

CHOREOGRAPHY AND COPYRIGHT

SOME COMMENTS ON CHOREOGRAPHIC WORKS AS NEWLY DEFINED IN THE CANADIAN COPYRIGHT ACT

by

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“CHOREOGRAPHIC WORK”

“choreographic work” includes any work of choreography, whether or not it has any story line;

«ŒUVRE CHORÉGRAPHIQUE»

«œuvre chorégraphique» S’entend de toute chorégraphie, que l’œuvre ait ou non un sujet.

R.S.C. 1985 (4th Supp.), c. 10, s. 1(3)

§1.0 Related Sections

Section 2—Definitions: “dramatic work”, “every original literary, dramatic, musical and artistic work”, “performance”, “work”; section 2.2—Definition of “publication”.

§2.0 Related Regulations

None.

§3.0 Prior Legislation**§3.1 Corresponding Section in Prior Legislation**

Section 2—From 1988.06.08 to present.

§3.2 Legislative History

S.C. 1988, c. 15, s. 1(3); C.I.F. 1988.06.08; R.S.C. 1985, c. 10 (4th Supp.), s. 1(3); C.I.F. 1989.11.01.

§3.2.1 S.C. 1988, c. 15, s. 1(3)**“CHOREOGRAPHIC WORK”**

“choreographic work” includes any work of choreography, whether or not it has any story line;

«ŒUVRE CHORÉGRAPHIQUE»

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§4.0 Purpose

This section provides for a non-exhaustive definition of choreographic work, one species of dramatic work.

§5.0 Commentary

“Dancing is a perpendicular expression of an horizontal desire.”

—George Bernard SHAW

“O body swayed to music, O brightening glance
How can we know the dancer from the dance?”

—William B. YEATS, *Among School Children* (1927)

§5.1 History

§5.1.1 Since 1988

Since the enactment of the *Copyright Act, 1921*, “choreographic work” (as well as a piece for recitation, entertainment in dumb show and cinematograph production) has been included in the definition of “dramatic work”, one of the four main categories of intellectual works protected under the *Copyright Act*. However, a *statutory definition* of “choreographic work” was only introduced on June 8, 1988 by the *Copyright Amendment Act* (S.C. 1988, c. 15, s. 1(3)).

Since the *Copyright Amendment Act, 1988*, the nexus with “drama” is no longer required for copyright to subsist in a choreographic work. To paraphrase SINGER (Barbara A.), *In Search of Adequate Protection for Choreographic Works: Legislative and Judicial Alternatives vs. The Custom of the Dance Community* (1983-84), 38 *University of Miami Law Review* 287, at p. 288, it could be said that choreography is “no longer a mere stepchild of drama”, even though choreographic works do not yet by themselves constitute a category of protected works and are still comprised in the more general definition of dramatic work.

§5.1.2 From 1924 to 1988

Prior to that amendment, it was unclear as to whether a choreography, *without a plot or storyline*, could be protected under the more general and non-exhaustive definition of “dramatic work”: see VAVER (David), *The Canadian Copyright Amendments of 1988* (1989), 4 *Intellectual Property Journal* 122, at pp. 144-145.

The section 2 definition of “dramatic work” provides specifically that dramatic work “includes (...) choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise (...)”. The definition of “dramatic work” introduced by section 2 of the Canadian *Copyright Act, 1921* is a mere duplication of the definition of “dramatic work” found in subsection 35(1) of the United Kingdom *Copyright Act, 1911*, the choreographic part of which corresponds to the modification of the definition of protected works introduced by the Berlin Revision (1908) of the Berne Convention. The first paragraph of Article 2 of the Berlin Revision (1908) of the Berne Convention reads partly as follows:

The expression “literary and artistic works” shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of reproduction such as ... dramatic works, dramatico-musical works, choreographic works and entertainments in dumb show the acting form of which is fixed in writing or otherwise....

L’expression “œuvres littéraires artistiques” comprend toute production du domaine littéraire, scientifique ou artistique, quel qu’en soit le mode ou la forme de reproduction tel que:... œuvres dramatiques ou dramatico-musicales, les œuvres chorégraphiques et les pantomimes, dont la mise en scène est fixée par écrit ou autrement

(The underlined part was added by the Berlin Revision of 1908.)

§5.1.3 Before 1924

Before the *Copyright Act, 1921*, copyright in the performance of choreographies, as dramatic works, was protected in Canada by virtue of the application of the *United Kingdom Dramatic Copyright Act, 1833* and of the *United Kingdom Literary Copyright Act, 1842*. Dramatic works, when published, benefited from the protection given to literary works: *Durand & Cie v. La Patrie Publishing Co.*, (1960) S.C.R. 649.

§5.2 “Includes”

The word “includes” is generally used in interpretation clauses to extend the meaning of words or expressions in the body of a statute. When these words or expressions are used, they must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares they shall include. “It has been established that when the statute employs the word “including” or “includes” rather than “means” the definition does not purport to be complete or

exhaustive and there is no exclusion of the natural meaning of the words”: *Laidlaw v. Metropolitan Toronto (Municipality)*, (1978) 2 S.C.R. 736, Spence J. at 744-745.

Therefore, since introduced by the word “includes”, the definition of “choreographic work” should be construed as illustrative or extensive and not as a complete and exhaustive enumeration: CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Blais, 1992), at pp. 55-58; DRIEDGER (Elmer A.), *Construction of Statutes*, 2nd ed. (Toronto, Butterworths, 1983), at pp. 18-22; PIGEON (Louis-Philippe), *Drafting and Interpreting Legislation* (Toronto, Carswell, 1988), at pp. 32-35.

§5.3 What Is Choreography?

Les danses modernes? Ce n'est plus de la danse, c'est de la décadence.
—Alfred CAPUS (1857-1922)

§5.3.1 Choreographic works: a dictionary definition

According to *Webster's Ninth New Collegiate Dictionary*, “choreographic” has a Greek etymology and comes from *choreia* (dancing) and *graphe* (writing). It is defined as “the art of arranging a dance or a performance and the notation of the steps of the dances in detail”. “Choreography” is also the written notation of dancing which is, according to the 1984 Revised Third Edition of *The Shorter Oxford English Dictionary on Historical Principles*, “to leap, skip, hop, or glide with measured steps and rhythmical movements of the body, usually to a musical accompaniment” and, as such, does not necessarily contain dramatic action. In ordinary parlance, “choreography” is generally understood as the art of dance.

§5.3.2 Choreographic works: a technical approach

“Choreography” could be described as the steps of a dance put together for performance, or the art of composing dance or, as expressed by Elise Orenstein of the Canadian Association of Professional Dance Organizations, “an arrangement or an organized thought in time and space which uses human bodies as design units”: see *Minutes of the Subcommittee of the Standing Committee on Communications and Culture on the Revision of Copyright*, No. 15 (1985.06.14), 1st Sess., 33rd Parl. (1984-85), at p. 87.

A more classical approach, even though not restricted to ballet, is found in KERNER (Mary), *Barefoot to Balanchine — How to Watch Dance* (New York, Doubleday, 1991), at pp. 132-133:

A choreographer of classical ballet has a specific movement vocabulary to work with. Like notes of music, however, these same steps can be put together in an infinite number of combinations. The prescribed steps can also be modified, as in contemporary ballet and modern dance, or repeated in different directions or done by a variety of dancers. In other words, the same step will look different in a dance depending on what step comes before and after it; the direction or tempo in which it is executed; whether it is performed while turning or leaping; what the rest of the body is doing at the same time; and how many dancers are doing it simultaneously. In short, what makes choreography interesting — instead of repetitive and boring — is the combination of the steps.

§5.3.3 Choreographic works: a legal approach

“Choreography is the composition and arrangement of dance movements and patterns, and dance is static and kinetic successions of bodily movement in certain rhythmic and spatial relationship”: *Copyright Law Reporter* (New York, CCH, 1991), at no. 625, and needs not tell a story in order to be protected by copyright.

§5.4 A Dramatic Work

§5.4.1 Textual context

Prior to the *Copyright Amendment Act* (S.C. 1988, c. 15, s. 1(3)), it was unclear (and, indeed, never judicially decided by Canadian courts) whether a choreography without a plot or sequence of actions could fall within the general category of dramatic work and be protected as such under the *Copyright Act, 1921*.

In fact, “choreographic work” was — and still is — included in the larger category of “dramatic work”. Under the *noscitur a sociis* rule of interpretation, the meaning of a word could be determined or further ascertained by its association with others: see *R. v. Shearwater Co.*, (1934) S.C.R. 197, Duff J., at p. 206; CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Blais, 1992), at pp. 263-264; DRIEDGER (Elmer A.), *Construction of Statutes*, 2nd ed. (Toronto, Butterworths, 1983), at pp. 109-111. Accordingly, it may be sustained that, to fall within this recognized category, a choreographic work must convey some dramatic concept, have a sequence of actions, or somehow meet the criterion of “telling a story”: see definition of “dramatic work” in section 2.

This prerequisite of a “dramatic action” has been seriously criticized: “Only a farfetched interpretation of the old Act could produce the result it claimed. Choreography, included as a species of “dramatic work”, may take some colour from its genus, but obviously extends to other things than Othello on point. Two other major genera in the Act, literary and artistic works, also non-exhaustively list a number of miscellaneous species in their definitions, but do not require them to have all the characteristics of the genus”: VAVER (David), *The Canadian Copyright Amendments of 1988* (1989), 4 Intellectual Property Journal 122, at pp. 144-145.

In fact, at least for the layman, choreography does not necessarily involve the presence of a drama. This is even more so when dealing with some contemporaneous ballet or choreography, the abstract dance movements of which appears more intended to convey, for instance, feelings or aesthetic impressions rather than a story.

Such controversy has ended, at least for choreographies created since the coming into force on June 8, 1988 of subsection 1(3) of the *Copyright Amendments Act* (S.C. 1988, c. 15), as “choreographic work” includes “any work of choreography, *whether or not it has any story line*” (Emphasis added); see also §5.5.6, *infra*.

§5.4.2 “any story line”/“ait ou non un sujet”

There is an apparent discrepancy between the English and French texts of the definition of “choreographic work”. Indeed, the words “ait ou non un *sujet*” (which could be translated as “has or not a theme or topic”) in the French text appears more extensive than the English “whether or not it has any *story line*”, which is more directed to a plot or sequence of actions.

§5.4.3 Pantomime

As no new definition was provided for pantomime (or “entertainment in dumb show”), it may be argued that the implicit storyline requirement has been maintained in regard thereto. However, it may be questioned whether or not there is still a storyline requirement for pantomime since the difference between pantomime and the newly defined choreography is sometimes thin.

§5.5 Fixation

§5.5.1 Requirement of a tangible form

For the *Copyright Act* to apply to a choreographic work, this work has first to be fixed on some tangible medium of expression, i.e., on a material support. Section 2 specifically provides that “‘dramatic work’ includes (...) choreographic work (...) the scenic arrangement or acting form of which *is fixed* in writing or otherwise (...)”.

“The first requirement, fixation in tangible form, presents a problem in the protection of choreography because movement is not susceptible of fixation as are other art forms (...) A choreographer’s finished product is ephemeral, lasting only the length of the dancer performance. Music has similar problems, but recording dance is much more difficult than recording music because dancers move in space as well as time”: COOK (Melanie), *Moving to a New Beat: Copyright Protection for Choreographic Works* (1977), 24 *UCLA Law Review* 1287, at p. 1294.

Therefore a performed but unfixed choreography will not be entitled to copyright protection under the Act. “It vanishes promptly upon performance. The choreographic work transmitted traditionally, i.e., orally, is impermanent in form in that there is no record of it following performance. It is impermanent by reason of non-fixation”: TAUBMAN (Joseph), *Choreography under Copyright Revision: The Square Peg in the Round Hole Unpegged* (1980), 10 *Performing Arts Review* 219, at p. 241.

The preservation of a particular dance by the simple memorization of its movements and patterns in the dancer’s or teacher’s mind will meet neither the fixation requirement nor the performance in public of the work: see TRAYLOR (Martha M.), *Choreography, Pantomime and the Copyright Revision Act of 1976* (1981), 16 *New England Law Review* 227, at p. 235, note 20.

It is the choreography itself — and not the theme or story, if any — that should be so reduced in some tangible form.

§5.5.2 Means of fixation

As expressed by BOURGAT (Marcelle), *Technique de la danse*, 8th ed. (Paris, PUF, 1986), at p. 18: “Écrire la danse, c’est définir dans le temps et dans l’espace, par des lettres, des chiffres, et des signes appropriés, une succession d’attitudes du corps permettant la succession d’un thème dansant”.

According to the section 2 definition of “dramatic work” which may be said to originate from the first paragraph of Article 2 of the Berlin Revision (1908) of

the Berne Convention, such a crystallization or reduction or the choreography shall be in *writing or otherwise*. It is worthwhile to note however that the words “or otherwise” in the aforesaid Article 2 were inserted as a matter of compromise between the German and Italian positions and were to give the widest possible latitude so far as modes of fixation were concerned: see *Actes de la conférence réunie à Berlin du 14 octobre au 14 novembre 1908*, Report of Louis Renault, at p. 231; see also *Études générales — La convention de Berne révisée du 13 novembre 1908*, (1909) 22 *Droit d’Auteur* 76, at p. 78.

Subsection 35(1) of *The Interpretation Act* (R.S.C. 1985, c. I-21), provides that in every Act of the Parliament of Canada (as is the *Copyright Act*), “writing” “includes words printed, typewritten, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in visible form”.

Fixation may take many forms, as pictorial or narrative description, film or videotape, photographs, hologram, computer animation and videography, or written notation.

Specific symbolic notation may be used to fix choreography, i.e., to reduce movement to symbols.

§5.5.3 Notation systems

“Recordation of dance by writing on paper has a long history. Originally, a simple description of the choreography in everyday language was the best available means for recordation. Soon titles were given by the artists to often-used sequences of movement, such as “ronde de jambe,” (sic) and these titles were used in the written descriptions as a kind of shorthand of dance. From these early beginnings, modern notation systems developed”: TRAYLOR (Martha M.), *Choreography, Pantomime and the Copyright Revision Act of 1976* (1981), 16 *New England Law Review* 227, at p. 231.

The first visual attempt to describe dance is Thoinot-Arbeau’s *Orchésographie* (1588) where the written description of position and steps were accompanied by drawings and their given names. It was followed by Raoul Feuillet’s *Chorégraphie ou l’art d’écrire la danse par caractères, figures et signes démonstratifs* (1700) where is found a true stenography of the dance steps which, however, covered only footwork, and by Magny’s *Principes de Chorégraphie* (1765) which constitutes a complete dictionary of dances and dance steps. Thereafter, Arthur Sain-Léon published his *Osténographie ou l’art d’écrire promptement la danse* (1852) which *steno-chorégraphie* system

combined stick figures with a musical staff for clarification, as was the case with Albert Zorn's *Grammar of the Art of Dancing* (1887).

All these systems were more or less based on music staves or variation thereof and the stick figure notation used carries its own drawbacks. "It is usually drawn from the audience's point of view, so that right and left have to be reversed by the dancer reading it; it cannot indicate the third dimension; and it gives position description rather than movement description": see HUTCHISON (Ann), *Labanotation: The System of Analysing and Recording Movement*, 3rd ed. (New York, Theatre Arts Books, 1977), at p. 3.

However, since Stepanov's *L'alphabet des mouvements du corps humain* (1892), a system based on the anatomical structure of the human body, the dance notation evolves to more accurate systems of recording in writing the movements of the dancers as now found, for instance, in Laban's Labanotation (1928), Benesh's Choreology (1956), Sutton, Eskhol-Wachman, (1972) systems: see Historical Development and Appendix D of HUTCHISON-GUEST (Ann), *Dance Notation: The Process of Recording Movement on Paper* (New York, Dance Horizons, 1984). Still, today, dance notation records dance movements on paper in a way similar to the way music is recorded on a staff; likewise, as an objective manifestation of the work, the dancer remains free to interpret it as he pleases.

Some (...) notation systems employ shorthand-type drawings on a musical staff (Sutton) or analysis of movement by degrees of arcs, cones, or rotations on a horizontal staff (Eskhol-Wachman). Once notated, the notation product is easily reproduced in printed or photocopied form and therefore lends itself to distribution and reconstruction by others": see FISHER Kathleen Anne), *The Copyright in Choreographic Works: A Technical Analysis of the Copyright Act of 1976* (1984), 31 ASCAP Copyright Law Symposium 145, at p. 153.

However, two modern notation systems dominate the field of written notation. As explained by WEINHARDT (Anne K.), *Copyright Infringement of Choreography: The Legal Aspects of Fixation* (1987-88), 13 *Journal of Corporation Law* 839, at 847:

The most commonly used type of notation is Labanotation. Labanotation involves a staff that is divided vertically by a center line to represent the two sides of the body. The staff is divided further into two to twelve vertical columns. The complex symbols in these columns of the staff *represent the positions of all parts of the body at a given point in space and time*. The center line represents the spine and the right and left lines correspond to the right and left sides of the body. The staff, which is read bottom to top, contains symbols which convey specific movements. The length of these symbols signifies the length of time allotted for that movement. (Emphasis added.)

§5.5.4 Visual recordation

Motion pictures and videotapes are also means to record a choreographic work and will meet the statutory requirement of fixation. This physical support may also be protected as a cinematograph work, as the case may be: see subsections 2(6) and 3(2).

§5.6 Retroactive/Retrospective

Does the definition of “choreographic Work” apply only to choreographies created after its coming into force on June 8, 1988 or does it apply also to choreographies created before that date?

Certainly this definition does not purport to operate *retroactively* since it is not indicated as changing the law as of a time prior to its enactment: see *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue* (1975), (1977) 1 S.C.R. 271, Dickson J., at 279. This does not mean, however, that this definition should not be interpreted so as to attach *retrospectively* new consequences to works created prior to its enactment. As put by DRIEDGER (Elmer A.), *Statutes: Retroactive Retrospective Reflections* (1978), 56 Canadian Bar Review 264, at p. 269:

A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.

The fact is that there are *no transitional provisions* that state specifically that this new definition applies in respect of choreographies that were made prior to the coming into force of the *Copyright Amendment Act* (S.C. 1988, c. 15, s. 1). It is worthwhile to note that transitional provisions were specifically incepted along with the concomitant introduction in the *Copyright Act* of the definitions of “moral rights” and “computer programs”: see sections 21 and 22 of the *Copyright Amendment Act* (S.C. 1988, C. 15).

Whether a liberal but retrospective application of this newly introduced definition will be allowed to stand and interfere with vested rights is left open for judicial determination: see CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Blais, 1992), at pp. 99-106; DRIEDGER (Elmer A.), *Construction of Statutes*, 2nd ed. (Toronto, Butterworths, 1983), at pp. 195-203.

§5.7 Infringement

§5.7.1 Unauthorized appropriation before fixation

The protection of the *Copyright Act* does not extend to a choreographic work that is not reduced in a tangible form, which is seldom the case, at least during the creative process. As explained by WALLIS (Leslie Erin), *The Different Art: Choreography and Copyright* (1986), 33 *UCLA Law Review* 1442, at p. 1459:

A choreographer generally calls a group of dancers to a rehearsal after he or she has formulated ideas for a dance, including any plot line to be incorporated into the work (...) He or she probably has conceived a number of the dance steps before actually meeting with the dancers, but the vast majority of the creative work is developed using the dancers. (...) The dancers perform these steps as the choreographer directs and he or she alters the movements to shape the mood or idea of the work. (...) Dancers are not handed sheet music from which to read their steps.

See also TRAYLOR (Martha M.), *Choreography, Pantomime and the Copyright Revision Act of 1976* (1981), 16 *New England Law Review* 227, at pp. 234-235 as to the “setting” of a choreography.

Therefore, because at this stage the choreographic work is not yet fixed, it will not benefit from copyright protection so as to prevent an unauthorized appropriation of the choreography. It would seem, however, that the provision of section 89 of the *Copyright Act* dealing with breach of trust or confidence may apply to such a situation; see also MIRREL (Leon I.), *Legal Protection for Choreography* (1952), 27 *New York University Law Review* 792.

§5.7.2 Unauthorized performance

The degree of fixation, while not necessarily precise, may become more acute when considered in the perspective of determining infringement, which includes the colourable imitation: see section 2 definition of “infringing”.

Now, with respect to choreographic works, copyright protection is not attached to the theme by itself but rather to its performance. It is more or less the combination of steps that is protected. The fact is, however, that the performance of these steps may greatly vary from one dancer to another, according to their own interpretation. Therefore the steps may be quite similar but their rendering by a dancer be so different that the copying choreography may be perceived as different from the copied one. It is submitted however that under the *Copyright Act*, it is not the performance of a work that is protected but rather the work itself. Whether or not specific

arrangements of movements will constitute a prohibited performance in public of the choreographic work or substantial part thereof will obey the same rules as for other protected works: see section 2 definition of “infringing” and section 3.

“Fixation in express detail is also beneficial in proving that an infringer ‘copied’ from the original work as opposed to creating the work itself. The unlikely similarity of specific movements and details cuts against the possibility that two choreographers independently created the movements”: COOK (Melanie), *Moving to a New Beat: Copyright Protection for Choreographic Works* (1977), 24 UCLA Law Review 1287, at p. 1296, note 44.

§5.7.3 Pictorial reproductions

Infringement of a choreographic work is not restricted to its unauthorized performance in public; it may also occur by way of adaptation of the choreographic work, as well as pictorial reproduction (drawing of sketches, taking of photographs of the spectacle, filming or video-recording), or telecommunication of same: see sections 3 and 27; also LADAS (Stephen P.), *The International Protection of Literary and Artistic Property*, in *Harvard Studies on International Law No. 3* (New York, Macmillan, 1938), at p. 222.

§5.7.4 Moral rights

Authorship. The moral rights of a choreographer as the author of a choreographic work may be infringed if he is not associated with the work as author: subsection 14.1(1). An interesting question might arise as to the basis and nature of the remedy open to a choreographer when his name is associated with a choreography to which he is not related or only remotely related (as in the case of a substantially departing adaptation) or when his name is associated with an unauthorized or truncated version of his original work.

Integrity. The moral right of a choreographer as the author of a choreographic work may be infringed if the work is modified or associated with a product or service to the prejudice of his honour or reputation: see subsection 28.2(1); see also SINGER (Barbara A.), *In Search of Adequate Protection for Choreographic Works: Legislative and Judicial Alternatives v. The Custom of the Dance Community* (1983-84), 38 University of Miami Law Review 287, at pp. 291-296, 307-317.

§5.8 Social Dance Steps and simple Routines

Dance is not a “spectator sport”. It is a creative activity which implies *to do* and only secondary something *to see*. (...) A dance performance is the sharing of the dancer’s experience with an audience. (...) Entertaining an audience is not the same as communicating an art experience. Entertainment provides a pleasant way of passing away the time. The art experience offers an intensified awareness of some aspect of life.

— METTLER (Barbara), *Modern Dance: Art or Show Business: Art or Show Business* (1952), 19-5 Dance Observer 68

Whether or not social dances and simple routines should be treated as choreographic works is left open for judicial determination.

In Canada, the matter was raised at the interlocutory level with respect to dance steps described as “East Texas Style Dancing” but unresolved in *Rocky Mountain Dance Co. v. Brookes* (1987), 19 C.P.R. (3d) 131, Cullen J., at 132 (F.C.T.D.). In the United States, social dance steps and simple routines are not included as choreographic works: *House Commission on the Judiciary*, H. Rep. No. 1476, 94th Cong., 2d Sess. (1976), pp. 54-54, note 8; such non-recognition may be the consequence of insufficient originality (i.e., creativity), a criterion that is higher under the United States *Copyright Act, 1976* than under the Canadian *Copyright Act*.

The fact is that ballet classical movements such as arabesque, assemblé, cabriole, entrechat, glissade, jeté, pirouette or sissonne are not by themselves copyrightable. However these movements are the building blocks of most choreographies and the original combination of these movements may constitute a protected choreographic work. There is no apparent justification for such an elitist approach. An *original* combination of dancing steps in a so-called “social dance” should also be protectable as a choreographic work, as the case may be.

In view of the liberal definition now given to choreography, an argument could be made that, subject to the requirements of originality and fixation, nothing should prevent the qualification as choreographic works of gymnastics or acrobatics routines: see *FWS Joint Sports Claimants v. Canada (Copyright Board)* (1991), (1992) 1 F.C. 487, Linden J., at 490 (F.C.A.). See also KUNSTADT (Robert M.) et al., *Are Sport Moves Next in IP Law? — Sports Moves Could Be Viewed as Choreography* (1996.05.20) *The National Law Journal* C-2 and DORION (André), *Ne tirez pas sur la juge brésilienne ou La protection des chorégraphies sportives en droit d’auteur* (1994), 7 *Les cahiers de propriété intellectuelle* 99.

§6.0 Case Law

§6.1 Canada

1. *Re Royalties for Retransmission Rights of Distant Radio & Television Signals* (1990), 32 C.P.R. (3d) 97, the Board (majority) at 138 (Copyright Bd.).

In contrast, BBC and CRRRA argued that sporting events themselves are not entitled to copyright protection. Although there is copyright in a team's play books and game plans as well as in the team crests and uniform designs, BBC contended that they are of no value to cable operators and that cable operators make no use of them. The game play sequence is not a choreographic work because, unlike a dance, a sporting event is for the most part a random series of events. The unpredictability of the action is inconsistent with the concept of choreography.

The board accepts the arguments of BBC and finds that a sports game itself is not a copyright work. (at p. 138)

2. *FWS Joint Sports Claimants v. Canada (Copyright Board)* (1991), 36 C.P.R. (3d) 483, Linden J. (F.C.A.).

The third issue argued by FWS was whether there is a copyright in the playing of a sports game. The board decided there was no such copyright, although there was in the television production of a game. It also held that there was copyright in the coaches' written play books and game plans, as well as in the team crests and uniform designs, but that these were not used by the cable operators. As for the playing of the game itself, even though it is played as much as possible in accordance with those plans, the board found that this was not copyrightable, since it was not a "choreographic work, because, unlike a dance, a sporting event is for the most part a random series of events. The unpredictability of the action is inconsistent with the concept of choreography". (at p. 488 C.P.R.)

I agree with the board. Even though sports teams may seek to follow the plays as planned by their coaches, as actors follow a script, the other teams are dedicated to preventing that from occurring and often succeed. As well, the opposing team tries to follow its own game plan, which, in turn, the other team tries to thwart. In the end, what transpires on the field is usually not what is planned, but something that is totally unpredictable. That is one of the reasons why sports games are so appealing to their spectators. No one can forecast what will happen. This is not the same as a ballet, where, barring the unforeseen accident, what is performed is exactly what is planned. No one bets on the outcome of a performance of Swan Lake. Ballet is therefore, copyrightable, but team sports events, despite the high degree of planning now involved in them, are not; see Harold G. Fox, *Canadian Law of Copyright & Industrial Design*, 2nd ed. (Toronto, Carswell, 1967), p. 139; Nimmer *On Copyright* (1990), at pp. 2-138; *Canadian Admiral Corp. v. Rediffusion* (1954), 20 C.P.R. 75, at p. 192, (1954) Ex. C.R. 382, 14 Fox Pat. C. 114, A "mere spectacle standing alone" cannot be copyrighted: see *Tate v. Fullbrook*, (1908) 1 K.B. 821 at 832, 77 L.J.K.B. 577, 98 L.T. 706 (C.A.). It is necessary for copyright not to have "changing materials" that

are “lacking in certainty” or “unity”: see *Green v. Broadcasting Corp. of New Zealand*, (1989) 2 All E.R. 1056, *per* Lord Bridge (P.C.) at p. 1058, even though some variations could be permitted: see *Kantel v. Grant*, (1938) Ex. C.R. 84 at p. 95; see also *Wilson v. Broadcasting Corp. of New Zealand* (1988), 12 T.P.R. 173. The unpredictability in the playing of a football or hockey game is so pervasive, despite the high degree of planning, that it cannot be said to be copyrightable. The American cases are not helpful here, given the statutory provisions and jurisprudence: see, for example, *Baltimore Orioles v. M.L.B. Players Asn.*, 805 F. 2d 663 (1986). (at pp. 489-490)

3. *Pastor v. Chen* (2002), 19 C.P.R. (4th) 206, Romilly Prov. J. (B.C. Prov. Ct.).
 (85) I find that the Claimant graphically displayed to me during his evidence his uniquely choreographed moves and dance styles which I find were his invention and properly covered by copyright. He readily admitted that some of his moves like the one he invented at the age of 16 were now in the public domain. However the ones that he made the subject of a Confidentiality Agreement signed by all his performers certainly were not. I find that the Claimant’s moves and dance styles have a “significant element of originality, not already in the realm of public knowledge,” and certainly could not be found in garden variety instructional videos which demonstrate rather basic steps for mere novices.

§6.2 United Kingdom

1. *Massine v. De Basil* (1937), 81 Sol. Jo. 670, Luxmore J. (Ch. D.).
 (...) That a ballet was composed of several elements — music, story or libretto, choreography or notation of the dancing, scenery and costumes. (at p. 670)

§6.3 United States

1. *Martinetti v. Maguire* (1867), 16 F. Cas. 161 (C.C. Cal.).
 The Black Crook is a mere spectacle; in the language of the craft, a “spectacular piece.” It has no pretensions to be called a dramatic composition. The dialogue is very scant, and appears in the light of a mere accessory — a piece of word machinery tacked on to the ballets and tableaux. *The principal part and attraction of the spectacle seems to be the exhibition of women in novel dress or undress, or in striking attitudes or action.* The closing scene is called “Paradise” and consists, as witness Hamilton expresses it, “of women lying about loose” — a sort of Mohammedan paradise, I take it, with imitation grottos and earthly hours. To call such a spectacle a “dramatic composition” is an abuse of language. An exhibition of model artistes, or a menagerie of wild beasts, might as well be called a dramatic composition, and claim to be entitled to copyright. A menagerie is an interesting spectacle, and so this may be; but it is nothing more. *An exhibition of women, whether in the ballet or*

tableaux, or even "lying round loose" in such a paradise, is not a dramatic composition and entitled to the benefit and protection of copyright. (at p. 162) (Emphasis added.)

2. *Fuller v. Bemis*, 50 F. 926, Lacombe J. (S.D.N.Y. 1892).

It is essential to such a composition that it should tell some story. The plot may be simple. It may be but the narrative or representation of a single transaction; but it must repeat or mimic some action, or speech, emotion, passion, or character, real or imaginary. And when it does, it is the ideas thus expressed which become subject of copyright. An examination of complainant's dance, as filed for copyright, shows that the end sought for and accomplished was solely the devising of a series of graceful movements, combined with an attractive arrangement of drapery, lights, and shadows, telling no story, portraying no character, depicting no emotion. The merely mechanical movements by which effects are produced on the stage are not subjects of copyright where they convey no ideas whose arrangement makes up a dramatic composition. Surely those described and practised here convey, and were devised to convey, to the spectator, no other idea than a comely woman is illustrating the poetry of motion in a singularly graceful fashion. Such an idea may be pleasing, but it can hardly be called dramatic. (at p. 929)

3. *Dane v. M. & H. Co.*, 136 U.S.P.Q. 426, Aurelio J. (N.Y. Sup. Ct. 1963).

The principal basis of plaintiff's claim for infringement of a common law copyright is that she created a musical choreographic composition (i.e., military/striptease dance number, which she had used to audition for a role) which combines music and action in such a manner as to provoke an emotion, portray a character and have a theme, or tell a story. The foregoing rule has been interpreted by our courts so as to permit choreographic works to be subject to copyright under Title 17 U.S.C.A., section 5, class D, which provides for recognition of "dramatic or dramatico-musical composition". (at p. 428)

The court further finds that plaintiff was not known in the theatrical world for her ability to create choreographic compositions and that when she performed at the audition it was her skill as an actress or dancer which she was trying to sell rather than a piece of property.

Plaintiff has testified that no part of her number was ever reduced to concrete form and that she never had any other material copyrighted during her career. While this alone would not preclude plaintiff from her right to assert her ownership to the piece of property, the court finds that plaintiff's material, even if same could be characterized as a choreographic composition, of itself would not be subject to copyright protection.

The words "dramatic or dramatico-musical composition," as used in the statute, must be held to include openly to representations and exhibitions which tend at least "to promote the progress of science and useful arts."

Where a performance contains nothing of a literary, dramatic or musical character which is calculated to elevate, inform or improve the moral or intellectual natures of the audience, it does not tend to promote the progress of science or the useful arts. ... Thus, not everything, put on the stage can be subject to copyright. While plaintiff's performance was no doubt amusing and entertaining to many, it does not fall within the purview of the statute as a production tending to promote the progress of science and useful arts. (at p. 429)

4. *Horgan v. MacMillan Inc.*, 789 F. 2d 157, Feinberg J. (2nd Cir. 1986).

Choreography was not mentioned in the prior law, the 1909 *Copyright Act*, 61 Stat. 652, and could only be registered, pursuant to regulations issued under that law, as a species of "dramatic composition." Dance was protectable only if it told a story, developed or characterized an emotion, or otherwise conveyed a dramatic concept or idea. ... The rights of choreographer in his work were not clearly defined, in part because the means for reducing choreography to tangible form had become readily available only comparatively recently ... and in part because of resistance to the acceptance of abstract, non-literary dance as a worthy form of artistic expression. (at p. 160)

§6.4 France

1. *Stichel v. Mendès*, (1911) 1 Gaz. Pal. 193, Moré J. (T. Civ. Seine).

Attendu que le travail du maître de ballet est des plus délicats, puisque c'est lui qui, après avoir étudié le livret et la partition, a la charge de décrire, par tous les moyens possibles, tous les mouvements visibles par lesquels se manifestent les sentiments humains, de tirer le meilleur parti des motifs qui lui sont fournis, de régler, de façon à éviter les "déjà vu", les pas et les ensembles qui seront dansés et de s'entendre avec le compositeur pour le remaniement de la musique, et en raison du genre et du tempérament des chefs d'employer qui, de par leur titularisation, doivent remplir les principaux rôles; *qu'il est donc ainsi permis de dire qu'un ballet d'action est une œuvre d'art dont le mérite revient en grande partie au chorégraphe.*(at p. 194) (Emphasis added.)

2. *Chasles v. Soutzo*, (1926) 39 D.A. 53, (T. Civ. Seine).

Attendu cependant que ... la Delle Soutzo, une des interprètes, après avoir pris part aux répétitions de Mlle Chasles, lui écrivit que le pas qu'elle lui avait appris étant surtout réglé pour une artiste de comédie, elle se proposait d'en danser un autre, que passant outre à ... une sommation ... elle exécuta un pas nouveau spécialement composé pour elle par le sieur Staats, maître de ballet de l'Opéra;

Attendu que, ce faisant, au risque de créer dans l'esprit des spectateurs entre l'œuvre annoncée et le pas différent introduit par elle, la Delle Soutzo a porté atteinte au droit moral de la demanderesse, l'auteur d'un ballet

comme celui d'une œuvre littéraire, dramatique et musicale ayant le droit absolu de s'opposer à toute altération, modification, correction ou addition, si minime qu'elle soit, susceptible de dénaturer sa pensée. (at p. 58)

3. *Poggi v. Éditions Salabert* (1958), 20 R.I.D.A. 94 (C.A. Paris).

Considérant en tout cas que la protection ne peut-être (*sic*) invoquée que lorsque l'auteur rapporte la preuve de l'existence de son œuvre permettant d'apprécier la réalité et la consistance de sa création originale; Considérant que l'art. 2 de la Convention de Berne exige la fixation de la mise en scène (i.e., the operetta *La Belle de Cadix*) par écrit ou autrement, c'est-à-dire par photographie, dessin, etc.; ... Considérant que Poggi, s'agissant d'une œuvre fugitive et toute de mouvement, aurait dû en assurer la fixation afin d'en ménager la preuve, ce qu'il n'a pas fait. (at p. 95)

4. *Martonn v. Leitz*, (1957) 2 J.C.P. 10031 (T. Corr. Seine).

Attendu qu'à ce point de vue c'est le caractère original de l'œuvre (i.e., numéro de transformiste à vue) qui en justifie la protection, caractère qui se manifeste non plus dans l'invention, *mais dans le renouvellement de formes d'art achevées dans leur principe, mais perfectibles dans leurs manifestations*. ... (L)a seule question est de savoir si, à l'intérieur de ce genre il a réalisé une œuvre imitée dans sa portée mais originale dans sa conception. (Emphasis added.)

5. *Eudes v. Cocteau* (1960), 31 R.I.D.A. 83 (C.A. Paris), Concl. Combaldieu.

Si la danse est l'art du mouvement, c'est, à la fois, un art plastique et un art dynamique et c'est une harmonieuse combinaison des deux qui produit, non seulement une impression d'esthétique, *mais qui communique, qui traduit aussi une idée ou un sentiment, se dégageant de l'argument du ballet*. ...

Mais il faut de toute évidence, une idée qui préside à ces élucubrations esthétiques, il faut quelque chose à exprimer, sinon on tourne en rond. Cela est si vrai qu'un *ballet abstrait* n'existe pas: *on part toujours d'une idée, d'un sentiment*. Tout au plus peut-on concevoir que, sur des études symphoniques de Schuman, on règle des études chorégraphiques; mais des *études* chorégraphiques ne sont pas un ballet. Ainsi donc il convient, je crois, *de mettre l'accent sur le rôle primordial de l'argument dans le ballet*. ... Que la chorégraphie soit un art et que cet art puisse avoir ses créateurs, il suffit, pour en convenir, de rappeler que les Grecs, nos maîtres dans tous les arts, avaient fait de la danse un des neuf muses. La chorégraphie adapte, réalise scéniquement, transpose dans des figures rythmées et des mouvements cadencés, dans des gestes, les expressions, la mimique, les entiments des personnages que qui (*sic*) réside dans la traduction esthétique de l'œuvre de la danse. (at pp. 87-88) (Emphasis added.)

§6.5 Case Law — Varia

1. *Béjart v. Association Plan K* (1988), 179 R.I.D.A. 372 (C.A. Bruxelles-9th Chambre, 1998.09.18):

Attendu que, contrairement à ce que l'appelant soutient, la demande de protection par le droit d'auteur ne porte pas uniquement sur l'image visuelle d'un homme nu ou quasi nu, muni d'ailes et chaussé de télévisions;

Que cette protection est demandée pour une scène d'un ballet consistant en une nouvelle interprétation du mythe d'Icare, à savoir in Icare empêché de voler par des téléviseurs accrochés à ses pieds;

Que cette scène est formée par la combinaison des éléments suivants : un homme nu ou quasi nu, muni d'ailes et chaussé de télévisions qui traverse lentement la scène de part en part, de droite à gauche et fait un arrêt au milieu de la scène;

Que cette scène comprend donc le mouvement, l'enchaînement de mouvements, plus le costume, les accessoires utilisés, le positionnement, la mise en évidence du personnage, sa puissance, sa signification symbolique;

Que cette scène dégage une grande force évocatrice, symbolique, représentative qui n'a pas échappé aux critiques d'art dans la mesure où cette scène est devenue la scène phare de "La chute d'Icare";

Attendu que cette combinaison d'éléments forme un tout qui ne peut être divisé en ses différents éléments pour tenter de démontrer que l'œuvre ne serait pas protégeable parce que chacun de ses éléments pris individuellement ne le serait pas;

Que la plupart des œuvres d'art sont formées par l'agencement original d'éléments sans originalité (juxtaposition de mots courants, de notes de musique préexistantes, de pas de danse connus...); (at pages 373-374)

§7.0 List of Cases

§7.1 Canada

1. *R. v. Shearwater Co.*, (1934) Ex. C.R. 1 (Ex. Ct.); rev'd (1934) S.C.R. 197.
2. *Durand & Cie v. La Patrie Publishing Co.*, (1951), 14 C.P.R. 129 (Ex. Ct.—Default); (1951), 15 C.P.R. 86 (Ex. Ct.—Particulars); (1957), 28 C.P.R. 1 (Ex. Ct.—Evidence); (1959), 32 C.P.R. 1 (Ex. Ct.); rev'd (1960), 34 C.P.R. 169 (S.C.C.).

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5. *Patsalas v. National Ballet of Canada*, (1986), 13 C.P.R. (3d) 522 (Ont. H.C.J.).
6. *Rocky Mountain Dance Co. v. Brookes* (1987), 19 C.P.R. (3d) 131 (F.C.T.D.).
7. *Re Royalties for Retransmission Rights of Distant Radio & Television Signals* (1990), 32 C.P.R. (3d) 97 (C.B.); (1990), 34 C.P.R. (3d) 383 (Can. Gov. in Council); (1991), 36 C.P.R. (3d) 483 (F.C.A.) (*sub nom. F.W.S. Joint Sports Claimants v. Copyright Board*), (1991), 36 C.P.R. (3d) 455 (F.C.A.) (*sub nom. Canadienne de Télévision par Cable v. American College Sports Collective of Canada, Inc.*).
8. *Drapeau v. Carbone 14*, (2000) R.J.Q. 1525 (Que. S.C.).
9. *Pastor v. Chen* (2002), 19 C.P.R. (4th) 206 (B.C. Prov. Ct.).

§7.2 United Kingdom

1. *Lee v. Simpson* (1847), 136 E.R. 349 (C.P.).
2. *Karno v. Pahté Frères, Ltd.*, (1908), 99 L.T. 114 (K.B.D.); aff'd (1909), 100 L.T. 260 (C.A.).
3. *Bishop v. Viviana & Co.*, (1909), (1905-10) MacG. Cop. Cas. 210 (K.B.D.).
4. *Holland v. Vivian Van Damn Productions Ltd.*, (1936-45) MacG. Cop. Cas. 69 (Ch. D.).
5. *Massine v. De Basil*, (1937), 81 Sol. Jo. 670 (Ch. D.); aff'd (1938), 82 Sol. Jo. 173 (C.A.).
6. *Norowzian v. Arks Limited*, (1998), (1999) F.S.R. 79 (Ch. Div.); affirmed (1999), (2000) F.S.R. 363 (C.A.).

§7.3 United States

1. *Martinetti v. Maguire*, 16 F. Cas. 161 (C.C. Cal. 1867).
2. *Fuller v. Bemis*, 50 F. 926 (S.D.N.Y. 1892).
3. *Barnes v. Miner*, 122 Fed. 480 (C.C.S.D.N.Y. 1903).
4. *Savage v. Hoffmann*, 159 F. 584 (C.C.N.Y. 1908).
5. *Dane v. M. & H. Co.*, 136 U.S.P.Q. 426 (N.Y. Sup. Ct. 1963).
6. *Horgan v. MacMillan Inc.*, 227 U.S.P.Q. 975 (S.D.N.Y. 1985); rev'd 229 U.S.P.Q. 684 (2nd Cir. 1986).
7. *Edwards v. Ruffiner*, 229 U.S.P.Q. 157 (S.D.N.Y. 1985).
8. *Anderson v. M & T Pretzel Inc.*, 46 U.S.P.Q. (2d) 1094 (S.D.N.Y. 1997).

§7.4 France

1. *Stichel v. Mendès*, (1911) 1 Gaz. Pal. 193 (T. Civ. Seine, 1911.02.10); rev'd (1919), (1920) D.A. 33 (C.A. Paris).
2. *Chasles v. Soutzo*, (1926) 39 D.A. 53, (T. Civ. Seine).
3. *Martonn v. Leitz*, (1957) 2 J.C.P. 10031 (T. Corr. Seine); (1958) D. 159 (C.A. Paris).
4. *Poggi v. Éditions Salabert* (1958), 20 R.I.D.A. 94 (C.A. Paris).
5. *Eudes v. Cocteau*, (1958) 2 J.C.P. 10762 (T. Civ. Seine); aff'd (1960) 2 J.C.P. 11710 (C.A. Paris).

§7.5 Varia

1. *Béjart v. Association Plan K* (1998), 179 R.I.D.A. 372 (C.A. Bruxelles-9th Chambre, 1998.09.18).

§8.0 Authors

§8.1 Canada

§8.1.1 Interpretation issues

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§8.2 United Kingdom

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§8.7.1 Law

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§9.0 Comparative Legislation

§9.1 Comparative Legislation - United Kingdom

§9.1.1 Copyright Act, 1911, section 35(1):

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;" (Our underlinings.)

§9.1.2 Copyright Act, 1956, section 48(1):

"dramatic work" includes a choreographic work or entertainment in dumb show if reduced to writing in the form in which the work or entertainment is to be presented, but does not include a cinematograph film, as distinct from a scenario or script for a cinematograph film;" (Our underlinings.)

§9.1.3 Copyright Act, 1988, section 3(1):

"dramatic work" includes a work of dance or mime;"

§9.2 Comparative Legislation - United States of America

§9.2.1 Copyright Act, 1976, section 102(a)(4):

"(a) Copyright subsists, in accordance with this title, in original works of authorship 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. Works of authorship include the following categories: (...)

(4) pantomimes and choreographic works; (...)"

§9.3 Comparative Legislation - France

§9.3.1 Copyright Act, 1957, Section 3:

"Sont considérés notamment comme des œuvres de l'esprit au sens de la présente loi: (...) les œuvres dramatiques ou dramatico-musicales; les œuvres chorégraphiques, les numéros et tours de cirques et les pantomimes dont la mise en œuvres est fixée par écrit ou autrement (...)."

§9.3.2 Code de la propriété intellectuelle, 1992, section 112-2:

"Sont considérés notamment comme des œuvres de l'esprit au sens du présent code: (...)

3° Les œuvres dramatiques ou dramatico-musicales;

4° Les œuvres chorégraphiques, les numéros et tours de cirques, les pantomimes, dont la mise en œuvres est fixée par écrit ou autrement (...)."

§9.4 Comparative Legislation - Australia

§9.4.1 *Copyright Act, 1968, Section 10:*

"dramatic work" includes -

(a) a choreographic show or other dumb show if described in writing in the form in which the show is to be presented (...).

§9.5 Comparative Legislation - Germany

§9.5.1 *Copyright Act, 1965, Section 2(1):*

"The literary, scientific and artistic works protected hereunder include, in particular: (...)

3. works of pantomme, including choreographic works (...)"

§9.6 Comparative Legislation - India

§9.6.1 *Copyright Act, 1957, Section 2(h):*

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film;" (Our underlinings.)

§9.7 Comparative Legislation - South Africa

§9.7.1 *Copyright Act, 1978, Section 1:*

"dramatic work" includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film, as distinct from a scenario or script for a cinematograph film;" (Our underlinings.)

§10.0 Varia

§10.1 Debates of the House of Commons

§10.1.1 Debates House of Commons, 1987 (1987.06.26)

Sheila Finestone M.P., at p. 7689.

I will now deal with choreography. Under the current 1924 *Copyright Act*, choreographic works come within the category of dramatic works. As a result, works of choreography must develop a plot or sequence of action.

Glass Houses, a work by Toronto choreographer Christopher House, or Marcel Marceau's work in mime are examples of work not constructed around a dramatic plot.

Groups appearing before the subcommittee in 1985 asked that there be an entirely separate category of protected subject matter labelled "choreographic works" incorporated in the new legislation. "Choreographic works" is defined in Bill C-60 as: "Any work of choreography, whether or not it has a story line". While I accept this definition, I would have preferred that suggested by Elise Orenstein of the Canadian Association of Professional Dance Organizations, which is "an arrangement or an organized thought in time and space which uses human bodies as design units".

§10.1.2 Debates House of Commons, 1987 (1987.06.26)

Lynn McDonald M.P., at pp. 7691-7692.

Another area in which there has been improvement is with respect to choreography. There will now be protection for the first time in a choreographer's own name. There will be a separate category for choreography. It will not be considered just as a type of dramatic work. The limitation of treating choreography simply as one other type of literary work is that, of course, for some modern dance there is no story line. They are not literary works. The expression is that dance is an arrangement in time and space using human bodies as design units. This is a technical expression for what we are trying to get at. Perhaps it is the right expression. Nevertheless, the idea is that there ought to be protection for these more abstract forms of choreography as well as for the more traditional type which tells a story. We have excellent dancers in Canada and excellent choreographers. That is an art form that has really thrived in recent decades. So it is quite proper that we see improved recognition of this art in our new copyright legislation.

§10.2 Illustrations

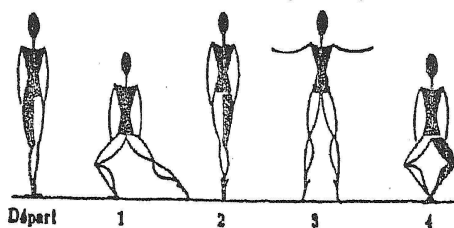
§10.2.1 Pas de bourrée

The "pas de bourrée" which is a series of swift, travelling steps done sur les pointes (dancing on the toes) so quickly that separation between the dancer's legs is not discernible is illustrated as follows:

Décomposition technique

Départ en cinquième, jambe gauche devant la droite.

- 1° Dégager le pied droit en le glissant de côté puis le soulever en effectuant *simultanément* une flexion de la jambe gauche ;
- 2° Tendre la jambe gauche et ramener la droite devant la gauche, les deux pieds sur les demi-pointes ou sur les pointes ;
- 3° Ecarter les jambes en seconde position en maintenant les demi-pointes, ou les pointes ;
- 4° Ramener la jambe droite en cinquième position devant la gauche, les pieds posés à plat, les genoux fléchis.

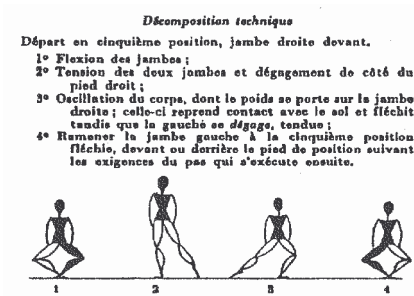


in BOURGAT (Marcelle), *Technique de la danse*, 8th ed. (Paris, PUF, 1986), at pp. 65-66; also in GORSKY (Alexander), *Two Essays on Stepanov Dance Notation* (New York, Cord, 1978), at p. 54:

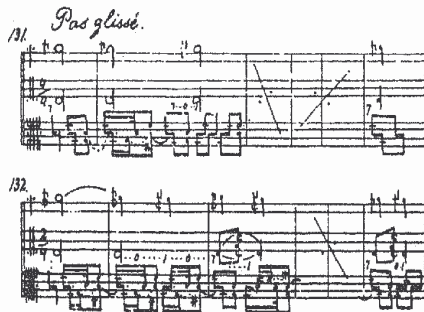
The image shows two systems of musical notation. The first system is titled '177. Pas de Bourrée.' and features a melody line on a treble clef staff and an accompaniment line on a bass clef staff. The second system is titled '178.' and also shows a melody line on a treble clef staff and an accompaniment line on a bass clef staff. Both systems include various musical symbols such as notes, rests, and dynamic markings.

§10.2.2 Glissade

The "glissade" which is a travelling step executed by gliding the working foot from the fifth position to an open position, the other foot closing to it, is illustrated as follows:



in BOURGAT (Marcelle), *Technique de la danse*, 8th ed. (Paris, PUF, 1986), at p. 79;



in GORSKY (Alexander), *Two Essays on Stepanov Dance Notation* (New York, Cord, 1978), at p. 53;

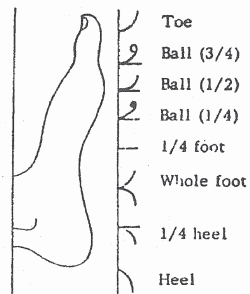
- (a) The conventional analysis of an art form.
- (b) Objective observation—records of students' execution, revealing faults.
- (c) The professional versions.



in BENESH (Rudolf) et al., *An Introduction to Benesh Movement Notation — Dance* (New York, Dance Horizons, 1969), at p. 53.

§10.2.3 Labanotation

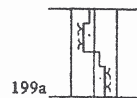
Key to Parts of the Foot. Note the different uses of the ball of the foot. In addition to the normal 1/2 toe there is the higher 3/4 toe (high arch) and a lower use with the heel closer to the floor. The small circles indicating these differences - white for up and black for down - are derived from the relationship pins.



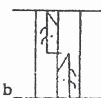
These hooks are used in connection with the floor. To show a hand touching a certain part of the foot, the body area or limb sign for that part must be used.

SLIDING SUPPORTS

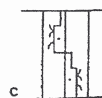
More frequently encountered than the above are sliding supports. Again, the use of two of the same hooks indicates the slide.



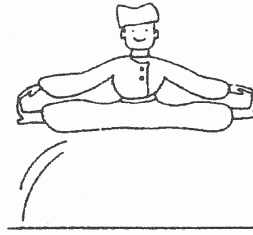
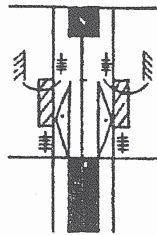
199a
Steps sliding on the whole foot



b
Steps sliding on the heel



c
No slide; step on heel, then whole foot.



Cossack Jump: The feet point upward during the jump.
Note the indication of contact between the foot and the hand.

Above illustrations extracted from HUTCHISON (Ann), *Labanotation: The System of Analysing and Recording Movement*, 3rd ed. (New York, Theatre Arts Books, 1977), at pp. 124-125, 133.

105. A dance step sequence in which the motif of sliding the feet over the floor alternates with leg gestures, the legs being lifted from the floor.



Starting position: legs astride, medium level stance. Without elevating them into the air (since there are no jumping gaps) slide the feet together into first position medium level, then apart into fourth position high level, right foot front. After a pause for one beat the weight is lowered on the right foot and the left lifted off the ground behind. Notice the angular vertical bracket in the right leg column which shows that "place" (see explanation to graphs 40 and 41) is the spot where the right foot stood previously, although the weight is shifted forward when the left foot is released.

The movement on beat 4 may also be written without the bracket (simple, see graph 34), but an indication of direction is needed. (The centre of gravity moves backward in this example.)

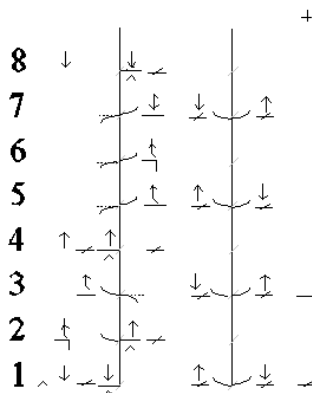
Now the tip of the left foot slides through the first position (two floor touch signs connected with one gesture means sliding) and the weight is transferred left sideways on to the left leg. The right foot performs a short touch of the floor before stepping out to the right, while the left leg retains weight, thus ending in a second position.

While the one leg is gesturing the other one has to take the weight. For this reason a retention sign is needed on beats 5 and 7. (see graph 17).

Above illustration extracted from LABAN (Rudolf), *Laban's Principles of Dance and Movement Notation* (Boston, Play's, 1975), at pp. 53-54.

10.2.4 Action Stroke Dance Notation

"A more complete notation of a Charleston step appears below. It adds general facing and direction symbols, indications of hopping on counts 3, 5, 6 and 7, kick preparations on counts 2 and 4, arm movements, and bending and straightening at the waist."



Iver Cooper's Action Stroke Dance Notation is described online at <http://www.geocities.com/Broadway/Stage/2806/>. The website, the notation system, the description of the notation, and the reproduced description/illustration of the Charleston step are Copyright 1997 Iver P. Cooper. No assertion of copyright is made in the Charleston step itself.

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