

# World Copyright Law Report

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Kenyon & Kenyon

## Second Circuit saves the last dance for Martha Graham's dance centre

In [Martha Graham School v Martha Graham Centre of Contemporary Dance](#), the US Court of Appeals for the Second Circuit has upheld a lower court decision that copyright in the majority of dances choreographed by Martha Graham is owned by the [Martha Graham Centre of Contemporary Dance](#).

Martha Graham, widely regarded as the mother of modern dance, declared Ronald Protas as the sole executor and beneficiary of her will. After her death he became artistic director of the centre, until he was removed by the board in 2000. As Graham's heir, he asserted copyright ownership of Graham's dances and initiated a lawsuit to enjoin the centre from performing them.

The Second Circuit Court of Appeals unanimously upheld the decision of the US District Court for the Southern District of New York that copyright in the majority of Graham's dances was owned by the centre. The decision rested mainly on the fact that for most of her life (1956 to 1991), Graham was employed by the centre or by the associated [Martha Graham School of Contemporary Dance](#), both of which are not-for-profit corporations. As a result, the question of copyright ownership is determined by the work-for-hire doctrine. Graham owned the copyright in the dances created before she was employed by the centre (ie, 1956). However, she failed to renew these copyrights as required by the law, and some of the dances entered into the public domain. When she began work at the centre, she assigned the copyright in many of her other dances to it.

Between 1956 and 1966 the scope of Graham's employment did not include choreography, so the court held that the dances she choreographed in that time span were not works for hire as they were not created at the instruction of the centre. From 1966, her employment was full time and primarily focused on choreography, therefore these dances were created in the course of her regular employment and can be considered as works for hire under both the Copyright Act 1909 and the [Copyright Act 1976](#).

Although the dispute involved 70 dances, the court held that only two of these belonged to Protas. The centre [welcomed](#) the decision, stating that it enables them to preserve Graham's legacy to dance by performing the works again.

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