How Copyright Law Affects Musicians For Dance

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Musicians in the field of dance have several reasons to be concerned with copyright; first, as protection for their own creations, and secondly, as a responsibility in relation to using works created by others. In both cases, the legal considerations pertain to *performing rights* as well as *mechanical rights.*

What Is Not Covered

If instrumentalists play only older classical or folk pieces plus original improvisations—for either dance classes or theatrical dance performances—then there is usually little chance of their inadvertently infringing on the copyrights of other composers. Improvising percussionists, for example, can feel free of any legal concerns about infringement because the type of rhythmic patterns heard in dance classes cannot be copyrighted.

Yet the other side of this picture is that if a musician innovates procedures of composing with electronic drum machines, for example, there is nothing to prevent others from adapting such methods and using them freely for profit. Purely rhythmic patterns, or the *processes* of "free improvisation" can be understood to fall into the realm of unprotected creation. As stated in the current U.S. Copyright Law: [Parag. 102(b)]: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

But let a recognizable Broadway show tune burst forth during one of your classes, or perform a contemporary chamber piece as part of a dance recital, or make a photocopy of a published percussion score for your students, or play a tape of a colleague's improvisations as part of a public lecture at which admission is charged, and you have entered the realm of copyright.

Copy and Recording Defined

Basic to understanding the law's protection are the legal terms. "Copies" are defined [Pang. 101] as: "material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

"Phonorecords" are defined [Parag. 101] as: "material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

"Sound recordings" have a separate definition [Pang. 101] as: "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied."

Public Performance Newly Defined

While the rights for mechanical reproduction— including methods of recording and publishing—are clearly extensions of former law updated to accommodate modern technology, the same cannot be said for the definition of "public performance," which has caused many questions to be raised in regard to music for dance classes.

The 1976 revision of U.S. copyright law states [Pang. 101]: "To perform or display a work 'publicly' means—(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered..."

The ramifications of this legal definition will be explored at length later in this article. But because so many Guild members are composers as well as instrumentalists, it seems appropriate first consider the concerns of musical creators in regard to the current copyright law.

Securing Your Rights as a Composer

As composers, dance musicians' original works are protected from the moment of creation, as long as the music is preserved in some tangible way. According to the law, [Parag. 101]: "A work is 'created' when it is fixed in a copy or phonorecord for the first time." The section goes on to explain: "A work is 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."

In the past, such "fixation" was understood to include written notation on paper as well as actual sounds recorded on tape or disk. With the extension of electronic technology, however, the latest copyright revisions are careful to include broad definitions that allow for future inventions of ways to symbolize and transmit sound. To protect your compositions, the service organization Meet The Composer urges [in its booklet *Composers in the Marketplace]:* "It is *imperative* that you secure your rights to your creative property through copyright."

As noted already, your composition automatically has some protection from the moment you fix it in tangible form. But to secure full protection in case of lawsuits, you should at least affix to the first page of all your manuscripts the symbol © followed by the year, your name, and the phrase "All Rights Reserved." For tapes, affix P followed by same information. This is important if you circulate your materials, even on a loan basis. To register a composition, you must fill in forms available from the United States Copyright Office (Washington, DC 20559) and include two copies of your work plus the current fee for each submission. This done, your work is now assured full legal protection as explained in general in the body of the law [Pang. 302]: "Copyright in a work created on or after January 1, 1978, subsists from its creation and, [with a few exceptions]...endures for a term consisting of the life of the author and fifty years after the author's death."

Entitlements of Copyright Ownership

As a copyright owner, you would now have [Pang. 106]: "the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by

rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly...." The current law serves not only to protect a composer's economic gains; it also provides for some control over artistic choices in regard to the use of one's compositions for theatrical dance.

One example of this was the experience of the choreographer Eliot Feld, who set his dance *Endsong* to Richard Strauss's *Four Last Songs.* Although apparently many of those involved in the case found Feld's videotaped run-through very beautiful, nevertheless, the heirs to the Strauss estate denied permission on the grounds that the composer's original work was not intended as a dance score. Consequently, Feld's choreographic piece was premiered in silence in 1992, and audiences must wait until the year 2025 (when the music enters public domain) to view the choreographic work in its intended musical context. In connection with such veto power, however, it must be noted that if a composer assigns copyright to a publisher, then after the premiere, such decisions become the prerogative of the publisher.

Work for Hire

Dance departments in colleges and universities may expect that collaborative scores be written by a composer as part of his or her regular job description. Sometimes a dance company may wish to own a score outright and asks that its resident composer assign copyright to the company.

Such cases may fall under the legal area of "work for hire" as specified in the copyright law [Parag. 102]: "a work prepared by an employee within the scope of his or her employment." One does not have to be employed fulltime for this to apply.

The ability to compose even an occasional brief piece may in itself enhance a musician's attractiveness as an employee in both theatrical and academic dance worlds, and so a skilled composer may want to emphasize this ability when it comes time to discuss salary. Indeed, it seems that among Guild members who work at colleges and

universities, composing music for dance recitals *is* part of their regular job descriptions.

Nevertheless, with regard to such assigning of copyrights, BMI's director of concert music relations Ralph Jackson warns: "I would never advise a composer to do that, because over the years there may be performances from their total catalog." And underscoring the point, Nancy Adelson of the New York Volunteer Lawyers for the Arts advises that it is preferable for creative artists to retain copyright of their own works.

Yet in some instances, when copyright ownership is not specifically spelled out in prior contracts, university musicians for dance are finding that their creative output is being treated as work for hire. Unless there is prior written understanding on this point, a musician may have difficulties, not the least of which may be the jeopardizing of one's relationships and employment within a department.

In recent years, a number of Guild members have been troubled by situations in which choreographers who are members of college dance faculties automatically expect that they can use music composed for the department for their own outside professional companies as well. Such double usage could certainly be efficient, but many composers understand that they are entitled to separate contracts specifying arrangements with professional companies. Musicians who foresee such possibilities can best protect their rights by negotiating a written agreement in advance specifying how their compositions may be used for dance.

Grand Rights

Any copyrighted music presented as part of a theatrical dance performance involves what are legally called *grand rights,* which must be negotiated individually for each work. If a composer or publisher retains copyright ownership even for works commissioned by particular dance companies, the same music could be used subsequently by other choreographers and companies, with further fees negotiated for performing rights.

If the music is not published, dance companies must make arrangements directly with the composer. If the music is handled by a publishing company, then the publishing company often negotiates performance fees and in turn pays the composer a royalty according to their specific contract. Some composers increase their incomes by becoming entrepreneurs and self-publishing their own works—thus profiting not only through the sale and rental of their compositions, but also from the double royalty payments for the performing rights.

Services of Performing Rights Organizations

When composers create solely for the dance departments or professional dance companies which employ them, then it may be practical simply to negotiate all financial agreements directly and not join any performing rights organization, especially if the situation involves *only* grand rights or work for hire. But once composers start achieving some degree of success in a variety of contexts, including some commercial recordings and publications, then they usually find it advantageous to become affiliated with one of the performing rights organizations in this country: AS CAP (American Society of Composers, Authors, and Poets), BMI (Broadcast Music, Inc.), or SESAC. Members of the American Composers Alliance are licensed through BMI exclusively.

The main service of these organizations is to collect license fees from the public users of copyrighted music and to distribute performance royalties to affiliated composers based on actual documented performances or upon projections of statistical samples. In practice, the system works best for pop composers whose tunes are played often over major radio and television stations—as well as for well-known "serious" composers whose numerous concert performance credits are "weighted" to reflect the instrumentation, length, size of concert hall, etc.

The performing rights organizations do not enter into any legal arrangements involving grand rights. It must be noted, however, that both BMI and ASCAP bolster the success of affiliated composers by providing *publicity* for theatrical works with scores by their members. This in turn is felt to contribute to the overall development of composers' careers, as well as to their incomes. Moreover, many "grand rights" scores written for dance have been recast as concert works eligible for "small rights" royalty payments through the performing rights organizations. As BMI's Ralph Jackson noted, "Small rights can sometimes be *enormous."*

For example, people in the field are fond of citing *Appalachian Spring,* which ASCAP's Aaron Copland wrote at the request of Martha Graham for her concert dance work. It was originally titled *Ballet for Martha.* But the musical work has certainly found a far wider audience through its expanded orchestral version, which falls into the category of "small rights."

New Law, New Quandaries

Grand rights practices, with regard to music written for dance performances, have been long-standing and are based on previous versions of the U.S. copyright law dating back to 1909. Ii would seem that the dance world still finds these legal traditions acceptable, though they may result in sizable fees for touring performances of repertoire.

It is the latest, 1976 revision of the copyright law that has raised controversial questions concerning the definition of a "public performance" of copyrighted music. As noted above, the new law defines "public performance" as one which occurs at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered. Performing rights organizations have used this definition as a legal basis for expanding their licensing coverage to include dance studios across the country.

There are exceptions, including the multitude of dance technique classes accompanied by Guild members at colleges and universities across the country. An amendment to the copyright law, enacted October 25, 1982, specifies that:

> Notwithstanding the provisions of section 106, the following are not infringements of copyright: "(1) performances or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction…(2) performance of a ...musical work…if (A)the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and (B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and (C) the transmission is made primarily for reception in classrooms or similar places normally devoted to instruction...(3) performance of a ...musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers…if (A) there is no direct or indirect admission charge; or (B) the proceeds...are used exclusively for educational, religious, or charitable purposes and not for private financial gain...

Legal Interpretation Affects Private Dance Studios the Most

This latest revision of the copyright law has been interpreted to apply to all the music—both recorded and live—that is heard in any kind of dance studio, with the exception noted above, when face-to-face teaching takes place in a nonprofit educational institution. In studios not falling into the category of the exceptions, owners of the schools may be liable for substantial penalties if there is an infringement of copyright—either through the playing of recordings, or due to a live performance. Consequently, the new law as currently interpreted has been the source of great anguish among owners of private dance studios, who have gathered petitions for changing the law. One legislative attempt to do this has already been defeated in the House of Representatives.

Legal Responsibilities—for Whom?

Under existing law, what responsibility does a musical accompanist have in regard to the performance of copyrighted music for dance classes? According to Barry Knittel, licensing director of ASCAP:

> The copyright law says that the user as well as the performer can be held responsible for the fee. Since 1914, ASCAP has simply chosen to license the user, who is in more fixed surroundings than the musician is. Technically, under the copyright law, the musician can be held liable for copyright infringement also. But ASCAP has always wanted to make sure that there was never the perception that people were paying twice for the same product, so we have gone to great pains not to get ourselves into that situation."
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> A differing legal viewpoint is presented in a BMI booklet entitled *For the Record: Questions and Answers on the Performance of Copyrighted Music.* In it, Jack C. Goldstein states [p.5]: "The proprietor of a place of business must bear the legal responsibility for the unlicensed performance of copyrighted music by musicians hired by the proprietor, even if the musicians are independent contractors over whom the proprietor has no control." The legal expert further notes [p.61: "The proprietor of a place of business may be held liable for copyright infringement even though the musicians performed the copyrighted music against the proprietor's orders." In practice, BMI's director of marketing and licensing, Michele Reynolds, confirmed that BMI looks to the studio owner for the responsibility.

Hostile Feelings Surface Among Dance Teachers

Perhaps it is not surprising that a dance teacher may grumble about how much money must be paid for a license to allow an instrumentalist to draw from the repertory of copyrighted music. Unfortunately, some of this discontent sometimes gets directed towards studio accompanists, who in fact reap no reward from the current licensing practices. It can be observed that while most dancers love music, some of them seem to have a not-so-latent resentment of the professional music "industry" in general. For instance, one irate critic in the dance field remarked privately to the author that people in performing-rights organizations are "a bunch of gangsters; nothing but Mafia-controlled extortionists." How did she know this? "Because they have such elegant offices." Yet a subsequent visit to the licensing department of ASCAP revealed offices which are comfortable but hardly extravagant by midtown Manhattan standards.

The "Industry"

At this point it seems pertinent to point out that both BMI and ASCAP are not-for-profit service organizations, and that all their income from licensing is distributed among creative members and affiliated publishers (after payment of expenses covering about 20 per cent of revenues).

It should also be emphasized that with regard to "the music industry," (a term which depersonalizes composers collectively), we are talking about the following:

every hit tune played on every radio station in every city in the country; spin-offs from the background scores for every show on TV and every commercial movie soundtrack; plus atmospheric background tapes for just about every restaurant, bar, bowling alley, beauty salon, shopping mall, hotel, baseball stadium, large elevator, and movie theater in America. That adds up to considerable amounts of music and millions of dollars in licensing fees annually.

Much of this music, obviously, falls more into the category of "entertainment," or "popular" styles. Historically, jazz and concert works have not been noteworthy as money-makers for their creators. Similarly,

writing musical scores for ballet and modern concert dance is not something that musicians do in expectation of mega-buck rock-star incomes. But regardless of the styles of music that earn the most income, the central legal purpose of the performing-rights organizations is summed up appropriately in ASCAP's articles of association: "to protect composers, authors, and publishers of musical works against piracies of any kind."

Who Gets the Royalties?

Leaving aside for the moment the question of what constitutes legal "piracy," there is still the question of just exactly *which* composers benefit financially from the playing of copyrighted music in licensed dance studios. As pointed out by a letter published anonymously in *Dance Magazine* [June 19911: "An unfair aspect of the situation involving performing-rights organizations is the way they distribute the royalties they collect....it would seem that those composers [whose specially-tailored music is heard in dance classes] should be entitled to a percentage of the royalties collected. This has never happened."

When questioned about this viewpoint, licensing officers at both BMI and ASCAP pointed to the "impossible" task of monitoring just exactly which pieces are played during dance classes. They also felt that at least in the jazz, tap, and aerobics styles offered at most private studios, the music heard in class was likely to reflect the general proportions and selections heard over popular radio stations.

Ralph Jackson at BMI was asked about possible royalties for a composer who writes *only* for dance studios (particularly for ballet and modem dance). "Right now," he stated, "there is no method of payment for such a person." However, Jackson went on to clarify that when the total pool of income from licenses increases, then *all* BMI composers benefit, since disbursements are on a percentage basis. As an example, he cited such a "well-rounded" composer as Michael Torke, who has orchestral and radio performances in addition to his successful collaborations with New York City Ballet's director, Peter Martins. Such a musician who concentrates on *composing—for* all possible uses—will benefit financially from the licensing of dance studios. In contrast, it seems that musicians who compose and improvise exclusively for dance somehow get short shrift or no financial benefit at all from the current performing rights system.

Air-Play the Main Basis of Disbursements

The disbursement procedure at BMJ was explained in more detail by Michele Reynolds: “The only basis upon which we can pay royalties is air play,” she pointed out. (For concert music, the procedure is somewhat different, based on more of a census reporting, and royalties are weighted depending on the particular piece and the hall in which it is presented).

When asked if there are any procedures in place to extend royalty payments to affiliated composers whose works are in fact being “performed” during dance classes, Reynolds registered doubt: “We would have to establish a whole logging procedure for all dance studios around the country. That would be possible, but it would be an expensive proposition.” Reynolds was concerned with large numbers. Any personalized monitoring would immediately suggest considerable costs. “The reason that we are able to pay so much out to all our affiliates,” she emphasized, “is because we keep the overhead *low—very* low.”

When Barry Knittel at ASCAP was questioned similarly, he suggested: “For those people who believe that their songs are not being picked up in our survey, AS CAP has an awards panel. They need only write and say that these songs were played these days, and the awards panel will review the matter and pay a royalty for those performances.”

Fee-Free Recordings?

Despite such avowed policies, some composer/ instrumentalists who specialize in creating music for dance seem to have given up on the prospect of earning any substantial royalty fees for the performance of their music in studio classes. Instead, they have opted for earning money more directly by producing and selling their own recordings of music for instructional dance. (Since all the arrangements between composers and performing rights organizations are negotiated contracts, even affiliated composers have the option of *not* including certain pieces among those covered by licensing.)

One finds, for example, Don Caron sending out brochures for Random Touch records with this italicized announcement: “No Licensing Restrictions. We are not regulated by BMI, ASCAP, SESAC, or any music licensing organization. When you purchase any of our recordings, you are extended permission to use them in all of your classes and performances without restrictions.” Similarly, Dansounds label announces in bold face at the top of its brochure: “Use Dansounds music in the Studio and in Performance. We are NOT affiliated with ASCAP or BMI.”

A System Unfair to Specialists for Dance?

Perhaps most indicative of some unfairness in the disbursal of performing-rights royalties is the case of the late Lynn Stanford. Although he was always among the first to champion live music for *all* dance classes, he nevertheless was encouraged to record many of his original improvisations, as well as his stylized arrangements of tunes both from public domain and in copyright. With his partners, he found considerable success in this business precisely because so many ballet teachers across the country do not hire live musicians for their classes. By the time of his death in 1991, Stanford had seen the commercial release of 20 discs of music intended for instructional dance purposes, with sales totaling upwards of $100,000.

Robert Weigel, business founder of Bodarc Recordings, confirmed that although Stanford had been a member of ASCAP for years, he received no performing rights royalties whatsoever on the substantial “public performances” of his own copyrighted music in thousands of dance studios around the country. This situation held despite the fact that this composer/pianist *had* applied for special ASCAP awards. His applications were turned down.

“This system hurts the dance specialist,” observed Weigel. Consequently, Bodarc has joined the list of record companies which will waive performing-rights royalties for classroom use only. However, it should be noted that such waiving of performing rights royalty fees is not automatic; individual dance teachers must write to the company and formally request permission for studio use of Stanford’s recordings. Moreover, it is important to note that such recordings are *not* “copyright free,” a term apparently coined by dance teachers who are opposed to licensing. The fact remains that if any of Stanford’s recorded music is to be used in dance recitals, for example, then *grand rights* still apply, and individual arrangements must be made with the recording company.

Private Teachers’ Reactions Seen as Typical

The waiver of performing rights fees for recordings has been welcomed by private teachers and owners of small community-based studios. There are thousands of these across the country, offering everything from creative

movement for toddlers, to ballet, jazz, tap, aerobic dancersize, modern dance styles, and baton twirling. Most important to note in this context is that almost without exception, these private teachers use recordings rather than hire live musicians to accompany their classes. Many of these dance teachers apparently are accustomed to choosing any music they like and then duplicating tapes with no concern whatsoever for possible copyright infringement.

From one standpoint, perhaps they can hardly be faulted for this, for our entire culture has accepted the sale and use of "boxes" equipped with double tape decks precisely so that music can be re-recorded at home "for free." Citizens who consider themselves otherwise law-abiding commonly loan each other recordings to copy. In fact, this practice has been rather surprisingly documented in *Copyright and Home Copying: Technology Challenges the Law,* which was issued by the U.S. Congress, Office of Technology Assessment, in 1989. Among its conclusions are the following points:

> The survey found that most members of the public considered themselves to be unfamiliar with copyright law, but they nevertheless had clear-cut ideas about the acceptability of home taping....Perceived familiarity with copyright law did not reduce the likelihood of home taping, nor did lack of familiarity with the law increase it."
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> "When asked about the acceptability of making a taped copy for your own use of a record, tape, or CD that you own,' a majority *(57* percent) gave a score of...perfectly acceptable. Moreover, *75* percent of respondents ranked this behavior on the acceptable side of the scale....Only 11 per cent of the public ranked copying of records, cassettes or CDs now owned for his own use on the unacceptable side of the scale.
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> The public acceptability of many forms of home music taping was even more clearly seen in considering situations in which the owner of the original materials did not retain the copies of the prerecorded music. When asked how acceptable they considered 'making a taped copy to give to a friend of a record, cassette, or CD that you own,' a majority of the sample (63 percent) rated the behavior as acceptable…while 40 percent rated it perfectly acceptable."

In such a social context, it came as a big shock to owners of dance studios that they were suddenly asked to pay for something that was formerly theirs at no cost. Even B MI's Michele Reynolds acknowledges: "When you use something for a long time for free and then you are told you have to pay for it, it's not easy to take."

Resentment Abounds

For dance teachers, the occasion of initial letters from BMI or AS CAP may mark the first time they have had to confront a specific dollar value for the musical component of their classes, and their reaction is often a feeling that somehow it is "unfair" that they be expected to make ongoing payments for the energy of music just as they do for the energy of electric light in their studios.

Indicative of the ire felt by dance teachers are some of the excerpts from letters published anonymously in *Dance Magazine,* whose senior editor Marion Horosko has been spearheading a movement to exempt all dance studios from being subject to licensing fees for use of copyrighted music. Among the comments of her readers was this opinion: "Our feeling is that composers compose, and they should thank their lucky stars there are dance studios keeping their music alive." And then there was this one: "For centuries, talented people have shared their talents....What a racket this is! ...What the performing rights groups are getting away with is wrong."

Upon hearing such statements, ASCAP's Barry Knittel remarked: "You take these people who talk about going to Congress and changing the copyright law. If they were writing the music, we would hear them weeping and gnashing their teeth at the thought that they were not going to be compensated for the use of their music. If someone were to choreograph a dance piece, and if someone else in that same town did the same choreographed piece, you would hear the screams across town."

A similar reaction was elicited from Rosalie Calabrese, executive director of the American Composers Alliance: "Everybody who uses existing material that has been put together by other creators should be sympathetic to the idea that creators should get paid for what they have done. Certainly a choreographer would not like to find out that his or her dance piece has been copied and is being done somewhere else at many colleges, charging admission and so forth."

Collection Methods Seen as Intrusive

Not only do dance teachers resent the license fees in themselves; they also are critical of the ways in which they feel they are being approached. For instance, Florence Tsu Sinay reported in *Dance Teacher Now* [October 1990, p.35]: "These in- person visits are often by large men at off-hours—at least off hours for a dance studio, when the owner, usually female, is alone. There are reports of telephone calls to homes rather than business locations in the wee hours of the morning, which wake business persons from a sound sleep. There are numerous reports from teachers who have been forced to leave classes to respond to a licensing 'agent' and in some cases interruption of a recital where the 'agent' has implied that the business would be shut down then and there if a licensing check was not written on the spot."

All that is fairly emotional language and an outsider has no way of judging the accuracy of such an allegation. ASCAP's Knittel does not appear to be an ogre. In fact, he speaks cheerfully of how much his own young daughter has enjoyed various kinds of dance classes, and he offered a differing account of ASCAP's licensing policies and procedures: "No business establishment is contacted in person initially. The first contact is always a letter which explains the copyright law, sends an application and a copy of a license agreement for them to review, and suggests that if they have questions they either speak to their lawyer or contact us directly."

At BMI, Michele Reynolds emphasized that her organization's employees are also trained in their approach, which includes a great effort simply to educate users of music in regard to the new copyright law, plus a policy of contacting teachers outside of class if they do not respond to information sent through the mail.

Special Group Discounts

Despite the avowed policies of the performing rights organizations, complaints from dance teachers have mounted. in consequence, both BMI and ASCAP have attempted to ease tensions by offering discount licenses to members of Dance Educators of America and Dance Masters. The paperwork is handled through the offices of these professional associations; the teachers do not have to deal directly with performing rights organizations or worry about possible interruptions during their classes; and best of all, they pay less for the right to use copyrighted music in their classes.

Carol Bierman, president of Dance Educators of America, confirmed that a whopping 50% discount is available to member teachers who arrange their AS CAP and BMI licenses through the group. Yet some of this reduction is due precisely to the fact that DEA and Dance Masters are absorbing some of the administrative costs. It is a form of subsidy—which obviously in turn comes out of the professional organizations' own annual budgets. "There is still a lot of misunderstanding," said Bierman. She and others have noted that many private teachers have *felt* pressure; they have felt intimidated. This is understandable when one learns that in some cases ASCAP employees have come to the *homes* of the teachers. Perhaps it is no wonder some feel "hounded."

The main objection on the part of private teachers has always been that they don't come under the same classification as beauty parlors, conference centers, and other places licensed for the use of recorded and copyrighted music. They raise valid questions about differing legal treatment for educational dance based solely on the fact of whether the school is commercially owned or has been granted nonprofit status.

Dancers are not indifferent to the economic concerns of composers. For example, Carol Bierman observed:

"Many people in the music industry are not receiving benefit from their work. Surely the Billy Joel's make money, but I don't know if the 'little people' make very much money from licensing." Focusing specifically upon the situation of creators of music tailor-made for dance, Bierman wondered if there couldn't be a different method of collecting royalties.

Exactly What Are the Fees?

With all the adverse publicity, one would think "arms and legs" were at stake in regard to performing rights fees. However, the reality may be somewhat more modest than the impression given by some owners of commercial dance studios.

For example, the average license fee collected by ASCAP from private dance studios is between $50 and $75 a year. The lowest proposed fee is $37.83 a year for a ballet studio with 75 students per week. If a teacher has over 300 students per week, the negotiable fee would likely be a maximum of $151.32 a year.

ASCAP's" combination" rates include jazz, classical ballet, tap, and modern dance, as well as acrobatic, gymnastic, square, folk, and ethnic styles—plus aerobics, baton, and slimnastics. Umbrella fees for such a variety of offerings range from a low of $56.74 to a maximum of $226.91. Finally, social ballroom and popular dancing require the highest fees, ranging from$76.67 to$302.65.

BMI (which is the larger organization) has a schedule of higher suggested license rates, ranging from $91 for under 60 students to $482 for over *375* students— regardless of what kind of dance is offered. The reader will be trusted to do some simple arithmetic to figure out just how relatively small these fees are *per student per year.* When broken down into rates per *student per hour,* it would seem that we are literally talking pennies.

How can the teachers gain extra income in order to meet these new fees? One wonders. In order to raise $37.83 extra per year, would a ballet teacher have to raise her hourly fee a few cents per student? Would she have to accept one more student into one class per week? Could she encourage the parents of students to hold a benefit bake sale? Or could she pointedly in turn charge the parents an annual music use fee in order to highlight the cause of her extra expenses?

Teachers Seek Alternatives

The legal alternative to paying for the use of copyrighted music is to do something like what the nation's broadcasters did earlier in the century to protest ASCAP' s policies before the competitive organization of BMI was available: namely, to play *"I Dream of Jeannie With the Light Brown Hair"* a great many times.

Perhaps of interest to Guild members, a rather strange result of all this dissatisfaction among private dance teachers has been the suggestion that dancers can "save money" by hiring unusually creative musicians rather than using recordings. For instance, Scarlet Lynne King of San Antonio Texas wrote in *Dance Magazine* [March 1992, p. 9]: "There are many alternatives, such as finding local musicians who are looking for ways to bring their music into the limelight, or musicians who will play their own or public domain music live. Martha Graham used piano chords, and Doris Humphrey used a drum."

The aforementioned writer disregards the facts that both Graham and Humphrey also worked with outstanding composers. Yet this strange impression commonly persists: that services of talented improvising musicians and composers will cost less than performing rights fees for the use of recordings. Says Florence Tsu Sinay in *Dance Teacher Now:* "Little-known composers...may, for a small fee...compose some original music for you to use for whatever purpose you contract them....The University of Nevada at Las Vegas uses a staff member, Beth Mehocic, to compose original music for use in UNLV dance productions."

Such a viewpoint fails to acknowledge the considerable achievement by a highly-esteemed member of this Guild, in securing a position as composer-in-residence [for over nine years] at a major university. It seems odd indeed to think of musicians being commissioned precisely because a teacher believes she might save money by paying less for original creative work than it would cost to play a record.

In such a case, those who would gain most might actually be the students, because they could experience (perhaps for the first time) what it is like to work with a live collaborative musician instead of a mechanical tape deck or turntable. If some of the dissatisfaction about licensing serves to start a trend towards hiring more live musicians for dance classes, Guild members might be the first to applaud, while simultaneously voicing concern about reasonable financial compensation for creative composition and recorded improvisations that are tailor-made for dance.

Some Questions for the Guild to Consider

As stated rather well in a booklet titled *The ASCAP license: How it works for you:* "The idea of copyright is to encourage creativity by making successful works of creative minds profitable for the creators. Nobody works for nothing, and...composers have to pay for rent and food just as you do."

On a practical level, musicians who are devoting their careers to the field of dance may want to devise and implement some new procedures for insuring that they receive all the financial benefits to which they are legally entitled for the use of their copyrighted music. Among other things, perhaps there needs to be some extended discussion among Guild members concerning reasonable definitions of "work for hire," as well as some dialogue concerning the existing licensing practices of performing rights organizations. Some of the present practices do not seem to benefit the very composers and improvising instrumentalists who devote substantial portions of their careers to creating music for dancers in both the studio and the theater.

Sources

Interviews were conducted in New York City by the author with the following: Rosalie Calabrese, executive director of the American Composers Alliance, May 6, 1991; Ralph N. Jackson, director of concert music relations, and Michele A. Reynolds, director of marketing and industry relations, BMI, May 13, 1991; Barry Knittel, director of licensing and Jim Steinblatt, public relations officer, ASCAP, July 22, 1991. Ralph Jackson and Robert Weigel verified some facts by phone on July 22, 1991, and Carol Bierman was interviewed by phone on September 23, 1991.

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U.S. Congress, Copyright Law of the United States of America, Circular 92, containing revisions to March 1, 1991. (Washington, DC: U.S. Government Printing Office).

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Though not quoted here, a brief introduction to licensing is BMI's pamphlet, "Questions Most Often Asked About Music at Health and Fitness Clubs," c. 1990. Also not quoted, but a clear presentation of the private dance teachers' viewpoint, is Marian Horosko' s article, "Whose Rights?" in Dance Magazine, February 1991, pp 82-83. ASCAP President Morton Gould wrote a letter in response, published January 1992 [pp. 8, 10,137].

Among the helpful legal introductions is J. Gunnar Erickson, Edward R. Hearn, and Mark E. Hal loran, from the Bay Area Lawyers for the Arts, Musician's Guide to Copyright, (New York: Charles Scribner's Sons, revised ed., 1983).

Finally, an organization worth knowing about is the non-profit Volunteer Lawyers for the Arts, with affiliates in 42 cities nationwide, all dedicated to providing free arts-related legal assistance to artists who cannot afford private counsel.

Grateful acknowledgement is made here for the assistance of Nancy Adelson from the New York office of the VLA, both for reading the entire manuscript and making some suggestions regarding a few legal points.

Among the helpful publications of VLA are the following booklets by Timothy S. Jensen, Esq.: *VIA Guide to Copyright for the Performing Arts* and *VIA Guide to Copyright for Musicians and Composers,* both available from the Volunteer Lawyers for the Arts, 1285 Avenue of the Americas, New York, NY 10019.

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