

Exploiting *Idols*

A case study of international TV formats trading
in the absence of intellectual property protection¹

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Abstract

Television formats have become a major export industry for Britain and the United States (who together account for nearly two thirds of all format hours broadcast annually worldwide). Yet, there is no such thing as a television format right under copyright law. Any producer is free to develop game, reality and talent shows that are based on similar ideas.

This case study documents the exploitation of one such format, *Idols*, based on semi-structured interviews with format sellers and buyers at international media trade fairs, and senior managers at Fremantlemedia, the television production company that developed *Idols* into one of most successful global format franchises (broadcast in 43 territories). The results reveal a combination of legal and non-legal strategies that in effect create an intellectual property (IP) regime that stands in place of formal television format rights (“IP without IP”). Empirically, format developers use three groups of strategies to exploit TV formats internationally:

(1) TV format producers formalize and sell know-how which cannot be easily gleaned from watching the show. This knowledge may include how to source contestants and organise audience participation, as well as specific production elements. The format is codified in a so-called ‘production bible’, supplied under confidentiality agreements and licences, and supervised in implementation by ‘flying producers’.

(2) Careful management of the brand image makes it difficult to copy a show successfully. Sub-strategies include the registration of relevant trade marks, localisation of the brand, and extending the brand by merchandising.

(3) Having an established distribution networks and international production bases allow for speed to market, and retaliatory measures against copycat producers. Retaliation includes the bilateral threat of non-supply of other programmes, and negative reputation effects in the social network constructed around trade fairs.

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Introduction – The growth of television formats

With the deregulation of national broadcasting markets during the 1970s and 1980s, cross-border trade in television programmes increased dramatically. Many European commercial broadcasters built their channels around licensed American television series, such as *Dallas* and *Denver*. At the same time, producers began to scan systematically national TV programming habits for promising ideas for international exploitation. For example, the first successful German soap opera *Lindenstraße* was a close imitation of Granada's *Coronation Street*. The arrival of a digitized multi-channel television environment and a consumer oriented Internet (Netscape Navigator www browser 1994) initiated further fundamental changes in the nature of global media markets. In their highly competitive national television markets, broadcasters increasingly started looking for 'sure shot', 'quick fit', and 'hit' programming solutions.

A television format provides broadcasters a tried, tested and successful television programme formula. A format may cost less time and money to produce than to create an original programme series, and it usually has proven its rating's worth in more than one television market before being offered as a franchise. Apart from the required viewing figures, and thereby high advertising revenues, a format also has a high potential for merchandising, multimedia games, phone-in revenues and other brand extensions. These additional revenue streams increase the attraction of a format for broadcasters. This is evidenced by the huge sums of money broadcasters are prepared to pay in

various territories or markets for a licence or option to a successful format. The licence fees alone for such a format can cost broadcasters in Western Europe up to £30,000 for 20 to 30 episodes (of 1 hour duration) for one season (Personal Interviews, 2008 - 2009). Although a format can be created in any genre of programming, the most popular examples now include game shows (*Who Wants to be a Millionaire*; *The Weakest Link*), factual entertainment (*Grand Design*; *Dragons' Den*; *Top Gear*), reality TV (*Big Brother*; *I am a Celebrity - Get me out of Here*; *Wife Swap*), and talent contests (*Pop Idol*; *Britain's Got Talent*, *Strictly Come Dancing*).

Hence, a TV format originates in a particular country's TV market and then is licensed around the world, usually keeping the core of the programme the same but reproducing or recreating various aspects to localize according to its target market's tastes and sensibilities. Essentially, a format constitutes a process of systematization of differences within repetition, tying together 'television systems', 'national television industries', 'programme ideas', 'particular adaptations', and 'individual episodes of specific adaptations' (Moran and Keane 2004). In other words, a TV format is that set of invariable elements in a programme out of which the variable elements of an individual episode are produced (Moran and Malbon 2006).

Trading TV formats in the absence of IP protection

TV format trade worldwide has been increasingly steadily. The success of Big Brother and Who Wants to be a Millionaire in the late 1990s sparked the global trade in TV formats and opened up the US market to European TV formats (FT 2005). As early as 1999, BBC Worldwide, the commercial arm of the BBC, created a 'Format Factory' which year on year achieved high revenues, with format sales for 2006 closing at over £35 million (BBC 2006). In the early 2000s, the market grew more than 30 per cent in three years, and the UK became one of the lead exporters of formats, along with USA and the Netherlands (FT 2005). According to FRAPA (2004) - a format producers' industry association, the value of the global TV format business had already exceeded € 2.4 billion. The international growth of the format industry and UK's leading position in it can be gauged through a report by the UK Trade & Investment (a government commission) based on figures provided by the BTDA (British Television Distributors' Association, now merged with PACT (UK)). It said, *"UK exporters won a dominant 45 % share of the international TV format market by hours and a 49 % share by the number of titles across the channels studied in 2003. The UK's closest competitor, the USA, had a 20 per cent share by hours..."* (UKTI/BDTA, 2005). In the last few years, UK's creation of formats has ranged between 20% and 50% of all format hours broadcast worldwide (Fremantlemedia 2008). Though much of the flow of formats tends to be from the developed world towards the developing world, there have also been a growing number of formats originating in countries such as Columbia (*Ugly Betty*) or Russia which have

been sold to the highly developed Western television markets (WARC 2005; Metro 2006).

This case study investigates how *Idols* became one of the most successful television formats sold worldwide - with 43 global versions - in the absence of any specific intellectual property rights. An *Idols* type format is traditionally very hard to protect. Component parts of such a format may attract some copyright and other legal protection: including copyright in its production bible, set design, programming rundowns, episode segments and musical content, but in a court of law, the principal idea and the overall format does not attract copyright protection¹. From a theoretically legal point of view, for such an intangible cultural product where there is no copyright protection provided by law, copiers should be able to copy the product freely and hence the price of such a product should be zero. However, as we have seen above, formats are sold worldwide for huge sums of money. This case study identifies the strategies evolved by the producers of successful formats to counter the limited legal protection available to their cultural products.

The case study is part of the research design of a larger study. Three methods were employed: (1) Creation and analysis of a database of 59 reported format rights disputes between 1988 and 2008; (2) Semi-structured interviews with media sellers and buyers at three international TV trade fairs (NATPE Las Vegas, Discop Budapest & ATF Singapore); (3) The emerging patterns of

exploitation strategies were specified through three case studies of formats developed and distributed by Fremantlemedia: *Idols*, *Got Talent* & *Hole in the Wall*. This chapter reports one of the three case studies - *Idols*. The data was collected during a five week placement at Fremantlemedia, using the same interview protocol developed for the trade fair study [see Appendix 3].

Throughout the chapter, findings from the larger project are used to contextualise the empirical material on *Idols*.

The case study is structured as follows. First it gives an overview on the *Idols* format and thereafter dwells on the issue of format copying (or copycatting, as the industry prefers to call it) from a legal and commercial point of view by juxtaposing how legal systems understand format copying while the format industry prefers to seek alternative means to tackle this problem. It then presents the research design directing the research behind this case study. In the next section, the case study documents and discusses the non-legal strategies of format exploitation which producers of formats such as *Idols* utilize to exploit their formats worldwide. The case study ends with following the exploitation strategy of the *Idols* format in the fast emerging television economies of Asia, Russia and Latin America.

What is *Idols*?

From glitzy global *American Idol* to Bollywood enthused *Indian Idol*, '*Idols*' is one of the most successful television format franchises running across the world. Its

locally produced versions have aired more than 129 series in about 43 territories so far². Essentially, *Idols* is a knock-out music talent show with several stages where contestants go through *Auditions*, *Eliminations*, a *Groups* stage, and a *Live Spectacular or Grand Finalé*. This television talent show is unlike any other because it showcases a contestant's life story and follows it from auditions to the final, thereby involving the audiences into the heart of the format.

“Idols is not a singing contest ... the genius of Idols as a format is that it is about finding stories and following contestants on their journey. The sheer duration of an Idols series and the number of stages you go through means that you can follow the characters and get a lot of their life's story. You can trace their development throughout the series and can see a rough diamond being honed towards the end of the journey into a pop star. In UK's first series of Idols, Gareth Gates (name of a contestant) walks through the door to his audition. He stutters so badly that he can hardly get his name out - the panel who have been sitting through all the 200 very average editions before him are not amused. But when he opens his voice and sings like an angel, everyone's jaws drop. Hence, it's not about the singing – it's about this incredible story and the production team spots those stories from the thousands of people that come for auditioning.” Senior Manager, Worldwide Distribution, Fremantlemedia

The *Idols* format is owned and licensed to producers and/or broadcasters by Fremantlemedia Ltd, part of the RTL group of entertainment companies which in

turn is 90% owned by Bertelsmann AG - a global media conglomerate (Fremantlemedia 2009a). FremantleMedia is one of the largest international creators and producers of entertainment brands in the world, with leading prime time drama, serial drama, entertainment and factual entertainment programming in over 40 television territories globally; including the UK, the US, Australia, Scandinavia, Germany, France, Singapore, Italy, Spain and Portugal. It is also seen to be growing ambitiously in emerging television economies of Brazil, Russia, India and China.

The origins of the *Idols* format were explored in 2004 in a dispute between Simon Fuller of 19TV and Simon Cowell of Syco along with Fremantlemedia – this dispute was settled out of court in the UK. Simon Fuller of ‘19TV’ had brought the format to be co-developed with Talkback Thames – the production wing of Fremantlemedia Ltd. whereupon it was broadcast first as *Pop Idol* on ITV – UK’s main commercial terrestrial channel (Personal Interviews, 2008 - 2009).

Fremantlemedia later on also co-produced on a show called *The X Factor* created by Simon Cowell, who had been a show judge on *Pop Idol*. There were striking similarities between the two shows and hence Fuller sued Cowell and Fremantlemedia in UK (BBC 2004) on various counts. Some of the charges included infringement of the ‘300 page production bible’ of *Pop Idol* for *The X Factor*, copying of technical aspects such music, lighting, the show structure, etc., use of the phrase “We’re looking for the X Factor” originally employed on *Pop Idol* as well as using almost half of 59 staff, including senior producers, from

the *Pop Idol* team to produce *X Factor* [Bournemouth University's Format Disputes Database, Dispute No. 2004-04-BR³].

An interesting commercial settlement in the above dispute allowed Fremantlemedia and Simon Cowell to continue producing the *X Factor* format in UK and other territories while giving Fuller a stake in the *X Factor* (Hinton 2006). *Pop Idol* was discontinued in the UK (Personal Interviews, 2008 - 2009) to make way for the *X Factor* while *Pop Idol* (as per previous agreements between Fuller and Fremantlemedia) continued to be exported as a format to other territories (Personal Interviews, 2008 - 2009).

Though initially it saw a slow roll-out in various countries – notable amongst the first few were South Africa and Poland – *Idols* got a major push only after *American Idol* was made. Tape sales of *American Idol* were initially secured in several territories within the English geo-linguistic cultural market or with market potential for Western music and Western cultural values.⁴ Such territories included Canada, Australia and Puerto Rico – many of these territories thereafter created their licensed local version of *Idols*. In the industry's understanding, tape sales test the market and stimulate demand in these territories to create local versions – thereby it provided a fillip to the sale of the format. Eventually *Idols* sold to more than 43 territories (Fremantlemedia 2009b).

In the USA, *American Idol* was consistently ranked the television series with the highest audience figures with a peak audience figure of over 37 million viewers (Fremantlemedia, 2009b). Equally popular in Western and Eastern Europe, *Idols* became the highest rated series ever in the Netherlands (also titled *Idols*) since the start of commercial television in 1989 whereas the final of *Idols* in the Czech Republic (titled *Česko Hledá Superstar*) was watched by over one third of the population (Fremantlemedia 2009b).

Idols is a well marketed brand with numerous brand extensions in several product merchandising and licensing categories. To satisfy cultural (such as negative connotation of the word 'Idol') or other operational requirements, the brand name is changed in some territories, for example as *Deutschland sucht den Superstar* (in Germany), *Nouvelle Star* (in France), *Turkstar* (in Turkey) or *Superstar.KZ* (in Khazakstan). In other cases, the company tries to maintain a consistent brand name as seen in examples such as *Pop Idol* (in UK), *Australian Idol*, *Indian Idol*, *Malaysian Idol* or *Idolos* (in Brazil/ pan-Latin America and Portugal)⁵.

Idols also enters into co-branding opportunities to take the format into newer territories. An unusual example was *Idol's* co-branding with the Sydney Opera House as a backdrop as well as an essential promotional ingredient of 2003 *Australian Idol's* final episode. In order to use the Sydney Opera House, its image and its logos in such a closely associated manner, Fremantlemedia's

Australian office had to come to an “*appropriate commercial arrangement in terms of an iconography fee*” with the Sydney Opera House (Borella 2003).

With a wide target market of demographic segmentation between the ages of 14 to 49, it is usually scheduled in prime time evening slots by broadcasters as this is most suitable for reaching a young demographic, attractive to advertisers. *Idols* has also been licensed into ancillary products and merchandising such as interactive games, T-shirts, *Idols* car, *Idols* perfume and so on.

To keep the *Idol* brand fresh in the audience’s minds (thereby keeping it popular with advertisers), continuous research and detailed analysis takes place. The format owners have a research and statistics department which gathers television ratings and other data from various television research and statistics companies around the world, such as AC Neilson in US, BARB in the UK, Eurodata in the rest of Europe (Personal Interviews, 2008-2009). This is then analysed in-house to inform the company’s management information system as well as make programming changes to the format. *Idols* has also been subjected to audience research using focus groups to make sure, as the series progresses from year to year, that its product proposition is relevant for audiences. As *Idols* is in its 8th series in some territories, audience research has in the past thrown up issues on the choice of contestants, the show judges, the structure of the show, audition methods, etc. Hence, as a result of talking to their viewers, the producers are constantly able to keep the format moving.

“When Idols was launched in 2001, it had a very distinct pattern of viewers. The auditions phase used to give us an upward curve of the viewers but during the group stage when the contestants are cut down to the final 12, the viewers will tune out for some reason. But during the final live stage, the viewers went up again. So, it was a U shaped curve and we discovered that this was the same pattern in all countries. We made the middle section more compact and dynamic so that we didn’t lose so much of the audience in between.” Research Manager, Fremantlemedia

The launch dates of all the *Idols* series till date in 43 different countries are provided in the appendix (A1).

Copycatting – legal and commercial dimensions

Format copying (or in the industry’s preferred term: copycatting) has emerged as a by-product of the growing international trade in format rights. Some producers or broadcasters scan the world for format solutions, and as there are relatively low barriers to the dissemination of information in the digital world, they recreate the format without paying any licence fee. These copycat producers or broadcasters might simply change elements of the original programme before localizing it themselves without the involvement of the originator. This, according to the original producer, is theft of their format rights – supposed intellectual property – leading to accusations of format plagiarism or format copycatting in

the industry. However, there are no specific laws anywhere in the world which govern format as intellectual property rights.

“The format industry is not necessarily reliant on legal protection. It certainly helps that there is a degree of perceived legal protection but the industry at large is aware of how dubious that legal protection is”. Senior Manager, Large Format Producer and Distributor

In the last few years, in three of the biggest and most sophisticated television markets – USA, Germany and UK – there have been high profile accusations of format copycatting or unauthorized copying – some of these have even become fully fledged court battles. Among other examples, there are RDF’s *Wife Swap* and similar shows in both the USA (*Trading Spouses*) and Germany (*Frauentausch*). Then there is UK’s *Pop Idol* and its successor *The X Factor*. None of these involved any fly-by-night producers; all were highly respected large TV organizations!

In the fastest growing media economies of the world, such as Brazil, Russia, India and China (BRIC), programme and format copying may take place not only for programmes imported into the country but even locally produced formats (Keane 2004, Thomas & Kumar 2004). The global television distribution market is expected to increase from US\$160.6 billion in 2006 to US\$250.7 billion in 2011

(PriceWaterhouseCoopers 2007) and the majority of this growth has been forecast to be in the BRIC countries.

Green v Broadcasting Corporation of New Zealand

In the landmark case of *Green v NZ Broadcasting Corporation*, the British television author and presenter Hughie Green objected to the unauthorized adaptation of his talent show *Opportunity Knocks* under the same title by the Broadcasting Corporation of New Zealand from 1975 to 1978. Green claimed copyrights to the 'script and dramatic format' of the show, broadcast in England between 1956 and 1978. As 'format', 'structure' or 'package' Green cited the title, the use of certain catch phrases, the use of a 'clapometer' to measure audience reaction and the use of sponsors to introduce competitors. However, the Court of Appeal of New Zealand ([1988] 2 NZLR 490) ruled that the ever changing format elements lacked the certainty and unity of a dramatic work. The case was appealed to the Privy Council in the UK which held that a dramatic work must have sufficient unity to be capable of performance. On the facts, Green was unable to show that the elements of his format were more than accessories to different dramatic performances ([1989] 2 All ER 1046).

In *Norowzian v Arks* ([2000] EMLR 67), advertising agency Arks Ltd. had used a innovatively edited jerky dance routine for a Guinness commercial which was inspired by the short film *Joy* directed by Mr Norowzian. The Court of Appeal for England and Wales held that no single frame was directly copied. Editing and

post-production techniques creating a 'look and feel' did not amount to an original work itself. In effect, the courts sided with the view that restrictions on the use of new entertainment techniques might stifle creativity.

Following these legal decisions⁶ that permit plagiarism of programme ideas in principle, one should have expected a decrease in the market for international television formats. Why pay for a television format if you can re-create it for free? "If no such rights exist, then the commercial rate for the format, at least from a legal point of view, is zero" (McInerney and Rose 1999).

Indications, however, are to the opposite. Celador's show *Who Wants To Be A Millionaire?*, first shown on Britain's ITV in 1998, was licensed for seven figure sums to U.S. network ABC and German commercial broadcaster RTL. This has now played in 108 territories while the Dutch firm Endemol's hit *Big Brother*, in which volunteers are locked under constant surveillance into a 'container home', has been sold to 45 territories⁷, including Britain's Channel 4, Germany's RTL2 and CBS. In order to facilitate format trading, international media trade fairs have established elaborate protocols, yet the legal issues surrounding the intellectual property protection of formats remain hotly contested.

Towards a non-legal solution

Although the format industry does not have access to any specific format protection right under intellectual property (IP) law anywhere in the world, it does

use the signalling and stance of IP protection whenever it is required to justify protection of its intangible assets. At the same time, lobbying associations do no longer aggressively seek statutory protection for format rights⁸. For example, during the consultations for the specially commissioned Gower's Review of Intellectual Property in the UK (Gowers 2006), one of the largest format makers of UK – the BBC – refused to suggest any furtherance of legal remedies to protect a format from being copied. The BBC's response states that "*current laws provide adequate protection*" and that "*a more prescriptive approach will create difficulties*". The authors' preliminary investigation through the tracking of reported disputes in trade journals and interviews with format industry managers at international television media trade fairs suggested that the legal uncertainty has led to the development of commercially oriented protection strategies, to provide an environment where formats can be traded internationally.

"Four or five years ago there was a real rash of rip-offs, but that has largely died off in the last couple of years. That's not about the fact that anyone was taken to court and sued – in fact quite the opposite, those cases that went to court actually failed. It's almost universal that those rip off shows failed because there is a lot more to a format than what you see on the television screen. There is a lot going on under production techniques, how you find the people, how you find the stories, how you look after the people." Senior Manager, Worldwide Distribution, Fremantlemedia

Occasionally, the format industry utilizes quasi-legal and alternative dispute resolution mechanisms, such as 'mediation' to resolve disputes between format originators and alleged format copycats. FRAPA (Format Recognition and Protection Association <http://www.frapa.org/>), for example, is an organization which lobbies for greater legal protection for format rights, but already has put in place an elementary form of a formats registry on behalf of the industry. It is known to have successfully conducted mediation for some high profile format rights disputes (FRAPA 2008) though the authors found in the course of their interviews that the power and representation authority of FRAPA has always been questioned by some sections of the format industry.

Moran and Keane (2004) in their definitive study of TV formats in Asian countries suggest that there is a growing recognition of the protocols of format exchange between format creators despite the fact that bigger and highly fragmented TV markets provide more chances of format copycatting. This change, according to them, is because of a mix of factors such as better access to original formats from around the world, widespread condemnation of copycatting practices and increased industry vigilance.

Research design

In order to look at the exploitation of TV formats, and specifically the mix of legal and non-legal protection strategies in a systematic manner, the authors followed the analysis of reported disputes with two series of interviews:

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- with 30 format buyers and sellers at three international trade fairs (DISCOP Budapest [June 2008], ATF Singapore [December 2008], NATPE Las Vegas [January 2009]);
- with 10 senior functionaries (7 representing management functions such as development, marketing, commercial, legal affairs and rights management; and 3 flying producers) at Fremantlemedia's London headquarters from 26th March to 21st April 2009; to produce three case video studies under the ESRC sponsored business placement scheme.

As a basis for these interviews, the literature from media economics to brand management to cultural theory was reviewed to create propositions on strategies which then informed an interview protocol.⁹ The interview protocol was applied to semi-structured interviews at the international trade fairs, and with the interviewees at FremantleMedia.

Within the constraints of this chapter, we can only point to key propositions of the relevant literatures in bullet form.

- Trade fairs establish identities of participants, instruct them in the business culture, & foster common-sense assumptions about how the industry functions (**Penaloza 2001**); trade fairs differentiate similar products and provide a terrain for producer's corporate brand identity (**Havens 2003**);

- Buyers at trade fairs act as cultural gatekeepers actually responsible for appraising and acquiring programming (**Harrington & Bielby 2005**).
- Viewer dissonance for the channel brand can affect the reception of the programme and vice versa (**Singh 2004, Drinkwater & Uncles 2007**); Relationship of consumer and brand strengthens as it moves through generic, expected, augmented and potential levels (**De Chernatony & Macdonald 2003**); Consumers visualize brand image as consisting of a hierarchy of attributes, benefits and values (**Davis, S. in Kotler 2003**).
 - Advertisements, trade-press reviews, in-person sales calls to buyers, and B2B programme merchandising gains visibility in a broadcaster's premises and the minds of the programme buyers (**Havens 2003**); These strategies help distributors to inform buyers about forthcoming shows, provide information on shows already achieving high ratings for other broadcasters or territories & reinforce the decisions of existing buyers (**Eastman, et al. 2002**); Corporate branding helps to maintain credibility of product differentiation in the face of imitation and homogenization of products and services (**Hatch & Schultz 2003**).
 - The reputation of the production company (as well as that of the director or writer) can make or break a deal with programme buyers though these generally fail to travel through to the actual intended viewership (**Harrington & Bielby 2005**).
 - Social norms may provide an alternative source of incentives which induce and reward producers of cultural goods in the absence of formal copyright

- protection. A strong implicit norms-based IP system exists amongst French chefs to protect of haute cuisine recipes (**Fauchart & Von Hippel 2007**). Trust, respect and access control to different levels of magic guilds and associations prevents the leakage of magic to outsiders (**Loshin 2007**). Stand-up comedians, in the absence of legal protection, order their industry under a set of IP norms which punishes copying while increasing investments in the creation of original material - something not available before creation of such norms (**Oliar & Sprigman 2008; Decherney 2009**).
- Branding creates consumer inertia – barrier to change consuming habits (**Reizebos 2003**); Brand innovator gives copycats a moving target and remains ahead of the competition (**Kapferer 1998**); International coalitions increased the marketability of a programme internationally as the foreign partner understands the programme's attributes desired by its own domestic audience (**Hoskins & McFadyen 1990; Chan-Olmsted 2002**).
 - In marketing popular culture, an emergent strategy needs to be used as the product is not entirely under the control of the producer; rather it is the audience which makes it popular (**Bjorkegren 1996**); the Blair Witch Project – entrained users and simultaneously spurred curiosity (**Klien and Masiclat 2002**).
 - Demand patterns in cultural industries are characterised by social contagion, leading to escalating changes through feed back loops (**Kretschmer et al. 1999**).

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- Most firms operating in cultural industries seek not only economies of scale but of scope, hence successful firms have to keep diversifying their portfolio rapidly into risky territories (**Towse 2003; Acheson 2003**).

Following the review of these literatures, our interview protocol included the following groups of questions which could be expected to produce qualitative material for the overall research aim: to capture the strategies used by television producers in the international exploitation of TV formats.

1. What constitutes a TV format? (Are certain types of formats copied more than others? What elements of formats are copied more than others? What does the industry mean by the allegation that a format has been copied?)

2. From a buyer's perspective, why are decisions taken to imitate or to license? (What is traded precisely? What are the respective roles of the laws of copyright, trade marks, passing off, unfair competition, and confidentiality?)

3. Which non-legal strategies are utilized by producers in the exploitation of formats? (What is the role of branding strategies (such as being first to market, brand extension)? What is the role of reputation networks, trade bodies, and gentleman's agreements? Are there different imperatives for format protection in certain territories?)

Exploitation and protection of formats

The analysis of the trade fairs interviews provided distinct patterns of non-legal strategies which the format industry utilizes to trade in format rights in the absence of any specific and consistent legal regulation. These patterns were specified through the placement within Fremantlemedia at their London headquarters. All interviews were recorded and transcribed. A selection of video interviews is available from the website of the ESRC TV formats project [<http://tvformats.bournemouth.ac.uk>]. Presented below are the patterns of exploitation strategies extracted by the authors.³

1. Market intelligence

It was noted that large format producers depended on enhanced and sometimes proprietary information flows to detect format copycatting. This is achieved using a network of spotters (or information providers) around key television territories of the world. A second function of spotters is to gather intelligence on new local formats which may be bought for international development.

“We have a good spotter’s network in the big format creating countries of the world – US, Holland, Australia, Scandinavia – which we use to buy new shows but they also feed us things about what is being developed.” Senior Manager,
Large Format Distributor

³ The methodology for capturing changing patterns of intellectual property strategies has been explored in Kretschmer et al. (1999).

“The spotter's network is so secretive that I only know the names of the spotters. They work as freelance production executives who channelize things they hear to me and the aim is about getting the knowledge of promising shows coming through from our competitors rather than trying to spot rip offs.” Senior Manager, Worldwide Distribution, Fremantlemedia

“It's a very active industry and the reason why I have started this informal group to exchange thoughts on deal making, contracts, rip offs, and you know all major format distributors such as Endemol, Fremantle, Distraction, Absolutely Independent – we all exchange our experience in the field that we operate in. So, if any big format is being ripped off, we call each other immediately. People call us and say that someone's supposed new format format is looking like ours and that we should try to do something about it and so on.” President, Large Format Distributor

2. Gentlemen's agreements and trust

The format industry prefers, as far as possible, to use commercial means to solve format rights disputes. They rarely seem to depend on a bundling of tradable intellectual property rights (such as trade marks and copyright). Industry professionals from several countries echoed the concern that on the one hand an attempt to use legal means of countering format copycats usually turn out to be too resource intensive (money as well as time) while on the other hand its

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inconsistency in treating TV formats means that a negative decision in the courts opens up further attempts at copying their formats.

“What drives the format industry is not what is legally protectable or the rights – it is traced back to what is the initial impulse for a television commissioning editor or buyer to buy someone else’s TV format – because that impulse is as simple as ‘since it worked over there therefore it has a fairly decent chance that it is going to work here as well i.e. there must be some chemistry in the show that works with the audiences. Therefore Idols is a shining example which goes around the world and achieves very similar results almost everywhere, despite uncertain legal protection.” EVP, Commercial & Business Affairs, Fremantlemedia

“Relationships and trust are very important in the formats business. Gentlemen’s agreements are still the corner stone of most global television business where most large companies observe other people’s IP.” Regional Director, Global Entertainment, Large Format Producer

“There is also a degree of taint around about very obviously ripping off someone else’s show. There is a degree of honour and trust within the industry – with some notable exceptions – generally speaking it’s seen as something slightly shameful to be very obviously ripping off somebody else’s show.” VP, Development, Large Format Producer

3. Deterrent legal claims

The industry is not hesitant about using the established positioning and signalling strategies of intellectual property protection. When required, it tries to assert its ownership of formats (which may not stand up to close scrutiny). This is mainly achieved through ‘*deterrent letters*’ (or ‘*letters of claim*’) usually from an in-house legal department) which emphasise to format copycats that copyright or unfair competition oriented legal action will be pursued if commercial means fail to find a satisfactory solution to their dispute.

“Most of the times I have a contact with the party which is sort of naughty and you can solve in a simple way i.e. by sending a couple of angry letters which helps usually.” In-house Legal Counsel, Large Format Producer

“When a broadcaster announces that they are doing a show with certain key elements such as judging talent of jugglers or singers, then if we think they have copied us, I write to the broadcaster saying we are concerned that the show they have announced sounds similar to our such and such format and hence we would like to remind them that we own the intellectual property on the show. This is usually enough to either stop them from doing what they are or visibly shift away by making changes from what they are doing.” Senior Manager, Distribution, Large Format Producer

4. Speed to the Market

The first format of a genre to reach the market (i.e. be broadcast) usually beats the intended copycats. This is also true of copycats who beat the original to the broadcast schedule. Hence, by a speedy roll-out throughout the main television territories of the world, the original tries to maintain its legitimacy. This strategy is widely employed by companies having production bases throughout key television territories.

“Idols came to Fremantlemedia as a relatively lowly developed idea or a concept on paper. Fremantlemedia’s UK development team which had worked on outstanding formats which travelled all around the world got involved - we have tremendous success with buying in ideas from outside and turning them into shows which travel the world. That’s why we are the partner of choice for a lot of format creators because they recognize that we add value to their ideas. We can roll shows out more quickly than anyone else and we can control production quality through our flying producer system”. EVP, Commercial and Business Affairs, Fremantlemedia

“Speed to market is the key to protecting our formats. We have bases in every major television territory. Know-how of successful previous versions coupled with a highly skilled technical team ensures we get the commission to produce a licensed version.” Senior Manager, Large Format Producer

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“We are an international worldwide production and distribution company with offices across the globe – anyone who places a format with us for distribution gets access to all these territories. Hence presence on the ground enhances the ability to protect our formats. In other words, the way we are structured helps ensure protection.” Senior Manager, Large Format Producer and Distributor

“When we did Idols 8 years ago, we rolled out the same in a phased manner. 2 territories in the first year and 6 or 7 territories thereafter in a year; learning from our mistakes and carrying that knowledge further. The business has changed now – the roll out takes place at a much more speed.” VP, Creative Partnerships, Fremantlemedia

“We sometimes get copycats such as Star Academy but because Idols was the first out there and it is very difficult once you have an established brand to copy that. We found that markets such as France which had aired Star Academy before Idols, our show didn’t perform that well. Basically the first in the market is seen as the standard. So it’s the same with Big Brother – once you have had it in a market, there is no point doing a reality show such as that in the same market. Viewers will not accept it and will take the first as the original.” Manager, Research, Fremantlemedia

5. Production Know-How ('Format Bibles')

Format originators provide substantial format development support in terms of style guides, production 'bibles' and other technical know-how (supplied under confidentiality agreements). This creates such a highly complex format product overall that it dissuades or makes it difficult for copycat producers to easily copy the original. This usually needs to fit visual brand identity of the broadcaster and failure to do so can create audience dissonance which ultimately leads to the failure of the format.

"If you want to copy Idols properly, then you really have to get hold of the Idols bible. We hold those Idols bibles relatively tightly. In our production territories, we don't give the production bibles to the broadcasters – our production team that has the bible. It's a bit problematic if we are in the licensing territories, since you are passing the bible across to broadcasters or other production companies. But I don't know too many examples of our bibles being passed around – because it can be traced back to someone." EVP, Commercial and Business Affairs,

Fremantlemedia

"The technical know-how or the 'production bible' is the crown jewel which we wish to protect. We never release it without a contract having been signed."

Partnerships Manager, Large Format Producer and Distributor

“There is an executive in our company who used to work for a competitor and they had created a dating show about a man choosing his partner from a pool of women – this they did without paying a format fee (hence not buying any consultancy) from the original US producers. Their show had failed and later when she was employed here she met one of the producers of the original version who by that time was also working here and he revealed that 80% of the dating show and the decisions of the contestants were actually scripted where every move of theirs was closely directed – that’s what actually shapes the drama, he said. That’s a classic illustration of just copying the product, without realising how to get to the end product, doesn’t work.” Senior Manager, Large Format Producer and Distributor

6. Flying Producers System

Successful format originators have a network of ‘flying producers’ who help to keep the original format's values and systems intact in all territories by policing the recreation of formats religiously as per company standards, thereby giving it a distinct positioning. They also bring to each new production the knowledge gained in producing all the previous productions – they know what has been tried in other territories, and what has worked and what has not.

“We can control production quality through our flying producer system.” Senior Manager, Development, Fremantlemedia

“Trusting the flying producers when he/she says what works and what doesn’t helps in making sure the recreated format succeeds.” Flying Producer, Fremantlemedia

“Idols was put together in-house – there is an awful lot going on beneath the surface; and if you have access to the people who created the original show, you have access to all that knowledge going on under that surface. If you don’t have access to that you are only guessing what it is, then you make mistakes because then you don’t actually know the true source of where the magic comes from.”
Flying Producer, Fremantlemedia

“People in the industry have a degree of trust when the show is coming from Fremantle – they know they will get what they pay for. That is because of our production management system which is run in sync with the flying producers – it’s all about knowledge transfer. When we buy-in a format to sell further on, we send some flying producers to sit in on the original production of the show. They learn from the people who first created the show and create a long format bible (the Idols bible is 60 pages!) and this goes into detail about how to make the show, its finances, budgetary requirements etc. For every territory that is producing the show, it is agreed in the contract that the flying producers go in and visit those productions – the more complicated shows they can spend 10 days over three trips coming in on various different stages of the production. And the people who produce the show will already have access to the bible and

basically the flying producers go through with them the bible, make sure they fully understand how all the different stages are done and then they monitor the productions.” Senior Manager, Distribution, Fremantlemedia

7. Stimulating Demand with Taped Versions

Tape sales of a highly rated television programme (such as a taped international version of *American Idol*) to key territories helps to drive sales of a format. In this case, a broadcaster is supplied with a licence by the format producer to broadcast the original tape for a specific number of times on its specific channels. Local audiences experience a highly developed product and thereby get an appetite for the creation of a local version.

“It helps that we have very strong tape sales operations. Broadcasters around the world not only rely on us for formats but also finished shows – tape sales. So if you copy our formats, you are cutting off your supplies.”

“The international growth of Idols was initially slow but it got a major push from tape sales of its American version – territories which had bought the American tape as it is wanted to create their own local versions. Eventually it sold to 43 countries. Tie-in with tape sales helped us set a benchmark for local versions which only we can deliver, hence copycat producers are not successful with broadcasters.” Senior Manager, Partnerships, Fremantlemedia

8. Power Relations & Retaliatory Clout

Format producers with a diversified portfolio of television programmes are able to influence buyers to buy a format in combination with other programmes. If potential television buyers try to copy a company's format, they may find themselves as the object of retaliatory measures. In other words, broadcasters dependant on a large diversified producer for other types of television programmes from this producer's finished programme library will not attempt copycatting a format if they wishes to maintain relationships and continue to be supplied with other programmes.

“Being local and being large means that our company is noticed – a copycat can surely expect our local representative to knock on their doors in case of a suspected infringement. We have the size and scale in terms of churning out regular formats and a copycat will cut off the supply of not only future licensed versions but also tape sales from us.” VP, Development, Fremantlemedia

“Our reputation and good name in the market which helps to solve cases quickly.” In-house Legal Counsel, Fremantlemedia

“Because we come out with more and more outstanding formats, the broadcast community understands the importance of keeping good relations with us, hence they tend not to jeopardize relations with us by bringing out a format too close to our own.” Senior Manager, Large Format Producer and Distributor

9. Role of Trade Fairs

Format originators attend international television trade-shows to showcase their formats to the industry. Though many formats are sold before appearing at trade shows, launching a format at a show legitimises the creator as the originator. This also dissuades copycats by creating a pecking order or ground rules for business relationships within the industry. The role of such social norms within the format industry may need further investigation.

“Trade fairs are used only to build relationships for formats. Most large formats, such as Idols, are sold to production houses before arriving on the floor. But for shows where a really fast roll-out is necessitated along with marketing the uniqueness of the show that’s where a trade fair helps to create an event around the format and pitch the show to a range of broadcasters.” Senior Manager, Fremantlemedia

“MIP (in Cannes) is one of the important trade fairs for us. It is about sitting down with our buyers as well as one of the few opportunities that the whole company could come together. Before MIP, we internally decide a list of priority formats we wish to push at the market.” Senior Manager, Large Format Producer and Distributor

10. Cultural Localization

Format producers usually attempt to suit the local culture of their formatted version so that these are accepted easily by broadcasters and audiences. Productions that align with a territory's established programme brand values will prolong the lifespan of a format. This prevents copycats from originating their own versions as there is a finite market share for a certain programme type within a certain genre. *Idols* is a good example of a format which has undergone numerous cultural modifications in order to appeal to its target audiences in diverse territories around the world.

“In Pop Idols (Britain), show judge Simon Cowell’s caustic comments were acceptable on television whereas in American Idol (where Simon was also a show judge) such comments could never have been made in public. Similarly, in Asian territories such as Singapore, etc. where the culture is much more polite, or seen to be polite, we had to ensure judges follow local customs and traditions.” VP, Development, Fremantlemedia

The concept of prize money was also modified in *Idols* in several territories. Hence the *Idols* format delivered a culturally enriching experience to the show aspirants.

“With the world around youtube etc., not many record companies in each territory are offering recording contracts to winners. Hence, innovative and culturally

sensitive prizes were incorporated. For example in the pan-Arab region where there is a strong culture of singers singing at the parties of influential and rich people, Idols winners were put in touch with concert promoters, etc.” VP, Creative Partnerships, Fremantlemedia

Idols in the pan-Arab region led to some interesting political sensitivities which the makers and audiences encountered. The region’s Arabic language broadcasting satellites go across Northern Africa, i.e. all the Arab states as well as Iran, Iraq and even Pakistan. So a programme on a popular channel has access to a huge population in diverse nations, with usually conflicting loyalties and sometime values. Plus, being on one satellite channel means it blocks out selling to anywhere else in the region.

“Idols in the Pan-Arab region was sold to Future TV based in Beirut. The first season was immensely successful in many territories across the region. There was an interesting episode after season 2 when there was one finalist from Libya and one from Palestine. Col. Gaddafi – the Libyan leader – got behind the Libyan finalist and Yasser Arafat got behind the Palestinian, thereby whipping up excitement in their respective countries. Supporters were seen asking people to vote, possibly even giving out phone cards to encourage people to call. And then the Libyan won. Yasser Arafat is said to have commented that it was typical of the kind of support Palestinians get from the rest of the Arabs nations! Hence, a

TV format brought out internal prejudices within a geographic nation.” VP,
Creative Partnerships, Fremantlemedia

11. Format Brand Management

Format producers nurture the format brand and extend it to merchandising and off-air licensing so that it drives audiences back to the on-air product. Game shows typically find their way first into consumer products such as DVDs, publishing and children’s games. Format producers also engage in creating brand extensions (e.g. spin-off programming) and business-to consumer (B2C) merchandising.

“We nurture format brands by having a consistency of graphics, music, programme structure, etc. As time progresses, there is a need to evolve the brand and hence being a large global company helps as successful ideas from one territory can be implemented in others.” EVP, Commercial and Business Affairs, Fremantlemedia

“When we were deciding how to manage the brand of Idols around the world, we looked at the logo of [Who wants to be a] Millionaire from 20 countries. You could see that the logo was standard though the name changed in all countries. From the outset we have been obsessive about the brand elements of Idols. We make available to all our format licensees, production assets from other productions such as the logo, the theme music, the opening title sequence, etc. I remember

when Idols went to Poland, the production made there was so outstanding in terms of logos, music, titles sequences, etc., that such production values hadn't ever seen before there. Locally produced shows couldn't generate that kind of productions because of cost issues. So, here was this incredibly glossy and world class framed and branded show in a country which had never seen it before; plus it allowed it to be done at a price suitable for that country. So that's another element that we can provide outstanding good value for what you pay and what you get to broadcast on your screens is better or glossier than locally generated productions. That's started with Millionaire and you will see the same with most of the shows that have travelled. So the branding elements can change the way the name can change but we do try to be very obsessive about key branding elements – and we mandate that territories do not change the key branding elements.” EVP, Commercial & Business Affairs, Fremantlemedia

“A strong brand has several benefits – it can leverage a whole host of products. Not only opens various revenue opportunities but also embeds the products in people's lives and feeds back to make audiences loyal to the show audiences loyal to the TV show.” EVP, Commercial & Business Affairs, Fremantlemedia

Discussion

Having mapped the patterns of exploitation strategies, three groups of responses emerged, each combining legal and non-legal means of preventing copying.

The first group may be characterised as the attempt to formalise knowledge, so that it can be transacted. Many respondents spoke of know-how, knowledge that resides so-to-speak, not on screen but behind the camera: how to source contestants, how to involve audiences, where to place the lighting, how to pace a series. All these elements are laid down in the 'production bible', supplied under confidentiality agreements, implemented by flying producers, and supported by raw production elements (such as music and graphics). This first group of strategies covers patterns 5 and 6.

The second group takes its lead from the discipline of marketing. It involves floating possible formats through tape sales of original language productions (pattern 7), localisation of format elements (pattern 10), and crucially, constantly evolving the brand which becomes harder to imitate as a moving target. Merchandising and other product tie-ins also fall within this group (pattern 11). The use of trade mark law to protect the image of a show linked to titles and logos is the complementary legal strategy.

The third group relies on strategies that are well understood in the context of media economics. If distribution structures enable a speedy roll out, using local production bases, an early format can become a 'category killer', leaving little space for competing shows in the same genre (pattern 4). Also relying on the structure of distribution networks are strategies that conceive of social norms as sources of incentives (in the tradition of the law & economics literature). Deviant

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producers will face reputation sanction in the context of trade fairs (patterns 2 and 9), and may no longer have access to content they desire (pattern 8).

Underlying these groups of strategies are two more generic competences. The first relates to the gathering of market intelligence, ability to spot trends, as well as responding to copying by putting deviant producers on notice (pattern 1). The second is a sophisticated in-house legal competence that enables elements of all three groups of strategies. Producing non-disclosure agreements, contracting over production bibles (pattern 5), logos and trade marks (pattern 11), instigating mediation, and drawing up deterrent letters (pattern 3).

The patterns identified can provide the basis for developing a model of business strategies in information markets characterized by absent or unenforceable intellectual property rights. Why pay when you can copy for free?

Idols in emerging economies

We conclude this case study with a brief look at *Idols* in emerging economies.

The research found that format sellers are experiencing an interest in local content for local channels. This is having a positive effect on the growth in the format market in emerging economies.

“If you go back 10-20 years then channels around Asia were happy to take finished content from various parts of the world and put it on their channels but they have all moved on since then. And they really want content in the local language with local personalities reflecting local cultures. But they still want great ideas – so taking a format from somewhere else that’s worked very well and adapting it in the local environment with local celebrities is one way of coming up with easy content. The market is definitely growing.” Regional Director – Asia, Large Format Distributor.

Although developing countries are often considered to have weaker systems of intellectual property rights, in the format trading world, emerging television economies are better at observing format rules. They are at the early stages of television development and do not shy away from buying successful television properties and pay for technical know-how to grow faster than their local competitors. They also do not wish to alienate large format and television players in the world television market. Still, some format players view emerging economies with an eye of suspicion – linking, mistakenly (as we have shown),

the status of the regime of intellectual property rights with successful protection of a format.

“We are always working on exploiting formats in emerging markets. We have started selling a lot of formats in Russia, Indonesia, etc. In certain territories there are problems to exploitation because our formats are not yet suited to those markets. For example, it is difficult to break into some Asian countries such as Korea and Japan because culturally they respond to different types of formats and have started looking within their own region. In Latin America, telenovelas are still very strong. Hence, Europe is still the most important market for formats.”

EVP, Worldwide Distribution, Large Format Distributor

“Emerging economies generally are better at observing format rules – they are happy to buy successful television properties and pay for technical know-how to grow fast and not alienate any players in the market – especially big ones such as Fremantle. Unusual territories which have worked well for us have included Khazakstan and Vietnam.” VP, Partnerships, Fremantlemedia

Although the Latin American continent has a huge television market and potential, formats as understood in the rest of the world do not succeed here compared to the rest of the emerging economies. Telenovelas and other local drama still dominate the schedules and there is no sustained tradition of entertainment formats. In fact, many Latin American companies, such as Telefe from Argentina and RCN from Brazil can be seen in trade fairs across the world

selling telenovela formats – this niche has appeared relatively recently in the formats world. Some Western companies such as Bavaria Film and Television (from Germany) are seen to compete with the Latin American companies in this particular niche of the industry.

The *Idols* format was sold to Latin American in a unique way. Fremantle, who own the rights to *Idols*, was already producing a similar format called Pop Stars in a few countries in South America. Since the continent tends to lag a few years behind the rest of the world in the exploitation of big budget formats, the company did not want to cannibalise an existing format that they had on air. To avoid any direct competition between their own formats, Fremantle decided not to launch *Idols* on any large terrestrial channel in any one particular country in South America but on Sony's satellite channel. This channel had a good reach in all satellite connected households throughout the continent and that led to three seasons of the Latin American version of *Idols*. Geolinguistic unity of the entire South American continent was a factor which helped create one version of the *Idols* format, making it the first live pan-Latin American format.

There are economic problems in selling formats to some emerging markets.

“The problem in Latin America for formats is mostly money. Argentina make their own programming but they pay very very low rates. Colombia pays a bit more where we have had five series of X factor and now have started making Hole in the Wall. Besides these, there is really not anywhere that you regard as a

territory that can make such a programme – Chile, Ecuador, Venuezula ... you can list some but none of them are big enough economically and historically, they don't put that kind of money into television production, so the barrier to selling formats in those places is that it's uneconomic for them to tour around the country and have a studio up for 10 weeks. They make much smaller programmes – you could sell them a quiz show when they could shoot 5 episodes in a day but not Idols or Got Talent where they shoot one in a week”.

SVP, Creative Partnerships, Fremantlemedia

Russia is an important emerging television format market for most format producers and distributors as it acts as a barometer of success in the entire Eastern Europe. If a format does not get a good response from Russian buyers at trade fairs or if it fails after being broadcast in the Russian market, this failure filters through to countries such as Lithuania, Estonia, Bulgaria, Ukraine and Georgia, affecting the format's prospect in the entire erstwhile Eastern bloc countries.

“Russia is a market where you need local knowledge – our mistake in the past has been to go and try to set up a production base without any local support. If we were to go back into Russia, we will try and go back into partnership with a local company.” SVP, Creative Partnerships, Large Formats Distributor

“We have sold most of our big formats into Russia but that is where our involvement stops. They don't really welcome the involvement of our flying producers. They send us little or no information on what they are doing and when they are doing it. They may go off format and create some more episodes and make some extra episodes. So, by not involving us, if Idols fails in Russia, it has knock-on effects.” SVP, Creative Partnerships, Large Formats Producer

“India is really opening up for us and a lot of our formats have been sold into India in the last few years and we are actively looking for how we are going to go back to create a set up in India.” EVP, Distribution, Large Formats Distributor

According to a senior manager at a large formats producer, there are times when the distribution strategy is faced with a unique challenge in an emerging economy. China was described as a case in point, where *Idols* which had travelled to most of Asia as local productions, could not be sold despite several attempts. The two fundamental obstacles to selling interactive formats, such as *Idols*, to China were – first the Chinese government's refusals to allow audiences to vote because they did not want to encourage a very high level of choice and participation and thereby a feeling of democratic engagement – and secondly, the problem of rip offs from several channels across the huge country.

“There are some issues with certain people in certain organizations maybe not understanding the value of intellectual property – I cant say we have not had any

problems at all. But I don't get worked up about it as much as folks in London might. We are used to the Chinese market – the answer is not just to sue someone because that will destroy all your relationships. The Chinese market is about knowing people and rolling with the ups and downs of the market. So if you just sue someone saying that you have pinched my idea – you will probably never do business in China again. Of course we value our IP and the way for us to be successful is to act in a commercial basis – we have to persuade people that it's the greatest thing and we have to work a good price for these ideas and make it happen. And that's the surest way to protect your idea in somewhere like China.” Regional Director, Global Entertainment, Large Format Producer

“We had sent a delegation to China in 2002 to learn about the market and particularly to sell Idols. The delegation didn't get a good response until we realised that the planned Chinese translation of Idols (This time you decide) wasn't a very good title to take to China! Plus, a programme on a popular Chinese satellite station 'Hunan TV' did a show called Mongolian Diary Yoghurt Super Girl. This was very similar to Idols and an enormous success – once that had happened, it was very difficult to sell Idols to China”. EVP, Worldwide Distribution, Fremantlemedia

The revenue model of formats in some emerging territories can also be different. For example, China has interesting business model for formats trading.

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“The business model in China is about receiving a nominal licence fee – which wouldn’t be much of an income but an acknowledgment that our IP does have value – then the sponsors pay for everything. What’s left over after paying for production costs is usually a significant amount which can be shared with the format owner partner. In Vietnam we have used major FMCG businesses who are in the territory to wholly fund the production and take the advertising around it by the spot, both the on-air sponsorship as well as off-air, a return for being associated with the biggest brands in the world on TV.” VP, Creative Partnerships, Large Format Producer

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Appendices

A1 Launch history of Idols, its territory titles and broadcasting channels.

Count	Territory/ Version	Title	Launch	Channel
1	UK	Pop Idol	October 2001	ITV1
2	South Africa	Idols	March 2002	M-Net
3	Poland	Idol	April 2002	Polsat
4	USA	American Idol	June 2002	FOX
5	The Netherlands	Idols	November 2002	RTL4
6	Germany	Deutschland Sucht Den Superstar!	November 2002	RTL
7	Belgium	Idool	January 2003	VTM
8	Norway	Idol	January 2003	TV2
9	Pan-Arabic	SuperStar	February 2003	Future TV
10	France	Nouvelle Star	March 2003	M6
11	Canada	Canadian Idol	June 2003	CTV
12	Australia	Australian Idol	July 2003	Network 10
13	Denmark	Idols - Ærlig jagt. Ægte talent	September 2003	TV3
14	Russia	Narodny Artiste	September 2003	Rossiya TV
15	Portugal	Ídolos	September 2003	SIC
16	Kazakhstan	SuperStar.KZ	September 2003	Channel 1 EurAsia
17	Iceland	Idols - Stjörnuleit	September 2003	TV2
18	Finland	Idols	September 2003	MTV3
19	Serbia Montenegro	Idol	October 2003	RTV BK Telecom
20	New Zealand	NZ Idol	February 2004	TV2
21	Czech Republic	Ěsko Hledá SuperStar		
22	Greece	Super Idol	February 2004	Mega
23	Turkey	Turkstar	February 2004	Kanal D
24	Croatia	Hrvatski Idol	March 2004	Nova TV
25	Indonesia	Indonesian Idol	April 2004	RCTI
26	Malaysia	Malaysian Idol	June 2004	8TV
27	Singapore	Singapore Idol	August 2004	Channel 5
28	Sweden	Idol	September 2004	TV4
29	India	Indian Idol	October 2004	Sony TV
30	Slovakia	Slovensko Hlada Superstar	October 2004	STV1
31	Armenia	Armenian Superstar	March 2006	Shant TV
32	Brazil	Ídolos	April 2006	SBT
33	South Africa (Afrikaans)	Idols	May 2006	kykNET
34	Latin America	Latin American Idol	July 2006	SET
35	The Philippines	Philippine Idol	July 2006	ABC5
36	West Africa	Idols West Africa	February 2007	M-Net
37	Bulgaria	Music Idol	February 2007	BTV
38	Estonia	Estonian Idol	March 2007	TV3
39	Vietnam	Vietnam Idol	April 2007	HTV7
40	Pan-Asia	Pan-Asia Idol	November 2007	RCTI
41	Pakistan	Pakistan Idol	January 2008	GeoTV
42	East Africa	Idols East Africa	April 2008	M-Net
43	Georgia	Geo Star	September 2008	Rustavi 2

A2 Interview protocol

Non-legal strategies for Exploitation & Protection TV Formats - Interviews Protocol

@ Sukhpreet Singh, Lead Project Researcher, Bournemouth University

❖ Non-Legal Protection and Exploitation – Marketing Strategies

- **Nurturing the format and corporate brand**
 - Depends on territory or country OR genre OR company size/resources available?
- **Brand innovation/ brand extensions/first mover advantage**
 - Depends on territory or country OR genre OR company size/resources available?
- **For-Buyer Promotions and For-Viewer promotions (B2B & B2C)**
 - Depends on territory or country OR genre OR company size/resources available?
- **Viral marketing / nurturing fans and support groups**
 - Depends on territory or country OR genre OR company size/resources available?

❖ Non-Legal Protection & Exploitation – Business networks, access control & other strategies

- **Power Relations & Clout**
 - Depends on territory or country OR genre OR company size/resources available?
- **Access Control & Confidentiality**
 - Depends on territory or country OR genre OR company size/resources available?
- **Trust and Reputation**
 - Depends on territory or country OR genre OR company size/resources available?

❖ Legal Protection – Copyright and other IP Rights

- **Are current IP laws robust for formats trading?**
 - Depends on territory or country OR genre OR company size/resources available?
- **Which IPR is most important?**
Copyright / Trademark / Confidentiality Agreements/ Passing Off/ Mediation
 - Depends on territory or country OR genre OR company size/resources available?
- **How often is your format copied from a legal point of view?**
 - Depends on territory or country OR genre OR company size/resources available?

❖ Any other strategies which help protection and exploitation of formats?

Respondent:

Company Affiliation:

A3 Links to study the format industry

Background Study to this Chapter	http://tvformats.bournemouth.ac.uk
Format Recognition and Protection Association (format industry body)	http://www.frapa.org
Wiki on <i>Idols</i>	http://idol.wikia.com/wiki/Idol_series

A4 Formats Business Glossary

Brand extensions	<i>Idols</i> provides an excellent opportunity for the owners to extend the brand into several different product categories: examples include <i>Idols</i> perfume, <i>Idols</i> car.
BRIC	Emerging economies of Brazil, Russia, India and China.
Copyright	A statutory right that protects automatically artistic and literary creations, including books, plays, images, music and films. All member countries of the World Trade Organizations have a standardised minimum level of protection. Television formats undoubtedly contain copyright elements, such as music, graphics, and the final show as a broadcast. However, there is no such thing as a television format right, protecting the idea behind a programme. Any producer is free to develop similar game, reality and talent shows. From a copyright perspective, the question is: how close a copy is permitted? Here, answers differ by jurisdiction.
Flying Producer	A consultant sent by the format owner to a production or licensing territory where a format has been sold. This consultant has previously worked on a successful version of the format and hence imparts knowledge for a successful show under production. Also acts as an enforcer for the format owner so that brand and other elements are not used inconsistently.
Format	A structured TV programme series with a predominant idea but expressed in distinct identifiable elements which can then be sold as a bundle to other territories.
Format Bible	A 'standard operating procedure' of the format industry; contains data according which the format may be produced, can have details on set design, logo usage policy, music to be used, costumes to be worn, hair cuts, suggested catchphrases, lighting system, camera angles, sourcing and types of contestants.
Format Brand	A successful format which carves out a name for itself in television audiences as well as television buyers and sellers at international trade fairs. Besides the name, the brand encompasses a set of values which help the brand to cross over to other type of product and service

Trading TV formats in the absence of IP protection

	categories when required.
Format Copycat	A television programme which is inspired by or is a crude copy of an existing format. Sometimes it can be co-incident but most times it is intentional, either because the copycat did not wish to pay the licence fees asked by the format owner or because it was unavailable (i.e. sold to a competitor).
Format Copycatting (also sometimes called Format Plagiarism/ Pirating/ Rip-off)	The act of copying a format or, in industry jargon, creating a copycat. In some cases, it can be as simple as recreating a format scene by scene and situation by situation. But mostly, copycats change a few elements here and there, navigating the borders of copyright infringement carefully. 'Copycatting' may also be used to describe existence of a similar programme within the same format genre such as 'reality jungle knock-out adventure', 'dancing with celebrities', or 'knock-out business reality', whereas it may only represent the audience's popularity with a format genre with sufficient differences in formats.
Format Distributor	A company or individual who sells formats from other companies or individuals on a outright purchase/ resell model or a commission basis model since the latter does not have the marketing capability, market reach or similar capabilities. Some distributors are also format producers.
Format Owner	Someone who owns the format (may not be the original author who created the format on paper) but someone who invested in the creation of the first version and has been able to get assignment of all or most copyrights for the purposes of format exploitation.
Format Producer	A company or individual who physically produces a format to be broadcast on a TV channel. Some format producers also distribute their own formats and some also broadcast it, if they own a broadcasting platform (i.e. a TV channel).
Format Rights/ Format Licence/ Format Options	The right or option to recreate a format by paying a sum of money to the format owner. It also typically includes a detailed consultancy agreement regarding the implementation of the format. Bundled format elements may include theme music, logo, software, format bible etc. Formats may be bought by a format producer, a distributor or directly a broadcaster who wishes to recreate the format on its own. The right or the licence gives a permission to recreate the format whereas an option refers to a situation where a buyer buys only a waiting time period of, say a year, until which time the format owner will not issue a licence to a different customer within the agreed territory.
Format Series/ Season	A format may run stripped on a channel's schedule say from Monday evening to Friday evening, 1 hour a day; or it

Trading TV formats in the absence of IP protection

	<p>may be broadcast say Friday and Saturday evenings for 2 hours each. However, in big budget formats, it will last for 20-25 episodes in a block of time per year and then come back the year after – this constitutes a series or season. In low budget formats such as quiz or studio entertainment, the format may last longer or even throughout the year. Usually, producers like to take a break and return with an improved series, to keep the format brand afresh.</p>
Format trade	<p>The global buying and selling of formats, taking place either through established television company networks or at international television trade fairs such as NATPE (Las Vegas), MIPCOM (Cannes) or ATF (Singapore). The legitimate global trade in formats was estimated in 2004 to be € 2.4 billion (not counting the alleged format copycatting).</p>
FRAPA	<p>Format Recognition and Protection Association - a global body of format producers. It claims to maintain a registry of formats and has mediated between parties format rights disputes.</p>
IPR	<p>Intellectual Property Rights, an umbrella term used since the 1960s to describe a group of legal rights to intangibles, such as patents, copyright, trade marks, design rights and confidential information. Intellectual property (IP) is also often used as a rhetorical device, claiming ownership to something that does not fall within the meaning of a statutory concept.</p>
Licensing Territory (also see Production Territory)	<p>Where a format distributor simply provides the licence to a territory buyer (plus other format properties as well as some consultancy depending upon the agreement) to recreate the format but does not get involved in actual production. This categorization is applicable only to some large producers cum distributors of formats.</p>
Merchandising	<p>When the format brand in a certain territory is licensed to off-screen properties such as perfumes, cars, children's items such as bags, water bottles and pencil boxes, and other consumer goods. Such goods benefit from the increased awareness of the format in a certain territory at a given time and hence pay a merchandising fee to the format owner to use the format brand name.</p>
Phone-in revenues	<p>One of the reasons why a format is attractive to broadcasters is that it opens up multiple revenue opportunities besides the traditional advertising revenues. Phone-in revenues is that type of revenue because the opportunity for that is opened up by interactive formats such as <i>Idols</i> where audiences are encouraged to vote in or vote out their most favourite or least favourite contestant</p>

Trading TV formats in the absence of IP protection

	of a format episode.
Production Territory (also see Licensing Territory)	Where a format distributor also acts as the producer (besides getting the licence fees from a territory's buyer for the use of the format). Being the producer provides considerable efficiencies and synergies to the format distributor. This categorization is applicable only to some large producers cum distributors of formats.
Re-versioning	Different from recreating of a format, re-versioning is not unique to a format and takes place in all types of finished television programming where it is slightly re-edited or re-cut (in industry parlance) when the programme is sold to a different territory. This is to take care of cultural differences (tonality, use of expressions, etc.) or legal requirements (product placements, nudity, etc.). Usually tapes of formats (when sold as finished programming) are re-versioned.
Tape sales	'Tape sale' is an industry term for acquiring a licence to broadcast a show in the original version. Broadcasters are able to buy the finished taped version of formats, such as American Idol, at the fraction of the cost or organisation required to recreate a format. This also acts as a testing ground to see the acceptability of a programme idea in a different territory while at the same time stimulating market demand before investing a large amount of resource into format recreation.

Endnotes

¹ Format programme names and logos may be protected as trade marks (whether registered or not) and by related trade description laws.

² Fremantlemedia internal presentation (2008) titled 'Travelling Formats World Report 2008'.

³ Dispute details available in Bournemouth's TV Formats Dispute Database, available from <http://tvformats.bournemouth.ac.uk>

⁴ American Idol achieved high ratings across the globe, probably due to the popularity of Western music, and high production values and relatively low cost compared to other local programming. Broadcasters bought the finished taped version of American Idol at the fraction of the cost of creating a new show and hence this acted as a testing ground to stimulate market demand. ['Tape sale' is an industry term for acquiring a licence to broadcast a show in the original version. See Appendix A4 for definitions of technical terms used in this case study.]

⁵ The various Idols logos can be seen at <http://tvformats.bournemouth.ac.uk>

⁶ In research reported elsewhere, the authors undertook a collection, indexing and systematic analysis of all reported format disputes over the last 20 years (since Green v Broadcasting Corporation of New Zealand 1988). This produced a bespoke database of format disputes. Certain key disputes as well as statistical observations are available from the website of the ESRC project: <http://tvformats.bournemouth.ac.uk>

⁷ Source Fremantlemedia graph titled 'Top Global Formats 1997-2008'

⁸ During the mid-1990, the UK Department for Trade and Industry conducted a consultation that eventually rejected the introduction of legislation for programme formats (Bridge and Lane 1996; Rose 1999).

⁹ The interview protocol is attached as an appendix (A2).