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The True Reality of Reality Television

BY [STEPHANIE RIMBERG](#)/ ON MARCH 15, 2020

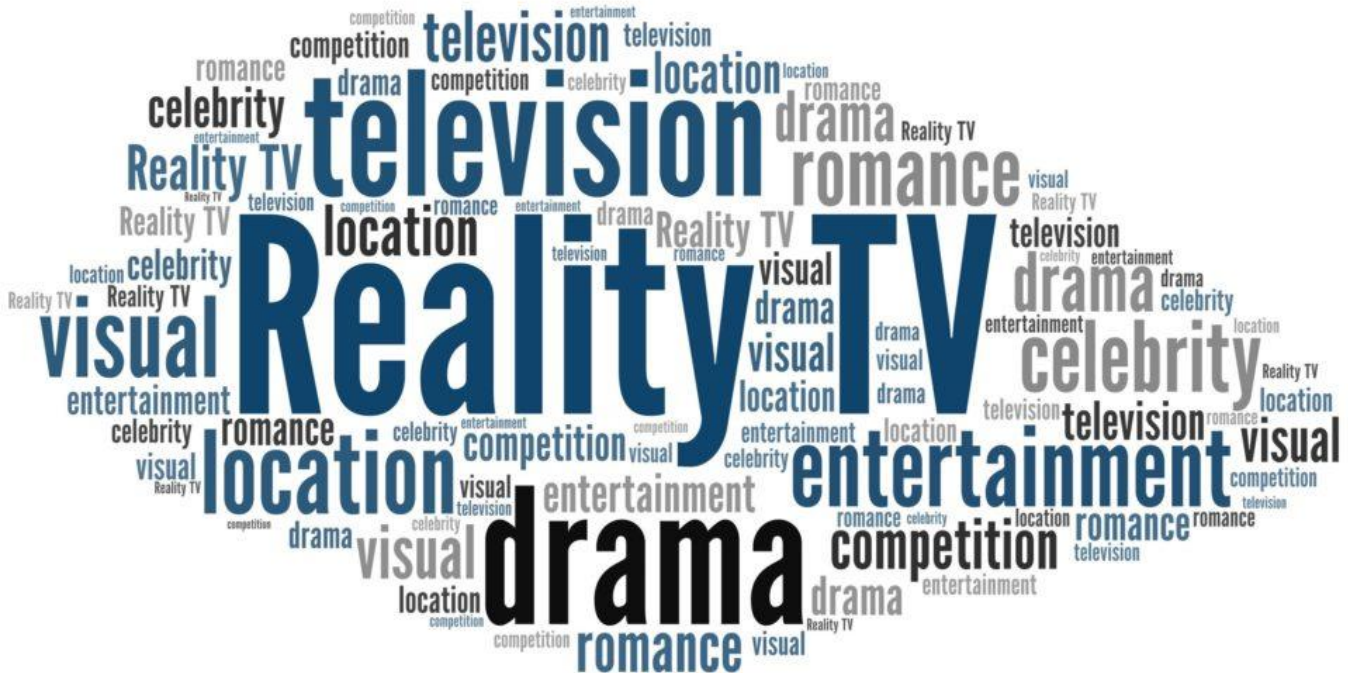


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The recent popularity of reality television has generated a new category of talent. Reality television stars like Snooki, Kelly Clarkson, and Kim Kardashian have become famous merely because of their appearance on reality television.^[1] This new definition of “talent” has not only shaped the reality television genre but has also influenced some of the provisions drafted into reality show participants’ contracts.^[2] Producers and networks are claiming that they deserve a cut of the stars’ revenues, as they essentially created their fame.^[3] This is seen with Bethenny Frankel, the *Real Housewives of New York City* star who became famous on the show and then later on went on to create *Skinnygirl Cocktails*, in addition to writing books and hosting her own talk show.^[4] When Frankel sold *Skinnygirl Cocktails* for more than one hundred million dollars, production companies claimed: “if we put you on the show and you end up doing an endorsement deal or write a book, we’re going to participate in your windfall of revenues.”^[5]

For networks, not only are reality shows a way to make some money off the newfound celebrities, but they are also cheaper to produce.^[6] One of the reasons for the recent popular trend of reality television is because of the high payoff and the simple revenue, as seen with producing a thirty-minute reality show, which costs anywhere from \$100,000 to \$500,000 per episode.^[7] Although producing a reality show is still quite expensive, it is definitely cheaper than scripted shows.^[8] What this means for reality television shows and their contracts is that

producers may be looking to save a few dollars here and there, and contestants might be taken advantage of.

Not only are contestants taken advantage of in that they cannot enjoy all of their financial success that they may make after their appearance on a reality show, but producers may also be cheap about participants' employment benefits. On *The Bachelor* and *Bachelorette*, for example, contestants are not paid at all, although they may occasionally receive free clothing or goodie bags but that is not common.^[9] If chosen as the lead Bachelor or Bachelorette, however, the star will make around \$100,000, with the only exception being Emily Maynard who earned \$250,000 for her season of *The Bachelorette*.^[10] Networks entice contestants to participate on shows such as *The Bachelor* and *Bachelorette*, by persuading contestants that participation comes along with fame, fortune, and/or finding love.

With producers saving costs by creating reality television, not only are they denying participants basic employment benefits, but even more so, they are infringing on participants' First Amendment right of freedom of speech. *Married at First Sight* reality Star, Davina Rankin, claims that "she was 'coached' into giving the producers the soundbites they wanted."^[11] Rankin further claims that the producers even encouraged her to have an affair.^[12] Not only are producers controlling what participants say and how they act, but when it comes to freedom of speech for producers there appears to be no limit. Many reality show contracts contain the "right to defame" clause, which allows producers to publish statements about participants, even if it will portray them in a bad or false light.^[13] Of course society wants to protect the right to freedom of speech, but that right should be limited to the extent that it does not harm others.

The lack of control over what producers can say about participants is seen with the recent lawsuit between Joe Teti and Mykel Hawkeye.^[14] Teti is the co-host of Discovery Channel's show *Dual Survival*, while Hawkeye is the co-star of Discovery's former show, *Man, Woman, Wild*.^[15] Teti claims that Hawkeye defamed him in online attacks on Facebook and other online platforms by making claims that Teti lied about his military record and exaggerated his escapades to Iran and Afghanistan.^[16] When assessing the case, Superior Court Judge Caldwell claimed that the court must find "a balance between the constitutional protection of speech and the potential damage to Teti."^[17]

While courts challenge the right to freedom of speech with respect to defamation, courts should also consider the unfair bias that has been given to producers. Producers are allowed to defame participants without infringing on participants' First Amendment rights, yet when it comes to participants talking, they are limited by what they can and cannot say while on the show. The general trend in state courts is to favor producers freedom of speech, even if such speech may be harmful to show participants. This is seen with Georgia's recent legislation of a revised anti-SLAPP statute that protects "free speech rights of producers, writers, directors, actors, and other creative professionals."^[18]

One reason courts have generally strayed from censoring freedom of speech is because censorship has been viewed as a “poison gas: a powerful weapon that can harm you when the wind shifts.”^[19] This means that courts value individual desires and interpretation, and once the government steps in and censors art and entertainment, an individual’s power to create and receive is now compromised.^[20] Such value, however, is protected for producers but not for show participants. I do not think courts ignore the moral harm that comes along with defamation, but courts seem to favor the argument that part of the risk that accompanies participation on a reality show is that one might gain a negative reputation in the future.^[21] While courts have rarely found the moral interests of show participants to outweigh the protection of freedom of speech, I think slightly more deference should be given to reality show participants, as their lives and reputations must be highly valued as well. Courts have yet to strike the right balance between protecting freedom of speech and the moral interest in avoiding defamation, and courts must work towards applying such balance equally to both participants and producers alike.

One question courts should consider is why producers are allowed to limit participants’ speech on a given show, yet participants cannot limit what producers say about them. The silence on this matter seems to contradict the American value that “every individual has the right to decide what art or entertainment he or she wants- or does not want- to receive.”^[22] As the reality television genre has been growing exponentially, it will be interesting to see the future lawsuits that will arise relating to participants and producers’ right to free speech, and how the courts will decide such cases. The genre, as well as the entertainment industry at large, is certainly likely to change in the coming years.

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^[1] Lauren Etter, *Lawyers of Reality TV*, ABA Journal (Dec. 1, 2014), https://www.abajournal.com/magazine/article/lawyers_of_reality_tv; Gabbi Shaw, *The Most Iconic Reality TV Stars of All Time- and Where They Are Now*, Insider (Dec. 16, 2019), <https://www.insider.com/then-and-now-reality-tv-stars-2018-6>.

^[2] Etter, *supra* note 1.

^[3] *Id.*

^[4] *Id.*

^[5] *Id.*

[6] See generally Barclay Palmer, *Why Networks Love Reality TV*, Investopedia (updated Jan. 31, 2020), <https://www.investopedia.com/financial-edge/0410/why-networks-love-reality-tv.aspx>.

[7] *Id.*

[8] See generally *id.*

[9] Tierney Bricker, *How Much Reality TV Contestants Actually Make (If Anything)*, E! News (Oct. 11, 2018), <https://www.eonline.com/news/975767/how-much-reality-tv-contestants-actually-make-if-anything>.

[10] *Id.*

[11] Jo Scrimshire, *The Realty TV Revolt: Traumatized Ex-Contestants Tell Kyle and Jackie O About the Manipulative Producers 24-Hour Work Days and Fake Storylines on Hit Programs Like Married at First Sight*, Daily Mail (updated Oct. 25, 2019), <https://www.dailymail.co.uk/tvshowbiz/article-7611285/Reality-TV-revolt-Stars-expose-manipulative-producers-24-hour-work-days-fake-storylines.html>.

[12] *Id.*

[13] Michelle Crouch, *13 Secrets Reality TV Producers Won't Tell You*, Reader's Digest (Feb. 16, 2018), <https://www.insider.com/behind-the-scenes-secrets-reality-tv-producers-wont-tell-you-2018-2>; See also *The Bachelor, Eligibility Requirements*, <https://casting.bachelor.warnerbros.com/eligibility.html>.

[14] The Charlotte Observer Staff, *Charlotte Lawsuit Pits Reality TV Feud vs. Freedom of Speech*, WBTV (updated July 12, 2019), <https://www.wbtv.com/story/28734653/charlotte-lawsuit-pits-reality-tv-feud-vs-freedom-of-speech/>.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Chris Dodd, *Why Free Speech is Critical to Film and Television Production in Georgia...and Around the World*, Huffpost (updated Oct. 18, 2017), https://www.huffpost.com/entry/why-free-speech-is-critic_b_12522960.

[19] *Freedom of Expression in the Arts & Entertainment*, ACLU, <https://www.aclu.org/other/freedom-expression-arts-and-entertainment>.

[20] *Id.*

[21] See generally Breeanna Hare, *The 'Real World' of Reality Show Contracts*, CNN (Dec. 30, 2009), <https://www.cnn.com/2009/SHOWBIZ/TV/12/30/legal.reality.contracts/index.html>.

[22] *Freedom of Expression in the Arts & Entertainment*, *supra* note 19.