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True Crime: Can a crime become intellectual property?

The rise of the True Crime genre, whether in literary, audiovisual or podcast format, has captured the attention of the public and production houses for its ability to narrate real events with narrative tension, forensic analysis and dramatization of events. However, this popularity has also raised relevant questions from a legal standpoint, particularly in the area of copyright and image use.

Historical facts, data and events belong to the public domain and are not subject to protection. A different case is the vehicle in which such facts are expressed, for if it is sufficiently creative to be considered original, it will enjoy copyright protection. That is to say, a crime documented in official records can be narrated by multiple persons, reserving exclusively the narrative structure, analysis, interpretation and style with which an author decides to approach it. This responds to the legal principle that distinguishes between the idea (not protectable) and its expression (protectable).

The True Crime genre operates in an intermediate space between journalism and literary narrative. The difference lies mainly in the degree of creativity. Therefore, not all content that relates a crime is automatically protectable: an original creative expression must be demonstrated for it to be considered an authorial work. A news report is designed to inform. A True Crime work, on the other hand, seeks to excite, dramatize and tell a story with aesthetic intentions. The difference can also be unraveled by order of appearance, since a work of this genre must necessarily be based on a journalistic investigation.

Another critical dimension of the genre is the use of the image of the people involved (victims, victimizers, witnesses, offended parties...) without their consent, as this is a circumstance that can generate civil, administrative and even criminal liability. In this area, it is worth mentioning two relevant precedents that have set precedents in the country.

The first one can be seen in the case of Luis Miguel, the series in which Issabela Camil filed a lawsuit against Netflix for the representation of intimate scenes that alluded to her. The second, even more delicate, is the case of the documentary Familia de Medianoche, in which a young woman was filmed without her authorization while receiving medical attention after being a victim of violence. Both cases led to protective measures and injunctions ordering the removal of the content from distribution platforms such as Netflix, Prime and Apple TV.

In conclusion, the True Crime genre represents an attractive creative exercise for authors and producers, but it also poses legal challenges that should not be underestimated. In this context, it is essential to have the support of an intellectual property specialist from the initial stages of the project, especially when working under rights acquisition schemes, content licensing or use of third-party image.

At ECIJA Mexico, we have a team specialized in these matters, ready to provide comprehensive advice in the legal management of content based on real facts.

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