



Choreography and copyright

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In this information sheet, we give a brief overview of copyright law as it relates to choreography. This overview is intended for choreographers, dancers and teachers of dance.

For information about our other information sheets, publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, governments and libraries. For further information about the service, see <http://www.copyright.org.au> (click the Advice button) or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Generally, the person who creates choreography owns copyright in it.
- Choreographers also have moral rights in relation to their work.

When copyright applies to choreography

In general terms, choreography will be protected by copyright law as a "choreographic show" (a sub-category of "dramatic works"), provided it is **original** and is recorded in **material form**. In this information sheet, when we refer to choreography, we refer only to choreography which meets these requirements.

Dramatic work

Shows such as *Tap Dogs* or *Riverdance* are protected by copyright as "dramatic works" because they are "choreographic shows". A ballet such as Graeme Murphy's *Beauty and the Beast* is likely to be a dramatic work not only because it is a choreographic show, but also because it tells a story and explores dramatic ideas. Choreography which is incorporated into a theatrical production, such as *Annie Get your Gun*, may be protected as part of the dramatic work in which it is performed.

If you have created a show which is comprised of dancing, or if your dance tells a story or explores dramatic ideas, your choreography is likely to be protected as a dramatic work. Alternatively, if your choreography is to be performed as part of a theatrical production, it may be protected as part of that production.

If your dance is not a dramatic work (because it is not a choreographic show, does not tell a story and is not part of a dramatic performance), it is unlikely to be protected by copyright. In our view, dances created for social purposes, such as line dances and mere routines devised for exercise classes, are unlikely to be protected by copyright. For further information, see our information sheet *Line dancers*.

Originality

Under the Copyright Act, only “original” works are protected by copyright. The level of originality required for copyright protection is not, however, very high, and choreography which contains stock elements or traditional steps and moves is still likely to be protected by copyright if it is an original arrangement of the steps, provided it is **also** a dramatic work (for example, it is a choreographic show).

Material form

A work must be recorded in “material form” in order to be protected by copyright. Choreography must therefore be documented in some way, for example, by being recorded on video or film, or by being written down in dance notation.

Choreography that is improvised or that is passed on orally or by copying what other people are doing, **and** which is **not recorded** in a physical or digital medium, is not protected.

Who owns copyright in choreography?

Generally, the person who creates the choreography is the first owner of any copyright in it. However, there are exceptions. If a person creates a piece of choreography as part of his or her job (for example, as a choreographer), then his or her employer owns the copyright, unless an agreement has been made to the contrary.

Where choreography is jointly created by a number of people, for example, by a choreographer in conjunction with a dancer or dancers, the copyright may be jointly owned by the creators. However, a person who has merely made some suggestions or discussed ideas for choreography will not be a joint owner of the copyright. In each case, who owns copyright will depend on the facts of the particular situation.

If someone is commissioned to create a piece of choreography by someone who is not their employer, the creator is the owner of copyright in the choreography. However, the person who commissioned it will have the right to use the choreography for the purposes for which it was commissioned. It is a good idea to record the terms of any commission in writing so that it is clear what uses have been licensed.

For further information, see our information sheet *Ownership of copyright*.

The owner of copyright in a work can assign or license any of the rights included in the copyright to another person. For further information on this, see our information sheet *Assigning and licensing rights*.

Nature of rights in choreography

The owner of copyright in choreography has exclusive rights to:

- **reproduce** the work: for example, by videotaping performances of it;
- **communicate** the work: for example, by broadcasting a performance of it, emailing a digital file showing a performance or notation of the work or putting such a file on a website;
- **publish** the work: that is, make it public for the first time; and
- **perform the work in public**: that is, perform it outside the domestic context.

This means that if you want to perform choreography created by someone else, you will generally need to get permission from the person who owns copyright (usually the creator).

You should also note that the creator of a piece of choreography has moral rights in relation to it, whether or not they own the copyright (see below, under the heading “Moral rights”).

Infringement of copyright in choreography

It is an infringement of copyright to reproduce, communicate, publish or perform all or a “substantial part” of a piece of choreography, unless the copyright owner has given permission or certain exceptions apply. For information on some of these exceptions to infringement, see our information sheets *Fair dealing*, *Research and study*, and *Educational institutions*.

In copyright law, a “substantial part” of a work need not be a large part, and is not necessarily determined by quantity or proportion. It is any important, distinctive or recognisable part. A single step or movement is unlikely

to be regarded as a substantial part of a choreographic work (so photographs of dancers are unlikely to infringe copyright in the choreography). However, a sequence of steps that is distinctive may be regarded as substantial. Each case depends on its own facts.

Moral rights

Moral rights are separate from copyright. While copyright rights can be bought, sold and licensed, moral rights are held by the creator of a work and cannot be transferred. They consist of:

- the right of the creator to be attributed as the author of his or her work;
- the right not to have the work falsely attributed; and
- the right of integrity in the work (that is, the right not to have the work treated in a way that could damage the creator's honour or reputation).

The right of attribution is straightforward: the creator of choreography must be attributed whenever the choreography is performed or recorded.

To minimise the risk of infringing a choreographer's moral rights, dance companies and schools should ensure that works are properly attributed in programs for the performance. If substantial changes are to be made to the choreography or setting of the piece, this should be acknowledged.

If choreography is changed, the attribution should not suggest that it is the choreographer's unaltered work. (In some circumstances, changing elements of choreography may infringe the creator's right of integrity).

The right of integrity is complicated in relation to works that are experienced primarily through performance, such as choreography and music. For example, in some cases it may be difficult for an audience to distinguish between the work and the performance of it, so a very bad performance could lead an audience to conclude that the choreography itself is poor. This issue has not so far been argued in court.

For further information, see our information sheet *Moral rights*.

Copyright protection of the "material form" itself

In addition to the copyright protection that may apply to a piece of choreography once it is recorded in material form, any video or film of a dance will generally be protected as a "cinematograph film".

It is important to note that copyright in the footage is separate from any copyright existing in the choreography itself, and is not necessarily owned by the same person.

The owner of copyright in a film or video is generally the person who paid for it to be made or, if nobody commissioned it, the person who made it.

The rights of the copyright owner include the right to:

- reproduce the footage;
- communicate it to the public (for example, by email, on the internet or broadcast); and
- cause the film to be seen and heard in public.

Note, however, that the rights of the owner of copyright in the footage will be subject to the copyright in the choreography, music and any other copyright works included in it.

Getting permission for use of music and choreography

Every time copyright music is played "in public", permission is needed from the copyright owner. This includes the playing of music in a dance class or rehearsal, if for profit. Owners of copyright in sound recordings have rights to control public performance of the recordings.

You will also usually need permission from copyright owners to tape music. Generally, you will need to contact the owner of copyright in the music and lyrics (usually a music publisher).

You will also generally need to contact the owner of copyright in the sound recording (usually a record company) if you are taping from a cassette, a record or a CD. In some cases, licences can be obtained from AMCOS (see further below).

Similarly, you will need permission from the copyright owner to use their choreography.

How do I contact a copyright owner?

If you are having trouble contacting a copyright owner, you will need to do a bit of detective work. Even if a copyright owner is hard to find, you still need permission to reproduce or perform their work. Ausdance (The Australian Dance Council) can provide information on dance-related subjects (website: <http://www.ausdance.org.au>).

Copyright collecting societies

Some of the uses you or your organisation wish to make of music and sound recordings will be covered by licences from copyright collecting societies.

Copyright Collecting Society	What it provides licences for
Australasian Performing Right Association (APRA)	<ul style="list-style-type: none"> the public performance of live music or recorded music on behalf of copyright owners; the recording of music (for example, to make a compilation tape); and dance schools and competitions (except in relation to full scale ballets).
Phonographic Performance Company of Australia (PPCA)	<ul style="list-style-type: none"> the public performance of sound recordings on behalf of its members.
Australasian Mechanical Copyright Owners' Society (AMCOS) and the Australian Record Industry Association (ARIA)	<ul style="list-style-type: none"> the reproduction of music and sound recordings; and the synchronisation of music and sound recordings into videos (in some circumstances).

Our information sheet *Music: playing music, APRA & PPCA* has further information and contact details for these organisations.

Common questions

How do I protect copyright in my choreography?

Copyright protection in Australia is free and automatic: there is no system of registration. Copyright protection does not depend upon publication, a copyright notice, or any other procedure. Rather, it depends on creating and recording your work.

However, we do recommend that you use the copyright notice, as it notifies people that the work is protected by copyright and identifies the person from whom permission should be sought. The notice consists of the symbol "©", followed by the name of the copyright owner, and the year of first publication. For example, © Bruce de Basil 2002 could be placed on film footage of your choreography, or on documents carrying your notated choreography.

As noted above, copyright protection only applies if the work is recorded in material form. You should therefore ensure that you make a video tape or other record of each of your choreographic works. Where your work is protected, you might also alert people to this fact by putting the notice on programs for live performances.

Can I use other people's ideas in my choreography?

Copyright does not protect ideas or information as such, but it does protect the way in which information or ideas are expressed. Therefore you do not infringe copyright merely by using other people's ideas.

How many changes do I need to make to avoid infringing copyright?

There is an important distinction between using a person's ideas and reproducing a substantial part of their copyright work. You can develop choreography using the same underlying theme as another work (for example, the seven deadly sins), and may be able to use a particular move you have seen in someone else's work, without infringing copyright. However, if you perform someone else's copyright work without permission, you are unlikely to avoid infringing copyright simply by making a few changes to it.

Note that making alterations to another person's choreography could also be an infringement of the choreographer's moral right, if you fail to attribute them for what you have taken from their work.

Can our dance school use choreography created by a former teacher at the school?

The school will need to work out who owns copyright in the choreography. If the teacher owns copyright, the school will need to assess whether or not it retains a licence to teach and perform it. If the teacher was an employee of the school and created the work as part of his or her job, the school owns the copyright.

On the other hand, if the teacher was a freelancer, and was commissioned to create the choreography for the school, or created the choreography as an addition to his or her duties as an employee, the teacher will own copyright (unless there was an agreement to the contrary). If the school does not own copyright, it may nevertheless have a licence to use the choreography for the purposes that have been agreed. In many cases, however, it may be difficult to work out whether a school has a licence or not, particularly if the teacher created the choreography only for his or her class or classes.

Where a teacher creates choreography for use in a school, it could be in the school's interests to have an agreement allowing the school ongoing use of the choreography. From the teacher's point of view, however, there may be benefits in permitting the work to be used by the school only from year to year (so that the teacher can terminate the permission after leaving the school). In any case, it is preferable for the teacher and school to have whatever is agreed set out in writing.

Can I withdraw permission for my choreography to be used in a public performance if I am not happy with the production?

Whether or not permission can be withdrawn depends on the terms of the agreement with the copyright owner. It is advisable to make these terms clear at the outset. See our information sheet *Assigning & licensing rights* for further information on this subject.

You should be aware that if a person has relied on the permission (for example, by spending time and money on preparing the production) the copyright owner may not be entitled to withdraw permission at a late stage.

If you feel that your reputation or honour may be damaged by the standard of performance, you may possibly be able to take action on the basis that your moral right of integrity will be infringed if your choreography is used in the production. This may, however, be difficult to prove or show. (Particularly in relation to performances by children, in dance schools or in the amateur context, it may be that your claim is met by an argument that any infringement is "reasonable" in light of the available resources and skills).

I have seen some of my choreography performed on television without my permission. What can I do?

As with any other copyright work, if important or distinctive parts of your choreography are reproduced, performed or broadcast without permission, you are entitled to take legal action for damages or other remedies. See our information sheet *Infringement: what can I do?*

Can I stop people from videotaping the end of year concert in which students perform my choreography?

Permission from the copyright owner is needed to film choreography. Therefore, if you own copyright in a piece of choreography, you can decide whether or not you will permit videos of it to be made. Even if you do not own copyright, if you have organised the concert, you may be able to prohibit filming within the hall or theatre, or make it a condition of entry that the performance not be filmed. This is unrelated to rights under copyright law.

Note that a licence may be required from the Australasian Mechanical Copyright Owners' Society (AMCOS) to film a performance if the music accompanying the performance will also be recorded. This licence is in addition to the

venue's licence from the Australasian Performing Right Association (APRA) for the public performance of the music (see below).

You should also get permission from the dancers to film the performance, as they have separate rights under the Copyright Act as performers.

Does taking a photograph of a dancer infringe copyright?

A still photograph might capture a step or pose from the choreography, but will not reproduce a substantial part of the choreography and therefore will not infringe copyright in the choreography.

The costume, however, may be protected by copyright as a work of artistic craftsmanship, in which case permission would be needed to photograph it.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au> – or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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