

Digital technologies and the conundrum of copyright and choreography

Abstract

Dance, in common with many other art forms, has in recent years been subject to the competition between classical traditions of interpretation and performance and more politically and commercially-oriented forces that have raised several questions about the role of dance in the UK. Furthermore, the development of digital media such as the Internet has increased both the potential for commercial exploitation of so-called creative industry products and services (of which the dance sector forms a part) and increased the risk of unauthorised copying and exploitation of those products by unauthorised parties. In this context we consider the implications for the UK dance sector.

As a performing art dance all falls into one of the 13 sub-sectors included in the UK Department of Culture, Media and Sport's (DCMS) definition of a creative industry. However, unlike some of these other sectors dance, expressed through its choreography, will only be protected by copyright law as a "choreographic show" (a sub-sector of dramatic works"), provided it is **original** and is recorded in **material form** (Australian Copyright Council). In other words for copyright protection to apply choreographic works [need] to be "fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." (US Copyright Act, 1976). Alternatively UK copyright law stipulates that dance must be in "writing or otherwise" (Copyright, Designs and Patents Act 1988). "Both expressions are fluid to enable the courts, in their interpretation, to accommodate future technological developments for the recording of dance" (Yeoh, *The Value of Documenting Dance*).

However, some writers have pointed out that there are flaws in the manner in which the US Copyright Office has defined rules that are supposed to clarify what constitutes expressive, copyrightable material in a choreographic work. "This ambiguity creates an imbalance between the public and private domains, which acts to stifle choreographic innovations instead of encouraging it" (Lakes, 2005).

Tatjana Byrne: tatjana_byrne@yahoo.co.uk

Examined in conjunction with specific aspects of UK policy guidance such as the possibilities offered by the use of digital technology in a non-aesthetic capacity, i.e. as an alternative means of distribution and dissemination this ambiguity raises interesting questions about the “incentives” offered by copyright and other IPR protection mechanisms to choreographers to submit their work to a digitisation process.

Much of the uncertainty arises due to the fact that a dance can be recorded as either a video/film or in the form of its notation. Just as a dance performance is an interpretation of the work by its performers so to is “...the notation an interpretation and analysis of the choreography by the notator and its value is dependent not only on the notator’s access to the choreographic process but also the accuracy of the notated score” (Yeoh, *The Value of Documenting Dance*).

The use of digital technology in recording, interpreting and distributing dance performances brings into question notions of identity, origin and temporal linearity with perceived shifts in emphasis, replacing the ‘produced’ with the merely ‘reproduced’ (Broadhurst, 1999).

Moreover, the distinction between the two concepts can be blurred, depending on the role and perspective of the different agents involved. Thus, William Forsythe, whose work often consists of sequences of movements that can only be recorded using video or film (Baudoin and Gilpin, 2000), claims that his work is not reproducible.

Conversely Forsythe’s own acclaimed CD-ROM *Improvisation Technologies* (1994 and 1999) offers the possibility of doing exactly that. Not only has the viewer now the possibility of understanding the work of Forsythe in a manner not possible in a live theatre, but the use of the CD as an alternative medium for the display of Forsythe’s work also makes the distribution of that work and its subsequent interpretation and imitation simpler.

This creation of a tangible, fungible record of his work has a number of interesting implications for Forsythe. On the one hand his potential audience is widened, for they have only to purchase and watch the CD to appreciate his work. This is achieved partially by the creators of the CD-ROM themselves through the development of “...a

Tatjana Byrne: tatjana_byrne@yahoo.co.uk

methodology of description – a unique design interface – that effectively embodies and elucidates these improvisation technologies” (Shaw in Forsythe, 1999).

A second implication of committing the live performance to CD is that additional distribution channels suddenly open up, which have the potential to reduce the price of reproduction, modification, storage and distribution of the ‘digitised’ product. As Gerbert (2000) contends in his exegesis on the music industry in the context of the digital economy:

“In the long run the only relevant costs remaining will be creative talent, original production, marketing/ context creation ... and intellectual property protection/ authorization”.

However, the very ubiquity of the performance, made possible by the use of digital distribution channels, also serves to re-emphasise the nature and importance as well as the intellectual and economic value of authenticity in defining both the artists (dancers and choreographer) and the performance itself.

Furthermore, the empowering effect of digital technology is, if the developments in the music industry are anything to go by, also likely to have an impact on the “people-formerly-known-as-the-audience” (Lilley, 2006). No longer is the cultural event or product limited either physically or temporally. Suddenly the audience is able to take a much more active role in transmitting and controlling a record and experience of the event in question.

This aspect clearly challenges the ability of the dance community to control their works once they have been performed. Specifically, it becomes more difficult to ensure the integrity of the work. Almost inevitably this will result in changes in dance community structures and relationships. For example, whereas currently choreographers tend not to rely on copyright, but instead tend to develop their own "community" systems of protection, particularly in urban environments with a noted dance sector such as New York City, there may be a shift towards more formal, contractual ways of protecting intellectual property. Reputation may no longer be sufficient to protect the work of choreographers.

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