Protection of Folk Dance Performers in United States

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Abstract

Folk dance performers are crucial in passing on cultural legacy to the following generation.

Folk dances have developed into a vital cultural expression, incorporating ethnic and regional elements, creative costume designs, and the use of props to depict the physiology and physical condition of a country's populace. The state grants performers legal rights in order to support them in using their creativity in performances without worrying about it being abused. They get social strength and superior financial advantages from this kind of protection. In light of technological advancements, the copyright law marks a substantial shift in order to grant copyright protection to these creative artists. Under US law, performers and their contributions to audiovisual works are not protected. Generally, audiovisual works are created as labour performed for hire, as specified by the Copyright Act's section 101.Congress in the US has not tried to implement WPPT. This raises doubts about adherence to the Beijing Treaty. Compared to the quick implementation of section 1101 following the TRIPS Agreement, Congress appears uninterested in expanding the scope of performers' rights under federal law, as evidenced by the current delay.

Key Words: Copyright, Performers, Folk Dance, Performers' Right and Congress

Introduction

Do artists own any rights to the expressive works they contribute to making? In the past, traditional authors' rights have gotten significantly more attention than performers' rights. The legal system has been hesitant to acknowledge performers as authors, and even when they are, their rights are more restricted and ranked lower than those of traditional authors. However, recent events have raised awareness of performers' intellectual property rights. Performers in the US have started to claim authorship rights in the works they contribute to more and more for a variety of reasons. Furthermore, minimum requirements for the protection of performers' rights which are distinct from authorship rights have been established by recent international treaties to which the United States is a party.

Folk Dance Performers in us

In the US, attempts have been made to designate a particular dancing style as the genuine American folk dance. Folklorists stress, however, that it is incorrect to label a certain kind of cultural expression as dominant or exclusively American. Among the many folk dances practiced in multicultural societies are the English Morris dance, African American hip-hop, Spanish fandango, Irish jig, Scottish highland fling, Native American fancy dance, Irish jig, and Latin salsa.[1] The idea of folk dance as it was traditionally known in the United States originated in Europe in the seventeenth century, despite the fact that dancing is a characteristic of practically every culture. Throughout Europe, folk dance was typically created and performed in a collective, anonymous manner and was passed down orally from generation to generation. Usually, it was associated with "folk" or "peasant" societies. Folk dances from Europe and England are thought to have originated from ancient customs, religious rites, and life cycle ceremonies. For example, maypole dances celebrate the arrival of spring and contain symbols of fertility. The notion that folk dance is an authentic representation of a people's cultural identity and ancient tradition has inspired academics, politicians, and others to search for common and representative dances. For the majority of the 20th century, folk dancing was popular in Western Europe and the US as a way to foster societal and local identity.

[1] American Folklife Center, Library of Congress an Illustrated Guide, *available at:* https://www.loc.gov/folklife/guide/dance.html

Performers right in us:

Acts now in place only partially safeguard performers' creative rights. Thanks to privacy or right of publicity laws, people in most states have the ability to object to any improper commercialization of their identity. In their contracts with producers, professional artists often agree to broad waivers of this privilege, which limits their ability to dispute how their performance is presented to the general public.[2] Neither state nor federal law formally protects the moral rights of performers. Since the federal moral rights statute only covers certain types of visual, graphic, and sculpture works, performance-based works such as sound recordings and movies are not covered.[3]

In the US, there is no explicit legal protection for performers' rights. It does not, however, imply that American performers have no protection at all. The economic rights of artists are of greater relevance to America, the birthplace of capitalism. The United States Copyright Act of 1976 protects the economic rights of artists, much like Indian law does. On December 8, 1994, Public Law 103-465 amended Title 17 of the United States Code (The Copyright Act) by establishing rights for the illicit fixing and trafficking in sound recordings and music videos of live musical performances. An Act to Implement the Results of the Uruguay Round of Multilateral Trade Negotiations was the name given to this legislation. Beyond this narrow limit, performers' rights are nonexistent in the USA.

1. **Protection of performers right related to the unauthorized act:**

Those who act without the performer's or performers' prior consent,[4] (1) reproduces copies or phono records of a live musical performance from an unauthorized fixation, or fixes the sounds or sounds and pictures of a live musical performance in a copy or phono record, (2) broadcasts or otherwise makes available to the public the audio or

[2] Mary LaFrance, "Are We Serious About Performers' Rights?", Vol.5 issue 1 , *IP Theory*, p:81 (2015).
[3] Ibid.
[4] Section 101 of Copyright Act, 1976: (a)UNAUTHORIZED ACTS. —Anyone who, without the consent of the performer or performers involved—
(1)fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,
(2)transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or
(3)distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States,
shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

video of a live performance of music, or (3) distributes, sells, rents, offers to rent, or traffics in any copy or phono record that has been fixed, regardless of whether the fixations took place in the United States shall be considered as the infringer of copyright.

According to US law, musicians are entitled to certain rights; in contrast to other laws pertaining to similar rights, the Copyright Act does not specifically address these rights.

US law does not protect audiovisual performers' contributions. According to the Copyright Act, a "work of visual art"[5] which include any still photograph created only for exhibition reasons as well as any painting, drawing, print, or sculpture that is created in a single copy. The definition clause of the act explicitly states that audio-visual works and works created for hire are not considered works of visual art.[6] Work made for hire[7] is described as a work produced by an employee when they're on the job or Unless the parties expressly agree otherwise in a written agreement that is signed by both parties, a work that is specifically ordered or commissioned to be used as a test, as test answer material, as an atlas, as a translation, as a supplemental work, as a compilation, as an instructional text, as a test, or as part of a film or other audiovisual work will be deemed to be a work made for hire. Section 101 of the

[5] Section 101 of Copyright Act: A "work of visual art" is—
(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or
(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

[6] A work of visual art does not include—
(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
(iii) any portion or part of any item described in clause (i) or (ii);
(B) any work made for hire; or
(C) any work not subject to copyright protection under this title.

[7] A "work made for hire" is—
(1) a work prepared by an employee within the scope of his or her employment; or
(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Copyright Act defines works as those that are produced for hire. When it comes to audiovisual works, this includes "a work particularly ordered or commissioned for use as a contribution to a collective work, as a component of a motion picture or other audiovisual work," which is the standard production model. The money made from the exploitation of their works and performances fixed in audiovisual works, however, can be divided by a number of audiovisual performers (especially those who work with major studios) who are parties to guild agreements (the case of so-called "residuals," which can be defined as amounts paid by studios for reruns, syndication, DVD release, or internet streaming release of their films). Here, authors and performers of audiovisual works are viewed as being on a somewhat equal footing, much like in the US.

2. Moral right of performers in US:

Performers in the US do not have legal moral rights, but they are no better off than writers (save for some writers of fine arts) in this regard, unless they own rights to derivative works, in which case they have an economic right that is roughly equivalent to a moral right.[8] This section grants authors the right to claim authorship of their work, to stop claiming credit for creating works of visual art that they did not create, and to stop having their name associated with a work of art if it is altered in a way that would be harmful to their honour or reputation.

3. Performers as joint author:

A specific performers' protection against the fixation of a live musical performance (including the fixation of sounds and images thereof) and subsequent actions of exploitation of such fixation has only been incorporated as part of the TRIPS

[8]The Visual Artists Rights Act (VARA), codified at 17 U.S.C. Section 106A (2012): RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—
(1)shall have the right—
(A) to claim authorship of that work, and
(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
(3)subject to the limitations set forth in section 113(d), shall have the right—
(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

agreement's implementation. The United States does not recognize the continental idea of neighboring rights. Alternatively, under US law, performers' contributions might be protected by copyright. But actors aren't mentioned as writers in the statute itself. The regular authorship criteria are relevant in this regard. Section 102(a)(6) of the US Copyright Act may provide protection to an audiovisual actor if they are co-authors of the film or other audiovisual work.[9] The US Copyright Act's section 101 defines a motion picture as a collective work. Every contributing author must have this aim and have it set up before they contribute.

4. Collective agreement:

The labour law system includes collective bargaining agreements between guilds and employers. The creation of labour union activities like the performers guild has been aided by the National Labour Relations Act, which aims to promote the two bargaining groups of employers and employees.[10] One of the first American organizations in the entertainment industry, the Screen Actors Guild was established as a result of the film company's decision to cut actor pay by fifty percent.[11]

The United States developed a number of measures to protect audiovisual artists and work towards achieving a fair and equitable relationship between them and their employers. The essential legal bases for performers' protection in the US are individual

[9] (a)Copyright protection 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:
(1) literary works;
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings; and
(8) architectural works.

[10] Section 151 of National Labor Relation Act: The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

[11] Jan Wilson, "*Special Effects of Union in Hollywood*", vol. 12**,** *Loyola of Los Angeles Entertainment Law Review,* p. n. 403 (1992).

contracts and collective bargaining agreements, which contain provisions that may, in some circumstances, even offer a high level of protection for the performers.[12]

The two federal rules that specifically address the creative rights of artists are the section 114 statutory licence for digital music transmissions and the 1994 anti-bootlegging clause, both of which are codified in section 1101 of the copyright statutes. Copyright infringement remedies under Section 1101 are available to those who, without their consent, (1) record the performance in audio or video; (2) broadcast the performance's sounds or sounds and images to the public; or (3) traffic in unauthorized recordings of the performance. Section 114 currently grants recording artists a limited right to royalties from live performances Apart from these legal defense options, performers' moral and financial rights in the works they co-create primarily depend on the agreements they make with producers. Due to their typically weak bargaining positions, most performers are unable to get meaningful rights above the minimums guaranteed by collective bargaining agreements. Artists who are not union members are not even entitled to these bare minimum protections.[13] Congress created Section 1101 in response to the TRIPS Agreement, but neither the Beijing Treaty nor WPPT have yet been put into effect. For example, performers are not protected by copyright statutes, and authors are still the only ones with exclusive economic rights. In addition to the moral rights of integrity and attribution, WPPT and Beijing grant performers the exclusive rights of replication, distribution, rental, and making available by wire or wireless means. The closest approximation to the moral rights of attribution and integrity for performers is provided by section 43(a) of the Lanham Act, which creates a federal cause of action for false designation of the origin of goods or services. Despite this, American law does not recognise moral rights in audiovisual performers. Federal law is silent on performers' economic rights, whether exclusive or not, with the exception of the rights granted to recording artists under section 114 and to live musical performers under section 1101. Because Section 106 of the copyright laws now grants the author of a copyrightable work the exclusive economic rights of reproduction, distribution, and public performance, it does not recognise that the performers who contribute to the work must now share these exclusive rights.

[12] Dr. Silke von Lewinski, "*The Protection of Performers in the Audio-visual Field in Europe and the United States*", Part III: Copyright and Related Rights: Section III(E): The Entertainment Industries: Chapter 96, p. no. 96-14.
[13] *Supra* n. 38.

Conclusion

Congress in the US has not tried to implement WPPT. This raises doubts about adherence to the Beijing Treaty. Compared to the quick implementation of section 1101 following the TRIPS Agreement, Congress appears uninterested in expanding the scope of performers' rights under federal law, as evidenced by the current delay. The economic provisions of the treaties are drafted in a way that allows the United States to comply with them without materially altering the fundamentals of federal copyright law; the moral rights clauses, on the other hand, require additional legislation. Relative rights-based strategies are not a panacea for legal issues. But there would be a lot of advantages. First of all, it would grant American performers the legal entitlement, under the Rome Convention, to a reasonable portion of worldwide remuneration for phonogram broadcasts. It would likewise be permissible to acknowledge the right of "consent to fixation" in audiovisual performances.

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