

Neutral Citation No. [2025] EWHC 39 (IPEC)

Claim No. IP-2023-000052

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INTELLECTUAL PROPERTY ENTERPRISE COURT**

**Royal Courts of Justice  
The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL**

**Friday 17 January 2025**

**Before:**

**RECORDER AMANDA MICHAELS**

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**Between:**

**JOSHUA RINKOFF**

**Claimant**

**-and-**

**BABY COW PRODUCTIONS LTD**

**Defendant**

**TIMOTHY SAMPSON and CHELSEA SPARKS (instructed by **Keystone Law**) for the  
Claimant**

**JONATHAN HILL (instructed by **Wiggin LLP**) for the Defendant**

**Hearing dates: 4 and 5 November 2024**

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**APPROVED JUDGMENT**

**This judgment was handed down by the Court remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on 17 January 2025.**

## Miss Recorder Amanda Michaels:

### Summary

1. This is my judgment following the trial of liability in a claim for copyright infringement. Joshua Rinkoff, the Claimant, is a writer and comedian who performs under the name Harry Deansway. He claims to own the copyright in the format of two series of comedy shows called "*Shambles*" described in the Amended Particulars of Claim as "a sitcom series, centred around a live comedy night." He complains that the Defendant company, which is a well-known producer of comedy shows, infringed his copyright by its series "Live at the Moth Club" ("*LATMC*").
2. For the reasons given below, I find that the format of Mr Rinkoff's series was not protected as a copyright work. Had I found there to be any such copyright, I would in any event have found that it was not infringed by the Defendant.

### Background

3. Mr Rinkoff has worked in the comedy industry for over 20 years as a stand-up comedian, director, writer and promoter. He explained that he has promoted live comedy acts since around 2006, initially in conjunction with his comedy magazine 'The Fix.' After the magazine stopped trading in 2012, he rebranded his regular live nights "*Shambles*." *Shambles* ran at the Aces and Eights Club, a pub or bar in Tufnell Park in north London which hosts a variety of live music and comedy performances in its basement. At about the same time, Mr Rinkoff said, he launched a YouTube channel called "Raybot."
4. In about 2013, Mr Rinkoff decided to create what he described as a digital version of *Shambles*. He said that he intended to showcase stand-up comedy in an innovative way, combining scenes of live comedy with behind-the-scenes narrative in the form of a sitcom, the intended effect being to immerse the audience in the setting of the live comedy club. With the help of a small team he filmed a series of 6 shows which were made available to the public and are still available in the UK on the Raybot YouTube channel. He had overall directorial control over the style and content of the shows, which I discuss below.
5. In September 2014, Mr Rinkoff entered into a production agreement with Wildseed Productions Ltd, which financed and produced a further series of 6 shows, released on Wildseed's YouTube channel in 2015. Those shows were taken down in April 2022.
6. The Defendant, Baby Cow Productions Ltd, is a TV production company. It produced a series of 5 shows entitled Live at the Moth Club. They were broadcast on the TV channel Dave (owned by UKTV) in December 2022 to January 2023 and were later made available for streaming on UKTV Play.
7. The moving force behind *LATMC* was Rupert Majendie ("Mr Majendie") who is Head of Development at the Defendant company and who has also had a lengthy career in comedy. He too has run live comedy gigs at various venues, including since 2015 at the

Moth Club, which is a working men's club in Hackney, where he runs an alternative comedy night called Knock2Bag. Mr Rinkoff and Mr Majendie have known each other for years. They were friendly at one stage but fell out after an incident in 2012 when Mr Rinkoff staged a protest during a show promoted by Mr Majendie at the Edinburgh Festival. There appears to have been something of a rapprochement in about 2021.

8. Mr Rinkoff became aware of *LATMC* shortly before its release. I am not clear how much he knew about it, it is possible that he had seen a trailer for it, but he did not say. His immediate reaction was to think that it had been copied from *Shambles*, and on 4 November 2022 (before *LATMC* was first broadcast) he posted a message of complaint on Facebook, referring to having instructed copyright lawyers and claiming that *LATMC* was "... a corporate version of *Shambles* for the masses ...". His solicitors wrote a letter of claim to the Defendant dated 23 December 2022 alleging infringement of copyright. They identified the principal similarity between *Shambles* and *LATMC* as the combination of "a narrative sitcom with a live stand-up show case" but it was also alleged that there were similarities of features of the characters and plotlines. They accepted that no single one of the features present in both shows would give rise to a claim, but said that the number of similarities plus the fact that "the creator" of *LATMC* was "clearly familiar" with *Shambles* led to an inescapable conclusion of copying. The Defendant disputed the claim, and these proceedings followed, with the claim being issued on 31 May 2023.
9. It is Mr Rinkoff's pleaded case that the format of the two series of *Shambles* is protected as a dramatic work for the purposes of the Copyright Designs and Patent Act 1988 ('the Act') and the Defendant infringed his copyright by copying and by communicating *LATMC* to the public. The Amended Particulars of Claim filed in February 2024 identified a single work in which copyright was claimed as having the following features:
  - "8 ... the format of *Shambles* consists of a number of clearly identifiable features, which, taken together, distinguish it from other shows of a similar type. Those features are connected together in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form. In support of the foregoing, the Claimant relies on the unique combination of each of the following features, giving rise to a series with an idiosyncratic tone and/or distinctive plots not seen in other sitcoms:
    - 8.1. A setting in a comedy club struggling to make ends meet based in a real-world venue which is not a full-time purpose built comedy club;
    - 8.2. The blending of fictional scenes involving situation comedy, on the one hand, and actual stand-up performances by both up-and-coming acts and established names filmed in front of a real audience at the club, on the other, giving rise to a unique hybrid of sitcom and comedy entertainment;
    - 8.3. The staging of interactions between the fictional characters of the sitcom scenes and *inter alia* the stand-up comedians of the live performance scenes to create a unique blend of the fictional and the documentary, including interactions between the fictional characters and the stand-up comedians, and/or interactions between the fictional characters and real audience members, ...;
    - 8.4 The use of techniques of *cinema verité* techniques including handheld camera footage, the use of natural lighting, the use of dialogue that appears to be unscripted and improvised, the staging of scenes in a fly-on-the-wall manner in which action unfolds in front of the camera in a manner that appears un-staged

and natural, and the use of what appears to be a real-life audience at a real comedy venue to imbue all the scenes with a sense of realism and authenticity but also to add to the general dry and deadpan humour of the series;

8.5. A promoter character, Harry, who is the protagonist of the show and faces significant challenges in putting on a successful comedy night, ...;

8.6 A hapless club owner character, Greg, who owns and runs the dilapidated venue and who tries to help the protagonist but usually makes things worse, ...;

8.7. An intern character and junior member of the team running the comedy club (named Joe in the First Season and Toby in the Second Season), who likewise acts with good intentions but often just makes things worse for the protagonist, ...;

8.8 The constant presence of a variety of industry characters working behind the scenes in the comedy industry, including such as agents, producers and talent scouts, who come up with bad or surreal ideas for the comedy night that never work, ...”

10. In paragraph 9 of the Amended Particulars of Claim, it is alleged that the work was recorded not just in the video recordings of the *Shambles* shows, but also in a number of documents written by Mr Rinkoff, such as notes of key features of Series 1, plot points for Series 1, outline scripts for Series 2 and a *Shambles* ‘Philosophy’ written in around November 2014.
11. One peculiarity of the Claimant’s case is that it was not made clear when he alleges that the work was completed. The Claimant’s skeleton argument for the trial suggested that the underlying format of both series was the same, which might have suggested that the format was set by the end of series 1. However, both the Amended Particulars of Claim and a Response to a Part 18 Request provided by the Claimant in August 2023 imply that the copyright work identified in paragraph 8 of the Amended Particulars of Claim is a single work, which includes elements from both series of *Shambles*. In addition, Mr Rinkoff confirmed in the same Response that he was alleging only infringement of the format as a dramatic work, and not alleging an infringement of copyright by copying or paraphrasing the dialogue of *Shambles*.
12. In the Amended Particulars of Claim Mr Rinkoff identified features of *LATMC* which he alleged gave rise “to a sitcom with a markedly similar tone and feeling to the original *Shambles*.” He alleged that there are striking similarities between the shows which could not be explained by coincidence and inferred that this was because Mr Majendie had accessed and copied *Shambles*. Following the case management conference on 8 March 2024, Schedules were produced in which Mr Rinkoff identified a limited number of scenes from *Shambles* said to support the points from paragraph 8 which I have set out above, and the pleaded similarities of feature and plot in *LATMC*.
13. The Defendant denied that the format relied upon by Mr Rinkoff was protectable as a dramatic work, because it was not designed to be performed, nor capable of being performed, but also denied that the two series of *Shambles* had a format identifiable with sufficient precision and objectivity to be capable of being protected as a copyright work. Copying was, in any event, also denied.

14. As is usual in this Court, a list of issues to be decided at the trial of liability was set out in the CMC Order of 8 March 2024; it was amended by Order of 31 July 2024. The issues were:
- (a) whether a format may be protected as an original dramatic work;
  - (b) whether the format of *Shambles* (as defined in the Amended Particulars of Claim) is protected as a dramatic work;
  - (c) whether the Claimant is the author of the format of *Shambles*;
  - (d) is the Claimant the owner of any copyright that may subsist in the format of Series 2 of *Shambles*;
  - (e) whether the pleaded features of *LATMC* had been copied from *Shambles*;
  - (f) if any of those features have been copied – did that amount to a substantial part of any protected work.

### Witnesses

15. I heard from Mr Rinkoff in person. Counsel for the Defendant said that he did not call into question Mr Rinkoff's belief that his show had been copied, but suggested that he had lost all sense of perspective in relation to the dispute and was, as a result, ready to make unfounded allegations of copying not supported by the documentation. He invited me to treat Mr Rinkoff's evidence with caution save to the extent that it was supported by the documents in the case.
16. It seemed to me that Mr Rinkoff was essentially an honest witness. However, I agree that he had lost any real objectivity about this case. For instance, in his witness statement he criticised Mr Majendie's behaviour in relation to other professional matters. Mr Majendie hotly disputes these criticisms, but they are, in my judgment, irrelevant to the issues I need to decide. Most of Mr Rinkoff's evidence as to the creation and description of *Shambles* is not seriously challenged, and much of his evidence as to copying is no more than speculation. I consider that it is right to scrutinise Mr Rinkoff's evidence with some care, but it does not seem to me that I should go so far as to accept his relevant points only if supported by the documents.
17. A second witness statement was produced for the Claimant, from Mr Miles Bullough of Wildseed Studios Ltd. He was not cross-examined. The Defendant's position was that his evidence was inadmissible, as it dealt with the construction of the contract between Mr Rinkoff and Wildseed.
18. The Defendant called four witnesses, all of whom were cross-examined. They were Mr Majendie, Mr Ben Ashenden and Mr Alexander Owen (who together form a comedy double act known as The Pin and were largely responsible for the scripts of *LATMC*) and Ms Ellie White, who together with her writing partner Natasia Demetriou came up with and played characters in *LATMC*. Although doubts were raised about them in the Claimant's skeleton argument, in his closing submissions counsel for the Claimant made no criticism of any of the Defendant's witnesses. All of them appeared to me to be good witnesses, who were clear about what they could and could not recall, and did their best to give their true recollection of events and to help the Court. Mr Ashenden and Mr Owen in particular appeared to me to be extremely careful witnesses.

## The shows

19. Each show in Series 1 of *Shambles* was some 6 or 7 minutes long. As now shown on YouTube, and in the copies shown to the Court, those shows combined, in broad terms, the following elements or segments. First, behind-the-scenes footage of Mr Rinkoff, playing himself as Harry Deansway, a harassed comedy night promoter, and his interactions with a few central characters, such as Greg, the owner of the club, and Harry's incompetent assistant or runner, Joe, and in some instances, brief interactions between the characters and the real comedians on the show. This is the sitcom element of the shows. Next, there are brief scenes in which Harry introduces comedy acts to an audience, with just a few short snippets of the comedians' performances. For instance, in the first episode of *Shambles*, there are 9 seconds of a performance by John Kearns, and about the same of Rich Fulcher, as well as even shorter snippets of performances by other performers, and of Mr Rinkoff performing in his Harry Deansway persona. Lastly, there are shots of audience members laughing, smiling and socialising. All of the Series 1 episodes follow broadly this pattern.
20. As I have indicated, the shows that I have seen do not include any significant excerpts from the comedians' sets, which was in line with Mr Rinkoff's notes at the time. However, he explained that originally it would have been possible for someone viewing the show on YouTube to have accessed the recording of two or three full sets per episode by clicking on a link which popped up during the course of the show, through a facility called "Annotations." The viewer could then have linked back to *Shambles*. That facility is no longer available and the copies of the shows which I have seen do not include any such links. It was put to Mr Rinkoff that it would subsequently have been possible to click through to a comedian's set on his Raybot YouTube channel via a link shown at the end of the show, but I have not been able to see or follow such a link. Mr Rinkoff confirmed that the comedians' full sets would have been, and probably still were, on the Raybot channel on YouTube, but he did not produce any viewing figures for them, and was unable to say how many people may have watched them or when, nor whether they did so by linking through from the sitcom.
21. In the state in which the shows were available to the Court, there is remarkably little footage of comedians on stage, and the shows consist almost entirely of the sitcom element. These episodes were filmed with handheld cameras and with natural lighting, which means that the images are often rather dark as the scenes are set in the club basement.
22. Harry Deansway is the central character of all of the episodes of *Shambles* and the central premise of the show, in my view, is that he is a professional comedian whose career is in the doldrums. All of the Series 1 episodes feature fictional elements of Harry's struggles, the club's financial stresses due to poor audience numbers, arguments between Harry and other characters, and a variety of problems (of varying levels of idiocy) often caused by Joe's incompetence. The challenges he faces, his rather depressed demeanour, and his frustrations with the club and the other characters are central to the sitcom element of the shows, as the Claimant acknowledged in his response dated 30 August 2023 to the Defendant's Request for Information.

23. Mr Rinkoff explained that there was not a full script for the episodes of the show. Instead, he gave each actor a short description of their character, or sometimes a small excerpt of a script that he would have written on the day or in the moment, but otherwise the actors would come up with the dialogue themselves. Mr Rinkoff said that he used an episode breakdown document to map out "the spine of the show" based on what had already been and was about to be filmed. The breakdown notes vary in their specificity but are always brief. For instance, the breakdown of Series 1 episode 5 reads:

- *Joe Signed and Jamie and Nat Forcing me to put him on*
- *Joe and Greg having a celebratory drink*
- *Bobby Mair*
- *Birthday Girls*
- *Daft Punk*
- *Andrew O'Neill*

The breakdown of Series 1 episode 6 reads:

- *Greg Jamie and Nat are aguing (sic) about Mic technique is teaching Joe about stand-up Harry presents evidence Jamie Tells us to clean up Dressing room, Joe puts coke and gun in Lukes bag*
- *Joes material dies on it's arse*
- *Joes big break end in failure, see him apologising outside with Jamie*
- *Pizza Police, Luke Arrested with Gun and Coke comes from Jamie asking us to tidy up the dressing room. Nat wants to sign Luke once he gets arrested and drops Joe.*

24. Mr Rinkoff said that he also created a filming information document to get an idea of everything that would need to be covered, which may have been shown to the cameramen. This document contains five dates for filming which suggests that it was created after the first episode was filmed in 2013. The document contains explanations such as:

*“What to film*

*Narrative of the night*

Pre-planned situations taking place around the venue. Some of the venue is quite dark so will need lighting

*Dressing room*

CCTV style footage of the dressing room. Two cameras must be running from 530 until the end of the night to capture all the action in real-time. ... The dressing room is small and dark. The cameras must be totally inconspicuous.

*The show*

This is a fully functioning real live night with paying customers. We would like the show captured in real-time to set up the atmosphere of the night ...

*Performers*

Film the performers we will use a snippet of every acts slot in the final edit. If the act allows it we will use their whole set. Film all the hosting of Harry Deansway as there will be some narrative stuff for the show that needs to be captured.”

At paragraph 9 of the Amended Particulars of Claim, this document is described as “outlining the key features of the first season.” However, it does not identify all of the

features pleaded in paragraph 8. For instance, there is nothing about the characters in the shows.

25. In May 2014, in the context of discussions between Wildseed and Mr Rinkoff about the proposed contract, he provided them with a press release of unknown date describing *Shambles* as follows:

"*Shambles* is an innovative new concept, part narrative sitcom part Stand Up Showcase.

Set at London's premier Avant Garde comedy night *Shambles* show focuses on the trials and tribulations of promoter and host Harry Deansway. The antidote to the glitzy shiny floored Live At The Apollo, the much less glamorous reality of stand-up. A venue owner who wants a say in the running of the night, selfish comedians who only care about themselves, a runner hired to make the show run smoother but with only creates more problems, an industry that doesn't understand the concept and the biggest problem of all, himself.

As well as the sitcom there are exclusive performances from a blend of up and coming new acts, international acts and established TV names. Once jacked into the characters and narrative from the sitcom audiences will be infused to watch the stand-up sets us creating authentic showcase of the live comedy experience that TV often struggles to translate.

*Shambles* can become the port of call for the worlds best stand-up talent and the show that audiences pick to discover the world's funniest performance.

26. Series 2 went live in July 2015 and was available online until April 2022, although some of the comedians' sets may have been kept online longer. The episodes of Series 2 lasted from around 12 to 17 minutes. They took much the same form as the episodes of Series 1, in terms of showing almost solely the sitcom elements of the show plus a very little of the comedy acts and general shots of a live audience. At the end of each episode there is a page with links to subscribe, and watch the last or next episode and, for episodes 1 and 6, an additional link to "Watch the Comedians."

27. The main characters from Series 1 reappear more or less in Series 2. However, the role of Greg is played by a different actor, and the characterisation is rather different, whilst Joe has been replaced by Toby, an equally useless intern. The new role of Lex, an incompetent barmaid who is Greg's niece, is central to much of the narrative.

28. Mr Rinkoff prepared various documents when planning Series 2. For instance, he wrote the *Shambles* Philosophy in about November 2014, which included this passage:

**"SHAMBLES PHILOSOPHY**

We need to approach it like we are filming a documentary. The idea is to give the audience the authentic feeling that they are behind the at a real comedy club. I want the audience to suspend disbelief on a different level to *Curb* and *The Thick Of It*. The way to achieve this is to create an actual reality and immerse instinctual actors and filmmakers in that world capturing what is actually happening rather than creating an imitation of that reality ourselves.

**STRONG FRAMEWORK NOT RIGID INSTRUCTIONS**

We have created a strong framework through plot points and character development now put the talented people we've hired in those circumstances and



what they come up with instead of rigid instructions on what we want them to do or what we think will happen

...

### **INSTINCTUAL**

I want actors to have an instinctual reaction to what is happening. I think this way you get more genuine reactions and interactions well the odd surprise. Same with camera crew they need to be following the action it's happening. All the main cast have performed live comedy for years so are able to act on their wits based on what is going on around them.

...

### **EMBRACE CHAOS**

I know this must be worrying to hear but capturing actual chaos is going to give the footage an attitude and authenticity that you would not get if you sat down and tried to write it. This is why we have to film scenes at the actual night."

29. Mr Rinkoff also wrote more detailed breakdowns of each of the episodes in Series 2. For instance, some of his notes for episode 2 were:

**"JOE HAS TAKEN THE INITIATIVE AND BOOKED A REVIEWER IN FOR THE NIGHT.**

**UNBEKNOWNST TO THEM HARRY HAS HAD A MASSIVE FALLING OUT WITH THE REVIEWER.**

**AFTER SOME DISCUSSION HARRY STORMS OUT AS HE BELIEVES THE REVIEWER TO BE CORRUPT. GREG TELLS JOE NOT TO WORRY AS THEY ARE GOING TO GIVE THE REVIEWER VIP TREATMENT SO THEY WILL DEFINITELY GET A GOOD REVIEW**

**DOORS OPEN**

**[GREG AND JOE ARE SITTING ON THE DOOR ANXIOUSLY AWAITING THE REVIEWER]**

**REVIEWER TURNS UP, GREG COMES ACROSS AS THOUGH HE IS BRIBING HIM WITH DRINKS AND JOE LETS SLIP HOW IMPORTANT A GOOD REVIEW IS, EVERYTHING THEY SAY TO REVIEWER ANTAGONISES HIM AND JUST DIGS A DEEPER HOLE. ... JOE BREAKS THE NEWS THAT ONE OF THE CONDITIONS OF THE REVIEW IS THAT HARRY APOLOGISES. HARRIS IS THERE IS NO WAY THAT IS HAPPENING. GREG GIVES HIM AN ULTIMATUM**

...

**[HARRY AND LEX ARE IN THE AUDITORIUM]**

**HARRY IS ASKING LEX TO STEAL THE REVIEWERS NOTEBOOK SO HE CAN CONFIRM HIS SUSPICIONS THAT A BAD REVIEW WAS GOING TO BE WRITTEN ANYWAY. SHE'LL DO IT FOR MONEY SHE SAYS. HE BORROWS IT OFF JOE AS HE WALKS PAST WITH NO INTENTION TO EVER PAY HIM BACK ..."**

30. Mr Rinkoff claimed in his witness statement that "the notes created the plotline to be followed in the episode, based on the *Shambles* Philosophy, and creating a coherent format for the cast to perform to that was to be used across each of the episodes." As I understand his evidence, these notes were used to guide the improvisation of each show. Again, there was never a complete script for a show.

31. Mr Rinkoff’s case was that *Shambles* had a cult following, was widely seen within the industry and had a lot of exposure with people sharing it on social media. He asserted that someone like Mr Majendie would have watched each episode as it went live. The Defendant however says that the viewing figures produced by the Claimant do not show a high level of success or exposure, as for instance episode 1 of Series 1 of *Shambles* received about 2,000 views over nine years. The viewing figures for Series 2 were higher. Episode 1 had some 10,000 views, but numbers reduced significantly for the following episodes, giving a total of around 27,000 views. Those figures are, however, far lower than the views of the individual comedians’ sets, for instance, Alex Edelman’s set had almost 39,000 views. I note also that Mr Owen, Mr Ashenden and Ms White, all of whom have worked in the industry for substantial periods, said that they were not aware of *Shambles* prior to the Claimant making his initial complaint, and their evidence on this point was not challenged.
32. *LATMC* was made in a rather different manner. In around July 2020 Mr Majendie pitched an idea for the show to others at the Defendant company. His initial proposal is not in the trial bundles, but on 1 July 2020 he forwarded an email setting out some thoughts from Mark Iddon, a producer at UKTV with whom he appears to have discussed the idea and who went on to commission *LATMC*. Mr Iddon said that he had been trying for years to create “An alternative to a shiny floor show version of Live at the Apollo.” He explained that he had been inspired by a number of shows, but did not mention *Shambles*. Mr Majendie and some producers wrote a “pre-pitch document” describing *LATMC* as:
- “our own low budget - home- made version of Saturday Night Live. It comes “live” from the Moth Club TV Studio every week ... it is more anarchic and raw than SNL. Part-scripted, part improvised ...
- The Moth Club is the setting for the show. It’s an old working men’s club that has seen better days ...
- As we get to know the show ... we also get familiar with the mechanics and working of the show backstage – for example Liam Williams will play an irate Studio Cameraman .... We may often see the angry Vision mixer barking strange orders from the Gallery...
- We have guests each week ... with comedians playing realistic but bizarre character guests. For example, Tim Key arrives ... to fix the plumbing ...
- The show will be written and performed in a week. It will give the show an unprecious, loose and exciting style ... The show has no repeated format. Each week has its own distinct feel...”

There were further ideas in the pitch document which it seems were not pursued.

33. UKTV agreed to fund a pilot. A script for this was written by Mr Majendie, with the help of Adam Hess and Olly Cambridge. More material was written by Ms White and Ms Demetriou. Seb Cardinal and Dustin Demri-Burns (who perform as ‘Cardinal Burns’) improvised their own material. The resulting show, described as the *LATMC* Taster, was shot in August and October 2021 and then edited for submission to the channel. It was never broadcast. The Taster was introduced and hosted by a comedian, who was not portrayed as the promoter of the show, but as its MC. The Taster showed longer parts of the participating comedians’ sets and very much less backstage action than *Shambles*. There were comic interjections by a range of fictional backstage

characters, with most of that screen time given to Ms White and Ms Demetriou as parody St John ambulance volunteers, and to a doorman character, Jackpot. It seems to me that the Defendant is right to suggest that the Taster did not include any behind-the-scenes narrative.

34. UKTV commissioned a series based on the Taster, and the Defendant made five episodes of *LATMC* which were broadcast. They were rather different from the Taster. Mr Hess was not involved in writing the broadcast episodes. Instead, in early 2022, Mr Majendie and the producer, Dave Lambert, asked Mr Ashenden and Mr Owen to write the script. They were experienced writers and actors and had previously worked with Mr Majendie for the Defendant. They described holding brainstorming sessions with Ms White and Ms Demetriou and Cardinal Burns, as well as with Mr Majendie, and I was shown various emails sent back and forth between the members of this group refining their ideas. Mr Ashenden and Mr Owen both described this as a collaborative effort. Mr Owen said that the faux-documentary style was The Pin's idea, so that the performers both on and off stage would be seen to be aware of the cameras. They said that they based much of the script on their own experiences of appearing at the Moth Club, and on Mr Majendie's experiences and anecdotes as a booker of comedy.
35. The title cards of each episode of *LATMC* start with this statement:  
"In the summer of 2022, DAVE sent a documentary crew to capture life on and off stage at the Moth Club's alternative comedy night in Hackney, East London."  
I consider that a viewer would immediately have realised that the show was not a real documentary, but a "mockumentary," as the titles go on to name the cast and the writers of the show. Mr Majendie is credited as a joint Executive Producer as well as the director, and Mr Owen and Mr Ashenden as assistant producers as well as writers.
36. Each episode of *LATMC* is around 40 minutes long. They combine comedic backstage elements with excerpts from the comedians' sets and those are considerably longer than the snippets in *Shambles*, taking up to around half the running time. There is a "comedy booker" character, Ellen, who is shown struggling to organise the shows and deal with the performers and the Moth Club staff. She also speaks directly and deadpan to camera. She is a comedic character but is not portrayed as a performer/comedian. There is an owner/manager, George, in the same general mould as *Shambles*' Greg, but who plays a less significant role in the show, a barman and a sound man both of whose incompetence is broadly reminiscent of the chaos backstage at *Shambles*, and the daft doorman character is retained. Ms White and Ms Demetriou now play a pair of clueless PR girls, broadly reprising characters they had played in other shows, and there are long-running backstage and film sequences mainly featuring Cardinal Burns. The Moth Club itself is shown as rather down-at-heel and poorly maintained, for instance there is a storyline in Episode 3 about the likelihood that the electrics will fuse, and George is keen to increase the venue's income, for instance by hiring the room used as a green room to a bingo club. However, there appears to be a substantial audience for the live shows.

### **Is there copyright in the format of *Shambles*?**

37. The Amended Particulars of Claim claims that the format of *Shambles* is protected as a dramatic work. In my judgment, the statement of case cannot be read as suggesting that the format of *Shambles* is protected as any other kind of work, whether or not of a kind

expressly identified in the Act. Hence this is not a case in which it is necessary to consider the copyright protection of any other category of work, whether identified in the Act or not, and the tensions which have been discussed in other cases between the UK and EU approach to “works.” See for instance *Wright v BTC Core* [2023] EWCA Civ 868; [2023] F.S.R. 21, especially at [53]-[60]. The Claimant’s case as set out in the skeleton argument for trial and in Mr Sampson’s oral submissions turned on whether the format amounts to a dramatic work. Moreover, as already explained, the Claimant’s complaint relates to copying of the format, not to copying of any literary copyright works contained within the shows, or any other kind of copyright in the recordings of the shows, and it is not his case that the work has been infringed by verbatim copying or paraphrasing the dialogue of *Shambles*.

38. The Defendant’s pleaded position was that a format of the kind relied on by the Claimant is not protectable as a dramatic work but, in any event, it denied that the two series of *Shambles* have a format, let alone a format that is identifiable with sufficient precision and objectivity for protection as a copyright work.

39. Dramatic works are one of the specific categories of work capable of protection under the Act (as amended). It provides that:

*Section 1*

Copyright and copyright works.

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—

- (a) original literary, dramatic, musical or artistic works,
- (b) ...

*Section 3*

Literary, dramatic and musical works.

(1) In this Part—

“dramatic work” includes a work of dance or mime;

40. The Act gives no further guidance as to the nature of a dramatic work. In *Copinger and Skone James on Copyright*, 19th ed. (December 2024), paragraph 2-113 reads (footnotes omitted):

“The 1988 Act continues the general approach of the earlier Acts in that, unlike the cases of literary and musical works, it does not attempt a comprehensive definition of a dramatic work, merely stating that it includes a work of dance or mime. It also includes plays, screenplay and scripts for TV shows (at least when intended to be performed live and recorded before an audience). Although it is expressly provided that a literary work cannot be a dramatic work, there is no express exclusion, unlike in the case of the 1956 Act, of the possibility of a film being a dramatic work. ... As to what comes within the general description of “dramatic work”, the expression is at large and should therefore be given its natural and ordinary meaning, which is that it is a work of action, with or without words or music, which is capable of being performed before an audience. This definition brings out the point that a distinguishing characteristic of a dramatic work is that it must be capable of being performed ...”

41. It was common ground that copyright protects the embodiment of an idea, not the idea itself. The underlying law was helpfully summarised by Edwin Johnson J in *Pasternak*

*v Prescott* [202] EWHC 2695 (Ch); [2023] FSR 9, in which he discusses in particular the important distinction between the “expression” of a work and the idea(s) underlying it:

“94. Turning to the principles which govern copyright protection, these derive partly from English case law, but also from international treaties which have shaped the UK copyright regime, as well as EU law through Directive 2001/29/EC (“the InfoSoc Directive”). This part of EU law remains a retained part of UK law.

95. In terms of what is protected by copyright, the first principle to draw out is the general principle that copyright arises only in the expression of a work, and does not arise in ideas themselves.

96. This distinction was explained by Lord Hoffmann in his speech in the House of Lords in *Designers Guild Ltd v Russell Williams (Textiles) Ltd (t/a Washington DC)* [2000] 1 W.L.R. 2416, at 2423A-D.

“My Lords, if one examines the cases in which the distinction between ideas and the expression of ideas has been given effect, I think it will be found that they support two quite distinct propositions. The first is that a copyright work may express certain ideas which are not protected because they have no connection with the literary, dramatic, musical or artistic nature of the work. It is on this ground that, for example, a literary work which describes a system or invention does not entitle the author to claim protection for his system or invention as such. The same is true of an inventive concept expressed in an artistic work. However striking or original it may be, others are (in the absence of patent protection) free to express it in works of their own: see *Kleeneze Ltd. v D.R.G. (U.K.) Ltd.* [1984] F.S.R. 399. The other proposition is that certain ideas expressed by a copyright work may not be protected because, although they are ideas of a literary, dramatic or artistic nature, they are not original, or so commonplace as not to form a substantial part of the work. *Kenrick & Co v Lawrence & Co* (1890) 25 Q.B.D. 99 is a well-known example. It is on this ground that the mere notion of combining stripes and flowers would not have amounted to a substantial part of the plaintiff’s work. At that level of abstraction, the idea, though expressed in the design, would not have represented sufficient of the author’s skill and labour as to attract copyright protection.”

97. It will be noted that Lord Hoffmann identified two propositions in this extract from his speech. So far as the first proposition is concerned, ideas of a non-literary kind, such as matters of historical fact or technical information cannot be subject to copyright protection. As Mummery LJ explained in *Baigent v Random House Group Ltd* [2007] EWCA Civ 247; [2008] E.M.L.R. 7; [2007] F.S.R. 24, at [146]:

“It is not, however, sufficient for the alleged infringing work simply to replicate or use items of information, facts, ideas, theories, arguments, themes and so on derived from the original copyright work.”

98. Turning to the second proposition, ideas of an artistic or literary nature are not necessarily subject to copyright protection. This principle was usefully explained by Laddie J, in *IPC Media Ltd v Highbury Leisure Publishing Ltd (No.2)* [2004] EWHC 2985 (Ch); [2005] F.S.R. 20, at [14]:

“The need to prove copying involves showing a design nexus between the defendant’s and the claimant’s works. However it is a mistake to believe that any nexus will do. The law of copyright has never gone as far as to protect general themes, styles or ideas. Monet, like those before him, acquired no right to prevent others from painting flowers or even water lilies or, to take an

example referred to by Mr Howe, Georges Seurat would not have obtained, through copyright, the right to prevent others from painting in a pointillist style. Even someone who is inspired by Monet to paint water lilies or by Seurat to paint using coloured dots would not infringe copyright. Such general concepts are not put out of bounds to others by the law of copyright. Needless to say, it is impossible to define the boundary between mere taking of general concepts and ideas on the one hand and copying in the copyright sense on the other. Judge Learned Hand in *Nichols v Universal Pictures Co* 45 F 2nd 119 (2nd Cir. 1930) said that wherever the line is drawn will seem arbitrary. He also said:

“Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times may consist of only its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his ‘ideas’, to which, apart from their expression, his property is never extended.” (p.121)”

42. I was referred to similar comments made in *Kogan v Martin* [2019] EWCA Civ 1645, [2020] FSR 3 at [34]:

“Copyright, of course, does not subsist in mere ideas, but in their expression. That proposition is a well-established one in English law, and is now also to be found in a number of international treaties and EU Directives: see art.9(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs”) and art.2 of the WIPO Copyright Treaty. The ideas/expression dichotomy has, however, been described as “notoriously slippery” ... A mere idea, stripped of any context, is of course not the subject of copyright. Jacob J put it in this way in *IBCOS Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] F.S.R. 275 at p.291:

“The true position is that where an ‘idea’ is sufficiently general, then even if an original work embodies it, the mere taking of that idea will not infringe. But if the ‘idea’ is detailed, then there may be infringement. It is a question of degree. The same applies whether the work is functional or not, and whether visual or literary. In the latter field the taking of a plot (i.e. the ‘idea’) of a novel or play can certainly infringe— if that plot is a substantial part of the copyright work. As Judge Learned Hand said (speaking of the distinction between ‘idea’ and ‘expression’): ‘Nobody has been able to fix that boundary and nobody ever can’.”

43. Copyright does not subsist in a work unless and until the work takes some material form. This is the requirement of fixation, which serves to evidence the existence of the work and delimit the scope of its protection. See *Wright (supra)* again at [53]-[60] and [73]. As the authors of *Copinger* explain at paragraph 2-166:

“The reasons for this principle are practical. Since copyright is a form of monopoly in relation to the subject matter which is protected, there must be certainty as to what that subject matter is. This is necessary so as to be able both to prove the existence of the work and to establish what the work consists of, so that it can be judged whether the work has been copied or otherwise infringed. Fixation also provides a limit to the monopoly, ensuring that the protection accorded to the work does not extend beyond the expression of the work to the ideas or information contained or represented in it. This is necessary in holding a balance between the author’s interests and society’s interests.”

44. As explained by Edwin Johnson J in the passage from *Pasternak* cited above, the Act is to be construed in conformity with Directive 2001/29 (the Information Society Directive) and pre-Brexit CJEU decisions on copyright are retained law in the UK. The CJEU has consistently stated that copyright protects the expression of the author's ideas, not the ideas as such. In Case C-5/08, *Infopaq International A/S v Danske Dagblades Forening* [2009] ECR I-6569; [2010] FSR 20 at [33] ff., the CJEU explained the concept of originality at [33]-[37] and held at [45]-[47] that it is possible for relatively short parts of a longer work to be protected from copying where those parts of themselves form an expression of the author's intellectual creation.
45. Then in Case C-683/17 *Cofemel - Sociedade de Vestuário SA v G-Star Raw CV* EU:C:2019:721, [2020] ECDR 9 the CJEU said:  
“27. Under Article 2(a) of Directive 2001/29, Member States are required to provide that authors have the exclusive right to authorise or prohibit reproduction of their works.  
28. The term 'work' referred to by that provision is also to be found in Article 3(1) and Article 4(1) of Directive 2001/29, on the exclusive rights granted to the author of a work with respect to its communication to the public and its distribution, and in Articles 5, 6 and 7 of that directive, the first of those provisions concerning the exceptions or limitations that may be applied to those exclusive rights, and the latter two provisions concerning the technological measures and information measures that ensure the protection of those exclusive rights.  
29. The concept of 'work' that is the subject of all those provisions constitutes, as is clear from the Court's settled case-law, an autonomous concept of EU law which must be interpreted and applied uniformly, requiring two cumulative conditions to be satisfied. First, that concept entails that there exist an original subject matter, in the sense of being the author's own intellectual creation. Second, *classification as a work is reserved to the elements that are the expression of such creation* (see, to that effect, judgments of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraphs 37 and 39, and of 13 November 2018, *Levola Hengelo*, C-310/17, EU:C:2018:899, paragraphs 33 and 35 to 37 and the case-law cited).” (emphasis added)
46. In *Levola Hengelo BV v Smilde Foods BV* (C-310/17) EU:C:2018:899, [2018] Bus LR 2442, in which copyright was claimed in the taste of a spreadable dip containing cream cheese and fresh herbs, the CJEU said that two conditions must be satisfied for subject matter to be classified as a “work”. First, the subject matter concerned must be original in the sense that it is the author's own intellectual creation and secondly the “protected subject matter” had to be capable of being expressed in a precise and objective manner.
47. The parties therefore agreed that the test for the subsistence of copyright is:
- a. the work must be the author's own intellectual creation, in the sense that the work reflects the author's personality, which is the case if the author was able to express their creative abilities in the production of the work by making free and creative choices so as to stamp the work created with their personal touch; and
  - b. it must be the expression of the author's intellectual creation, which requires it to be identifiable with sufficient precision and objectivity.

48. As to the proper scope of a dramatic work, both parties took as a starting point the Court of Appeal’s judgment in *Norowzian v Arks Limited (No. 2)* [2000] F.S.R. 363. The primary question on the appeal was whether a film could be a dramatic work. Nourse LJ said at pages 366-7:
- “In my judgment a film can be a dramatic work for the purposes of the Act. The definition of that expression being at large, it must be given its natural and ordinary meaning. We were referred to several dictionary and textbook definitions. My own, substantially a distilled synthesis of those which have gone before, would be this: a dramatic work is a work of action, with or without words or music, which is capable of being performed before an audience.”
49. In *Kogan v Martin (supra)*, when considering a claim to joint authorship, the Court of Appeal held that a screenplay for a film was a dramatic work rather than a literary work, with Floyd LJ explaining:
- “41. ... It is the skill and effort involved in creating, selecting or gathering together the detailed concepts or emotions which the words have fixed in writing which is protected in the case of a literary or dramatic work, whether the work is one of sole or joint authorship. ...
42. ... What counts as an authorial contribution may vary depending on the type of work, however. A screenplay is concerned with providing a plot and dialogue which enable the reader to visualise what is going to happen on the screen, and get a feeling for what the audience will experience. The author is directly concerned with such matters as the choice of characters and the incidents in the film which will bring out those characters, and display their emotions. The storyline and plot are also of direct concern to the author and are a part of what he or she creates. These aspects of a screenplay can, in principle, amount to a contribution of an authorial kind.
- ...  
66. ... the judge describes a screenplay as a literary work, like a novel, and describes the primary skill as the selection and arrangement of words in the course of setting them down. This passage fails to make what in our view is an important distinction between a novel and a screenplay. We think a screenplay is more accurately described as a dramatic work, as its primary purpose lies in being performed, as opposed to being read, like a novel.”
50. It is clear from paragraph 42 of *Kogan* that the dramatic copyright protects the skill and effort used to create or select or, in this case perhaps, combine, the underlying concepts of the work. The concepts are not protected as such. This reflects the general principle that copyright protects only the expression of a work and does not subsist in ideas themselves.
51. In paragraph 66 of *Kogan*, Floyd LJ went on to set out a short extract from a passage from the then current edition of *Copinger*. In the most recent 19th edition that passage is at paragraph 6-98 and reads (with footnotes omitted):
- “In the case of dramatic works which are written or otherwise recorded in words, if the language itself has been copied, no special considerations apply. However, a basic distinction between literary works and dramatic works is that the choice of dramatic incident and the arrangement of situation and plot may constitute, to a



much greater extent, the real value of a dramatic work. ... It should be remembered that dramatic works include not only plays, screenplays and scripts for TV shows (at least when intended to be performed live and recorded before an audience) ... and that they may also take the form of a (cinematograph) film or audiovisual work.”

52. The Claimant also relied upon *Shazam Productions Ltd v Only Fools the Dining Experience Ltd*. [2022] EWHC 1379 (IPEC), [2022] FSR 25, where one issue before the court was whether a body of scripts for *Only Fools and Horses* taken together was a dramatic or literary work, including whether they collectively established as an independent work the characters, stories and imaginary “world” of *Only Fools and Horses*. Each individual script was found to be a dramatic work, but the claim that the collected scripts were also a single dramatic work was rejected, essentially because they were never intended to be performed together or sequentially.
53. In addition to these cases on the nature of a dramatic work, I was referred to a number of cases in which a claim was made to copyright in a format. The first of these was a decision of the Privy Council in *Green v Broadcasting Corporation of New Zealand* [1989] RPC 700 (the *Opportunity Knocks* case), where, in the context of a game show, the “dramatic format” was said to be “those characteristic features of the show which were repeated in each performance.” The features relied upon were, in addition to the title: the use of the catch phrases 'for [name of competitor] opportunity knocks', 'this is your show folks, and I do mean you' and 'make up your mind time', the use of a device called a 'clapometer' to measure audience reaction to competitors' performances and the use of sponsors to introduce competitors.
54. The Claimant drew my attention to the dissenting judgment of Gallen J in the appeal to the Court of Appeal of New Zealand. He held that:

“If the combination of material upon which the person seeking protection relies has a recognisable framework or structure and that framework is such as to impose a shape upon the other constituent parts of the show produced within it, then I should not have thought it contrary to principle to regard it as an original literary or dramatic work for the purposes of the [New Zealand Copyright Act 1962].”
55. However, the Privy Council upheld the majority in the NZ Court of Appeal. At p. 702 Lord Bridge of Harwich said:

“It is stretching the original use of the word “format” a long way to use it metaphorically to describe the features of a television series such as a talent, quiz or game show which is presented in a particular way, with repeated but unconnected use of set phrases and with the aid of particular accessories. Alternative terms suggested in the course of argument were “structure” or “package”. This difficulty in finding an appropriate term to describe the nature of the “work” in which the copyright subsists reflects the difficulty of the concept that a number of allegedly distinctive features of a television series can be isolated from the changing material presented in each separate performance (the acts of the performers in the talent show, the questions and answers in the quiz show etc.) and identified as an “original dramatic work”. No case was cited to their Lordships in which copyright of the kind claimed had been established.

The protection which copyright gives creates a monopoly and ‘there must be certainty in the subject matter of such monopoly in order to avoid injustice to the

rest of the world’: *Tate v. Fulbrook* [1908] 1 K.B. 821, per Farwell J. at page 832. The subject matter of the copyright claimed for the ‘dramatic format’ of ‘Opportunity Knocks’ is conspicuously lacking in certainty. Moreover, it seems to their Lordships that a dramatic work must have sufficient unity to be capable of performance and that the features claimed as constituting the ‘format’ of a television show, being unrelated to each other except as accessories to be used in the presentation of some other dramatic or musical performance, lack that essential characteristic.”

56. In *Banner Universal Motion Pictures v Endemol Shine Group* [2017] EWHC 2600 (Ch), [2018] ECDR 2, the claim related to a TV game show format called “Minute Winner” which was said to be protected by copyright as a dramatic work. The claimant had devised his show in 2005, but it had not gone into production. He said that the format had been disclosed to the second defendant and was infringed by the defendants’ “Minute to Win It” game show. The claimant’s case was that his format added up to a “distinctive action framework” for a television gameshow which comprised the following “distinctive features”:

“... the use of the title *Minute Winner*, the phrase ‘one minute to win (something)’, examples of minute-long tasks using ordinary household items capable of being performed and completed in a minute by individuals on camera; set either in a studio or on location; in either case capturing a contestant’s actions and reactions during the attempt of the minute long task; to be broadcast either singly as fillers between feature-length shows or in succession to form a feature length show in its own right; and the use of prizes sponsored by firms in exchange for advertising during the programme.”

It was claimed that this was a sufficient structure to qualify for copyright protection.

57. Snowden J referred at length to *Norowzian* and *Green*, and said:
- “43 I think that the authorities and commentary to which I have referred above indicate that it is at least arguable, as a matter of concept, that the format of a television game show or quiz show can be the subject of copyright protection as a dramatic work. This is so, even though it is inherent in the concept of a genuine game or quiz that the playing and outcome of the game, and the questions posed and answers given in the quiz, are not known or prescribed in advance; and hence that the show will contain elements of spontaneity and events that change from episode to episode.
- 44 I do not need to decide on this interim application the precise conditions that must be satisfied before a television format can be protected as a dramatic work. What I think is apparent from the authorities, however, is that copyright protection will not subsist unless, as a minimum: (i) there are a number of clearly identified features which, taken together, distinguish the show in question from others of a similar type; and (ii) that those distinguishing features are connected with each other in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form.
- 45 In *Green*, the majority of the New Zealand Court of Appeal and the Privy Council were not satisfied that those criteria were met on the facts ... I think that the Privy Council simply thought that, even considered together, the features were not organised in such a way as to constitute a unified work that could be performed, which is the essence of a dramatic work. Moreover, although Gallen J took a different view of the particular facts of the case, I do not think that he necessarily

took a very different view of the legal principles: he spoke of the need for the combination of features to amount to “a recognisable framework which imposed a shape upon the other constituent parts of the show.”

46 In my judgment, tested against any of those requirements, there is no realistic prospect of BUMP persuading a court that the contents of the Minute Winner Document qualified for copyright protection. In my view, those contents are both very unclear and lacking in specifics, and even taken together they did not identify or prescribe anything resembling a coherent framework or structure which could be relied upon to reproduce a distinctive game show in recognisable form. The features were, in truth, commonplace and indistinguishable from the features of many other game shows.”

Counsel for the Claimant in this case submitted that the failure of the claim in *Banner* did not detract from the practical utility of Snowden J’s test.

58. Counsel could not identify any UK case in which a claim that a format was protected as a dramatic work had succeeded. Mr Sampson however drew my attention to a decision of the Alberta Court of Queen’s Bench, *Hutton v Canadian Broadcasting Corp*, from December 1989, where one of the issues was whether the format of a pop music show was protected as a dramatic work. The show followed the broad concept of a number of earlier shows, including the British series *Top of the Pops*. It had been created by the Claimant and 19 episodes of the show had been co-produced with the defendant. Part of Mr Hutton’s show was scripted, and the scripts for each episode were interchangeable. The “major dramatic conceit” of his show was a “Music Central” sequence in which it appeared that information about the charts was being compiled there and then. Some 3 years afterwards, the defendant aired another pop program which Mr Hutton alleged copied his format, which he said was a dramatic work under the Canadian Copyright Act 1985 which defined a dramatic work as follows:

“‘dramatic work’ includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, in any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character.”

59. MacCallum J noted that what mattered was whether the arrangement or “acting form” etc gave the work an original character protected by the Act, not the idea behind the form. He found that the format of the Music Central part of Mr Hutton’s show was a protectable dramatic work, by reason of the sufficiency of its “dramatic incident and seminal storyline.” He held that the show:

“tells the story of Mulligan and his two assistants gathering chart information for the countdown. It is a story which is perhaps incidental to the playing of rock videos, but it is the only thing in my view which lends dramatic incident to the programs. By contrast, [the defendants’ show] tells no story at all.”

On the facts, there was no finding of copyright infringement. MacCallum J held that despite the similarity of the idea of the defendant’s shows in terms of setting, themes etc, they were typical of the genre, and the formats of the programs were essentially dissimilar. The dramatic incidents of the claimant’s show which gave it its original character, were altogether lacking in the defendant’s show.

60. The test being applied in *Hutton* was not identical to the test I must apply here, nor is this case based upon “dramatic incident.” Further, there was no finding that the whole

format of the show was a protectable copyright work. In the circumstances, although I was invited to apply similar reasoning, I find the decision of little help, particularly in contrast to the UK authorities discussed above.

61. The overall position arising in particular from *Green* and *Banner* is helpfully summarised in *Copinger* at paragraph 2-123 (footnotes omitted):

“In a number of reported cases, attempts to argue that copyright is capable of subsisting in the formats of television shows and other similar programmes have failed. Protection has typically been refused on the grounds that there was insufficient certainty as to the content of the work and that it possessed insufficient unity to be capable of performance. The High Court has however held that it is at least arguable as a matter of concept that such formats can be protected as dramatic works, even though any genuine game show or quiz will include elements of spontaneity and events that change from episode to episode. It is of the essence of a dramatic work that it be a uniform work that could be performed. At a minimum, two conditions must be satisfied before a format will be protected in this way. First, there must be a number of clearly identified features which, taken together, distinguish the show from others of a similar type. Secondly, those distinguishing features must be connected with each other in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form.”

62. The learned authors of *Copinger* comment in a footnote that the basis for the first condition above (found in paragraph 44 of *Banner*) “which appears to involve a novelty test, is not clear.” Paragraph 2-123 is an updated version of a paragraph in the 18<sup>th</sup> edition of *Copinger* (current at the date of the trial and relied on by the Claimant) in which it was suggested that “A useful test to determine whether there is a protectable dramatic work is to ask whether, using the written script or other record as a basis, it is possibly (sic) to present a coherent and meaningful show which is capable of being performed.”

63. In addition, *Copinger* considers the position where part of a show is improvised, at 2-124 (footnotes again omitted):

“As with a literary work, the idea for a dramatic work is not itself protected by copyright. What is protected is the form in which that idea is expressed. Whilst, as discussed above, a work will only be a dramatic work if it is a work of action capable of being performed before an audience, the *performance* of any actors must be distinguished from the *work*. The work may enjoy protection as a dramatic work; the performance of any actors may give rise to quite separate rights under Pt II of the Act. A copyright dramatic work confers on the owner the exclusive rights to do various acts in relation to the work as a whole or a substantial part of it; a qualifying performance confers on the owner of the performers’ right various rights in relation to the performance. The unauthorised copying of a performance of a dramatic work may thus separately infringe the rights of the owners of the copyright and the performers’ right. Again, a person may give a performance which is an ad lib performance. This may either be as part of a work, as where the author has left the performer to improvise without direction from the author, or it may constitute the entire performance. In the former case, the improvisation may be part of the dramatic structure of the work, but what the actor actually does while improvising cannot, it is suggested, be part of the original dramatic work.”

64. The Claimant's counsel identified four "discrete elements" as the hallmark of a format protectable as a dramatic work under the Act, and necessary to produce a work capable of performance. These were, in short, (a) characters with a clear identity who appear repeatedly in each episode, (b) a consistent setting, (c) plots or storylines sufficiently described that each episode be understood and capable of performance and with a consistent narrative framework, episode to episode, and (d) consistency of filmic techniques and editorial style. I did not find this a helpful analysis in this case. First, it does not seem to me that these four features would necessarily create a uniform work that could be performed. Secondly, they are not the same as the eight features relied upon in the Amended Particulars of Claim. Whilst (a), (b) and (d) are essentially the same as some of those features, I struggle to see how (c) is reflected in them. It does not appear to me that (c) reflects the central premise of *Shambles*, the combination of a sitcom with genuine stand-up comedy, which is said to be unique, distinctive and crucial to giving *Shambles* a coherent framework, nor does it seem to me that the pleaded features of *Shambles* identify any plot or storyline. 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.
65. The pleaded claim is to a format which is described as including all of the 8 pleaded features set out above, taken together, and forming a coherent whole. This leads to a difficulty which I have mentioned at paragraph 11 above, arising from a lack of clarity in the Claimant's case as to when or at what point he says the format/dramatic work was created. The pleaded case refers to both Series of *Shambles* and does not specify whether the format was said to have been created (and recorded in writing or on film) during or at the end of Series 1, or only during or on completion of Series 2. Certainly, Annex G to the Amended Particulars of Claim, which identified elements of episodes which the Claimant said demonstrated the pleaded features, relied on episodes from both series, as did the Scene Selection document produced by the Claimant following the CMC. In the Claimant's skeleton argument, it was said that the Claimant's case was that whilst there was an evolution in quality and development of the show between Series 1 and 2, the underlying format remained the same. In dealing with the Wildseed agreement (discussed below), counsel suggested that all of the key elements of the format were in place before Wildseed was involved. However, counsel also accepted that it is difficult to say when the format came into existence. I conclude, with some hesitation, but by reason of the manner in which the case is pleaded, that the intent was to rely on the format as applied and recorded in both Series.
66. A further difficulty is that the Claimant does not appear to claim that all of the 8 features were present in all of the episodes, nor do I consider that he could do so. For instance, Greg (described in paragraph 8.6) does not appear in episode 2 of Series 1. The feature of the "constant presence of a variety of characters working behind the scenes ... such as agents, producers and talent scouts who come up with bad or surreal ideas for the comedy night that never work ..." (described in paragraph 8.8) is not found in episodes 1, 2 or 6 of Series 1. In episode 1 of Series 2, the character relied on for this feature is another comedian, who Greg has hired as an MC of Harry's comedy night. He does not come up with any ideas for the comedy night, but is simply a dreadful MC, who is hostile to Harry and behaves inappropriately. In episode 2 of Series 2 this feature is said to relate to a reviewer invited to the venue by Toby. The reviewer is also hostile to Harry, as they have clashed in the past, and he certainly makes no suggestions for the comedy night. Neither the MC nor the reviewer therefore match the feature pleaded at

paragraph 8.8. Moreover, the Defendant submitted that where episodes include scenes with Harry's agent, he did not come up with any ideas for the comedy night nor were ideas implemented which did not work. I think it fair to say, therefore, that there was no constant presence of such characters, as pleaded at paragraph 8.8.

67. If it is right that the pleaded features are not all present in every episode of the show, then the format cannot be found in every episode, as paragraph 8 claims that "the format of *Shambles* consists of a number of clearly identifiable features, which, taken together, distinguish it from other shows of a similar type ... The Claimant relies on the unique combination of each of the following features ..." In my judgment this suggests that the format is not a "work" or does not have a fixed form of expression, or both.
68. The Defendant submitted that the features as pleaded were unprotectable ideas, which were not clothed with the necessary detail to reflect the creative choices made by the Claimant. The Defendant also suggested that the pleaded format was no more than an artificial creation produced for the purposes of the proceedings, which omits aspects of the characters and events in *Shambles*, to be able to show similarity at a high level and lead to an inference of copying. The latter point applies in particular to the descriptions given of the main characters in the sitcom. Harry is described as the protagonist, but simply saying that he faces significant challenges in putting on a successful comedy night does not give any idea of the nature of his character, his backstage *persona*, or his performance as MC and as a comedian. Indeed, in my judgment the features of the format in the Amended Particulars of Claim do not reflect the central premise of *Shambles*, which is much less the combination of real stand-up comedy with a backstage sitcom than a sitcom about Harry Deansway's fictional difficulties in trying to run his comedy nights at the Aces & Eights venue. The formulation of the format does not properly reflect the pivotal role played by Harry in both Series. In my view, the pleaded format fails sufficiently to identify and does not properly or fully express the work in issue, and is, as the Defendant suggested, a construct of features designed for the purposes of this litigation.
69. Furthermore, this is not a case like *Baigent v The Random House Group Ltd* [2007] EWCA Civ 247; [2007] F.S.R. 24 where the claimants, who alleged that Mr Dan Brown had infringed their copyright in their book, *The Holy Blood & The Holy Grail*, relied on alleged copying of the "Central Theme" of their book. The question there was whether *The Da Vinci Code* infringed the claimants' literary copyright in their book, and no separate copyright was claimed for the Central Theme, which was designed to identify central features of the claimants' work which it was said could also be found in *The Da Vinci Code*. Here, by contrast, the copyright work relied upon is said to be a dramatic work which consists of the features listed under paragraph 8 of the Amended Particulars of Claim. The Claimant pointed to various documents which he had written, for example setting out the "Shambles Philosophy," or setting out basic plotlines for particular episodes, but he did not seek to rely on any copyright in any of those documents. Counsel suggested that these documents could be equated to the screenplays which with the subject matter in *Kogan*, but even if that is right, which I doubt, they form no part of the dramatic work which is alleged to have been infringed.
70. Moreover, even if all eight features identified in paragraph 8 of the Amended Particulars of Claim were present in each episode of *Shambles*, or in the episodes of Series 1 if the format is to be taken as complete at that stage, I consider that the features taken together

do not have the necessary qualities to amount to a dramatic work which could be protected as a copyright work. In my judgment, the eight features are not connected with each other in a coherent framework, and they do not set out a formula which can be repeatedly applied so as to enable the show to be reproduced in recognisable form. The pleaded features set out general ideas at a fairly high level of abstraction and in my judgment are inadequate to enable anyone to create, perform or reproduce an episode of *Shambles*. It is equally plain that the pleaded features of *Shambles* are not organised into a unified work which could be performed which, as Snowden J said in *Banner*, is the essence of a dramatic work.

71. Mr Sampson submitted that *Shazam* left open the question of whether characters, storylines and an “imaginary world” could, if sufficiently described, enjoy protection as a dramatic work. Whether or not that is right, the description of the features of the show relied upon by the Claimant in this case falls far short of the level of specificity necessary to satisfy such a test. In particular, as I have said, the pleaded features do not adequately describe any of the characters in the show, not even the character of Harry Deansway. He is described only as “A promoter character, Harry, who is the protagonist of the show ... .” It does not seem to me that anyone could perform his part based only upon that description, nor produce a show which reflects the fact that all of the episodes of the show centre upon Harry.
72. No storylines are identified, and the setting of the show and its basic premise of blending fictional scenes with live stand-up are described in terms which are too broad to lead to copyright protection. The format does not indicate how much of any one episode would be sitcom and how much would be stand-up, and in some episodes, as I have explained, the amount of stand-up shown is negligible. If all of the episodes are said to include that basic premise, it is hard to see how the episodes all evidence the existence of the work and delimit the scope of protection.
73. The filmic style adopted for *Shambles* was also said to be an essential feature of the framework of the show, but again this feature appears to me to be so loosely described as to be virtually meaningless. Certainly, it is not particularly distinctive.
74. The Claimant submitted that the unique setting of *Shambles*, with the combination of comedy sets before a live audience with a behind-the-scenes sitcom, and the character traits of those characters running from episode to episode were crucial factors said to give a coherent and recognisable framework to each episode and series. I accept that the central idea of *Shambles* was to combine live comedy sets with a behind the scenes sitcom, albeit in many of the episodes there turned out to be remarkably little footage of the comedians on stage. However, I do not accept that either of these features of *Shambles* (or indeed, those features in combination) give a coherent and recognisable framework to the shows. They are insufficient to do so. The Claimant accepted that the combination of characters and plotlines needed a level of repetition or repeatability carried over coherently from episode to episode in order to establish a protectable format. That does not seem to me to be the case with the pleaded features of *Shambles* – there is insufficient identification of the attributes of the principal characters and a complete absence of plotline. In my judgment, this does not meet the criteria for copyright protection.

75. In all the circumstances, I find that the format of *Shambles* is not a work which is capable of being protected by copyright as a dramatic work.
76. In case I am wrong on that central point, I will deal with the further issues in the case.

### Authorship

77. The Defendant put the Claimant to proof of his authorship of the format of *Shambles*. It pointed to the credits for all of the episodes of Series 1, which state “Devised and directed by Harry Deansway with contributions from the cast” and to some documents passing between the Claimant and Jesse Cleverly of Wildseed, in which Mr Cleverly appeared to make some suggestions as to character development. Mr Rinkoff was cross-examined on these points. He maintained that the authorship of both Series was his alone. He accepted that Mr Cleverly had made suggestions but said that he thought that he had not accepted them.
78. Whilst the Claimant’s evidence on whether he had accepted anyone else’s suggestions was vague and, it seemed to me, was heavily influenced by his view that this was his show, incorporating his ideas, it does seem to me probable that the pleaded features in paragraph 8 of the Amended Particulars of Claim were all Mr Rinkoff’s own ideas. Possibly other people had some input into the details of characterisation, or details of plots, which are not part of the format as identified in the pleaded case, but I am satisfied that the Claimant was the sole author of the alleged format.

### Ownership of any copyright works

79. In the light of the terms of the contract between the Claimant and Wildseed, the Defendant alleged in an amendment to its Defence that the Claimant was not the owner of any copyright that might subsist in the format of Series 2 of *Shambles*. The Claimant was given permission to file a Reply in response to the amended Defence but did not do so. Instead, it produced the witness statement of Mr Bullough of Wildseed, who said that it was his understanding that Wildseed would own all copyrights in the recordings of Series 2 but the underlying rights in the Existing Material and any rights in the underlying copyright in the format for the *Shambles* episodes, including Series Two, remained with the Claimant.
80. The Wildseed agreement was made on 1 September 2014. The Claimant is identified as the “Owner” and Wildseed as the “Company”. So far as relevant it included the following recitals:
  - The Owner is the absolute Owner of the entire copyright and all other rights throughout the world in the Existing Material (as defined in Schedule one attached hereto).
  - During the Initial Term the Company intends to commission produce (*sic*) a pilot based on the Existing Material (“the Pilot”) of up to one hour which the Owner will write the scripts for, perform in and direct.



- The Owner has agreed to grant to the Company the sole and exclusive right to exercise the Underlying Rights (as defined below) in the Existing Material and the Pilot ... and to assign to the Company all copyright and all other rights in any material that is produced by the Company as a result of the exercise of the Underlying Rights (“the New Content”) on the terms and conditions set out below.

The terms included:

1.1 ... in consideration for the Company paying the Owner the sums set out in clause 3, the Owner hereby grants to the Company the exclusive right to utilise, reproduce and adapt the Existing Material including all underlying material contained therein for use in any media worldwide (“the Underlying Rights”) for a period commencing on the date of this Agreement and lasting for a period of twelve months from the earlier of the date that the Pilot is completed by the Company or until the 31<sup>st</sup> December 2015 (“Initial Term”).

3.1 The Company agrees to further develop the Existing Material and Pilot during the Initial Term ...

3.2 The Owner agrees to support the development of the New Content including but not limited to making variations, reproductions and or adaptations of the Pilot, the scripts and Existing Material, ...

3.3 The Owner agrees to write the scripts for and to perform in the Pilot and provide his directing services thereto in line with production and editorial discussions with the Company’s representative ...

4.1 The Owner hereby grants to the Company with full title guarantee, all current and future rights, title and interests they have in and to the New Content, scripts and the Pilot worldwide in perpetuity.

4.2 ... the Owner hereby grants to the Company with full title guarantee, all current and future rights, title and interest in and to the product of the Owners Services hereunder worldwide in perpetuity.

5.4 The Owner shall have the first option to provide his services as writer, performer and director for any New Content produced by the Company ...

Clauses 1.4 and 1.5 also provided for the Company to buy out the Claimant’s rights in the Underlying Material in certain circumstances, which have not occurred, so far as I am aware. Schedule 1 to the agreement was missing.

81. The Defendant submitted that the agreement drew a distinction between Existing Material and “all underlying material contained therein”, and any “New Content” developed pursuant to the agreement. It said that the effect of clause 4.1 was that all rights in the New Content, even when created by the Claimant, would be owned by Wildseed. I agree with that construction of the agreement. In my judgment, it comprised an assignment of any future copyright in any New Content which might have belonged to the Claimant as its author, reflecting the third of the recitals set out above.
82. The Defendant did not challenge that construction of the agreement but suggested that in the light of Mr Bullough’s evidence, it would, if necessary, have been possible to cure any lack of title by an assignment to the Claimant. Mr Sampson also submitted that Wildseed did not acquire any rights in the format, as all of the key elements of the

format were already found in the Existing Material. This highlights the difficulty which I have already mentioned of the lack of clarity as to when the format in issue was fixed. I accept that there may have been a format in place by the end of Series 1 of *Shambles*, but for the reasons I have already given, I consider that the copyright claimed in these proceedings is of the format as it stood on completion of Series 2. Some part or parts of that format may therefore have fallen into the category of New Content. I was not addressed on this point in detail and do not consider that I should make any finding at this stage as to whether any element of the pleaded format was exclusive to Series 2. If and to the extent that there is any such part of the format, and copyright subsists in the format, in my judgment copyright in the New Content would belong to Wildseed. If I am wrong in concluding that there is no copyright in the format, then the question of joint or divided ownership may need to be resolved.

### Infringement

83. The last two issues may be taken together, namely whether the pleaded features of *LATMC* were copied from *Shambles* and whether, if any of those features have been copied, that amounted to taking a substantial part of the protected work.

84. There was common ground as to the test for copying and infringement under the Act. Copyright in a dramatic work may be infringed if, among other things, it is copied, and copying means “reproducing the work in any material form.” To amount to actionable infringement, the copying must be of the whole or a substantial part of the work, in qualitative rather than quantitative terms. Both parties referred me to the decision of Zacaroli J in *Sheeran v Chokri* [2022] EWHC 827 (Ch), [2022] FSR 15. The allegation was that the Claimant (who sought a declaration of non-infringement) had copied a musical work, consciously or unconsciously. Zacaroli J said:

“21. To amount to an infringement, however, the copying must be of either the original work or a “substantial part” of it: s.16(3)(a) of CDPA. This is a qualitative, not quantitative, question. The test is whether the part in question contains elements which are the expression of the intellectual creation of the author of the work: *Newspaper Licensing Agency Ltd v Meltwater Holding BV* [2011] EWCA Civ 890, at [24]-[28], applying *Infopaq International A/S v Danske Dagblades Forening* [2009] E.C.D.R. 16; [2010] F.S.R. 20. The essential consideration is to ask whether a defendant has taken that which conferred originality on the claimant’s copyright work (or a substantial part of it): *Mitchell v BBC* [2011] EWPC 42, per HHJ Birss QC at [28]-[29].

...

24. While the legal burden rests with the person alleging infringement, in the case of conscious copying the evidential burden shifts to the alleged infringer if there is proof of sufficient similarity and proof of access. There was some debate as to whether what was required was proof of access, or proof of the possibility of access.

25. The weight of authority supports the former: see, for example, *Designers Guild* (above), per Lord Millett at p.2425E; *Baigent v Random House* [2007] EWCA Civ 247; [2007] F.S.R. 24 at [4], although I do not think anything turns on it in this case. Tens of thousands of new songs are uploaded to internet sites daily. It clearly cannot be enough to shift the burden of proof that a song was uploaded to the internet thereby giving the alleged infringer *means* of accessing it. In every case, it must be a question of fact and degree whether the extent of the alleged infringer’s

access to the original work, combined with the extent of the similarities, raises a sufficient possibility of copying to shift the evidential burden. ...

26. Irrespective of where the burden lies, infringement requires there to have been *actual* copying, which necessarily entails that the alleged infringer not only had access to the original work, but actually saw or heard it.

27. The leading case on subconscious copying is *Francis Day & Hunter v Bron* (above), in which the Court of Appeal established that, although it was possible to demonstrate that a person had infringed copyright without intending to do so, it was nevertheless necessary to establish “proof of familiarity” with the allegedly copied work, as a prerequisite to establishing infringement: and that there was a causal link between the alleged infringing work and the original work ...

28. Whether there has been subconscious copying is a question of fact to be determined on the basis of all the evidence (and does not rest on the shifting of an evidential burden: see *Mitchell v BBC* (above) at [39]). There will rarely, if ever, be direct evidence of subconscious copying, so it is necessary – as with any issue where direct evidence is lacking – to reach a conclusion based on inferences from other evidence. The following direction which the trial judge, Wilberforce J, had given himself was approved by the Court of Appeal in *Francis Day* (at pp.614-615):

“The final question to be resolved is whether the plaintiffs’ work has been copied or reproduced, and it seems to me that the answer can only be reached by a judgment of fact upon a number of composite elements: The degree of familiarity (if proved at all, or properly inferred) with the plaintiffs’ work, the character of the work, particularly its qualities of impressing the mind and memory, the objective similarity of the defendants’ work, the inherent probability that such similarity as is found could be due to coincidence, the existence of other influences upon the defendant composer, and not least the quality of the defendant composer’s own evidence on the presence or otherwise in his mind of the plaintiffs’ work.”

85. In this case, the Claimant’s pleaded and pre-trial position was that Mr Majendie would have seen *Shambles* and had deliberately, consciously copied it in producing *LATMC*. He emphasised the availability of the show online, the social media posts which related to it, his past relationship with Mr Majendie, and the closeness of the comedy industry, all of which, he said, pointed to Mr Majendie having access to the shows. In his witness statement, Mr Majendie accepted that he vaguely recalled being aware of *Shambles*, but had forgotten about it when he came up with *LATMC*. Mr Majendie said that when Mr Rinkoff complained about it, he had a quick look at *Shambles* online and it did not spark any clear memory of having seen it. I take this to mean that he accepted that he had watched some of *Shambles* some years before making *LATMC*. On the other hand, I accept his evidence that he did not have *Shambles* in mind when he conceived the idea of *LATMC*.
86. In the Claimant’s skeleton argument for trial, it was also suggested that Mr Ashenden and Mr Owen must have “had one eye on *Shambles*” when writing *LATMC*. The Claimant argued that the similarities between the shows, characters and plotlines were such that it was for the Defendant to show that *LATMC* had not been copied from *Shambles*, and to suggest otherwise was unrealistic.

87. The allegations of direct copying were not pursued at trial. Mr Ashenden, Mr Owen and Ms White who wrote much of *LATMC* all disclaimed any knowledge of *Shambles*. I believed them. The only way in which they could have copied *Shambles* would have been indirectly through the influence or intervention of Mr Majendie, who had seen *Shambles*. All of the Defendant's witnesses were cross-examined on the influence of Mr Majendie on the creation of *LATMC* and all of them accepted that he had initiated the project and remained involved in its development. It was not put to the Defendant's witnesses that they had copied *Shambles* or that they were lying as to the shows and experiences that they said had inspired *LATMC*, nor did the Claimant pursue a case of conscious or deliberate copying in his closing submissions.
88. Instead, in closing, Mr Sampson submitted that the similarities between the shows were too numerous to be explained by coincidence, and they must have flowed from unconscious copying. It was suggested that Mr Majendie had influenced the writers of *LATMC*, and this unconsciously led to the copying of characters, plotlines or other aspects of *Shambles*. I discuss the alleged copying below.
89. Alternatively, the Claimant suggested that copying may have arisen through the agency of Adam Hess, who had written the Taster, and who had appeared in one episode of *Shambles*. However, the Taster is less similar to *Shambles* than the full shows with which Mr Hess had no involvement, and in particular did not contain the central characters of Ellen and George who are said to be copied from Harry and Greg in *Shambles*. Mr Majendie said that Mr Hess had not passed on to him material or ideas other than those which appeared in the Taster and there is no reason to doubt that evidence. There was no evidence at all to support this theory of indirect copying, and I find this to be a wholly speculative line of argument. I do not consider that the Claimant has even raised an inference that the involvement of Mr Hess led to indirect and/or unconscious copying of *Shambles*.
90. Furthermore, the similarities between the shows identified by the Claimant do not seem to me to raise an inference of copying. The main complaint is that *LATMC* is set in an almost identical setting (a run-down comedy venue) and combines scenes of real comedians performing on stage with backstage scenes featuring a range of fictional characters. In my judgment *LATMC* may have the same central underlying idea as *Shambles*, but that does not by itself lead to any inference that the pleaded format of *Shambles* has been copied as a whole or in substantial part. The examples given by the Claimant to illustrate his allegations of similarity in paragraphs 19.1 and 19.2 of the Amended Particulars of Claim do not seem to me to show any significant similarity, and certainly not similarity sufficient to raise an inference of copying. The similarity is at an extremely high level of generality. Not only are the live comedy elements of *LATMC* far more significant than in *Shambles* but the overall premise of *LATMC* is much less evidently a sitcom and much more a faux documentary than *Shambles*, that difference being reinforced by the backstage characters of *LATMC* being aware of the camera and speaking directly to camera, generally in a deadpan manner.
91. The Claimant suggested in paragraph 19.4 of the Amended Particulars of Claim that Harry's character in *Shambles* was copied by Ellen's character in *LATMC*. I do not accept that those characters are similar enough to raise any inference of copying. Ellen is not herself a comedian/performer, nor is she the MC of the comedy nights. She is not portrayed as being down on her luck, unlike Harry, albeit she is just as frustrated as he

is in running the comedy nights. The Scene Selections for paragraph 19.4 of the Amended Particulars of Claim are for scenes in which Ellen experiences difficulties but do not, in my view, come anywhere near close enough to any pleaded feature of the *Shambles* format to support an allegation of copying.

92. The alleged similarities between the characters of the managers/owners of the clubs and their useless assistants do not seem to me to suggest copying so much as the use of stock characters. There is said to be a running joke about Greg trying to fix defects at the club, which is replicated in the character of George, but this does not strike me as a significant part of *Shambles* nor is it likely to be due to copying. Mr Majendie's unchallenged evidence was that the character of George was based upon a real manager of the Moth Club. The incompetence of most of the sitcom characters in both shows seems to me to be a stock comedic device, as competence is rarely funny. Again, in my judgment, the Claimant's illustrative Scene Selections do not support an allegation of copying.
93. The Claimant also pleaded at paragraph 20 of the Amended Particulars of Claim that there were plot similarities which showed that *LATMC* was copied from *Shambles*. None of these strike me as particularly similar and they do not suggest to me that there was indirect or unconscious copying. For instance, it was alleged that there was a joke about "a junior member of the comedy club team writing material for one of the stand-up shows." In *Shambles*, this was when Joe was persuaded to write a set to perform himself, which of course was dreadful. In *LATMC*, Freddie the sound man tries to write a set for a real stand-up, Phil Wang, when he is supposedly unable to perform his own material. George helps Freddie out. This set too is dreadful. However, the basic premise of the two incidents strikes me as sufficiently different not to suggest that one was copied or inspired by the other. I take the same view of the further examples given in paragraph 20 of the Amended Particulars of Claim.
94. Two further matters intended to show copying (but not pleaded as such) were the subject of cross-examination. First, the Claimant pointed to a proposal in June 2022 by The Pin to include a character in *LATMC* of a clumsy bar manager to be called Maddie, who would be George's niece. The Claimant suggested that this was copied from the character of Lex in Series 2 of *Shambles*, who was a barmaid and Greg's niece. However, it is clear that the idea came from The Pin, not from Mr Majendie, as his reaction to the proposal was that there were too many characters, and he seems to have queried "Maddie." Her character did not make it into the show. In the light of the oral evidence, to the effect that the idea for this character emanated from Mr Owen and Mr Ashenden, I conclude that this was coincidence and not indicative of indirect copying. Similarly, the Claimant pointed to a proposed but unused plot line for *LATMC*, based upon the club being haunted. It was suggested that this reflected a similar plot in *Shambles* Series 2. Mr Ashenden thought that this was just a rather unoriginal idea, and Mr Majendie agreed, which probably explains why the idea was not used. I understand why these similarities raised the Claimant's suspicions, but in my view the unchallenged evidence of the Defendant's witnesses proves that the similarities were not due to copying, direct or indirect.
95. In all the circumstances, I do not consider that there are grounds to draw an inference that *LATMC* was copied from *Shambles*.
96. For all of these reasons, the claim fails.

97. This judgment will be handed down remotely. If the parties are unable to agree the appropriate form of order, a hearing will be listed through the usual channels to resolve the Order, and the time for appeal will, if necessary, be extended to run from the date of that hearing.