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RESEARCH ARTICLE

The Legal Nature of Program Formats as Copyrightable Works in Turkish Law

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Abstract

Program formats can be defined as the fundamental structures that include the characteristic features of a program, allowing different program episodes to be created by evaluating the format in a similar yet distinct manner in each episode of the program. Initially emerging in the radio field and later gaining prominence in the television industry, formats have expanded their usage to include digital platforms as well. Currently, there is a strong demand in the markets of various countries for formats that have already been created and aired in other markets. However, there is no clear legal regulation on how program formats should be protected. In the doctrine, there is often a debate about whether formats can be protected as works under Law No. 5846 on Intellectual and Artistic Works¹ (IPL). These debates center on whether formats have a degree of concreteness worthy of protection as copyrightable works and whether they bear the characteristics of their authors, and even if these conditions are met, there is no consensus on which category of works formats should be included in. This study focuses on the evaluation of program formats within the scope of the IPL criteria for being considered as works, based on Turkish legal doctrine and judicial decisions.

Keywords

Program formats, Originality, Individuality, Concretization, Copyrightable Works

1 Code of Intellectual and Artistic Works, Code Number: 5846, Official Gazette: 13.12.1951/7981.

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I. Introduction

Program formats can be described as the fundamental structures that encapsulate the distinctive attributes of a program, allowing them to be filled in different uniquely tailored and implemented ways throughout each episode¹.

Although formats appear as works expressed in writing, they have a different and remarkable quality from the usual types of copyrightable works for reasons such as not being intended to be read, unlike literary works, and not being staged, unlike cinematic works. These factors contribute to their unique and attention-grabbing nature within the realm of artistic creations².

Program formats, which were first used in radio broadcasts in the United States of America (USA) in the 1940s, have reached a wide range of usage in the TV sector with the influence of Hollywood cinema in the 1970s. This expansion allowed program formats to establish a widespread presence in the realm of the television industry³. The rapid development of the internet from the 1960s and 1970s to the present day has facilitated the transition of formats into the online realm.

The game show “Jeopardy” which was first aired in the USA in 1964, can be considered as the precursor of program formats. This show has also recently been broadcast in Turkey under the name “Büyük Risk”. Additionally, notable examples of well-known program formats globally include “Wheel of Fortune” (USA, 1976) aired in Turkey as “Çarkıfelek”, “Family Feud” (USA, 1976) aired as “Aileler Yarışıyor”, “Letters and Numbers” (France, 1982) aired as “Bir Kelime Bir İşlem,” “Survivor” (Sweden, 1997) aired with the same name, “Who Wants to Be a Millionaire?” (UK, 1998) initially aired as “Kim 500 Milyar İster?” (now known as “Kim Milyoner Olmak İster?”), “Big Brother” (Netherlands, 1999) aired as “Biri Bizi Gözetliyor,” “Got Talent” (USA, 2006) aired as “Yetenek Sizsiniz”, and “MasterChef” (Australia, 2009) aired with the same name in Turkey.

There is no doubt that program formats are intellectual creations. However, there is no specific normative regulation on how they should be legally protected. This makes the scope and limits of protection unclear and open to interpretation. At this point, it will be instructive to determine whether formats can be legally characterized as copyrightable works. There is no consensus in the doctrine and judicial decisions as to whether formats qualify as copyrightable works. These debates are particularly focused on whether formats have acquired a degree of concreteness worthy of protection as works and whether they embody the originality⁴ of their authors. Even

1 Uğur Çolak, *TV Program Formatlarının Korunması* (2004) 4 (3) *Fikri Mülkiyet ve Rekabet Hukuku Dergisi* 13.

2 Robin Meadow, ‘Television Formats – The Search for Protection’ (1970) 58 (5) *California Law Review* 1170.

3 Stefan Bechtold, ‘The Fashion of TV Show Formats’ (2013) 2013 (2) *Michigan State Law Review* 457.

4 Foreign doctrine on the subject uses the term “condition of originality” to express this condition [see for example Bechtold (n 4) 469, 472, 473; Frank L Fine, ‘Case for the Federal Protection of Television Formats: Testing Limit of Expression’

if these are clarified, there is no consensus as to which category of works formats should be classified under.

This study aims to evaluate program formats in the light of Turkish legal doctrine and judicial decisions in terms of the conditions to be considered as a copyrightable work within the scope of the IPL. Under the first heading, the concept of program format⁵ is explained. In the following section, the conditions for being considered as a work within the scope of the IPL are briefly discussed. Subsequent sections delve into each condition separately, providing general information about the respective condition. Furthermore, specific explanations and evaluations are provided for program formats to shed light on controversial aspects of the subject matter. The aim is to bring clarity to the discussion by examining program formats in relation to each condition and addressing the pertinent issues.

II. The Concept of Program Format

The concept of program format/format is not defined in law. It is an industry-specific term derived from the realm of media⁶. In this context, a format is typically described as a composition of elements including the main idea, storyline, theme, genre, music, technical adjustments, graphics, sequence, and production instructions⁷. The format created with these elements is applied to the relevant program to create interrelated program sections⁸.

In the legal doctrine, the purpose of a format is defined as determining how a program in its draft stage will be prepared, how the program host will conduct proceedings, what type of questions will be asked of participants, where participants will be seated, under what circumstances a participant will be deemed successful or unsuccessful, which slogans, music and jingle will be used in the program, what kind of atmosphere will be created in the studio, and how viewers can actively engage with the program⁹. In this way, if the program's overall framework can be outlined and its basic rules established, then the existence of a format can be acknowledged.

Pacific Law Journal, 1985 17(1) 57, 58, 71; Neta-Li E. Gottlieb, 'Free to Air - Legal Protection for TV Program Formats' (2011) 51 IDEA: The Intellectual Property Law Review 233, 238, 266, 268]. In this study, the concepts of "individuality", "characteristic" and "particularity", which we consider to have the same content and value in terms of reflecting the condition in question, are used interchangeably with the term "originality".

- 5 The term "program format/format" is used to cover all genres, as there is no practical difference between radio, television, and online platforms, except for the media in which they are broadcast.
- 6 Marc Heinkelstein and Christoph Fey, 'Der Schutz Von Fernsehformaten Im Deutschen Urheberrecht - Zur Entscheidung Des BGH: Sendeformat' (2004) 53 GRUR International 380; Katja Lantzsch, Der Internationale Fernsehformathandel: Akteure, Strategien, Strukturen, Organisationsformen (Wiesbaden 2008) 122.
- 7 Bechtold (n 4) 456.
- 8 Mustafa Ateş, Fikri Hukukta Eser (1st edn, Adalet 2007) 281; Mustafa Arıkan, Fikri Mülkiyet Hukukunda Televizyon Program Formatlarının Korunması (1st edn, On İki Levha 2012) 12; Bechtold (n 4) 457; Meadow (n 3) 1170; Tuğçe Karabağ, Fikir ve Sanat Eserleri Hukuku Açısından Televizyon Programları ve Televizyon Program Formatları (1st edn, Seçkin 2007) 49-50.
- 9 Çolak (n 2) 13-14.

The preparation of formats may require months of research and writing processes. This is hardly surprising, given that the formats are usually fifty to a hundred pages long and consist of written parts that involve considerable intellectual effort. On account of these characteristics, it has been observed that formats are equally deserving of protection, at least to the extent of other types of works encountered in the entertainment industry¹⁰.

Program formats are developed in one country's market and then launched internationally for adaptation in other countries. In order to adapt these formats, licenses are granted to relevant local market players. Along with the license, a manual known as the "production bible" is provided to the licensee. Some authors refer to this guide as the "format rules book"¹¹. However, it should be noted that this guide not only includes rules related to the formats but also contains valuable production-related data such as insights and lessons learned during the development stage, research findings from the audience perspective, marketing tips, shooting schedule, crew list, sample budget, and other essential information¹². Depending on the license agreement, successful changes made by the licensee to the format may also be included in the manual¹³. In this context, it is thought that it would be more appropriate to refer to the expression "production bible" as "production manual" rather than "format rule book", as it better reflects the content of the book and its purpose¹⁴.

Formats are created by blending elements of creative thinking, business, and marketing in a single framework. In this context, some elements may be externally imposed based on the program's genre and available technology, while others are driven by the program's target audience, desired emotions and reactions, and the logical coherence of the format. Each element used in the format contributes to its value. However, the true value of a format is derived from the combination of these elements and the natural connections that form between them¹⁵.

Finally, under this heading, it is worth mentioning the distinction between programs and program formats. In point of fact, while formats are written works, programs based on a format are cinematographic works captured on camera. Another difference concerns the extent to which programs and program formats are subject to commercial transactions. That is to say, formats can be marketed for direct use as they are, while programs can be marketed by adapting the format text and broadcasting localized program segments¹⁶.

10 Meadow (n 3) 1171.

11 Ünsal Dönmez and Bengi Sargın, 'Televizyon Program Format Lisans Sözleşmesi' (2021) 4(1) Ticaret ve Fikri Mülkiyet Hukuku Dergisi 71.

12 Andrea Esser, 'Format is King: Television formats and commercialization' in Karen Donders and Caroline Pauwels and Jan Loisen (eds), *Private Television in Western Europe* (Palgrave Macmillan, 2013) 151-152.

13 Esser (n 12) 152.

14 Halil Berk Erdoğan, *Program Formatlarının İnternet Ortamında Korunması* (1st edn, Seçkin 2023) 20.

15 Gottlieb (n 5) 215.

16 *ibid* 217.

III. The Legal Nature of Program Formats As Works Under IPL

A. The Legal Concept of a Work And The Conditions For Qualification As A Work Under IPL

The legal protection granted to an intellectual product also entails the limitation of rights of third parties. Therefore, the classification and protection of a product as a copyrightable work is only possible when certain conditions are met. In this regard, guidance is provided by Article 1/B-a of the IPL. According to the relevant provision, a work is defined as *“any kind of intellectual and artistic creations that bear the characteristic of its author and are classified as works of science and literature, music, fine arts, or cinematography.”*

Based on this definition, the conditions for being considered a work under the IPL have been categorized differently in the doctrine. The majority view groups these conditions under two main headings¹⁷. Accordingly, for an intellectual product to be protected as a work, it must meet objective and subjective conditions. The objective condition pertains to the concretization of the intellectual product, meaning it must be concretized in a tangible form and fall within the types of works envisaged under the IPL. On the other hand, the subjective condition, originality, pertains to the work being the result of intellectual effort and bearing the individuality of its author.

Another perspective categorizes the criteria for classifying a creation as a work as follows: originating from a human creator, possessing intellectual or aesthetic content, being perceivable by third parties, demonstrating the qualities of a work in the domains of science, literature, music, fine arts, or cinematography, reflecting the individuality of its author, and exhibiting a certain level of creativity¹⁸.

A different classification includes the conditions of concretization, being included in one of the types of works stipulated in IPL, being created as a result of an intellectual effort and activity, bearing the characteristic of its author and, where applicable to fine art, possession of aesthetic value¹⁹.

17 Ernst Hirsch, *Fikir ve Sanat Hukuku* (1st edn, Ankara Ar 1948) 130; Ateş (n 8) 28; Hayri Bozgeyik, *Mimaride Telif Hakları: Mimari Projeler, Mühendislik Projeleri, Mimari Eserler ve Mimari Maketler Üzerindeki Telif Hakları* (1st edn, Seçkin 2019) 42; Levent Yavuz and Türkay Alica and Fethi Merdivan, *Fikir ve Sanat Eserleri Kanunu Yorumu* (2nd edn, Seçkin 2014) 63; Şafak N. Erel, *Türk Fikir ve Sanat Eserleri Hukuku* (1st edn, Yetkin 2009) 52; Özge Öncü, *Fikir ve Sanat Eserleri Hukukunda İktibas Serbestisi ve Sınırları* (1st edn, Yetkin 2010) 112; Şafak Parlak Börü *Fotoğraflar Üzerindeki Haklar* (1st edn, Turhan 2013) 181; Ramazan Uslu, *Türk Fikir ve Sanat Hukuku'nda Eser Kavramı* (1st edn, Seçkin 2003) 34; Ramazan Yılmaz Yazıcıoğlu, *Fikri Mülkiyet Hukukundan Kaynaklanan Suçlar* (1st edn, On İki Levha 2009) 57; Yalçın Tosun, *Sinema Eserleri ve Eser Sahibinin Hakları* (2nd edn, Onikilevha 2013) 30; Indeed, in this direction see: Supreme Court Assembly of Civil Chambers 2003/4-260, 02.04.2003; 11. Civil Chamber of Turkish Court of Appeal 2008/7336, 13.11.2009 and 2007/4708, 15.05.2008 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

18 Fırat Öztan, *Fikir ve Sanat Eserleri Hukuku* (1st edn, Turhan 2008) 82.

19 Ünal Tekinalp, *Fikri Mülkiyet Hukuku*, (5th edn, Vedat 2012) 103; Savaş Bozbel, *Fikri Mülkiyet Hukuku* (1st edn, On İki Levha 2015) 27; Salih Polater, *Fikir ve Sanat Eserleri Hukukuna Göre Güzel Sanat Eserleri ve Eser Sahibinin Hakları* (1st edn, On İki Levha, 2021) 32.

According to the view we adopt, there are basically three conditions to be fulfilled in order for a creation to be considered a work within the scope of the IPL²⁰. These are:

- Going beyond an abstract idea and being concretized in the external world in a way that can be perceived by third parties (Objective condition/ Condition of concretization²¹)
- Being created as a result of an intellectual effort and activity and bearing the characteristics of its author (Subjective Condition / Intellectual effort or activity and condition of individuality)
- Being included in one of the types of works (science-literature, music, fine art, or cinematography) stipulated in Article 1/B-a of the Code (Condition of form)

In addition to these three conditions, for fine artworks, it is also necessary to fulfil the condition of having aesthetic value²².

It is necessary and sufficient to meet the aforementioned conditions. In addition, there is no requirement for registration as in the case of trademarks, patents, or designs. The work need not be distinctive and objectively new since novelty for the author, in other words subjective novelty, is sufficient²³. The quantity or quality of the work, its recognition or economic value beyond a certain region, the labor, and the expense incurred are not taken into account in determining the quality of the work.

B. Concretization (Objective Condition)

In Turkish law, the first condition for an intellectual product to be accepted as a work and protected under copyright law is that it must be perceptibly embodied in the outside world²⁴. In other words, intellectual products that remain at the abstract idea stage will not be protected as works, no matter how creative they are. This point is described in the doctrine as follows: *“A painter cannot benefit from copyright protection unless he picks up a brush and paints a picture, and a writer cannot benefit from copyright protection unless he writes a novel.”*²⁵.

20 Tekinalp (n 19) 97; Temel Nal and Cahit Suluk and Rauf Temel, *Fikri Mülkiyet Hukuku* (6th edn, Seçkin 2022) 38.

21 In the doctrine, this condition is referred to as “condition of fixation” or “condition of concretization”. [See Bechtold (n 4) 466-467; Fine (n 5) 57 dn. 3, 65 dn. 71; Gottlieb (n 5) 233, 238; Meadow (n 3) 1173, 1175, 1189] In this study, the term “condition of concretization” is preferred to ensure unity of concept.

22 Since there is no doubt regarding the fact that the program formats, which are the subject of this study, cannot be considered as works of fine art, the requirement of having aesthetic value has not been examined.

23 Regarding the aspects that will not be taken into account for being considered as a work, see Bozbel (n 18) 38-39; Nal and Suluk and Temel (n 20) 44-46.

24 Tekinalp (n 19) 108; Nuşin Ayiter, *Hukukta Fikir ve Sanat Ürünleri* (1st edn, 1981) 41; Ateş (n 8) 32; Ernst Hirsch, ‘Memleketimizde Mer’i olan Telif Hakkı Kanununun Tahlili’ (1940) 6 (2-3) *İstanbul Üniversitesi Hukuk Fakültesi Dergisi* 367, 399.

25 Nal and Suluk and Temel (n 20) 48.

In the IPL, the principle that the ideas underlying the work will not be protected is explicitly accepted only in respect of computer programs²⁶. In contrast, there is no normative basis applicable to all types of works. However, as per Article 90/5 of the Constitution, namely, “*International treaties duly put into force have the force of law*”, the provisions of the treaties to which Turkey is a party fill this gap. Indeed, Article 9/2 of the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)²⁷ states that “*The protection of intellectual property rights covers the expression of ideas, not ideas, methods, principles of application or mathematical concepts.*” Again, the Berne Convention for the Protection of Literary and Artistic Works of 1886²⁸ adopted the principle that abstract ideas shall not be protected and explicitly stipulated that daily news or various events that are merely press reports cannot be protected as works (Article 2/8)²⁹.

The fact that abstract ideas are not protected is also frequently stated in judicial decisions on the subject. In fact, the Turkish Court of Cassation’s General Assembly of Civil Chambers emphasized the non-protection of “*(...) unembodied abstract ideas, themes, research subjects or methods, anonymized words, formulas (...)*” within the scope of intellectual property law³⁰. In another decision, it was clearly stated that abstract designs can be expressed differently by different individuals, and therefore, they cannot be protected under copyright law³¹.

The condition of concretization, which is one of the elements for benefiting from copyright protection under the IPL, pertains to the existence of a work³². The identification of abstract ideas does not require their acceptance as works. At this point, it is worth

26 Last sentence of Article 2 of the IPL is as follows: “*Ideas and principles on which any element of a computer program is based, including those on which its interfaces are based, are not deemed works.*”

27 Agreement on Trade-Related Aspects of Intellectual Property Rights [short form: TRIPs Agreement], Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (April 15, 1994), 33 I.L.M. 81, 1197.

28 The Berne Convention for the Protection of Literary and Artistic Works, dated 1886, is the first international treaty in the field of copyright and related rights. This treaty establishes minimum standards of protection for literary and artistic works, aiming to ensure effective and harmonized protection of the rights of authors at national and international levels. Turkey, through Law No. 4117 dated 07.07.1995, has adopted the 1979 Paris Act of the Berne Convention (see The Decision of the Council of Ministers, numbered 2003/6170) (available at, <<https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Berne-Convention-for-the-Protection-of-Literary-and-Artistic-Works.pdf>> last accessed 18.06.2023).

29 Paul Goldstein and P. Bernt Hugenholtz, *International Copyright: Principles Law and Practice* (4th edn, Oxford University Press 2019) 193.

30 Supreme Court Assembly of Civil Chambers E. 2017/7, 20.02.2020 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

31 Indeed, in this direction see: 11. Civil Chamber of Turkish Court of Appeal 2012/11315, 12.03.2014 “*(...) as it is a well-known fact that abstract ideas cannot be protected as works; the construction of a dam and regulator within a specific elevation range for a river, the use of 4 pipes in this context, and fundamental choices such as turbine type being mere technical options consisting of abstract ideas; and furthermore, since the project has not been expressed and embodied in a written form, which can be protected under the IPL as a tangible expression in the form of text and since there is no evidence of quotation or unfair exploitation in the specific case it has been decided to dismiss the case*”; Eleventh Civil Department of the Supreme Court 2015/2356, 21.1.2016; 11th Civil Department of the Supreme Court 2007/7226, 07.07.2008; 11th Civil Department of the Supreme Court 2005/14088, 29.01.2007 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

32 Istanbul 4th Civil Court of Intellectual and Industrial Property Rights, 2021/260, 21.04.2022 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

mentioning how concretization can be achieved. The expression of a work as a “product” falling under one of the categories in Article 1/B-a of the IPL basically indicates that the requirement of concretization is sought. However, there is no provision on the circumstances in which the intellectual product is considered to be concretized³³.

In order for an intellectual product to be accepted as a work, it is considered necessary and sufficient that it can be perceived directly by at least one of the five senses or with the help of a technical device such as a media player, and it is not required to be recorded on a technical device³⁴. In other words, the intellectual product need not necessarily be embodied in an object. What is important is that it can be perceived objectively by third parties. On the other hand, the condition of concretization should not be interpreted as the completion of the work. An intellectual product at the draft stage may also be protected under copyright law, provided that the objectivity requirement is met.

There is no consensus in the doctrine as to whether program formats satisfy the element of concretization. Indeed, according to one view, the general plan contained in program formats is highly abstract. These texts describe in general terms how the program will be structured, and even if these plans or drafts are “the product of a high level of intellectual effort” and are physically determined, they cannot escape from being “abstract ideas”³⁵.

On the other hand, a different opinion argues that it would not be appropriate to disregard a TV program format, which has been determined in writing with all its details, as a work on the grounds that it is not sufficiently embodied, and that it is necessary to make a separate evaluation in terms of subjective and objective conditions³⁶.

Another view is that some program formats occupy at least a middle ground, positioned between the abstract idea and the finished concrete product³⁷. This is on the grounds that formats encompass not only guiding fundamental elements for producing program segments but also recurring and characteristic-defining content elements within individual segments.

A similar view considers that they are concretized at the required level because they are expressed in a systematic manner that forms the general framework of the ideas that make up the format, and therefore they can be considered as works³⁸.

33 In the Berne Convention, the requirement for the concretization of an idea on a tangible medium is left to the discretion of the member countries within their own legal frameworks. Therefore, member countries are free to determine whether the fixation requirement is a constitutive element of the definition of a work (Article 2/2).

34 Nal and Suluk and Temel (n 20) 44.

35 Çolak (n 2) 26.

36 Tosun (n. 17) 190.

37 Arıkan (n 8) 36.

38 Ateş, (n 8) 282.

A further perspective holds that in order for a format to be concretized, it should take the form of a text capable of evoking concrete aspects related to the program in the reader's mind. Within this context, it is emphasized that the inclusion of elements representing the program's unique qualities and demonstrable features (such as stage sets) in the format can effectively render it sufficiently concrete³⁹.

A different view argues that in order for the format to be preservable, it is necessary to specify in the format the framework of an ongoing series of events, the behavior of the main and side characters (such as presenters, guests, contestants, etc.), the means by which the story is to be presented, and a gradual progression in the format should be felt⁴⁰.

In the judicial decisions on the subject, it is commonly concluded that the format in question does not qualify as a work on the grounds that it does not go beyond abstract thought rather than its concretization.

Accordingly, the Supreme Court approved the decision of the Ankara Regional Court of Justice, 20th Civil Chamber, which held that the TV game show format titled "Eldeki Kuş mu? Teldeki Kuş mu?" (later renamed as "Cevap Soruda") cannot be protected due to its abstract nature⁴¹. In another ruling⁴², the court determined that "(...) a television game show involving the screening and promotion of various contestants' short films and their evaluation by a jury is considered to be of "... nature, rather than "... and abstract ideas are not eligible for copyright protection and do not give rise to authorship, non-original abstract designs of this nature can be expressed in different forms and interpretations by anyone (...)". In a different dispute where the artistic nature of the TV game show "Şampiyon Taraftar" was examined, the court ruled in a similarly negative manner⁴³.

In a different decision, the reason why program formats fail to provide the element of fixation was explained as follows: "*Program formats are generally documented as written texts and often notarized for ease of proof. In these types of texts, the outlines of the TV program are usually abstract, and elements such as how the program will be presented, what the rules of the contest are, and stage design are included. The program plan outlined in these texts is highly abstract. It describes the program's execution in very general terms. Therefore, even though these program plans or drafts may be the result of significant intellectual effort and physically documented, they cannot escape being 'abstract ideas'.*"⁴⁴

39 Ankan (n 8) 38-39.

40 Fine (n 5) 58.

41 11. Civil Chamber of Turkish Court of Appeal 2018/2799, 10.06.2019 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

42 11. Civil Chamber of Turkish Court of Appeal 2015/2356, 21.01.2016 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

43 11. Civil Chamber of Turkish Court of Appeal 2005/11112, 20.11.2006 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

44 Istanbul 4. Civil Court of Intellectual and Industrial Property Rights, 2017/199, 29.01.2020 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

On the other hand, some decisions are partially instructive as to the circumstances in which program formats will satisfy the requirement of concretization. In a particular decision, the court stated that a format - in addition to other requirements - can benefit from protection if it is “...documented as a written text and repeatedly fixed in a tangible form.” It ruled that, based on its originality and specificity, a format could be considered a scientific or literary work within the meaning of Article 2 of the IPL⁴⁵.

Similarly, in another decision⁴⁶, it was stated that “...in the specific case, the format relied upon by the plaintiff essentially pertains to a method, a business process, or a similar procedure. There is no written format document created by the plaintiff. Therefore, the plaintiff cannot make a claim for authorship based on the TV program format...” In numerous parallel decisions, the term “format text” has been used⁴⁷. Therefore, in terms of the perceivability of formats by third parties, the requirement of being documented in written form is necessary.

In light of these explanations, it is considered that it would be *contra bona fide* to categorize program formats as abstract ideas without subjecting them to any evaluation. Formats that are sketched in general terms, that are in the nature of an abstract idea or a description of a method, a method of doing business or a similar procedure should not benefit from copyright protection. However, formats that contain elements that are original and reflect the creative activity of the author should be eligible for recognition as works, provided that they fulfil the other requirements.

In terms of the requirement of concretization, since the format consists of a written text by nature, it should be deemed necessary and sufficient to be determined in writing, in line with the judicial decisions. As stated above, in cases where the format is the subject of a license agreement, the format rule book/guide, which is given to the licensee producer and contains detailed elements, features and rules of the format, is the practical manifestation of the requirement of concretization in the form of written text. The important thing is that the format can be replicated in the future with the same content. In this framework, the format text does not necessarily have to be recorded in physical media, but the digital recording should also meet the requirement of concretization. To do otherwise would mean raising the threshold for concretization and thus narrowing the scope of copyright protection, for which there is no justification.

lexpera.com.tr> last accessed 18.06.2023) (Although the decision was overturned by the court of appeal (Istanbul 16th Regional Court of Justice 2020/2164, 29.12.2022), in the examination of the overturning decision, the reference made to the relevant section of the decision remains valid, as the grounds for overturning were based on an internal inconsistency regarding the ownership of the format.)

45 Istanbul 1. Civil Court of Intellectual and Industrial Property Rights, 2017/12, 26.11.2019 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

46 Istanbul 1. Civil Court of Intellectual and Industrial Property Rights, 2017/144, 26.12.2019 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

47 11. Civil Chamber of Turkish Court of Appeal 2015/7276, 29.03.2016 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

It should also be noted that, although there is no obligation to do so, formats are often the subject of a license agreement, and in this case - as mentioned above - a very detailed set of rules, referred to as a “format rule book/guide”, is delivered to the licensee producer. In the production manual, the detailed elements of the program, how the events in the format will develop and evolve as the stages progress, how the characters will behave, how the audience will be made to feel the emotions and thoughts that are intended to be created in the audience, slogans, decorations, music and lighting will make the format concrete enough. The view that a program format that has been determined in writing with all these details cannot be considered a work on the grounds that it is not sufficiently embodied will not be accurate.

C. Intellectual Effort or Activity and Individuality (Subjective Condition)

Intellectual products, which are based on unique ideas that are associated with the outside world in their own distinctive form, are subjected to an inspection, also referred to as the “subjective condition”, as to whether they bear the individuality of their author and whether they have been created as a result of an intellectual effort or activity⁴⁸. Although this condition is not explicitly stated in the definition of a work in Article 1/B-a of the IPL, the types of works included in the Law inherently contain the elements of individuality and intellectual effort of the author⁴⁹.

As will be explained in detail below, in the doctrine and judicial decisions, whether the program formats satisfy the subjective requirement is evaluated in terms of the individuality requirement. Therefore, under this heading, general explanations regarding the condition of being created as a result of an intellectual effort or activity are sufficient, and detailed examinations and evaluations are made within the framework of the element of individuality.

What is meant by the condition of being created as a result of an intellectual effort or activity is that only works created by the creative power of human intelligence can be considered as works within the scope of the IPL⁵⁰. Pursuant to this condition,

48 Ateş, (n 8) 75; Ayiter (n 24) 44; Duygun Yarsuvat, *Türk Hukukunda Eser Sahibi ve Hakları* (2nd edn, Güray 1984) 53; Tekinalp (n 19) 104; Tosun (n 17) 35-37; Nal and Suluk and Temel (n 20) 43.

49 The Berne Convention does not include any provisions regarding the requirement for a work to possess the “individuality of its author”, “aesthetic value”, “quality” or “intellectual creativity”, or to be deemed “original”. The power to make regulations in this regard has been left to the discretion of the member countries of the Union. The question of whether it is necessary to include concepts such as “intellectual effort or activity”, “individuality of its author” or “originality” in the definition of a work was discussed during the Brussels amendment of the Berne Convention. Within these discussions, one view put forth was that the concept of “product” in the definition of a work alone is insufficient in determining the existence of a work, and therefore, this definition would potentially encompass all kinds of products for literary and artistic protection. Consequently, it would be appropriate to include such elements within the definition of a work. However, it was ultimately accepted during the discussions that the terms “literary and artistic work” inherently encompass the elements of “intellectual effort or activity” and “individuality of its author” by their nature, and thus there is no need to include such concepts in the definition [Eva Marie König, “Der Werkbegriff in Europa Eine Rechtsvergleichende Untersuchung des Britischen, Französischen und Deutschen Urheberrechts,” (1st edn, Mohr Siebeck, 2015) 12].

50 Hirsch (n 24) 380; “A result produced by a living organism other than a human; such as microorganisms, or nature itself, for example the fairy chimneys formed over time in the Cappadocia region, cannot be considered as a work of art because

which is also called “*mental productivity*”, products created by ordinary abilities common to everyone, or any result produced by animals⁵¹ or as a result of natural events, will not qualify as a work⁵².

In order to fulfil the subjective requirement, mental productivity is not enough, the intellectual product must also bear the author’s individuality/characteristics. However, there is no consensus in the doctrine on the definition of the concept thereof⁵³.

According to one view, for the existence of individuality, there must be a creative activity in the intellectual product and the author’s characteristic must be reflected in the work in some way. Hence, it is not possible to mention individuality in a work that can be produced by anyone⁵⁴.

A different view argues that individuality manifests itself in expression (style) and that style, being individual and subjective, reflects the creative power of its author. According to this view, style is found not only in written works, but in all works of thought and art.⁵⁵

Another opinion states that the particularity of works is more or less identifiable, and that the highest level of particularity is when the author can be identified at the moment of contact with the work, but that most works do not have this level of particularity⁵⁶.

As to an alternative perspective, in the determination of particularity, a single criterion valid for all types of works cannot be given, and a different criterion of particularity should be determined for each type of work. In this framework, sometimes a colour or a style of shaping the intellectual product, sometimes the choice and arrangement of words can be decisive⁵⁷.

A similar opinion posits that the notion of uniqueness can be equated with “originality” and “the author’s individuality” and suggests that the assessment of whether a work embodies the author’s individuality necessitates an examination of

it is not an intellectual product.” see Arıkan (n 8) 57.

51 Hirsch (n 24) 380; Ayiter (n 23) 43-44.

52 “*The subject matter of intellectual property is the products that emerge as a result of the intellectual effort and endeavors of human beings utilizing their power of thought. Thinking is a characteristic unique to humans. Thinking or mental effort involves the process of mentally processing certain events, reasoning, or solving a problem using various symbols, images, and concepts.*” [Tekinalp (n 19) 32]; “*Human beings produce intellectual creations due to their capacity for thinking and thought.*” [Yarsuvat (n 47) 2]; “*The creation of an intellectual and artistic work has been described as perhaps the most mysterious phenomenon in the cultural life of humanity, often relying on the unpredictable inspirations of the human mind. Therefore, it is not possible for soulless entities such as computers, machines, and the like to produce works of art.*” [Mustafa Ateş, “Fikri Hukukta Eser Sahipliği” (1st edn, Adalet 2012) 33]; “*In order for a work to fulfill the requirement of carrying the characteristic of its creator, it must be created by a human being.*” [Polater (n 19) 87-88]

53 Ateş (n 8) 51.

54 Ernst Hirsch, *Hukuki Bakımdan Fikri Say Cilt 2: Fikri Haklar* (1st edn, İstanbul Üniversitesi 1943) 12, 131.

55 Tekinalp (n 19) 105-106.

56 Ayiter (n 24) 43.

57 Ateş (n 8) 75.

the concepts of “idea” and “form.” In this regard, an idea is viewed as a product of exploring the metaphysical realm. Shape, on the other hand, is generally related to appearance⁵⁸. The proponents of this view argue that these two concepts are confused in some works, that in works of fine art the specialty usually lies in appearance, while in works of science and literature it is seen more in the presentation of the idea, and therefore originality should be evaluated in different ways for each type of work⁵⁹.

In our opinion, individuality can be summarized as the ability of the creator to reflect his/her own intellectual activities and style on the intellectual product (according to the nature of the product) in different layers such as the way of expression, word choice, style of expression, camera angle, colour choice, brush choice, note arrangement. In this framework, it is not possible to determine a single criterion valid for all types of work in the evaluation of this condition and a separate evaluation should be made for each type of work, taking into account its own characteristics, the existence of a spirituality specific to the author of the intellectual product and the author’s independent field of action.

Regarding the evaluation of formats in terms of subjective condition, it is seen that a distinction is made in the doctrine in terms of fictional formats and non-fictional formats⁶⁰. According to this distinction, in fiction-based formats, the biographical and psychological profiles of the characters, the dynamics of the relationships between the characters, the behavioural patterns of the characters, the different types of characters, the texture of the program (which can be summarized as whether it will look flashy, simple, natural or mysterious) and the way the story is presented can be clearly determined⁶¹. On the other hand, non-fiction, reality-based program formats do not include such detailed elements, making it more difficult to determine whether the creator’s touch is present in the format. In this type of format, there is usually a presenter, not characters, and the same theme is repeated in the program content⁶². Therefore, it should be accepted that a format of this nature does not carry the subjective element.

In the judicial decisions on the subject, although the distinction between fictional and non-fictional is not explicitly mentioned, the focus is on whether the program formats contain detailed explanations that differentiate them from similar productions in the broadcasting sector. Yet, it is often concluded that the program format must contain detailed explanations in order to be considered to bear the characteristic of the author⁶³.

58 Yarsuvat (n 48) 53.

59 ibid 53.

60 Fine (n 5) 68-72.

61 ibid 68-69.

62 ibid 70.

63 11. Civil Chamber of Turkish Court of Appeal 2015/10650, 09.05.2016 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

In a recent case, a program was found by a court decision to lack specific details essential for copyright protection due to its incomplete format and lack of originality, leading to the conclusion that it didn't possess copyrighted characteristics⁶⁴. In a similar case, the court ruled that common elements in TV competition shows, such as contestants and prize awards, do not embody the plaintiff's distinctiveness, thereby excluding them from copyright consideration⁶⁵.

In a distinct case, the court clarified that a format primarily pertains to structure and rules, regardless of meticulous detailing, and retains its external nature. The court highlighted that originality necessitates the incorporation of the author's distinctive traits, defining this threshold as uniqueness not just in expression but also in content, albeit without imposing excessively high standards⁶⁶.

In a different case, the court found a format based on a 14-week program with assigned film subjects, budget, short film production, TV airing, and SMS awards to lack the required uniqueness and originality for copyright⁶⁷. Likewise, in another case, a format involving contestants and a "storage room" segment was denied protection due to its lack of specificity⁶⁸.

According to our view, the fictional-non-fictional distinction in the doctrine and the evaluation of whether the judicial decisions contain detailed explanations are parallel to each other. In this framework, it is essential to acknowledge that a fictional program format, which is adequately specified and distinct from similar programs in the media industry, should be able to satisfy the subjective criterion. By contrast, non-fictional formats containing non-original content, such as the hosting of guests, conducting interviews, visiting different countries, or presenting specific news, are deemed inadequate to meet the criterion of originality. Adopting a divergent perspective would lead to the monopolization of elements that are present in every program, such as filming techniques, sound effects, the narration style of the presenter, staging devices and visual effects, and would expand the scope of copyright protection in a way that would unduly limit freedom of expression.

64 İstanbul 4th Civil Court of Intellectual and Industrial Property Rights, 2021/260, 21.4.2022 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

65 İstanbul 1st Civil Court of Intellectual and Industrial Property Rights, 2017/144, 26.12.2019 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

66 İstanbul 4th Civil Court of Intellectual and Industrial Property Rights, 2017/199, 29.01.2020 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023). (Also see n 42)

67 11. Civil Chamber of Turkish Court of Appeal 2016/8864, 12.03.2018 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

68 İstanbul 16th Civil Court of Intellectual and Industrial Property Rights, 2017/2556, 30.10.2019 (available at, <<https://legalbank.net>> last accessed 18.06.2023 (Approved with 11th Civil Department of the Supreme Court of Appeals' decision 2019/5193, 29.06.2020)

D. Falling Under One of the Categories Specified in Article 1/B-A Of IPL (Condition of Form)

In order for an intellectual creation to be considered a work, in addition to the objective and subjective criteria, it must also fall under one of the categories specified in Article 1/B-a of the IPL, which include scientific and literary or musical work or work of fine arts or cinematographic work⁶⁹.

The categories of works introduced by the IPL are subject to the principle of *numerus clausus* and intellectual products that cannot be included in one of these categories cannot be considered as works. However, the types of works listed under these four categories are listed by way of example and are not subject to the principle of *numerus clausus*⁷⁰. For example, although the term “series of interrelated moving images” is used in Article 5 of the IPL, only “cinematographic works” are listed and the term “film” is used in the text and title of the article. The term “film” is not a legal term and covers a wide range of creations besides motion pictures, such as documentaries, TV series, commercials, cartoons, etc.⁷¹ Therefore, although not listed in the Article, intellectual products that are similar to the works included in the scope of the provision - provided that other conditions are also met - may also be considered as works.

Although the types of works listed under the categories are exemplary, the classification of works into the four established types poses challenges in determining the legal status of new types of intellectual creations, such as program formats. This situation has resulted in the emergence of certain methods and justifications in legal doctrine and court rulings, where the underlying basis for their determination may lack clarity, pertaining to the legal attributes of these novel forms of intellectual creations. Indeed, with the emergence of television and later the widespread use of the internet, the number of platforms on which cinematic works are transmitted (or streamed) and made available to the public has increased significantly. As a result, there has been a diversification in the types of cinematic creations. In the face of this evolving landscape of cinematic creations, the existing legal definitions have proven inadequate and insufficient in capturing the full scope of these new forms of expression⁷².

The question of whether program formats, which form the core of programs that are considered as cinematic works, possess the status of works extends beyond visual and auditory works and requires assessment from other perspectives as well. In this regard,

69 Ayiter (n 24) 45; Tekinalp (n 19) 109; Ateş, (n 8) 35-38; Yarsuvat (n 48) 55; Nal and Suluk and Temel (n 20) 39; Polater (n 19) 39.

70 Ayiter (n 24) 45; Tekinalp (n 19) 114; Ateş, (n 8) 35-38; Yarsuvat (n 48) 54; Nal and Suluk and Temel (n 20) 39; Polater (n 19) 39.

71 Tekinalp (n 19) 126-127; Nal and Suluk and Temel (n 20) 39.

72 Tosun (n 17) 52.

in order to determine the qualification of a format as a work, which is recognized to meet both objective and subjective criteria, it becomes crucial to identify the specific category of works to which the formats belong. This determination needs to be made with utmost precision, as the assigned category will significantly impact the ownership of these formats, given their inherent nature. Debates primarily revolve around whether formats should be classified as cinematic works or as scientific and literary works.

The quality of the program formats that constitute the building blocks of programs that are considered to be cinematic works is an issue that should be evaluated not only in terms of audio-visual works, but also in terms of other types of works. At this point, in order for a format that is deemed to meet the objective and subjective conditions to be considered a work, it is necessary to determine which category of work the formats fall into. It is important that this determination is made with precision. This is because the identified category of works will also create major *de facto* differences in terms of copyright due to the nature of the formats. The debate centers on whether the formats are works of cinema or works of science and literature.

The minority view in the doctrine argues that program formats should be considered as a work similar to the cinematographic works regulated under Article 5 of the IPL. This view argues that program formats have a double character and can be protected under Article 2 as well⁷³. According to this view, “(...) *television programs are considered as works similar to cinematographic works as stipulated in Article 5 of the IPL. In some decisions of the Court of Cassation, it can be observed that television program formats are also regarded as works similar to cinematographic works as defined in Article 5. Therefore, it is also possible to acknowledge program formats as works similar to cinematographic works, as expressed in the decisions of the Court of Cassation.*”

The opposing view, on the other hand, relies on the definition of cinematographic works. In fact, Article 5 of the IPL, titled “Cinematographic Works,” defines them as “*films of an artistic, scientific, educational or technical nature or films recording daily events or movies, that consist of a series of related moving images with or without sound and which, regardless of the material in which they are fixed, can be shown by the use of electronic or mechanical or similar devices.*” Formats, on the other hand, are written works and cannot manifest themselves as a series of moving images. Therefore, they cannot possess the nature of cinematographic works, and there is no need for further examination on this matter⁷⁴.

The prevailing view in the doctrine is that program formats should be considered within the scope of “scientific and literary works.” In fact, program formats are described as an “unconventional form of literary works”⁷⁵.

⁷³ Arıkan (n 8) 40-42.

⁷⁴ Tosun (n 17) 191.

⁷⁵ Meadow (n 3) 1170.

According to one view, formats are works of science and literature, provided that they also meet the other conditions, since they contain an intellectual effort and have a fiction and a plan⁷⁶.

Another view compares program formats to zoning plans in terms of their function, and states that it is not a proper approach for program formats not to be accepted as works when architectural, urban planning and design projects, and even sketches are protected as works of science and literature. According to this view, program formats should also be evaluated within the scope of works of science and literature, since works “expressed in any form of language and writing” are considered as literary works under Art. 2 of the IPL⁷⁷.

On the other hand, a different opinion asserts that due to their independent existence from the actual program, program formats cannot be considered as cinematographic works. Instead, they suggest that within the scope of different types of works, program formats align more closely with scientific and literary works. This viewpoint also emphasizes that program formats lack literary characteristics⁷⁸.

There is no uniformity in the judiciary as to which category of works formats should come under.

In a significant Supreme Court decision⁷⁹, the “Dart Show” competition format was deemed akin to cinematographic works due to unauthorized use, while another ruling⁸⁰ emphasized that TV program formats, including competitions, should be acknowledged and safeguarded as works under Law No. 5846.

However, in accordance with the prevailing doctrinal stance, the majority of decisions hold that formats should fall under the purview of “scientific-literary” works. In a relevant case concerning a cartoon format, it was expressly stated that if characters and typification fulfil the requisite criteria, they may be recognized as works, further confirming the classification of the format itself as a scientific-literary work⁸¹.

In a decision pertaining to the “Kim Milyoner Olmak İster?” TV show format, an adaptation of “Who Wants to Be a Millionaire?” in Turkey, the court ruled that the extensive 249-page format text comprehensively outlines the show’s entirety,

76 Tekinalp (n 19) 110.

77 Ateş (n 8) 282-283.

78 Hamdi Yasaman, *Fikri ve Sınai Mülkiyet Hukuku Fikir ve Sanat Eserleri Endüstriyel Tasarımlar Patentler ile ilgili Makaleler Hukuki Mütalaalar Bilirkişi Raporları* (1st edn, Vedat 2012) 162.

79 11. Civil Chamber of Turkish Court of Appeal 2008/5996, 03.11.2008 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

80 11. Civil Chamber of Turkish Court of Appeal 2004/6612, 05.04.2005 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

81 11. Civil Chamber of Turkish Court of Appeal 2015/13096, 15.05.2017 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023).

encompassing elements like contestant-host interaction, commercial breaks, filming techniques, and visual presentation of questions. This detailed document was recognized as a work falling within the scope of science and literature under Article 2⁸².

In a different ruling aligned with this perspective, the court examined the conditions for TV program formats to be classified as works of science and literature. The court outlined that TV program formats can qualify as works if they are expressed in writing, and are reproducible, original, and distinct. However, in the case under consideration, the plaintiff's format described a method without a written document for validation, precluding its recognition as a work. Generalized elements shared by many TV shows, like contestants and prizes, lack the plaintiff's uniqueness and are excluded from consideration⁸³.

Based on this information, in our opinion, it is evident that programs should be protected under Article 5 of the IPL. As a matter of fact, the term "film" is defined in Article 5 and as stated above, this term covers many creations such as documentaries, TV series, advertisements, cartoons and similar creations in addition to motion pictures. However, it is a mistake to extend this approach to programs to include formats. In other words, it is not possible to accept formats that are embodied in a written form as cinematographic works. This is because in order for a work to be considered a cinematographic work or a work similar to a cinematographic work, it must first be a "series of interrelated moving images".⁸⁴ Since program formats in the form of written text do not meet this requirement, they should be deemed not to be cinematic works without further examination.

According to Article 2 of the IPL, the fundamental characteristic of works that fall under the category of scientific and literary works is that they are "expressed in language". The protection of these products as copyrighted works does not hinge upon the significance of their content, the subjects they address, or their scientific or literary value. Any form of expression of ideas and artistic creations in language, regardless of their literary, scientific, social, political, or religious nature, is eligible for copyright protection as long as it possesses originality and attains a certain level of concreteness⁸⁵.

82 11. Civil Chamber of Turkish Court of Appeal 2015/7276, 29.03.2016 (available at, <<https://www.kazanci.com.tr>> last accessed 18.06.2023). Indeed, in this direction see: 11. Civil Chamber of Turkish Court of Appeal 2011/12280, 10.06.2013 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

83 11. Civil Chamber of Turkish Court of Appeal 2011/8810, 06.06.2013 (available at, <<https://www.lexpera.com.tr>> last accessed 18.06.2023).

84 The umbrella term "cinematic works" as stated in the IPL may potentially give rise to debates concerning the legal classification of works such as television series and even music videos, which fall within the scope of cinematographic works. It is arguable that the term may prove inadequate when considering emerging forms of intellectual creations resulting from advancing technologies. In light of this, it could be proposed that cinematographic works, including cinema works, be addressed under the encompassing heading of "audiovisual works." This inclusive definition would serve to minimize disputes regarding the appropriate categorization of new types of intellectual creations brought forth by technological advancements.

85 Ateş, (n 8) 123; Tekinalp (n 19) 114; Nal and Suluk and Temel (n 20) 56; Yarsuvat (n 48) 55-60.

Program formats that are not in the nature of an explanation of a method, nor of a method of doing business or a similar procedure, and that are fixed and reproducible in written form should benefit from copyright protection as works of science and literature, provided that they also meet other conditions.

IV. Conclusion

Program formats constitute the building blocks of programs, one of the most important revenue items of the media sector, however there is no consensus in the doctrine and judicial decisions as to whether formats qualify as works within the scope of the IPL. These debates are particularly focused on whether the formats have acquired a degree of concreteness worthy of protection as works and whether they bear the characteristics of their authors. Even if these conditions are met, differing opinions exist regarding the specific category to which program formats should be classified.

For a work to be recognized as a work under intellectual property law, certain conditions must be met. The first and most fundamental of these is that it is only ideas that cannot be protected and that protection can only be enjoyed if the intellectual product exceeds a certain threshold of concretization. In the doctrine, it is argued that formats can in no case be more than an abstract idea, and the majority view is that it would not be correct to disregard the format as a work on the grounds that it is not sufficiently concretized and that a separate evaluation should be made within the framework of the circumstances of the concrete case.

In our opinion, accepting that program formats are in the nature of abstract thought without any evaluation would be unfair within the framework of the circumstances of the concrete case. In this framework, formats that do not go beyond the transcription of an abstract idea, that are sketched, that are a description of an abstract idea or a method, method of doing business, or a similar procedure should not be protected under the IPL. On the other hand, it is considered that formats which are original in terms of the elements they contain, and which reflect the intellectual effort or activity of their author - provided that other conditions are also met - are not an obstacle to their acceptance as works.

Regarding the condition of concretization, it should be deemed necessary and sufficient that the format is determined in writing. In cases where the format is the subject of a license agreement, the “format rule book” delivered to the licensee producer is also a practical manifestation of this concretization in the form of a written text. The important point is that the format should be reproducible in the same content and that the format text should not necessarily be recorded in physical or digital form. Any contrary assumption would raise the threshold of concretization and consequently restrict the scope of copyright protection, without a justifiable basis.

An additional essential requirement for a concrete manifestation of an intellectual product to be deemed a work is the embodiment of its author's originality. Undoubtedly, a program format may attain the status of a work only when it harmoniously combines not only mundane elements but also additional elements that exemplify the creative intellect of its proprietor.

A further stipulation for an embodied intellectual product to attain the status of a work is contingent upon it carrying the distinct characteristics of its author. Indeed, a program format can be a work if it is not only composed of ordinary elements but also blends them with other elements that reflect the creative intellect of its author.

In the assessment of the condition of individuality, a different approach should be preferred for each type of work. Regarding program formats, it is deemed necessary to evaluate them based on their fictional or non-fictional nature, as well as their level of concreteness and individuality. In this context, a program format that is based on fiction, is adequately fixed in a concrete form, and that exhibits original or unique elements would satisfy the subjective condition. On the other hand, since non-fiction formats, unlike fictional ones, repeat the same theme and do not include detailed elements, it will have to be accepted that a format of this nature does not carry the subjective element. A contrary view would lead to the monopolization of essential elements that should be available to all and would expand the scope of copyright protection in a way that would unduly limit freedom of expression. However, in practice, formats are often the subject of license agreements, and the licensee is obliged to provide the producer. Also, it is worth noting that program formats often enter into licensing agreements, wherein the licensee is granted access to a production bible that meticulously outlines the rules, characteristics, and elements of the format. In light of this, it would be unfounded to contend that a program format, duly fixed in written form with comprehensive details, lacks the required condition to be deemed a work.

Another condition for an intellectual creation to be considered a work is that it must be included in one of the categories of works of science and literature, musical works, works of fine art or cinematographic works specified in Article 1/B-a of the IPL. The ongoing debate revolves around whether program formats can be classified as cinematographic works or scientific and literary works.

While there are varying opinions in the legal doctrine regarding whether program formats can be protected as cinematographic works, the prevailing view is that they should be classified within the scope of scientific and literary works. Previous rulings of the Supreme Court demonstrate divergent perspectives, with certain earlier decisions asserting that program formats cannot be classified as works, while others suggest that formats should be regarded as works resembling cinematographic works. However, upon examining more recent rulings, it is observed that the court leans

towards the view that program formats, if they meet the objective and subjective conditions, can be recognized as scientific and literary works.

Program formats, as they exist in a fixed written form, are considered not to fulfil the requirement of being “a series of interconnected moving images” necessary for classification as cinematographic works. Within this context, it is essential for a specific format that satisfies the subjective condition to be protected as a scientific and literary work under Article 2 of the IPL. However, it must surpass the threshold of being a mere description related to a method, business process, or similar procedure.

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