

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **DANCING ON THIN ICE: INTELLECTUAL PROPERTY RIGHTS CHALLENGES AMIDST THE RISE OF ONLINE PLATFORMS**

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## **Introduction**

The advent of social media and digital content-sharing platforms such as YouTube and TikTok has transformed the dance industry, providing choreographers with unprecedented access to a global audience. Choreographers' work is now more exposed than ever because they upload and share with millions of viewers worldwide. With these platforms, however, comes the wide exposure and the opportunity to earn, but significant intellectual property rights (IPR) protection is also brought into the picture. Copyright originally defended written and visual arts; often the system goes directly into unenforceable situations regarding it with dance choreography, susceptible to common/expression as remixing or adaptation.

This paper examines the specific IPR challenges choreographers face in the digital age and explores the differential legal framework across jurisdictions, particularly the United States, the European Union, and India. The paper also sets out the relative strengths and weaknesses of each of these frameworks with a view to what harmonized international practices could do to strengthen the protection of dance choreography in an increasingly digital world.

## **Dance Choreography and Intellectual Property: An Overview**

Then there is the status of dance choreography in the world of intellectual property. Dance, as an art form, reflects creativity, uniqueness, and cultural expression, but as such, often lacks a concrete body of work beyond its live or recorded presentations. For protection as intellectual property, the work must usually be "fixed" in a medium, such as a manuscript or digital file. Making a video record of their work is the most important factor contributing to the vagueness and interpretation rather than establishing clear demarcation lines of ownership for choreographers.

Copyright law of many places categorizes original choreographic works as part of the general

category "literary, dramatic, musical, and artistic works."<sup>1</sup> Choreography is, therefore, a copyrightable art form in movement only when it can be expressed in any written form- video or written notation. Choreographers now share their works on YouTube and TikTok, thus facing more difficulties in being assigned copyright ownership as those sites encourage quick dissemination and user participation, which oftentimes turns into unauthorized copying, remaking, and even commercial exploitation.

## **Intellectual Property Rights Challenges in the Digital Space**

### **1. Unauthorized Sharing and Remixing**

Rather than working on a culture of ownership, where perhaps those in the dance community share ownership through citation and attribution, there is a culture of sharing, especially through social media, where people mash and mix and use other people's bits of choreography to make new, perhaps more viral-worthy actions. This approach makes popular some dances but often ultimately results in unauthorized imitations that skip over the original power of the creator. "Viral culture" might be most apparently enabled by sites like TikTok, which allow choreography to be copied by millions of users within hours without even gaining the original author any recognition or compensation.

### **2. Monetization and Attribution**

The monetization channels of social media, such as YouTube ad income and the TikTok Creator Fund, have huge financial implications on the viral dance moves. However, creators of original choreography usually lack equal remuneration opportunities. Dance moves are imitable without the consent of their creator. This is what allows people to make money from popular dance moves with the choreographer who invented them not being compensated. Further, with the producers, issues of ownership will also creep in where their identities are separated from their work. This is especially so where there are several remixes of the choreography.

### **3. Inadequate Legal Protection**

Copyright regimes across the globe differ in protecting choreographers. Choreography is eligible to be copyrightable in the United States if it can be proved to display originality and fixation, although ordinary movements or short sequences are not protected under copyright. This issue places a large body of dance work within the

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<sup>1</sup> The Copyright Act 1957 (India).

uncertainty of whether or not a work of choreography will qualify for protection. The European Union, providing greater protection for creative dance, requires fixation. Most of the developing world does not even have express rights of copyrighting choreography; therefore, little can be done by choreographers when infringement occurs.

Olivia Roche's paper examines the inadequate enforcement of copyright protection for choreographic works, especially regarding viral TikTok dances such as "Renegade." It contends that choreographers, frequently unacknowledged or little rewarded, require enhanced protection. The author advocates for a mandatory licensing framework, like to music licensing, to guarantee equitable remuneration for choreographers. The paper examines copyright issues, the challenges choreographers face, and suggests legislative reforms to address these concerns in the modern digital age.<sup>2</sup>

## **Comparative Analysis of IPR Frameworks for Dance Choreography**

### **Indian Context: Challenges in Enforcement**

The Copyright Act of 1957<sup>3</sup> in India provides protection for unique creations, including dance, classified as "dramatic works." This indicates that choreographers in India can, in principle, safeguard their creations. Nonetheless, the implementation of these rights in the digital realm is still constrained and inadequately advanced. Bollywood dance sequences, which have achieved international acclaim, represent a substantial cultural export; nonetheless, choreographers frequently have difficulties in preserving authority over their creations. The unauthorized utilization, remixing, and dissemination of dance routines on social media platforms such as YouTube and TikTok often remain unregulated.

The absence of copyright enforcements in the digital medium is a significant issue in India. Indian law does take into consideration choreography as a subject for copyrights, but its protection is limited by poor infrastructural and resource setup. Indian choreographers are further vulnerable to copyright infringement because these online mediums primarily focus on distributing content rather than taking care of the rights of the artists. The global nature of social media is exacerbating the lack of enforcement because such content can be distributed easily

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<sup>2</sup> Roche C, 'TikTok, Dance, and the Evolution of Copyright' (2023) 7 *Georgetown Law Technology Review* 1 <https://georgetownlawtechreview.org/wp-content/uploads/2023/01/Roche-TikTok-Dance-Copyright.pdf> accessed 2 October 2024.

<sup>3</sup> The Copyright Act 1957 (India).

across borders while holding the original creators relatively unaccountable.

### **United States: Expanding Copyright Laws to Digital Platforms**

Choreography is also protected in the United States through Copyright Act of 1976<sup>4</sup>, provided the work is original and fixed in a tangible medium. More extensive works of choreography, like ballets or theatrical performances, are usually protected by copyright, while shorter ones, which are more likely to appear on TikTok or Instagram, may not reliably meet the originality standards required for protection. The viral nature of social media compounds this problem because routines are often shared, adapted, and copied without permission.

The landmark case in the United States is *Horgan v. Macmillan, Inc. 1986*<sup>5</sup>, where copyright protection is extended even to still images of choreographed performances, provided that they represent a "substantial" part of the work involved. It laid down the precedential scenario for greater protection of choreography and underlined the importance attached to choreography as intellectual property.

The United States also offers the Digital Millennium Copyright Act, which equips authors to post "takedown" notices when their works are being used without permission. This is an important tool that choreographers can use to remove from YouTube or similar sites unlawful copies of their work. However, the DMCA also has shortcomings, particularly in those cases in which the infringing work is very easily reposted after a takedown notice is given which limit the choreographer's ability to control the infringing use of their work.<sup>6</sup>

This means that the United States has relatively flexible rules over fair use, allowing certain levels of remixing and transforming uses without necessarily needing permission from copyright owners. It may be a sparks for creative freedom but equally may undermine control by choreographers over their work, particularly within remix culture on platforms like TikTok.

### **European Union: A Holistic Approach to Intellectual Property Rights**

The European Union ensures much protection of choreography through its specific copyright legislation. The EU's Directive on Copyright in the Digital Single Market, enacted in 2019 has

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<sup>4</sup> Copyright Act 1976 (US).

<sup>5</sup> *Horgan v Macmillan, Inc* 789 F.2d 157 (2d Cir 1986).

<sup>6</sup> Digital Millennium Copyright Act 1998 (US).

strengthened the limitation to protect the interests of copyright proprietors, including choreographers. YouTube and TikTok among other social media sites are now required to provide licenses for copyrighted material, and thus ensure that authors receive compensation for the usage of their works.<sup>7</sup>

Another quite prominent progressive element of the EU's framework is a so-called principle of "value gap" that obliges platforms like YouTube to bridge the gap between income generated from user-generated material and remunerations offered to creators. This could significantly strengthen the protection of choreographers throughout the EU.<sup>8</sup>

There is an evident problem as the statutory construction of copyright differs in most EU countries. The *Infopaq International A/S v Danske Dagblades Forening*<sup>9</sup> judgment of 2009 clarified that even very short segments of copyrights, such as a dance, are protected. To this extent, judgment calls for the regulation of using dances within digital formats. At the same time, smaller choreographed works which typically end up on YouTube or social media sites might still not pass the originality test of the EU.

One of the indirect measures that protect creators is the EU enforcing the General Data Protection Regulation with the overall regulation of how to share and use personal data on social media sites. In fact, the primary goal of GDPR was to protect the privacy of individuals. However, it also inhibits the illegal collection and use of choreographic works without the consent of the creator.

### **Developing Nations: Limited Frameworks and Enforcement Challenges**

As such, developing countries face challenges specific to the protection of choreography through intellectual property rights. Most jurisdictions have specially provided for dance and performing arts in their copyright enactments. In these economies, traditional dances have been defined as part of national cultural heritage, and, on current laws, they are not entitled to copyright protection. Under such circumstances, choreographers of these countries are at a great risk of losing their work illegally- particularly on international platforms such as Tik Tok

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<sup>7</sup> Directive (EU) 2019/790 on Copyright in the Digital Single Market [2019] OJ L130/92.

<sup>8</sup> Passinke E, 'The Proposed EU Digital Services Act and Its Compatibility with International Trade Law' (2020) *Stanford Law School EU Law Working Papers* 49 [https://law.stanford.edu/wp-content/uploads/2020/08/passinke\\_eulawwp49.pdf](https://law.stanford.edu/wp-content/uploads/2020/08/passinke_eulawwp49.pdf) accessed 1 October 2024.

<sup>9</sup> *Infopaq International A/S v Danske Dagblades Forening* (C-5/08) [2009] ECR I-6569.

may replay or change them without compensation.

India forms another significant example. The Copyright Act of India has, indeed expanded to encompass choreography; but enforcement is a much tougher task with a relatively weak infrastructure system for handling digital copyright claims. Moreover, international copyright treaties are being slowly accepted by India, and international efforts stall global enforcement. A number of developing countries, such as India, have not entirely been integrated into international frameworks like the Berne Convention or the WIPO Copyright Treaty which aligns intellectual property rights legislation worldwide.<sup>10</sup>

Absence of harmonization puts developing countries' choreographers in an insecure position when their work is disseminated into other parts of the globe. The rising popularity of Indian choreographers on the social media platform reiterates the need for better security measures to ensure a safeguard over their creative works within this global, digital world.

### **Towards Harmonizing IPR for Choreography Globally**

A comparison of IPR frameworks points out that developed countries, such as the United States and the European Union, have provided much stronger legal protections for choreographers. Yet, the evolution of IPR frameworks continues to grapple with the specific problems created by digital sites. While the United States has greatly expanded copyright legislation to include choreography, the agile pace of social media often remains a challenge in forcing enforcement. The European Union, on the other hand, has adopted a more holistic approach with tougher laws with an emphasis on licensing agreements but enforcement across borders has always been challenging.

The problem of enforcement is, however, critically pronounced in developing countries such as India. Even in the presence of legal structures, they often prove inadequate to protect choreographers against digital copyright infringements-most of all when choreographic creations cross over international borders. Such nations must, therefore, improve the enforcement tool, infrastructure for digital copyright disputes, and align with treaties to safeguard the choreographer in the digital age.

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<sup>10</sup> World Intellectual Property Organization, 'WIPO Copyright Treaty (WCT)' (WIPO) <https://www.wipo.int/treaties/en/ip/wct/> accessed 12 October 2024.

*Eastern Book Co. v. D.B. Modak*<sup>11</sup>, India: This case reiterated the fact that in India, copyright protection demands the work must have "creativity" and "originality." Inference drawn for choreography is that further proof is required for original creative contributions.

In India, there are only a few landmark cases involving dance choreography. That is due to an almost complete absence of strong legal frameworks that may deal with digital infringement in a more forceful manner. The scarcity of these cases shows just how important it is for choreographers to be proactive about their rights.

Ultimately, harmonization of global policies relating to intellectual property rights in dance will require an all-encompassing approach to legal change, digital enforcement, and international cooperation so that choreographers everywhere can protect their creative works and benefit from their creative endeavours.<sup>12</sup>

### **Potential Solutions and Harmonization of Global IPR Practices**

Perhaps the best answer is a globalization effort in protecting the intellectual property rights of choreography, especially given that such platforms are transnational in nature. Standardized copyright regulations and enforcement mechanisms will easily help the choreographer protect his rights irrespective of the type or number of platforms he or she uses to show off their work.<sup>13</sup>

#### **1. Standardization on International Digital Copyright Enforcement**

A global consensus on choreography, like an international agreement on the protection of literary and artistic works would facilitate harmonization across borders. Organizations like WIPO might have an important role in negotiating requirements for copyright in choreography to draw attention to the need for adequate representation, fair rewards, and heavy regulation over remixes on online platforms.

#### **2. Platform Liability**

To mitigate pirating, social media firms may use enhanced content- recognition techniques. Platforms can use AI and machine learning to identify copyright infringements of dance works and then split the revenue or give credit to the original creator. YouTube and TikTok may develop copyright agreements with dance crews,

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<sup>11</sup> *Eastern Book Co v D.B. Modak* (2008) 1 SCC 1 (India).

<sup>12</sup> World Intellectual Property Organization, *Intellectual Property and Traditional Knowledge* (WIPO 2020) [https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo\\_pub\\_1023.pdf](https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf) accessed 12 October 2024.

<sup>13</sup> World Intellectual Property Organization, *Understanding Copyright and Related Rights* (WIPO 2016) [https://www.wipo.int/edocs/pubdocs/en/copyright/1036/wipo\\_pub\\_1036.pdf](https://www.wipo.int/edocs/pubdocs/en/copyright/1036/wipo_pub_1036.pdf) accessed 10 October 2024.

where choreographers can upload works directly to the platform to receive instant protection.

### **3. Public Awareness Campaigns**

More awareness by dancers, choreographers, and social networking users about intellectual property rights will limit unauthorized use. Trainings can ensure that copyright infringement concerns are overcome by choreographers, coupled with a culture of recognition and fair compensation.

### **4. Monetization and Licensing Models for Social Networking Sites**

New licensing and revenue streams would provide a way out of the financial aspects of dance copyright. Online media platforms could provide a facility for micro-licensing to any individual wanting to copy and mash up dances, thus granting original creators financial advantages for every form of use. This could allow the choreographers to have control over their work and receive monetary benefits if their works became extremely popular.

## **Conclusion**

The digital revolution of the dancing world has opened up new opportunities for choreographers to disseminate their work to a worldwide audience. The new development also throws forth relevant and significant challenges to the protection of intellectual property since the current copyright rules often fail to meet the various needs of choreography in dance. This comparative research will analyse the differences and inconsistencies of the currently applicable intellectual property rights regarding digital choreography in the United States, the European Union, and emerging countries.

International standard formulation, elevated platform responsibility, and educational initiatives are powerful ways of safeguarding choreographers in the dance world within the digital era. International practices may be aligned with a favourable environment for the digital sphere to empower choreographers by collaborating with the legal sector and the digital platforms, enabling them to have authority over their work and earn financially by virtue of their contributions to the dance world.