Copyright and the Dance Teacher

1. What 'in copyright' means

In most countries, original musical, dramatic and artistic works are protected by copyright¹ until:

- 70 years after the creator's death
- 70 years after the death of the last living contributor in a work which has been created by more than one person,
- 70 years after the death of the arranger, if a work which is otherwise out of copyright (such as a folk song or a piece by Mozart, for example) has been arranged
- 25 years after a new edition of an otherwise out of copyright work is published (this is called the 'graphic' or 'typographic right')

Works which are out of copyright (non-copyright) are said to be 'in the public domain'.

Note that for sound recordings, copyright expires 70 years after the date of the recording.²

2. What copyright protects and prohibits: rights and royalties

Assuming that the use of their music has been licensed and paid for, composers or copyright owners are due royalties³ every time their music is:

- performed ("Performing Rights")
- recorded ("Mechanical Rights")
- used in a film ("Synchronization rights")
- used for a stage play or ballet ("Grand Rights"), and
- printed

Copyright also subsists in:

- Sound recordings (called 'phonographic copyright, and represented by the sign 'P' in a circle. For more information on this in the UK, refer to Phonographic Performance Ltd (PPL)
- Printed music - whether original compositions or arrangements. The Music Publishers Association in the UK can advise more on this subject.

¹ In the UK, see Copyright, Designs & Patents Act (1988) §12 (Hereafter, this act is referred to as 'CDPA (1988)'
² See CDPA (1988) §13A
³ Although 'straight line distribution' of royalties to composers or copyright owners is not guaranteed by the Performing Right Society (PRS).
Copyright is known as a 'negative right' - in other words, it tends to prohibit and restrict, rather than permit people to do things (with the exception of the composer, the author of any associated words and in the case of published music, the music publisher, who are the only beneficiaries of the 'positive right' in copyright).

The things that you cannot do under copyright law are called 'restricted acts', and if you do them, they are called 'copyright infringements'. Under copyright law, restricted acts are as follows:

- You may not copy the work without permission
- You may not perform the work without permission
- You may not record the work without permission
- You may not arrange, adapt or cut the work without permission
- You may not adapt the music to a film, play, ballet or other stage work without permission
- You may not use the music in such a way that might denigrate the original intention of the composer (called 'detrimental use' of music)

If you want to do one of the restricted acts, then you need to apply for a licence. Licences are processed mainly by collecting societies (licensing bodies) rather than individual creators or publishers. However, when you choreograph to music which is in copyright, you need to gain permission to do so, and this has to be done directly with the publisher or composer.

3. Simple copyright issues – teaching

If you own a dance tuition school, you generally need two licenses to use music:

- A yearly venue-licence from a performing rights collecting society such as the Performing Right Society (PRS) in the UK, or APRA in Australia and so on. The money from this is distributed to composers, publishers and any estates.
  
  You would only be entitled to a waiver on performing rights if all the music that you play in a class were out of copyright. As soon as even one piece of music that you use is in copyright, you must pay for a blanket licence.

- A yearly licence from a phonographic rights collecting agency such as Phonographic Performance Ltd in the UK (PPL) or PPCA in Australia. The money from this is distributed to record companies and performers on recordings, via their record companies.
  
  You would not need a PPL licence if you never use recorded music at all in your classes; but if you play background music in the reception area, for example, you will need a PPL and a PRS licence.

4. Complex copyright issues – performing & choreographing

Where permission and licences are needed to perform or record music alone (for example, in a concert, or on an audio recording), you can deal with licensing agencies such as the PRS or MCPS in
the UK, or APRS and AMCOS in Australia, who will issue licences and collect royalties on the composers' and publishers' behalf.

It is important to understand the difference between licences and permissions – just because you have a license to play music in a theatre, it does not mean that you automatically have permission to perform a ballet to it without the consent of the composer or publisher.

If music is in copyright, and you want to choreograph to it, you need to negotiate directly with the composer or publisher of the work in question. The composer may refuse permission to have their work choreographed to (see section 6, Examples of Copyright Permission Problems in Ballet). If they agree to let you perform your work, they will negotiate a fee with you, based on the type of performance and size of the theatre. This fee is not always onerous, particularly if the publishers are sympathetic to student work. On the other hand, some companies and composers may not be interested in putting effort into collecting relatively small amounts of money, and may therefore let your request sit at the bottom of a pile for weeks, or charge you full rates.

5. What if I don't comply?

- **Worst case scenario**: fines, court cases, impounding of materials, or an injunction preventing you from continuing your business or show
- **Fairly bad scenario**: you invest time and money in a project which has to be scrapped at the last minute for copyright reasons
- **Common scenario**: you will be charged more retrospectively for using music than if you had gone through the proper channels in the first place
- **Best scenario**: allow enough time to apply for a licence before public performance

6. Examples of copyright permission problems in ballet

- Peter Schaufuss’s ballet *The King* (1999) using music of Elvis Presley, was allowed to be performed in Denmark, but was cancelled in Scotland, then had to be quickly re-written when it toured to the UK.
- Eliot Feld’s ballet *Endsong* (1991) originally set to Richard Strauss’s *Four Last Songs* has been performed in silence, ever since the Strauss estate refused permission for the music to be used for a ballet. There are four choreographers who are allowed to use this music, because their use of it predates the estate's decision, and the decision was not applied retroactively.
- The music for Ashton’s *Monotones* is by Erik Satie, who died in 1925, and is therefore out of copyright. Two of the sections were orchestrated by Debussy (d. 1918), and are also out of copyright. The rest of the score is orchestrated by Roland-Manuel and John Lanchbery, both of whom are still in copyright.
- The music for the opera *Prince Igor* was written by Borodin who died in 1887. However, parts of the opera were arranged by Rimsky-Korsakov & Glazunov. Although the former died in 1908, the latter died in 1936 – which means that until the end of 2006, the Glazunov estate still collected royalties on Borodin’s work. This was only the case, however, since 1996 when UK law was harmonized with European law (from ‘death + 50 years’ to ‘death + 70 years’). For ten years from 1986-1996, Glazunov too was out of copyright.
Due to the Copyright Term Extension Act (1998) in the USA, many Russian works, including selections from Romeo & Juliet (Prokofiev) and The Rite of Spring (Stravinsky) which were previously non-copyright in the US (but in copyright elsewhere) have now gone back into copyright.

7. What you need to do:

If you use music for dance teaching, make sure that you have:

- a venue licence for performing rights (e.g. a PRS licence), and
- a licence to play recorded music, or music in TV or radio programmes (e.g. a PPL licence).

Always check that the buildings you have hired have the required licences. Do not assume that people are correct when they tell you that they’re ‘covered’ – many people do not understand copyright, especially where dance is concerned. If in doubt, ask one of the relevant collecting societies or publishers.

If you use music for choreography and performance:

- Check whether the music you want to use is in copyright or not
- If it is, contact the publishers of the music, or the composer directly. They will want to know how many performances you intend to do, how many seats the theatre holds, and what other pieces will be on the programme (i.e. what proportion of the evening your piece occupies).
- If you want to make cuts or arrangements to the score, you will need to send these to the publisher/composer for approval
- If you are using a recording, you will need to contact the record company for a licence to do so

If you are commissioning a composer to write music for you, make sure that all fees, royalty payments, and permissions have been agreed in writing long in advance of the first performance.

If you are performing a choreographic work which is not by you, remember that the choreography may be in copyright, too, and you will have to seek permission and pay for this.

8. Exemptions

In copyright, the notion of ‘fair use’ allows people to do otherwise restricted acts in the course of research or education, or for private use. However, music in the context of dance classes is not seen as ‘educational’ in terms of copyright legislation, and must be paid for. Choreography may be performed to music without permission, but only in the company of fellow students and staff in the context of a lesson- not in public performance.

The Australian collecting societies AMCOS/ARIA have evolved a ‘Dance Schools Licence’ which enables dance teachers to do a number of normally ‘restricted acts’ (e.g. make recordings of music
for class and for home practice by students), for an annual fee based on the number of enrolled students. To our knowledge, they are the only society to do this.

9. Further Information

- **BMI** (Broadcast Music Inc.) - links to collecting societies around the world
  http://www.bmi.com/international/entry/C2258
- **UK Music**
  http://www.ukmusic.org/
- **Copyright resource Centre** from the Music Publishers' Association of America
  http://www.mpa.org/content/copyright-resource-center
- **FAQs from ARIA (Australia)** about copyright and licensing
- **LICENSING 101** from SoundExchange (US)
  http://www.soundexchange.com/service-provider/licensing-101/
- **Look before you leap**, p. 121-125 (London, 1995: Dance UK). Ann Whitley's book for budding choreographers has a very informative, clear & readable account of musical issues in choreography. Rights organisations mentioned are mainly UK-based, but the principles are broadly universal.
- **PRS for music**
  http://www.prscformusic.com
- **Music and Dance Copyright**: article from Boosey & Hawkes
- **PPL (Phonographic Performance Ltd)**
  http://www.ppluk.com
- **UK Intellectual Property Office** (formerly the Patent Office)
  http://www.ipo.gov.uk
- **Whose right, who’s right: how to get the rights to choreograph to copyrighted music** (from Dance Magazine, 1995)
  http://bit.ly/1zvb5Lo
- **WIPO** (World Intellectual Property Organisation) news and information pages
  http://www.wipo.int/pressroom/en/
- **International copyright collection societies**

Every care has been taken in preparing this information, but no responsibility can be accepted by the Royal Academy of Dance for any harm, however caused which results from this Information.