

Jennifer Lantz in The Verge: Fortnite Keeps Stealing Dances ? and No One Knows If It's Illegal

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The Verge quoted Haynes Boone Partner Jennifer Lantz in an article about the issues several popular culture icons may face in claiming copyright infringement by Epic Games, the creators of the popular Fortnite video game.

Here is an excerpt:

When the Copyright Act of 1976 was passed, it finally established rules around choreography, with some limited fair use cases around criticism and dance education. Strangely enough, it covered even pantomime, but not an individual dance move as we've culturally come to understand it in the ensuing decades.

There may be a good reason for that. Individual dance steps, like individual words and musical notes, can often form the foundation of other pieces of art. If an artist could claim a copyright in an individual step, it may make free expression with the human body prohibitively difficult without legal risk. It also opens up all sorts of thorny edge cases around street performance and other public forms of dance, as well as the actions of countless people on social media, YouTube, and other online video channels.

"I think the concerns were more that people would try to copyright exercise systems, or combinations of yoga postures, which are traditional," says Jennifer Lantz, an intellectual property and trademark lawyer with Haynes Boone. "Or traditional social dances like the waltz or the foxtrot. Those are specifically excluded in the copyright office guidance."

But Lantz says that complex choreography, like legendary choreographer George Ballantine's version of *The Nutcracker*, is inarguably an original piece of art. Such classic forms of dance can be translated into choreographic notation on paper, which further establishes a right to ownership. "Everybody would agree that that entire piece, which is over two hours, is sufficiently creative to be copyrightable," she says. ...

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