



## For Policy Makers: Policy Brief: Copyright Royalties vs Public Funding for dance made and performed by dancers with disabilities

This position brief targets policy makers.

The **Invisible Difference: Dance, Disability and Law** project is an Arts and Humanities Research Council-funded project that is exploring issues confronted by professional disabled choreographers and ownership and authorship of their work.

### Project Overview

Running from January 2013 to December 2015, ours is an interdisciplinary partnership between academics in Higher Education and artists working in the creative industry. Members of the project are: Professor Sarah Whatley, Coventry University; Professor Charlotte Waelde, University of Exeter; Dr Abbe Brown, University of Aberdeen; Dr Shawn Harmon, University of Edinburgh; Dr Karen Wood and Hannah Donaldson, research assistants; Mathilde Pavis and Kate Marsh, Doctoral candidates and dance artist Caroline Bowditch. During the course of our research we are conducting qualitative research with disabled choreographers and dancers, including Caroline Bowditch, Claire Cunningham, Marc Brew, Chisato Minamimura, and others. We also have strong links with Candoco dance company and other independent disabled dancers.

This paper explores the contribution of copyright law to the development and funding of disabled dance artists and their work. Since public policies encourage artists to administer their creative practice according to commercial business models,<sup>1</sup> copyright law is the focus of this paper. Copyright grants to authors and owners the power to control the commercialisation of their work. It is thus crucial to understand how copyright could support the practice of disabled dance artists, and assess whether it would be possible to replace public funding by exploiting the dance through copyright.

### Discussion

The Arts Council is withdrawing funding from the creative sector. In 2010–2011 public grant in aid funding to the Arts Council stood at £450 million. In 2011–2012 it was reduced by 14 per cent to £388 million; in 2012–2013 by 7.5 per cent to £359 million; in 2013–2014 by 3 per cent to £348 million; and in 2014–2015 it will be reduced to £343 million.<sup>2</sup> As government funding reduces, so some other form of financial support needs to take its place. One possibility is commercial exploitation of the arts. The Arts Council is clear in its aim to “strengthen business models in the arts, helping arts organisations to diversify their income streams ...”.<sup>3</sup>

One way in which the disabled dance community can respond to these challenges is through exploitation of intellectual property rights, specifically copyright, in the dance. Once a dance protected by copyright has been created, the right owner<sup>4</sup> is legally able to control the reproduction and dissemination of copies of that dance and can obtain royalties in return for licensing the right to copy and disseminate the work to

<sup>1</sup> Charlotte Waelde; Sarah Whatley; Mathilde Pavis, “Let’s Dance! But Who Owns It?” (2014) 36 European Intellectual Property Law Review 217

<sup>2</sup> Ibid 218

<sup>3</sup> Ibid 217

<sup>4</sup> traditionally the author but often practice is more complicated, especially in the case of dance artists as pointed out by the media lawyer *Irving David* in “Choreography and Copyright - Make the Right Moves” Dance UK official website <http://www.danceuk.org/news/article/choreography-and-copyright/> [accessed 08/05/2014]





third parties.<sup>5</sup> In this respect, copyright royalties are a form of income to the owner of the copyright in the work.

It seems unlikely however that these royalties could ever equal - or even come near - the amount of funding distributed by the Arts Council to disabled dancers.

1. Earning royalties from copyright relies on artists' access to the market and to audiences according to established supply and demand principles: copyright does not automatically result in an income stream. It is most likely to sustain artistic practices when the artist is sufficiently successful to generate demand and sales. In other words, copyright only makes a significant financial impact on the artist' income when the artist has already had commercial success in the market by him/herself whether or not with the initial support of public funding. Further, and even when there is some commercial success sufficient to generate copyright royalties, the distribution of these royalties will depend on the contractual arrangements between the artist, the potential commissioners, producers, companies and other co-authors. At that point copyright becomes a useful tool to administer the artistic estate with a view to developing self-sustaining business models.
2. Even if the artistic practice is successful, copyright royalties are highly unlikely to be able to generate an amount equivalent to the cuts in public funding for the Arts. Royalties alone are most of the time insufficient to sustain artists' practice or living.<sup>6</sup> As an example, while public funding distributes £343 million into the Arts for the year 2013-2014, the Authors' Licensing and Collecting Society distributed a little over £27 million to its 65,000 members.<sup>7</sup> On average per artist, the royalties represent approximately £415 per year, a sum far from being enough to launch works on the market, sustain their practice or even live off their art.
3. Public funding is selective and can and should be used as a tool for diversity-oriented policies.<sup>8</sup> That is not a role that copyright can occupy. As noted, copyright mechanisms follow the pattern of the market, and the market plays no (voluntary) role in the protection and integration of minority art forms.

## Recommendations

1. Copyright royalties cannot be considered as a replacement for public funding for dance made and performed by dancers with disabilities.
2. Public funding for the arts should be used as a tool to pursue diversity oriented policies
3. Copyright and management of rights should be routinely included in training for all artists.

<sup>5</sup> Sections 1 ; 16-26 Copyright, Designs and Patents Act 1988

<sup>6</sup> See the comments of the Rolling Stone's guitar and bass player Bill Wyman in Sandall R, "Bill Wyman: I Can't Live off the Stones Royalties" The Telegraph (online edition) <http://www.telegraph.co.uk/culture/music/3670387/Bill-Wyman-I-cant-live-off-the-Stones-royalties.html> [accessed 08/05/2014]

<sup>7</sup> See "Authors' Licensing and Collecting Society" (2014) <http://www.alcs.co.uk/join> [accessed 08/05/2014]

<sup>8</sup> Note the obligations on States under the Convention on the Rights of Persons with Disabilities 2006





## Conclusions

We have shown elsewhere that dance made and performed by dancers with disabilities is marginalised and almost wholly absent from our cultural heritage.<sup>9</sup> Given this marginalisation copyright law could never realistically be considered as a complete or even partial replacement for public funding. Copyright law can, at the most, act as complementary avenue for disabled dance artists to secure their place in the market. Policy-makers cannot and should not leave to copyright mechanisms the obligation to support the arts, and in particular minority art forms.

While exploitation of the dance via copyright cannot act as a substitute for public funding, we are sympathetic to the desire to encourage artists to think creatively about business models and sustainability of their practice. While we have found during our research that there is an awareness of copyright among dance participants, it is generally not in sufficient depth to be able to develop strategic thinking around how the law might sustain the dance. To this end training should be made available, and programmes in copyright management should be a core component of the curriculum. Managing the various rights copyright laws grant (i.e. authors', performers' or collective rights) is a crucial skill in a context where commercialisation of creative work is central: it is a key component in the drive to “ensure companies, artists and producers have a deeper sense of their markets and how to position themselves”.<sup>10</sup>

Should you require further information please contact Professor Charlotte Waelde  
[c.e.waelde@exeter.ac.uk](mailto:c.e.waelde@exeter.ac.uk)  
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<sup>9</sup> Shawn Harmon, Charlotte Waelde; Sarah Whatley, “Disabled Dance: Finding a Place in our Cultural Heritage – Empirical Evidence”, forthcoming 2015

<sup>10</sup> See <http://www.artscouncil.org.uk/what-we-do/supporting-artforms/dance> [Accessed January 22, 2014].

