



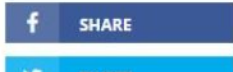
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# Creative clash: Is the 'Blackish' legal case wo fight in court?



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“Idlewild” may have gotten puppy love at the box office, but “Blackish” is getting full grown fandom. Unfortunately, while the “Blackish” team is celebrating the ABC show’s success, they have a legal issue on their hands. Bryan Barber, the creator of the film starring Outkast, may have been an outcast on his own idea: the creation of “Blackish.”

According to a [Deadline report](#), the ABC sitcom creator Kenya Barris was served with a [\\$1 million lawsuit](#) plus interest for allegedly stealing the show idea. Barber is accusing Barris, who was also a college friend of his from Clark Atlanta University, of using Barber’s idea from an original untitled script during a time period of the end of 2006 to September 2014 without letting Barber know. The lawsuit also points out that there are similarities between the script and Barber’s own life:

- Similar plot, sequence, character, mood, place and dialogue between original untitled script and pilot episode
- Both works focus on the black experience from the perspective of an upper-class,



- Both works focus on the black experience from the perspective of an upper-class, African-American male protagonist living in a predominantly white environment.
- Protagonist goes to his entertainment/media industry office and is greeted by a white colleague who tries to “be cool and act black” in a comedic manner.
- The white colleague also gives protagonist a black nickname, and the protagonist has to correct the pronunciation of his actual name.
- The white colleague tries to do a “black” handshake with the protagonist.
- Both works discuss local verbiage and stereotypes (ex. “grape drink” versus “grape soda”).
- The protagonist in both works is married to a biracial doctor named “Rainbow” abbreviated as “Bow.” (Note: In real life, Barris’ wife’s real name is Dr. Rainbow Edwards-Barris.)
- Both works discuss how unhappy the protagonist is to be confined to the “Urban Department” solely based on race.

[Click here](#) for more similarities within the scripts.

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Barber feels he is “entitled to compensation and credit as a writer and creator of the Series, including all attendant rights and interests.” He also wants “an accounting of all funds, benefits, and property received or earned as a result of [Barris’] commercial exploitation of [Barber’s] idea and/or the Original Untitled Script through the development of the Series.” The lawsuit against Barris is for Breach of Implied-In-Fact Contract, Breach of Confidentiality, Declaratory Relief, Accounting, Fraud (Concealment) and Breach of Fiduciary Duty.

It’s interesting to note the lawsuit does not include a copyright infringement claim. There are several reasons Barber may have elected not to sue for copyright infringement. In order to seek statutory damages for copyright infringement, the untitled script needed to be registered with the U.S. copyright office.

It’s possible that Barber may have failed to register his untitled script with the copyright office. As an aside, it’s \$55 to file an electronic copyright registration with the copyright office. The application can be submitted by going to [www.copyright.gov](http://www.copyright.gov).

However, it appears that Barber could assert facts to meet at least two of the three elements needed for a copyright infringement lawsuit. One element needed for a copyright infringement lawsuit is that the two scripts are substantially similar (ex. Rainbow “Bow” as the main character).

There are elements of the script that are not unique. “The Cosby Show” was a sitcom that portrayed the family life of an affluent African-American family. The recently canceled “Uncle Buck” also portrayed the family life of an affluent African-American couple in a comedic manner. Barris could argue that Barber doesn’t have a valid copyright infringement claim because both scripts use elements that are common to this genre of television.

Another element of a copyright infringement claim is access. Barber has to allege facts to show Barris had access to his script. With a 20-year friendship and as college buddies, it is possible that once the project was turned down for VH1, they both trusted each other with the confidentiality of the script. Now whether they mutually spoke about shopping it around in 2006 or later is up for debate.

We will have to see how the lawsuit plays out. For now, fans can enjoy the new season of “Blackish” starting Wed., Sept. 21.

Have more legal questions about copyright battles? Contact [J. Paye & Associates](#) today.

*Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).*