Bad Moves as an Intellectual Property Asset

Sarah Hook[1] Marie Hadley[2] and Vicki Huang[3]

Dance reflects a snapshot of its time and a shared cultural consciousness. This is epitomised by the global phenomenon of Dr Rachael Gunn's (aka B-Girl Raygun) breakdancing performance at the 2024 Olympics. While media discussions have centred on the class barriers that enabled her participation, accusations of trivialising Australian participation in a sport on an international stage, and the appropriation of First Nations movements, this paper explores the legal implications of the aftermath: the rapid dissemination and reinterpretation of Gunn's dance moves in parodic performances. Specifically, this paper investigates the status of dance as an intellectual property (IP) asset. The controversy that surrounds Gunn's Olympics breakdancing performance is used as a stepping off point to consider the legal status of dance under Australian IP laws. The relationship between the monopoly rights granted to choreography via copyright and trade marks versus unauthorised uses is examined. Critical questions are raised about law's role in regulating what the body can—and cannot—do without permission. Does the commodification of choreography and dance movements by IP law undermine the status of iconic dances like Gunn's as a shared cultural text?

Love it or hate it – the 2024 Paris Summer Olympic breakdancing routines by academic and professional breakdancer Dr Rachael 'Raygun' Gunn is likely to become an iconic piece of Australian cultural history. Gunn's unique dance moves and underwhelming score captivated audiences around the world, sparking a meme sensation, dividing opinion in the breakdancing community (Turnbull and Rodd 2024), and leading to much media commentary and critique. In Australia, these critiques included outrage over squandering the privilege to compete as an Olympian, accusations of intentionally scoring zero points, and claims of cultural appropriation of the well-known Indigenous men's 'Kangaroo Dance' that mimics the animal's qualities, energy and spirituality using semi-improvised movements (e.g. Torre 2024; Karacsony 2024). Gunn's path to the Olympics was also intensely scrutinised.

Not all responses to Gunn's breakdancing were negative. She was also celebrated, and her dance routines joyfully parodied. Five days after her Olympics debut, United States (US) comedian Jimmy Fallon opened his *Tonight Show* with a Raygun-themed comedy skit

(Cartwright 2024). Two months later, Minnesota Vikings American Football player Cam Bynum celebrated an interception with Gunn's 'sprinkler' move and kangaroo hop pose (TMZ Sports 2024). Online stores capitalised on her popularity, releasing Raygun-themed Christmas decorations, ornaments, and clothing in the US, United Kingdom (UK), and Australia in the lead-up to the 2024 festive season. Gunn seemed bemused by her commodification, yet stated 'If they're gonna use my image … can they at least give me some free copies and maybe some royalties?' (The Project 2024).

The same day that this comment was reported in the media, the iD Comedy Club in Sydney received a cease-and-desist letter from Gunn's lawyers. The venue had been set to premiere comedian Stephanie Broadbridge's musical parody of Gunn's Olympic journey called *Raygun: The Musical*. The legal letter asserted the 'likely choreography' of the musical would infringe Gunn's copyright in her 'Olympic level choreography' (Bevan 2024: 2). The letter also mentioned Gunn's pending trade mark applications over the word 'Raygun' and two images of her signature kangaroo hop move. The musical was promptly cancelled.[4]

This paper uses the controversy over *Raygun: The Musical* as the stepping off point for examining the nature of dance as an intellectual property (IP) asset under both copyright and trade mark law. Can a movement sequence, such as that which is improvised in a breakdancing competition, subsist in copyright or be protected as a brand? And if it can – what is the legal status of any parody uses of those IP assets by a third party?

Firstly, we will explore the legal status of dance choreography as a dramatic work under the *Copyright Act* 1968 (Cth). Secondly, we will investigate when a parody dance that infringes copyright choreography may be excused as a fair dealing under s41A of the *Copyright Act.* Thirdly, we will explore when a dance move may be registered as a figurative or motion trade

mark and the extent of the monopoly held by the owner.[5] Given the limited case law in Australia, cases and commentary from the US and UK will be drawn upon where relevant.

We identify that certain aspects of dance can be protected as an IP asset. The control that copyright and trade mark rights offer over unauthorised bodily expressions and parodic responses is, however, not absolute. Despite the limited case law, we argue that infringement principles and the existing carve-out for parody under copyright seem appropriate to ensure that public enjoyment of shared cultural moments and movements is not unduly restricted. However, broad claims over infringement[6] or the mere threat of an infringement claim may inadvertently suppress creative expression.[7]

1 Choreography as a Copyright Work

In their letter to the iD Comedy Club, Gunn's lawyers asserted that Gunn held copyright in her breakdancing choreography as 'an original dramatic work fixed in a tangible medium of expression' during the Olympic broadcast on 9 August 2024, describing it as a 'complex sequence of moves and techniques of which our client is the creator and author' (Bevan 2024: 2-3).

In Australia, 'dramatic works' are protected by copyright when they are reduced to material form, have an identifiable author, and are sufficiently original. The *Copyright Act* 1968 (Cth) does not provide an exhaustive definition of dramatic works. However, section 10(1) provides that the definition includes '(a) a choreographic show or other dumb show; and (b) a scenario or script for a cinematograph film'.[8] The protection of choreography, rather than dance generally, indicates that it is the composition, arrangement, and sequencing of movements, steps, and gestures into different forms and spatial relationships that potentially creates a 'work' capable of protection. Even though dance-making is often iterative, collaborative, and dancers imprint their interpretation and individual artistry on the performance of the work (Waelde et

al 2014: 219, 226), the choreographer is typically considered the author and the first owner of choreography that subsists in copyright. This is because the relevant authorial contribution that is protected by copyright law is the contribution to the creation of the choreography, not the performance itself.[9]

While we do not have cases in authority in Australia, US cases have consistently held that as choreography is the object protected by copyright, an individual dance movement such as a plié is regarded as an 'idea' and unprotected by copyright (*Hanagami v Epic Games* (2023): 942). Neither are simple routines and social dance steps such as the waltz step, the Twist, or the second position of classical ballet (*Horgan v Macmillan* (1986): 161).[10] These elements can only be expressed in one way. As such, they also fall into the public domain and can be used by all without restriction. Nevertheless, the arrangement and combination of common dance movements into a routine that amounts to a coherent compositional whole could constitute a work that warrants copyright protection. This means that while Gunn's 'sprinkler' move could be described as a simple routine or social dance and would not, of itself, be protected, when intellectual effort is deployed and the move is arranged with other moves such as 'the kangaroo' and 'snake', as it was, an original copyright work could be created; the choreography would now go beyond a few simple movements with the capacity for only minor linear or spatial variations. Yet, for infringement, more than a few dance moves must be copied – it must be a substantial part taken.

In addition to generally consisting of 'choreography', to receive copyright protection, choreography must also meet the formal features of a 'dramatic work'. It must be intended for performance or representation; 'staged, contrived, or directed' rather than simply recorded (*Australian Olympic Committee v Big Fights* (1999): 67). This is typically expressed as the requirement that a dramatic work have dramatic unity, that is, that it be capable of performance (see, e.g., the New Zealand case of *Green v Broadcasting Corporation of New Zealand* [1989]:

20). This requires dramatic control and a degree of certainty of subject matter so that the choreography is replicable. A lack of dramatic unity has been found where there is a high degree of unpredictability in the outcome of a 'scripted' fireworks display (*Nine Network Australia v Australian Broadcasting Corporation* (1999)), and where a recorded dance performance could not be replicated in real time and space because the use of editing techniques obscured the choreography (see, e.g., the UK case of *Norowzian v Arks Ltd (No 2)* [2000]). Gunn's Olympic performance exhibits the qualities of a dramatic work: the choreography goes beyond random physical movements and is intended for, and capable of, performance.

In terms of the subsistence criteria, the material form requirement presents the main obstacle for copyright protection of dance choreography. Fixation can be achieved through writing or through the making of a recorded copy in electronic form (*Copyright Act* s22(1)(2)).[11] That is, through pre-scripting a dance through notation,[12] or video recording a live performance. Postmodern dance in particular presents challenges to fixation; the more experimental and experiential a dance is, the more difficult it is to reduce it to stable, predictable series of movements (Waelde and Schlesinger 2011: 260; Anon 2025: 1437). However, while pre-scripting may pose difficulties in such circumstances, improvised dramatic performances receive the same legal protections as pre-scripted ones (Arnold 2001: 3) – the live performance must, however, be fixed simultaneously by its video recording.

The necessity for fixation treats choreography as akin to a musical score, something with an abstract structure that is repeatable (Pouillaude 2017: 170). The expressive and embodied nature of dance is arguably ill-served by its fixation in dance notation and its capture by video recording that tends to distort or flatten the performance (e.g. Wallis 1985: 1446; Pellicano 1997: 120-122; Gover 2021: 65; Ravetto-Biagioli 2021: 18).[13] Such critiques are not consequential for copyright purposes because the fixation of a work, as Pila reminds 'does not constitute the work, but rather is required to prove its existence' (Pila 2008: 541). The Olympics

broadcast might not present Gunn's choreography in all its expressive detail – but it does capture the entirety of the work clearly. The work is fixed.

If Gunn's Olympics choreography subsists in copyright, she will hold exclusive rights of reproduction, performance, recording, and adaptation (*Copyright Act* s31(1)(a)). She would be able to control performances of her choreography, or a substantial part of it. As the parody musical was never performed, it is unclear whether it would have infringed copyright. The relevant test is whether the infringing work has taken a substantial part of the source work, and not whether the choreography could be reconstructed in full from the infringing work. As such, US courts have noted that still images of a choreographed work can potentially infringe copyright (*Horgan v Macmillan* (1986): 163), as can a two-second combination of eight bodily movements (*Hanagami v Epic Games* (2023): 942). Performing a quantitatively small portion of Gunn's Olympics choreography could have, theoretically, infringed Gunn's copyright in the dramatic work, if the choreographic elements taken were qualitatively significant to the original work,[14] and if what was taken was considered Gunn's original expression.

If Gunn's copyright had been infringed by the parody musical, it would be prudent to consider whether the use constituted a fair dealing, to excuse Broadbridge's infringement.

2 Parody and Copyright Infringement

Section 41A of the *Copyright Act* provides an exception to copyright infringement if the material is used in fair dealing for the purpose of parody or satire. There are no cases that consider dance parodies in Australia. In the US, there has been litigation involving a cartoon reenactment of the renowned dance lift from the film *Dirty Dancing.* However, that parody dance was relevant to a claim for false endorsement, not copyright infringement (*Lions Gate Entertainment v TD Ameritrade* (2016)).[15]

In literary theory, parody is generally conceived as a work imitating another work to criticise it, although others do speak of parody as irony (Hutcheon 2000: 34), as meta fictional mirror (Rose 1979: 52), and as a technique (Chambers 2010: 11). Courts have resolutely tied parody to humour. In *Deckmyn v Vandersteen* (2014), which involved the parody of a famous comic strip, the European Union Court of Justice defined a parody as something that evokes an existing work but remains distinct from it and expresses humour or mockery ([20]). That two-part definition was applied in the Canadian case (which has similar laws) of *United Airlines v Cooperstock* [2018] (hereinafter *Cooperstock*).

In Australia, the importance of humour to the fair dealing defence for parody and satire has been affirmed. In *AGL v Greenpeace* (2021) (hereinafter *AGL*) Burley J stated: 'Having regard to the second reading speeches [on the legislation], it would appear that the, or a, purpose of the introduction of the exception was to promote freedom of speech by permitting, in particular, the use of humour in the form of parody or satire' ([42]).

Intended as a parodic representation of Gunn's Olympic journey, it is highly likely that *Raygun: The Musical*, if it had been performed, would have met the definition of parody. The repetition of Gunn's Olympics dance – whether in style, quotation, or other imitation, is likely to have served as a playful mockery of the original. Critical distancing could be achieved through its contextual placement within the broader musical's narrative and the audience's recognition of the dance as a parody, both repeating *and* subverting the source work.

As confirmed in *Universal Music Publishing Pty Ltd v Palmer (No 2)* [2021] (hereinafter *Palmer*) and *Pokémon Company International v Redbubble* [2017] (hereinafter *Redbubble*), identifying an infringing work as a parody is only the first step of determining whether infringement is excused under section 41A. The use must also be for the purpose of parody and be fair.

On its face, it is likely that Broadbridge would have been able to easily demonstrate that the purpose of the use of the dance was that of parody. *Raygun: The Musical* was advertised as a parody musical. The use does not appear to be driven primarily by commercial profit (as in *Redbubble*), a desire to defame or punish (as in *Cooperstock*), or any other extraneous purpose like political gain (as in *Palmer*).

In terms of the fairness requirement, the Supplementary Explanatory Memorandum for the integration of parody into the *Copyright Act* noted that 'fairness' 'must take into account that parody, by its nature, is likely to involve holding up a creator or performer to scorn or ridicule' (Commonwealth Government 2006: [44]). For a parody to be a parody it must comment on the source work by conjuring it in the mind of the audience and ironically inverting it; and this conjuring is likely to require a quantitively significant taking. Thus, while the amount and substantiality of the source work taken would typically weigh against a finding of fairness in cases of satire (that comment on society at large rather than the source work) or other fair dealing categories, this is unlikely to be decisive in the instance of a parody (Hook 2019: 103-4). Moreover, as parodies generally have a different audience to the source work, the effect upon the potential market is slight. Commercial use is also seen as generally acceptable as a parody is unlikely to be able to get a licence.

In terms of how moral rights interact with fair dealing for parody, the right of integrity (*Copyright Act* s195AQ) is curtailed by a defence of reasonable use (s195AS) which is likely to mirror fair dealing approaches (Sainsbury 2007: 150). Moral rights would only apply if the work *is* able to be protected by copyright. If this was the case, whether the musical would be seen as derogatory treatment which jeopardises Gunn's honour and reputation is a difficult question. It can be argued that the Olympic routine itself was enough for reputational harm and that the musical merely extends this harm; however, it may then be questionable whether the musical number is a parody or just a copy. The question would be: what is the comment being

made about the work for it to be a parody if the routine itself was a parody originally? The right of integrity has been interpreted as including insult to feelings (*Perez & Ors v Fernandez* [2014]: [104]). It could be argued however that all parody could be seen as insulting and moral rights are not meant to erode exceptions in such a way.

Although the Raygun parody musical never eventuated, Raygun's performance generated dozens of viral memes. This may lead some to question why letters of demand weren't sent to these meme makers. These memes could be an infringement of the copyright in the choreography and in the underlying cinematograph film. As Pappalardo and Meese (2019) explain, these types of uses fall into a 'grey zone'. Memes are technically infringing but mostly tolerated as enforcement is not worth the effort.

While parody exceptions may have been able to save the musical going ahead, the biggest hurdle for adaptations is receiving a groundless threat. Despite there being groundless threat provisions in the Act, creators need to have resources to fund such litigation and the ability to reassure venues and producers that the threat is groundless. This is difficult when venues are risk averse, and the understanding of these exceptions is limited.

We turn now to consider the relationship between dance and trade mark law.

3 Trade Marking a Dance Move

Unlike copyright which protects expression, trade mark law protect brands. Specifically, trade mark law gives a trader a monopoly right over a trade mark (i.e. a sign, word, or symbol) in relation to specific goods or services where that trader is using that mark as a brand. Soon after the Paris Olympics, Gunn applied for three trade marks in various classes including entertainment and clothing.[16] These trade marks included the word 'Raygun', two figurative marks of her in a silhouette kangaroo hop, and another for a photograph of the same. The three trade marks were successfully registered in April (*AU Trade Mark No 2476761)* and May 2025

(*AU Trade Mark No 2485348; 2485349*). These trade mark rights would allow her to enforce against copyists, but only if they were using marks like hers and using them as trade marks, i.e. as brands. It would not stop another trader using these marks in a parodic way (*AGL*).

Trade marks are therefore not useful in the protection of choreography per se. However, recent expansions of the law to include 'movement' trade marks may lead to commodification of discrete motions which could have a chilling effect on other choreographers.

Unlike copyright, trade mark law permits the commodification of a human movement if it is used as a brand (*Trade Marks Act* 1990 (Cth) ss17, 20), but movement marks (also known as motion or gesture marks) are still a rare feature of both Australian[17] and international trade mark registers.[18] In Australia, there are a handful of such registrations including a man throwing salt onto meat (*AU Trade Mark No 1840549*); hands forming a heart shape in front of a chest (*AU Trade Mark No 2086373*); a finger tracing a tick shape onto a hand (*AU Trade Mark No 1862843*); and a drummer (*AU Trade Mark No* 2166425). No movement marks at present in Australia depict a dance move or sequence; however, it is generally accepted that sports movements and other choreographic works could be registered if they meet registration requirements (Kieff et al 2009: 781-2, 784).

These movement marks are short, discrete gestures which are arguably being used as brands; that, is when used, they serve to distinguish the trade mark owner's goods or services from those of other traders in the field (*Trade Marks Act* ss17, 20, 41). The most well-known movement marks in Australia are owned by car manufacturer Toyota. They have run an advertising campaign since the 1980s depicting a person jumping for joy with the trade marked catch phrase 'Oh What a Feeling' (e.g. *AU Trade Mark No 536815*). In 2007, it was reported that Toyota was considering legal action against airline Jetstar for using a 'not dissimilar' jump in its advertising campaign (Weekes 2007). Although no litigation resulted, this incident

garnered mainstream media attention and spurred both parties into trade marking and thus commodifying movements that are arguably elements of basic choreography.

To date, Toyota has successfully registered 28 movement marks in relation to a jumping figure in class 12 (motor vehicles).[19] The record shows that many registrations were opposed by Qantas (Jetstar's parent company), but these oppositions failed. On the register, Toyota's movement marks have similar titles such as 'Moving Image of Man, Silhouette, Jumping with Arms Outstretched Forming Star Shape and Feet Touching Together', and each includes a video clip of a 2-3 second movement (e.g. *AU Trade Mark No 1500012)*. Collectively viewed, some of the 28 poses capture the longer choreography of a person launching themselves from the ground into a variety of celebratory positions. Qantas has also gone on to successfully register their own star jump style motion marks across a multitude of classes including luggage, financial services, and air travel (e.g. *AU Trade Mark No 1514513; 1517025*).

Owners of movement marks have the same rights as owners of more typical trade marks. That is, Toyota could enforce their rights to stop another trader from using a similar movement, but only if that other trader was using that movement to signify their own brand. This is a significant limitation, and other traders would still be free to use choreography of someone jumping for joy or doing a star jump in their creative works, so long as they were not using those motions as trade marks in fields within Toyota's registration, i.e. motor vehicles. Nevertheless, as with all trade marks, there is a potential for a chilling effect on the public if the limits of a trade mark holder's rights are poorly understood.

For example, if Gunn sought registration of her 'kangaroo,' 'shrimp' or 'sprinkler' motions as movement trade marks, this would not stop the public from using these moves at their local disco. Such trade marks would not stop someone from creating a parodic show and using those moves in the show's choreography. This is because none of these uses are use as a trade mark, i.e. use as a brand. Nevertheless, a cease-and-desist letter citing the ownership of

trade marks, as seen in the Gunn scenario discussed earlier, could have a chilling effect and cause other artists to seek expensive legal advice or cancel their shows out of fear, even though Gunn's trade mark rights would not be enforceable against such non-trade mark uses.

Another tension highlighted but unresolved by the Raygun scenario is whether assigning a property interest over 'her' dance moves, validates a form of cultural appropriation from both Indigenous and African American communities (see, e.g., Ravetto-Biagioli 2021). Raygun has reflected on her own sense of imposter syndrome as a 'white Australian academic' in hip hop dance spaces (Gunn and Shaheen 2022). While this article does not address this issue given space constraints it is interesting to compare to Anthea Kraut's scholarship on race in American dance where Josephine Baker's career is used to highlight how black dancers lack the kind of IP rights to their dance that other white dancers have (Kraut 2015). Would an Indigenous dancer have had the same rights to claim dances that had been passed down and protected through custodianship that Dr Gunn attempted to assert?

In terms of a sense of shared cultural owning as opposed to exclusionary proprietary rights enforcement, Dr Gunn herself writes in an article with Feras Shaheen:

> Rather than focusing on authenticity, ownership, and identity, what if we then reframed our relationship to the dance to be one of collaboration and community? To contribute something of ourselves to this now globalised cultural bricolage? In our engagement, we both try to lean into the individuality of our personal expressions of Hip Hop community members, and pay attention to the interaction of our practice, identity, experience, and ethics (Gunn and Shaheen 2022).

This quote unravels some of the authorship claims made, especially the admission of the performance as a globalised cultural bricolage.

4. Conclusion

When Dr Rachael 'Raygun' Gunn performed her dance moves on the world stage at the Paris Olympics, she sparked a global flurry of commentary, critique, and social exchange. Spontaneous and scripted parodies of her performance abounded, one of which was objected

to by Gunn via a formal cease-and-desist letter. This paper used the legal objection against Stephanie Broadbridge's parody musical to propel an examination of dance as an IP asset under both copyright law and trade mark law. Despite both copyright and trade mark doctrines containing some mechanisms to ensure the availability of some uses of dance material for parodic and non-branding purposes, poor understanding of choreography and movement marks undercut the limitations of these protections.

To ensure that public engagement with dance as a cultural text is not curtailed through self-censorship, its availability for subversion should be more clearly flagged in cultural consciousness. Any legislative change is unlikely to dispel a chill that is likely with the widespread use of groundless threats. In fact, this situation shows the strength of Australian copyright and trade mark law, but its strength is only able to be shown if people are brave enough for litigation.[20]

Risk averse venues and publishers are unlikely so brave, and creatives are under resourced to take such a stand. Better public education over what constitutes an infringement is needed so that grand claims in cease-and-desist letters do not have the ability to undermine fair dealing and the ability to parody cultural moments. As Anthony Skinner, owner of the iD Comedy Club, who cancelled the parody musical in response to Gunn's letter of demand, notes, 'The average person has no idea about any of this stuff. It seems that they're just sort of using that to their advantage and trying to get people to crumble' (Olaya and Galvin 2024).

An unintended consequence of the *Raygun: The Musical* dispute is that the media attention educated the public on the reach of the law and the costs of litigation. The media also turned to legal academics for critical commentary, giving a rare opportunity to dispel myths over ownership and its limits. Raygun also faced public backlash over her legal pursuit of another creative artist (McKern 2024). This public backlash serves as an interesting chilling effect in reverse, i.e. it serves as a warning to creatives as to the social costs of enforcing their

rights against parties who the community believes have done no wrong. This public social shaming provides both potential plaintiffs and defendants with the community's collective standard of what properties should be in the public domain or should be safe for subversion.

Determining whether contemporary dance becomes a shared cultural text depends on adaptation and identification by a community of a sense of shared experience and the archiving of that experience through play. When fame is predicated on the virality of a moment through play, the prohibitions on further play may be seen as unfair, especially where a dance is a bricolage of Australian dance movements and Indigenous cultural moves. Despite adequate exceptions in our copyright and trade mark laws that allow us to share a cultural moment, groundless threats are a sure-fire way of chilling cultural expression and creating spaces of cultural exclusion.

Endnotes

[1] Sarah Hook is a Senior Lecturer at UTS Law, University of Technology Sydney.
[2] Marie Hadley is a Senior Lecturer at the School of Law and Justice, University of Newcastle.
[3] Vicki Huang is an Associate Professor at Deakin Law School, Deakin University.
[4] Stephanie Broadbridge has since re-staged the show, changing the name of the show to *Breaking: The Musical* and the main characters name to Spraygun. The advertising materials describe it as 'a parody and unauthorised (but completely legal) telling of an Australian Olympian's journey to the 2024 Paris Olympics' (McKen 2024).
[5] This article does not look at whether the advertising of the musical may have infringed copyright, although it should be noted one of the trade mark images claimed, the kangaroo hop silhouette, was first made by Stephanie Broadbridge complicating matters.
[6] For example, protections for well-known trade marks have broadened. Section 120(3) of the *Trade Marks Act 1995* (Cth) extends infringement claims to uses unrelated to the specific goods or services for which the mark is registered. Wilkinson (2019) argues that this could have a chilling effect on those who make expressive or parodic uses of that well-known mark online. For example, a website titled 'VegeMite-Not' to make fun of the trade mark VEGEMITE would initially be seen as non-infringing as such use would not be impugned trade mark use. However, Wilkinson argues that the sale of advertising space or merchandise via the site can easily turn that expressive use into impugned trade mark use if it becomes seen as an indicator of source. The spectre of infringement could deter the public from making expressive uses of well-known trade marks online.
[7] See Wilkinson (2019: 61) discussing the chilling effect that the mere threat of litigation can pose on smaller enforcement targets.
[8] This provision also specifies that it does not include a cinematograph film as distinct from the scenario or script for a cinematograph film: see *Copyright Act* s10(1) definition of 'dramatic work'.
[9] Research supports that choreographers may be reluctant copyright owners (Yeoh 2015). Choreographers have historically controlled their choreography through contracts and staging the performance. There are also suggestions that some saw any free riding as part of the nature of dancing, as free advertising, and that most people who wanted to use the steps in a commercial way would be better hiring the choreographer to teach it (Lakes 2005: 5).

[10] This case discusses the comments in the US Compendium of Copyright Office Practices' *Compendium II* (1984). The comments echo the sentiments in the House of Representatives report on the *Copyright Act of 1976* that explicitly added choreographic works as a work able to be protected and stated that there was no need to specify that 'choreographic works' do not include social dance steps and simple routines as a settled matter of law (HR 94-1476, 94th Cong, 2d Sess 53, 54 (1976)).
[11] In addition to s22(2), see also definition of 'article' in *Copyright Act* s115.
[12] For example, Labanotation, a notation system introduced in 1928, consists of symbols representing parts of the body, direction, speed and placements (Mitchell 2018: 385).
[13] This likely explains why, within dance communities, choreography is typically taught through a combination of techniques such oral instruction, person-to-person teaching, demonstration, or copying, rather than providing the notation to dancers (e.g. Blades 2022: 123, 125; Pellicano 1997: 121).
[14] This possibility was acknowledged in *Hanagami v Epic Games* (2023), where the court noted that it was a possibility that a two-second combination of eight bodily movements, could potentially infringe choreography (942). Also note Australian authority in *EMI Songs Australia v Larrikin Music Publishing Pty Ltd* (2011), where the four-part round was enough for a substantial part to be held as taken.
[15] The cease-and-desist letter against *Raygun: The Musical* also included a false endorsement claim, of which the silhouette of Gunn in the kangaroo pose was relevant to. False endorsement is outside the scope of this paper.
[16] Gunn applied for a fourth trade mark in December 2024. It is a word mark that essentially extends the previous word mark application to cover an additional three classes. It was registered on 3 September 2025 (*AU Trade Mark Number 2505281*).
[17] As of 1 March 2025, there were 122 movement trade marks registered on the Australian trade marks register out of over 900,000.
[18] As of 1 March 2025, the WIPO Global Brands database shows only 1,295 movement marks as registered out of close to 69 million trade marks.
[19] Some of these marks depict a sports movement or sports paraphernalia but not dance specifically. For example, *AU Trade Mark Number 1676581* depicts a moving image of a silhouette jumping in the air with both arms and catching a football; *AU Trade Mark Number 1676579* depicts a moving image of a silhouette jumping in the air punching the sky with one arm, holding a cricket bat.
[20] While targets of enforcement suits can sue the plaintiff for groundless threats, for example, under *Trade Marks Act 1990* s129, these suits can be extremely expensive, and aggressive plaintiffs know that smaller targets would be unwilling or unable to seek legal advice or pursue counter-litigation.

References

Anon 2025 'Dancing on Their Own: Alternatives to Copyright for the Choreographic Community' *Harvard Law Review* 138/5: 1429-1450

Arnold R 2001 'Joy: A Reply' *Intellectual Property Quarterly* 1: 10-21

Bevan B 2024 'Letter to iD Comedy Club' *XVII Degrees* 6 December

Blades H 2022 'Ownership, Ontology, and the Contemporary Dance Commons' *International Journal of Cultural Property* 29: 123-140

Cartwright L 2024 'Jimmy Fallon Playfully Mocks Viral Australian Breaking Sensation Raygun' *News.com.au* 14 August. Available at: <https://www.news.com.au/sport/olympics/jimmy-fallon-playfully-mocks-viral-australian-breaking-sensation-raygun/news-story/b7037c6792304618596eaccd9d03ce44>

Chambers R 2010 *Parody: The Art that Plays with Art* Peter Lang New York

Commonwealth Government 2006 *Supplementary Explanatory Memorandum: Copyright Amendment Bill 2006 (Cth)*. Available at: <https://classic.austlii.edu.au/au/legis/cth/bill_em/cab2006223/memo_1.html>

Gover KE 2021 '"You Stole My Work! And You Stole it Poorly!" Choreography, Copyright, and the Problem of Inexpert Iterations' *Dance Research Journal* 53/1: 61-77

Gunn R and F Shaheen 2022 ‘The Ethics of Living a Double Life: Rethinking Ownership, Authenticity, and Identity in Hip Hop Culture’ *Hip Hop Dance Almanac* May. Available at <https://www.hiphopdancealmanac.com/ink-cypher-the-ethics-of-living-a-double-life>

Hook S 2019 ‘Dealing Fairly with Parody: How Literary Theory Can Inform Legal Definitions’ *Australian Intellectual Property Journal* 29/2: 91-106

Hutcheon L 2000 *A Theory of Parody: The Teachings of Twentieth-Century Art Forms* University of Illinois Press Urbana

Karacsony L 2024 ‘Raygun Accused of Cultural Appropriation After Claiming Ownership of Kangaroo Dance in Legal Threat Against Sydney Comedian’ *Sky News* 9 December. Available at: <https://www.skynews.com.au/lifestyle/arts-and-culture/raygun-accused-of-cultural-appropriation-after-claiming-ownership-of-kangaroo-dance-in-legal-threat-against-sydney-comedian/news-story/c180c0f9cbee94dc4e1d66c072aac4bf>

Kieff FF, Kieff S, Kramer R and R Kunstadt 2009 ‘It's Your Turn, But It's My Move: Intellectual Property Protection for Sports Moves’ *Santa Clara Computer and High Technology Law Journal* 25/4: 765-785

Kraut A 2015 *Choreographing Copyright: Race, Gender, and Intellectual Property Rights in American Dance* Oxford University Press Oxford

Lakes JM 2005 ‘A Pas De Deux for Choreography and Copyright’ *New York University Law Review* 80: 1829–1861

Olaya K and Galvin N 2024 ‘Raygun Hits up Comedy Club Owner for $10,000’ *Sydney Morning Herald* 18 December. Available at: <https://www.smh.com.au/culture/comedy/raygun-hits-up-comedy-club-owner-for-10-000-20241218-p5kz73.html>

McKern J 2024 ‘Rachael “Raygun” Gunn’s $10K Legal Move Sparks Fierce Backlash’ *News.com.au* 19 December. Available at: <https://www.news.com.au/sport/olympics/rachael-raygun-gunns-10k-legal-move-sparks-fierce-backlash/news-story/d820c6f040f910304a5f3aadcae3fca1>

Mitchell G 2018 ‘Who Controls the Dance: Copyright in the World of Choreography’ *American Intellectual Property Law Association* 46/3: 381-412

Pappalardo K and Meese J 2019 ‘In Support of Tolerated Use: Rethinking Harms, Moral Rights and Remedies in Australian Copyright Law’ *University of New South Wales Law Journal* 42/3: 928-952

Pellicano V 1997 ‘Dance and Copyright: Pas de Deux or Pas de Disaster?’ *Media and Arts Law Review* 2/3: 116-134

Pila J 2008 ‘An Intentional View of the Copyright Work’ *Modern Law Review* 71/4: 535-558

Pouillaude F 2017 *Unworking Choreography* Trans A Pakes Oxford University Press Oxford

Ravetto-Biagioli K 2021 ‘Whose Dance is it Anyway?: Property, Copyright and the Commons’ *Theory, Culture & Society* 38/1: 101-126

Rose M 1979 *Parody/Meta-Fiction: An Analysis of Parody as a Critical Mirror to the Writing and Reception of Fiction* Croom Helm London

Sainsbury M 2007 ‘Parody, Satire, Honour and Reputation: The Interplay Between Economic and Moral Rights’ *Australian Intellectual Property Journal* 18/3: 149-166

The Project 2024 'Raygun Christmas Decorations Are Taking Over The Festive Period' *10 Play* 6 December. Available at: <https://10play.com.au/theproject/articles/raygun-christmas-decorations-are-taking-over-the-festive-period/tpa241206njliw>

TMZ Sports 2024 'Raygun Approves NFLer's Breaking Celly... After INT In Vikings Game' *TMZ* 11 November. Available at: <https://www.tmz.com/2024/11/11/raygun-reaction-camryn-bynum-breakdance-celebration/>

Torre G 2024 'Breaking: Megan Davis Takes Aim After Raygun Misfires at Olympics' *National Indigenous Times* 12 August. Available at: <https://nit.com.au/12-08-2024/13059/breaking-megan-davis-takes-aim-after-raygun-misfires-at-olympics>

Turnbull T and Rodd I 2024 'How Raygun Made It to the Olympics and Divided Breaking World' *BBC* 18 August. Available at: <https://www.bbc.com/news/articles/c4gl34v4r98o>

US Compendium of Copyright Office Practices 1984 *Compendium II*. Available at: <https://en.wikisource.org/wiki/Compendium_of_US_Copyright_Office_Practices,_II_(1984)>

Yeoh F 2015 'Choreographers and Copyright Ownership: Investigating an Apparent Dysfunction' *Journal of Intellectual Property Law & Practice* 10/12: 911-920

Waelde C and P Schlesinger 2011 'Music and Dance: Beyond Copyright Text?' *SCRIPT-ed* 8/3: 257-291

Waelde C, Whatley S and M Pavis 2014 'Let's Dance! – But Who Owns It?' *European Intellectual Property Review* 36/4: 217-228

Wallis L 1985 'The Different Art: Choreography and Copyright' *UCLA Law Review* 33/5: 1442-1471

Weekes P 2007 'Carmaker Considers Legal Action' *Sydney Morning Herald* 5 August. Available at: <https://www.smh.com.au/business/carmaker-considers-legal-action-20070805-gdqs6x.html>

Wilkinson G 2019 'Mitey Marks and Expressive Uses of Culturally Significant Trade Marks in Australia' *Australian Intellectual Property Journal* 30/1: 46-69

Cases

AGL v Greenpeace (2021) 395 ALR 275
Australian Olympic Committee v Big Fights (1999) 46 IPR 53
Deckmyn v Vandersteen Case C-201/13 (CJEU, 3 September 2014)
EMI Songs Australia v Larrikin Music Publishing Pty Ltd (2011) 191 FCR 444
Green v Broadcasting Corporation of New Zealand [1989] 3 NZLR 18
Hanagami v Epic Games (9th Cir, 2023) 85 F.4th 931
Horgan v Macmillan (1986) 789 F.2d 157
Lions Gate Entertainment Inc v TD Ameritrade Holding Corporation 170 F. Supp. 3d 1249 (C.D. Cal. 2016)
Nine Network Australia v Australian Broadcasting Corporation (1999) 48 IPR 333
Norowzian v Arks Ltd (No 2) [2000] EMLR 67
Perez & Ors v Fernandez [2012] FMCA 2
Pokémon Company International v Redbubble [2017] FCA 1541
United Airlines v Cooperstock [2018] 1 FCR 188
Universal Music Publishing Pty Ltd v Palmer (No 2) [2021] FCA 434

Statutes

Copyright Act 1968 (Cth)
Trade Mark Act 1995 (Cth)

Trade Marks

AU Trade Mark No 536815 filed on 25 June 1990 (Registration published on 24 February 1994)
AU Trade Mark No 1500012 filed on 3 July 2012 (Registration published on 17 Jan 2013)
AU Trade Mark No 1676579 filed on 23 February 2013 (Registration published on 1 October 2013)

AU Trade Mark No 1676581 filed on 23 February 2013 (Registration published on 1 October 2013)
AU Trade Mark No 1514513 filed on 14 September 2012 (Registration published on 4 July 2013)
AU Trade Mark No 1517025 filed on 27 September 2012 (Registration published on 4 July 2013)
AU Trade Mark No 1840549 filed on 26 April 2017 (Registration published on 2 January 2019)
AU Trade Mark No 2166425 filed on 25 Mar 2021 (Registration published on 2 November 2021)
AU Trade Mark No 2476761 filed on 23 August 2024 (Registration published on 1 April 2025)
AU Trade Mark No 2485348 filed on 25 September 2024 (Registration published on 5 May 2025)
AU Trade Mark No 2485349 filed on 25 September 2024 (Registration published on 5 May 2025)
AU Trade Mark No 2505281 filed on 9 December 2024