

How to Rescue the K-Pop Choreography: A Comparative Copyright Study with the United States

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Abstract

The popularity of K-Pop has brought about the growth of Korean music industry and enriched most of the participants of the music industry. Unfortunately, choreographers who have created iconic dance moves did not receive proper appreciation, mainly due to the lack of copyright protection. This normative legal research employed both statutory and comparative approaches. The author examined the legal framework and industrial structure relating to choreographic works in South Korea and in the United States and made comparison between both jurisdictions. It is found that although choreographers in both countries are now actively seeking for protection of their copyright, nevertheless, the legal framework in the United States is more accommodative for the protection of choreographic works as compared to its Korean counterpart. Amendment of the Korean Copyright Act as well as changes in the industrial environment and custom are required to provide more adequate legal protection of choreographic works in South Korea.

Keywords: Choreography; Copyright; Korean Copyright Act; K-Pop.

1. Introduction

Over the past few years, Korean popular music, well known as K-Pop, has become a global phenomenon and greatly impacted the music industry in Korea. K-Pop artists such as BTS and Blackpink have become global stars and attracted millions of fans internationally. There are many factors that led to the huge success of K-Pop, including songs, music, fashion, performance, and others, but one of the powerful factors would be undeniably K-Pop dance.¹ K-Pop dance can be characterized with its unique 'point' dances which comprises catchy movements that are easy to remember and imitated by the public.² Those point dances became one of signature of K-Pop music and it contributed greatly to the popularity of K-Pop. One of the most popular dances of K-Pop music that became a global sensation is 'Gangnam Style dance' by singer, 'Psy'. The Gangnam Style music video on YouTube was viewed by more than a billion times and people all over the world started to copy and follow the dance moves. Subsequent K-Pop music and its iconic dances, especially that was shown by Blackpink and

¹ Marian Liu, Youjin Shin, and Shelly Tan, 'Why Is K-Pop so Popular?', *Washington Post*, 2021 <<https://www.washingtonpost.com/arts-entertainment/interactive/2021/kpop-bts-youtube-twitter-blackpink/>>.

² Ivy Wong, 'Point Choreography in K-Pop', *Medium*, 2021 <<https://ivywxy.medium.com/point-choreography-in-k-pop-d392a27089e2>>.

BTS, were loved globally and such popularity has blessed the Korean music industry with growth as well as huge inflow of profits.

While the Korean music industry has bloomed and grown exponentially with its global popularity, one group of contributors who played one of the major roles in K-Pop music, were largely ignored and excluded from enjoying the success of K-Pop. They are the creators of those iconic K-Pop dance moves: the choreographers.³ Despite the high value of their works, the choreographers, who are often dancers, were given disproportionate appreciation. Until recently, they were largely ignored and mistreated. They had to endure not only the lack of fair and appropriate financial rewards for their works, but also the absence of copyright protection for their works. Although there are now movements to protect and secure their rights, however these have not addressed the fundamental issues yet. Two major predicaments that the choreographers have been facing are that they did not receive their appropriate share or credit for their works, and that their works have been infringed and these infringements have been accelerated with the expansion of social media.

The lack of copyright protection for K-POP choreography was not the only case. Choreographers in the United States, home of Pop music, have also experienced insufficient protection for their choreographic works and have struggled to claim for enhanced protection. This article aims to examine why the value of choreography has been undermined in Korea and to seek solutions by comparing the legal and industrial structure of Korea and the U.S.

2. Method

The type of the research is that of normative legal research which employs statutory and comparative approaches. The author has diligently examined relevant sources including statutory text, judicial decisions, legal documents, books, journals and websites. In addition, comparative analysis has been made to study the legal structure and industrial background in regard to copyright protection for choreography in South Korea and the United States. After comparing the conditions in both jurisdictions, the author comes up with proposals for the copyright protection of choreography in South Korea.

3. Discussion and Analysis

3.1. Lack of Copyright Protection on Choreography

According to Worldmetrics Report 2024, the total worth of the K-Pop industry is estimated to be \$5 billion and one of the biggest K-Pop groups, BTS, has earned \$46 million in 2019.⁴ Despite such a growth of the K-Pop industry, the fruit of success is not yet shared with choreographers. While there is no statistics on the average income of choreographers, it is estimated to be around the minimum wage level⁵ based on numerous testimonies from choreographers. Choreographers receive a one-time payment of 3~5 million KRW (approximately 2100~3500 USD) for dances used in one song and usually they only get a couple of deals in a year which forces them to quit their job and find another source of income

³ Choreographers are those who create choreography, the art or practice of designing sequences of movements of physical bodies in which motion or form or both are specified.

⁴ Alexander Eser, 'Kpop Industry Statistics: Record-Breaking Success and Billion-Dollar Contributions', *Worldmetrics*, 2024 <<https://worldmetrics.org/kpop-industry-statistics/>>.

⁵ Ministry of Labor, 'Yearly Trends in Minimum Wage(in Won, %)', *Minimum Wage Commission*, 2024 <[https://worldmetrics.org/kpop-industry-statistics/#::~text=Highlights%3A The Most Important Statistics 1 BTS%2C arguably](https://worldmetrics.org/kpop-industry-statistics/#::~text=Highlights%3A%20The%20Most%20Important%20Statistics%201%20BTS%20arguably)>.

due to the economic hardship.⁶

Ju-Sun Lee who created the famous dance of ‘Gangnam Style’ was in the same position with other choreographers. He received a one-time payment for his work, as it is customary practice in Korea for choreography, before the music video has gone viral. Although he received additional money after the music video and the dance earned global fame, the additional payment was from Psy who is also a good friend of his, not from the exercise of his copyright. Similarly, Noze, a dancer and a choreographer, who earned fame from a Korean TV show ‘Street Woman Fighter’ confessed that she did not receive any royalty for the dance she created, namely the so-called ‘Hey Mama Dance’ which became an instant hit and has gone viral in social media.⁷ This is not only the case of one particular choreographer, but almost all choreographers face the same predicament in claiming fair share of their works.

In addition to this lack of adequate payment, the choreographers suffer from widespread infringement of their works. Due to the lack of copyright protection on choreography, the dances created by choreographers are used without attribution and therefore infringe the right of choreographers. Choreographers’ position got even more vulnerable and worsened with the digitalization and the advent of video sharing in social media platforms, such as TikTok. Their works were distributed and used without their permission and with weak resort to claim originality and copyright of theirs.

3.2. Why Choreography is Unprotected

3.2.1. Design of Copyright Law and Legal Protection

Korea has enacted its first Copyright Act in 1957 and amended twenty times since the enactment.⁸ According to the Korean Copyright Act, ‘work’ which is the object of copyright is defined as ‘creative production that expresses human thought and emotions’ (Article 2). A copyright commences from the time of its creation and it does not require any procedures or formalities (Article 10). Therefore, there is no requirement of fixation or registration in order to receive the protection of copyright, but authors can register their works to the Korea Copyright Commission (Article 53). Once registered, the registered person and registered date of creation are entitled to presumption of being the author of the work and the date of creation, respectively [Article 53(3)].

The term choreography or choreographic work is not found in the Korean Copyright Act. Article 4 (Examples of Works) provides an illustrative list of works that are copyrightable including theatrical works. In Subsection (1) 3 it is mentioned that theatrical works include dramas, dances, pantomimes, etc. Choreography is interpreted as a part of ‘dance’ which falls under the category of ‘theatrical works’. More specifically, choreographer, the creator of the dance moves, has the rights on his choreographic work. There are two major issues arising from this legal structure: first, the copyrightability of choreography is not explicitly provided; and second, dance (which also implies choreography) is categorized as a part of ‘theatrical works’.

⁶ Si-Soo Park, ‘What about the Choreographer of Gangnam Style?’, *The Korea Times*, 2014 <<http://www.koreatimesus.com/what-about-the-choreographer-of-gangnam-style/>>.

⁷ Skylar Adams, ‘Dancer Noze Has Not Been Paid Any Royalties for Her Viral “Hey Mama” Dance — Here’s Why’, *Koreaboo*, 2021 <<https://www.koreaboo.com/news/dancer-noze-royalties-hey-mama-dance/>>.

⁸ Ministry of Culture of the Republic of Korea, ‘Welcome to the Website of the Ministry of Culture, Sports and Tourism of the Republic of Korea’, *Ministry of Culture, Sports and Tourism of the Republic of Korea*, 2019 <<https://www.mcst.go.kr/english/index.jsp>>.

Despite the shortfalls of the legal framework surrounding choreography under the Copyright Act, Korean courts have interpreted the article broadly to recognize choreography as an independent creative work, not as a part of theatrical work. There has been a legal case that dealt with K-pop choreography, namely the 'Shy Boy' case. This was the only case that involved the copyright infringement of K-Pop choreography by a female singer group, named 'Secret'. This group illegally used particular dance moves when performing a song entitled 'Shy Boy.' The choreographer of that dance has filed a lawsuit against defendants who are owners and trainers of a dance school that used the mentioned dance. The defendants trained their students dance moves belonging to the plaintiff, then recorded and uploaded the dance videos on the school's website. The court found that the dance moves was considered as creative production of the plaintiff which deserved a copyright protection. The court recognized the creativity of choreography by stating that:

*"creativity does not mean originality in the full sense, but rather it means that a work is not a simple imitation of someone else's work, and it contains the expression of the author's own original thoughts or emotions...creative combination and arrangement of a series of physical movements and gestures suitable for girls (singers), and is a creative work that expresses the plaintiff's thoughts or emotions."*⁹

The court decided that the defendants have infringed the plaintiff's copyright, including right to attribution (Article 12), right of reproduction (Article 16), and right of public performance (Article 17). Consequently, the court imposed as much as 3 million KRW of damages.

So far, there is no other legal case that dealt with choreography or its copyright and the reasons is probably because of the low number of registrations. According to the statistics on registration of the Korea Copyright Commission, the registration number of theatrical work, in which choreography would be included, is very low as compared to other copyrightable works. Among 66,592 works that are registered in 2023, only 69 works are registered under the category of theatrical work, which is only 0.1% of the total number. The number of registrations on theatrical work remained low in the last five years, showing only around 100 yearly registrations when the total number of registrations increased from 46,730 in 2019 to 66,592 in 2023. Moreover, the exact number of registered choreographies remains unknown to the public because there is no separate category for choreography but they are registered under 'theatrical work' pursuant to the structure of the Korean Copyright Act.

Registration mechanism was rarely utilized by choreographers not only due to the industry structure, but the process of registration is challenging due to lack of detailed guidelines. Some difficulties that arise in relation to registration, include the absence of detailed instruction on the relevant forms, the reluctant to register under 'theatrical work', and defining authors in joint creation that are commonly practiced.¹⁰ Considering the fact that fixation is not required under Korean law which could cause uncertainties in determining the original author, the registration could work as a powerful tool in asserting and defending one's copyright since the registration process inevitably entails fixation. Low rate of registration has also weakened the protection on copyright of choreography.

⁹ Seoul Central Court 2011.11.8. 2011GaHab23960 Decision

¹⁰ Sang Don Joo, 'Choreography "Copyright Registration", Why Is It Difficult?.. Unclear Registration "Practical Procedure"', *lpdaily.Co.Kr*, 2023 <<https://bit.ly/3AiW5yl>>.

3.2.2. Music Industry and Choreography

In addition to the shortcomings of Korean legal structure, the embedded custom and structure of the music industry were detrimental to the rights of choreographers. Dancers, who are often creators of dance moves, were treated as mere supporters of singers without much of an importance. The value of choreography was largely ignored and choreographers did not receive proper payment for their works, let alone the claiming for copyright. Lia Kim, the CEO of 1Million Dance Studio, spoke in one interview that there was a long period of time when there was no perception that choreography is a work of art which deserves a payment.¹¹ Choreographers, who were also dancers, were only paid for the performance fee without payment for the choreography itself. Amount of compensation was also marginal, and many dancers were often forced to find other jobs for survival. Not only was the amount inadequate, a one-time payment scheme was mostly used which made it impossible for the choreographers from enjoying additional income depending on its popularity.¹² The unfairness of this practice is evident, considering that the other participants in the music industry, such as singers, composers, or songwriters can claim and obtain proportional income depending on the success of their works.

In an environment where even the proper payment was hard to obtain, the demand for copyright was almost impossible to claim. Written contract was seldom used and the miniscule payment was considered inclusive of everything.¹³ Requesting for additional compensation or exercising copyright was unthinkable, even if the dances are used and distributed widely and repeatedly. The choreographers rarely claimed for their copyright because such a claim would mean the loss of the possibility of obtaining a future deal. Even if a contract was written, the provisions are unfavorable to the choreographers, who were often in inferior position, and structured to transfer the copyright rather than granting some of the rights that comprise the copyright.¹⁴ In addition, as the music industry boomed, big entertainment companies hired choreographers as employees, and the work product was contracted to the work for hire.

3.2.3. The Emergence of Digital Media Platforms

With the emergence of digital media platforms, contents are instantaneously spread out all over the world.¹⁵ Social media operates on the basis of 'sharing' and the process of 'sharing' accelerates infringement on copyright. Dance moves are transmitted without the permission of or credit to the choreographers and general public performs and shares cover dances. Despite the fact that the digital media platforms accelerate the copyright infringements, the protection mechanism on copyright is almost absent. In addition, social media platforms are reluctant to implement strict measures to protect copyright, because it will discourage the users from actively using the social media and the social medias enjoy some protection from

¹¹ Enyoung Lee, 'In Order for K-Dance, Sought after by Choreographers around the World, to Become More Popular, Copyright Recognition Is Required', *Economychosun*, 2024 <https://economychosun.com/site/data/html_dir/2024/03/15/2024031500002.html>.

¹² Joy Kim, 'Potential Crisis and Opportunity in the K-Pop Choreography Copyright', *International Journal of Advanced Culture Technology*, 9.3 (2021), 253–58.

¹³ Sangho Song, '[Cultural Story] Everyone Follows "K-Dance"... But Where Is the Choreographer's "Copyright Protection"?', *Gyeonggi Ilbo*, 2022 <<https://www.kyeonggi.com/article/20220726580155>>.

¹⁴ Diana Setiawati and Nikita Kimberly Huang, 'Intellectual Property Rights Analysis in the Context of Artificial Intelligence Development in the Indonesian Legal Context', *E-Justice: Journal of Law and Technology*, 1.1 (2024), 81–94.

¹⁵ Patricia Ordóñez de Pablos, Xi Zhang, and Mohammad Nabil Almunawar, *Handbook of Research on Disruptive Innovation and Digital Transformation in Asia* (IGI global, 2021).

the Copyright Act. Article 102 of the Act stipulates the limitation on liability of online service providers. The online service providers are not responsible for copyright infringement if they take necessary measures 'after' becoming aware of the infringement. Based on a series of court cases, the online service providers are not obliged to take active precautionary measures to prevent potential infringement in every case. They are exempted if they implemented precautionary measures of managing or controlling to the extent those measures can be implemented on a technically or economically feasible basis.¹⁶

Confronting digital media platforms, the power of choreographers to claim their rights is lacking. Unlike other participants of the music industry, the choreographers have not yet established a consolidated association to claim for the proper compensation for the choreography used in those platforms. For musical works, there are four existing associations namely: Korea Music Copyright Association; Korean Society of Composers, Authors and Publishers; Federation of Korean Music Performers; and Recording Industry Association of Korea. Those associations represented the voice of their members and implemented a trust management system in which they collect fees from online service providers and share the collected fees based on percentage that they already have agreed upon. However, this collective charging system implemented by powerful associations is lacking in choreographers' society. Until now, choreographers are left alone to file complaints against responsible parties without a consolidated association that secures their voices.

3.3. Choreography in the United States

3.3.1. Choreography and the Copyright Act

It is not only K-Pop dance that received disproportionate recognition, but dance has been standing on the edge of legal protection in the U.S. as well. The U.S. has relatively short history on the protection of choreography, compared to other copyrightable work.¹⁷ Copyright on choreography was first recognized in 1976 when the Copyright Act of 1976¹⁸ added 'pantomimes and choreographic works' as a specific category of the works of authorship.¹⁹ Given the fact that the first copyright law of the US was passed in 1790, it took almost two centuries for choreography to be recognized on its own merit. Although choreography was protected under the 1909 Copyright Act, it was protected only to the extent that the work had a storytelling or dramatic component to them and choreography was recognized as part of dramatic composition. This was due to the perception of the U.S Congress that choreography did not have its own, independent social value that deserved protection.

There are several characteristics that the U.S. Copyright Act differs from the Korean Copyright Act. The U.S. Copyright Act states that the copyright protection subsists, in 'original works of authorship fixed in any tangible medium of expression' and 'works of authorship include... pantomimes and choreographic works.' The Korean Act defines work as 'creative production', but the U.S Act specifies work as 'original.' 'Original routines or original

¹⁶ Court of Korea, 'Case Law News', *Scourt*, 2019 <<https://www.scourt.go.kr/portal/news/NewsViewAction.work?seqnum=6567&gubun=4>>.

¹⁷ Sydney L Solferino, 'One Small Step on TikTok, One (Possibly) Giant Leap for the Dance Community: How TikTok Spearheaded a Change in the Seemingly Stagnant Field of Copyright Law', *Catholic University Journal of Law and Technology*, 32.1 (2023), 145-70.

¹⁸ 17 U.S.C. § 102(a)

¹⁹ David Sye, 'Literally Stealing the Show: A Brief (and Recent) History of Dance Copyright', *The Office for Intellectual Freedom of the American Library Association*, 2021 <<https://www.oif.ala.org/literally-stealing-the-show-a-brief-and-recent-history-of-dance-copyright/>>.

arrangements of preexisting routines' could be copyrightable, but 'folk dances or social steps or a compilation of exercises or the selection and arrangement of yoga poses' are not protectable.²⁰ With regard to internet service providers, the Digital Millennium Copyright Act of 1998 ("DMCA") provides limitations on their liability.²¹ If the online service providers abide by the notice and takedown mechanism, they are not liable for copyright infringement occurred by users.²²

Major difference between the Korean and the U.S. Copyright Act is that the U.S. Copyright Act requires fixation on a tangible medium. While fixation clarifies the creation of copyrightable work, such requirement has deterred the copyrightability of choreography due to the inherent characteristic of ephemerality or improvisation of dances.²³ Only after the advent of digital technology that can capture the dance into a fixed form, the burden of fixation has become lighter. The limitation of video recording in traditional two-dimensional systems or the cost entailed in generating notated version of the choreography also played as an obstacle in fulfilling the fixation requirement. Another difference is the U.S. law requires pre-registration and or registration in order to proceed with civil action for infringement (17 U.S. Code §411). In 2019, the Supreme Court of U.S. has clarified that a pending application is not sufficient but registration (or preregistration in certain cases) is required for infringement suits.²⁴ Authors are encouraged to register their work in order to seek legal enforcement.²⁵

3.3.2. Music Industry of the U.S.

The structure of the music industry and the perception among choreographers were obstructive in the recognition of copyright of choreography. Francis Yeoh (2022) quotes an opinion from Barbara Singer that there was little incentive for choreographers to rely on enforcement of law or claim copyright against infringers due to practice or custom within the dance community. In the early days, the dancers and choreographers were surrounded by a 'close-knit community' where 'the custom acts as a formidable regulatory force within this field.' In other words, there was less possibility of blatantly copying others' work in such a small community. Consequently, choreographers were reluctant to take legal measures to register or pursue their copyright. On the other hand, choreographers themselves had little awareness of copyright. Yeoh (2022) argues that choreographers were hesitant to seek for copyright due to the fact that dances are intermingled with movement of body, and it was difficult to distinguish which part of such moves are copyrightable. The perception on copyrighting dance moves were not commonly shared among dancers and it was natural to copy dance moves from earlier dances. Also, there existed belief that some choreographers believe that their works do not last after their death.²⁶

²⁰ Craig Joyce and others, *Copyright Law* (Carolina Academic Press, 2013).

²¹ 17 U.S. Code § 512 - Limitations on liability relating to material online

²² Daniel Seng, 'Copyrighting Copywrongs: An Empirical Analysis of Errors with Automated DMCA Takedown Notices', *Santa Clara High Technology Law Journal*, 37 (2021), 119.

²³ Kriss Ravetto-Biagioli, 'Whose Dance Is It Anyway?: Property, Copyright and the Commons', *Theory, Culture & Society*, 38.1 (2021), 101–26 <<https://doi.org/10.1177/0263276420925534>>.

²⁴ Justine Levy, 'Fourth Estate Pub. Benefit Corp. v. Wall-Street. Com, LLC, et Al. 139 S. Ct. 881 (2019)', *Intellectual Property and Technology Law Journal*, 24 (2019), 239.

²⁵ Laura A. Kees and Jacob S. Wharton, 'Supreme Court Clarifies Copyright Law: "Application" v. "Registration" Finally Resolved', *Womble Bond Dickinson*, 2019 <<https://www.womblebond Dickinson.com/us/insights/alerts/supreme-court-clarifies-copyright-law>>.

²⁶ Francis Yeoh, 'Why Don't Choreographers Copyright Their Works?', *Dance Chronicle*, 45.2 (2022), 155–72 <<https://doi.org/10.1080/01472526.2022.2064162>>.

In addition, the U.S court has interpreted the creations of the choreographers based on commission are ‘work made for hire’ pursuant to 201 (b)²⁷ in the Martha Graham case.²⁸ In that case, the court decided that the works of Martha Graham, who was a legendary dancer and choreographer, belong to the Martha Graham Center of Contemporary Dance, Inc., because she was an employee of the Center as she worked at the center for more than three decades and received annual salary. This decision was criticized for it was inconsistent with the common understanding of the traditional customs of the dance community.

Despite the Act and precedents all indicating the need for copyright registration, choreographers are reluctant to register for various reasons, including costs involved in registration. The cost of notation, which is used to record choreography, is expensive, allegedly about \$10,000 for twenty minutes of dances,²⁹ therefore the registration became extremely burdensome to many choreographers who are not yet financially affluent.

Although choreographers and their copyright in the U.S. also suffered from misappropriation, there are new movements from the choreographers to secure their rights. In 2020, one iconic choreographer Jaquel Knight, has registered his choreography in Beyonce’s “Single Ladies” song which is assessed as the first choreographer to be protected in a genre other than ballet. He also established a company, Knight Choreography and Music Publishing Inc. to enhance and promote the copyright of choreographies.³⁰ In addition, choreographers have established ‘Choreographers Guild’ to work as a labor organization to represent the voice of choreographers to promote economic security, to earn crediting and recognition, to strengthen copyright and to educate and exchange information.³¹

3.4. How to Rescue Copyright of Choreography?

3.4.1. Amendment of Korean Copyright Law

As discussed above, the current Korean Copyright law is inadequate in recognizing the copyrightability of choreography. The Act should explicitly define choreography as a separate category of copyrightable work, not put it under the category of theatrical works. Otherwise, it seems that the Act fails to appreciate the full value of choreography. In addition, precedents can be overturned by the court, therefore relying on current interpretation of the court, the absence of clear provision unnecessarily puts copyrightability of choreography in an uncertain position. The current wording of the law can also be narrowly construed to limit the copyrightability of choreography only within the scope of theatrical work. Such risk can be evidenced from the U.S. case in which U.S court required a storytelling element under the Copyright Act 1909 when choreography was defined under the category of ‘dramatic works.’ Pursuant to language of the Copyright Act of 1909, the courts limited copyrightability only within the storytelling premise.

²⁷ 17 U.S. Code 7 U.S. Code § 201 - Ownership of copyright

²⁸ Martha Graham School and Dance Foundation, Inc., v. Martha Graham Center of Contemporary Dance, Inc., 380 F. 3d (2d Cir. 2004)

²⁹ Kathleen Abitabile and Jeanette Picerno, ‘Dance and the Choreographer’s Dilemma: A Legal and Cultural Perspective on Copyright Protection for Choreographic Works’, *Campbell Law Review*, 27 (2004), 39.

³⁰ Margaret Fuhrer, ‘A Labor Movement for the Artists Who Make Popular Culture Move’, *The New York Times*, 10 March 2022 <<https://www.nytimes.com/2022/03/10/arts/dance/choreographers-guild.html>>.

³¹ Choreographers Guild, ‘Who We Are’Who We Are”, *Choreographers Guild*, 2024 <<https://choreographersguild.org/who-we-are/>>.

On the other hand, there are claims requesting the addition of requirements to the current law. The basis for such an argument is that without fixation requirements, the creation of choreography could be put in a vague position and it inevitably weakens the protection. Fixation would clarify and evidence the time of creation objectively. However, considering the adverse effect of fixation requirement, such as the costs involved and limitation put on ephemeral dance, fixation requirement should not be added. Rather than adding fixation requirement, promoting registration would be a better solution. Setting a detailed guideline on subcategories of theatrical works would be helpful in guiding potential registrant in selecting appropriate category for their choreography.³²

3.4.2. Implementation of Protection Mechanism on Choreography

It has only been in recent years that the voice of Korean choreographers started to resonate outside of their community. TV programs that solely focused on dancers who are also choreographers, such as *Street Woman Fighter* in 2021 and 2023, *Street Man Fighter* (2022) became instant hits and the dancers and choreographers started to gain fame. Even with the enormous hits of previous K-Pop dances, the choreographers only attracted one or two interviews, or received spotlight as a trainer of K-Pop idols. However, such a trend has changed and more and more choreographers are starting to become really famous. The public started to listen to their voices and this empowered their voices more than ever before.

Copyright of choreography should be protected both in economic and social perspectives. Standard contracts in various fields are made and distributed by the government for use. Some provisions of the standard contracts reflect relevant regulations and cannot be revised unfavorably to a certain party that the law aims to protect. There is no standard contract distributed in the area of choreography. Standard contracts that include the scope of rights conferred to the agency or music companies should be established by the government. The use of standard contract would prevent music companies enforcing unfavorable provisions, such as the transfer of all copyright for small amounts of lump sum payment, against choreographers, who mostly lack the bargaining power except for some star choreographers.

In addition, the choreographers are demanding the protection of their right of attribution as one of the most urgent issues. The right of attribution is the right to indicate name on one's work and is stated under Article 12 of the Copyright Act.³³ The right of attribution of other participants, such as writer, composer or singer are well protected and indicated on screen when a performance is broadcasted to the general public, but rarely the name of choreographers is specified.³⁴

Most importantly, a consolidated response to the music industry by choreographers is crucial in protecting copyright. For other participants, organizations that represent and collect

³² Yoon Sun Han, 'Research on Copyright Activation Measures for Choreographers', *The Journal of Korean Dance*, 41.4 (2023), 245–270.

³³ Article 12 (Right of Attribution) (1) The author shall have the right to indicate his or her real name or pseudonym on the original or copy of his or her work, or on the medium of publication by which his or her work is made public. (2) Unless otherwise expressly stated by the author, the person using his or her work shall indicate the author's name in accordance with the author's manner of indicating his or her real name or pseudonym: Provided, That the same shall not apply where deemed unavoidable in the light of the nature of a work as well as the purpose and manner of its use.

³⁴ Sohee Baek, 'Lia Kim: "Please Mark Choreographers as Composers"... First Step in Discussion on Making "copyright" a Reality', *Aju Business Newspaper*, 11 December 2023 <<https://www.ajunews.com/view/20231211143729922>>.

copyright fees are already firmly working, securing the rights of composers, writers, or singers. choreographers.³⁵ On 24 April, 2024, a Korean Choreography Copyright Association was established by some famous choreographers, including Lia Kim, Honey Jay and others. They seek to consolidate the voice of choreographers and represent their rights and aim to negotiate systemic collection of copyright fees. There were some associations that aimed to raise a consolidated voice but all failed to become representative associations for the majority of choreographers.

4. Conclusion

With the success of K-Pop music, the Korean music industry has experienced exponential growth with huge benefit for most of participants except for the choreographers who did not receive proper credit and economic profit. In addition, choreographers suffered from continuous infringement on their works. The Korean Copyright Act is structured to complicate the choreographers in seeking their copyright and needs to be amended in order to provide clearer guidance for the copyrightability of choreography as can be learned from the Copyright Act of the U.S. The U.S. has amended its copyright law to explicitly define choreography as independent copyrightable work, which has clarified and facilitated the copyrightability of choreography. Choreographers in the U.S. have initiated active movements in registering their choreographies and seeking for adequate protection of their works. In the same regard, the rights of choreographers could escape from vulnerable position by improving the industrial environment. It can be improved by promulgating a standard contract that protects rights of choreographers and by displaying the name of choreographers on their works and by consolidating with a unified organization to claim their rights.

References

- Abitabile, Kathleen, and Jeanette Picerno, 'Dance and the Choreographer's Dilemma: A Legal and Cultural Perspective on Copyright Protection for Choreographic Works', *Campbell Law Review*, 27 (2004), 39
- Adams, Skylar, 'Dancer Noze Has Not Been Paid Any Royalties for Her Viral "Hey Mama" Dance – Here's Why', *Koreaboo*, 2021 <<https://www.koreaboo.com/news/dancer-noze-royalties-hey-mama-dance/>>
- Baek, Sohee, 'Lia Kim: "Please Mark Choreographers as Composers" ... First Step in Discussion on Making "copyright" a Reality', *Aju Business Newspaper*, 11 December 2023 <<https://www.ajunews.com/view/20231211143729922>>
- Choreographers Guild, 'Who We Are/Who We Are'', *Choreographers Guild*, 2024 <<https://choreographersguild.org/who-we-are/>>
- Court of Korea, 'Case Law News', *Scourt*, 2019 <<https://www.scourt.go.kr/portal/news/NewsViewAction.work?seqnum=6567&gubun=4>>
- Eser, Alexander, 'Kpop Industry Statistics: Record-Breaking Success and Billion-Dollar Contributions', *Worldmetrics*, 2024 <<https://worldmetrics.org/kpop-industry-statistics/>>
- Fuhrer, Margaret, 'A Labor Movement for the Artists Who Make Popular Culture Move', *The*

³⁵ Evie Whiting, 'Square Dance: Fitting the Square Peg of Fixation into the Round Hole of Choreographic Works', *Vanderbilt Law Review*, 65 (2012), 1261.

New York Times, 10 March 2022
<https://www.nytimes.com/2022/03/10/arts/dance/choreographers-guild.html>

Han, Yoon Sun, 'Research on Copyright Activation Measures for Choreographers', *The Journal of Korean Dance*, 41.4 (2023), 245-270

Joo, Sang Don, 'Choreography "Copyright Registration", Why Is It Difficult?.. Unclear Registration "Practical Procedure"', *Ipdaily.Co.Kr*, 2023 <<https://bit.ly/3Aiw5yl>>

Joyce, Craig, Marshall Leaffer, Peter Jaszi, Tyler T. Ochoa, and Michael Carroll, *Copyright Law* (Carolina Academic Press, 2013)

Kees, Laura A., and Jacob S. Wharton, 'Supreme Court Clarifies Copyright Law: "Application" v. "Registration" Finally Resolved', *Womble Bond Dickinson*, 2019
<<https://www.womblebonddickinson.com/us/insights/alerts/supreme-court-clarifies-copyright-law>>

Kim, Joy, 'Potential Crisis and Opportunity in the K-Pop Choreography Copyright', *International Journal of Advanced Culture Technology*, 9.3 (2021), 253–58

Lee, Enyoung, 'In Order for K-Dance, Sought after by Choreographers around the World, to Become More Popular, Copyright Recognition Is Required', *Economychosun*, 2024 <https://economychosun.com/site/data/html_dir/2024/03/15/2024031500002.html>

Levy, Justine, 'Fourth Estate Pub. Benefit Corp. v. Wall-Street. Com, LLC, et Al. 139 S. Ct. 881 (2019)', *Intellectual Property and Technology Law Journal*, 24 (2019), 239

Liu, Marian, Youjin Shin, and Shelly Tan, 'Why Is K-Pop so Popular?', *Washington Post*, 2021
 <<https://www.washingtonpost.com/arts-entertainment/interactive/2021/kpop-bts-youtube-twitter-blackpink/>>

Ministry of Culture of the Republic of Korea, 'Welcome to the Website of the Ministry of Culture, Sports and Tourism of the Republic of Korea', *Ministry of Culture, Sports and Tourism of the Republic of Korea*, 2019 <<https://www.mcst.go.kr/english/index.jsp>>

Ministry of Labor, ‘Yearly Trends in Minimum Wage(in Won, %)', *Minimum Wage Commission*, 2024 <<https://worldmetrics.org/kpop-industry-statistics/#:~:text=Highlights%3A The Most Important Statistics 1 BTS%2C arguably>>

Ordóñez de Pablos, Patricia, Xi Zhang, and Mohammad Nabil Almunawar, *Handbook of Research on Disruptive Innovation and Digital Transformation in Asia* (IGI global, 2021)

Park, Si-Soo, 'What about the Choreographer of Gangnam Style?', *The Korea Times*, 2014
 <<http://www.koreatimesus.com/what-about-the-choreographer-of-gangnam-style/>>

Ravetto-Biagioli, Kriss, 'Whose Dance Is It Anyway?: Property, Copyright and the Commons', *Theory, Culture & Society*, 38.1 (2021), 101–26
<<https://doi.org/10.1177/0263276420925534>>

Seng, Daniel, 'Copyrighting Copywrongs: An Empirical Analysis of Errors with Automated DMCA Takedown Notices', *Santa Clara High Technology Law Journal*, 37 (2021), 119

Setiawati, Diana, and Nikita Kimberly Huang, 'Intellectual Property Rights Analysis in the Context of Artificial Intelligence Development in the Indonesian Legal Context', *E-Justice: Journal of Law and Technology*, 1.1 (2024), 81-94

Solferino, Sydney L, 'One Small Step on TikTok, One (Possibly) Giant Leap for the Dance Community: How TikTok Spearheaded a Change in the Seemingly Stagnant Field of Copyright Law', *Catholic University Journal of Law and Technology*, 32.1 (2023), 145-70

- Song, Sangho, '[Cultural Story] Everyone Follows "K-Dance"... But Where Is the Choreographer's "Copyright Protection"?', *Gyeonggi Ilbo*, 2022 <<https://www.kyeonggi.com/article/20220726580155>>
- Sye, David, 'Literally Stealing the Show: A Brief (and Recent) History of Dance Copyright', *The Office for Intellectual Freedom of the American Library Association*, 2021 <<https://www.oif.ala.org/literally-stealing-the-show-a-brief-and-recent-history-of-dance-copyright/>>
- Whiting, Evie, 'Square Dance: Fitting the Square Peg of Fixation into the Round Hole of Choreographic Works', *Vanderbilt Law Review*, 65 (2012), 1261
- Wong, Ivy, 'Point Choreography in K-Pop', *Medium*, 2021 <<https://ivywxy.medium.com/point-choreography-in-k-pop-d392a27089e2>>
- Yeoh, Francis, 'Why Don't Choreographers Copyright Their Works?', *Dance Chronicle*, 45.2 (2022), 155-72 <<https://doi.org/10.1080/01472526.2022.2064162>>