

Jason Bloom in Law360: 'New Fortnite Dance Suit May Shed Light on Copyright Limits'

April 26, 2022 Jason Bloom

PRACTICES Intellectual Property Litigation, Media and Entertainment Litigation, Copyright, Intellectual Property, Litigation

[Jason Bloom](#), partner and chair of Haynes Boone's Copyright Practice Group, commented in a *Law360* article. Read more below:

The maker of the hit video game Fortnite has faced claims that it uses popular dance moves without permission over the years and so far, has been able to shake them off, but a new suit against Epic Games from a choreographer with exclusive rights to a routine may force courts to finally grapple with key questions on what parts of a dance can be copyrighted.

Last month, Los Angeles choreographer Kyle Hanagami filed suit in California federal court against Epic Games, alleging that the Fortnite in-game "It's Complicated" dance "emote" — the programmed moves performed by players' avatars — rips off a dance routine he made that accompanies the Charlie Puth song "How Long."

The new case is the latest in a string of suits involving Fortnite dance emotes. After the U.S. Supreme Court held in *Fourth Estate Public Benefit Corp. v. Wall-Street.com* in 2019 that a copyright registration must be granted or rejected before filing suit, those plaintiffs — including "The Fresh Prince of Bel-Air" actor Alfonso Ribeiro, who was unable to secure a registration for the "Carlton Dance" from the U.S. Copyright Office — voluntarily dropped their cases. ...

"I think the biggest challenge [for plaintiffs like Hanagami] will be originality and copying," said Jason Bloom of Haynes Boone. "To the extent the game did not copy the entire dance, but discrete moves, Epic may seek to locate evidence showing that those moves are not original to Hanagami and may argue that it did not copy the choreography, but rather used discrete moves that are noncopyrightable scènes-à-faire," or common elements that can't be protected.

To read the full article, click [here](#).