

# Kluwer Copyright Blog

## A Shambles: Rinkoff v Baby Cow Productions; is the format of a show a protectable copyright work?

Jeremy Blum, Dhara Reddy (Bristows LLP) · Wednesday, February 19th, 2025

In a recent decision, [the UK IPEC](#) has considered whether the format of a comedy show can be protectable as a dramatic work in copyright. The claim was brought by Joshua Rinkoff (the “**Claimant**”) for copyright infringement of a comedy show he wrote, produced and acted in called “**Shambles**”. The premise of the show was a sitcom series centred around a live comedy night held at a run-down comedy club. The judgment confirms that, though not impossible, it is very difficult to establish that a format of a show is a dramatic work protected by copyright in the UK.



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### Background

Mr Rinkoff brought the claim against Baby Cow Productions Ltd (the “**Defendant**”), a well-known producer of comedy shows, claiming that it had infringed his copyright in Shambles by its series “Live at the Moth Club” (“**LATMC**”) which also combined the idea of live comedy performances with a behind-the-scenes sitcom.

Mr Rinkoff’s pleaded case was that the format of Shambles was protected as a dramatic work under the [Copyright, Designs and Patents Act 1988](#) (the “**CDPA**”) and that the Defendant had infringed his copyright by copying and by communicating LATMC to the public.

Central to the claim were the eight pleaded features raised by Mr Rinkoff as making up a single protectable copyright work which, he said, when taken together were able to distinguish Shambles from shows of a similar type and thus constitute a dramatic work under the CDPA. These features included, amongst others:

- a setting in a struggling comedy club;
- the blending of sitcom scenes with actual live stand up comedy performances;

- unscripted and improvised dialogue;
- staging of scenes in a fly-on-the-wall manner; and
- various characters including, a promoter character, Harry, who is the protagonist of the show and faces significant challenges in putting on a successful comedy night.

Mr Rinkoff alleged that there were “*striking similarities*” between the two shows which could not be explained by coincidence. From these similarities, he inferred that Mr Majendie, the primary writer of LATMC, had accessed and copied Shambles.

The Defendant denied all allegations of copying. They argued that the format was not protectable as a dramatic work since it was not designed to be performed, nor capable of being performed (*Norowzian v Arks Limited (No. 2)*). It also denied that the format was identifiable with sufficient precision and objectivity (*Levola v Smilde Foods*) to be capable of being protected as a dramatic work.

### **Comparison of the shows**

The judge, Miss Amanda Michaels, undertook a helpful comparison of the shows, in particular noting that Shambles ran across two series which were made up of short episodes (up to a maximum of 17 minutes) with some episodes containing only 9 seconds of live stand-up performances. Mr Rinkoff explained that there was no full script for the episodes. Instead, he would create a brief episode breakdown document for the actors who would then come up with the dialogue themselves. Mr Rinkoff also prepared additional documents when planning series 2, which included more detailed breakdowns of the episode. He, therefore, claimed that these notes created a coherent format for the cast to perform.

LATMC was predominantly written by Mr Majendie along with three other writers and comedians. The episodes were around 40 minutes long and combined comedic backstage elements with excerpts from real live comedians’ sets. Importantly, those excerpts were considerably longer than the snippets in Shambles.

### **Does copyright subsist in the format?**

The main question to be answered was whether there was copyright in the format of Shambles as a dramatic work. In particular, the judge noted that under the CDPA and established case law (*Norowzian v Arks Limited (No. 2)* and *Banner v Endemol*), a dramatic work must be capable of being performed before an audience.

The judge examined the case law and noted that the parties had not identified any UK case that had successfully found that copyright could subsist in the format of a show. On one hand the case law (*Green v Broadcasting*) showed that format copyright claims often failed on grounds that the subject matter lacked certainty and unity to be capable of performance. There were also cases that showed that the format of a TV or game show could be protectable as a dramatic work despite containing some elements of spontaneity. Miss Michaels pointed to the two conditions, set out by Snowden J in *Banner v Endemol*, that must be met before a format could be protected in this way. The format must include:

1. a number of clearly identifiable features which taken together distinguish the said show from other shows of a similar type; and
2. those distinguishing features are connected in a coherent framework which can be repeatedly applied to enable the show to be reproduced in a recognisable form.

The Claimant attempted to identify its own four discrete elements which it said to be the “*hallmark of a format protectable as a dramatic work*”. One of these was that a plot is sufficiently described so each episode can be understood and is capable of performance. The judge referred back to the Claimant’s own eight pleaded features noting that this feature, was not present in its own claim. Miss Michaels states:

*“if a plot is necessary to a format before it can be protected as a dramatic work, because otherwise there is nothing to perform, as the Claimant’s counsel suggested, the pleaded format fails this test”.*

The judge goes on to identify the numerous issues in the pleaded features set out by the Claimant. Most significantly, all of the eight features were not present in each episode. The judge therefore firmly concluded that if the pleaded features are not present in every episode, the format cannot be found in every episode and so the format cannot be a “work” nor does it have a fixed form of expression. These features were not connected in a coherent framework and most importantly, could not be repeatedly applied so as to create a work capable of performance, which was the essence of a dramatic work. Even if all features pleaded were present in each episode, the judge found the features taken together did not have the qualities to amount to a dramatic work protected as a copyright work due to a lack of coherence.

The judge found the premise of the show had been described in far too broad terms, there were no storylines identified and the principal characters had not been identified with sufficient precision. As such, the format of the show as pleaded had been set out at a high level of abstraction and did not meet the criteria for copyright protection.

### **If copyright subsists, has the work been infringed?**

Despite the above conclusion, the judge went on to consider the infringement position. She found that there was no evidence that Mr Majendie, or any of his co-writers, had copied Shambles directly or indirectly. The similarities identified by the Claimant did not give rise to any inferences of copying and again the judge said that these had been described at a high level of generality. There were significant differences between the works, including that the live comedy elements in LATMC were much longer and the show followed more of a “*faux documentary*” style rather than a sitcom.

### **Comment**

The decision highlights the challenges facing creators who want to claim copyright protection for a format. It will require a certain level of specificity and coherence which should allow the work to be reproduced in a recognisable form. Specific care should be taken during creative processes to record a format with sufficient detail to ensure its future protection.

Claimants should also give considerable thought when setting out their pleaded case and describing the features of the claimed copyright work to ensure these are not at such a high level of generality putting them outside the scope of protection and catching infringement.

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The image is a promotional graphic for a survey report. It features a dark background with a circular inset showing a gavel resting on a glowing digital circuit board. The text is white and blue. At the top left, it says '2024 Future Ready Lawyer Survey Report'. Below that is the main title 'Legal innovation: Seizing the future or falling behind?'. A blue button with white text says 'Download your free copy ->'. At the bottom left is the Wolters Kluwer logo. At the bottom right is the 'Future Ready' logo with 'LAWYER' written below it.

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