



Transforming Arts Organizations Worldwide

Ballet Practices Research

Secondary information

Contract practices for dancers and participation in external projects

USA

- According to the US Bureau of Labor Statistics, 30% of dancers and choreographers are employed by Performing Arts Companies and 15% are self employed. Freelance has become an increasingly common practice amongst dancers, therefore, companies are used to negotiating the terms of employment, especially if they are being hired as independent contractors. Such terms include:
 1. Credit
 2. Non-compete clauses
 3. Copyright ownership (regarding contributions to the creative process – choreography for example)
 4. Independent contractor will generally not be considered an employee of the company and therefore are not subject to benefits.
- There are only a few positions in the country available with year-round financial stability. It's not unusual for a dancer to take external jobs, second jobs, or file for unemployment in addition to dancing a company's regular season.

GERMANY

- Germany spent the equivalent of 2 billion in arts funding (vs \$75 000 USD being the biggest grant given to a ballet company in the USA). State-funded ballet companies naturally make for better overall job security. Some ballet companies offer a 12-month contract, automatic enrolment in a pension plan and medical insurance.
- Germany provides a small stipend for artists who want to work independently, outside of an official company.

Going digital and photograph copyright ownership

- With live performances being the only way to present their work, ballet and other performing arts companies will have to prepare for recording and taping of their shows. According to Amy Fitterer, executive director of Dance/USA, companies are working on ways to access such equipment to prepare for a hybrid future of performances. Some Ballet companies are adapting their business model "and plan to regular capture of content to build a more robust catalogue," such as the National Ballet of Canada.
- Marc Kirschner, a founder of the paid performing arts streaming service Marquee TV, recommends companies make high-quality captures of live contemporary works rather than put up old footage with rudimentary filming. These can be made with smaller casts and filmed in front of a house with 20 percent capacity.



USA

- **Case study: Horgan v. Macmillan.**

George Balanchine choreographed The Nutcracker for the New York City Ballet and in 1981 he registered a copyright over his choreography. In his will, he left all media, performance and other rights to Barbara Horgan. Horgan learnt that the publishing company Macmillan was going to publish a book about the Nutcracker Ballet, which included 60 photographs of the ballet performance, without Horgan's authorization. Horgan filed a copyright infringement suit against Macmillan. The District Court rejected Horgan's plea, however, the Court of Appeals for the Second Circuit reversed the District Courts decision. The Second Circuit stated that "the district judge took a far too limited view of the extent to which choreographic material may be conveyed in the medium of still photography. A snapshot of a single moment in a dance sequence may communicate a great deal".

If you would like to read more, [this](#) short article is available or [this](#) more detailed analysis about the case and the copyright of choreographic works.

Royalties for re-use of performances

Some examples of reuse of performances:

- Boston Ballet will use archived footage of past performances for a one-hour version to be shown on television in New England.
- Others are offering in-person performances, such as Atlanta Ballet's *Drive-In Movie Experience* allowing patrons to watch a filmed past performance from their car.
- Streaming on platforms such as Marquee TV, who pays royalties to the performing arts companies.



USA

- It seems choreographers continue to receive royalties and commissions on re-runs. In an interview, Trey McIntyre, freelance choreographer, mentions that he switched to a career in photography while still receiving commissions from his work as a choreographer from different dance and ballet companies. You can read his interview [here](#) and if you want to know more, we would be happy to try and contact him.

FRANCE

- Under French law, if you are a choreographer, you are the author of a choreographic work. As such, you can also collect copyright in addition to your salary.

Royalties and copyright in re-use of performances

INDIA

- **Case study: Lalgudi G. Jayaraman v. The Cleveland Cultural Alliance (CCA)**

The Cleveland Cultural Alliance (CCA) produced the dance ballet titled “Jaya Jaya Devi”. Staged in 1994, the music was composed by Lalgudi G. Jayaraman , the story was written by Ms. Sujatha Vijayaraghavan and choreographed by Shrimathi Radha (collectively, the Plaintiffs). The ballet was performed in numerous venues in the US and in India. The CCA sought an assignment of the copyright, however, as no agreement could be reached between the CCA and the Plaintiffs, the copyright continued to vest in the Plaintiffs. In December 2007, the CCA publicized its plans to revive the dance ballet without the consent of the Plaintiffs, and a suit was filed before the Madras High Court seeking first a preliminary and then a permanent injunction. Since there was no written agreement between the parties regarding their mutual rights and obligations and, according to section 17 of the Copyright Act, the author of a work was the first owner of the copyright therein, the Judge ruled that the copyright owner was entitled to all remedies by way of injunction, damages and accounts.

If you would like to read the entire judgement text, you may do so [here](#) or you can also read [this](#) short article which also explores the differences between the US and Indian copyright law.

Cancelled performances and royalties: experiences in other industries

USA

- According to [DeWitt Stern](#), an insurance brokerage firm that works with Broadway shows as well as ballet companies and other performing arts organizations, if a Broadway production cancels shows voluntarily, it will not receive coverage for loss of income. But with a government mandate, losses incurred after two closed shows could be covered.
- If a concert promoter cancels the event due to an epidemic, its insurance may not cover it. Specifics of force majeure clauses vary. For touring musicians, cancellations or postponements is a significant problem for their earning potential as sales for CDs and records and streaming royalties are extremely low.

UK

- As a direct result of the pandemic, workers in the UK theatre sound industry have collectively lost nearly £2 million in income. [The research](#) by the Association of Sound Designers counted a total loss of £1,943,452 in income across the 249 respondents, an average of £7,805 per person. Furthermore, 76% of the respondents said they had more work postponed, equivalent to £750, 000.

Australia

- Approximately 100 organisations, associations and companies from the Arts Industry (including the West Australian Ballet) called the Australian Prime Minister to action to aid the sector after COVID hit. In a letter to Australia's PM, members of the arts sector highlighted that live streaming or digitising work isn't always an option, and that it comes with its own set of problems. Artists and organisations are foregoing ticket sales, copyright payments, royalties and all the other ways that their income is generated. If you would like to read the full letter and the organizations that signed it, you may do so [here](#).

Practices on medical coverage and mental health

USA

- Lack of health insurance coverage is common among dancers.
- Many large companies may provide their employees (dancers included) with the option to elect into a group plan at a reduced rate that is taken from their pay-check each pay period. They may offer this general health insurance to cover issues such as acute illness, chronic conditions, prescriptions, non-work-related injuries, etc. while also having Workers' Compensation Insurance to cover work-related injuries that occur while rehearsing or performing for that employer/company ,
- In other cases, companies may not be able to provide a general health insurance plan due to the size of company or the budget. Freelance dancers are also often responsible for obtaining their own insurance independently.
- There are funds or associations that can help such as: New York Foundation for the Arts and the Robert Rauschenberg Foundation, the American Guild of Musical Artists, Musical Health Alliance.
- Mental health coverage generally depends on the insurance policy.

CANADA

- In 2011, The National Ballet of Canada instituted the Dancer Health and Wellness Programme which includes physical and mental health. 18 healthcare specialists are listed as part of their staff in the organization's [directory](#). These healthcare specialists include: an orthopaedic surgeon, a performance psychologist, a psychotherapist, and a massage therapist, amongst others. It appears that several clinics, some specializing in orthopaedics and sport medicine, donate their time to the National Ballet.

SCOTLAND and AUSTRALIA

- Like the National Ballet of Canada, the Scottish Ballet and [Australian Ballet](#) also list several health professionals in their [directory](#), such as a chiropractor and a gyrotonic instructor as well as a Dance Health Manager and Dance Health Co-Ordinator, amongst others.

Practices on medical coverage

MEXICO

- In 2011, a draft decree was approved in the Chamber of Senators that would issue a law that would create a trust to administer a support fund to ensure social security for the artistic union. However this law draft did not reach the Chamber of Deputies. This year, President Andrés Manuel López Obrador, with the Republican Austerity Law, cancelled the payment to the Treasury of the Insurance of Major Medical Expenses, a benefit that the dancers of the National Dance Company enjoyed. The National Dance Company offered their dancers a pay raise so that they could buy insurance themselves.

FRANCE

- In order to protect artists, French law has established the principle that they exercise their profession within the framework of an employment contract. In French law, the principle is that the employment contract must be set for an indefinite period. However, this type of contract is quite rarely offered to artists, except in some large permanent companies. If you live in France (i.e. you live there for more than 6 months per year), whether you are French or foreign (holding a residence permit if you are from outside Europe), you benefit from French social protection, in particular:
 - Unemployment benefits
 - social security (illness, accident at work, maternity, paternity, etc.),
 - financing of continuing vocational training
- The healthcare system in France offers mental healthcare services that patients can access for free or benefit from large subsidies. However, there has been concern that services are not at an adequate level to cope with demand. Much mental healthcare in France is provided through Medical Psychological Centers (*centre medico psychologique – CMP*). These provide mostly free services covered by state health insurance. Some specialist services involve partial payment.

Useful resources

- A quick and useful guide for dance companies returning to work: "COVID-19 FAQ For Dancers And Dance Companies Returning To The Studios". *DANCE USA*, 2020, https://dance-usa.s3.amazonaws.com/page_uploads/COVID%20FAQ%20-%20MAY%202020.pdf. Accessed 14 Oct 2020.
- A summarized resource for dancers seeking to understand health insurance: "Health Insurance tips for dancers", Task Force on Dancer health, Dance USA, https://dance-usa.s3.amazonaws.com/page_uploads/Insurance%20Tips%20FINAL%20PDF.pdf
- The Dancers Forum Compact was created to establish guidelines for the work relationship between dancers and choreographers. The forum was created in 1996. It addresses topics such as crediting, contracts, working conditions for dancers, amongst others.
The Dancers Forum Compact for a Working Relationship between Dancers and Choreographers, *Dancers Forum*, 2002, https://s3.amazonaws.com/NYFA_WebAssets/Pictures/1d633b67-07c1-403c-aa78-8132f0fe9825.pdf

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