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## **SCRIPT: A LEGACY OF VITALITY**

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## Introduction

From 2002 to 2012, the Arts and Humanities Research Council (AHRC) funded SCRIPT, the Centre for Research on Intellectual Property and Technology Law. Based in the Law School at the University of Edinburgh, it allowed a diverse and changing collection of scholars to network and push the boundaries of knowledge across a range of legal fields, including but not limited to those of intellectual property law, information technology law, and medical law. Much of this work engaged to some degree with the interaction between law and culture. For the SCRIPT co-directors and associates, this was an immensely busy and highly privileged time; the exceptional benefits of having secured funding for a range of research projects over ten years allowed us to develop extensive national and international networks and engage in cross and multi-disciplinary projects in many fields. While funding for SCRIPT came to an end in 2012, the legacy of SCRIPT continues, not least in the form of this journal, for which each of us has acted as contributor and reviewer, and one of us as editor-in-chief.

This particular contribution, the title of which purposefully draws on a cultural artefact, but explores the polar opposite of the sentiment contained in that artefact,<sup>1</sup> will briefly discuss the current AHRC-funded project “InVisible Difference: Disability, Dance and Law”,<sup>2</sup> the seeds of which were sown during the period of SCRIPT’s second tranche of funding. First it will explain how links were forged between four areas of law: intellectual property law, medical law, human rights law and disability law; between dance scholarship and the practice of disabled dance; and will discuss how the boundaries between these fields were crossed. Second, it will show how the academic disciplines are being re-thought as a result of the collaboration, explaining how the work undertaken seeks to inform law, dance and disability policies.

## Realising InVisible Difference

For us, it began at the zoo. A dreary Edinburgh day in October spent taxiing between the sober conference room and the more exciting penguin enclosure was capped with an experimental exercise where every member of SCRIPT, and some friends of SCRIPT, put their name in a hat to be drawn into research/writing teams. Almost four years later, the penguin enclosure, if not forgotten, has been well eclipsed by the events that followed. The original idea was to encourage busy academics to partner with one or more colleagues with whom they would not normally collaborate, and get them to write something rigorous that took all of them outside their specialist comfort zone, but would still draw on their specialist expertise. It was a risky experiment, demonstrated by the fact that we were the only “team” to complete the assignment and deliver an original piece; that is, until this year, when a second team published

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<sup>1</sup> We are, of course, referring to the Misfits’ ground-breaking album, *Legacy of Brutality*, which led to a new genre of music variously called “gloom punk”, “horror punk”, and “horror rock”, a genre that mixes Gothic and punk sounds with doo-wop and rockabilly beats and that relies on often violent imagery influenced by horror films and sci-fi B-movies.

<sup>2</sup> “InVisible Difference: About” (2013) available at <http://www.invisibledifference.org.uk/about/project/> (accessed 27 Jan 15).

their collaboration.<sup>3</sup>

We each had some involvement and interest in technologies and interdisciplinarity. From this common platform and a discovered shared interest in law and culture, we brought our specific sensibilities – derived from intellectual property law, information technologies law, human rights law, and medical law and ethics – to the undertaking. The result was a critical article highlighting the need for more research into the lived experience of disability and the use of, or interaction with, both law and technologies. In our work, after considering the concept of disability and the role of technologies in producing disability, we examined blindness and access to books as a case study on the international, European and UK legal frameworks. We explored how their operation has an intimate relationship with our understandings of disability.<sup>4</sup>

Having steered the experiment to harbour successfully, we saw no reason, and had no wish, to call time on the collaboration. As such, we joined forces with a fourth colleague, Sarah Whatley, a well-known scholar of dance whom Waelde had encountered in her work under the AHRC's "Beyond Text" call.<sup>5</sup> Whatley's "Beyond Text" research project, "Choreographic Objects: Traces and Artefacts of Physical Intelligence", brought together an interdisciplinary team, including social scientists, dance researchers and artists, to explore theories of knowledge production and knowledge transfer in the creation of a series of choreographic initiatives. For her "Beyond Text" work, Waelde teamed up with Philip Schlesinger, Professor of Cultural Policy at the University of Glasgow (co-investigator), along with experts in dance, musical composition, cultural heritage and cultural economics, to explore the extent to which experimental and experiential forms of music and dance were beyond the protection of copyright.<sup>6</sup> Waelde and Whatley met during one of the "Beyond Text" gatherings organised by Evelyn Welch, the Programme Director. The immediate connection was dance, but the intellectual links and interests went much further and much deeper. Whatley was interested in ownership and authorship of dance – questions that Waelde had covered in her research. Links around disability became apparent: Whatley had pioneered work around inclusion of disabled dancers in higher education; and central to the Brown/Waelde/Harmon contribution noted above, was the law's response to disability.

Almost a year later, in September 2011, a proposal was submitted to the AHRC with Whatley as PI and the three of us as co-investigators. The project was aimed at extending current thinking around the making, status, ownership and value of work by contemporary dance choreographers, with a focus on dance made and performed by disabled dance artists. Overarching questions asked within this project, called "InVisible Difference: Disability, Dance and Law", included the following:

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<sup>3</sup> G Black et al, "Scotland the Brand – Marketing the Myth" (2015) 24 *Scottish Affairs* 47-77.

<sup>4</sup> A Brown, S Harmon and C Waelde, "Do You See What I See? Disability, Technology, Law and the Experience of Culture" (2012) 43 *International Review of Intellectual Property and Competition Law* 901-929.

<sup>5</sup> "Beyond Text: Projects" available at <http://projects.beyondtext.ac.uk/choreographicobjects/> (accessed 27 Jan 15).

<sup>6</sup> C Waelde and P Schlesinger, "Music and Dance: Beyond Copyright Text?" (2011) 8 *SCRIPT-ed* 257-291.

1. Why are we so far from a reality where dancers with physical impairments are fully integrated within mainstream dance performance?
2. What is it in existing theoretical and legal frameworks that helps or hinders the participation of disabled dance artists in the mainstream?

Other questions implicated and explored are:

1. What is normal?
2. What are the economic realities for a disabled dance practitioner?
3. Is the disabled dancing body more exposed to public consumption than the non-disabled body?
4. How do we value dance made by and performed by disabled dancers?

In exploring these questions, our aim was to work closely with disabled dancers to consider perceptions of creation, interpretation, and authorship, and to uncover and discover new ways of thinking about how dance that is made and performed by disabled dancers contributes to our cultural lives. It was a project that had very clear and explicit practical ambitions to strengthen the case for change (where necessary) in working practices and in the legal and policy frameworks that underpin, support or influence the artists' work. The AHRC were impressed and (apparently) agreed that this was the time for these questions to be explored as a base for future change. Thus, InVisible Difference was funded. The project began in January 2013, and we were joined by four talented early career researchers (two research fellows and two PhD candidates).<sup>7</sup>

### **Rethinking Disciplines**

So started our journey, one in which dancers learned of law and lawyers learned of dance. Everyone in the project learned together how creativity can be practised and how practices can contribute to our cultural heritage. All involved have moved well outside their comfort zones, with two legal team members participating in dance workshop sessions<sup>8</sup> and one dance team member being a named author in an article in a leading intellectual property law journal.<sup>9</sup> In mixed disciplinary teams, members explored discourse analysis in respect of audience commentary on disabled dance (which in the main involved YouTube comments, as this was the main body of commentary identified);<sup>10</sup> and engaged in observation and interviews of respected

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<sup>7</sup> Dr Karen Wood, Research Assistant, Coventry University; Hannah Donaldson, Research Assistant, University of Exeter; Mathilde Pavis, PhD Candidate, University of Exeter; and Kate Marsh, PhD Candidate, Coventry University.

<sup>8</sup> Charlotte Waelde participated in a dance workshop alongside Sarah Whatley and Abbe Brown alongside one of the artists we work with in the project, Chisato Minamimura, at "Gathered Together" at the Tramway, Glasgow in 2014. See: Tramway, "Gathered Together: Indepen-dance" available at <http://www.tramway.org/events/Pages/Gathered-Together.aspx> (accessed 23 Apr 2015).

<sup>9</sup> C Waelde, S Whatley and M Pavis, "Let's Dance! But who owns it?" (2014) 36 *European Intellectual Property Law Review* 217.

<sup>10</sup> We examined approximately twenty YouTube clips, with some yielding greater data than others. Key clips used were: "How to Dance without Legs" available at <https://www.youtube.com/watch?v=mLe9ZSwU4aQ> (accessed 27Apr 15), "The Best Dance Ever (Makes You Cry)" <https://www.youtube.com/watch?v=Pwhz7NvFFac&list=FL5NGa2okQ003DzrCkioNGqQ&index=14>

disabled dancers who are members of the project team or friends of the project<sup>11</sup> (and who we are delighted to note all have strong links with Scotland, a testament to the open approach taken by Creative Scotland).<sup>12</sup> In all these activities, we had the privilege of learning from each other and then working together to pursue new objectives. Frequently we became aware of the inadequacies of our fields.<sup>13</sup>

The team aimed and aims to do more; not just to learn to speak another language, and to engage with colleagues, but to build a new and intertwined approach to dance and disability. In pursuit of this we encountered an obstacle we did not anticipate: even when we felt we were agreed on an issue (or our objective), we were still apart. A useful example was our exploration of “who owns the dancing body”. Eight team members produced eight significantly different contributions. More fundamentally, we took different approaches to our understanding of the body and its importance, and to the meaning of ownership, control, reward and authorship. It became apparent that a new approach was required.

We embraced this challenge, through a writing sprint approach (i.e. six hours locked in a room in Coventry in September 2014). This was a process of deep engagement and challenge. It is a testament to all that the feeling of being part of a greater whole, and building something new, grew throughout our discussions – as opposed to the more likely outcome of fragmentation and loss of morale. While we did not quite deliver a finished piece in those six hours, our discussions (which were carefully managed by one of our team), led to us developing a clear structure, a coherent line of argument, and allocating responsibility for writing a paper. A paper that, in the end, was less about ‘owning’ the dancing body, and more about acknowledging the value, wholeness, virtue, and potential contribution to culture, of the dancing body that is disabled. Most importantly, we all felt that each drew both on their own established and developing expertise, knowledge and thoughts, but also on those of others within the team, as we together moved beyond disciplines and our impasse. A possible challenge then arose regarding a home for this piece; would it be of interest to an established journal, or would it be seen as outside their established parameters? This is an issue we also encountered in seeking a publisher for the edited book, which will be one of the final outputs of *InVisible Difference*. Excitingly, Intellect has offered to publish this and the dancing body piece will be the first chapter.

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(accessed 27 Apr 15), and “AXIS on SYTYCD” <https://www.youtube.com/watch?v=rdLsRefSh58> (accessed 27 Apr 15).

<sup>11</sup> “Caroline Bowditch” available at <http://www.carolinebowditch.com/> (accessed 27 Jan 15); “Claire Cunningham” available at <http://www.clairecunningham.co.uk/> (accessed 27 Jan 15); and “Chisato Minamimura” available at [http://chisato.h-and-c.jp/profile\\_e.html](http://chisato.h-and-c.jp/profile_e.html) (accessed 27 Jan 15).

<sup>12</sup> Creative Scotland, “Five Questions for Claire Cunningham” (2012) available at <http://www.creativescotland.com/explore/read/stories/5-questions/2012/claire-cunningham> (accessed 27 Jan 15). Caroline Bowditch has been funded many times through Creative Scotland. Between 2008 and 2012 Creative Scotland funded Caroline as Scottish Dance Theatre’s Dance Agent for Change, which aimed to increase the amount of disabled people involved in dance. “Caroline Bowditch” available <http://www.carolinebowditch.com/performing.html> (accessed 27 Jan 15).

<sup>13</sup> See S Whatley et al, “Validation and Virtuosity; Perspectives on Difference and Authorship/Control in Dance” (forthcoming) *Choreographic Practices*; S Harmon, “The Invisibility of Disability: Using Dance to Shake from Bioethics the Idea of ‘Broken Bodies’” (2014) *Bioethics* available at <http://onlinelibrary.wiley.com/doi/10.1111/bioe.12139/full> (accessed 23 Apr 2015).

## **New Approaches and External Challenge**

As the InVisible Difference team enjoyed, indeed wallowed, in this unusual intellectual freedom, there was a timely reminder of reality in the organisation and staging of our November 2014 year two symposium, “Disability and the Dancing Body: A Symposium on ownership, identity and difference in Dance”. This was graciously hosted by Siobhan Davies Dance Studios in London (termed by one attendee as “a cathedral for contemporary dance”).<sup>14</sup> The event was advertised with excitement and apprehension through law and dance networks and over social media. Had our team captured itself? Was it exploring issues that would not resonate with the lived experience of our primary constituents? Happily, we were delighted when the event was “sold out”<sup>15</sup> well in advance and on the day we welcomed over seventy attendees, including some personal assistants and assistance dogs, with visual and auditory/sign support available.

First, we welcomed via Skype a keynote from the consultant to the project, Caroline Bowditch, who self-describes as a performer, maker, teacher, speaker and mosquito buzzing in the ears of the arts industry in the UK and further afield. The symposium then explored three issues of critical concern: meaning and scope of cultural heritage; meanings of support for the disabled dancer and the availability of a critical discourse for disabled dance, such that it might develop greater impacts on audiences. There were presentations, challenge sessions, informal discussions and four pieces of work performed by dancers who have disabilities: three pieces presented in person, and one on screen. The speakers and audience came from different parts of the creative industries (e.g. dance makers and curators, experts in cultural heritage, actors, writers, cultural leaders and policymakers, academics working in dance, theatre and cultural studies and dance therapists, educators and critics) with representatives from law and medicine as well.

There was stimulating and probing discussion. We also took the opportunity to explore a new methodology by generating data through participant “surveys” captured through postcards - some blank, some posing specific questions. This gathered information on reactions to the dance performances and to the issues explored in the sessions. If the “sprint” discussed above had helped the InVisible Difference team to intertwine different strands and build their argument, then the symposium and the data were a reminder that others inevitably (and perhaps rightly) considered that different questions should be explored. Examples were exploration of learning disabilities as well as physical disabilities, inclusion of other people and perspectives in the debate and the inadequacies of the use of words to analyse a cultural form based on the body. Some of this can be incorporated in InVisible Difference, and we look forward to doing so. Other issues must wait for the next project and we are already exploring possible support and partners. Importantly, the evidence that we gathered on the day assured us that the questions we are exploring are not just of relevance, but are of deep concern for stakeholders some of whom expressed pleasure at these being examined in a systematic way, but also frustration that they hadn’t yet been settled.

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<sup>14</sup> “Siobhan Davies Dance” available at <http://www.siobhandavies.com/> (accessed 27 Jan 15). See details of event on project website: “InVisible Difference: Events” available at <http://www.invisibledifference.org.uk/events/our-events/> (accessed 23 Apr 2015).

<sup>15</sup> Metaphorically. It was a free event.

### **Coming Full Circle? The Place of Law**

Law had several roles within the discussions at the symposium. Many of the legal speakers, possibly having spent too much time with one of the technical editors of this journal, began their presentations on an apologetic note (i.e., “This will be interesting,” or “Sorry, it’s law, but it can be important.”). Indeed, throughout the day there were healthy if uncomfortable reminders of several critical points, namely that law:

- does not have the importance to dancers that it does to lawyers;
- is not necessarily able to deliver outcomes, which other disciplines might consider to be appropriate.

Examples of specific issues that emerged at the symposium, which have also been explored in the project outputs noted throughout this piece, are that law focuses too much on choreographers rather than dancers (by respecting control and advanced recording of a dance, rather than the individual delivery of it, and by not engaging with the remaking of a dance by different bodies); on property and commodity rather than on process, cultural value and identity; and accordingly can be seen as oppressing dancers with disabilities, rather than empowering them.

Yet it was also clear that law:

- is nonetheless influential on creative practices; and
- is itself fluid, flexible and open to creativity if people engage with it.

Ultimately, a key message was that if stakeholders consider that the law is not meeting their needs, (and perhaps so much so that some groups might not see the law as being relevant to them), then debate and policy engagement should aim at pressuring for change. Coming full circle, this can enable law to be, if not important to all, then at least a respected part of the creative industries.

Contributing to this change, and providing information about the present legal framework and opportunities which can be explored within it, has been a key goal of InVisible Difference. Briefing papers have been prepared for experts in ethics,<sup>16</sup> for dancers,<sup>17</sup> for arts funders,<sup>18</sup> for supporters/observers<sup>19</sup> and for providers of facilities

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<sup>16</sup> “A Bioethics Perspective Through Disabled Dance: A Policy Brief for Ethics Educators and Practitioners” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 23 Apr 15).

<sup>17</sup> “Policy Brief For Dancers” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 23 Apr 15).

<sup>18</sup> “Copyright Royalties vs Public Funding for Dance Made and Performed by Dancers with Disabilities” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 23 Apr 15).

for dance.<sup>20</sup> Each brief introduces an issue relevant to the target audience, presents our key research findings and delivers focused recommendations. For example, there is guidance on what are reasonable changes to be made to venue access arrangements, thus avoiding the risk of a court action; and suggestions are provided to dancers and supporters as to how court actions seeking changes might be pursued if necessary. We have also contributed to consultations so as to influence policy change ourselves.<sup>21</sup>

InVisible Difference will also contribute to the contemporary debate on the value of arts and humanities research funding through the identification of what difference the project has made, whether to the lived experiences of disabled artists or to the legal frameworks that support their work.

### **Closing Thoughts**

InVisible Difference will run until December 2015. The project has a regularly updated team blog,<sup>22</sup> an active social media presence, conference presentations in Edinburgh and around the world at law and dance events that have involved the showing of dance, briefing papers and peer reviewed articles in edited collections and a diverse range of journals. These are important achievements and there will be more.

Yet it is the soul of the project, the vitality of the team and the new approaches generated that will be its legacy. The team hopes to continue to work together and to build upon valuable connections made, possibly through the formation of a new research centre. Interdisciplinarity will be at the heart of it. There, as now, key challenges will be how to learn from, embrace, challenge and discard restrictions imposed by disciplines, while delivering academic work that is rigorous and respected within the confines of each discipline. We must discard our shackles and continue to expand the boundaries of our disciplines and also influence practical change for dance and disability – a challenge in the light of the significant fundamental inequalities that appear given recent political developments, to be embedded in society.<sup>23</sup>

This project has been a privilege, and a journey that we hope to continue. Thank you SCRIPT.

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<sup>19</sup> “Policy Brief for Supporters of Dance” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 23 Apr 15).

<sup>20</sup> “Policy Brief for Venues: Providing Space. Obligations and Approaches to Dancers with Difference Bodies” “InVisible Difference: Policy Briefs” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 23 Apr 15).

<sup>21</sup> InVisible Difference, “Policy Brief: The UN Convention on the Rights of Persons with Disabilities (CRPD): Thoughts on the UK Initial Report CRPD/C/GBR/1” (2014) available at [http://www.invisibledifference.org.uk/media/papers/Policy\\_Brief\\_CRPD\\_2.pdf](http://www.invisibledifference.org.uk/media/papers/Policy_Brief_CRPD_2.pdf) (last accessed 23 Apr 15). The Department of Work and Pensions response is available at [http://www.invisibledifference.org.uk/media/papers/Merged\\_response.pdf](http://www.invisibledifference.org.uk/media/papers/Merged_response.pdf) (accessed 23 Apr 15).

<sup>22</sup> “InVisible Difference: Blog” available at <http://www.invisibledifference.org.uk/blog/> (accessed 27 Jan 15); “InVisible Difference: Publications” available at <http://www.invisibledifference.org.uk/research/publications/> (accessed 27 Jan 15).

<sup>23</sup> Independent Living Fund, “High Court upholds Government decision to close the Independent Living Fund” (2014) available at <https://www.gov.uk/government/news/the-high-court-upholds-the-governments-decision-to-close-the-independent-living-fund> (accessed 27 Jan 15).