

DOI: <https://doi.org/10.33731/12022.258186>

THE STRUCTURE OF THE TELEVISION FORMAT AND THE CHARACTERISTICS OF ITS ELEMENTS AS AN AUDIOVISUAL WORK

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The article reveals the issues regarding such a complex object of copyright as a television format. The television format is considered as a type of audiovisual work, its structure and characteristics of its elements are analyzed. The current legislation and judicial practice are reviewed, it is substantiated that the elements of the television format should be characterized by signs of originality, uniqueness, and singularity.

Key words: television format, elements of television format, audiovisual production, copyright, television format structure

Television format as a type of audiovisual work is a complex object of copyright in its structure. Accordingly, different subjects of copyright take part in its creation.

According to Article 17 of the Law of Ukraine «On Copyright and Related Rights», the authors of an audiovisual work, including a television format, are the executive producer; screenwriter; the author of a specially created piece of music; art director; director of photography. At the same time, copyright, in accordance with the law, extends to works (literature, science, art) that are the result of creative activity, completed and incomplete, released and not publicly available, regardless of their genre, volume, purpose and goals.

According to Art. 8 of the mentioned law, the copyright protects literary written works of fiction, journalistic, scientific, technical or other nature (books, brochures, articles, etc.) [1].

In turn, Art. 1 of the Law of Ukraine «On Television and Radio Broadcasting» defines an audiovisual work as an audio-

visual information that is subject to copyright, has a certain duration, author's title and its own concept.

The main element in the structure of the television format is the script, from which, in fact, the process of its creation begins. The script of an audiovisual work by its nature is a literary work with stage processing, which is the basis of the future television format, and considers necessarily all the features of the television process that distinguishes it from ordinary literary works [8].

This is confirmed by the norm of Art. 8 of the Law of Ukraine «On Copyright and Related Rights» part 13, paragraph 1, which includes works of stage processing suitable for stage display as objects of copyright. Hence, each new script project written for television format, is an original literary work and belongs to copyright.

From the foregoing, it follows that any script is a literary work, regardless of what kind of art it is written for (theatre, cinema, television, etc.). However, a television format script is not only a literary



work that can be used independently as an object of copyright, but also a document based on which a detailed «format bible» is developed and filmed. It contains not only a thorough literary description of the future television format content, but also elaborate plot dialogues. The script gives a concrete idea of the future television format, defines the objects and locations of filming [13].

A television format script could be an independent original work created specifically for a concrete format that can be classified as a literary work. Meanwhile, on Ukrainian television, the script is mostly a derivative work in accordance with clause 14, part 1, Art. 8 of the Law of Ukraine “On Copyright and Related Rights”. We are talking about the derivative work if the script is created on the basis of an already existing literary work. In this case, legal relations always arise between the author of the script and the author of the literary work, as well as legal relations between the author of the script and the television studio. In the production of television formats, individual episodes from other scripted works have been repeatedly used and are being used, which is perceived in Ukrainian television as a common occurrence. This is what additionally confirms the objective possibility of separating the script from the television format itself [6].

Hence, a television format script is a separate work for the television industry, which has independent significance and is being protected legally as an object of copyright, meanwhile, the script is the main element in the structure of the television format.

When determining the structure of the television format and revealing the essence of the objects that compose it, it is necessary to proceed not only from the external expression of the television format but also from the substance of these elements, that is, from the internal content of the television format. Such objects, in addition to the script, include

the theme of the TV format, its ideological content, the plot core (storyline), the expressiveness of decorative means, and the system of images.

Disclosure of the essence of *the television format external expression* allows us to identify objects that are its structural elements, have a relatively independent meaning and can be separated from the whole work.

Identification and analysis of the television format internal elements nature are to clarify its content. An analysis of the internal elements enables the identification of criteria by which it is possible to establish the illegal borrowing of other people's ideas, plots, fabulous, etc., as well as elements that will further influence the determination of the television format's legal protection overall size.

The theme of the television format as an element of its internal structure determines its character and the system of images as a whole. This is a series of life phenomena united by human thoughts and feelings, a common idea, a sphere in which the plot of the future format will be developed [14]. The theme of love, the theme of war and heroism, of the struggle between good versus evil, and any other theme can be used by the artist regardless of the use of this theme by other authors. The topic is primarily an expression of an idea, and according to the Law of Ukraine «On Copyright and Related Rights», Art.8, paragraph 3, it is not protected by law. Opinions and feelings in any art cannot be monopolized.

Thus, it can be concluded that the theme of the television format, as its internal element, is not and should not be protected by copyright.

The following element of the future television format is «material». The difference between the topic and the material can be revealed in the process of selecting the television format plot, determining its significance. The material includes life facts that make up the artistic unity. So, when developing a television format, national characteristics, cos-



tumes, household items, decorations, etc. are studied and taken into consideration. The material as a source of information can be freely used by any author without any restrictions. The attitude towards one and the same phenomenon (material), its creative coverage are different for separate authors, and it depends only on the worldview of the artist.

So, the material at the time of the television format creation and production is the basis for expressing the storyline, the originality of the character or behavior and relationships of the characters, their language, as well as other authorial techniques of highly artistic significance. A literary work based on the material must be created earlier, before the start of work on the television format script itself, provided that the script is a derivative work.

At the same time, the material itself, which is the basis for the creation of the script, is not an object of legal protection. Only creative processing, use and individual presentation of the material in the content of the television format script will constitute a certain creative result. *It follows from this that the material itself used in the process of creating a television format is not subject to copyright protection, and the legal protection of a television format does not automatically extend to such a structural element as material.*

The plot as an element of the television format is the inner content of the relationship between its main characters. It is through the plot that the intention of the television format author is embodied. The plot can be based on the dramaturgy of a scripted work or on the basis of life conflicts observation transferred by the author to a literary work. The plot of the television format, which is only an objective reflection of real life, is not subject to copyright, and the one, although borrowed from real life, but which received a creative "reworking" of the author, which acquired an original presentation and became a creative solution to the conflict, expressed in an objective form, must be protected by copyright law, regardless of

the protection of the television format itself. Meanwhile, just such a plot can become the basis of the script. In this case, further use of the original story is allowed only with the consent of the script author. Thus, the plot, which has become the result of creativity and has found its objective form of expression, is an independent object of copyright protection, which does not exclude its further embodiment in the script.

To create a television format and recognize it as an independent protected object, it is not enough just to combine material, plot, theme, idea, it is not enough even to express all this in an objective form. To recognize it as an object of copyright, it is necessary to have a constructed figurative system that would unite the listed elements. A simple combination of material, plot, ideas does not give the television format a creative individuality. This requires the next element of the television format - a system of images in which the plot of the television format is realized. The plot, as an element of the television format, exists in close relationship with the system of images, which is a complex system of interactions, the interdependence of the characters relationships in the television format, a variety of events that find their expression in the language of the characters, their actions, gestures.

The television format is characterized by a unique relationship between the system of images, between the image and the figurative form. It is the coincidence of the system of images that is the criterion for determining the borrowing of internal content coming from the original television format. The images system creates independent objects of copyright, and therefore it should be subject to legal protection.

The coincidence of the images system can be at the level of a literary work, when developing a work of art, at the level of developing a script, that is, we are talking about the coincidence of characters in works of different genres that are objects of copyright protection. An



issue of the characters protection is a question of the possible protection of the work part.

An analysis of the foreign countries' legislation shows that some of them have provided for the possibility of copyright protection of a work part as an independent object of copyright. However, what should be understood by the phrase «part of the work» is not defined in the legislation. To some extent, this issue has found its solution in judicial practice [10] when considering a wide range of cases of copyright infringement on part of a work. The subject of such cases is the violation of intellectual property rights because of the illegal use of the works titles, characters and their names, individual phrases, etc.

In the theory of copyright, there are different points of view on the content of the «part of a work» notion. The most detailed classification of the literary work parts was proposed by the recognizable scientist V. Ya. Ionas. In his opinion, the constituent elements of a literary work should be divided into two general groups.

- *theme, material, plot core, idea* (legally indifferent);
- *images, language* (legally significant) [4];

In the doctrine of copyright, it has been argued that the part of a work protected by copyright is an element of the internal or external form of the work, provided that such an element is endowed with originality and potential use independently of the work as a whole [12]. In general, one can agree with such a definition of the relationship between the concepts «element of a work» and «part of a work», but with some limitations. Any element is a structural unit of the whole, including when it comes to a work. However, not every element can be separated from a work, such as the language of the work. At the same time, a part of a work that can be separated from the whole one may include all or individual constituent elements of the external and internal form of the work or do not have identifying features of the external

and internal forms of the work expression, while being its element — a character or title.

In a general sense, the term «character» (from French *personnage* and Latin *persona* — mask, role, personality, personality) is an actor, a creature of a literary (artistic) work, myth, book, work of fine art, performance, film, game, etc., as well as a person as an object of genre painting. The explanatory dictionary of the Ukrainian language defines that: «A character is an acting person in a work of art». «In general, a person, a participant in something» [2]. At its core, the concept of «character» is a collective name for that set of representation means, regarding which it is defined as a concrete-sensual given, the image of a character that is created by his portrait, costume, language, actions, characteristics from other figures leading the story. A synonym for the term «character» in the literature is the «literary hero» concept. At the same time, the character of a literary work is not necessarily a person [3].

As for an audiovisual work, a concept as «image» is the most commonly used as its part. The question arises whether «character» and «image» are identical concepts.

If we turn to special literature, then an image is a reproduction, presentation of any objects in a work of art: people, other living beings, phenomena of the objective world (images of nature, images of cities, images of things, etc.). An image is not a simple copy of a real existing object, it is always an artistic generalization [7].

In the field of show business, the term «stage image» is used — this is an individual image that a performer (actor, singer) creates on stage [11]. This is all that the performer felt and understood in the work, this is a combination of various actions and characteristics of the performer, which include costume, hairstyle, makeup, acting techniques, plasticity, language. The stage image exists only when the performer transforms into a character, a script character during re-



hearsals, filming, with a subsequent fixation on a material carrier. Thus, the stage image created by the performer is an object of related rights, and the character is protected by copyright. However, both the image and the character are interconnected, but the image is a broader concept, since not only the main features of the character itself are used to create it, but also music, a certain landscape, in which the internal experiences of the character are enhanced, the viewer's attention is focused on the development of the storyline.

Considering the character as an element of an audiovisual work, including a television format, the question of its possible protection arises.

An analysis of the foreign countries legislation indicates that most of them do not contain a direct rule according to which a character is an object of copyright. Ukraine is no exception. One of the countries where the character acquires copyright protection is the Republic of Moldova. So, according to paragraph (4) of Art. 7 of the Republic of Moldova Law «On Copyright and Related Rights»: «A part or other element of a work (including a title or an actor) constituting an intellectual creation is also protected by copyright» [9]. Until recently, the character as an independent object of copyright protection was not mentioned but received legal protection as part of the work in accordance with Art. 9 of the Law of Ukraine «On Copyright and Related Rights». However, amendments to this law and inclusion in Art. 1 definition of the «caricature» notion changed the situation in favor of introducing such terms as «character of the work» and «name of the work's character» into the legislative circulation. Thus, the legislation of Ukraine indirectly refers the character to the objects of copyright. In order to avoid misunderstandings in resolving disputes related to copyright infringement, it is advisable to supplement the Art. 9 of the Law of Ukraine «On Copyright and Related Rights» with an indica-

tion of the inclusion of the character and the original name to the objects of copyright protection.

An analysis of judicial practice shows that most of the disputes do not concern the legality of using literary characters. The subject of disputed relations is the legitimacy of using their visualizations created by other artistic means (drawings, audiovisual works), or the use of a character's name. The verbal form is not the only one in which a character can exist. It is a very rare situation when the author of work describes a character in one fragment of the work (scenario). As a rule, the idea of a character is formed under the influence of his speech, individual actions. Thus, the character is an object of copyright, the idea of which is formed throughout the work (television format). Therefore, if we imagine the situation that someone decides to borrow a character from another work, the question arises of what exactly was borrowed: a text that contains a description of the character, but it may not really exist as a complete fragment, or a non-textual element of work. The second variant is more real, but also more difficult to identify. This requires the definition of features that, in their totality, will characterize the personage, allowing him to be identified. Such signs, in particular, could include the name of the character, his portrait, characteristics of the personage that can distinguish him from similar ones; such signs include the field of activity and profession, age, language, habits, as well as the place of the character in the essay. This issue has not only theoretical significance, but also generated by practice, as evidenced by the well-known disputes over the use of characters from the cartoon series «Masha and the Bear», the use of the name «Kapitoshka» from the eponymous cartoon, characters from the cartoon series «Prostokvashyno», etc. The problem of legal protection of a character as an independent object of copyright exists and remains debatable, as evidenced by scientific publications [5].



The system of the television format images has its own components, both singular (character (as part of a work), music, works of fine art, performance, etc.), and in their entirety are objects of copyright or related rights.

Thus, the internal structure of the television format includes unprotected elements, which include the idea, theme, as well as elements of the external structure that are objects of copyright protection — material, script, plot, a system of images. Thanks to these very elements, the television format can receive legal protection, which plays a fundamental role in its identification. The protected elements of the television format include musical, graphic design and the original name of the television format.

Therefore, the above examples show that the elements of the television format

should be characterized by signs of originality, uniqueness and singularity, which are subjective and evaluative in nature, do not affect the acquisition of copyright protection by the television format, but make it possible to distinguish the certain television format another similar one, forming its reputation in its totality. All elements of the television format are interconnected and form a single structure with the ability to reuse, ensuring the reproduction of the television format in a form that allows it to be recognized. ●

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Надійшла до редакції 17.01.2022 року

Федорова Н. Структура телевізійного формату та характеристика його елементів як аудіовізуального твіру. У статті розкриті питання щодо такого складного об'єкту авторського права як телеформат. Телеформат розглядається як вид аудіовізуального твору, аналізується його структура та характеристика його елементів. Зокрема, розкрито сутність зовнішнього вираження телеформату та проаналізовано природу внутрішніх елементів телеформату.

Проаналізовано чинне законодавство та судову практику, обґрунтовано, що елементи телеформату мають характеризуватися ознаками оригінальності, унікальності, та неповторності.

Запропоновано критерії за якими можливо встановити неправомірне запозичення чужих ідей, сюжетів, фабул тощо, а також елементів, які впливатимуть у подальшому на визначення загального обсягу правової охорони формату.

Доведено, що всі елементи телеформату пов'язані між собою і утворюють єдину структуру, яка має здатність до багаторазового використання, що забезпечує відтворення телеформату у формі, що дозволяє його впізнавати.

Ключові слова: телеформат, елементи телеформату, аудіовізуальний твір, авторське право, структура телеформату