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## **Book Review: Choreographing Copyright: Race, Gender, and Intellectual Property Rights in American Dance by Anthea Kraut**

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# The IP Law Book Review

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**CHOREOGRAPHING COPYRIGHT: RACE, GENDER, AND INTELLECTUAL PROPERTY RIGHTS IN AMERICAN DANCE** by **Anthea Kraut**

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Dance may be one of the world's oldest art forms, but it is a relatively recent entrant into the sphere of copyright law—and remains something of an afterthought amongst copyright lawyers and scholars alike. For copyright scholars, at least, that should change with the publication of Anthea Kraut's *CHOREOGRAPHING COPYRIGHT: RACE, GENDER, AND INTELLECTUAL PROPERTY RIGHTS IN AMERICAN DANCE*. Kraut performs a fascinating exploration of the evolution of choreographic copyright—sweeping, political, polemical—that should leave no one in doubt as to the normative significance of choreography as a subject matter of copyright law and policy. Nor should doubt remain as to the political significance of copyright within the realm of choreography. Choreographic copyright, Kraut persuades us, is a key site for the negotiation of subjecthood and the navigation of shifting power flows. Through carefully researched and beautifully narrated case studies that reveal the role of race and gender in the allocation of intellectual property rights, Kraut weaves a compelling historical and socio-cultural account of copyright's emergence and exploitation on the stages and in the studios of 19<sup>th</sup>-21<sup>st</sup> century America.

A scholar of dance, Kraut contributes to an increasingly interdisciplinary conversation around the legal structures of the intellectual property system, challenging the traditional formal account of copyright law with its facially neutral concepts of authorship, originality, ownership, and economic incentive. Bringing to bear lessons from dance, performance and cultural

studies, critical race scholarship, and critical legal studies, Kraut expertly deconstructs the edifice of copyright law to reveal the gendered and racialized assumptions of value and social hierarchy on which its foundations lie. Perfectly adept at explaining the law and its development through statute, regulation, and case law, Kraut confidently engages with the legal scholarship on the nature of copyright while also seamlessly drawing on a rich body of literature on dance history and philosophy, anthropology and ethnography. The contribution that this book makes to the field of dance and theatre studies has already received worthy recognition<sup>1</sup>—but it is the interdisciplinary light that it sheds on the legal theorizing of copyright in dance and beyond with which I am most impressed. In particular, Kraut’s book should be welcomed as an important contribution to legal scholarship in the blossoming areas of copyright and choreography; intellectual property, race and gender; and intellectual property’s negative spaces.

In the first regard, the book adds greatly to a surprisingly small body of academic scholarship grappling with copyright law’s treatment of choreographic works.<sup>2</sup> Coming from a legal perspective, such works typically focus on the significant doctrinal challenges involved in, for example, parsing protectable original expression from public domain “social dance steps and simple routines;” separating the choreographic “work” from the “system, method or mode of operation” that copyright ought not to protect; adequately fixing the choreographic work in a stable, material form that allows the work to be protected, registered and readily identifiable; and untangling the ownership claims of dance companies, choreographers, and performers. Each of these challenges presents fascinating practical and policy questions for legal scholars to examine, pressing not just at the subtle incoherencies of choreographic copyright but revealing the uncertainties inherent in copyright law at large. Kraut recognizes these doctrinal challenges as she tackles particular cases, but refuses to reduce them to interesting questions of law: rather, they play at the peripheries of a much larger challenge—revealing the inherently political nature of recognizing, defining, allocating, and circumscribing copyright in choreographic works.

In this political vein, Kraut’s book also represents a major contribution to the legal scholarship at the intersection of intellectual property, race, and gender. This vital area of critical concern has emerged, over the past decade or two, to occupy a central place in critical legal approaches to copyright, radically unsettling the long-held notion that its privileges apply equally across cultural, geographic, racial, gender, and economic divides to anyone who can objectively lay claim to the label of “original author.” Beginning

with the work of scholars such as K.J. Greene (who is thanked in this book) and Rosemary Coombe (whose work Kraut describes as instrumental to her thinking) (p. 35),<sup>3</sup> a community of critical scholars has shown that the law's labels are differentially bestowed upon certain creators and genres of creative expression depending on the identity of the author(s), the perceived value of the work within the dominant culture, and the social context from which the author speaks.<sup>4</sup> Of course, it should be no surprise that racial and gender inequalities permeate copyright law as they do any other area of our law and society, subordinating some voices for the valorization, amplification, and economic benefit of others. What Kraut demonstrates, through her examination of the ebbs and flows of copyright in choreography, however, is the extent to which the recognition or denial of copyright has always depended on the dancer or choreographer's "position in a raced, gendered and classed hierarchy, and on the historical conditions in which they made, and made claims on, their dances" (p. xiii). Nuanced in its telling but simple in its essence, Kraut's argument is that "choreographic copyright emerged out [and so retains] the same racialized logic of property that has persistently treated some bodies as fungible commodities and others as possessive individuals" (p. xviii). Through one choreographer's story after another, Kraut tells us how, "although race and gender rarely surfaced as explicit factors in dancers' pursuit of copyright protection or in the law's uneven bestowal of that protection, choreographic copyright has served to consolidate and to contest racial and gendered power" (p. xiii).

CHOREOGRAPHING COPYRIGHT should also be received as a welcome addition to the so-called "negative space" literature: the growing body of academic work that examines what happens in creative communities when intellectual property protection is absent, whether in law or in practice.<sup>5</sup> From the perspective of the legal scholar, the purpose of these forays into different and often marginalized communities of creative practice is often to unsettle assumptions about the incentive structures established through law, and to explore how these map onto (or fail to map onto) people's actual decision-making about what and how to create, or shared norms around when and how to copy (or not). Kraut's exposition reveals the extent to which the dance world—whether of late nineteenth century theatres, early twentieth century stages, or twenty-first century streets—offers a perfect example of how creativity thrives and norms of sharing develop in the general absence of formalized legal claims over—or recognition of—expressive works as such. Nonetheless, the denial of copyright to particular creative communities and particular actors within or at the margins of those communities remains subject to powerful critique as a mode of "invisibilization" (pp. ix-x).<sup>6</sup> At the same time, Kraut acknowledges and

warns of the way in which the vesting of copyright—particularly in the *embodied* choreographic expression of the dancer—threatens to exacerbate the kind of objectification and commodification to which gendered and racialized bodies have historically been subjected.

Thus, with the natural balance of the proverbial ballerina, Kraut tip toes along the narrow line that many legal commentators struggle to hold. Kraut succeeds, to my mind, where others have faltered: at once and convincingly condemning the denial of recognition that the refusal of intellectual property rights can represent, while sustaining a critical skepticism of the proprietary mode through which such recognition manifests and is operationalized in the marketplace. What emerges is a complex tale: a celebration of ownership in its connection with personhood, combined with a measured wariness of property in its connection with alienability and the conditions of capitalist exchange. The line she draws between the discourse of intellectual property rights and the empowerment of African American performers, for example, explicitly proceeds along the same path of principled pragmatism taken by critical race theorist Patricia Williams with respect to the discourse of rights in general (p. 131).<sup>7</sup> Rather than arguing for or against choreographic copyright or legal reform, Kraut contends only and importantly that “copyright and choreography productively illuminate one another and the workings of race and gender in American dance” (p. 5).

The book is divided into five chapters with an introduction and a coda. The Introduction, entitled “Dance Plus Copyright,” acquaints the reader with copyright’s tentative presence in the world of dance, and with the dance world’s tentative embrace of copyright. While acknowledging the problematic (sometimes even farcical) (p. 2)<sup>8</sup> nature of efforts to own physical movement in the digital age, Kraut points the reader firmly towards the racial dynamics of appropriation and ownership, insisting from the outset that it is insufficient to simply dismiss choreographic copyright as either folly or futile. Rather, the challenge is to recognize that “[q]uestions of who possesses the rights to which movement, of who is authorized to borrow from whom, and of who profits from the circulation of dance are all entangled in the legacies of racial injustice” (p. 2). The Introduction is worth reading in its own right for its concise but surprisingly comprehensive overview of relevant debates in copyright theory (from public domain and free culture critiques of copyright’s expansion to concerns about its “Euro-modernist” origins and Western Enlightenment underpinnings) (p. 7), as well as its survey of raced and gendered conceptions of property (from labour and personhood theories to “whiteness as property”) (p. 27),<sup>9</sup> and conceptions of materiality (commodification, embodiment and corporeality) in respect of both property and dance.

With this complex ground-work laid, Kraut embarks, in Chapters 1-5, to explore choreographic copyright case studies, drawing on a “combination of traditional performance sources and traditional legal sources,” to examine “how dance-makers with various degrees of privilege, working in the genres of modern dance, ballet, tap and jazz at various historical moments, engaged with the discourse and legal apparatus of intellectual property law” (p. 41). In telling these stories, Kraut mines them for illuminating lessons on “the ways dancers both participate in and resist the commodification of their embodied work, the stakes involved in that participation and resistance, and the effects of race and gender on both” (p. 41).

Chapter 1 relays the experience of a white, female modern dancer, Loïe Fuller, as she sought to claim ownership of her “stolen” “Serpentine Dance” (p. 64),<sup>10</sup> culminating in the 1892 case of *Fuller v. Bemiss*.<sup>11</sup> The case is cited quite frequently in the choreography context for the derisive manner in which Fuller’s claim was dismissed by the court as falling short of the requirements of “dramatic composition.” Indeed, Judge Lacombe concluded that the “mere mechanical movements” of Fuller conveyed “no other idea than that a comely woman is illustrating the poetry of motion in a singularly graceful fashion.” The idea was “pleasing” but “hardly...dramatic” (p. 73). Kraut observes the gendered implications of the decision, noting how gracefulness and visual pleasure are attached to the female dancing body as object, while denying her “interiority” and “status as an authorial subject entitled to ownership” (p. 74).<sup>12</sup> True to form, however, Kraut does not start or end her analysis there, but adds further layers of contradiction, introducing new tensions just as the more obvious conclusions were beginning to solidify. She notes, for example, that the “Serpentine Dance” was not the result of *de novo* origination but rather borrowed from Indian “nautch” dancing, introduced to the West through colonial cultural flows. When “white Western bodies” become the privileged interpreters and masters of Oriental dance, she contends, they lay claim to “Eastern ‘raw materials’ through their choreographic practice” (p. 63). With the disavowal of antecedents and the arrogation of proclaimed “creative genius” and “novelty,” Fuller is not presented simply as subordinated female subject, but also as privileged subject “claim[ing] the status of the white Romantic artist” (p. 65) and thereby seeking “to signal her distance from the chorus girls, skirt dancers, and Nautch dancers of the commercial stage” (p. 66). Kraut charts Fuller’s continued pursuit of intellectual property rights to “elevate her station,” navigating the “patriarchal organization of the mixed-race commercial stage” (pp. 80-81). Ultimately, Kraut concludes that Fuller’s turn to the legal apparatus “must be seen at one and the same time

as an act of gendered resistance against a patriarchal system and an assertion of racial privilege within a system of white dominance” (p. 90).

A similar narrative approach guides the reader through each subsequent chapter. The themes, tensions and interpretations that Kraut presents are constantly twisting and turning in on themselves, resisting the reader’s confident grasp, refusing to simplify the intersectionality of their subjects or the shifting, contextual nature of power. Chapter 2 delves into the relationship between race and property from the other side, exploring the efforts of Johnny Hudgins, an African American blackface comic pantomimist, to first defend himself against a breach of contract claim by denying his originality or individuality as a performer, and then to assert himself as an owner of copyright over his original act a few years later. Mining the contradiction, Kraut observes: “The irony of viewing Hudgins as a commodity that speaks and of viewing that speech as an affirmation of his personhood is that his speech...on some level reinforced the commodity status of his dancing body” (p. 125) In Chapter 3, Kraut examines how notions of property were both refuted and reinvented amongst African American dancers of the 1930s and 40s. Referencing the work of legal scholars such as Boatema Boateng and Yochai Benkler, (p. 157)<sup>13</sup> Kraut argues that a shared tradition of “stealing steps” amongst African American vernacular dancers, combined with codes and conventions that governed borrowing, reveals “the ways in which notions of intellectual property play out in and around practices that the law refuses to recognize” (p. 164).

1940s and ’50s Broadway is the focus of Chapter 4, which tracks the battle for choreographers’ copyright waged by white women such as Hannah Holm (who successfully registered the choreographic score for “Kiss Me Kate) and Agnes de Mille (the choreographer of “Oklahoma!”), whose advocacy later paved the way for the inclusion of choreography in the 1976 Copyright Act). Their “success” is not, however, the full story. In her telling of the tale, Kraut emphasizes that “granting the choreographer intellectual property rights necessitates suppressing the non-autonomous and non-original aspects of the creative process: its collaborations, its borrowings, and vitally, its dependence on the labour of racialized others” (p. 197). She then adds to the story Faith Dane’s 1962 common law copyright claim in the musical “Gypsy,” dismissed because her performance of “bumps, grinds, [and] pelvic contractions” could not rise to “the status of a property right.”<sup>14</sup> By juxtaposing these case studies, Kraut underscores how decisions about copyrightability (and so access to “the rights of possessive individualism”) (p. 216) are rife with distinctions between high and low art, intellectual and physical labour, moral virtue and morally suspect sexuality.

The final chapter provides a thorough account of the two major choreography copyright cases post-1976: one that upheld the infringement claim of the George Ballanchine estate;<sup>15</sup> and the other that denied the ownership and infringement claim of Martha Graham's estate.<sup>16</sup> Having emphasized the embodied nature of the choreographic work throughout the book, Kraut tugs on this string, asking, "what does the irrevocable loss of the choreographer's body [in death] mean for the figure of the author and for the afterlife of the choreographic work?" (p. 221). She beautifully captures the significance of copyright's romantic author trope, noting that after the literal deaths of two great American dance icons, "what was implicitly on trial in their copyright lawsuits...was nothing less than the choreographer-as-genius" (p. 228). Perhaps it ought not to surprise us, then, that it was the male genius who persisted as possessive individual post-mortem, "entitled to the historically white masculine privilege of propertied personhood" (p. 262).

If the racialized and gendered dynamics and power flows of choreographic copyright were beginning to seem clear, however, a final twist is presented in the Coda, which explores the controversy around African American pop star Beyoncé's evident copying, in her "Countdown" music video, of Belgian choreographer De Keersmaeker's acclaimed modern dance "Rosas danst Rosas." This offers the opportunity for Kraut to break from her U.S.-frame, panning out to transnational dimensions of cross-border cultural flows, and the implications of choreography's digital circulation. In a controversy involving parties at "opposing poles" in the contemporary dance landscape, it might have been tempting to present this twist as an optimistic turn: the empowered black female performing artist successfully appropriating white, avant-garde art, thereby "invert[ing] the historical pattern of acclaimed white artists taking from non-white dancers" (p. 268). The tale could have been one of racial and gender progress, revealing the power of art, in the internet age, to unsettle social hierarchies on the world stage. (pp. xvii-xviii) Resisting such a tidy final act, however, Kraut instead invites us to consider how the critical response to Beyoncé's appropriations reveals continuing anxieties around the appropriate flow of choreographic traffic (pp. 265-266). Beyoncé's reproduction ("re-embodiment") (p. 276) of the choreography within commercial "global pop culture" ("coded black") (p. 274), was "a tacit attenuation of white privilege," which could be reclaimed only by reasserting authorial control. Having accused Beyoncé of "stealing," De Keersmaeker's decision to run a "Rosas Remix Project" and invite the public to upload their own versions of the choreography does not read, to Kraut, as a concession to the post-proprietary circulation of digitized dance in a participatory online environment: paradoxically,

perhaps, it looks more like an alternative copyright claim: “an attempt to regulate choreography’s reproduction and to separate out the right kind of circulation from the wrong” (p. 280).

The picture Kraut paints, in the telling of these stories, is not ultimately one of progress, or even evolution, but one about the intractability of race and gender as hierarchizing constructions that continuously regulate the role of author and the privilege of proprietorship.

Most of the choreography copyright cases examined in Kraut’s book and outlined above have made appearances elsewhere in the existing literature on copyright in choreographic works. Perhaps most notably, interesting accounts of an overlapping array of cases, similarly focused on emphasizing the privileging of whiteness and the presumed masculinity of authorship are provided by Caroline Picart in her excellent book, *CRITICAL RACE THEORY AND COPYRIGHT IN AMERICAN DANCE*.<sup>17</sup> While I would have appreciated a more carefully articulated explanation of the commonalities and differences between Picart’s and Kraut’s account of this legal history,<sup>18</sup> I found both to be valuable and much needed contributions to the landscape of critical copyright theory. Indeed, I hope that Kraut’s book and Picart’s represent the start of a new wave of critical and interdisciplinary work in this field. I have argued elsewhere that the increasing number of controversies around choreographic “appropriation” in popular culture, such as those levelled against Beyoncé’s music videos, raises the specter of choreography as a new front in digital copyright wars.<sup>19</sup> Whether or not that proves to be true, there is no question that choreographic copyright offers up a fertile terrain within which to explore the contours of copyright law, challenging and rethinking how the law constructs and values the author, authorship, and the work. Far from competing over the same academic territory, there is plenty of room here for many more voices to enter the fray.

As for Kraut’s voice, it is possible that her prose will be a little off-putting to some, straying as it occasionally does from the richly poetic to the potentially opaque. Readers familiar with the terminology, theoretical constructs, jargon and style of writing in socio-cultural and gender studies will undoubtedly feel more at home than those used to the typical legal academic terrain. Certainly, the writing can be dense, and the book is not a quick and easy read. But the reader is rewarded for her persistence. After all, Kraut’s objective is not to simplify the role of copyright, race or gender in the stories she is telling, but to convince the reader of their complex interplay. She does so in a way that seems almost to revel in their context-specific contradictions. Embracing the complexities and exposing the

contradictions, Kraut offers a deeply nuanced account of a tangled “knot of recurrent issues: raced and gendered hierarchies in the theatrical marketplace; white women’s complication relationship to property rights; legacies of ownership of black bodies and appropriation of non-white labor; copyright as a discourse of domination and of resistance; the contradictions of self-ownership; and the tension between dance’s ephemerality and its reproducibility.” (p. xvii)

CHOREOGRAPHING COPYRIGHT is an illuminating book about copyright’s complicated engagement with choreographic expression in the United States, written “from a critical dance studies perspective that foregrounds race and gender” (p. xvii). It deserves a thoughtful reading by a wide audience within the IP academy, but will be of particular interest to anyone whose work brings a critical or interdisciplinary lens to bear on issues of copyrightability, authorship, ownership, equality, and the circulation of ideas within and across creative communities.

#### ENDNOTES

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<sup>1</sup> CHOREOGRAPHING COPYRIGHT won Outstanding Book from the Association for Theatre in Higher Education (2016) and the Biennial Sally Banes Publication Award from the American Society for Theatre Research (2016).

<sup>2</sup> See e.g., Gary Ordway, *Choreography and Copyright*, 15 ASCAP Copyright Law Symposium 172 (1967); Martha M. Traylor, *Choreography, Pantomime and the Copyright Revision Act of 1976*, 16 New Eng. L. Rev. 227 (1980-1981); Barbara Singer, *In Search of Adequate Protection for Choreographic Works: Legislative and Judicial Alternatives vs. The Custom of the Dance Community*, 38 U. of Miami L. Rev. 287 (1984); Leslie Wallis, *The Different Art: Copyright and Choreography*, 33 UCLA L. Rev. 1442 (1985-1986); Anne Weinhardt, *Copyright Infringement of Choreography: The Legal Aspects of Fixation*, 13 J. Corp. L. 839 (1987-1988); Adaline Hilgard, *Can Choreography and the Copyright Waltz Together in the Wake of Horgan v Macmillan, Inc.?*, 27 U.C. Davis L. Rev. 757 (1994); Julie Van Camp, *Copyright of Choreographic Works*, ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK 1994-1995 (Stephen F. Breimer, Robert Thoerne & John David Viera Eds., Clark Boardman Callaghan, 1994), 59-92; Matt Kovac, *Copyright and Choreography: The Negative Costs of the Current Framework for Licensing Choreography and a Proposal for an Alternative Licensing Model*, 36 Hastings Comm. & Ent. L.J. 137 (2013-2014); Christopher Buccafusco,

Authorship and the Boundaries of Copyright: Ideas, Expressions, and Functions in Yoga, Choreography, and Other Works, 39 Colum. J.L. & Arts 421 (2016); Jessica Goudreault, Copyrighting the Quotidian: An Analysis of Copyright Law for Postmodern Choreographers, *Cardozo Arts & Ent. L.J.* (forthcoming, 2017).

<sup>3</sup> Citing Rosemary Coombe, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* (Duke Univ. Press, 1998)). Kraut also acknowledges Jane Gaines, *CONTESTED CULTURE: THE IMAGE, THE VOICE, AND THE LAW* (UNC Press, 1991), for its treatment of copyright “as an ideological construction embedded in shifting cultural politics.”

<sup>4</sup> See e.g., Olufunmilayo B. Arewa, From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context, 84 N.C. L. Rev. 547 (2006); K.J. Greene, Copynorms, Black Cultural Production, and the Debate over African-American Reparations, 25 *Cardozo Arts & Ent. L.J.* 1179 (2008); K.J. Greene, Copyright, Culture & Black Music: A Legacy of Unequal Protection, 21 *Hastings Comm. & Ent. L.J.* 339, 358-59 (1999); K.J. Greene, Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues, 16 *Am. U. J. Gender Soc. Pol’y & L.* 365 (2008); see also Boetema Boateng, *THE COPYRIGHT THING DOESN’T WORK HERE: ADINKRA AND KENTE CLOTH AND INTELLECTUAL PROPERTY IN GHANA* (UMN Press, 2011); Ann Bartow, Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law, 14 *Am. U. J. Gender Soc. Pol’y & L.* 551, 552, 559-64 (2006); Malla Pollak, Towards a Feminist Theory of the Public Domain, or Rejecting the Gendered Scope of United States Copyrightable and Patentable Subject Matter, 12 *Wm. & Mary J. Women & L.* 603 (2006); see generally Irene Calboli & Srividhya Ragavan (eds.), *DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS, AND INTERSECTIONS* (Cambridge Univ. Press, 2015); John Tehranian, Towards a Critical IP Theory: Copyright, Consecration, and Control, *BYU L. Rev.* 1233 (2012).

<sup>5</sup> See, e.g., Christopher J. Buccafusco, On the Legal Consequences of Sauces: Should Thomas Keller’s Recipes Be Per Se Copyrightable?, 24 *Cardozo Arts & Ent. L.J.* 1121 (2007); Dotan Oliar & Christopher Sprigman, There’s No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy, 94 *VA. L. Rev.* 1787 (2008); Kal Raustiala & Christopher Sprigman, The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, 92 *VA. L. Rev.* 1687 (2006); Elizabeth Rosenblatt, A Theory of IP’s Negative Space 34 *Colum. J.L. & Arts* 317 (2011); Dave Fagundes, Talk Derby to

Me: Intellectual Property Norms Governing Roller Derby Pseudonyms, 90 Tex. L. Rev. 1093 (2012); Kate Darling, IP without IP? A Study of the Online Adult Entertainment Industry, 17 Stanford Technology Law 709 (2013); Kate Darling and Aaron Perzanovski (eds.), CREATIVITY WITHOUT LAW: CHALLENGING THE ASSUMPTIONS OF INTELLECTUAL PROPERTY (NYU Press, 2017).

<sup>6</sup> Remarking on the “entrenched racialized logic that generally assigns authorship and ownership of discrete acts of creative expression to individual white artists while ‘invisibilizing’ the creative labor of individual and collective artists of color.”

<sup>7</sup> Citing Patricia J. Williams, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR (Harvard Univ. Press, 1991).

<sup>8</sup> Describing the copyright infringement accusations made by Richard Silver against a number of performers of the popular 1970s line dance known as the Electric Slide). See also, *id.* at 1 (quoting tap dancer Eddie Rector as having remarked, “Shuck, if you could copyright a step...nobody could life a foot.”); cited in Marshall and Jean Stearns, JAZZ DANCE: THE STORY OF AMERICAN VERNACULAR DANCE (Perseus Books Group, 1968), 338.

<sup>9</sup> Citing Cheryl Harris’s ground-breaking Whiteness as Property 106 Harvard L. Review 1714 (1993).

<sup>10</sup> Quoting Fuller as having written, “They had stolen my dance.... [N]ow others were going to reap the benefit. I cannot describe my despair.”

<sup>11</sup> 50 F. 926 (S.D.N.Y. 1892).

<sup>12</sup> Citing Ann Cooper Albright, TRACES OF LIGHT: ABSENCE AND PRESENCE IN THE WORK OF LOÏE FULLER, 28 (Weslyan Univ. Press, 2007).

<sup>13</sup> Citing Boateng; Benkler, THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM (Yale Univ. Press, 2006)).

<sup>14</sup> *Dane v. M & H Company et al.* 136 U.S.P.Q. 426 (N.Y.Supp.Ct.1963), *per* Justice Aurelio; quoted in Kraut, at pp. 214-15.

<sup>15</sup> *Horgan v. Macmillan Inc.*, 789 F.2d 157, 160 (2d Cir. 1986).

<sup>16</sup> *Martha Graham School v. Martha Graham Center*, 153 F. Supp. 2d 512 (S.D.N.Y. 2001); *Martha Graham School v. Martha Graham Center*, 224 F. Supp. 2d 567 (S.D.N.Y. 2002); *Martha Graham School and Dance Foundation, Inc. v. Martha Graham Center of Contemporary Dance, Inc.* 380 F.3d 624 (2d Cir. 2004).

<sup>17</sup> Caroline Joan S. Picart, *CRITICAL RACE THEORY AND COPYRIGHT IN AMERICAN DANCE: WHITENESS AS STATUS PROPERTY* (Palgrave Macmillan, 2013)

<sup>18</sup> Kraut acknowledges the overlap and identifies some specific differences in coverage and conclusions, but contends that the primary distinction is that “Picart’s dance research relies heavily on secondary sources, and there are some holes in her historical analysis.” Kraut, p. 38.

<sup>19</sup> Carys J. Craig, *Bodies in Motion: Contemplating Choreography and Copyright Law* (on file with the author).

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