

DANCING A

FINE LINE

CHOREOGRAPHY AND COPYRIGHT

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For this issue focussing on choreography Irving David and Ben Challis explain the copyright issues relevant to choreographic works.

Anyone who creates something – be it a painting, a symphony, a novel or a choreographic work reasonably expects to be acknowledged as the author of the work and to benefit financially from his or her creativity.

Choreography can be defined as “the composition and arrangement of dance movements and patterns usually intended to be accompanied by music”. Dance and mime are protected as dramatic works – a work that has movement, a story or action. Choreography has been protected by UK copyright law since 1911 (although protection only began in 1976 in the USA). This means that under U.S. law the composers, Rogers and Hammerstein, received handsome payment for their 1943 musical and literary copyrights in “Oklahoma!” but the choreographer, Agnes de Mille, received no ongoing royalty payments.

The UK Copyright, Designs and Patents Act 1988 provides that the owner of the copyright in a work has certain rights in relation to it – including the right to make copies of the work and to broadcast and adapt it. If the owner does not want to directly exercise these rights he or she may permit others to do so in return for a royalty or a one off (“buy-out”) payment.

Who is the author of a work and, therefore, the first owner is not straight-forward. If one person wholly originates a work then he or she is the sole author. Where people collaborate they will be co-authors so choreographers working with dancers developing a dance routine or even a full length ballet should come to a clear understanding in advance regarding the copyright ownership.

There is no such thing as “copyright in an idea”. So if two people independently produce two recordings which are similar, or two photographers each take a similar photograph then a separate copyright will subsist in each of those recordings and photographs. They have not “copied” each other. This is important in dance: Anyone looking to copyright law for protection will need to show that his or her choreography is more than just an

‘idea’. It is debatable for example whether Michael Jackson’s ‘Moonwalk’ can be protected in copyright. For choreography to be protected by copyright law it needs to be ‘fixed’ or recorded in some permanent form. It will not be protected if it is merely publicly performed as this is not a permanent representation of the choreography. It is easy to ‘fix’ a piece of music or a set of lyrics – they can be written down or recorded and, thereby fixed. It is not so easy to fix a series of performance movements. Historically the difficulty in fixing dance in a permanent form has led to the art form being marginalised in copyright law. Indeed, there is little case law relating to choreography. The lack until recently of an accessible and reliable system of notating dance has made it difficult for some choreographers to protect their copyrights.

UK law now allows dance to be recorded in “writing or otherwise”. The video camera has made life a lot easier for choreographers to fix their works, (at least for the purposes of copyright law) and other methods of fixation now include notation, pictorial or narrative description, film or videotape, photographs, holograms and even computer animation. These can all be used by an author to protect or enforce his or her copyrights.

Provided that choreography is original, is capable of physical performance and can be fixed, it will be protected as a dramatic work from the date of fixation until seventy years after the death of the author/choreographer – or the death of the last survivor if there are co-authors.

Almost always the choreography will only be one of many copyrights involved in a stage performance – there will be musical copyrights, a dramatic copyright in any script and artistic copyrights in costumes and scenery. There will be a separate copyright in any film or audio-visual recording made of a dance or ballet so a filmmaker would need permission from all the other copyright owners, including the owner of the choreography, before he or she could exploit the film or recording. ■

DWFM Beckman offer expert legal advice for all involved in Dance.

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