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Literally Stealing the Show: A Brief (and Recent) History of Dance

Copyright

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JaQuel Knight, a renowned choreographer, recently made moves by launching Knight Choreography and Music Publishing Inc. Knight’s company will oversee rights to dance moves, similar to how music publishers protect the intellectual property of their own clients. Knight was the artistic mastermind behind the dances such as Beyoncé’s “Single Ladies” and Cardi B’s “WAP,” having already secured copyright for the former in July 2020. In an interview with Variety, Knight explains “copyrighting movement is about putting the power back in the artist’s hands… and we are thrilled to be launching Knight Choreography and Music, Inc. so that the next generation of artists are afforded the same platform, resources and tools to thrive, creatively and financially, in the commercial music industry.”

While libraries are traditionally viewed as a “place with books,” libraries have transformed into spaces where patrons interact with many media types. ALA’s core organizational value of “ethics, professionalism and integrity” is outlined in the Code of Ethics and specifically examines the ethics and legality of using others’ work in “Copyright: An Interpretation of the Code of Ethics,” including the medium of dance. Personally, I once assisted a patron uploading original hip-hop videos to Youtube. As libraries continue to assist patrons with inquiries past the realm of reading materials, it is important to be familiar with issues surrounding other kinds of works people are engaging with. So in order to know why Knight’s company is significant, let’s take a look back at the recent history of dance and copyright.

Copyright Act of 1976

The Copyright Act of 1976 was the first piece of copyright legislation to explicitly protect choreography, specifically including “pantomimes and choreographic works” as a category of works of authorship. As dance is such a natural human expression, it was important to define what constitutes a choreographic work and how it is fixed as a “tangible medium of expression.” Circular 52, last updated March 2021 at the time of this post, provides various examples of what is and is not covered by copyright. A dance can be copyrighted if it includes certain elements, such as:

- Rhythmic movements of one or more dancers’ bodies in a defined sequence and a defined spatial environment, such as a stage
- A series of dance movements or patterns organized into an integrated, coherent, and expressive compositional whole

Concert/Theatre Dance
The first major case involving dance copyright was *Horgan v. MacMillan, Inc.* in 1986. The case centered around choreographer George Balanchine’s rendition of *The Nutcracker*, which was photographed and featured in a book. A district court found that there was no copyright violation because the photographs did not infringe upon the copyrighted choreography. The U.S. Court of Appeals, however, reversed the decision since the photographs used were similar enough to be used to recreate the choreography. Circular 52 now officially states for a choreographic work to qualify for registration, it has to be fixed in a tangible medium such as dance notation, video recording, text description, photographs, or drawings.

Another significant case involved the choreographic works of Martha Graham, known for revolutionizing the field of modern American dance. Upon her death, Graham wished for the copyrights for choreography be passed to her heir Ronald Protas. Unfortunately, the court ruled in 2002 that the Martha Graham Dance Center, rather than Protas, owned the copyright for most of her dances. Since the dances in question were created through the center, they were considered works made for hire, thus the property of the employer. Scholars Abitabile and Jeanette Picerno write, “If Graham had either copyrighted her dances or signed a written contract with the School stating ownership over her dances, the School would not maintain any rights over them.”

**Explosion of Dances in Pop Culture**

Music videos hit the scene in the seventies and eighties, and with that iconic dance routines such as Michael Jackson’s “Beat It” and “Thriller.” Naturally, creative dance routines often appear in TV shows, movies, and now viral videos shared via Youtube or TikTok. It is fairly common for people to show off their ability to perform popular moves. Starting in 2018, *Epic Games* was the subject of a flurry of lawsuits surrounding their sale of “dance emotes” in the game *Fortnite*. In the game, players can purchase emotes that allow their character to perform a dance. Several of the dances portrayed, however, were inspired by real world examples. The issue was that Epic Games was making millions of dollars off of dances created by other people. Below are some comparisons between dances used for emotes:

- The Carlton
- Donald Faison's dance from Scrubs

Many of the cases brought against Epic Games were dismissed or eventually dropped, relating back to the U.S. Copyright Office which states that “The U.S. Copyright Office cannot register short dance routines consisting of only a few movements or steps with minor linear or spatial variations, even if a routine is novel or distinctive.” Therefore the dances used were too simple to be considered choreography. A different example, however, involved artist YouFunnyB and his Billy Bounce dance in 2019. While the details of the agreement have not been disclosed, YouFunnyB announced that he actively collaborated with Epic Games to incorporate his dance into the game, despite not being credited in game.

https://twitter.com/FreeYoufunnyB/status/1131469884284637184?

The social media platform TikTok soared into popularity in 2018, and is well known for users sharing dance moves. This past March, TikTok star Addison Rae appeared on *The Tonight Show with Jimmy Fallon* to perform eight dances popularized via the platform. Viewers were quick to call out that most of the dances featured were created by black dancers, and Rae was receiving the spotlight for their work and creativity. To rectify this, Fallon invited the creators on the show to discuss their creative process and to perform their moves (albeit virtually). Many speculate that this incident was one of the factors which motivated Knight to create his company. During the process of establishing Knight Choreography and Music, Inc., Knight was interviewed by NPR and discussed the challenges and benefits of protecting his choreography. Knight explains that it is important for choreographers to obtain copyright protection so that they retain ownership over their work and could get residual payment for use in films, commercials, video games, etc. A question you might have at this point, which NPR’s Ari Shapiro asked, is will people on TikTok or Youtube “get sued for, like, doing a popular dance at a bachelorette party?” Knight explained that the point of copyrighting dances isn’t to prevent people from dancing at home or at parties, but rather protect choreographers from having their works exploited by major companies for profit, such as with what happened with Fortnite. As Knight’s venture is the first of its kind, it will be interesting to see the effects of choreographers being able to protect their moves.

https://www.oif.ala.org/oif/?p=25941
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