

UDC 347.77.028:347.785(477+4+73)  
DOI <https://doi.org/10.32782/chc.v057.2025.14>

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## COPYRIGHT PROTECTION FOR SEPARATED ELEMENTS (MOVEMENTS) IN A CHOREOGRAPHIC WORK

**Relevance of the research.** The issues of copyright protection in the field of choreographic art are becoming increasingly important in the digital age. The boundaries between personal enjoyment, public performance, and the commercialization of choreographic works are now blurred, raising questions about copyright protection. The digital age has elevated choreography to new heights while simultaneously encompassing new and old legal challenges.

The ease of dissemination and copying of digital content via the Internet, particularly through social media, results in small authorial choreographic performances becoming instantly accessible to a vast audience worldwide.

In addition to this, the issue of the use and protection of rights to basic, commonly known dance movements, which form the foundation for creating many choreographic works, remains a related and underexplored matter. This issue is of significant importance for choreographers and all those engaged in the art of dance, as it delineates the boundaries of their rights and responsibilities in the use and creation of choreographic works.

The purpose of the article is: to analyse the legal landscape in Ukraine, the European Union (hereinafter – EU), and the United States of America (hereinafter – USA) concerning the protection of authors’ rights for choreographic works, with a focus on separated elements (movements) of choreographic art. In particular, to emphasize original movements and commonly known movements in the field of choreography; to contemplate where the boundary lies in the concept of “choreographic work” when it comes

to separated dance elements (movements); to investigate the arguments “for” and “against” providing special legal protection for specific elements (movements) in choreographic works.

**The state of scientific development of the issue.** Although the general question of copyright protection for choreographic works is the subject of scientific research, legal analyses, and discussions, especially in the context of technological development and the digital environment, the problem of legal protection of specific elements of choreography remains under-researched, particularly in Ukraine. At the national level, the issue of copyright protection in artistic works has been the subject of research by scholars such as Ye. O. Kharytonov, O. I. Kharytonova, H. O. Ulianova, O. S. Lahovska, O. V. Rozhon, and others.

The main content. From mesmerizing scenes of ballet to viral social media challenges, the art of choreography remains a vital form of artistic expression and an object of intellectual property. In every dance genre, there are basic, commonly known elements (movements) that serve as the foundation for creating complex original choreography. These basic elements (movements) are implicitly considered part of the public domain, aimed at fostering creativity. From *pliés*, *pas de deux*, and *relevés* in classical ballet to bounces, stomp-touches, and kick-and-steps in hip-hop – such movements in choreography can be compared to notes in music.

Thus, in the legal sphere, the following question arises: can separate dance movements be legally protected as separate objects of copyright

protection within the whole (comprehensive) choreographic work? What constitutes a 'whole choreographic work' – where is the boundary between a part and the complete choreographic work? These questions delve into the intricate nuances of copyright law, as they intersect with the mutable and ephemeral nature of dance, both from an artistic perspective and concerning the definitions of the concept of 'choreographic work' across different jurisdictions.

The use of a separate part of an author's choreography can be compared to samples in musical works, where only a part of the song (melody) is transferred with property rights and/or a licence for use by other entities. However, several questions remain unexamined:

1. Where is the clear boundary between commonly accepted movements and original authorship elements;

2. What is the minimum required for the elements (movements) to be considered a choreographic work;

3. What should be the regime for the transfer of rights to a part of the author's choreography?

These issues require the accumulation of case law and, accordingly, additional legal interpretation. According to Article 433 of the Civil Code of Ukraine, copyright protection is provided for choreographic works without the need for any formalities regarding them and regardless of their completeness, purpose, value, etc., as well as the manner or form of their expression [1]. Based on this provision, it can be concluded that copyright in Ukraine protects an incomplete but complex work. That is, in the context of choreography – a complete sequence of movements, rather than separated dance elements. At the same time, the legislator does not provide a definitive answer to this, leaving room for speculation.

To understand this, it is worth addressing the definitions of "choreographic work" and "art" as a prism of embodiment and self-presentation of any work. According to O. M. Parkhomenko, "choreographic art is syncretic art. Here, dance and pantomime, music and poetry, sculptural poses, the plasticity of movements, and the dramaturgy of the literary work have merged into a single stream" [2].

According to philosophers, the task of choreographic art is the "projection of metaphysical value-judgments, the stylization of man's movements by the continuous power of a fundamental emotional state—and thus the use of man's body to express his sense of life" [3].

It is obvious that there is a lack of a comprehensive definition of 'choreographic work' as in European, as in Ukrainian legal field, which, as a result, makes it impossible to specify other related issues concerning it.

In our opinion, it can be stated that a choreographic work should consist of a minimal number of sequential original movements that are aesthetically and visually balanced. Since the basic elements (movements) themselves are not considered original and are not even subject to copyright (just as musical notes are not subject to copyright), a unique authorial combination based on (or without) these basic movements should be eligible for copyright protection.

A separate movement in choreography can be viewed as a fundamental component rather than a complete expression. At the same time, the originality of a separated movement must be exceptionally high and clearly distinguishable from existing dance vocabulary in order to qualify for protection. Originality in the context of copyright means that the work must be independently created by the author (choreographer) and not copied from an already existing work. In other words, originality requires that the choreographic work demonstrates a certain minimum level of intellectual and creative expression that goes beyond the use of well-known or protected elements (movements).

In various jurisdictions, there is a different approach both to defining the concept of "choreographic work" and to the limits of protection for its separated elements. By way of comparison, U.S. legislation distinguishes between the concepts of "pantomime and choreographic work" under the Copyright Act of 1976 [4]. According to Circular 52 of this Act, a choreographic work is defined as "composition and arrangement of a related series of dance movements and patterns organized into a coherent whole" [5]. American legislation also delineates a boundary between choreographic works that are protected by copyright and movements that are not. Examples of basic movements that are not protected by copyright protection in the U.S. include gestures, yoga poses, or their sequences, social dances (for instance, line dances, ballroom dances, etc.); as well as ordinary and athletic movements (for example, during gym workouts). Even unique or new separated movements are not subject to copyright – only the original combination and sequence may be protected [6].

The judicial practice in the United States holds important precedent. In the case of "Hanagami v. Epic Games" the issue has been raised whether

separated dance moves can be protected by copyright. The essence of the case is that choreographer Kyle Hanagami claimed that the video game developer “Epic Games” unlawfully copied part of his registered choreography titled “How Long Choreography” to create an in-game animation (known in English-speaking contexts as an “emote”) titled “It’s Complicated”, which can be purchased in the game “Fortnite”. More specifically, the dispute concerned a short two-second sequence of eight movements that was repeated in the game’s animation [7].

The District Court for the Central District of California initially dismissed the lawsuit, concluding that the movements were too short and simple (“basic poses”, “short sequence”) to qualify for copyright protection as a choreographic work [8]. The court determined that these movements were merely “building blocks” for the creation of choreography.

Hanagami (the author) appealed this decision. The Ninth Circuit Court of Appeals emphasized that ‘the original selection, coordination, and arrangement of various dance movements by the choreographer are subject to copyright protection, even if the separated positions are not’. The court drew an analogy to the potential for copyright protection of combinations of words or figures. Ultimately, the court overturned the lower court’s decision, disagreeing with the notion that ‘choreography’ can be equated with ‘poses’. The court stressed that choreography includes various expressive elements beyond separated movements, such as rhythm, structure, transitions, use of space, and energy. Thus, the Ninth Circuit’s ruling acknowledges that choreography is more than just a series of poses or steps; it is the art of original combination and arrangement of these elements. Subsequently, the decision of the appellate court remanded the case to the district court for further consideration, and in February 2024, it was reported that the parties had reached a settlement, resulting in the closure of the case.

Copyright in the EU is based on a number of directives, the case law of the Court of Justice of the European Union (CJEU), and international conventions. Directive 2001/29/EC (InfoSoc Directive) establishes the general framework for the protection of works. The document grants authors a number of exclusive rights concerning their works, including the right to reproduction (Article 2), the right to distribution (Article 4), and the right to adaptation (Article 2(a) of the Berne Convention, referred to by the Directive) [9].

EU legislation protects works that are original intellectual creations of the author and meet the criterion of originality. The harmonized EU copyright law provides protection for works that qualify as the author’s ‘own intellectual creation’, a standard referred to as originality. It is important to note that in the EU, the protection for a [choreographic] work arises from the moment of its creation without the need for prior registration [10].

The Court of Justice of the European Union in the Cofemel case stated that for the originality criterion, it is “necessary and sufficient for it [the work] to reflect the personality of its author as an expression of their free and creative choices [11]. Although the case concerned clothing design, the criterion of “originality” is universal for all types of works protected by copyright, including choreographic works.

Although in the EU, the issue of copyright protection for choreography is also a subject of discussion, particularly in the context of harmonizing copyright legislation among member states. Different approaches to defining originality and the scope of protection may lead to discrepancies in the legal regulation of this matter in various EU member countries. For instance, in Germany, the protection of a choreographic work does not depend on its fixation, and improvisation is protected in the same manner as choreographic works featuring complex elements [12]. In contrast, according to French legislation, fixation of a choreographic work is required for protection as stipulated in Article 112-2, Part 4 of the *Code de la propriété intellectuelle* [13].

Choreographic works are explicitly recognized as objects of protection under the Bern Convention [14]. However, in the legal framework of the EU, there is no unified position regarding the definition of choreographic works or concerning the protection of their separated elements (movements). Italian copyright legislation (Law No. 633 of April 22, 1941) explicitly mentions choreographic works as objects of copyright (Article 1) [15]. Analysing this law, one can conclude that copyright protection is granted to the composition of movements, their sequence, and expressiveness, reflecting the creative intention of the author (choreographer).

In most EU countries, there is a consensus that choreographic works are protected by copyright as “works of art”. The primary emphasis is placed on the originality of the movement composition rather than on separated, commonly used elements. At the national level of the member states, there is a lack

of a clear, legislatively established definition of a “choreographic work”, which leaves room for judicial and academic interpretation.

The concept of ‘choreographic work’ and the distinction of its separated authorial dance elements is a topic of discussion in Ukraine as well. According to Article 7 of the Law of Ukraine on Copyright (hereinafter – Law), a work is protected by copyright regardless of its integrity and completeness. And according to Article 9 of the Law, ‘copyright on a work arises from the fact of its creation. A work is considered created from the moment it is given any objective form for the first time’ [16].

Article 11 of the Law guarantees that the author has the right to demand the preservation of the integrity of the work, to oppose any distortion, alteration, or other changes to the work [...] without the author’s consent. Thus, for copyright to arise for a choreographic work in Ukraine, its originality and material embodiment are necessary, whether before an audience or as a fixation on an information carrier. The use of a part of the [choreographic] work without the author’s permission is prohibited. Today, this issue has not yet been fully explored. As Ukrainian legislation does not provide a comprehensive definition of ‘choreographic work’ or its standardized notation, this let alone the question of protecting its separated elements (movements).

**Arguments “for” and “against” providing copyright protection to separated elements (movements).** There are various arguments regarding granting legal protection to certain elements in choreographic works. On one hand, providing protection for highly original authorship movements could ensure adequate protection and commercial interest for authors (choreographers). Thus, they would be able to grant permissions (licences) for the use of parts of their original choreography under specific conditions. Legal protection would emphasize the intellectual value of choreographic work and contribute to greater respect for copyright in this field.

However, the assessment of highly original and excellent authorship is an evaluative concept and a subjective criterion. The protection of certain elements could significantly restrict creativity, as it would limit the freedom of dance vocabulary for other choreographers. Since dance is largely constructed on a shared language of movements, granting copyright to such elements could hinder the natural evolution and development of this art form. There is a risk that such protection could dis-

proportionately benefit large companies with the material resources to defend such rights, which could monopolize the choreography industry and limit opportunities for small and independent choreographers.

In addition, there exists a concept in copyright law known as fair use, which permits the use of copyrighted materials for purposes such as news reporting, education, scientific research, parodies, and so forth. Thus, the use of choreographic works, whether partially or entirely, for these purposes will be considered authorized without obtaining a licence (permission) from the author.

**Comparative analysis of the protection of separated elements in other forms of art.** The approach to the protection of separated elements in choreography can be compared to the protection of such elements in other forms of art, such as music and literature. In music, copyright protects original components: melody, lyrics, harmony. Similar to dance, copyright protects the unique arrangement of musical elements, rather than their building blocks. In literature, copyright does not protect names, titles, slogans, or short phrases. Artistic characters may be protected by copyright if they are well-developed, possess distinctive features, and exhibit coherence in content.

It is important to understand the boundary: where copyright begins. If there were a necessity to obtain permission for the use of notes and such basic movements, it would limit the freedom of artists. Therefore, copyright in the context of choreographic works aims to protect unique combinations of movements, rather than the most basic elements themselves.

**Conclusions.** Understanding the extent to which authors (choreographers) can protect their creativity is crucial for the development of artistry and ensuring that artists are rewarded for their contributions. On one hand, it is important to understand the boundaries of copyright and to recognize that basic dance movements are part of a general dance vocabulary. On the other hand, the question of providing legal protection for separated movements in a choreographic work remains relevant, yet ambiguous.

Legislation in Ukraine provides for the protection of copyright for the original sequence of dance elements, their combinations, and the overall composition. Thus, the object of protection is the unique arrangement and sequence of movements that form a choreographic work. There is no unified position at the supranational level in the EU regarding the pro-



tection of rights to separated elements (movements) in choreographic works. Experience from the USA indicates a trend of not protecting commonly used movements so as not to limit creative freedom and the further development of the choreographic arts. However, judicial practice supports artists, considering the protection of a unique combination and even simple movements to be relevant.

The development of a unified position by the World Intellectual Property Organization regarding the definition of “choreographic work” and the protection of copyright on separated elements could

synchronize protection at the international level. However, while debates continue among scholars and the international community, authors (choreographers) are advised to meticulously document their works using video recordings and modern digital notation systems until a common legislative position is established at the international level. Thus, in the event of disputes, detailed documentation on all possible media can serve as important evidence of authorship of elements (movements) in choreographic works and help prevent their unauthorized use.

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#### **Захист авторських прав на окремі елементи (рухи) у хореографічному творі**

Стаття присвячена актуальним питанням захисту авторського права на окремі елементи (рухи) хореографічних творів у цифрову епоху. В статті аналізується правовий ландшафт в Україні, ЄС та США щодо захисту прав авторів на окремі елементи (рухи). Особлива увага приділяється розмежуванню оригінальних рухів та загальновідомих елементів у хореографії. Визначається, що загальновідомі базові елементи (рухи) в хореографічних творах є основою для створення авторської оригінальної хореографії. Досліджується питання, чи можуть вони бути захищені як самостійні об'єкти авторського права в рамках цілісного хореографічного твору. Запропоновано, що хореографічний твір повинен складатися з мінімальної кількості послідовних оригінальних рухів, які є естетично та візуально збалансованими. Оригінальна авторська комбінація, що базується на цих рухах або без них, повинна підлягати захисту авторським правом. Розглянуто судовий прецедент у справі «Hanagami v. Epic Games», в якому зазначено, що хореографія – це більше, ніж просто серія поз чи кроків; це мистецтво оригінальної комбінації та розташування цих елементів. Досліджено аргументи «за» і «проти» надання правового захисту окремим елементам. Аргументи

