



COPYRIGHT PROTECTION ON CHOREOGRAPHY

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ABSTRACT

As we all know that Copyright Law 1957 under Intellectual Property protect all forms of dramatic works under the provision of Sec 2(h). So under dramatic works it includes acting, choreography (dance moves), literary works, photography and other musical works, paintings/ sculptures etc.

*In this paper the main contention of the authors is that whether dance moves with various aerial acts can be copyrighted so that no other people can copy the dancing moves. The authors would like to give an instance to prove the point the authors would like to state one of the ancient form of dance which has various aerial acts and it has been emerged from a sport called gymnasium i.e. **Mallakhamb** which requires wooden pole made of teak wood or sheesham. Dancers are required to show their aerial moves through those poles and ropes so it gives a real picture how the dancers prove their dancing ability with new aerial movements therefore IPR came into the picture where the choreographers can protect their dance moves from future benefits and commercialization. Even the famous choreographer Remo D Souza in the year 2013 planned to protect his own choreographed dance moves from the film of ABCD (Anybody can dance) so in this paper we'' discuss whether copyright protection can be granted to the choreographer for protecting their dance movements.*

KEYWORDS: Dance movements, Choreography, Copyright, IPR, Judicial precedents

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INTRODUCTION

As the authors already given an outline that famous choreographer Remo D Souza in the year 2013 planned to protect his own choreographed dance moves from the film of ABCD (Anybody can dance) so in order to proceed further we need to know about choreography and the provisions of copyright laws.

A performing artist's choreography is their art. Choreographic works are considered a type of "dramatic work" for the purposes of seeking protection under the Indian Copyright Act of 1957. Section 2(h) of the Copyright Act specifies that dance belongs within the category of dramatic work, which includes an expressive form of art with emotion, a theme, scenic arrangement, acting, and entertainment.

The expressions of ideas, not the ideas themselves, are protected by copyright. [1] Similarly, the choreographic pattern should be conveyed in the form of literary work, where the significant work can be written down or captured electronically.[2]

For getting the choreographic work to be copyrightable we need to focus on certain principles in order to fulfil

1. Originality of the aerial acts must be fulfilled[3]
2. Dance moves are to be systematic in nature.
3. It must be tangible in nature and must be notable as literary works.

Some prominent dances such as ballet, Kathak and Bharatnatyam are based in such a standardized manner on predetermined rules and patterns, whereas various other forms of dance like Bhangra and freestyle do not follow a precise pattern. The copyright law safeguards a comprehensive and systematic combination of registration dance steps.[4]

Dance is an abstract kind of art that makes it harder to obtain intellectual property, unlike a chemical or mechanical process. One issue that choreographers, performers, artists, and dance groups are experiencing these days is a financial crisis and societal restrictions as a result of a lack of proper legislation on choreography protection.

Dance is an expressive kind of art which makes it difficult to obtain intellectual property, as opposed to chemical formula or mechanical procedure.

Elements of choreography under copyright act 1957

1. An individual or a group should have skills for the choreography.
2. Rhythm and dance movements should be properly coordinated with music and sound patterns.
3. The formation of the art/ theme should be expressive and novelty must be there.
4. It should be treated as literary works in nature

Historical Perspective of Dance Choreography

Before the pre-copyright period, the etymology of the term dance is derived from the Greek word 'Choros, Khoros or Horos.' Dance choreography became popular dramatic work in the early 1900s, and more people began working in this wonderful subject.

The term "choreography" is not defined in the Copyright Act of 1957.[5] Choreography is defined by numerous court rulings and experts. Despite legislative prohibitions prohibiting infringement and popular professional judgments, the imprecise concept of choreography acted as a major impediment to the rise of choreography under copyright law.

The concept of choreography has occasionally altered. In our history, in any country's theatrical work, copyright law does not include dance. Under the Copyright Act literary and artistic works have been given priority, but dancing has been totally rejected as an immoral creative form.[6] Dance is the basic expression of sentiments and emotions, although it was not seen as suitable for dramatic theory.

But it is difficult to protect dance moves under copyright act as choreography is described as a dramatic work before moving in the analysis let's clear the concept between dancer and choreographer. A choreographer is someone who designs dance moves and puts up a sort of physical text to tell a story or remark on a situation, as opposed to a dancer. It is also an abstract piece of just physical exercise, while a dancer plays dance and interprets public choreography. We may comprehend the idea of dancers as actors and choreographers as directors to make it easier to interpret.

In accordance with Section 2(qq) of the Act, the Indian Copyright Act specifies dancers as a performer. The section states that an actor, singer, musician, dancer, acrobat, juggler, conjurer, lecturer and anybody else who performs will be included in a "performer."

Under Chapter VIII of the Act some particular rights are granted to performers. It does cover both the performer's economic and moral rights, but distinct rights are granted for choreographers.

Copyright Act and Choreography

Choreography as a «dramatic» work is only mentioned in The Indian Copyright Act. Section 2 (h) of the Indian Copyright Act of 1957 protects dramatic works The part covers any recitation, choreographic work, or amusement in a dumb show, the scenic arrangement, or acting, the form of which is set in writing or otherwise, but excludes a cinematograph film. We may understand that the clear reading from this clause requires a defined type of work to hold the copyright in choreography. The World Intellectual Property Organization (WIPO) defines examples of "fixation," such as paper work, disk, canvas-painting or graphic art. If a choreographer wants to get a copyright, it must be reduced in a stable format such as a written format or videotaping but not in movies.

In choreography this part has a restricted scope for the phrases „or otherwise" and the exception of "cinematograph film."

Section 2(f) defines "cinematographic film" as a visual recording work, and includes a sound recording accompanying visual and "cinematography" as including any work created by any film analogue method, including video films.

If the piece is choreographed and not part of the movie it meets the requirement to be a dramatic work. In accordance with Article 14(a) of the Copyright Act of 1957 India, the theatrical work is entitled to reproduce, copy, adapted.

The author of a dramatic work shall be defined in Section 2(a)(i) as the first owner of a work of copyright in order to identify the ownership of a choreographic work and the author of Section 17(a) is defined in Section 2(a)(i). The owner of a choreographic piece is therefore the first owner, i.e. the creator of the work.

For the choreographic work, section 2(h) and 2(f) are ambiguous, since a video capture is not the result of theatrical labour but rather the result is a cinematographic film. So the author of that work is not entitled to the author of the work if he makes a video of his/her dance, as defined in Section 2(xxa) of the act that specifies "visual recording." This applies however to instances where the video producer and the choreographer are two individuals.

So the authors in this paper almost clear the point whether copyright on dance movements can be granted easily or not the famous UK Dancer Agnes George DEMILLE in her statement in US Copyright office that Choreography and dance can hardly be granted copyright protection in the long term. The most portion of the dance and most sections of the music do not tell a tale or may not tell an expression storey. He was of the opinion that the definition of choreography as a theatrical kind of art does not benefit. Folk dance was once performed by professional performers as Indian classical dance, ballet or ballroom dance but is now in the public sphere, and therefore the issue about originality is under discussion.

In contrast, the renowned dance instructor Lucile B. Nathanson fostered copyright protection in choreographic pieces, believing that ignoring protection would damage artists financially. The only way to preserve choreographers' rights is to encourage theatrical works to reproduce.

While the dance forms were open to the public, it does not mean that in dance choreography the choreographer cannot get copyright protection. The creator should be considered as protecting all that stems from the talent and intellectual effort.

A very famous case **Academy of General Education, Manipal and Anr. v. B. Manini Mallya**[7] is relevant to us, since under Section 2(h) of the Copyright Act of 1957 it deals with the protection of a new version of ballet dance as dramatic work. In this decision, the Supreme Court held that copyright for 'dancing' would not

fall within the jurisdiction of the literary work but the purpose of defining 'dramatic work.' Briefly, Dr. Karanth had invented a new 'Yakshagana' form, i.e. a type of dancing ballet. The Respondent has sued Dr Karanth's will, claiming that the Appellants have violated its copyright by doing the same dance and not getting their prior consent, on the grounds of alleging violations of copyright for that dance. The appellant being an institution for education, the Apex Court set forth the provisions of fair treatment in this case, and held that the order of injunction is not applied if the dance is carried out by a teacher or a pupil during education or if it is carried out strictly in front of a non-paying hearing by the appellant.

Performer's right under Copyright Act 1957

Although the protection of copyright for the choreography is in the immediate future, dancers are clearly and clearly defined in respect of their right to perform. Performer's rights are defined as 'when an artist appears or performs in a performance, the person shall have a specific right to be known as 'the right of the performer' in regard to that performance' in accordance with section 38 of the Copyright Act.[8] Section 2(q) of the Copyright Act[9] defines an act as "a visual or auditory performance performed by one or more performers" in which a performer includes a dancer[10] within his/her scope. Exclusive of performers should have the right of the creator to reproduce any kind of sound or visual recording, to make copies available, to communicate with the public, to sell or to rent copies of the recording, etc.[11] However, Performer's right for private use, use for good teaching or study, use for reporting current events or a true examination of the Act and other activities that are not infringing against the copyright of the Act is an exception to that of Performer.[12]

IP Protection on Dance Movements

Apart from the protection of copyright, a whole dance show includes a number of elements in itself which can, in some forms of intellectual property law, be protected. While dance cannot be trademarked, the dance name and appearance can be protected under the Trade Marks Act, however this is not possible. The approach is also protected by Patents Law and design laws allow for the provision of dance costumes and props. The Tap Shoe Patent had already been published in the United States in 1915 is fascinating to note!

Judicial Decisions

1. Foreign Decisions

Massine v. De. Basil (U.K.) (1937) [13] is a dance ballet with multiple elements including music, drama, choreography, dance move notation, costumes and stage views.

The courts reaffirmed in **Horgan v. MacMillan Incorporation** [14] that under the earlier U.S. Copyright Act of 1909 choreography had no defined position, but only was it identified in accordance with the 'dramatic work' of the Copyright Law. The dance choreograph is only protected by this law if a tale, an expression, an emotion or a conceptual phrase or an ideal work is present. Unless it transmits a theme, with expression and passion or

shows it in the form of any conceptual expression or idealism, dance choreography was protected by this regulation. In the earliest phases of creation of copyright law, the right of a Choreographer in his choreography was not identified.

In **Stichel v. Mendes** [15] (France), the court ruled that choreography must represent movement that exemplifies a synthesis of human emotions and expression. The dance composer directs the choreography and oversees the staff who carry out their responsibilities for the duration of their term. As a result, the choreographer receives credit for the theatrical effort.

According to **Fuller v. Bemis** [16] (French law), a dance piece must convey the audience a story/plot. It must repeat, duplicate, or imitate the movement or words of any character or drama, emotion, and so on. The expression of an idea in whatever form will fall under the purview of Copyright. Dance may be a succession of graceful movements, lighting, shadows, characters, and emotions shown in a plot.

2. Indian Jurisdictions

The Supreme Court ruled in **Academy of General Education, Manipal and Ors. Vs. B. Malini Mallya** [17] that a ballet dance reproduced in a literary form qualified for dramatic work under the Copyright Act, 1957. As a result, in order to get copyright in choreography/dance work, the artist or choreographer must transform it into a written form that may be documented for the registration.

In **Bikram's Yoga Coll. of India, L.P. v. Evolution Yoga, LLC**, [18] the topic of whether the systematic and sequential style of yoga is protected by the Copyright Act was challenged. The yoga sequence was ruled to be unprotected by the Copyright Act since it is a kind of systematic bodily activity.

CONCLUSION

The law related to copyright protection of dance sequences remains in its infancy; nevertheless, due to the proliferation of platforms such as TikTok and games such as Fortnite, numerous lawsuits alleging copying of popular dance movements are coming to the fore. Many artists are becoming aware of their rights and are striving to defend them. Surprisingly, despite the fact that dancing is quite pacific in nature, its protection is very litigious. Copyright protection for dance sequences is also gaining momentum in the business. Existing research indicates that there is an increasing need for performers to seek copyright protection for artistic works; however, we now conclude that in this era of Digitalization of artistic performances and cultural diversity, existing intellectual property laws do not provide adequate support to the choreography content. Remo D' Souza, a well-known Indian choreographer and director, has previously announced that he would seek protection for one of his film's choreography. As a result, dance is becoming more of a business professional than a once- worshiped form of art. However, the legal system should not be entirely entrusted with making dance and choreographic decisions. Because they are unable to perceive the sacredness of dance in the same

way that a trained eye can. Choreography should be given a fair interpretation, and performers should have easier access to courts and the legal justice system to assert their copyright. Hopefully, such acts will have a domino effect, and many more dancers or choreographers would come out to seek legal protection for their renowned dances, resulting in a more established legal position not just in India but also worldwide.

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