A COPYRIGHT PRIMER FOR THE DANCE COMMUNITY

DANCE HERITAGE COALITION, INC.
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The Dance Heritage Coalition (DHC) was founded in 1992 to address the problems that were identified by a study of the state of preservation and documentation of dance in America. Jointly commissioned by The Andrew W. Mellon Foundation and the National Endowment for the Arts, the resulting study *Images of American Dance* recommended the formation of an alliance of the nation’s major dance collections (1) to facilitate communication; (2) to develop national standards, policies, and priorities; and (3) to implement collaborative activities and projects in the fields of dance preservation, documentation, and access. The DHC’s mission is to make accessible, enhance, augment, and preserve the materials that document the artistic accomplishments in dance of the past, present, and future. It also now serves as a think tank and convener for the dance heritage field.

Member Organizations of the Dance Heritage Coalition

- American Dance Festival
- Dance Notation Bureau, Inc.
- Harvard Theatre Collection, Houghton Library, Harvard University
- Jacob’s Pillow Dance Festival
- Library of Congress
- New York Public Library for the Performing Arts, Dance Division
- Lawrence and Lee Theatre Research Institute, Ohio State University
- San Francisco Performing Arts Library and Museum
- Anacostia Museum and Center for African American History and Culture, Smithsonian Institution
All performing artists—and those entrusted with the care of artistic creations—need to arm themselves with some basics of copyright law, to protect their creations from improper use or even outright theft. Furthermore, as users or adapters of the choreography, music, poetry, and similar material created by others, artists must become aware of their own potential liability for possible copyright infringement.

The following information is a brief overview of copyright issues, especially those relating to videotape production and use, which may affect members of the dance community. Specific questions that are not covered here should be addressed to the U.S. Copyright Office or to other resources listed below.

Local arts organizations or dance service organizations may also be of assistance, and they may be able to suggest attorneys specializing in copyright law or intellectual property rights. Note that while the U.S. Copyright Office is not permitted to give legal advice in specific copyright disputes, it does inform members of the public about general provisions of copyright law and the registration of copyrights. When in doubt, always consult an attorney—neither this brochure nor any service organization, no matter how well intentioned, can substitute for expert legal advice. Copyright infringement, even if inadvertent, may be costly.
WHAT IS COPYRIGHT?

Copyright is the legal right of creative artists (as independent agents) or publishers to control the use and reproduction of their original works (see “Work for Hire” below). The owner of any such “intellectual property” has five rights:

(1) the right to reproduce it;
(2) the right to publicly perform it;
(3) the right to publicly display it (using static images);
(4) the right to create a derivative work; and
(5) the right to distribute copies of it (i.e., by hard copy or online).

Only the copyright owner or his or her agent may authorize others to exercise these rights.

WORK FOR HIRE

Typically, the author of a work is its creator and initially obtains all rights to the work. If a work is created as part of the creator’s job, however, it is considered a work for hire. A work for hire may also be a specially commissioned work designated as such in a signed, work-for-hire agreement. In these cases, the employer or commissioner is considered the “author,” and the work for hire becomes the property of the employer or company that commissioned it.
WHAT IS COPYRIGHTABLE?

A creator may acquire copyright for any of the following:

- Literary works;
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Choreographic works and Pantomimes;
- Pictorial, Graphic, and Sculptural works;
- Motion pictures and other Audiovisual works; and
- Architectural works.

Such works are automatically protected by copyright the moment they are fixed in a “tangible form of expression”—even if they are never registered with the U.S. Copyright Office (for “Registration,” see page 9). For dance, this includes pieces captured on film or videotape, or through notation (e.g., Labanotation or Benesh). A live performance is not copyrightable unless it is somehow recorded and, thereby, made tangible.

Copyright requires a certain amount of intellectual labor; consequently, short dance phrases are not copyrightable, much the same as individual words or short verbal phrases are not. In addition, U.S. copyright requires a tangible medium of expression: an idea in someone’s head is not copyrightable, neither are improvised speeches or performances that have not been written down or recorded.

Copyright of a videotape or film covers all original elements of the picture, including any original script or music, and any audio and visual elements that are subject to copyright. Typically, a set or costume design is not copyrightable, unless it constitutes a pictorial, graphic, or sculptural work. Without the owner’s consent, no one may broadcast, exhibit, distribute, or make copies of the film or videotape, and no one may publicly perform anything captured on the film or videotape. (See “Fair Use” on page 6 for a notable exception.)
Copyright protection extends to works in conventional form, such as print and recordings, as well as to those in electronic form. The increasingly widespread use of digital reproduction—through “downloading” or “scanning” into personal computers—has created a whole new area of questions and problems regarding copyright. Works in this form can be quickly and easily disseminated around the world without any consent from or benefit to the copyright owner. In this environment, sending unauthorized digital copies of copyrighted work could lead to legal action for copyright infringement which, in turn, could result in civil or criminal penalties.

Various organizations have begun to address legal, ethical, and intellectual concerns created by the escalating information exchange on the worldwide web. One such group, Creative Commons (http://creativecommons.org), has developed a new form of licensing that works in tandem with copyright, intended to both protect copyright owners and promote the sharing of online materials and information.

**FAIR USE**

While copyright law gives certain exclusive rights to owners, it is also designed to promote the progress of science and the arts. Consequently, the Copyright Act includes some important limitations. One of these is the fair use doctrine, which allows the limited use of copyrighted works without permission from the owner, for “criticism, comment, news reporting, teaching, scholarship or research.” In most cases where the use is commercial in nature, courts do not consider it to be “fair use.”

Fair use determinations are generally made by the courts, which balance the rights of copyright owners against those of the user, on a case by case basis. A court usually bases its decision on four factors:
(1) the nature of the use, e.g., whether the use was commercial or for criticism;
(2) the type of work, e.g., whether it is a factual or entertainment work;
(3) the amount of material copied—it must be somehow limited in scope; and
(4) the economic effect of the use on the copyright owner’s market for the work.

For the most part, only students, teachers, journalists, parodists, and researchers can legitimately (i.e., legally) claim “fair use” when copying a portion of someone else’s original creation, and then only for one of the uses specified above.

As an example, if an instructor wishes to use a photograph or a short videotape clip to supplement a lecture on dance history, that would be considered “fair use” (or would fall under the teaching exemption), and permission from the owner would not be necessary. Lifting a photograph of Fred Astaire from the web for use in an advertisement, however, would require permission from the copyright owner—and probably a hefty fee. This would not be considered “fair use.”

As a matter of professional ethics, the artist or copyright owner should always be given appropriate credit for the use of her or his works, whether or not copyright permission is needed.
WHY REGISTER WITH THE U.S. COPYRIGHT OFFICE IF WORKS ARE AUTOMATICALLY PROTECTED?

Since works are automatically protected, an author or creator is not obligated to register her or his original works with the U.S. Copyright Office to secure protection. However, there are compelling reasons for doing so.

Primarily, you can only sue someone for infringing your copyright if you have registered your work with the Copyright Office. If you register your work within three months from the date of first publication, or at least prior to the date of infringement, you can ask the court to order the infringer to pay your attorney’s fees as well as statutory damages. Registering at a later time means that you can only collect actual damages, which may not be worth pursuing if you cannot prove financial loss.

Another important reason for registering your works: often, the mere threat of legal action by a registered copyright holder is enough to halt a current violation or deter a future violation, saving everyone the trouble and expense of going to court.

COPYRIGHT NOTICE

The U.S. Copyright Office recommends the placement of copyright notice (year, copyright owner, and the symbol © or the word “Copyright” or the abbreviation “Copr.”) on any published works. Published works can include copies of notated choreography, film, and videotapes, as well as posters, books, and other traditional print media that is sold or distributed to the public. The copyright notice on works informs the public of the claim of protection so that an accused infringer cannot assert in court that he or she was unaware of copyright protection.
HOW TO REGISTER WITH THE U.S. COPYRIGHT OFFICE

To register a dance work, you must obtain a registration application and submit

(1) a copy (or copies) of the work (either a video recording or notation);
(2) the application; and
(3) the $30 fee (subject to change)

to the U.S. Copyright Office. The office is housed at the Library of Congress in Washington, DC. Packages may be delivered in person, by commercial carrier, or by the U.S. Postal Service.

WARNING: If you are submitting videotape or any type of magnetic media, DO NOT USE THE U.S. POSTAL SERVICE. Federal government facilities continue to irradiate their mail as a security precaution; this may result in the loss of your taped image! To safeguard your submissions, use a private, commercial carrier, such as FedEx, DHL, or UPS.

You may register at any time during the term of the copyright (see below “How Long Does Copyright Protection Last?”). After receiving and examining your three required items, the Copyright Office will send you an official registration certificate, including the registration number.

The Copyright Office issues certificates for 99% of applications submitted. Copyright registration does not guarantee originality or artistic merit. All challenges to copyright are resolved in the courts, rather than by the U.S. Copyright Office.

The application form, online registration list, and further details are available at the Library of Congress web site, http://www.loc.gov/copyright/. You may also call their office at 202-707-3000.
HOW LONG DOES COPYRIGHT PROTECTION LAST?

For works created after 1978, as well as for most works created but not copyrighted before 1978, copyright protection lasts through the lifetime of the author/creator, plus 70 years. If such a work was created “for hire,” copyright extends to 95 years from the date it was “published” or 120 years from creation, whichever comes first.

In most cases, works published before 1923 are in the public domain, meaning anyone may use them without permission. U.S. works published before 1964 and not renewed with the Copyright Office are also in the public domain. A dancer, therefore, could create a “derivative work” based on such works, without seeking permission.

In other cases, those wishing to use an original work should seek permission directly from the copyright owner. To locate an owner, search for works registered after 1978 through the Copyright Office web site. Registration records for earlier works are available in the Copyright Office Card Catalog. For additional help in determining the copyright status of a work, the Copyright Office will conduct a search of its records for $75/hour.

CONCLUSION

Although issues of copyright law are extremely complex and often confusing, it is imperative that we educate ourselves about their fundamentals, to become effective advocates for ourselves, for our fellow dancers, and for other artists. We also must try to keep abreast of the latest court decisions and of copyright legislation that is pending in Congress. The outcomes of legal proceedings that question the ownership or use of works in the performing arts have serious implications for the entire dance community. Our collective voices must be heard on Capitol Hill to protect the dance legacy we cherish.
RESOURCES FOR ADDITIONAL INFORMATION

“Copyright and Fair Use,” Stanford University Libraries, Stanford, CA.

Information on primary materials, current legislation, resources on the internet, and overview of copyright law.

http://fairuse.stanford.edu/

Creative Commons

Online copyright licensing; helps people dedicate their creative works to the public domain in order to increase the amount of online raw source material.

http://creativecommons.org

Friends of Active Copyright Education (FA©E), an initiative of the Copyright Society of the U.S.A.

Provides a broad range of resources to foster and support copyright awareness.

www.law.duke.edu/copyright/face/

United States Copyright Office, Library of Congress, Washington, DC

Information on copyright basics, searching copyright records, registering a work, copyright law and policy, licensing, and publications.

http://www.loc.gov/copyright

Telephone: 202-707-3000

“Copyright Crash Course,” UTSDL Website and Resource Support, Digital Libraries Service Division, The General Libraries, University of Texas at Austin.

University of Texas copyright policy, including copyright basics such as fair use, licensing resources, and getting permissions.


Telephone: 512-495-4109 or 1-877-255-3987

World Intellectual Property Organization, Copyright and Related Rights Sector, Geneva, Switzerland

Copyright and related rights information, archive of international information resources.

www.wipo.org/copyright