



Dance as Intellectual Property A Talk with Elena Paul

I. Copyright in Choreography

- A. The intellectual property rights in choreography are protected under the Copyright Act of 1976.
1. The concept of legal ownership in dance is relatively recent. Historically, copyright protection extended to choreography insofar as it constituted a “dramatic work.” The 1976 Copyright Act created a distinct category of “choreographic work.”
 2. The statute provides that “copyright protection subsists... in original works of authorship fixed in any tangible medium or expression.” [17 U.S. §102\(a\)\(4\)](#).
 3. Social steps and simple routines are not copyrightable. The arrangement of physical movements does not rise to level of copyright protection unless it has sufficient attributes of a work of choreography. *Horgan v. MacMillan*, 789 F.2d 157 (1986).¹ The Copyright Act itself does not define “choreographic work.”
 4. The choreography must be presented in a fixed tangible medium, which may be in the form of written dance notation, film, or other mediums of notation.
- B. Who owns choreography?
1. Choreographer may work independently and license their works to different companies or work for one particular dance company.
 - a. When the choreography is created on behalf of a client, the choreographer is the owner of the rights.
 - b. When the choreography created is part of the work expected under an employment agreement, the employer is the owner of the rights.
 2. Many premiere dance companies are multi-repertory companies. They have a repertoire of works to which they own the rights that they consistently perform as well as works they license typically for a period of 3 years.
- C. Licensing dance
1. Licensing agreements for choreography can be all-inclusive or limited.
 2. An all-inclusive licensing agreement may stipulate that the choreographer would oversee the direction of the production or performances. He may specify the costumes, sets, dancers, and music used in conjunction with the choreography.
 3. A limited license would include only the choreography.
- D. *Martha Graham School and Dance Foundation, Inc. v. Martha Graham Center of Contemporary Dance, Inc.*, 380 F.3d 624 (2004).²
1. Martha Graham is a modern dancer and choreographer who established the Martha Graham Center of Contemporary Dance. After her death, Ronald Protas claimed that he owned the rights to all her dances as her sole heir. The Center claimed that Graham either assigned the rights to the Center or choreographed them as an employee of the center.

¹ https://scholar.google.com/scholar_case?case=14083197885283774149&q=789+f.2d+157&hl=en&as_sdt=2002

² <http://openjurist.org/380/f3d/624/martha-graham-school-and-dance-foundation-inc-v-martha-graham-center-of-contemporary-dance-inc-l>



2. The District Court agreed with the center. The court ruled that the Martha Graham Dance Center owned the rights to the dances she created after 1956 when she was in effect an employee, and the rights to dances created prior to 1956 had been transferred to the Center when she sold her school to a nonprofit foundation. Graham was an employee of the center – she had received salary and benefits, she had never been paid royalties for her work, and the Center financed sets and costumes.
- E. Graham case legacy
1. As a result of the outcome of the case, dance companies and choreographers are more cognizant of their rights and relationships.
 2. Choreographers have more incentive to copyright their works and to work out their intellectual property rights with employers or companies.

II. Labor and Employment – Dancers’ Contracts

A. Unions

1. Many dancers employed by major dance companies are union members.
 - a. American Guild of Musical Artists (AGMA) is a dancers union that represents the dancers of major dance companies, including Alvin Ailey.
2. Typically, there exists a collective bargaining agreement between major dance companies and dancers’ unions.
3. Union membership offers benefits like trade regulations, resources specific to the union, and contracts. Their contracts will include provisions regarding travel, hotel accommodations, rest and work times, vacation days, and injuries.
4. Dancers are typically employed under one year performance contracts.

B. Right of publicity

1. When dancers’ images are used for the promotion of the company, these are services generally included under their employment contract.
2. If the dance company want to license the dancer’s image to third parties for promotions not directly related to the company,

III. The Nonprofit Dance Company and Qualified Sponsorships

A. Dance company organization

1. Many premiere dance companies consist of not only the dance performing groups but schools, and arts education and community programs.
2. Alvin Ailey Dance Foundation, for example, is the umbrella organization composed of the Alvin Ailey American Dance Theater; Ailey II, a dance troupe; The Ailey School; Ailey Arts in Education & Community Programs; and The Ailey Extension, which offers classes to the general community.

B. Corporate sponsorships, promotions, and advertising

1. Non-profit dance companies, like Alvin Ailey, enjoy special federal tax exemption status, or 501(c)(3) status.³
2. While charitable organizations are generally exempt from federal income tax, they are subject to Unrelated Business Income Tax (UBIT) when regularly carrying on a trade

³ [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations)



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- or business not substantially related to the organization's exempt purposes.⁴ 26 U.S. Code § 512.
3. Corporate sponsorship is a significant funding source for nonprofits.
 4. Qualified sponsorship payments are payments made by a person engaged in a trade or business for which the person will receive no substantial benefit other than the use or acknowledgment of the business name, logo, or product lines in connection with the organization's activities.⁵
 - a. Qualified sponsorship payment is not subject to UBIT.
 - b. If the nonprofit acknowledges the sponsorship, it cannot include any qualitative statements regarding the sponsor's goods or services. The nonprofit and not the sponsor should control the content of the acknowledgment.
 5. Qualified sponsorship payment is distinct from advertising, which is an endorsement of the sponsor's products or services. Advertising is subject to UBIT.
- C. Choreographers' Contracts
1. A basic contract between a company and a choreographer will include provisions regarding compensation, specifications for composing, royalty payments, licensing, artistic matters.
 2. It may also include other provisions like a minimum number of complimentary tickets to a premier of the choreographer's dance.

Resources

- A. Alvin Ailey American Dance Theater: <http://www.alvinailey.org/>
- B. American Guild of Musical Artists: <http://www.musicalartists.org/>

⁴ <http://www.irs.gov/Charities-&-Non-Profits/Unrelated-Business-Income-Defined>

⁵ <http://www.irs.gov/publications/p598/ch03.html>