

Key Issues
**IN TALENT
AGREEMENTS**

Overview

Talent agreements encompass the broad category of contracts that set the terms around how your talent, image, and/or work, are engaged, produced, displayed, or performed publicly, and used commercially, how you are compensated and who owns the ultimate work.

Today, a Dance Studios Alliance NYC panel will address issues associated with talent agreements and industry practices that impact key stakeholders.



Overview

DANCE STUDIOS ALLIANCE NYC is an unprecedented collective of diverse dance organizations reimagining the tapestry of the NYC dance community. We are committed to creating a better dance community.

KEY ISSUES IN TALENT AGREEMENTS is the first of a series of FREE EVENTS geared toward addressing issues prevalent in our industry. Today's panel:



GLADYS BANKS, Esq.
Brickhouse NYC
Panelist

YOSARA TRUJILLO, Esq.
Sweet Water Dance & Yoga
Panelist

PAVAN THIMMAIAH
PMT House of Dance
moderator

Intro

A TALENT AGREEMENT is a binding agreement between a "talent", (performer, writer, choreographer, actor, singer, musician...etc) and an individual or organization that wishes to hire the talent to present its abilities or perform the job. Examples include:

- Choreography
- Dance Performance
- Dance Instruction
- Acting
- Musical/Voice Performance
- MC/Hosting Performance



Important

ALL TALENT AGREEMENTS are meant to be legally binding and enforceable at law, which means it gives the parties the right to sue in case the other party does not perform its part of the bargain.

THEREFORE

This presentation is meant to be informative. **THIS IS NOT LEGAL ADVICE.** At best, this presentation will suggest elements to consider when presented with an Agreement.

YOU SHOULD ALWAYS SEEK LEGAL ADVICE BEFORE SIGNING ANY LEGALLY BINDING AGREEMENTS or whenever you have any concerns about whether an agreement is legally binding.

Free and low cost legal resources are listed at the end of the presentation, for your reference.

Key Concepts

TALENT: A person that can be relied upon to complete a particular task. i.e. Dancer, Choreographer, Actor, Musician, Singer, MC/Host, Spokesperson.

HIRING PARTY: An individual, group or organization that engages talent for a particular event or production, usually for purposes of a public live or digital performance.

CONTRACT: A binding written agreement intended to be enforceable by law.

ENTITY: A legally or otherwise recognized organization.

EQUITY: (1) Fairness
(2) The value of a property or an interest in a property.

EMPLOYEE: An employee is a person who an employer hires to do a particular job. Employees are individuals who take directions from other professionals, such as managers within a firm.

Key Concepts

Continued...

INDEPENDENT CONTRACTOR: An independent contractor is a temporary employee who is not an employee that is hired for projects or specific purposes for longer-term clients. As a contractor, you might work on-site in a client's office or your own workspace. Dancers, choreographers, models, and talent are often hired as Independent Contractors.

FREELANCER: A freelance worker is a nonpermanent, self-employed worker who provides products and services to multiple organizations. These professionals can work for as many clients and take on as many projects as their schedule allows. Freelancers set their own rates, process tax payments independently and choose where to work. Examples of freelance workers include journalists, copywriters, graphic designers and web programmers.

Work

Your
WORK
CREATION
EXPRESSION
PRESENCE
BODY
IMAGE

are the **PRODUCT!**

This includes your physical and recorded presence/image.

Product

What PRODUCT is being negotiated?

Choreography vs. Physical Performance

Performance vs. Image

Live Performance vs. Digital Recording

A Talent Agreement can include one or any number of "products" the talent will perform.

CONSIDER: WHAT "PRODUCT"?

What is the PRODUCT(S) is being negotiated?

Am I the CHOREOGRAPHER?

Will I be PERFORMING?

Will my IMAGE be used in marketing?

A Talent Agreement often bundles any number of "products" the talent will perform for a project.

Use

What is the proposed USE is being negotiated?

Your product can be used once, for a limited run, or in perpetuity.

Your product can be used locally, regionally, globally, and/or digitally.

The key concept here is EXPLOITABILITY.

A Talent Agreement should delineate the USE being negotiated. Higher Exploitation = Higher Value

CONSIDER: USE

What is the proposed USE being negotiated?

Choreography: Will my choreography be used once or for a run?

Live Physical Performance: Am I performing at one show or a run?

Image: Will my image be used locally? Regionally? Globally? For the performance or as part of the entity branding assets?

Digital Recording: Will my performance be replayed digitally?

Limited Use vs. Perpetual Use: Will it be used once, or in perpetuity?

Ownership: See below

CONSIDER: USE

Children's Dance Studio Recital

vs.

Nike Promo Spot

Dance Studio Recital will be performed once or for a limited run, for a local community, and will only be recorded and shared by parents.

Nike will record you once, and use the digital footage globally, in perpetuity.

LOW USE

LOW EXPLOITATION

HIGH USE

HIGH EXPLOITATION

Purpose

Purpose refers to whether a work is being used for Commercial Exploitation, as in the Nike example above, on one extreme, or for a Public Benefit on the other.

Commercial Uses are generally seen to increase artist compensation.

Public Benefit may or may not compensate less than Commercial Use.

In either case, the Talent is seen as "participating" in the commercial success or public benefit offering.

CONSIDER: PURPOSE

DSA NYC Performance

DSA NYC Recital will be performed once for the purpose of promoting a not for profit organization that works to improve the dance industry in NYC.

PUBLIC BENEFIT USE

vs.

Nike Promo Spot

Nike will record you once, and use the digital footage globally, in perpetuity to increase Nike sales & profits.

COMMERCIAL USE

Market Value

What "the market" is willing to pay for your services?

The market pays more for unique, high-quality talent. Even higher for talent with a large following that might improve visibility.

- What is "the service(s)" you are negotiating?
- What is the "market rate" for that service, for someone of your expertise/talent?

CONSIDER: MARKET VALUE

- Am I a new or experienced talent?
- Is my talent rare/in demand (higher value) or do I have competition (lower value)?
- Is there a situation (like a pandemic) that might increase or decrease the value of your offering?
- Are you a celebrity, or influencer or do you have a huge social media following (higher value)?
- Is the "use" "commercial" or "for public benefit"?

CONSIDER: MARKET VALUE

While rates and payment terms are set by individual agreements, there are standard rates that should serve as departure points for negotiating your own rate.

Price yourself too high, you may be passed over for someone else.

Price yourself too low, and you undercut yourself and the industry.

Dancersalliance.org has a Standards Rates page that is a great point of reference:

<https://www.dancersalliance.org/rates>

Compensation

Once your rate is set, there is still the business of HOW and WHEN will you be paid? Will you need to provide an invoice once services are rendered? How and to whom?

Talent Contracts must include compensation details, as well as method and time to be paid.

Note: This is where your designation as an Employee, Independent Contractor or Freelancer can matter the most.

CONSIDER: COMPENSATION

The Freelance Isn't Free Act (FIFA) enacted by NYC in 2017 protects Freelancers from non-payment, underpayment or late payment from Hiring Parties, and also from parties that do not provide a contract for hire. These protections provide recourse through the Office of Labor and Policy Standards as well as the Court.

For more on FIFA visit the NYC Consumer Protection Information page at <https://www1.nyc.gov/site/dca/about/freelance-isnt-free-act.page>

Ownership & Access

After the terms of the agreement have been performed, who owns the resulting "work", and any rights related to the work?

Will the choreography be owned by you or the organization? Will you be allowed to use the resulting images for your own purpose or will you be excluded from using it?

What about images that are not used? Will you be able to use them on your own site for your own marketing?

Legal Services

- VOLUNTEER LAWYERS FOR THE ARTS

- <https://vlany.org/>

- LAWYERS FOR THE CREATIVE ARTS

- <https://law-arts.org/>

- NEW YORK FOUNDATION FOR THE ARTS

- <https://www.nyfa.org/online-resources/emergency-resources/legal-resources/>

