

Establishing the Copyright Ability of TV Formats in Cross-Border Private Relations

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Abstract

The global market of copyrights on TV formats has been growing and developing since the 1950s but their proper understanding has not been officially consolidated in positive law. The study subject is cross-border relations that identify TV formats as copyrightable intellectual property. The article aims at determining approaches to establishing protectability of foreign TV formats as copyrighted works in different jurisdictions. To attain this end, the authors used formal-legal and comparative-legal methods, as well as methods of legal modeling and historical analysis. Based on the study results, the authors have developed the term "lex media" (media law) to denote the usages that formed in the cross-border circulation of rights to TV formats and determined a list of the main social relations regulated by lex media, its main sources and correlation with lex mercatoria. Due to lex media, TV formats join not only positive copyrights, but also common format rights, and in the transnational relations, TV formats are recognized as a quasi-copyrightable intellectual property.

Key-words: Copyright, International Private Law, Protectability, Classification, TV Format, Format of Audiovisual Work, Format Rights, Lex Mercatoria, Lex Media.

1. Introduction

Today, there are numerous formats of audiovisual work, alternatively referred to as TV formats, that combine typical features of a TV program and make it recognizable by the audience and, as a result, competitive (Lane: 1992). TV formats are rather new, but widely popular type of intellectual property (hereinafter "IP") that allows recreating a TV show that has proved to be interesting in one country with due regard to the cultural characteristics of another country, thereby minimizing the risks associated with developing a new TV program from scratch.

There is no clear understanding of this economically valuable IP. However, the analysis of studies in the field of jurisprudence and global litigation practice, as well as the regulation of relations arising out of TV formats elaborated by international media industry by itself, suggests that TV format is a solid piece of property which represents a set of constant features meant for identifying an audiovisual work (TV program), making it distinctive and allowing the creation, identification and correlation of similar audiovisual works in various jurisdictions. The material form in which TV formats are usually fixed is its manufacturing records, or format documentation commonly known as production bible, containing information on how to create a new TV program or a series of such programs on its basis, as well as fix and combine individual pieces of PI that embody the format in question.

Often, plaintiffs try to protect their TV formats as a work of authorship. There are the following reasons for this approach: 1) most countries are members of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886; 2) format of an audiovisual work is similar to dramatic and script works; 3) significant creative efforts made by the author or a group of co-authors. Nevertheless, the approaches of countries to understanding the protectability of TV format differ and have not been analyzed from the viewpoint of private international law.

In addition, the cross-border circulation of rights in TV formats have been jelled a body of transnational usages (Kanashevskiy: 2000, p. 94), regulating i.e. the issues of protectability, that have not been addressed by experts in the field of private international law.

This article presents the main approaches to establishing protectability of works of authorship in international copyright law on a whole, as well as in particular, the study assesses the applicability of these approaches for protecting TV formats and dwells on the approach to ensuring the protectability of TV formats developed by the media industry.

2. Methods

We used formal-legal and comparative-legal methods to identify IP joining international copyright law protection. We put forward a thesis about the primary classification of legal concepts when determining the law to be applied to a disputed legal relationship, which is exercised by the court based on its own law (*lex fori*).

Through the method of historical analysis, we considered different concepts of protectability. The latter is generally understood as the compliance of IP with a set of criteria specific to a particular State and represents their legal mechanism for identifying copyrightable works.

To define and describe the transnational usages system of *lex media* we used method of legal modeling.

3. Results

The range of IP protected by basic conventions on copyright differs but mostly includes works in the field of literature, science and art. Under the Berne Convention of 1886, as a rule, the protection of works does not depend on the form of their expression. However, member-States are endowed with the right to not protect works that are not fixed in any material form. According to the Universal Copyright Convention of September 6, 1952, works are protected in the prescribed forms (i.e. writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture).

There are specific types of protection for certain groups of copyrightable IP: complete or partial exemptions; specific protection of works in accordance with their status; specific protection of certain types of works.

Based on the Berne Convention of 1886, all IP that can be potentially classified as works in conformity with the scope of protection provided are conditionally divided into the following categories: protected, unprotected and protected to a limited extent. The conventional protection applies to protected IP in full (Articles 2(1), (3) and (5)). Unprotected IP is exempted from the conventional regulation (Article 2(8)): news of the day or miscellaneous facts having the character of mere items of press information. The WIPO Copyright Treaty of 1996 states additional exemptions: ideas, processes, methods of operation or mathematical concepts as such are not protected (Article 2).

Under the Berne Convention of 1886, protected to a limited extent is IP that can be partially or completely excluded from legal protection through prescriptions of one's national law (Article 2bis(1)): official texts of the legislative, administrative and judicial nature; official translations of such texts (Article 2(4)); political speeches and speeches delivered in the course of legal proceedings (Article 2bis(1)). In addition, it is allowed to limit the protection of works first published in the territory of a member-State, whose authors are nationals of States not party to the

Convention, given that such States do not provide sufficient protection to works of authors who are nationals of member-States (Article 6).

Various conventions set different statuses of "published" and "unpublished" works in Article 4(3) of the Berne Convention of 1886 and in Paragraphs 1 and 2 of Article II of the Universal Copyright Convention of 1952. By classifying IP as (un)published, a legal fact is established that is crucial for solving several legal issues, in particular, choosing the jurisdiction that will regulate the scope of copyrights, time frames, means of copyright protection, etc. The legal protection of unpublished works in accordance with basic conventions is "at the option" of national legal systems of member-States, while published are subject to conventional regulation.

In relation to alterations and cinematographic works, additional requirements are established: they are protected as such only if the rights of the original work authors are respected.

The list of IP protected by international copyright law is constantly expanding alongside the evolution of social relations, e.g. in Article 10 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of April 15, 1994 and Articles 5, 6 of the WIPO Copyright Treaty of December 20, 1996, computer programs and databases (data compilations) are enshrined as works.

In addition to the specified criteria for the listed types of works, an IP should meet one of two criteria related to its origin to get international legal protection: nationality (or habitual residence) of the author and the place of publication of the work (territorial). The main criterion is the author's nationality, while the territorial criterion is secondary, i.e. it applies only to the works created by the authors who are not nationals of the parties to the basic Convention and do not have habitual residence in any of them.

Regarding the definition of criteria for granting international protection to works, the TRIPS Agreement of 1994 and the WIPO Copyright Treaty of 1996 refer to the Berne Convention of 1886.

Thus, the conventional unification of some secondary criteria for the protection of works within cross-border copyright relations (fixation in any material form; lack of the IP in question in the list of exemptions; proper author / place of creation) does not contribute to a clear understanding of an essence of a work as a protectable IP and does not unify characteristics that an IP should meet to be considered as a copyrightable work. The subsequent international treaties on copyright matters also did not resolve this issue.

Since States apply national rules of protection to foreign works and courts do the (primary) classification of legal concepts while determining the law to be applied to a disputed legal

relationship based on their own laws (*lex fori*), answers to the question of the criteria for the protection of a work should be sought in the national law of member-States to the international system of copyright protection.

The protectability of a work should be understood as the compliance of an IP with a set of criteria specific to a particular State and representing a legal mechanism for identifying copyrightable IP. There are two doctrinal approaches to decide whether an IP is protectable as a work of authorship, or not: 1) objective approach when we decide on copyrightability through comparing an IP in question with works created nationally/worldwide before and finding features that the first has and others do not; and 2) subjective approach when we compare the IP with the other types of IP, i.e. inventions, paying attention to uniqueness of its inner form.

A typical approach to the issue in national legal systems is to provide copyright protection only to the IP recognized as creative.

The criterion of creativity can be directly enshrined in legal norms of the national law as a condition for the protection of a work, a set of requirements for the originality of a work and the process of its creation as a result of the creative activity of an individual (De Miguel Asensio: 2012, p. 979). In German law, the requirements for the protectability of a work are disclosed in the concept of a copyrightable work as an intangible result of personal creative activity (Kashanin: 2007, p. 75).

Under the French legislation, works protected by copyright should meet several requirements: be the result of the author's independent creative activity; be original and reflect the unique author's style; exist in any material form (written, oral, spatial, video or sound recording) (Bentley, Sherman: 2004). There is no list of non-copyrighted works in French law. In judicial practice, IP that is not protected by copyright is that that do not meet the criterion of the originality and, accordingly, are not unique and inimitable (Lafitskii: 2013, p. 221).

According to the UK common law, the most common condition for copyright protection is that such works should meet the criterion of originality. In this case, the term "originality" evaluates the skills or intellectual efforts the author contributed to create the work in question.

If compared to UK law, US law pays more attention to the author's creative contribution. Thus, the Copyright Act of 1976 (Article 102(a)) states that only "original works" are to be protected. The list of works subject to copyright protection excludes works that are not presented in a tangible form, such as impromptu speeches or performances, titles, names, short phrases and slogans, popular

symbols or patterns, simple variants of typographic design, lettering or coloring, simple lists of ingredients or components.

Article 102(a) of the Copyright Act of 1976 contains an exhaustive list of IP that should be protected: literary, musical, dramatic works, pantomime and choreographic works, pictorial, graphic, sculptural works, motion pictures and other audiovisual works, architectural works and sound recordings. However, the US law enforcement practice proves that the list of copyrightable IP is non-exhaustive: an IP is recognized as original and is subject to copyright protection if it is not the result of mechanical copying. Since the main criterion for the protection of works in the US is their originality (Leidy: 2011-2012), the IP exempted from protection in many States (for example, design) falls under protection in the territory of the US (Abrams: 2012, p. 1113).

As a result, at present, civil law countries consider creativity or creative contribution a necessary component of protecting a work. Common law countries to some extent take into account other contributions to the creation of works, including labor, skill and even money (Macmillan v. Cooper: 1923) and do not always consider creativity the key role. At the same time, the continental approach merges with the one used in the common law countries (Kalyatin: 2017).

4. Discussion

It is worth considering the approach of various States to the choice of applicable law when determining the protectability of foreign works in their territory.

When deciding on the originality of a foreign work, US courts use exclusively their local law. For example, this approach is demonstrated by the judicial decision on the dispute "Bridgeman Art Library, Ltd. v. Corel Corp." (1998). To examine the originality of photographs, the court referred to US law directly since the Berne Convention of 1886 is not self-executing for the US. Accordingly, the obligations of the US under the Berne Convention of 1886 can be fulfilled only by incorporating them into the national legislation. In this regard, the US national law should be applied to prove the originality of some work, given that the Berne Convention of 1886 does not contain conflict of laws rules to help select a particular law applicable to originality issues (Patry: 2000). In the decision it was also highlighted, that in relation to States that have not acceded to the Convention, the originality of a work in the territory of the US should be decided by the law of the forum, i.e. *lex fori*.

The Civil Code of the Russian Federation does not contain any conflict of laws rules for determining copyrightability of foreign works. However, based upon the list of additional exemptions

from copyright protection including ideas, concepts, principles, methods, processes, systems, manners or the resolution of technical, organizational or other problems, inventions, facts, programming languages set upon the paragraph 5 of the Article 1259 hereof it can be concluded that copyrightability of IP is to be determined due to the Russian law.

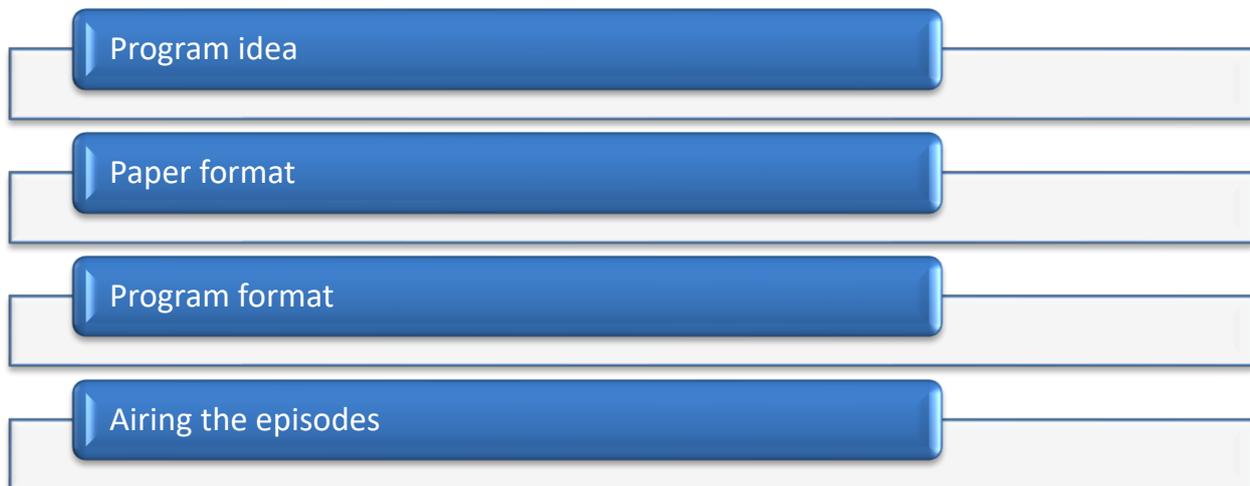
The Japanese litigation practice in determining the protectability of a foreign work is also based on the conflict of laws principle *lex loci protectionis* which is interpreted for the designated purpose as "the law of the place where the protection is claimed". When considering the dispute "Weis Manufacturing California N-Shirts v. KK Universal Hanbai", the Tokyo District Court had to choose a conflict of laws rule to decide on the protectability of a foreign work. After analyzing the connecting factors enshrined in the Berne Convention of 1886 "the law of the place where the work was created" and "the law of the place where the protection is claimed", the court decided that the protection of works is not included in the scope of the conflict of laws rules provided by the Convention. However, the Tokyo District Court stated that the connecting factor "the law of the place where the protection is claimed" (Copyright Act No. 48 of 1970) is applicable for determining the protectability of a foreign work (Doi: 2001, p. 46).

In sum, although legislators and courts of various countries might have different opinions on how to determine the applicable law when establishing the protectability of a foreign work, their judicial decisions are mostly based on the same approach, i.e. to apply the connecting factor – "the law of the place where the protection is claimed".

We find it appropriate to illustrate the mentioned statements with such a rather new, but widely popular type of IP as TV format.

TV formats are developed in several stages (Gottlieb: 2010) that are presented in Table 1.

Table 1 - Stages of creating TV formats



It should be noted that format changes its IP nature through the stages. Firstly, it is a mere unprotectable idea, or program idea. After it is fixed in writing, a format becomes a literary or dramatic work — so called paper format. Then other types of IP such as musical works, designs, logos etc. add the paper format forming a program format, and after it is altered into episodes of the program (audiovisual works) and their release the final stage “airing the episodes” came.

A screenplay outline (or treatment) is the basis of format documentation also known in the industry as production bible. It presents such data about a future TV program as its one-time or recurring nature, title, timing, schedule, planned airtime, filming locations, presence or absence of the hosts, viewers, guests, storyline, necessary filming set, rules of the game, etc.

When describing a new TV program, it is significant to dwell on its "format characteristics", in particular, distinctive features that are original elements of the project, to show how the format differs from similar ones. It is format characteristics to play the key role in assessing the novelty of a TV project (Goldburt: 2015).

The protectability of a format from jurisdiction to jurisdiction depends on the internal law of the country where such protection is sought. The practice of recognizing a format as a work is currently under formation. While considering the so-called "format" cases, courts develop criteria that should be met by a copyrightable format.

In the decision on *Universal City Studios, Inc. et al. v. Film Ventures International, Inc. et al.* adopted by a California court in 1982, the word "format" is not mentioned but the dispute arises from the format of cinematographic work per se. To establish significant similarities between the disputed

works, the court used a two-step test (*Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp. et. al.*: 1977):

1) revealing significant similarities between the main ideas of the works in question (intrinsic test);

2) revealing significant similarities between the forms chosen for expressing these ideas (external test).

The above-mentioned works were based on similar ideas: a great white shark terrorizes a city on the Atlantic coast. The second criterion is also satisfied since two movies use similar ways of expressing such ideas that do not belong to mandatory scenes (*scènes à faire*), namely: between the basic story points, the major characters, the sequence of incident, and the development and interplay of the major characters and story points.

Thus, it was established that "Great White" infringed the copyrights in the motion picture "Jaws" by copying its ideas. The listed elements belong to the format of audiovisual works based on a script.

Hugh Hughes Green v. The Broadcasting Corporation of New Zealand is considered the first "format" case. A plaintiff, the British national Hugh Hughes Green, claimed that his copyrights in the dramatic format of the TV program "Opportunity Knocks" broadcasted in the UK were infringed by the eponymous New Zealand program which has distinctive features typical of the plaintiff's format. The New Zealand Court of Appeal found it impossible to protect the plaintiff's dramatic format as a dramatic work due to gaps in scripts that enshrined only the skeleton outline or framework to search for talents. However, it was confirmed that the structure of each episode strictly adhered to the format fixed in the scripts despite all the changes in the list of participants. The court agreed with the plaintiff's arguments about the possibility of presenting the work not only in written, but also in audiovisual form, however the plaintiff appealed to the consolidation of the disputed format in the form of scripts and the court could not recognize them as a protected dramatic works. The scripts themselves could not be executed and, thus, according to the judge, did not meet the main criterion for the protectability of a dramatic work.

The New Zealand decision was appealed to the Privy Council of the UK which stated that a "dramatic format" is a set of distinctive features that are repeated at each performance as well as a description of such features. According to the Privy Council, the copyrightable IP declared as the "dramatic format" was not sufficiently defined. The declared features were not related to each other,

only accompanied the demonstration of other dramatic or musical performances and, therefore, could not be characterized as a unified phenomenon. The protection of this format was denied as the plaintiff did not provide evidence subject to copyright: his scripts were too general and fixed only catchphrases or thoughts for interviews. Furthermore, few phrases and thoughts could not form something protectable, even though they had not been changed for decades.

According to our reckoning, the problem was not only in the lack of evidence but also in the exhaustive nature of lists of copyrightable works both in the UK and Australian laws (Section 1(1) of the UK Copyright Law of 1988; Article 14(1) of the Copyright Act of New Zealand 1994, where every IP under dispute should be classified as a type of the one included in the list (Seville: 2015). Obviously, the courts of both States considered the plaintiff's wording "dramatic format" as an intention to seek its protection as a dramatic work. However, such an intention was subsequently denied by the plaintiff's representative, which proved the absence of references to any precedents relating to the protection of dramatic works in the plaintiff's procedural documents (Green v. Broadcasting Corporation of New Zealand: 1989).

Due to the indicated failure or misunderstanding, the precedent was formed, and courts try to overcome its consequences using the following practice.

In 2015, the case of Ukulele Orchestra of Great Britain v. Clausen took place. A plaintiff stated the copyright infringement of the performance format and argued that this format was precisely a dramatic work. In support, he presented several DVDs with recordings of the episodes and a list of nine distinctive features (elements) typical of the format, namely: (1) a group of musicians the majority of which play ukuleles, one of which plays a bass instrument; (2) those instruments being of differing musical registers; (3) all of the musicians are formally attired; (4) all of the musicians (other than the double bass player) play their respective instruments in seated positions on chairs; (5) all of the musicians read music from music stands positioned in front of those musicians; (6) all of the musicians play music which is not originally recorded for the ukulele; (7) the musicians also sing as well as play in one other of the musical pieces they play; (8) the musicians all speak scripted or improvised humorous monologues; (9) the musicians introduce themselves as "We are the Ukulele Orchestra of Great Britain".

The court decided that this format could not be protected since the specified features did not have a sufficient degree of certainty. Nevertheless, the court emphasized that the refusal to grant

protection cannot be based on the negative case of *Hugh Hughes Green v. Broadcasting Corporation of New Zealand*.

The criteria for protected formats are compiled in the case of *Banner Universal Motion Pictures Ltd v. Endemol Shine Group Ltd* initiated between a British company formed by a Danish national and a Dutch company. The High Court of England claimed, "A documented format for a televised game show could arguably qualify for copyright protection as a dramatic work, but it would need to have identified features distinguishing it from similar types of show, and the features would need to be connected in a coherent framework which could be repeatedly applied to enable the show to be reproduced in recognizable form." (*Banner Universal Motion Pictures Ltd. v. Endemol Shine Group Ltd.*: 2017).

Thus, up to date, Great Britain chooses to classify the format as a dramatic work. Despite the years-long rejection of protection, courts develop criteria for protectability and it is logical to assume that, in the nearest future, one of the formats will be recognized copyrightable by British courts.

In the course of the Australian dispute between *Nine Films & Television Pty Ltd v. Ninox Television Limited*, the protection of "Dream Home" format as a dramatic work claimed by the plaintiffs (a New Zealand company) within Article 10 of the Copyright Act of June 27, 1968 did not challenge or question by the court, as well as the protectability of the defendants' format "The Block" (*Nine Films & Television Pty Ltd v. Ninox Television Limited*: 2005).

Within the Spanish case of "What Kids Really Think", a TV format was defined as "a work of the human mind that comprises an original structure or form consisting of a predetermined combination or sequence of elements that make up the framework of a TV program, whether it is a magazine show, game show, talk show or quiz show, allow its production and distinguish it from the others" (SAP: 2010). As a result, this format was recognized as a work that should be protected by copyright.

The Dutch courts delivered a similar decision when resolving a dispute over the infringement of copyrights in the "Survive!" format by the "Big Brother" format (*Castaway e.a. vs. John de Mol Producties e.a.* Rolnummer: 2000).

Thus, we stated two main trends in determining the copyrightability of a format: 1) establishing the protectability of a format without reference to any type of work; 2) establishing the protectability of a format since it meets the typical characteristics of a work belonging to one type or another. The latter is usual for common law countries. For instance, the judicial of UK, New Zealand

and Australia have been developing criteria that a TV format should meet to be recognized as a dramatic work. In Spain and the Netherlands, the TV format of an audiovisual work is checked for compliance with the general conditions of a copyrightable IP without reference to a specific type of work.

Consequently, however the certain split within copyright protection the format of an audiovisual work is a copyrightable IP and, in accordance with the fundamental principles of copyright law, is protected since fixed in some tangible form and presumed to be protected until the person involved proves otherwise in a court or until the term of protection expired.

While a system of State format protection is being formed, the international media community, or otherwise media industry, represented by members of the international non-governmental organization "Format Recognition and Protection Association" (hereinafter "FRAPA") established in 2000 decided to consider any formats protectable IP, regardless of the opinion of State judicial and legislative bodies. Article 3 of the FRAPA Code of Conduct of November 2014 encourages its members to "set an example for others, whether members or not" and states that "In an industry where no legal regulations consistently and clearly define what a format is and how it can be protected, members will advocate for the value of original formats and against theft. Members will respect the intellectual property of others in a prudent and lawful way, providing global leadership to others in the creative industry." Under Article 4 of the FRAPA Code of Conduct, FRAPA members agree to work together to establish international industry standards for the protection and promotion of formats. Such standards are seen by the developers of the Code not as legal advice but as recommendations based on best practices.

Before the creation of FRAPA, the media industry usages for protecting format rights were referred to by the plaintiff in the case of Celador Productions Ltd v. Danmarks Radio brought before a Danish court in 1999. The plaintiff claimed that the protection of format copyrights is generally recognized in the entertainment industry. This proves the existence of a common practice to grant format rights by licensing not only copyrights in a format but also providing format rights as a set of quasi-intellectual rights in the format. In essence, they duplicate copyrights but arise in relation to a format regardless its copyrightability due to positive law, i.e. any national law or a treaty (Moran: 2010; McTernan: 2005).

Thus, the format copyrightability is presumed; however its copyright protection might be rejected due to the inconsistency with the requirements enshrined in *lex loci protectionis*, in cross-

border relations, quasi-intellectual format rights protect formats anyway. Therefore, by virtue of the media industry usages the format itself becomes a quasi-copyrightable IP.

Doubtfully, national courts take the usages in question into account. But when submitting a dispute to international commercial arbitration or when using alternative dispute resolution, usages can likely form the basis of the final act. For example, in 2010, the Arbitration and Mediation Center was provided as forum for resolving "format" disputes for FRAPA by World Intellectual Property Organization (hereinafter "WIPO"). According to the WIPO Expedited Arbitration Rules for the Media and Entertainment Industry of September 1, 2014 (Article 56(a)), the Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate, but in any case, it shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. Moreover, the Tribunal may decide as amiable compositeur or ex aequo et bono, i.e. proceeding only from the ideas of fairness and without references to specific rules of law (Karabelnikov: 2013) if the parties explicitly authorized the Tribunal to act in such a manner.

Since format rights are not positive intellectual rights, it is possible to shift away from the principle of territoriality in cross-border relations, which implies the existence of exclusive rights only in the territory of the State of origin, unless otherwise provided by an international treaty. It is also possible to move away from other restrictions typical of intellectual property relations in private international law, for example, from prohibiting the right holder or parties to choose the law governing intellectual property matters.

The above-mentioned usages developed in the cross-border circulation of rights in formats should be recognized as the media industry usages (Dyakonova: 2017) and entitled as *lex media* (media law). Along with *lex mercatoria*, *lex finanziaria*, *lex informatica*, *lex petrolea*, *lex sportiva*, etc., we named *lex media* in Latin to emphasize the non-State origin of the norms governing cross-border relations in the media industry. The latter is understood as the sphere of production and distribution of television, film and radio content; participants of the media industry are persons who either have the status of mass media or do not have such a status. The usages that are part of *lex media* and relate to cross-border commercial contractual relations should be considered within *lex mercatoria*. These usages are related not only to the sphere of business conduct but also regulate relations associated with the creation of a TV program by an individual.

Business practices are applied to the relations between professional market participants and individuals and are manifested, in particular, in the sphere of transnational consumer relations for the regulation of transnational consumer contracts. However, the considered quasi-intellectual norms govern not only contractual relations, but also tort relations and relations associated with the emergence of format rights and the initial possession of such rights.

The main sources of *lex media* are the FRAPA Code of Conduct and other documents of FRAPA, industry agreements of Writers Guild of America, Writers' Guild of Great Britain, Alliance of Motion Picture and Television Producers, Producers Alliance for Cinema and Television, Personal Managers' Association and standard form contracts developed in accordance with them, as well as judicial practice and legal doctrine.

Summing up, if authorities of a State do not recognize the TV format as a work, the media industry considers it to be protected from the viewpoint of the usages and practices prevailing in the media industry, united by the term "*lex media*", i.e. as a quasi-copyrightable IP, that means TV formats are protected with both positive copyrights and format rights emerged and existing in the media industry usages simultaneously and independently.

5. Conclusion

1. The criteria for protecting a work established by national laws and developed by State courts are expressed in objective or subjective approaches that predetermine different classifications of the same IP as a work in different legal systems.

2. When determining one's copyright to a foreign IP, courts apply the *lex loci protectionis* conflict of laws in the context of "the law of the State where protection is sought".

3. Since TV formats meet the criteria of both objective and subjective approaches, they are subject to protection as a work from the moment of their creation until otherwise proved in a court or until the term of protection expired.

4. We revealed two main approaches to establishing the protectability of TV formats: a) as a work of some type enshrined in law (Great Britain, New Zealand, Australia); b) as a work in general regardless of its type (Spain, the Netherlands).

5. Based on the usages of the media industry, i.e. *lex media* (media law), the format of an audiovisual work is regarded as a quasi-copyrightable IP protected with both positive copyrights and format rights simultaneously and independently.

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