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The Impact of Technology on Copyright Enforcement in Television Programming: Legal Insights and Challenges

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ABSTRACT

Copyright in television shows is a complex and growing subject of law. Television programs are covered by the Copyright Act of 1957 for copyright protection. When someone copies, distributes, performs, exhibits, or creates a derivative work of a work that is protected by a copyright without the owner's consent, that is considered copyright infringement. A television program may have a variety of components that are covered by copyright, such as the underlying screenplay, the cinematography, A television show's copyright also covers the rights to make prequels and sequels, as well as rights to commercialize the program. The copyright of television shows presents a variety of difficulties. Unauthorized television shows streaming on websites is one problem. Copyright in television shows is a complex and important legal area. Copyright holders have several legal options for defending their rights. However, it is now easier than ever to gain unauthorized access to protected content because of the advancement of new technologies. Copyright will likely continue to be a contentious issue even though its future in television programming is uncertain.

Keywords: Fair use, Copyright Infringement, Format rights, Television Shows.

I. INTRODUCTION

Copyright in television refers to a set of exclusive rights granted to the creator of the program. These rights include the ability to reproduce the show, make derivative works from it, distribute copies to the general public, perform the show live, and display it, in the open. At the moment of creation, television programs automatically obtain copyright. This suggests that the show's author does not have to register the copyright in order to be protected. However, there are a few more benefits to copyright registration, such as easier damage claims in the event of infringement and speedier copyright enforcement. Copyright protects a wide range of creative elements of television shows, such as the plot, characters, language, music, pictures, and overall

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structure.

This suggests that the only people with the power to determine how their shows are used and shared are those who own the copyrights. Copyright for television shows is important for several reasons. First, it protects the time and money, creators' dedication to producing their shows. Second, it gives producers incentives to create new, unique material. Thirdly, it ensures that creators will profit from the success of their shows. However, television shows' copyright is not unqualified. Copyright protection does not apply in a number of circumstances, such as the theory of *scènes à faire* and fair usage. Fair use allows the unrestricted use of copyrighted content for certain, limited purposes, including research, teaching, scholarship, news reporting, criticism, and commentary. Within a certain genre or style, the *scènes à fait* doctrine allows for the unrestricted use of common or generic portions of copyrighted works. Copyright in television shows is essential in the global television industry. It helps to promote creativity and protecting inventors' rights. The availability of a wide range of top-notch television shows for viewers is also facilitated by television show copyright.

(A) Research Problem:

Since the early 1990s, television has become a popular form of entertainment in many countries. As the number of viewers increased, television networks introduced a variety of shows in an effort to increase their Television Rating Points (TRP). This has led to a rise in television channels using copyrighted content in their shows without obtaining a license, claiming that the use comes within the Fair Dealing exception. The question of whether this is true or not is up to the legal system to decide. However, as technology has advanced, using it to record shows and upload them to online streaming services is also being examined to determine whether or not it constitutes infringement.

(B) Research Objectives:

- Does using the core theme or concept of a show constitute copyright infringement, and does altering the show's integrity lead to infringement.
- Does recording TV shows via DTH recorders, mobile or laptop screen recorders, and uploading them online constitute copyright infringement.
- Does the doctrine of fair dealing apply to copyright infringements by TV show owners and third-party streamers.

(C) Research Questions:

1. Whether usage of concept or theme of a particular show by another amounts to infringement?
2. Whether recording of television shows and uploading the recorded content or any part of it in Online Streaming platform amounts to infringement?
3. Whether doctrine of fair use can be used for evading copyright infringement?

(D) Research Methodology:

This research paper is based on doctrinal research methodology, which includes various articles and international conventions, Journals and case laws pertaining to the subject matter which is being discussed in this paper.

(E) Literature Review:

1. **Choi, J. (2023) 'Historiography of interpretations of television format copyright: A political economic perspective'³**

The article's findings reveal that courts adjudicate copyright infringement disputes based on the jurisdiction of the alleged adaptor, prioritizing local interests over those of the originator. It highlights that the legal construction of television formats is shaped by political and economic forces, reflecting an ideology of individual authorship rather than a natural evolution. Additionally, the study identifies patterns in rulings across various countries, indicating a trend towards protecting domestic media corporations against foreign competition.

2. **Nirkhee, Srujan. (2023). 'COPYRIGHT ISSUES IN THE INDIAN ENTERTAINMENT INDUSTRY'⁴**

With a primary focus on the film industry, this article attempts to offer a comprehensive grasp of the most important issues pertaining to India's copyright laws while also conducting an investigation into those issues. With a primary focus on the film industry, this article attempts to offer a comprehensive grasp of the most important issues pertaining to India's copyright laws while also conducting an investigation into those issues.

³ Choi, J. (2023), *Historiography of interpretations of television format copyright: A political economic perspective*. SAGE Open, <https://doi.org/10.1177/21582440231158329>

⁴ Nirkhee, Srujan (2023), 'Copyright Issues in The Indian Entertainment Industry'

3. Chebet D. Koros, 'Protection of TV Formats: Legal vs. Non-Legal Approaches,' 10 QMLJ (2019)⁵

This article discusses the definition and breadth of television formats, as well as their projection and legal and non-legal techniques.

II. COPYRIGHT INFRINGEMENT IN TELEVISION SHOWS

- Reality shows are unscripted television programs that highlight the lives of real people or pit rival athletes against one another. Among the popular reality shows in India are Bigg Boss and Indian Idol.
- Game shows: These are shows in which contestants compete to solve riddles or complete tasks in order to win prizes. Some well-known Indian game programs are Kaun Banega Crorepati and Neengalum Vellalam Oru Kodi.
- Soap Operas: Television programs that are modeled on soap operas are long-running dramas that typically focus on the private lives of a cast of people. Often, their complex relationships and compelling stories are what set them apart. Saath Nibhana and Yeh Rishta Kya Kehlata Hai, Two popular Indian soap operas are Saathiya.
- Comedy shows: Comedy shows are meant to make people laugh. They can appear as stand-up comedy acts, sitcoms, or sketch comedy shows. Kalakka Povathu Yaaru and One of the most popular is The Kapil Sharma Show.
- Mythological shows are those that are based on Indian mythology. Their elaborate storylines and lavish sets and costumes are shared traits. Popular Indian mythology TV shows include Seedhayin Rama and Mahabharata.
- Historical television: Programs that examine Indian history fall under this category. They are widely used to educate viewers about different periods of Indian history. Popular historical television shows in India include Jhansi Ki Rani and Peshwa Bajirao.

Anil Gupta v. Kunal Gupta and Ors is the most well-known lawsuit involving reality program infringement.

The plaintiff in this case developed the idea to produce a reality television show program known as "Swayamvar" that would include the matchmaking procedure. It was determined that the plaintiff's labor benefits were not due to the defendant. It is impossible for the defendant's

⁵ Chebet D. Koros, 'Protection of TV Formats: Legal vs. Non-Legal Approaches,

reality TV show based on the plaintiff's original idea of spouse selection to be accepted in any way. Furthermore, it was determined that although the notion lacked copyright, it might be registered in accordance with the 1957 Copyright Act if it were refined into a concept with enough specifics.

Furthermore, using the confidential knowledge in a certain way would constitute a copyright violation under sections 51 and 55 of the Act.

In summary, it is indisputable that concept notes provided by individuals ought to be safeguarded in an effort to encourage common people to express their thoughts and watch them come to life in television programs.

However, a generic idea that is already in the public domain cannot be given copyright protection. In contrast to the "Swayamvar" case, where a novel notion was first conceived and then appropriately developed, the "Zee case" and the "Anil Gupta case" vary in that Zee was seeking to establish copyright over an idea over which adequate judgment and skill had not been exercised thorough in writing, necessitating a great deal of effort and expertise in the idea note. It is maintained that when the proper skill and judgment are used, copyright protection is granted.

(A) Zee Telefilms Ltd. & Ors. v. Twentieth Century Fox Film Corporation⁶

. In this case, the court established certain crucial guidelines pertaining to format rights:

- For someone to assert that their work has been copied, a **significant amount** of it must be **demonstrated to have been copied**; this significant amount must be related to quality rather than quantity.
- Before deciding whether or not the entirety of the duplicated content represents a significant component of the plaintiff's program, the substantial amounts must be determined by examining the similarities between each program independently.
- Copyright does not protect ideas, concepts, principles, or discoveries; instead, it requires **uniqueness to be protected. (expression)**
- Since an outline or concept is not an intellectual property, it cannot be protected.
- Nonetheless, copyright protects a work of literature or drama that approaches a plot or theme in a unique and creative manner.

R.G. Anand v. Delux Films – This significant case in India clarified that having a similar

⁶ Twentieth Century Fox Film Corporation v Zee Telefilms Ltd & Ors 2012 (51)PTC 465 (Del)

theme or idea does not constitute infringement **unless the specific expression**, like dialogues or characterizations, is notably similar.

K.R. Ravi Rathinam v. The Director General of Police – In this case, the court focused on the originality of creative works within India's entertainment sector, emphasizing that each work should be assessed based on its overall impression to the average viewer, rather than just isolated similarities.

(B) Television Format Rights:

TV format rights are the intellectual property rights related to the concept or idea of a television show. They comprise the distinctive components of the program, such as its characters, rules, narrative, and structure. Licenses to use the format are regularly given to other broadcasters throughout the world, allowing them to produce their own versions of the show for their different viewerships.

For TV formats to be eligible for copyright protection, they must meet certain criteria. First, it needs to be original and distinctive. The second need is that it must be sufficiently developed to be written down. Thirdly, it must be quite complex and complicated. This essentially implies that a TV format must be more than a simple idea. It must have a number of unique, identifiable, and completely explicable concrete elements. A game show structure could contain, for example, the game's rules, the host's and competitors' roles and responsibilities, as well as the props and set design.

(C) The Rights OF TV Formating:

Television formats, which are legally considered intellectual property, are regularly bought and sold by television companies, broadcasters, and distribution organizations. It is impossible to avoid format copying in the modern world. "Television formats" are not expressly covered by any international legislation. Conventions state that there are two categories of television formats:

- a) Formats on paper (works which are unpublished)
- b) Produced or published formats

Although there is no specific law protecting formats, many countries have used a variety of legal strategies, including contract law, civil law, unfair competition or breach of confidence, copyright law, and passing off. Television is a major source of entertainment in India, with a wide variety of shows available in multiple languages. Although the term "format rights" does not exist in India, it is clear in a number of situations that it is protected as intellectual property.

Published formats are those that have been produced and turned into a television program that may be licensed to prevent format piracy, while paper formats are those unpublished structures of a show that are primarily written to transmit the idea or concept of the show to the producers.

III. INDIA'S ENFORCEABILITY IN TV SHOWS

The purpose of India's Copyright Act is to protect the artistic creations of writers, musicians, artists, and other creators. The Copyright Act protects an idea's expression rather than the idea itself. As a result, it is either impossible or extremely difficult to preserve unpublished "paper" versions. But now that the courts have made their rulings, India must protect its TV forms.

Celador Productions Ltd. v. Gaurav Mehrotra & Anr. - This case centered around the well-known game show format "Who Wants to be a Millionaire?" and its Indian version, "Kaun Banega Crorepati." The plaintiff successfully obtained an injunction against the defendants for using the similar name "Crorpatikaun.com," which could lead to confusion and infringe on format rights. The Delhi High Court limited the use of names and formats that are too closely associated with the original⁷.

Gen X Entertainment v. Purple Haze Entertainment - This case brought attention to trademark disputes concerning show titles. The Bombay High Court instructed Purple Haze Entertainment to make it clear that their new show, "Emotional Atyachar," was not affiliated with the existing show from Gen X. This case emphasized the significance of trademarking distinctive show titles alongside obtaining format copyrights.⁸

Barbara Taylor Bradford v. Sahara Media Entertainment Ltd. - In this case, author Barbara Taylor Bradford sued Sahara Media to stop them from airing a TV show that she claimed was based on her novel. The court decided that copyright laws do not cover generic storylines, highlighting the "idea-expression dichotomy" which restricts copyright protection to particular creative expressions instead of just ideas. This case illustrated the difficulties in safeguarding unscripted formats such as reality television⁹.

Survivor v. Boot Camp - While not an Indian case, this U.S.-based dispute has global implications and highlights the challenges surrounding reality show formats. The producers of "Survivor" filed a lawsuit against the producers of "Boot Camp," claiming that their show

⁷ What are format rights?, <https://blog.ipleaders.in/format-rights-enforceability/>

⁸ Copyright issues in the Media Industry, <https://blog.ipleaders.in/copy-right-issues-in-the-media-industry/>

⁹ VASUNDHARA SINGH, A Study into the Framework on the Protection of Television Formats under Intellectual Property Law Regime in India with Special Reference to Copyright Law, <https://www.ijlmh.com/wp-content/uploads/A-Study-into-the-Framework-on-the-Protection-of-Television-Formats-under-Intellectual-Property-Law-Regime-in-India-with-Special-Reference-to-Copyright-Law.pdf>

borrowed significant elements from the "Survivor" format. The settlement, which did not result in a clear legal ruling, underscores the industry's ongoing battle to safeguard reality formats that primarily rely on competitive structures instead of rigid narratives.¹⁰

(A) Doctrine of Fair Use:

Section 52 of the "Copyright Act, 1957," which is the legal framework of the Indian regime, specifies some acts or works that cannot be regarded as copyright infringements, specifically fair dealing with a literary, dramatic, musical, or artistic work that is not a computer program for the purposes of-

- fair dealing with any work, not being a computer programme, for the purposes of—
 - (i) "private or personal use, including research;
 - (ii) criticism or review, whether of that work or of any other work;
 - (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.
- the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;
- transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy;
- the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding”

(B) Yashraj Films Pvt. Ltd. vs. India TV Independent News Services Pvt. Ltd.

The facts of the case state that the singers' lives were chronicled and their songs were performed on a show that the defendants, India TV, aired on their channel.

But while the artists were singing, snippets of movie scenes were playing in the background.

The complainant in this case, Yashraj Films Private Limited, claimed that a scene in the movie's background infringed upon its copyright. The defendants invoked the defense of fair dealing under Section 52.

The Delhi Court rejected the defendants' claim of fair dealing and prohibited them from

¹⁰ Id.

creating, distributing, broadcasting, or making any other kind of profit off of any plaintiff-owned cinematograph film, sound recording, or part of one. In an appeal from the aforementioned ruling, the renowned bench of the Delhi High Court chose to reject the conventional approach to treating Section 52 of the Copyright Act after years of considering several arguments and viewpoints during this drawn-out legal battle. The bench reversed the ruling of the lone judge and restored the limitations imposed on it. Nevertheless, the appellants were nevertheless prohibited from showing any cinematograph film without the required permission. The Copyright (Amendment) Act of 2012 expanded the concept of fair dealing to encompass cinematograph films and musical recordings. By overturning the rigid and conventional approach and making the necessary modifications, the Indian legal system advanced the cause of fair dealing under copyright.

(C) Various Conventions On The Doctrine Of Fair Dealing

1. **Article 9(2) of the Berne Convention** states that, in certain exceptional circumstances, laws in the Union's member states may allow the reproduction of such works, so long as doing so does not interfere with the work's regular exploitation or unreasonably harm the author's legitimate interests.
2. **Article 13 TRIPS:** Members must restrict restrictions or exceptions to exclusive rights to specific, exceptional circumstances that do not interfere with the work's typical utilization and do not unjustly jeopardize the right holder's legitimate interests.
3. **Art.10 WIPO Copyright Treaty:**
 - i. In certain exceptional circumstances that do not interfere with the work's normal exploitation and do not unreasonably jeopardize the author's legitimate interests, Contracting Parties may include provisions in their national laws that restrict or exclude the rights granted to authors of literary and artistic works under this Treaty.
 - ii. When implementing the Berne Convention, Contracting Parties must limit any restrictions or exceptions to the rights outlined in it to specific, exceptional circumstances that do not interfere with the work's typical exploitation or unjustly jeopardize the author's legitimate interests.¹¹

¹¹ copyright protection in India and access to specific media content. Available at: https://www.researchgate.net/publication/338214706_Copyright_Protection_In_India_And_Access_To_Specific_Media_Content (Accessed: 26 October 2023).

IV. RECOMMENDATIONS

Strengthen Copyright Protections for Core Themes and Integrity: Copyright owners of television shows can take steps to secure copyright protections around the core themes, concepts, and unique elements of their shows. Legal measures should also aim to protect the show's integrity, making unauthorized alterations or distortions a potential infringement to preserve original artistic expression.

Enhance Regulation on Unauthorized Recording and Distribution: Encourage strict regulations and monitoring of unauthorized recording methods—whether through DTH recorders, mobile screen recording, or other technologies—and the subsequent distribution of such content on streaming platforms or personal domains. This could involve developing clearer copyright policies, automatic content recognition systems, and encouraging platforms to take proactive steps against unauthorized uploads.

Clarify Fair Dealing Doctrine for TV Content: Fair dealing exceptions should be carefully defined to prevent misuse, while allowing space for legitimate commentary, criticism, or transformative uses in ways that do not infringe on original copyright protections.

V. CONCLUSION

There is no copyright for television shows or the types of television shows that are produced since each producer in the fiercely competitive television show market increases their strategies to boost television rating points for his program. The only thing that is protected by the act is the format that the shows contain, which is where television formats come in handy. Concerns regarding its legal protection have increased in tandem with its enormous expansion, primarily due to the lack of a specific statute safeguarding format rights. Only in cases of secrecy violation are format rights recognized by Indian courts copyrightable.

Since Indian courts have not yet rendered a definitive ruling on the "protectability" of format rights in the absence of a confidentiality agreement, I would like to draw the conclusion that there will be no copyright or absolute copyright for television as a whole; rather, there will only be copyright for format; therefore, the law should expand the scope of copyrightability in television in order to safeguard the interests of producers.

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