

Copyright and Copying

by **Irving David**
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Music lawyer and Dance UK member Irving David, partner at DWFM Beckman Solicitors, together with Ben Challis, professor of law at Buckinghamshire New University, answer questions from Dance UK members. Here they consider the key areas of copyright and copying.

'The details of one of our courses were copied word-for-word by another company overseas, and appeared on that other company's website, even using the same application form with our company's name changed to theirs! What can we do to protect ourselves and what can we do now the copying has occurred?'

It would appear from your email that there has been blatant copying of your course notes and your application form – and both are entitled to copyright protection as a literary work. These matters would, in all probability, be actionable at law in a copyright infringement claim – but in each case it is important to weigh up the 'cost benefit' factor involved in issuing legal proceedings.

You would need to show that you have 'suffered loss'. If no financial loss has been suffered then no action would be possible. Even if commercial loss can be shown, you would need to take into account the actual cost which would be incurred in issuing legal proceedings against the infringer.

Here you refer to an overseas company infringing a UK member's original course material. Clearly, the cost of issuing proceedings overseas would be substantially more than home-based proceedings – although even proceedings issued in the UK would be costly. There is no point spending £1,000.00 to gain compensation of £500.00.

'My concept for a new style of dance class has been copied by a local gym, with my ideas advertised on their flyers – can I stop this?'

Of overriding importance is the principle that there is no copyright in a general 'concept' – there is 'no copyright in an idea'.

So, if two people produce a similar concept for a dance class, that would not of itself entitle either of them to

copyright protection for that concept or to take any legal action to stop the other. However, if you have created an original style or form of dance with specific movements then that 'choreographic material' would be entitled to copyright protection.

As we explained in a previous article (Issue 70), choreography can be defined as 'the composition and arrangement of dance movements and patterns usually intended to be accompanied by music'. For choreography to be protected by copyright law it needs to be 'fixed' or recorded in some permanent form (in writing, recorded, or on film). It will not be protected if it is merely publicly performed as this is not a permanent representation of the choreography.

Also, as we previously mentioned there is, at present, little case law relating to choreography. This is in part due to the lack, until recently, of an accessible and reliable system of notating dance which made it difficult for some choreographers to protect their copyrights.

At risk of becoming too complicated, a separate copyright can exist in a 'compilation' of existing creative elements but this needs to be considered on a case by case basis. Provided that the choreography is original, is capable of physical performance and can be fixed, it would be protected as a dramatic work from the date of fixation until 70 years after the death of the author/choreographer – or the death of the last survivor if there are co-authors. ■

DWFM Beckman offer expert legal advice for all involved in Dance.

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