

It is virtually impossible to proscribe entertainment programming as such. Any limitations written in terms of particular programs would involve the Commission in the type of detail that is considered in copyright litigation. At what point does a program change sufficiently so that it becomes a different program? The obvious instances are few — change in title does not create a new program. Does the addition of one new character or the change in character names create a new format? Is "Run For Your Life" the same program as "The Fugitive"?

We have also considered the possibility of a rule precluding programs or program series revolving around a main character. Television is not limited to such programs and, conversely, the problem of identification continues to exist.

The only approach which bears any hope from an administrative point of view is to preclude the siphoning of talent in such a way as to make that talent unavailable to free television and, accordingly, we have drafted a rule in this context.³⁹

It is to be noted that the rule on talent cannot reasonably be applied to motion picture film exhibited on Pay-TV while, at the same time, every utilization by Pay-TV of motion picture film impedes the use of that film by free television. The Commission, consequently, should adopt a rule which limits the amount of time that a Pay-TV station can devote to films. The benefits inherent in such a rule extend beyond reducing the impact on free television. Movies occupied 86% of the Pay-TV programming in Hartford and, as such, the service provided by Pay-TV could be described charitably as analogous to the service provided by a neighborhood theater and the neighborhood theater does not utilize scarce broadcast frequencies. If the broadcast of motion picture film were limited, Pay-TV would be forced into the type of programming which heretofore has been limited to the speeches of company officials.

³⁹ Comments looking toward a talent restriction were requested in Paragraph 14 of the Further Notice.