bill, however, has not yet been enacted and sits in the Assembly committee.[57]

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[51] *Id.*
[52] S.B. 62, 2021-22 Leg., Reg. Sess. (Cali. 2021) (enacted); Fashion Sustainability and Social Accountability Act, S.B. 7428, 2021-22 Leg., Reg. Sess. (N.Y. 2021).
[53] *Id*.
[54] *Id*.
[55] *Id.*
[56] *Id.*
[57] *Assembly Bill A8352: Current Bill Status*, THE NEW YORK SENATE, https://www.nysenate.gov/legislation/bills/2021/A8352, (Last visited Oct. 27, 2022)

b. National Standards

As of now, there are no binding protections or regulations in place that hold fashion manufacturers, wholesalers, distributors, or retailers responsible for poor sustainability practices. Current common law civil liability provides a backstop for consumers who are harmed by clothing. Current clothing civil liability is largely governed by consumer protection law for general goods and services. In the United States, a person can bring a lawsuit against a company when they have claimed to be harmed because of defective piece of clothing or wearing apparel.[58] These claims are typically evaluated under strict lability. A manufacturer or seller can be liable "for harm or damage caused by a defective condition present in the product when it left the hands of the seller or manufacturer if the defective condition rendered the product unreasonably dangerous or unsafe to the user or consumer."[59] Typically, these suits can be in one of four categories: the garment is unreasonably flammable, there is a presence of irritants or poisons in the garment, the garment was defectively constructed/has concealed foreign objects, or other defects.[60]

Lawmakers are trying to introduce a federal legislation that intends to improve labor rights for workers and change the American garment manufacturing industry. [61] This bill is known as the Fashioning Accountability and Building Real Institutional Change (hereinafter "FABRIC") Act. [62] It is America's first federal fashion bill and would impose penalties for labor violations.[63] The bill also would establish a garment industry registry program which is a record-keeping policy designed to increase transparency within the fashion industry.[64] Additionally, the FABRIC Act aims to revive the

[58] Summary, Am. L. Prod Liab. 3d Ch. 87 Summary
[59] 63 Am. Jur. 2d Products Liability § 132
[60] *Id*.
[61] Fashioning Accountability and Building Real Institutional Change Act, S. 4213, 117th Cong. (2022).
[62] *Id.*
[63] *Id.*
[64] *Id.*

domestic fashion industry by creating a manufacturing program that allocates $40 million in grant funding.[65]

In addition to legislative efforts, three administrative agencies have also taken matters into their own hands. For example, the U.S. Customs and Border Protection Agency banned numerous goods including cotton and cotton products from Xinjian, China due to human rights violations.[66] This is the only binding measure currently in place. The SEC has proposed new climate-related disclosure requirements for public companies including climate-related financial data and reports on greenhouse gas emissions. [67] There are many environmental advisory standards on the textile industry from the Federal Trade Commission (FTC), but that's the extent of the regulation, advisory. To further clarify their interpretation on the environmental advisory standards and green marketing requirements, the FTC provides their "green guides." [68] The FTC cites that these "Environmental Benefit Claims are difficult to substantiate, if not impossible."[69] This is due to many companies claiming their products are green and made with recycled content, when in reality the environmental costs of using the recycled content outweigh the environmental benefits of using it.[70]

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[65] *Id*.
[66] *China: Mounting concerns over forced labour in Xinjiang*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, https://www.business-humanrights.org/en/latest-news/investors-human-rights-groups-call-on-us-to-enact-a-regional-ban-on-cotton-imports-from-xinjiang-based-on-evidence-of-forced-labour/ (Last visited Oct. 27, 2022)
[67] SEC Proposes Rules to Enhance and Standardize Climate Related Disclosures for Investors, U.S. SECURITIES AND EXCHANGE COMMISSION, https://www.sec.gov/news/press-release/2022-46, (Last visited Oct. 27, 2022)
[68] Environmental Claims: Summary of the Green Guides, FEDERAL TRADE COMMISSION, https://www.ftc.gov/business-guidance/resources/environmental-claims-summary-green-guides, (Last visited Oct. 27, 2022)
[69] *Id*.
[70] *Id.*

c. International Governance

Like national standards, there is no binding international law on the sustainability of fashion textiles. There have been agreements and efforts, however none have been fruitful in providing change for a sustainable and continuing fashion industry. As technology increases, so does the ability of every kind textile and fashion to be bought by customers and flown across the world at the click of a button. Unfortunately, since there is no binding law for quality control, potential customers and lawmakers overlook the sustainability of these pieces. As with any type of international legislation, providing a binding standard is very difficult because of the problem of enforcement.

Most of the advisory regulations aim towards the businesses on keeping them responsible rather than the country. For example, the ISO standards attempt to manage quality and environmental degradation of the supply chain of the fashion industry.[71] There are some global organizations such as the World Trade Organization and the United Nations who are trying to make a difference. The World Trade Organization established the Textiles Monitoring Body in 1994.[72] This body implemented the Agreement on Textiles and Clothing and expired in 2015.[73] "The expiry of the ten-year transition period of ATC implementation means that trade in textile and clothing products is no longer subject to quotas under a special regime outside normal WTO/GATT rules but is now governed by the general rules and disciplines embodied in the multilateral trading system."[74]

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[71] DOMINIK ZIMON ET AL.,THE INFLUENCE OF ISO 9001 & ISO 14001 ON SUSTAINABLE SUPPLY CHAIN MANAGEMENT IN THE TEXTILE INDUSTRY, 1-12 (2020), https://doi.org/10.3390/su12104282

[72] *Textiles Monitoring Body (TMB): The Agreement on Textiles and Clothing*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm, (Last visited Oct. 27, 2022)

[73] *Id.*

[74] *Textile,* WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/texti_e/texti_e.htm, (Last visited Oct. 27, 2022)

The UN Sustainable Development Goals address inequality and consumer consumption and protection. Goal 10 explains how business addressing inequality is "fundamental to implementing a sustainable business model." [75] Further, Goal 12 explains how sustainable consumption and production incorporates promoting sustainable lifestyles through: decoupling environmental degradation from economic growth, applying life cycle thinking, and allowing developing countries to jump to more competitive sustainable technology.[76] The UN Sustainable Development Goals apply broadly to every type of industry and not specifically fashion and is industry specific, not country specific. The entirety of public governance, or the lack thereof, demonstrates a heighted need for private governance to take the leading role towards a prosperous and sustainable fashion industry.

IV. PRIVATE ENVIRONMENTAL GOVERNANCE

Governments at the federal, state, and local levels are still engaged in developing, implementing, and enforcing environmental regulations. Corporations will, theoretically, change their behavior to adhere to those regulations and enforcement actions. All the while groups on either side litigate and lobby mitigate whatever action or reaction the other is taking.[77] However, no major environmental federal statutes were enacted between 1991-2012, despite the growing knowledge and concern about a plethora of environmental issues.[78] The temporal lag in upgrading, modifying, and creating environmental statutes has also led to lag in addressing the global environmental crises.[79] At this rate,

[75]Sophie Parsons*, Accessibility Is Essential to a Sustainable Design Approach. Here's Why*, ECO AGE, https://eco-age.com/resources/accessibility-is-essential-to-a-sustainable-design-approach-heres-why/, (Last visited Oct. 27, 2022).
[76] Sustainable Development Goals: Goal 12, UNITED NATIONS, https://www.un.org/sustainabledevelopment/sustainable-consumption-production/, (Last visited Oct. 27, 2022)
[77] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 130 (2013).
[78] *Id*. at 131.
[79] *Id*. at 132.

scholars and policymakers agree that a comprehensive international environmental agreement will not be possible to achieve the climate change temperature targets.[80]

However, despite the lack of action in the government sector, environmental preferences have been expressed through private interactions, resulting in private environmental governance.[81] Private environmental governance is a "new model of legal and extralegal influences on the environmentally significant behavior of corporations."[82] This system fulfills similar standard-setting implementation, monitoring, and enforcement as a government would, but are performed by private entities, often as a self-managing measure.[83]

There must be both a synthetic and analytic approach to private environmental governance.[84] The synthetic approach identifies the common features of dissimilar activities that are outside the reach of the standard public governance and the analytic approach examines the incentives, areas of influence, and strengths and weaknesses of these activities.[85] Stated plainly, private environmental governance are actions taken by non-governmental entities that are designed to achieve ends traditionally reached by governments—including managing the exploitation of common resources, increasing the provision of public foods, reducing environmental externalities, and fairly distributing environmental services. These collective or individual standards do not require corporations to have pure and noble motivations but nonetheless induce that private entity to achieve governance objectives.[86] The pursuit of a more environmentally favorable investment plan has only grown more popular as climate change is becoming

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[80] *Id*. at 133.
[81] *Id*.
[82] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 133 (2013).
[83] *Id.*
[84] *Id.*
[85] *Id.* at 134.
[86] *Id.* at 136.

a more prominent issue among money managers and institutional investors.[87] For example, in 2021 banks have committed $203 billion USD in financing to clean energy projects compared to $189 billion USD to fossil fuel businesses.[88] This trend creates new and significant opportunities for companies to pursue a sustainable business strategy.[89]

The emergence of private governance in addition to the standard public government model is valuable for several reasons.[90] First, it suggests new ways of thinking about collective environmental problems at domestic and global levels. Private governance is less costly to individuals, requires little collective action, allows for ease in collecting and distributing information, and political boundaries are no obstacle.[91] Second, the existence of private environmental governance allows environmental protection and modification of practices in arenas the government was previously unable to touch.[92] Lastly, the understanding of the private governance model can encourage new solutions to problems, like sustainability, that require collective action and new forms of intervention.[93]

Private environmental governance takes many forms, encompassing both collective and bilateral standards.[94] These forms vary depending on why the need for private governance has risen.[95] It may arise as a response to the failure of government to act adequately—like FSC certification system for forestry—or due to the simple fact that the government lacks jurisdiction—as in the battle over global

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[87] Colin Myers & Jason J. Czarnezki, *Sustainable Business Law? The Key Role of Corporate Governance and Finance*, 51 ENV'T L. 991, 1029 (2022), https://ssrn.com/abstract=4026707.
[88] *Id.*
[89] *Id.*
[90] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 138 (2013).
[91] *Id.*
[92] Jonathan M. Gilligan & Michael P. Vandenbergh, *Accounting for Political Feasibility in Climate Instrument Choice*, 32 VA. ENVT'L L. J. (2013), http://dx.doi.org/10.2139/ssrn.2220788.
[93] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139 (2013).
[94] *Id*. at 139.
[95] *Id*. at 139-61.

common resources.[96] In some cases, governments are unable to promulgate a law despite authority to do so, or they lack of enforcement capacity.[97] In addition, private governance can step in where timely action is crucial—private labeling responses to tuna-dolphin concerns—or higher incentives can be provided—like the CDM Gold program to offset the Kyoto Protocol.[98] It is important to recognize that private governance does not operate entirely separate from governments, but is supplemental in creating standards that are greater or lesser than the government would require.[99]

a. Environmental Private Governance in the Fashion Industry

The global apparel industry was valued at $3 trillion USD and accounted for 2% of the world's gross domestic product in 2016.[100] With its primary focus being on increasing sales and rapid clothing cycles, the fashion industry is the second largest polluting industry in the world after oil.[101] This is unsurprising given the fact that the apparel industry transcends political boundaries and forms a complex global web, making it practically impossible to impose governmental environmental regulations.[102] The harm and corresponding lack of action in the fashion industry could stem from a lack of transparency.[103]

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[96] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139-61(2013); Benjamin Cashore & Michael W. Stone, *Can Legality Verification Rescue Global Forest Governance: Analyzing the Potential of Public and Private Policy Intersection to Ameliorate Forest Challenges in Southeast Asia*, 18 FOREST POL'Y & ECON.13, 14 (2012).
[97] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139-61(2013)
[98] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139-61(2013); Kelly Levin et al., *Can Non-State Certification Systems Bolster State-Centered Efforts to Promote*
Sustainable Development Through the Clean Development Mechanism?, 44 WAKE FOREST L. REV. 777 (2009) https://digitalcommons.montclair.edu/president_pubs/12.
[99] Michael P. Vandenbergh, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 139-61(2013).
[100]MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY: TRANSPARENCY IS KEY 150 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.
[101] *Id*. at 147.
[102] *Id*. at 148.
[103] *Id*. at 149.

Corporations doubt that consumers are willing to pay for positive changes, governments fear that corporations will stop business in their countries if they set more stringent standards, and consumers are cynical about corporate intentions.[104] Consumers ultimately hold the power with their decisions, which is problematic when they cannot see the link between their actions and the impact.[105] Consumers who truly demand ethical action from corporations, and actively avoid products that do not align with those values, are the minority of the population. Additionally, many consumers do not possess knowledge about ethical or environmental issues—those driving the core of the fashion industry cannot make powerful informed purchases without that knowledge.[106] However, this also reveals a seemingly simple and clear solution—transparency.[107] If we magnify consumer activism, corporate accountability, and government intervention, consumers could see the direct impact of their purchases and provide a necessary check to corporate action.[108]

There was a massive global interest shift into the ethics of the fashion industry due to the Rana Plaza incident in 2013 where consumers got a glimpse of the inhumane labor conditions and unethical practices[109] As a result of the increased awareness of societal and environmental impacts of the industry, consumers started to make a statement with their purchases by avoiding products based on negative company practices and reputations. Consumers also asked more questions about where their clothes were made, what they were made of, and who made them.[110] These actions did make an impact.[111] Apparel

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[104] *Id*.
[105] *Id*.
[106] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY:
TRANSPARENCY IS KEY 149-50 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.
[107] *Id*.
[108] *Id*.
[109] *Id*. at 150-51.
[110] *Id*. at 151.
[111] Nazia Habib-Mintz, *Multinational Corporations' Role in Improving Labour Standards in Developing Countries*, 10 J. INT'L BUS. ECON. (2009).

firms, such as Adidas and Mango, founded the Accord and the Alliance for Bangladesh Worker Safety in response to the demands of stakeholders and media sentiments.[112] The development of such a group provided evidence that consumers can actively pressure corporations to adopt socially and environmentally responsible practices.[113]

i. Anti-Consumption

Anti-consumption is the concept of consumers resisting, rejecting, or reducing the consumption of goods and services and has increasingly changed the way businesses operate.[114] The basis of this concept is that avoidance of specific products and services based on personal values is just as impactful on corporate governance as purchasing something.[115] Social media and press reports are a vital source of information that empowers consumers to make educated purchasing decisions.[116] However, current manufacturing still presents a problem towards transparency, limiting the influence individuals have on private environmental governance.[117] Unsurprisingly, it is younger generations—specifically those born after 1980—that are the most sustainability conscientious and supportive of stricter environmental laws and policies.[118]

As a result of the anti-consumption movement, managers are under extreme pressure to adopt corporate social responsibility (CSR) practices and consider environmental protection when making

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[112] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY: TRANSPARENCY IS KEY 151 (2017), HTTP://DX.DOI.ORG/10.1057/978-1-137-60179-7_5.
[113] *Id*.
[114] *Id*.
[115] *Id*. at 152.
[116] *Id*. at 153.
[117] *Id*. at 152-53.
[118] SUSTAINABLE BRANDS, *Millennials Most Sustainability-Conscious Generation Yet, But Don't Call Them 'Environmentalists'*, https://sustainablebrands.com/read/stakeholder-trends-and-insights/millennials-most-sustainability-conscious-generation-yet-but-don-t-call-them-environmentalists (last visited Oct. 25, 2022).

business decisions.[119] In this context, there has been a wave of new organizations and initiatives to promote sustainable standards and management strategies, commonly referred to as Sustainable Fashion Governance.[120] CSRs still incite doubt from consumers as they believe that firms would not voluntarily incorporate CSR, even if it was the right thing to do, because businesses only exist to make money. Rather, consumers see the incorporation of such missions or commitments as a means for firm growth and profit by avoiding anti-consumption attitudes—in other words, "greenwashing."[121]

Despite the doubt and obvious obstacles, some apparel corporations have actually taken real steps to adopt and promote socially and environmentally responsible behavior.[122] Patagonia is one of the most successful corporations to have done. They have used educational campaigns and collaborations, provided an overview of its supply chain, and showed the public where and how their products were made.[123] Simply clicking on one of Patagonia's suppliers on their world map would reveal information on the supplier and why Patagonia is working with said supplier.[124] The corporation takes part in fair trade programs to raise workers' wages and improve living standards to promote health, safety, and environmental compliance.[125] Today, Patagonia continues to be the gold standard, with 100% of their down stuffing responsibly sourced, 100% of their electricity needs in the United States met with

[119] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY:
TRANSPARENCY IS KEY 153 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.
[120] Sarah Jastram & Anna-Maria Schneider, *Sustainable fashion governance at the example of the partnership for sustainable textiles*, UWF 23, Dec. 2015, at 206, https://rdcu.be/cYkF8.
[121] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY:
TRANSPARENCY IS KEY 154-55 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.
[122] *Id*. at 155.
[123] *Id*.
[124] *Id*.
[125] *Id*.

renewable energy, 98% of the products in their line made from recycled materials, and 88% of their products are Fair Trade Certified sewn.[126]

ii. Slow Fashion

Anti-consumption has also resulted in another private environmental governance in the fashion industry, slow fashion.[127] In this movement, companies reduce, reuse, and recycle materials and products to minimize the overall impact of their products on the environment.[128] These firms will often promote the reduction of consumption and recycling their products to minimize the environmental and social impact that the production may cause.[129] The slowing down of production runs parallel to a private governance shift towards quality over quantity, based on durability, longevity, and minimizing the item's environmental impact as opposed to the latest trends. [130] Slow-fashion creates a focus on sustainability in 5 ways: (1) downscaling production capacity, (2) limiting the availability of products, (3) reducing the negative impact of production on the environment, (4) paying fair wages and long-lasting relationships with suppliers, and (5) reducing over-consumption by offering long-lasting quality products.[131] This process theoretically makes up for the quantitative profit, as its selling less for more and promoting the purchase of products going hand in hand with the "good" mission.[132] Therefore, the success of slow fashion private governance is determined by how the corporation markets the idea of slow fashion and how consumers connect to what they buy.[133]

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[126] PATAGONIA, *Our Footprint*, https://www.patagonia.com/our-footprint/ (last visited Oct. 25, 2022).
[127] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY:
TRANSPARENCY IS KEY 157 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.
[128] *Id*.
[129] *Id*.
[130] *Id*.
[131] *Id*. at 158.
[132] *Id*.
[133] MICHAEL S. W. LEE ET AL., ANTI-CONSUMPTION AND GOVERNANCE IN THE GLOBAL FASHION INDUSTRY:

In today's interconnected world, private environmental governance is in a unique position, being not only the potential solution to the plethora of fashion industry issues, but also the reason as to why these are issues in the first place. There is hope that with increased transparency—and a corresponding positive reinforcement of such transparency between corporations, governments, and consumers—large-scale social and environmental changes and protections can happen. However, there are still many obstacles to such transparency that need to be overcome to create a permanent change in the operation of the fashion industry.

b. Potential Environmental Private Governance in Baltimore

When evaluating private governance, it is vital that corporations, individuals, non-profits, CEOs alike remember that a positive and effective environmental impact can be made in their own backyards. Although Baltimore, Maryland is not necessarily known for its corporate headquarters like New York City or San Francisco[134], it is home to Under Armour.[135] Under Armour is a world renowned brand known and presently a multi-billion dollar corporation that coordinates with several professional sport organizations.[136] The corporation moved to Baltimore in 1998 where it has fostered community support with programs that provides underprivileged youths around the world with access to physical education and sports, whether it be through activity, education, mentorship, or service.[137]

TRANSPARENCY IS KEY 159 (2017), http://dx.doi.org/10.1057/978-1-137-60179-7_5.

[134] BLOOMBERG, *Where Corporate Headquarters are Located*, https://www.bloomberg.com/news/articles/2018-11-15/where-corporate-headquarters-are-located (last visited Oct. 25, 2022).

[135] UNDER ARMOUR, *Under Armour Unveils Long Range Plan for New Global Campus in Baltimore*, https://about.underarmour.com/news/2021/04/long-range-plan-new-global-campus-baltimore (last visited Oct. 25, 2022).

[136] UNDER ARMOUR, *Our Story*, https://about.underarmour.com/brand/our-story (last visited Oct. 25, 2022).

[137] UNDER ARMOUR, *Get Involved,* https://impact.underarmour.com/contact/ (last visited Oct. 25, 2022).

Under Armour posits a unique opportunity for good environmental private governance by serving a historically underprivileged community economically, socially, and environmentally. As a company, they are partners with the Fair Labor Association, the Sustainable Apparel Coalition, and the Environmental Defense Fund Climate Corps.[138] Under Armour outwardly establishes a sustainable and green commitment to its consumers, employees, and the planet in their marketing. Their sustainability strategy, "What's Under Matters," prioritizes three ESG issues: Products, Home Field, and Team.[139] In that they promise their products will be designed with less waste and more durability to "set the stage for circular systems by 2030," they will protect the environment by "leav[ing] our home field better than we found it," and working as a team with "suppliers, workers, and communities… to create more inclusive workplaces, increase worker well-being, and to help build stronger communities."[140]

Purely looking into their environmental and sustainability practices, Under Armour has engaged in several collaborative industry initiatives: (1) "to reduce greenhouse gas emissions by 30% by 2030", (2) "increase annual sourcing of renewable electricity in owned and operated facilities to 100% by 2030 (80% by 2025) as part of commitment to RE100", (3) "and achieve net zero greenhouse gas emissions by 2050 as a pledge to Business Ambition".[141] From the product perspective, Under Armour hopes to go beyond the conventional practices of the fashion industry by looking at sustainable alternatives for dyes, finishes, printing, product development, and textiles.[142] For example, increasing the longevity and sustainability of their fabrics using REPREVE® recycled polyester, where in 2018

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[138] UNDER ARMOUR, *Sustainability*, https://about.underarmour.com/community/sustainability (last visited Oct. 25, 2022).
[139] *Id.*
[140] *Id*.
[141] UNDER ARMOUR, *Environment*, https://about.underarmour.com/community/sustainability/environment (last visited Oct. 25, 2022).
[142] UNDER ARMOUR, *Environment-Product,* https://about.underarmour.com/community/sustainability/environment/product (last visited Oct. 25, 2022).

they diverted 10 million plastic bottles from landfills and oceans by reusing them in 2.5 million shirts.[143] They have also innovated a new yarn extrusion and dyeing process, reducing their water, energy, emissions, and chemicals use—estimating that 5.5 Olympic swimming pools of water will be saved for every million yards of material—and a digital printing method yielding over 90% savings in water use and 30% savings in air and greenhouse gas emissions.[144]

In the end, it seems, as an outsider looking in, that Under Armour is doing everything right. They recognize the need to protect communities, foster environmental protection through every step of their manufacturing process, and have incorporated internal measures to ensure transparency, efficiency, and meeting future goals. Except is this really the case? Are they as a corporation doing enough? How can consumers make responsible purchases at the prices they can afford? This is where our true proposition lies. A mobile app that will allow consumers to be more informed and play their part in influencing private governance's dedication to environmental protection and sustainable practices.

V. POLICY PROPOSAL – FASHION COMPANY GRADING APP

Gen Z's 'Fast Fashion' culture is particularly notable because it exists within a generation being dubbed "The Sustainability Generation."[145] Young people, the drivers of fast fashion, overwhelming want to consume more sustainably, yet, frequently make choices that do not support said end-goal.[146]

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[143] *Id.*

[144] UNDER ARMOUR, *Environment-Manufacturing,* https://about.underarmour.com/community/sustainability/environment/manufacturing (last visited Oct. 25, 2022).

[145] Greg Petro*, Gen Z Is Emerging As The Sustainability Generation*, Forbes (2022), https://www.forbes.com/sites/gregpetro/2021/04/30/gen-z-is-emerging-as-the-sustainability-generation/?sh=5234f73a8699 (last visited Oct 30, 2022).

[146] *Out Of Style: Will Gen Z Ever Give Up Its Dangerous Love Of Fast Fashion?*, The Guardian (2021), https://www.theguardian.com/fashion/2021/oct/06/out-of-style-will-gen-z-ever-give-up-its-dangerous-love-of-fast-fashion (last visited Oct 30, 2022).

Exposing this class of consumers to information that allows them to make a meaningful environmental and social choice may have the potential to push private change.

There are no shortage of attempts to quantify sustainability in the fashion industry. With tens of different certifications and a variety of grading systems available, consumers already have access to the data needed to make sustainable fashion choices.[147] Despite an availability of sources, consumers searching for this information are faced with an overwhelming amount of data, greenwashing, and biased misrepresentation.

Many scoring schemes simplify expansive amounts of data down to a few sentences.[148] While this promotes ease in understanding, it also deprives consumers of a detailed support for the score. Additionally, brands that advertise as environmentally-friendly tend to be significantly more represented under these existing systems.[149] This coverage helps consumers build awareness of these brands but will likely not initiate private change and governance because non-participants remain shielded from negative publicity.

Grading System	**Positives**	**Issues**
Good on You www.goodonyou.eco	Considers environmental, social, and animal welfare categories. Scores on 1-5 scale	Does not break down "100's of factors" that are taken into account, rather gives a broad overview.
ESG Enterprise www.esgenterprise.com	Provides breakdown of factors within categories	Certain information is kept behind a paywall and companies pay to be evaluated
ESG Risk – Sustainalytics www.sustainalytics.com/esg-ratings	Scores companies based on ESG risk factors and categorizes based on risk severity	Ranking behind paywall
Eco-Age www.eco-age.com	Provides strong analyses Emphasis on conducting objective audit	Only evaluates companies that pay for services

[147] EcoCult Staff, *Is There A Sustainable Certification For Clothing? [Guide To Ethical Labels]* Ecocult (2020), https://ecocult.com/eco-friendly-ethical-sustainable-labels-certifications-clothing-fashion/ (last visited Oct 30, 2022).

[148] *Good On You* (2022), https://goodonyou.eco/ (last visited Oct 30, 2022).

[149] Alex Assoune, Reformation Panaprium (2021), https://www.panaprium.com/blogs/i/reformation?_pos=1&_sid=3ff1fb91a&_ss=r (last visited Oct 30, 2022).

Panaprium www.panaprium.com	Breaks down basic information more efficiently Expands upon scoring factors	Interface is not as straightforward as other sites Does not give categorical scores

In addition to their grading / scoring system, many sites help consumers make 'informed' decisions by highlighting if the company has earned any environmental and social certifications. Across the industry, these vary greatly. Some certifications are structured like traditional "certifications" whereas others are function more like a network.[150] Certifications may use third-party auditors or rely on self-reporting; similarly, some certify raw materials or end products, whereas others certify entire factories or brands.[151]

In the fashion industry, certifications breed greenwashing opportunities. For example, the Higgs Index; a sustainability index from the Sustainable Apparel Coalition (SAC) used by 151 major brands including Under Armour, Patagonia, and Amazon. Earlier this summer, the SAC announced they would be pausing use of consumer-facing sustainability profiles after the Norwegian Consumer Authority declared that data from the index could not be used to sufficiently support environmental claims of two members, including H&M.[152] Despite this consumer-side shutdown, some members—Under Armour—have not indicated any change in the status of this coalition.[153]

Potential Industry Environmental and Social Certifications[154]

Certification	**Topic**
Global Organic Textile Standard (GOTS)	Covers the processing, manufacturing, packaging, labeling, trading, and distribution of all textiles made from at least 70% certified organic natural fibers. The textiles must meet a certain set of environmental standards (toxicity, wastewater, etc.) as well as social criteria in accordance with the International Labor Organization.

[150] *Good On You* (2022), https://goodonyou.eco/ (last visited Oct 30, 2022).
[151] EcoCult Staff, *Is There A Sustainable Certification For Clothing? [Guide To Ethical Labels]*, Ecocult (2020).
[152] Truth in Advertising Staff, *The Higg Index, Sustainability Ratings Tool Comes Under Fire*. Truth in Advertising (2022), https://truthinadvertising.org/articles/the-higg-index/ (last visited Oct 30, 2022).
[153] *Sustainability*, UA Newsroom, https://about.underarmour.com/community/sustainability (last visited Oct 30, 2022).
[154] EcoCult Staff, *Is There A Sustainable Certification For Clothing? [Guide To Ethical Labels]*, Ecocult (2020).

OEKO-TEX	Tests for presence of substances like toxic chemicals that are harmful to humans
Better Cotton Initiative (BCI)	Requires members to meet a set of standards. Paying members are ranked if they source at least 5% of their cotton as Better Cotton to start, with a plan to be sourcing at least 50% of their cotton as Better Cotton within five years. This certification is a partway step to "organic," which can take significant investment and three years to obtain.
bluesign	Certification given to textile manufacturers who are producing in a way that is safe for both humans and the environment. They take a variety of factors into consideration including water waste, dye toxicity, and worker & consumer safety.
Organic Content Standard (OCS)	Strictly certifies chain-of-custody system from organic raw material to finished product
Cradle-to-Cradle	Focuses on the circularity of products through five categories: material health, material reutilization, renewable energy and carbon management, water stewardship, and social fairness.
USDA Organic	Products, such as cotton or wool, are certified if they meet strict standards in their growing and harvesting process. They cannot be treated with any pesticides, synthetics, fertilizers, hormones, or other types of additives.
National Sanitation Foundation (NSF)	Third-party certification that ensures human and environmental safety across several different industries.
Forest Stewardship Council (FSC)	Ensures that companies using timber from an FSC-certified forest meet their standards along the entire supply chain
Regenerative Organic Certified (ROC)	Regenerative Organic Certification goes beyond organic to be a holistic agriculture certification encompassing pasture-based animal welfare, fairness for farmers and workers, and robust requirements for soil health and land management.
Climate Beneficial	Certifies wool coming from animals that were raised in such a way that more carbon was sequestered than emitted
ECOCERT	Specializes in organic agriculture products, ECOCERT label means the fabric is either GOTS (Global Organic Textile Standard), OCS (Organic Content Standard), and/or Ecological & Recycled Textiles (ECOCERT Standard) certified.
SA8000	Certification standard for factories and organizations across the globe. Standards are in line with the Universal Declaration of Human Rights and International Labour Organization (ILO) conventions and include things like child labor, forced labor, health and safety, discrimination, and working hours.
Worldwide Responsible Accredited Production (WRAP)	Social compliance certification that audits factories in categories such as forced labor, benefits, and discrimination, and then given a platinum, gold, or silver certification.
Fairtrade USA	Certifies all-sized farms, producers, and traders through factors including include fair wages, safe working conditions, and supply chain transparency, and certain environmental standards like the prohibition of GMOs and toxic chemicals.
B Corp Certification	Measures a company's entire social and environmental performance, from supply chain and input materials to employee benefit and more. Each company gets a B Impact score, indicating how much room there is for improvement.
Sustainable Apparel Coalition (SAC) / Higgs Index[155]	Apparel, footwear and home textile industry's foremost alliance for sustainable production. The Coalition's main focus is on building The Higg Index is a standardized supply chain measurement tool for all industry participants to understand the environmental and social and labor impacts of making and selling their products and services.

[155] SAC & CEO Amina Razvi & Federica Marchionni CEO et al., *Sustainable Apparel Coalition* (2022), https://apparelcoalition.org/ (last visited Oct 30, 2022).

Fair Labor Association (FLA)[156]	Evaluates companies' systems to protect workers throughout global supply chains

Noting these shortfalls, we propose to launch an app that objectively synthesizes and expands upon these existing systems and assigns clothing companies a score in three categories: environmental, social, and accessibility. The app will have accompanying social media accounts to share information highlights in consumers' social media 'feeds.'

The purpose of this app is to help consumers source environmentally-friendly fashion while exposing accessibility barriers and publicly encouraging companies to mitigate disparities. The app will prioritize being transparent about the factors being used to score the company, highlighting environmental justice concerns in the manufacturing process, and exposing greenwashing through the use of certain buzzwords, such as 'recycling' and 'organic.' Each of the categories contributes to a different aspect of ESG concerns in fashion:

a. Environmental

Companies' environmental scores will be generated based on the following criteria:

Topic	**Potential Source**
'Good on You' Overall Environmental Ranking	Good on You
Climate Action	Eco-Age
Materials Sourcing	Eco-Age, Good on You
Hazardous Chemicals	Eco-Age, Good on You

Existing systems create implicit bias by quantifying positive environmental scores using certain environmentally-friendly buzzwords. For example, many of the source environmental grading systems and certifications quantify the sustainability of brands' agricultural footprint based on their designation as an *organic* producer of an *organic* material.[157] This is misleading to consumers because sustainable

[156] FLA, *Fair Labor Accreditation Fair Labor Association* (2022), https://www.fairlabor.org/accountability/fair-labor-accreditation/ (last visited Oct 30, 2022).
[157] EcoCult Staff, *Is There A Sustainable Certification For Clothing? [Guide To Ethical Labels]*, Ecocult (2020).

farming is not exclusive to organic farming.[158] In general, an organic textile is one produced with fibers grown in controlled settings with no pesticides, synthetic fertilizers, or toxic chemicals.[159]

Panaprium, one of the available grading systems, highlights:

> We want products that are better for people and the planet. That is why natural and organic materials are a priority. . . . [Organic materials] reduce water and energy consumption, carbon emissions, waste, and use no harmful man-made chemicals. They are less likely to contribute to acidification, eutrophication, and global warming. They help with soil fertility and biodiversity.[160]

This information, while technically true, mistakenly credits organic farming for the positive environmental effects of implementing sustainable agricultural best management practices.[161] Organic farming focuses on what is applied to plants while sustainable farming focuses on actual on-the-ground practices.[162] Sustainable farming practices inherently further the goals noted above while organic farming does not.[163] For example, organic growers apply natural instead of synthetic fertilizers to their land; these natural fertilizers still contain the same nutrients that run-off into the water. Alternatively, sustainable farming practices prioritize strategic nutrient application, natural or synthetic, and other farming practices that prevent runoff.[164] Whereas organic farming is often accompanied by sustainable farming, grading companies' agricultural footprint based off of a lack of an "organic" certification or supply chain misrepresents the significance of organic farming versus sustainable farming.[165] Further,

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[158] Jordan Charbonneau, *Sustainable Textiles: Modern Fiber Farmers*, The FruitGuys Community Fund (2020), https://fruitguyscommunityfund.org/sustainable-textiles-modern-fiber-farmers/ (last visited Oct 30, 2022).
[159] *Id.*
[160] Panaprium Staff, *Sustainability Rating FAQ*, Panaprium https://www.panaprium.com/pages/rating-faq (last visited Oct 30, 2022).
[161] Jordan Charbonneau, *Sustainable Textiles: Modern Fiber Farmers*, The FruitGuys Community Fund (2020).
[162] Tillable, *What Is The Difference Between Organic Farming and Sustainable Farming?* Tillable (2022), https://tillable.com/blog/what-is-the-difference-between-organic-and-sustainable farming
[163] *Id.*
[164] *Id.*
[165] *Id.*

obtaining an organic certification is a significant barrier for landowners in the textile industry and beyond because it is time- and cost-prohibitive. This often prevents smaller landowners from being officially "organic," even if they employ the same sustainable farming practices.[166] The Farm Bill provides some cost-share funding for these small-to-mid-sized producers to obtain certifications, however, this program is in need of increased funding that it will likely not be allocated.[167]

b. Social

Companies' social scores will be generated based on the following criteria:

Topic	**Potential Source**
'Good on You' Overall People Ranking	Good on You
Social Summary Score	Eco-Age. Panaprium
Diversity Score	Eco-Age, Panaprium
EJ Indices Below 80th p. Near Major US-Based Manufacturing	ECHO compliance / EPA EJ map
Socioeconomic Indices Below 80th p. Near Major US-Based Manufact.	ECHO compliance / EPA EJ map

Outside of occasional vagueness, existing scoring systems and certifications do a relatively adequate job of collecting quantifying social and labor policies; the app will centralize these data. In addition, the app differs from existing systems by including environmental justice (EJ) indices in the analysis. Using EPA's ECHO compliance database and/or state EJ tools, the score card reports the number of EJ indices above 80th percentile in the immediate area surrounding major manufacturing facilities. Despite increasing EJ-focused legislation, companies locating and maintaining their manufacturing facilities are in the best position to prevent EJ inequities.

c. Accessibility

Topic	**Potential Source**
Fashion Transparency Index / Transparency Score	Fashion Transparency Index, Panaprium, Eco-Age
Size Range	Company Site, Scoring Categories
Pricing Accessibility (Items per $100)	Company Site, Scoring Categories

[166] NSAC Staff, Recent reports highlight barriers and opportunities for organic farming National Sustainable Agriculture Coalition (2022), https://sustainableagriculture.net/blog/recent-reports-highlight-barriers-and-opportunities-for-organic-farming/ (last visited Oct 30, 2022).
[167] *Id.*

EJ Indices Below 80th p. Near Major US-Based Manufac.	ECHO compliance / EPA EJ map
Socioeconomic Indices Below 80th p. Near US Manufac.	ECHO compliance / EPA EJ map
Percent of Manufacturing Outside of US	Publication by Company

Companies' accessibility scores will be generated based on the following criteria:

Many environmentally- and socially-friendly brands remain inaccessible for lower-income and plus-sized communities. In the United States, more than 37.9 million people are living in poverty[168] and almost 70% of women are considered "plus-sized."[169] These communities are often excluded from access to niche products – including sustainable clothing.[170] For example, $100 at Patagonia purchases a single sweatshirt[171] while $100 at Shien covers, on average, 10 articles of clothing.[172] While limited-income consumers are likely aware that Patagonia makes high-quality, environmentally-friendly clothing they ultimately opt to purchase chemical-ridden fast fashion because of this disparate cost gap. Similarly, Shein's selection of plus-size clothing is more expansive than Patagonia's.[173] To highlight this, the accessibility section of this app prioritizes scoring companies for their price and size inclusivity alongside general information transparency.

d. Grading System

The grading system places priority on source openness and clearly breaking down the factors accounted for in each score category. The scorecard, see Appendix A, is filled out with a sample of

[168] John Creamer, *Poverty in the United States: 2021*, Census.gov (2022), https://www.census.gov/library/publications/2022/demo/p60-277.html (last visited Oct 30, 2022).
[169] Hilary George-Parkin, *68% Of American Women Wear A Size 14 Or Above,* Racked (2018), https://www.racked.com/2018/6/5/17380662/size-numbers-average-woman-plus-market
[170] Gina Tonic, *'Solving' Fast Fashion Isn't A Plus-Size Responsibility*, https://www.refinery29.com/en-gb/plus-size-fast-fashion-sustainability (last visited Oct 30, 2022).
Ayah Rashid, *We Can't Afford The Price Tag on Affordable, Ethical Fashion Brands,* Postscript Magazine (2021), https://postscriptmagazine.org/content/price-tag-sustainable
[171] Patagonia Women's Micro D® SNAP-T® fleece pullover, Patagonia, https://www.patagonia.com/product/womens-micro-d-snap-t-fleecepullover/26020.html?dwvar_26020_color=null
[172] SHEIN USA, https://us.shein.com/ (last visited Oct 30, 2022).
[173] *Id.*; Patagonia Outdoor Clothing & Gear, https://www.patagonia.com/home/

information from scoring systems including, but not limited to, Good on You; Eco-Age; Cradle-to-Cradle; and Panaprium. Each factor above will be equalized to be scored out of 100. These factors are then averaged to create a categorical score. From here, each of the three categories are scored individually and are averaged to assign the company an "overall ESG GPA." See Appendix A for an example scorecard and grading categories.

Assigning each category individual scores allows this app to highlight accessibility shortcomings in brands that may be ranked positively in other systems, such as Patagonia. Good on You scores Patagonia as "good," or 4/5, based on their excellent environmental and social policies; contrastingly, Shien is rated as "avoid," and is given a 1/5. These rankings properly highlight companies' social and environmental impacts but fail to highlight accessibility differences. This app will further ESG private governance goals by holding companies accountable for the cost-burden and inclusivity of their products, factors that directly prevent consumers prioritizing sustainable purchasing.

e. Use of Award Money

The award money will be used to subscribe to a database system, create an app prototype, and initiate social media campaigns. Logistically, the app must be published on a database server; this may cost up to $25 a month to host. Further, a significant chunk of funding will need to be allocated to develop the app interface and input more company score cards. Beyond logistical requirements, the prize money will be used to initiate social media campaigns. The goal of this campaigns is to create awareness for the app while showing consumers how major companies are scoring. These campaigns may include paying to promote posts and advertisements on Facebook, Instagram, or TikTok alongside sponsoring environmentally-forward fashion creators to post about the app.

We hereby certify that the brief for The University of Maryland Francis King Carey School of Law is the product of the undersigned. We further certify that the undersigned have read the Competition Rules and that this brief complies with these Rules.

Date: October 31, 2022

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