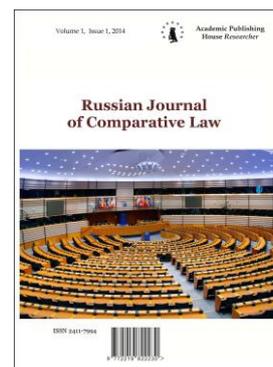


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Articles and Statements

Audiovisual Work Format as an Object of Copyrights in Russian and Foreign Legal Practice

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Abstract

In the article the author describes audiovisual work format, discusses doctrinal points of view on the protection of the result of intellectual activity as an object of intellectual property rights. Then the author analyzes the judicial practice of the Russian Federation and foreign countries dealing with recognition audiovisual work format as object of copyrights. On the basis of the analysis, the author offers rightholders a number of recommendations for protecting their audiovisual work formats, as well as recommendations for characterizing audiovisual work format as a type of copyrighted work (dramatic work, script work, etc.). Finally, in view of the present judicial practice, the author concludes on potentiality for the audiovisual work format to gain legal protection as an independent type of work (object of copyrights).

Keywords: intellectual property, copyright law, nontraditional intellectual property, audiovisual work format, television program format, TV-format, intellectual rights protection, cross-border disputes, characterization of foreign legal concepts.

1. Introduction

Issues of legal protection of audiovisual work format (hereinafter also — TV-format, TV program format, format) are one of the tendencies of not only Russian (Sherstoboeva, 2011, Gorchakov, 2013, Gavrilov, 2017), but also the foreign (Meadow, 1970; Singh, 2010; Gottlieb, 2010) intellectual property law.

In west-european and north-american countries the “formatting” of television programs has been developing over the past 50 years; and in the early 90s of the last century it came to Russian television. It's no secret that a great deal of television programs — such as “The Last Hero” (Rus. “Последний герой”; originally named as “Survivor”), “Don't Be Born Beautiful” (Rus. “Не родись красивой” which meaning is similar to the English proverb “Better be born lucky than rich”; originally named as “Yo soy Betty, la fea”), “The Voice” (Rus. “Голос”; originally named homonymous) etc. — which gained success at various times in Russia have been developed on the basis of foreign television formats.

Convenience related to minimization of financial, labor, information, etc. costs and production risks arising from the development of a new television program from scratch, is an obvious undeniable reason why popularity of audiovisual work format increase constantly in the

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global media industry. Concluding a license agreement on intellectual property rights to one's TV-format, a licensee acquires not a mere set of rights to some intellectual property which the format consists of (such as a script, characters, the most repetitive and/or original phrases, music, costume, make-up and scenery design, phonograms), but confidential information (business plans, guides on selection of participants and hosts, information on cameras and lighting equipment location, other technical and economic information necessary to create an audiovisual work), along with the licensor's end-to-end advice during the final television program production process within the licensee's territory (localization). Thus, provided that both parties make due efforts the success of the licensee's TV program is guaranteed.

Nevertheless, neither in doctrine, nor in judicial practice there is no unity in understanding the essence of format audiovisual work, as well as how and whether the result of intellectual activity must be legally recognized as an object of intellectual property. The issue also remains open at both national legislative and international legal acts levels (Kuznecov, 2016).

The article is an attempt to synthesise and analyse Russian and foreign judicial practice on granting legal protection to audiovisual work format as an independent object of copyrights. On the basis of the obtained results, the author proposes practical recommendations on some ways of protection of audiovisual work format as an object of copyrights, and on characterizing audiovisual work format as a type of copyrighted work.

2. Materials and methods

The study is based on the following materials: international treaties on intellectual property; acts of international organizations specializing at protecting audiovisual work format; acts of foreign legislation and acts of judicial practice of foreign countries (in particular of Australia, Belgium, Brazil, New Zealand, Canada, etc.) on cross-border intellectual property relations; Russian legislation and judicial practice on cross-border intellectual property relations.

Performing the research, the whole spectrum of general scientific methods usual for private law disciplines was used. Moreover, such private scientific methods as technical and comparative methods were used in the work.

3. Discussion

Up to date, in domestic and foreign legal community, there is no unity in understanding of nature and ways of legal protection of audiovisual work format.

For instance, par. 2 of Introduction to The Code of Conduct of the Format Recognition and Protection Association (FRAPA) (established in November 2014 and revised in March 2016) stated: "A format is a creative concept that finds itself on the dividing line of an idea and a tangible product... Every format is a unique creation in which its unique content and circumstances continually result in a new (legal) situation."

Professor Eh.P. Gavrilov defines the "program format" as a part of the form of its expression, which includes – using the popular Russian TV-program "The Field of Miracles" as an example – the form of the hall, the shape of the rotating table, the questions asked etc. (Gavrilov, 2016: 238), and the scriptural basis of the program consisting of a multiunit group of original elements that determine the creative solution of the program, including the original combination of these elements (Gavrilov, 2017).

In the author's opinion, the best doctrinal definition of audiovisual work format was suggested by A.V. Gorchakov: "Audiovisual work format is to be understood as a set of results of intellectual activity both protected and unprotected apart from the format as an intellectual property which are systematized as to be used to create an audiovisual work having a repeating (stable) feature and constitute a single complex object" (Gorchakov, 2013: 73).

For better understanding of the audiovisual work format phenomenon, it should be kept in mind that, as Neta-li E. Gottlieb notes, format can take various forms depending on the stage of TV-program developing.

At the first stage, format is completely equivalent to the idea (program idea) and presents an unexpressed general idea of an audiovisual work that is objectified on any medium.

At the second stage, the idea is presented in detail in writing, including a description of the visual elements of the show, rules, names, locations, casting recommendations, description of the plot, musical themes etc. Thus, it turns out “paper format” or the first version of the “production bible.”

At the third stage, a set of technical, production elements (music, design of scenery, computer programs, characteristics of participants and hosts, etc.) and business knowledge is added to the “bible” — as a result a “program format” is created.

At the fourth, and final, stage, finished episodes of the program created on the basis of the “program format” are released (airing the episodes) (Gottlieb, 2010: 3-4). The similar classification of the stages is proposed by A.V. Gorchakov (Gorchakov, 2013: 65-73).

Thus, audiovisual work format can be defined as a unique set of sustainable TV show elements, on the basis of which enables one to produce separate series of audiovisual works in any country of the world with regard to national (local) features of a particular region. As such, the named elements can be both protected and unprotected as intellectual property.

As for the position which audiovisual work format could potentially take among objects of intellectual property rights (Biryukov, 2017), if recognized as such, logically, the answer to this question is rather equivocal. Up to date, two points of view can be distinguished. The adherers of the first — and the dominant — one propose to protect audiovisual work format as an object of copyrights (Meadow, 1970; Singh, 2010; Gottlieb, 2010). The adherers of the second point of view tend to believe that modern branches of intellectual property law (copyright, allied rights, and industrial property law) can't grant audiovisual work format adequate legal protection in view of its specifics. For audiovisual work format a special regime at the junction of copyright and industrial property rights is to be developed (Sherstoboeva, 2011; Gorchakov, 2013; Ananeva, 2017); consequently, format must be classified as an atypical intellectual property.

Sharing the second of the mentioned positions, but realizing lack of its influence on the practice, hereinafter the author proceeds on the assumption of audiovisual work format is an object of copyrights.

Recognizing format as an object of copyrights, is not a perfect decision. However, over the past thirty years, a wide range of judicial decisions supporting the idea has been formed. The court decisions analysis will undoubtedly enrich present knowledge on audiovisual work and will help in developing better regulation.

First of all, the reasons why the judicial practice has formed in such a way lie in that often in format disputes plaintiffs claim for their copyrights in format violation. Secondly, courts of some jurisdiction (Spain) support the plaintiffs position and hold for them and, if not, always accurately motivate the judgements in great detail. Thus, gradually a number of customary requirements have been developed meeting with which “promises” authors and other format rightholders obtaining a significant advantage when a dispute arises.

The first one of such requirements became the developing of the most detailed production “bible” in which the courts perceive a form of the television format expression. Recalling Gottlieb's four TV program production stages and taking reason as guide, one can state that a “bible” exists in every TV program in one form or another. A reasoned exposition of the concept and evaluation of its economic viability are vital for a format creators to justify for the project's profitability and to receive funding to put out the “paper format” (second stage) or “program format.” However, for getting copyright the existence of a production “bible” only is not enough — its quality plays a leading role.

In the very first TV format case — “Green v. Broadcasting Corporation of New Zealand” (Green, 1989) — heard in New Zealand in 1989, the plaintiff failed to submit the production “bible” before the court. Instead, the producer and host of the popular at the time British show “Opportunity Knocks,” Hugh Green, acting on plaintiff's the side, presented his script of the television program and referred to various similarities between his program and the defendant's homonymous one produced by the Broadcasting Corporation of New Zealand. Similarities encompass, among other things, the use of the same catch phrases and “clapometer” to determine the audience's reaction to the participants' performances. Nevertheless, the court did not find enough unity of the elements which Green indicated to grant legal protection to the “dramatic format” of. The court pointed out it is the difficult to separate certain sustainable and recurring features from other mutable elements and refused to protect it stating, that since copyright creates a rightholder's monopoly “there must be certainty in the subject matter of such monopoly in order

to avoid injustice to the rest of the world.” In Green case there was no certainty in the subject of monopoly. Instead, ideas the defendant borrowed from the script, are not protected by copyright as widely recognized all over the world. Moreover, the court considered that a dramatic work must be of sufficient unity to be performed, but features constituting in the plaintiff's opinion the “format” do not meet the given condition.

Unlike the Green case in the New Zealand case “Wilson v. Broadcasting Corporation of New Zealand” (Wilson, 1989) presented before the court that same year, the children's audiovisual work “The Kiwi Kids” format created by the plaintiff under the auspices of the local children's charity fund about children with developmental features struggling against dark forces was written out. The court recognized nine and a half pages describing the show's concept accompanied with images of characters and some scenes, as well as 57 pages of the project feasibility study a dramatic work which distinctiveness and original ideas remained in the defendant's animation program.

The need to disclose the TV-program concept in the production “bible” as complete, as it is possible was confirmed by the court “Cummings v. Canwest Global Broadcasting Inc.” (Cummings, 2005). Refusing to protect a plaintiff's TV program “Dreams Come True” and stating the lack of violation in the defendant's actions, i.e. in creating and broadcasting television series “Popstars,” the court of Quebec (Canada) pointed out the plaintiff's “bible” wasn't elaborated enough and so did not match with the originality criterion. Supporting the position of the lower court, the Quebec Court of Appeal added that the plaintiff's production “bible” looked more like a skeleton of an idea than the idea itself, and to obtain protection the plaintiff had had to add the skeleton with “flash,” which would have been protected by copyright law (Singh, 2011: 24-25).

Then the courts moved to clarifying a production “bible” content and characteristics of audiovisual work format it must possess to obtain copyright protection. “Castaway Television Productions Ltd & Planet 24 Productions Ltd v. Endemol Entertainment & Jon De Mol Productions” (Castaway, Planet 24, 1999) dealt with the rights to the two most successful television formats of the early 21st century — “Survivor” produced by the British company Castaway Television Productions, and “Big Brother” produced by Endemol Entertainment. Rights to “Survivor” were successfully provided for localization around the world, including in Denmark, where the local version was named “Survive!” According to the plaintiffs, Endemol Entertainment copied the localized version and created the “Big Brother” program on its basis. Furthermore, to prove the format was copyrightable the plaintiffs claimed it was a unique combination of 12 specific elements had to be repeated in all local versions. The Netherlands court concluded the combination was indeed unique and specific enough to be considered original. Moreover, the format was described in the production “bible” in detail, so it could be recognized a work and gain copyright protection. Nevertheless, the court found no violations in the Endemol Entertainment actions.

Thus, the first time the essence of originality (or, according to Meadow, novelty) of copyrighted audiovisual work formats was established: the presence of a set of elements combined unique enough to the combination meet originality under the *lex fori*. In “Castaway Television Productions Ltd & Planet 24 Productions Ltd v. Endemol Entertainment & Jon De Mol Productions” the unprotected elements was discussed, but it seems doubtful the unprotected elements undermined copyrightability of the television format as a single object.

In the Spanish case “Maradentro Producciones S.L. v. Sogecable, S.A.” (Maradentro, 2009), the plaintiff was denied copyright protection of his television format due to insufficient detailing of the latter. However, the value of this case lies in the court's position on audiovisual work format copyrightability. The court stated he formats are subject to copyright protection as far as:

1. copyright protects drawings, plans, models, mock-ups and sketches;
2. copyright protects scripts and storylines;
3. if the format can be compared to a script or a storyline then it must be protected as well;
4. in order for a format to be protected there must be a qualitative leap from a mere general concept, in a detailed and formally structured way, resulting in a creation of some complexity.

In a number of cases, courts denied to recognize TV formats copyrightable due to the lack of creative or intellectual contributions of their authors. For instance, in “K. Verbraeken v. VRT & BVBA De Filistijnen” (Verbraeken, 2008) the Belgian court refused to satisfy the claim because plaintiff's television format consisted of too generalized descriptions; the court qualified the lack of “intellectual effort of the author.” The court stated: in order to obtain copyright protection, it must be apparent from the “bible” what exactly the actual episode of the program will look like.

In another Belgian case, due to non-compliance with the criterion of originality an audiovisual work format was even declared standard. Refusing to plaintiffs' claims, the court ruled that a mere description of some elements of a program or a television format put in writing is not a sufficient proof of the plaintiffs' intellectual efforts, and therefore, they have no copyrights in the format (BVBA T. & J.D.B., 2008). Consequently according to the Belgian courts, an audiovisual work format must, among other things, also meet the requirement of author's creative contribution.

The Australian District Court refers to the same requirement ruling that there was no infringement in "Nine Films & Television Pty Ltd v. Russia. Ninox Television Ltd:" [there is no copyright infringement, if. — AA] "someone independently creates a program without copying or where there is no substantial reproduction, or similarity to the material in which concepts are embodied" (Nine & Television, 2005).

In sum, the forequoted judgements demonstrate judicial attempts to interpret audiovisual work format falling under the universally received criteria for works of authorship: tangible form of expression, originality, author's personal creative contribution (Lutkova, 2017: 38-81; Biriukov, 2017: 34-36). However, the full-scale copyright protection is not exhausted with its mere declaration — it is also vital to define proper copyright infringement criteria to the very intellectual property. In a number of cases, having agreed that the format is a work courts refused to recognize the defendant as an infringer, and the defendant's format or program as a copy, because they were not sure that the similarities between the comparison objects were caused by copying, but by the single source of authors' inspiration. Let us consider the motives governing courts of various states, which make them refuse to establish one's format rights infringement.

In 1990 "Preston v. 20th Century Fox Canada Ltd" (Preston, 1990) dispute was solved in Canada. The Canadian court became first to apply the criterion of "substantial similarity" and established a list of conditions hereto. The case was initiated by an author of a literary work "Space Pet" who filed a lawsuit against 20th Century Fox Canada Ltd, believing that the ewoks from the movie "Star Wars. Return of the Jedi" are similar to the two kinds of creatures from his work (ewoks and olaks). The court found similarities in some details of the ewoks description, but a reasonable person would not notice a substantial similarity between the works of the parties. As explained by the court, a substantial similarity has to be proved, first of all, with the quality of the borrowed elements — not by their quantity — and it is necessary to take into account plots of comparison objects, themes, dialogues, moods, settings, temps, characters and sequences of events.

It was the "substantial similarity" criterion to be referred to by a court in the Canadian case "Hutton v. Canadian Broadcasting Corporation" (Hutton, 1992) dealt with comparing two nightly musical charts. The court decided that the programs in question have only genre similarities, as both teams of developers were inspired by charts of the fifties of the last century. However, the message and the structure of the programs differ, which affects the perception of their audience.

In the above dispute between rightholders in "Survive!" and "Big Brother" television formats, the Netherlands court, having recognized the plaintiff's format consisted of a unique combination of 12 elements as copyrightable one, nonetheless refused to recognize the defendant had infringed the plaintiff's rights. Later during the Danish proceedings justifying the same position, the appellate court concluded: "A format consists of a combination of unprotected elements... An infringement can only be involved if a similar selection of several of these elements have been copied in an identifiable way. If all the elements have been copied, there is no doubt that copyright infringement is involved. If only one (unprotected) element has been copied, the situation is also clear: in that case no infringement is involved" (Singh, 2011: 18).

The above opinion of the Danish Court can be illustrated by the Brazilian case "TV Globo & Endemol Entertainment v. TV SBT" (TV Globo & Endemol, 2004), where the "Big Brother" rightholders acted as plaintiffs. Initially, the plaintiffs and the defendants negotiated a license agreement, but the defendant refused to sign it, and after a while released a program called "Casa dos Artistas" ("Artist's House") copying some of the "Big Brother" television format elements. In this case, the court find out a rough and poorly disguised copycatting, which jumps out from the first minute of the defendant's TV program "with meticulous description, not only of the atmosphere in which the people will live for a certain period of time but also the places where cameras are positioned" (Singh, 2011: 23).

Another dispute over the localization of the “Survivor” took place in the United States. And again having satisfied the plaintiffs’ action for declaration of copyrights in their audiovisual work format the court ruled there had been no violation, as it considered the results of the intellectual activities of the parties “substantially different in concept and feel” ([Survivor Productions & CBS, 2003](#)).

It is logical that in order to decide the question on substantial similarity and on similarity in concept and feel a court should join art domain experts. However, it did not help Gestmusic Endemol S.A. to defend the rights in its television format “Your Face Sounds Familiar” during the trial against the Channel One took place under the Russian jurisdiction.

The background of the case “Gestmusic Endemol S.A. & VaitT Media v. Channel One” ([Endemol, 2015](#)) (hereinafter — “Endemol v. Channel One”) is as follows. A license agreement was concluded between Gestmusic Endemol S.A. (Plaintiff 1) and Channel One (Defendant) under which Plaintiff 1 transferred to the Defendant an exclusive right to create one season of a series named “Exactly the same” (Rus. “Точь-в-точь”) on the basis of the “Your Face Sounds Familiar” format. “Your Face Sounds Familiar” was created in 2011 in Spain and expressed in the production “bible.” After Plaintiff 1 performed the agreement, nonetheless it set about producing the second season. At the time, exclusive rights to the TV format “Your Face Sounds Familiar” had been already transferred to VaitT Media (Plaintiff 2) via new licensing agreement on developing a series named “As like as two peas” (Rus. “Один в один”). Thus, in the opinion of both Plaintiffs, the exclusive rights of the Plaintiff 1 in the format and the exclusive rights of the Plaintiff 2 in the audiovisual work “As like as two peas” were infringed. The lowest court equated the format to ideas, concepts, principles, methods, processes that do not relate to creativity, but only describe the technology of production, and decided on lack of violation in the Defendant’s conduct. The above was confirmed by higher courts, including the Supreme Court of the Russian Federation.

A detailed analysis of the “Endemol v. Channel One” was conducted by Eh.P. Gavrilov in the article “Audiovisual work ‘format’ and some matters of intellectual property law.” The author proposes several valuable comments, however they need to be explained.

Eh.P. Gavrilov rightly notes that if one recognizes the production “bible” of “Your Face Sounds Familiar” as a literary work, then this work is copyrightable within Russia, since in 2011 both the Russian Federation and Spain were and still are participants of Berne Convention for the Protection of Literary and Artistic Works dated September 9, 1886 (hereinafter — the Berne Convention). In the case at issue, the “bible” is an unpromulgated literary work, as in sense of par. 1 Art. 1268 of the Civil Code of the Russian Federation it was not lawfully (by the author or due to the author’s consent) opened to the public by means of publication, public show, public performance, broadcast or cable or in any other manner. Then, Eh.P. Gavrilov moves to the features of circumstance in proof inherent to unpromulgated works copyright infringement. While for promulgated works the presumption of the infringer’s knowledge on its existence and of its copying by the infringer prevails, for unpromulgated ones there is an opposite presumption. Hence, the burden of proving that the alleged infringer had an access to the work lies with the rightholder. Only then will the presumption of copying take effect. At the same time, Eh.P. Gavrilov associates the Plaintiffs’ loss of the case with the latter failed to prove the Defendant’s access to the “bible” and his familiarization with it ([Gavrilov, 2017](#)).

In the author’s opinion, it is necessary to object to the both Eh.P. Gavrilov’s position and the court’s one by clarifying them slightly. In accordance with the media custom, a license agreement on transfer of exclusive rights in an audiovisual work format characterizes by a number of features. Such an agreement is mixed: its significant part deals with scope and manner of consulting services the licensor is to render the licensee; a scope of the services varies from contract to contract. In particular, the basic and expanded provisions on the scope of the services are distinguished. It is assignation a production “bible” to the licensee which a basic, minimal scope of the services consists of — that means its inherent to any license agreement of such a type. Extended provisions may include, among other things, joint production of the pilot episode of the program by the parties, localizing, visiting by flying producers on schedule, participating a licensor’ advisors in the production, master classes of the original television program producers etc. The extended, maximally developed provisions is an advantage for the both parties: as the licensee receives invaluable knowledge and skills, and guarantees a localized version of the TV program will be produced at least equal to the original one, the licensor excludes licensee’s errors related to a lack of experience, proper technical equipment etc. that will not only lead to unpopularity of the

TV program in a single market, but also will bear a tangible blow to the licensor's reputation as an initial rightholder. Thus, Channel One was for sure familiarized about the existence of an unpromulgated literary work in the form of the production "bible" of the audiovisual work of the "Your Face Sounds Familiar" format. Assuming the converse is impossible, as the Defendant's acquaintance with the "bible" follows directly from the fact the licensing agreement between the parties was concluded. However, it should be agreed that the Plaintiff 1 should have additionally mentioned this in the claim or during a presentation of the case, and also submitted a relevant evidence.

E.P. Gavrilov agrees with the Plaintiffs' statement on the individualized sustainable elements of the television format repeated in each episode and which make the program recognizable should gain copyright protection, if they are original themselves, or if the set of them is original. Unauthorized use of such a protectable format constitutes a copyright infringement.

Thus, E.P. Gavrilov proposes a number of legal findings had to contain, amongst others, the fact at issue in "Endemol v. Channel One", and the burden of proof of which lay on the plaintiffs. The legal findings are:

- individualizing a certain set of elements, repeated in separate episodes of the TV program;
- use of the set of elements by the Defendant;
- originality of the elements themselves, or the set of the elements used by the Defendant (Gavrilov, 2017).

However, the Plaintiffs did not prove the above, so the courts found in favor of the Defendant.

The last thing to be clarified to gain the aims of the research is the possibility of protecting audiovisual work format as a dramatic work. Previously, four litigations were considered where the plaintiffs claimed for their television formats were a dramatic work in accordance with their national law or in accordance with the *lex fori* (Green, 1989, Hutton, 1992) — that is, in accordance with the Australian, New Zealand and Canadian jurisdictions. Analyzing the definitions given in the copyright laws of these states, we do not find any significant differences between understandings a dramatic work in Australia and New Zealand. Both laws include in the scope of the concept under consideration choreographic works, pantomimes, and film scripts (Australian Copyright Act, 1968; Copyright Act of New Zealand, 1994). It can be assumed that such a unity is rooted in close geographic location of the countries and in close relationship between them. The Canadian Copyright Act is one to stand out, as par. 2 Art. 2 of which fixes the following concept of a dramatic work:

- «(a) any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise;
- (b) any cinematographic work; and
- (c) any compilation of dramatic works" (Canadian Copyright Act, 1985).

Consequently, under the Canadian Law, a dramatic work encompasses, in addition to a choreographic work and a pantomime, declamations, as well as compilations of several dramatic works. As to film scripts, in Canada they are not referred to as dramatic works, but films as a whole are.

Theoretically, if one provides the court with sufficient evidence that a television format or its "bible" are a script of series, the protection format as a dramatic work is possible in Australia and New Zealand, which is confirmed, in particular, by "Wilson v. Broadcasting Corporation of New Zealand." However, the opposite we see in Canada: although, in "Hutton v. Canadian Broadcasting Corporation," the plaintiff managed to register his format as a dramatic work, the court set the record straight and the plaintiff's television program was not recognized as a dramatic work.

Australia, New Zealand, and Canada, as well as other jurisdictions where the above disputes were resolved (including the Russian Federation), participate in the Berne Convention. In Article 2(1) of the Berne Convention of 1886, among other examples of "literary and artistic works," dramatic works are also named, but there is no definition hereto, hence, it is national legislators to interpret it.

The Russian Civil Code does not contain a definition of a dramatic work, too, as well as definitions of other results of intellectual activity listed in par. 1 Art. 1259. Nevertheless, in the Russian doctrine there is an opinion that dramatic works differ from, for example, literary works with the purpose of its creation — i.e. for theatrical production (Trahtengerc, 2009: 151-152).

That is, in accordance with the Russian legislation it is impossible to recognize an audiovisual work format as a dramatic work. Nonetheless, the Russian legislation contains a script work which is close to a dramatic one. The script work which can be used not only for creating theatrical productions, but also to create audiovisual works. G.B. Yumadilova defines a script work as “an object of copyrights created as a result of creative activity, which is a detailed description of actions, lines, sceneries and underlying the creation of a future theatrical or cinematographic work” (Yumadilova, 2016: 84-85). A.A. Klishina and V.L. Entin add that the script work is protected by copyright regardless of how fully it reflects the future work [theatrical or audiovisual. – AA], whether it is expressed in a brief form (synopsis), in a pre-stage form (literary scenario) or in an expanded form (director’s script) (Abova, 2011: 264). Therefore, in proper accompanying conditions, an audiovisual work format can be judicially recognized as a scripted work, however, due to different qualitative value of the intellectual properties in issue, it will hardly satisfy the rightholders.

4. Results

The study illustrates legal protection of an audiovisual work format as an object of copyrights feasibility in Russia and foreign countries. The feasibility depends on meeting of a particular television format with the requirements of national legislation for works of authorship.

It is possible to propose to rightholders a number of recommendations for protecting their audiovisual work formats.

First and foremost, a television format must meet the criteria of a work protectability, that is: be expressed in any tangible medium (i.e. in a production “bible”), be original, be a result of personal creative efforts of an author or a collective of authors. A “bible” is to describe the essence of the future television program in as much detail as possible, to individualize the essential elements of the television format clearly, to demonstrate the elements’ unity, as well as originality of each element itself, or a combination of them. Proving there is a format rights infringement, it is vitally to keep in mind that the production “bible” can be recognized as an unpromulgated work, and therefore, in case of a dispute it is necessary to prove the fact of an alleged *violator*’s access to the “bible.” To identify copying, it is better to call on an expert for evaluating similarity/difference between the following elements of the work’s form recognized in the Russian doctrine: language, artistic images, sequence of events, characters features, “logical chains,” etc. (Gavrilov, 2016: 228; Ionas, 1972) In courts of the United States, Canada and Brazil, one may refer to similarity/difference in themes and mood of an original work and an alleged copy, as well as in feel the comparison objects cause in the target audience.

Depending on form of the television format presentation and *lex loci protectionis*, courts qualify the intellectual property as a dramatic work (Australia, New Zealand), works of literature (Canada), a television program (Canada), a compilation (Netherlands, Denmark), a separate independent type of work (USA, Brazil, Russia). For each case and depending on the requirements of the particular legislation, it is advisable to decide on weather a television format is a promulgated or an unpromulgated work.

5. Conclusion

Thus, audiovisual work format is a new kind of intellectual property result underlying the global media market. Arguing on the ways of television formats legal protecting, legal science and practice agree with such protection necessity. Finding specific ways of protection that meet with TV format features is a task of subsequent researches.

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