

Bodies in Motion: Contemplating Choreography and Copyright Law

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The viral success of *Gangnam Style* stirred up plenty of discussion in the blogosphere about the (ir)relevance of copyright in the musical work and sound recording. While we wondered aloud about the lawfulness of those amateur dance videos that reproduced the musical track, there was relative silence about the lawfulness of mimicking Psy's distinctive dance moves. The notion that the public "flash mobs" or "dance bombers" circling one hand over their heads while maniacally hopping sideways ought first to have obtained the permission of Psy (who claims to have created his own whacky moves), seems positively absurd. It would, however, have been sound legal advice. The fact that choreographic works attract copyright protection is not controversial in itself. Yet, almost every core element of copyright doctrine sits uneasily with the practices and processes of choreography. What constitutes originality in dance traditions where essential steps and routines are repeated across time and space? What is an abstract idea, a merger or scenes a faire when genres define styles, which spawn specific moves that, in turn, come to define the genre? What is authorship as distinguished from performance, and in what circumstances might the performer become the author? What is fixation (and why does it matter) in a performance-based medium where ideas find materiality in the bodies and brains of dancers? What is an unlawful reproduction or a substantial use when even the particular position of a hand (think: Madonna's *Vogue* or Michael Jackson's signature crotch-grab) can be an essential and recognizable portion of a choreographic classic? What is fair use or fair dealing in the context of dance, and how well do these legal defenses map on to common practice in the choreography and dance community and beyond? And, more broadly, on what basis and subject to what limitations should one person's exclusive intellectual property right restrict the harmless movements of others' bodies? In these, and many other ways, choreography copyright challenges the basic structures and strictures of copyright law. The purpose of this paper, then, is not only to explore the complexities of applying copyright to choreography, but to employ choreography as a conceptual site within which to critically assess copyright's central assumptions. As an area of cultural creativity still relatively untouched by the force and effect of copyright law and litigation (compare, e.g., the infiltration of copyright norms into hip hop dance and hip hop music), it may also operate as an example of what collaborative, accretive, cultural creativity can look like when the legal norms do not appear to apply either in practice or in principle -- but only on paper.

Biography: I grew up in Scotland, studied law at the University of Edinburgh, then moved to Canada for my graduate studies (LLM (Queen's University), S.J.D. (University of Toronto)). I am now a tenured faculty member of Osgoode Hall's IP and Technology Law Program.

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