[GB] A further Consultative Document on Programme Formats

IRIS 1996-7:1/18

Jaap Haeck
Institute for Information Law (IViR), University of Amsterdam

In 1989 the Privy Council denied copyright protection for the format (plan or scheme on which a television series is based) of the television gameshow 'Opportunity Knocks' ([1989] 2 All ER 1056). Although the decision of the Privy Council had highly persuasive authority, the issue remained controversial. In 1994 a draft private Member's Bill proposed to extend literary works to formats. Subsequently, the Patent Office issued a Consultative Document on the protection of formats. As a result the Patent Office has continued working on possible legislative approaches to the protection of formats. This has recently resulted in a further Consultative Document.

The new Consultative Document does not stretch the literary work to include formats but it enlarges the meaning of infringement by copying. To avoid problems with the different interpretations, the word 'format' has not been used. Instead the Consultative Document uses the words 'scheme or plan'. It proposes to add some paragraphs to Article 17 of the Copyright, Designs and Patents Act 1988. As a result a copyright work may be infringed if the underlying format of this work is copied in a new programme. The established principle that copyright in a work embodying instructions for making a thing is not infringed by making that thing would accordingly be departed.

A condition is that the format has to be sufficently elaborated and original (not copied). Consequently, a notable higher threshold of skill and effort would apply to formats, than would be the case if a format was defined as a copyright work in its own right.

To ensure certainty about what is protected there will only be infringement if the scheme or plan is prefixed: set out in material form which predates the first programme made to that format.

Questions are asked in the Document on the protection of existing formats and the transitional provisions. As a result of international obligations the proposed protection would have to extend to nationals of states which are parties to the BC and the TRIPs. It might be that foreign owners of formats used in the UK would benefit more than UK producers of formats.

© European Audiovisual Observatory (Council of Europe) 2026

The Consultative Document invited comments on the chosen approach by the end of June to: Mrs. J. Sullivan, Copyright Directorate, The Patent Office, Hazlitt House, 45 Southampton Buildings, London WC2A 1AR.

Programme Formats : A Further Consultative Document.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026