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The Protection of Television Formats:

**Intellectual Property
& Market based Strategies**

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The Protection of Television Formats: Intellectual Property and Market based Strategies (by Sukhpreet Singh)

Abstract

Television formats have become a major export product, with Britain alone accounting for nearly half 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 research analyses the paradox of growth in the international trade of formats in the absence of any legal solutions which provide precise and enforceable governance.

The research first assesses the limits of copyright law as a means of protecting formats, by creating a bespoke database of 59 format disputes reported in the trade press and in online services. Disputes are categorised by jurisdiction, ground of dispute and decision or settlement. Secondly, theoretical propositions of format protection are developed, based on theories from the diverse fields of cultural theory (production of culture perspective), marketing (brand identity, innovation and extensions) and media economics (distribution dynamics and scale of production). These propositions then are exposed to semi-structured interviews with format sellers at international television trade fairs, as well as senior managers at Fremantlemedia (a leading format originator and distributor).

The qualitative data is synthesized into a theory of format trade using IP and market based means of protection. Format developers appear to use three groups of strategies to exploit TV formats internationally. These are (1) Formalization and transaction of know-how (format bibles, flying producers, confidentiality agreements and access control); (2) Managing the brand (brand identity, localisations, brand extensions, innovation, trademarks); (3) Distribution dynamics and industry conventions (scale of production, social networks, retaliation, trade fairs).

This research contributes to original knowledge in media and cultural industries management by first empirically illustrating a recurrent, under-researched problem and then advancing a theory to understand industry behaviour to overcome the same.

List of Contents

1. Introduction.....	6
1.1. Overview of the thesis.....	6
1.1.1. Justification of approach	6
1.1.2. Derivation of interdisciplinary conceptual framework.....	8
1.1.3. Relationship between the three literatures.....	11
1.1.4. Structure of the thesis.....	12
1.1.5. Original contribution to knowledge.....	13
1.2. What are ‘television formats’?.....	14
1.3. Global trade in formats.....	15
1.4. Format industry structure and dynamics.....	18
1.4.1. Distribution systems.....	19
1.4.2. Emerging economies.....	20
1.5. ‘Format copycatting’ or ‘format imitation’.....	21
1.5.1. Uncertain legal protection of TV format rights.....	22
1.5.2. Varying forms of format copycatting	25
1.5.2.1. Genre variance.....	26
1.5.2.2. Creating copycat spin-offs.....	26
1.5.2.3. Failure to buy a licence	27
1.6. Towards protecting formats without IPRs	28
2. Literature Review.....	30
2.1. Introduction	30
2.2. TV formats and the ‘production of culture perspective’	31
2.2.1.1. Regulation and law.....	35
2.2.1.2. Markets	38
2.2.2. Conclusions from the ‘production of culture perspective’ ..	42
2.3. TV formats and marketing.....	43
2.3.1. Trade fairs - annual marketing rituals	46
2.3.2. Programme brand identity	48
2.3.3. Programme brand extensions.....	49
2.3.4. Programme brand & its channel fit.....	50
2.3.5. Producer’s corporate brand and reputation	51
2.3.6. Programme genre as a brand.....	53
2.3.7. Programme brand innovation	54
2.3.8. Producing nation as brand.....	56
2.3.9. Driving Fans through viral marketing of formats	57
2.3.10. Conclusions from ‘TV formats and marketing’	58
2.4. TV formats & media economics	59
2.4.1. Differentiating characteristics of media products	60
2.4.2. Media economic analysis of formats.....	64
2.4.2.1. Cultural capital and cultural discount.....	64
2.4.2.2. Comparative advantages	66
2.4.2.3. Principle of minimum differentiation.....	67
2.4.2.4. Distribution networks in format trading	68
2.4.2.5. Structure of format firms.....	69
2.4.2.6. Gatekeepers of formats.....	70
2.4.2.7. Contract theory and formats trade.....	72
2.4.2.8. Role of externalities.....	72

2.4.3.	Formats trading and the economics of property rights	73
2.4.3.1.	Economic costs of property rights	74
2.4.3.2.	Protection of expression, not ideas	74
2.4.3.3.	Protection against copying only, not duplication.....	75
2.4.4.	Economic alternatives to copyright law	75
2.4.5.	Conclusions from ‘TV formats & media economics’	76
3.	Methodology	79
3.1.	Aims and objectives	79
3.2.	Secondary research – trade journal review.....	80
3.3.	Study One (primary research) – content analysis	81
3.3.1.	Content Analysis codes	83
3.4.	Study Two (primary research) – semi-structured interviews .	85
3.4.1.	Interview protocol.....	87
3.4.2.	Interview respondent sample: purposive	88
3.4.3.	Interview analysis: coding-based pattern matching	91
3.4.4.	Set of open, axial and selective Codes.....	93
3.5.	Reliability, validity and trustworthiness of findings	94
3.5.1.	Reliability and validity of content analysis findings.....	94
3.5.2.	Trustworthiness of interview findings	95
3.6.	Limitations.....	96
3.7.	Ethical considerations	98
3.8.	Reflection on conducting an interdisciplinary research	99
4.	Data Analysis: Format Rights Disputes	101
4.1.	Bournemouth Format Rights Dispute Database 1987-2007	101
4.2.	Content analysis findings	119
4.2.1.	Taxonomy of format rights disputes.....	120
4.2.2.	Format disputes per country/ territory	121
4.2.3.	Format disputes year-wise.....	123
4.2.4.	Court case related and other statistics of disputes	124
4.2.5.	Rulings for / against claimants.....	125
4.3.	Conclusion from content analysis	126
5.	Data Analysis: ‘IP without IPRs’	128
5.1.	Preference for market based means to protect formats	128
5.1.1.	Legal remedies – when or not are they used?	131
5.2.	Information enhances protection capability	134
5.2.1.	Spotter’s network	135
5.2.2.	Proprietary & in-house information agencies	137
5.2.3.	Trade community relations	137
5.3.	In-house legal departments & ‘deterrent letters’	140
6.	Data Analysis: Market based Protection Strategies	145
6.1.	Confidentiality & access control	145
6.1.1.	Methods of maintaining format confidentiality	145
6.1.2.	Varying levels of confidentiality.....	149
6.1.3.	Challenges for maintaining confidentiality in formats	150
6.2.	Speed to market: first mover advantage	152
6.3.	‘Enhanced distribution network’ & ‘scale of production’	156
6.4.	Power play & retaliatory measures	162
6.4.1.	“Play by the rules or be blocked out.”	164
6.4.2.	Format tape sales	167

6.5.	Production consultancy.....	169
6.5.1.	Format bibles.....	172
6.5.1.1.	Format bibles protect formats.....	174
6.5.2.	Flying producers system.....	175
6.5.2.1.	Sheriff’s men or cultural imperialists?.....	177
6.6.	International television trade fairs and markets.....	180
6.6.1.	Trade fairs may be grounds for copycatting.....	185
6.7.	Industry conventions that mimic social norms.....	186
6.7.1.	Reputation.....	188
6.7.2.	Gentleman’s agreements.....	191
6.7.3.	Shame.....	192
6.8.	Localisations.....	195
6.8.1.	Cultural localisations.....	197
6.8.2.	Visual localisations.....	200
6.8.3.	Nationalistic localisations.....	200
6.8.4.	Business-based localisations.....	202
6.9.	Managing brand identity, extensions & innovation.....	204
6.9.1.	Understanding the format brand.....	204
6.9.2.	Evolving and nurturing the format brand.....	207
6.9.3.	Ancillary benefits of branding formats.....	208
6.9.4.	Format corporate brand.....	211
6.9.5.	Nation branding benefits to formats.....	212
6.9.6.	Format branding protects from copycats.....	215
6.9.7.	Promotions establish originality.....	216
7.	Data Analysis: Protection through Registration Systems.....	220
7.1.	FRAPA and its effectiveness.....	220
7.1.1.	FRAPA in decline?.....	223
7.2.	Other registration systems.....	225
8.	Data Analysis: Formats in Emerging Markets.....	227
8.1.	Emerging markets are fertile for formats.....	227
8.2.	Less copying in emerging markets.....	228
8.3.	Trading formats in China.....	233
8.3.1.	Misconceiving format rights challenges in China.....	234
8.3.2.	Format business style in China.....	236
8.4.	Formats in Russia and Eastern Europe.....	239
8.5.	Formats in India (including pan-Arabia).....	241
8.6.	Formats in Latin America.....	244
9.	Conclusion.....	247
9.1.	Link of key findings with literature.....	247
9.1.1.	Formalizing and transacting know-how.....	249
9.1.2.	Managing the brand.....	250
9.1.3.	Distribution dynamics & industry conventions.....	254
9.1.4.	Information gathering & in-house legal capabilities.....	258
9.2.	Theory of TV Format Protection and Exploitation.....	259
9.3.	Areas for future research.....	264
10.	Original and Wider Contribution to Knowledge.....	266
10.1.	Original academic contribution.....	266
10.2.	Research funding.....	267
10.3.	Publications and dissemination of findings.....	268

10.4.	Research papers at key conferences	269
11.	Appendices	270
11.1.	‘TV formats and the production of culture perspective’ – graphical representation	270
11.2.	Interview protocol.....	271
11.3.	Sample transcribed interview.....	272
11.4.	Screen-shots of popular international formats	279
11.5.	Chronological launch of a popular format (Idols)	280
11.6.	Example of ‘Member Checking’ Correspondence.....	281
12.	Glossary	282
13.	List of References	286
13.1.	Academic:.....	286
13.2.	Cases Cited	299

List of Figures

Figure 1	Screen-shot of ‘Format Disputes Database’ Codes	84
Figure 2	Set of open, axial and selective Codes.....	93
Figure 3	Descriptive observations from content analysis	119
Figure 4	Types of format disputes.....	121
Figure 5	Format disputes per country	122
Figure 6	Format disputes year-wise.....	124
Figure 7	Comparison of disputes ‘ruled on’ and ‘decided on’ copyright ..	125
Figure 8	Percent of court rulings favouring claimants or defendants	126
Figure 9	Theory of TV Format Protection and Exploitation	260

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1. Introduction

1.1. Overview of the thesis

This research attempts to solve a conundrum faced when trading a unique mass consumed cultural product – a TV format. On one hand, the international trade of formats is growing fast (see section 1.3), on the other hand, format imitation (‘copycatting’, in the industry jargon) continues around the world (see section 1.5). The format industry sees format imitation¹ as a challenge to exploiting their investments which results in losses to its legitimate trade in format rights. It, therefore, on one hand supports the demand for expansion of relevant intellectual property laws to curb format imitation, but in practice it does not depend upon legal solutions to overcome this problem. A resulting proposition is that if current intellectual property laws are not able to protect TV producers against formats imitations, ‘something else’ is helping their trade to grow. This research is concerned with synthesizing that ‘something else’.

1.1.1. Justification of approach

On the face, this appears to be a research problem arising from the legal discipline however it is not possible to solve it within the discipline (as seen below) given that law applies rules and rarely offer explanations. *“Legal facts do not speak for themselves, because concepts need to be constructed and because the process of concept construction needs to be theoretically informed”*, (Adler 2007). It follows that legal research needs to take account of the cultural, social and economic context of law. This helps not only to advance theory but to deepen understanding, and inform and evaluate policy. Hence, one needs a wider academic lens to situate the

¹ The author defines imitation (referred to as *copycatting* in the format industry) as entirely re-making or independently duplicating a formatted show without authorization of the original creator. This is opposed to *copying* which simply means making an infringing copy of a finished programme (which

problem of ‘growing trade despite format imitation’ – a lens which understands law as a part of a wider and open system, not a closed one.

In the past 30 years, several commentators (Meadow 1970; Day 1978; Fine 1985; Lane 1992; Sharp 2006; Hinton 2006; Klement 2007; Logan 2009) have identified the problem of format imitations, all of them studying formats through the prisms of the legal discipline. Assuming that inability to legally protect formats will lead to a failed market for these products, the commentators either blamed courts for not being able to adjudicate format rights disputes (by applying existing statutes or legal conventions) or advocated a *sui generis* format right, similar to copyright, to protect formats from being imitated (Lane 1992). However, most were unable to see that though format imitation may be a challenge to existing law in most parts of the world, the format industry had already created mechanisms whereby it was able to increasingly trade in formats.

Moreover, the growth in format trade (as well as format imitations) led to some industry initiated methods to understand and solve them, again from a formalized and regulatory paradigm. For example, in the mid 1990s, the then *Department of Trade and Industry* (DTI), precursor of the *Department of Business, Skills and Innovation* (BIS) of the Government of UK, had approached the UK IP Office for a *sui generis* ‘format right’. The government refused to initiate a bill in the parliament to provide any statutory solution to format rights, viewing the problem as one which could be solved either mutually or contractually by the format industry. In the year 2000, an international trade body, called FRAPA (or Formats Rights and Protection Association), was instituted with the express aim of countering worldwide format imitation. It represented many large formats producers and distributors but for many years thereafter (i.e. until the mid 2000s), format imitation disputes continued to be reported from around the world, particularly in areas such as Western Europe where FRAPA claimed to be

can lead to ‘piracy’). *Reversioning* refers to using the same show’s content but editing it to suit a certain target market.

most active. This also showed that legal solutions were not working to solve the conundrum of formats rights.

1.1.2. *Derivation of interdisciplinary conceptual framework*

Owing to the justifications put forth in the previous section, the researcher proposed to study the increasing trade of formats despite format imitations, not only from within the legal discipline, but from a wider academic lens. The research design draws on disciplines beyond law such as cultural theory, marketing and media economics. It may be noted here that the area of '*international trade of broadcast media*' is not yet adequately theorised with no established situating or grounding in academic studies. It is in the terrain referred to by Cottle (2003 cited in Kung 2008, pg 1) '*in between the economic determinations of the marketplace and the cultural discourses within media representations*'. Thus, the researcher could have chosen to conceptualize the research within any existing field of academic study but this restriction would not have allowed the development of new explanations as achieved in this study.

As discussed in the previous section, on the face of it 'growing international trade of TV formats without a precise and enforceable regulatory framework', appeared to a legal problem. Upon closure introspection, however, it transpired as one which could be theorised through the lenses of economics, business or cultural studies. Thus, the researcher needed a wider academic situation of the research problem – a perspective which illustrated how cultural goods are produced or replicated by looking upon several key components (regulation, marketing and the firm's behaviour as understood in media economics) as part of a wider and open system. Thus, an interdisciplinary approach was utilized, where literature from three distinct bodies of academia was mobilized to form one hybrid conceptual framework.

Firstly, in order to understand how an object of culture, such as a TV format (and by extension its imitations) may be created, the researcher reviewed literature from cultural theory, a branch of sociology. Amongst the various theories concerning how culture is produced, the ‘production of culture perspective’ (Peterson & Anand 2004) provided one that concentrated and organized a wide range of research findings on production of culture, a topic of great interest in disciplines as varied as institutional economics, management theory and cultural policy since it dealt with issues such as the regulation of intellectual property and the making of markets. Here was an academic paradigm which understood law as part of a system and thus provided an apt theoretical framework for this research. Two facets from this perspective, namely ‘Regulation’ and ‘Markets’ provided an understanding how on one hand, certain regulatory structures such as copyright and other IP tools helped create television formats, while on the other, existence of conducive international markets aided their spread. Thus, the researcher chose this perspective as the first strand of literature to understand how objects of culture, such as formats and their imitations, are created. The Production of Culture Perspective conceptualises the research problem as one of structural constraints that incubate production of formats and their imitations, thereby providing the first body of literature.

Secondly, preliminary investigation of format rights disputes through television trade journals such as ‘Broadcast’ allowed the researcher to explore the industry participants’ perspectives and behaviour. Articulation of marketing strategies utilized in format trading was most commonly encountered in the trade journal literature. Therefore, the researcher chose to investigate academic literature from the marketing discipline to create marketing based theoretical propositions about format protection and then empirically examine them. Thus, in the second body of literature, theories such as the use of television trade shows to create a market for television programmes (Haven 2003), creation of a distinct brand identity and having a moving target (Kapferer 2000), and benefits of building brands (Reizebos 2003), provided another layer of the conceptual framework.

Thirdly, since format imitation is a problem of a scarce resource (i.e. a successful format) being exploited by an originator and a copycat both wanting to satisfy their wants, the researcher was led to consider economic perspectives to the international trade of formats. Efficiencies in allocating scarce resources could be understood only by studying economics literature. The media economics discipline is concerned with existing conditions of a market to meet the need of stakeholders by focusing on deployment of resources (Picard 2002). In other words, it explains how economic constraints govern functioning of media products. Here, theories of the unique characteristics of cultural goods (Caves 2000), cultural capital (Throsby 2003), distribution dynamics of media firms (Vogel 2007), economic alternatives to property rights approach (Towse 2008), and value chain of formats (Küng 2008), provided a media economics perspective to the conceptual framework. Thus, media economics – which deals with efficiencies of resource allocation in the production media and cultural products – became the third body of literature.

It is worth noting here that the process of derivation of the hybrid conceptual framework, created through a mobilization of an interdisciplinary literature, was one of iteration or repetition until a flexible enough theoretical framework for defining the research aim was met. The researcher was not aware in advance that these three distinct bodies of literature will be needed to conceptualize the research problem. On the contrary, the need for each body of literature appeared only when the researcher had exhausted trying to conceptualize the problem from one body of literature and thus, that became the starting point to evaluate another discipline. In this way, the researcher was also made aware of the inconsistencies which lay between the distinct disciplines being studied. The process of literature choosing, hence, became that of iteration, with constant tensions, and reconciling between different theoretical underpinnings.

1.1.3. Relationship between the three literatures

The aim of this research has been theory development, i.e. ‘creation of a theory of format trading in the absence of a precise and enforceable regulatory framework’. Existing bodies of literature, i.e. cultural theory, marketing and media economics, were mobilised for the purposes of understanding a problem and to create a hybrid conceptual framework which gave rise to an interview protocol. This interview protocol was exposed to data which eventually lead to the synthesis of 41 open codes which were then moulded into 15 axial coded results (see full list in Section 3.4.4). Thus, a new explanation of industry behaviour was generated and eventually this lead to a theory of format protection and exploitation. Hence, the relationship, between the resultant theory of format protection and the literature which informs it, is not linear or circular – it is coincidental that three bodies of literature result in three sets of strategies in the integrated theory.

For example, ‘format bibles and flying producers as production consultancy’ (under formalisation and transaction of know-how) were synthesized as emergent open codes i.e. which were not available on the interview protocol or on theoretical propositions from literature, thereby proving that the relationship between the literature and the resultant theory is not circular or pre-supposed.

To illustrate further, the theory of ‘cultural discount’ (Throsby 2003), found in the media economics body of literature helped to inform, through a synthesis of interview data, the ‘localisations’ strategy under the ‘managing the brand’ group of strategies, thereby proving that the relationship between the literature and the resultant theory is not circular or pre-supposed.

1.1.4. Structure of the thesis

In Chapter 1 (Introduction) the researcher provides a prologue of the format industry as well as definitions of key concepts. In Chapter 2 (Literature Review) he establishes theoretical propositions based on theories from the diverse fields of cultural theory, marketing and media economics (in ensuing chapters, these are exposed to semi structured interviews with format industry professionals for the development of a theory explaining formats rights protection and trading). In Chapter 3 (Methodology), the researcher justifies the methodology followed for the two studies in this research (Study One - content analysis and Study Two - semi-structured interviews) besides the method of analysis used to arrive at findings from both the studies.

In Chapter 4, containing Study One, the researcher assesses the limits of copyright law as a means of protecting formats, by creating a bespoke database of 59 format disputes reported in the trade press and in online services. In Chapters 5 through 8 (Data Analysis), containing Study Two, the researcher reports on findings from 41 semi-structured interviews conducted using an interview protocol developed from theoretical propositions identified in the three strands of literature. The discussion contained in these chapters evaluates the capabilities of format firms to establish an ‘IP without IPRs’ model of trading; the market based exploitation and protection strategies used in the industry; the use of alternative protection strategies such as global registrations systems; and how these strategies assist format developers in emerging economies.

In Chapter 9, the researcher draws on findings from the ‘Data Analysis’ chapters to synthesise a theory of format trade using IP and market based means of protection. Format developers appear to use three groups of strategies to exploit TV formats internationally. These are (1) formalization and transaction of know-how, (2) managing the brand, (3) distribution dynamics and social networks. In Chapter 10, the researcher details his

original contribution to knowledge by reporting on the actual and planned research dissemination activities (publications and seminars) besides an overview of relevant prestige measures arising from this research.

1.1.5. *Original contribution to knowledge*

The aim of this research was to fill the gap in knowledge created by the paradox of growing international trade of television formats amidst legal uncertainty about their protection. As explained in the previous section (and illustrated in the next section and in Chapter 4 ‘Data Analysis: Format Rights Disputes’), legal strategies of format protection leave an explanatory gap in trading of formats. This is filled with the development of an empirically researched theory of format rights protection and exploitation. The researcher first empirically evidenced the legal uncertainty of the protection of format rights by means of a content analysis resulting in a bespoke database of format rights disputes. Secondly, using empirical evidence from semi-structured interviews, the researcher developed a theory of format protection and exploitation. This theory, (1) formalization and transaction of know-how, (2) managing the brand, (3) distribution dynamics and industry conventions, fills the gap of understanding the growing international trade of format rights in the absence of a precise and enforceable legal regulatory mechanism. In summary, a *‘theory of format rights protection’* and a *‘formats rights dispute database’* are original contributions to knowledge.

From a policy point of view, the *‘theory of formats rights protection’* questions assertions that proprietary legal rights of protecting cultural goods are the best way of ensuring competitiveness and growth of cultural industries. Using the case of television formats, the researcher has demonstrated that alternatives to proprietary legal rights (such as formalizing know-how, localizing brands, distributing effectively and shaping business norms in social networks) can enable businesses to thrive in environments where intellectual property rights are either non-existent or

not fully enforced. Contained in this thesis, the ‘IP without IPRs’ model shows empirically that alternatives to strong IP protection can help cultural industries flourish. The empirical evidence generated in this research also forms the basis for research papers and other research dissemination activities (evidenced in Chapter 10).

At the same time, the *‘theory of formats rights protection’* also lays the foundation for format developers from emerging economies to position their business strategies for competitive advantage. Particularly as cultural industries grow and cultural exports become a strategic focus for governments in emerging media economies such as China, India, Russia and Latin America; the theory developed in this research, along with the *‘format rights dispute database’* will be of great use to cultural industries in these countries.

1.2. What are ‘television formats’?

Television programmes are exchanged as cultural objects in most parts of the world today. Of the numerous types of television programmes bought and sold in global markets, popular ones include sitcoms (or situational comedies), sports and business news programmes, family dramas (or telenovelas), and the now ubiquitous television ‘format’ in various genres of reality, factual, game-show, and quiz. Moran and Malbon (2006, p.20) define a television format as that set of invariable elements in a programme out of which the variable elements of an individual episode are produced. Fundamentally, formats constitute processes of systematization of difference within repetition, tying together ‘television systems’, ‘national television industries’, ‘programme ideas’, ‘particular adaptations’, and ‘individual episodes of specific adaptations’ (Moran and Keane, 2004, p.200).

Television formats are increasingly being traded internationally. If a television programme is successful in one country’s TV market, its format or

its 'set of invariable elements' is sold the world over, keeping the core idea and structure same but localizing according to cultural tastes and sensibilities. Though formats can be created in any genre of programming, popular ones tend to be game, quiz, reality, and factual where localization does not tend to take away the essence of a programme. An early example of a television format was a quiz show titled Spelling Bee, first aired by the BBC in 1938 (McQueen 1998 cited Casey et al. 2002). More recent examples of formats include game shows (Who Wants to be a Millionaire; The Weakest Link), reality TV (Big Brother; I am a Celebrity; Wife Swap), entertainment (Pop Idol; X-Factor; Strictly Come Dancing) and factual programmes (Grand Designs).

1.3. Global trade in formats

The first ever study of global trade in television programming was conducted by Nordenstreng and Varis (1974 cited Harrington & Bielby 2005) where they provided evidence of a worldwide dominance of TV programming emanating out of the United States. They identified that the preference of importing markets for US made entertainment showed a form of cultural imperialism in reception markets.

The above laid the foundation for other studies, which sometimes disagreeing with the notions of cultural imperialism, also looked at why and what types of television programmes are sold internationally (Hoskins and Mirus 1998; Sinclair & Cunningham 2000; White 2003 cited Harrington & Bielby 2005). Market dynamics of certain countries – such as availability of a large domestic television audience in USA which helped American producers recoup initial costs and allowed them to sell their programming worldwide at throwaway prices – had worked tremendously to the advantage of some television producing nations. Similarly, others argued that globalization led to a homogenization of culture, putting forward the emergence of 'geo-cultural markets' based on regional interests, former colonial alliances and changing patterns of immigration (Straubhaar 1997

cited Freedman 2003, p.26). Similarly, television products seemed to travel well in similar geo-linguistic markets such as Spanish programmes finding a ready market in Latin America or Indian television finding popularity in countries with a high sub-continental² population (Wildman and Siwek 1988; Sinclair, Jacka & Cunnigham 1996; Ray and Jacka 1996).

Global formats were identified as offering sufficient universal thematics in genres such as sport, nature, children’s programming, science, and for-gain competitions, all of which easily travelled or flowed internationally. This flow, however, occasionally needed tempering with ‘cultural screens’ of scheduling, product development or localized promotion (Cunningham and Jacka 1996) – varied aspects of marketing activities. Bellamy and Chabin (2002) argued that while the fundamentals of the marketing process were becoming an understood common language among industry professionals, the recognition of and reaction to cultural differences had already become an integral component of international television marketing. Others looked at why certain countries are better at television exports than others. Olson (1999 cited Havens 2003) found that American television exports benefited from a cultural “transparency”, brought about by the diversity, competitiveness and geographic concentration of the domestic market, and this transparency helped the export potential.

From a viewer’s point of view, Hartley (2006) pointed out that the reason why a programme was successful in a reception market was because it was already famous as a format in another market. He provided the example of viewers of Australia’s FOX8TV who were enjoying re-runs of America’s Next Top Model while trying out a locally re-versioned Australia’s Next Top Model. Thus, in the UK, the popularity of X-Factor, a format similar to the UK origin 'Pop Idol', can be attributed in part to the audience reinforcement created by re-runs of American Pop Idol, though the Idols format has stopped producing in UK.

² Sub-continent refers to the entire region south of the Himalayas, politically bounded by countries such as India, Pakistan, Afghanistan, Bangladesh, Nepal, Bhutan and Sri Lanka.

Above all, the worldwide increase of format trade makes for an interesting observation. Although a steady business in television programmes existed for decades (Moran & Malbon 2006), some developments hastened the international rise of formats. The use of franchising agreements and the worldwide trend to remove trade barriers on the whole, which allowed service industries to benefit from the globalization of their operations (McDonald et al. 2001), affected global TV programming. As seen previously, buying a successful and proven format from abroad is less uncertain and often cheaper than developing a new programme concept – especially if the original format has proved to be successful with viewers and recouped its initial investment in its home country; ready to be bought for a marginal cost.

The global trade in programme formats can also be credited to the efforts of international and domestic companies to deal with the resilience of national cultures (Waisbord 2004). In other words, when in Rome, do as the Romans do! Hoskins & McFadyen (1990) had argued that where linguistic, cultural or regulatory barriers prevented export of a pre-made television series, it was possible for the makers to “export the concept or format”. Sometimes formats are also seen as unintended by-products of non-tariff barriers to international trade – for example protectionist domestic regimes which controlled how much foreign programming was broadcast on their airwaves paved the way for successful international scripts to be remade with local talent (Wildman & Siwek 1988; Waisbord 2004).

Global format trade has been increasing by more than 10% per year (FT 2005) and current trade estimates are in excess of €9.3 billion or \$13.1 billion (Variety 2009). As early as 1999, BBC Worldwide, the commercial arm of the BBC, had created a ‘Format Factory’³ which year on year achieved high revenues, with format sales for 2006 closing at over £35 million (BBC 2006). 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 BTDA⁴. 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...”* (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).

1.4. Format industry structure and dynamics

At the outset it may be beneficial to justify that there is a lack of availability of industry background data of the format industry⁵. The researcher noticed several monumental changes in the ownership structures of the industry between the start of the research and the printing of this thesis. At several points during this section, as well as through the rest of the thesis, this point has been made. The intention of the researcher in this section is to provide a snapshot of how the industry exists when this thesis has been completed – in order to contextualise the results of this thesis.

The format industry is made up of format creators/ developers and distributors/ resellers of varying sizes, concentrations and representative bases around the world. On one hand, there are companies like 'Absolutely Independent' from The Netherlands that can be classified as pure distributors – they buy format rights from independent creators and smaller companies and then distribute option agreements, in other words a finite

³ There are indications of BBC Format Licensing existing as early as 1995 (Moran 1998).

⁴ British Television Distributors' Association (now merged with PACT UK).

period right to reproduce them in specific territories. Pure distributors do not engage in production leaving the buyers to produce these formats on their own, using sometimes third party producers, in their respective locations. On the other hand, there are companies such as Fremantlemedia Ltd. which are part of a bigger media conglomerate and have a stake in each stage of the format value chain. They benefit from their vertically integrated structures and functions, engaging in development, production and distribution of in-house as well as bought-in formats. Such larger companies prefer to produce their formats instead of only licensing format rights. Only in territories where they do not have a group production company do they consider selling a ‘format rights only’ licence for a broadcaster to have the format produced by a third party. Preference for format production helps them to exercise optimum control over the exploitation and protection of the format (as seen further in the analysis chapters).

1.4.1. Distribution systems

A trend towards consolidation of the format industry is noticed by the researcher (see section 6.4). Single format sellers such as Celador, whose popular format *Who Wants to be a Millionaire* was the company's flagship are either being bought over or are selling their inventory to specialized large distributors who can exploit and protect the format in a more effective way using their complex web of IP and market based strategies. Moreover, several niche format distribution companies such as the Canada based Distraction Formats have ceased to exist since the economic crises of 2008. Some big names in the international format sales are now part of large media conglomerates, for example King World International was assimilated into CBS Paramount Television in 2007. Hence, most popular formats nowadays are distributed by large international production houses such as Fremantlemedia, Granada Media, All3Media and RDF (based in the UK); Sony Pictures Television, CBS Paramount Television and Fox

⁵ For a historical reading of format industry structures, see Moran (1998).

Television Distribution (USA); and Endemol and Eyeworks (from The Netherlands).

The trade of formats is not symmetrically distributed across the globe. Historically, formats have originated in a Western European economies such as the UK or the Netherlands, travelling first to US and only when they have been successful there, travelling to emerging and other economies. Initially, all format distributors faced the challenge of convincing buyers of paying for format rights in whichever territory they intended to sell to. Even in a large and specialized television territory such as the US, pioneering Western European distributors initially found a cold response to their format sales (personal interviews, 2009). Only in the last ten years have formats emerged as the one of most traded programme types in global television business (personal interviews, 2009). The U.K. still leads in the number of exported formats, followed by the U.S., the Netherlands and Argentina (Variety 2009).

1.4.2. Emerging economies

Though Western European territories of UK, Germany, France and Scandinavia still constitute the biggest markets for the sales of formats, sales have also been growing in emerging markets, particularly in Asia and Latin America. A detailed analysis of formats in emerging markets is found in Chapter 8; here it can be noted that two key changes have precipitated this increase in business. Firstly it is the growing understanding amongst television broadcasters that audiences prefer to watch local content with local themes over foreign subtitled or dubbed content; and secondly, broadcasters in these territories looking to satisfy the need for local content continuously wish to outdo each other and look for the 'next big idea'. This gap in the demand and supply of 'good ideas which seem local' is filled by formats which can easily be localized to suit local needs.

Another reason why formats are becoming popular in emerging economies is that broadcasters here get access to pre-produced elements (such as theme music, set design, software) of a superior world class product without having to pay a lot for it. This is because format developers and distributors usually recoup much of their investment from larger television territories so that low paying emerging territories can access formats for a marginal prices – this works as a mutually beneficial situation.

1.5. ‘Format copycatting’ or ‘format imitation’

Since broadcasters increasingly looking for ‘sure shot’, ‘quick fit’, and ‘hit’ solutions in their highly competitive national television markets, formats provide them with a solution. Formats cost less time and money to produce than to create original shows from scratch and have usually proven their worth in another competitive television market. It is industry wisdom that formats are extremely popular with audiences and have in the last few years outstripped viewing figures worldwide for other forms of programming. Besides getting the broadcaster viewing figures and hence high advertising revenues, formats also have a high potential for merchandising, multimedia games, phone-in revenue and other brand extensions. These additional revenue streams further increase the allure of formats for broadcasters. This is evidenced by the huge sums of money paid by broadcasters in various territories or markets for a licence or option to an original successful format.

Owing to the above benefits which formats provide, some broadcasters and producers scan the world for format solutions. As there are low barriers to dissemination of information in the world today, format imitation becomes inevitable. Some broadcasters (or producers) wish to derive from and ride the wave of popular formats and simply change some elements of an original format before localizing it themselves without involving the originator and avoid paying a format rights licence fee. This leads to accusations of format imitation or copycatting in the industry.

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 imitation or unauthorized copycatting. For instance, RDF's ground breaking format *Wife Swap* was imitated in the USA as *Trading Spouses* and in Germany as *Frauentausch*. Further, there is UK's 'Pop Idol' and its best friend, 'X Factor' (Lyle 2006). None of these involved any fly-by-night producers; all were highly respected large TV organizations!

The situation could potentially be exacerbated in the fastest growing media economies of the world such as Brazil, Russia, India and China, where there is a suspicion in the industry that imitation takes place not only for programmes imported into the country but even locally produced programmes (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 majority of this growth has been forecast to be in BRIC⁶ countries.

1.5.1. Uncertain legal protection of TV format rights

Legally, cultural objects, such as television programmes, are protected from unauthorized imitation (and thereby unauthorized exploitation) by an internationally recognized and enforced regime of intellectual property rights. Through copyright, a creator of a 'literary', 'artistic', or 'musical' work or a 'film', 'sound recording' or 'broadcast' is provided exclusive attribution and an opportunity for sufficient exploitation of the work. Though the principle may apply to formats, in practical terms the issue is not so clear. There is no legal definition of a 'television format' and judges the world over in court cases involving formats have tended to see it as an overarching idea of a TV programme – not a unique creative expression capable of being protected by copyright. It may be noted that copyright law protects

⁶ BRIC is an acronym given to major emerging economies when discussed in international trade or finance literature. It consists of Brazil, Russia, India and China.

only the expression of ideas in their tangible form and does not stop other individuals to create similar, even identical, works through their own independent efforts (Bainbridge 2007, p.5). This, combined by the attraction of formats, as seen previously, can explain the phenomena of format imitation.

Since 1989, format makers such as Hughie Green (Green v Broadcasting Corporation of New Zealand, 1989⁷) have failed to protect their copyright in a TV format on the grounds that only successful expressions of creative endeavour attract copyright protection. With this precedence set in common law jurisdiction, format imitators have found it easier to imitate formats with the knowledge that an idea itself did not grant a legalised form of monopoly and hence copying a format was not an infringement of copyright law⁸.

Another UK court decision made the protection of formats difficult through the means of formalized regulation such as copyright law. *Norowzian v Arks Ltd.* [2000 EMLR 67] concerns the copying of a short film where a British producer – director alleged that a short film produced by an advertising company was an infringement of his dramatic work in a film which he had previously produced. The Court held that there was no copyright infringement as the film itself or the underlying dramatic work had not been copied, only the general idea of the film had been copied.

It is legitimate to ask the question why there has not been a coordinated effort for a worldwide format right, given the contribution of the industry to international trade. To understand this, one needs to understand the nature

⁷ In *Green v NZ Broadcasting Corporation*, the British television presenter Hughie Green objected to the unauthorised 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) and the Privacy Council in UK [(1989) 2 AER 1046] finally ruled that the ever changing format elements lacked the certainty and unity of a dramatic work. Green could not also bring a successful case of ‘passing off’ as his ‘Opportunity Knocks’ version was unknown to New Zealand audiences and he had not suffered any financial losses in UK due to the BCNZ’s version.

of a format and what constitutes format imitation. A format originator's feeling of being 'ripped off' or 'copycatted' emerges from the nature of a television format. Television programming is known in the industry to be derivative where originality of a concept is seen in degrees or levels. Small cosmetic changes made to a format can alter the show fundamentally, thereby raising the question of a format's rightful originator.

Moreover, the creative community's perception of a 'rip-off' is much wider than that understood by the legal fraternity. Legal personnel are trained to separate the levels of extraction of a format. For example, the difference between genre and format can be extracted at various levels. However, creatives and programme developers get inspired by other programmes because of television's derivative nature. Thus, disconnect between the creatives and the legal team exists when it comes to interpreting format imitation. Moreover, since small producers and distributors consist of creative and sales team with not much in-house legal expertise, they take a restricted view of format copycatting – considering all similar looking and derived programmes as copycats.

To illustrate the above, one can take the example of Fremantlemedia's *The Apprentice*, a business reality format first made popular by Donald Trump as the host of its American version. On the surface, any competing business reality show can be considered a 'rip-off' of *The Apprentice* by much of the creative community until several broadcasters in a market start creating their own individual versions thereby making business reality a territory genre. From a legal point of view, a business reality show can be considered a copy only if it contains several elements unique to 'The Apprentice' so as to resemble it very closely. Thus, elements such as having 16 contestants going through several rounds of tasks per week in which 1 celebrity business tycoon from real life, flanked by 2 assistants, judges the contestants to award the winner a prize of a job in the judge's

⁸ Although there have been some worldwide court rulings protecting formats, the grounds of claim have usually not been copyright but 'breach of confidence' or 'passing off'.

real life company, such elements may constitute a copy. Thus, owing to the fundamental problem in defining the exact point when a similarity becomes a copy, format producers and distributors have tended not to take suspected copycats to a court of law or approach law making bodies in their countries to make strict laws regarding formats. They have, instead, attempted to solve the issue using market based solutions so that potential copycats either stop producing suspected infringing copies or visibly shift their product away from a supposed original.

Similar issues exist for format producers from emerging television territories. In Asian economies, the situation is conflated by the fact not only some copycats copy fundamental elements from a popular format but they add various levels of localisations (detailed in section 6.8 'Localisations' of Chapter 6 'Data Analysis: Market based Protection Strategies') thereby rendering a format's locally produced version very different from the original. Similarly, for Latin American territories where telenovelas are the staple viewing diet of most South Americans, telenovela format producers assert that changing a single character from a plot changes the plot, which in any case are not protected by copyright law. Hence, the challenges for telenovela producers are similar to those of entertainment formats such as gameshows or reality television. In these situations, the recreated format effectively ceases to be an easily recognizable copy and hence originators/distributors cannot hope to take any legal action against the copycats, even if they wanted to. The copycat version can still reduce the chances of the licence of the original format being sold in that territory - this increases the need for business solutions and other market based forms of protection.

1.5.2. Varying forms of format copycatting

There is diversity in the forms of format copycatting. Some of these are discussed below:

1.5.2.1. Genre variance

Game shows contain specific elements, which the industry calls “*very highly formatted elements*” such as a type of set design, unique script or treatment, on-screen colours, sequence of events, rules and playing duration of a specific game, etc. Here game participants are usually be expected to behave in a certain number of ways. Such a format can be considered difficult to be copied because of the detailed level of abstractions achieved in the elements binding the format. An originator can easily spot a copycat if sufficient numbers of elements are not changed by the copycat.

On the other hand, reality formats provide a loose situational structure or a guideline within which reality participants are encouraged by producers to behave in unconventional ways and the attraction of the format arises out of ‘real’ interactions of participants, thus rendering reality formats easier to be copycatted owing to the difficulty to be aligned to predetermined structured elements. Though the resulting copied version may look different from the original, the originator considers their idea so unique that accusations of copycatting are made even when there are minor similarities between formats.

The above leads the researcher to surmise that when a format is so successful that it starts a new genre, copycatting is inevitable. For example, if there is a dining format successful after 10 years in a certain territory, then in 5 months the market will have 5 or 6 different dining formats trying to replicate the success of this newly emerging genre.

1.5.2.2. Creating copycat spin-offs

Some format producers devise novel methods to copy formats after accessing the production and technical know-how. After accessing

specialist format information such as the format bible and other assets (detailed in section 6.5 of Chapter 6 'Data Analysis: Market based Protection Strategies'), copycats create spin-off versions of formats. Though ideally the originator wishes that rights to any development in a format reverts to itself, in some cases, clever modification of contracts clauses by licensees allow them to distribute the spin-off version in territories other than the originator's and buyer's.

Interestingly, large format distributors tend to tolerate a one-off copycatting situation as long as the copycat is either in a commercially insignificant territory or if it promises not to distribute the copy to other territories, thus isolating the copy. This strategy provides the opportunity to the originator to continue distributing their format to high revenue territories without having to divert their resources to confront and contain a copy from a small revenue generating territory. The strategy, however, may emboldened copycats to distribute copycat version to further territories.

1.5.2.3. Failure to buy a licence

In some cases, format copycatting takes place because commercial pressures are high for a broadcaster who has failed to secure rights to a format despite bidding for it. So this broadcaster creates a copycat format in order to pre-empt and dampen a competitor's anticipated success using a licensed format.

The above situation was illustrated in a case format rights dispute involving Fox Broadcasting (USA) and RDF (UK). Fox had created *Trading Spouses* by copycatting RDF's *Wife Swap* because it lost a licence bid to the US broadcaster ABC. The industry did not consider this an attempt by a large broadcaster to unduly usurp property belonging to a small format producer as Fox was known to pay for formats. Several trade journals (and anecdotal evidence from the industry) led the researcher to conclude that commercial pressures may have contributed to this drastic step by Fox, a broadcaster

popular with originators and producers. Nevertheless, RDF approached a court of law in USA to seek legal redress but eventually entered into an out-of-court settlement.

1.6. Towards protecting formats without IPRs

Following the *Green v BCNZ* decision in the UK Privy Council (stated earlier in this chapter) that permitted copying and reproducing of programme ideas in principle, one could have argued for a decrease in the market for international television formats because there ceased to exist a legal requirement to pay for a television format. This would have led to a market failure in international format trade. Though there have been numerous instances worldwide of format ‘free-riding’ – where a format has been copied without buying any licence from the originator – sometimes leading to format rights disputes; evidence points to the steady growth of international format trade where formats deals involving multi-million sums of money are not unusual. For example, Celador’s format “Who Wants To Be A Millionaire?” which was first shown on UK’s ITV was licensed for seven figure sums to the US network ABC and German commercial broadcaster RTL. Dutch firm Endemol’s hit format ‘Big Brother’ in which contestants are locked under constant surveillance into a ‘container home’ has been ‘sold’ to many countries, including Britain’s Channel 4, Germany’s RTL2, Canadian CBS and the Indian channel Colours.

Investigation through semi-structured interviews with television industry representatives indicates that the legal uncertainty with protection of formats has led to the development of market based protection strategies to foster format trade. 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 formats from copycatting. Its response that “current laws provide adequate protection” and “a more prescriptive approach will create difficulties” effectively

illustrates that solutions other than legal ones are being favoured by the industry to protect and exploit formats internationally.

At the same time, alternative dispute resolution mechanisms such as ‘mediation’ also emerged as strategies to create a dialogue between format originators and suspected copycats. FRAPA is an industry organization which on one hand calls for a legal protection mechanism, but has in place an elementary format registry and has successfully provided mediation services for some high profile format rights disputes (FRAPA 2006) (analysis of FRAPA and its effectiveness in Chapter 7).

Furthermore, international media trade fairs have helped to establish elaborate protocols of format trading. Moran and Keane (2004, p.198) 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 in spite of 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 copying practices and industry vigilance.

2. Literature Review

2.1. Introduction

This chapter reviews theories and key concepts of literature investigated from three diverse disciplines, namely Sociology of Culture, Marketing and Media Economics, to lay a foundation for creation of theoretical propositions regarding television format protection and exploitation. These theoretical propositions were then empirically examined using semi-structured interviews with format industry professionals (details in Chapter 3 ‘Methodology’ section 3.4).

At the outset of this thesis, in section 1.1, a rationale was provided for utilizing theories from diverse disciplines to provide an academic conceptual framework for this research and to justify how they integrated with each other for the purposes of this research. The first of these theories, the production of culture perspective (Peterson and Anand 2004) from the sociology of culture discipline, is contained in the first strand of literature, reported hereafter. In development since the 1970s but published in its current form only in 2004, this theory has been used by researchers from varied fields such as literature, anthropology, geography and music besides the likely fields of sociology and management. It has had impact on all academic disciplines that it has touched, with consistent citations over the years estimated at 45 peer reviewed literary works (as per the Social Science Citation Index (SSCI)). This is considered a good measure of academic acceptance and validity. Furthermore, the ‘production of culture perspective’ has helped to illuminate important cultural factors that affect areas such as regulation and markets. For example, it has become central to the debates over the deregulation of the media industries, the content of newspapers, TV news, and the scope of intellectual property in regulating media industries.

The second strand of literature in this chapter, from the marketing discipline, provides Kapferer's (2000) 'Strategic Brand Management' theory and Reizebos' (2003) strategic benefits of a brand building strategy.

Furthermore, one encounters Penaloza's (2001, cited widely i.e. 25 times since 2001 (as per SSCI)) work on stock and rodeo trade shows as facilitators of creating a market besides Havens (2003, cited 3 times as per SSCI)) application of this theory to international television programme trade fairs.

Finally, in the third strand of literature, Caves' (2003) invaluable contribution to media economic theory is investigated. Caves' special characteristics of cultural industries, especially his contract theory to drawing up creative contracts, indicate the use of reputation networks and retaliatory sanctions in enforcing creative contracts. Furthermore, Vogel's (2007) theories on cultural capital, distribution dominance of media firms and impregnable institutional capacity, further fortify creation of a conceptual framework from this literature review. The above cited literature is now reviewed in the following pages.

2.2. TV formats and the 'production of culture perspective'

TV formats are a form of popular cultural product. In order to understand issues connected with their exploitation and protection, let us look into the reasons why cultural products are produced. This allows one to gain an insight into the conditions which support or impede their trade. The theoretical framework which the researcher chose to study for such an insight is the 'production of culture perspective'. Broadly, the production of culture perspective attends to how forms and objects of culture are shaped by the systems within which they are created, distributed or preserved. The researcher establishes in this strand of the chapter that *'if production processes are aligned in a certain way, they will provide favourable or disagreeable conditions for a certain type of TV format to be created'*. Since copying is a form of creation, too, this will provide an insight into the

reasons behind imitation of TV formats. Understanding how imitations are created will help to understand how to contain such imitations, in other words protect formats.

First postulated in the mid-1970s, to understand the factors which facilitate the creation of cultural products, this framework has been revisited by the researchers (such as Peterson & Anand 2004) at the turn of the century and made relevant for cultural products created using today’s digital media. Simply put, it stresses that ‘constraints in production processes shape content’. In other words, “technical constraints” (how the nature of technology forms content, for example how the visual medium of television reshapes news to emphasize visually dramatic events), or “commercial constraints” (how profit or market orientation shapes the nature and content of popular culture, for example the division of network television into small bites surrounded by commercials) are the highlights of this perspective.

Attempts at understanding the production (and consumption) of culture, its constituents and its nature, can be traced to the mid-1940s work of two German philosophers of the Frankfurt School, Theodor Adorno and Max Horkheimer, who studied the “cultural industries”. Adorno and Horkheimer argued that cultural objects are produced in much the same way as other industries produce or manufacture objects; hence the production of popular music or cinema, for example, is not different from that of an assembly-line production of cars. The standardization of production, according to them, created standardized and interchangeable cultural objects, which lead inevitably to standardization of consumption. In this scenario, consumers are neither “active” nor creative, but instead are reduced to a homogenous, undifferentiated mass, responding to cultural objects in a predictable uniform manner (Negus 1997).

Other scholars moved away from these pessimistic beginnings in their efforts to use “analytical systems from the sociology of occupations and of organizations” to “see how social resources are mobilized by artists,

filmmakers, and the like to make cultural production possible” (Mukherji and Schudson 1991 cited Harrington & Bielby 2001). They did not suggest that the production of culture can be reduced to economics alone, rather that processes of production are themselves cultural phenomena and should be analyzed as such.

“We need to understand the meanings that are given to both the ‘product’ and the ‘practices’ through which the product is made” (Negus 1997). By empirically analyzing group dynamics, the interactional order, social networks, and organizational decision-making; this perspective attempted to situate popular culture in concrete and identifiable social and economic processes and institutions (Mukerji and Schudson 1991 cited Harrington & Bielby 2001). The overarching idea here was that not only physical means produce culture but culture in fact shapes production of these means; or to take a tangential example, not only organizational culture is influenced by the available resources and means of an organization, but the resource sourcing and means creation is influenced by the organizational culture.

In between the above two perspectives is the ‘production of culture perspective’, seen as a post-Adorno & Horkheimer thought which emerged in the mid-1950s and dealt with how the mundane processes of production shaped meanings and values, hence culture. For example, Mills (1955 cited Peterson & Anand 2004) pointed to the role of mass media in shaping America while White and White’s (1965 cited Peterson & Anand 2004) showed that the rise of Impressionist art in France was the result of the market created by Parisian art dealers and critics. Further, Hirsch (1972), commenting from an organizational setting, argued that new cultural items or ideas must first be processed favourably through a system of organizations, whose units filter out large number of candidates, before they arrive at the consumption stage. Finally, Peterson and Berger (1975) postulated that the degree of diversity in musical forms is inversely related to market concentration and that changes in concentration lead to changes in diversity of the music produced.

In the mid 1970s, the above thought peaked with the publication of a number of studies, in a variety of fields, all purporting in their individual ways, the notion that cultural production depended on a number of factors related to the activity of production and not just its intrinsic or aesthetic value. Heirich (1976) showed that revolutions in cultural understandings were impacted upon by scientific, artistic or religious modes of inquiry, market conditions for the dissemination of ideas, and shifts in social circumstance for the producers of culture. Crane (1976) demonstrated that scientific knowledge produced is a result of the reward system within an occupational community. DiMaggio & Hirsch (1976) furthered that to study art, it is important to study the organizations within which art is produced following from their assumption that the major issues in the sociology of art can be rephrased profitably in organizational terms. Hagstrom (1976) linked the subject matter of scientific specialities to the structure of research groups. Using network analysis, Kadushin (1976) showed that the systematic study of the properties of different social circles affects and is affected by the content and style of the ideas produced by members of the circle. Useem (1976), using three decades worth of data from the US, showed that government patronage or subsidy shaped cultural production to more nearly fit the government's own needs.

Bringing together all these works, Peterson (1976) established that

“...culture is deliberately produced, and unexplored commonalities in the production of art, science and religion can be revealed by overcoming several limitations to its comparative analysis”.

Production here meant the processes of creation, manufacture, marketing, distribution, exhibition, inculcation, evaluation and consumption.

All studies in the production of culture perspective focussed on the expressions and processes of culture, rather than its intrinsic value to

society; and by concentrating on such processes of production, the perspective showed that culture is situational and ever-changing (Peterson and Anand 2004). The updated version of this perspective, the first to appear in the 21st century in the sociology of cultural production, provides a comprehensive understanding of the production of cultural objects and symbols, explaining that cultural production depends upon unique facets of the production system, namely *regulation*, *markets*, technology, organizational structure, and occupational careers.

The research problem at hand, that of ‘growing trade in international *markets* of television produce in the absence of a precise and enforceable *regulatory* framework for its protection’, led the researcher to concentrate on these two of the five facets of the production of culture perspective to explain the conditions for creation of TV formats and their imitations. The immediate enquiry in this chapter concerns itself with ‘regulation’ and ‘markets’ which favour or impede TV format production.

2.2.1.1. Regulation and law

Formal legal systems, such as copyright, instituted worldwide through international treaties such as the Berne Convention of 1886 as well as international trade related bargaining powers between member states of the WTO pertaining to the tradable aspects of intellectual property, i.e. the TRIPs regime, provide favourable conditions for the production of some cultural objects. The economic justification of copyright, to provide an incentive to authors and publishers to create and publish cultural works by enabling them to control exploitation and thus recoup the outlays involved (Towse 2004) is well accepted.

“...copyright law transforms whole classes of creative activity into property that can be bought, sold, stolen and litigated about much like other goods...” (Peterson 1982)

It is established that copyright law is such a powerful regulatory mechanism that it can chart a specific development pattern of cultural artefacts and symbols. Griswold (1981) showcased how a lack of copyright protection for British and other foreign authors in America in the late 19th century made their works so cheap to produce and sell in the market that home-grown American authors found it difficult to compete with them in the same genre; deviating them from the prevalent literary norms of the day, to *“write on non-traditional themes that the European authors had not effectively monopolized”*⁹. Her conclusion was that the concept of literature-as-reflection must be expanded to include reflection of production circumstances, author characteristics, and formal problems as well as the preoccupations of any particular society.

Further, the use copyright law and the use of its ideology by record companies to defend themselves against technological and political threats to their incomes, has been documented by Frith (1988) and Frith and Marshall (2004).

“... Copyright provides the framework for every business decision in the industry. Who gets recorded? What do they record? How and where they are marketed? Who is allowed to use their song? Who makes money from that? Will this song be heard on the radio? Used on a TV commercial? Feature in the background of a cinematic film? ... Copyright, one might say, is the currency in which all sectors of the industry trade.” (Frith and Marshall 2004)

The role of copyright to exert censorial control over music has been forwarded by Greenfield and Osborn (2004), who after analysing case law and out of court settlements of derivative music works, concluded that

⁹ The content of the American novels of the late 19th century is dramatically different from those in the early 20th century, published after the introduction of the American Copyright Act in 1890 - which provided copyright protection to all domestic as well as foreign authors, thereby ensuring equitable returns for American authors as well, whose “novelistic imperatives took over and they swung back into line with everyone else”. Hence, copyright laws had considerable influence on the content of American novels.

copyright deters creativity, notwithstanding the traditional view that copyright promotes creative endeavour by acting as an incentive.

“Given the existence of intellectual property rights, future uses of musical works can be fettered on the grounds that someone own the original and can therefore control their reuse” (Greenfield and Osborn 2004).

Since laws are simply not imposed from outside but parties involved in the production process regularly lobby for or against particular regulatory frameworks to have statutes strictly enforced or ignored as it fits their own financial agendas (Peterson 1982), there is a growing opposition to provisions of the TRIPs related intellectual property rights instituted through the world today by WTO. Developing countries (including several emerging economies) feel that IPRs as they exist today are a result of lobbying efforts of corporations based in developed countries who own objects of intellectual property including cultural objects. As such many provisions of the IPRs begin to show a curtailing effect on aspects of cultural production, especially with works containing musical parody, re-mixing, sampling and layering.

On a macro level, some organizations are working on initiatives such as fair use of knowledge for education and criticism and for protection of indigenous knowledge. On a micro level, other organizations have come up with innovative ‘copyleft’ solutions such as the GPL (General Public Licence) and Creative Commons to mitigate the negative overbearing effects of regulation on cultural production. The argument is taken further by authors who say that not only creativity is at risk of being controlled by the use of laws but in effect that locks down cultural production and development.

“... free culture ... is a balance between anarchy and control. A free culture, like a free market, is filled with property. It is filled with rules of property and contract that get enforced by the state. But just as a free market is

perverted if its property becomes feudal, so too can a free culture be queered by extremism in the property rights that define it.” (Lawrence Lessig 2004)

A further literary analysis of intellectual property rights that affect international trading of formats is provided in the third strand of literature under the media economics discipline (see section 2.4.3).

2.2.1.2. Markets

For every scholar who derides the notion that cultural production can be modified by being involved with a ‘market’ (such as Adorno and Horkheimer in the 1940s), there are others who suggest that optimum cultural production does not even take place without the involvement of a market.

On one hand, an emphasis on macro-structures of ownership informed anxieties about the globalization of cultural production and distribution during the 1980s and 1990s, thereby making Adorno and Horkheimer relevant once again. On the other hand, the very existence of ‘markets’ playing an important role in the success of popular cultural products was documented (Bjorkegren 1996; Colbert 2000). The extent of ‘massification’ of popular cultural - in other words it’s diversity and innovation available to the public - was shown to do more with the market structures and organizational environment of its producers than with the demands of either the masses for certain kinds of homogenous cultural materials (DiMaggio 1977). In other words, availability of mass culture is a direct effect of markets getting involved in culture. Peterson and Berger (1975) argued that the market structure of an industry and its seller’s concentration determines the degree of control over the market that firms hold and the certainty of managers that their products will be sold. Therefore, the availability of ‘markets’ where cultural producers can showcase their wares to prospective consumers is an important facet of the production of culture perspective.

This can help determine if cultural artefacts are incubated to be produced further or not.

The market has been examined as having an influence on the inherent values of advertising, which can easily be construed as a cultural product satisfying commercial requirements. Hirschman (1989) studied the collaborative efforts among institutions and individuals required to generate advertisements. She found that to create advertising messages, clients and agencies collaborate by entering into a patronage based relationship, the structure of which had effects on the communicated messages. Some of the effects were; commercialization of the creative process i.e. messages were not valued in and of themselves, but for their effectiveness in furthering the aims of the client, imposition of monetary and time resource restrictions which may delimit technical quality or symbolic content, and, imposition of corporate values on the messages i.e. the political or social ideology of the paying client.

The effect of a market has also been studied in music. Negus (1999) gives an interesting account of how the creation or availability of a ‘market’ leads to the development of Latin music. When produced as early as the 1930s in countries such as Cuba, Mexico, South and Central America, Latin music was hardly ever considered a “niche” or specialist market for consumers within USA, despite the fact that the part of the US population with a Latin-American heritage had rapidly grown between 50s and the 70s. Most of this music was imported and sold by small and independent labels in the USA as “ethnic” music and sometimes was “re-exported” back to the regions. The economic blockade of Cuba by the USA after the 1959 revolution and instability in other Latin-American countries also hampered the development of Latin music in the USA. However, during the 1980s, major US music companies began considering the possibility that Latin-American nations might become “stable” or “legitimate markets” in the near future – their interest being primarily in terms of selling more “repertoire” in Latin America and extracting further revenues, in addition to the region’s role as a source

of music and artists. Thus, Latin-American music received a major fillip from the US music majors because of the creation of new markets.

Markets induce characteristics which may change the way cultural production takes place and hence, this may change the cultural object or symbol. Industry conventions, for example, have been studied to drive cultural produce. Becker (1974) showed that artistic creativity is the product of cooperative efforts of a number of people, acting together in a network while sharing certain conventions which made collective action simpler and less costly in time, energy and other resources. Sanders (1982), too, discussed the role of industry conventions which help to regulate the myriad occupational and market relationships which constitute the complex process of cultural production. He elaborated that production conventions are those shared understandings which shape the understanding of production activities and constrain the relationships among production personnel. Thus, such constraining can lead to a focus or structured approach to what type of creative output is attempted.

Film, an integral part of cultural industries, has not escaped market imperatives. Bordwell et. al. (1985 cited Custen 1986) demonstrated, using a systematic sampling of Hollywood movies, how the mode of production related to film content and the movie business. To make such work profitable meant devising procedures of manufacture and marketing. Thus, two general profit goals of markets – differentiation and standardization – were instrumental frames surrounding the growth of movies from early days to the solidification of the “classical” paradigm. Attempts at differentiation led to longer films while cost efficient measures such as continuity system of shooting became the way narratives were organized (Custen 1986).

“If a film was to compete for the amusement market with other narrative forms available at the same time, it had to offer – or convince viewers that it did offer – something distinct from vaudeville, magazines, or other forms of narrative amusement”. (Bordwell et. al. 1985 cited Custen 1986)

The effects of markets are amongst the highest on television programming since enormous production inputs are required to produce television output than other forms of culture. Harrington & Beilby (2005) deconstructed global television distribution through participant observations of leading TV trade shows – the American NATPE & the European MIPCOM. Here, TV programmes, including formats, succumb to forced changes because of the nature of the distribution system even before they reach a host country. The reputation of the original producer, which attracts industry buyers, is lost once a programme reaches the host audience, here the only celebrity value which ‘travels’ is of the on-screen performer, especially when helped by online communities. Though there is loss of TV paratexts (such as previews, product tie-ins, print ads etc.), but textual elements which closely reflect the host country’s culture ‘travel’ well in the sale of programmes. Moreover, there is an erratic and variable profitability from different markets with no guarantee of the programme succeeding in the host market.

Thus, though current distribution practices enable format elements such as textual aesthetics or presenter / production country reputations to travel from the markets of production to those of consumption; the same practices do not allow other elements such as producer’s reputation, critical success or even commercial success to travel. In other words, television produce is changed due to the manner in which it is distributed in the market.

Bielby & Bielby (1994) showed that prime time television development relates itself to a highly centralized brokered relationship between creators and business interests where critical and commercial success (decoupled from each other) could not be predicted in advance. In such circumstances, decision making brokers used linguistic framing devices of reputation, imitation and genre to reassure commercial and creative constituencies that their actions were appropriate, legitimate and rational. Imitations,

particularly, happened from other mediums, such as hit film, play, comic book or novel pointing to the inevitability of some degree of format imitation.

Tuchman (1978) in one of the earlier works concluded that television news is a by-product of organizational needs and requirements rather than resulting from an abstract conception of public's right to know. News organizations cast a "news-net" that closely paralleled the distribution of power in society, catching only certain kinds of "fish at points where the activities of legitimated institutions and the organizational needs of news-work intersect". She then showed how the definitions and 'facts' gleaned from these sources in a crude empirical manner are processed within a self-validating 'web of facticity' and how they are presented in historically evolved and formalized news narratives that draw from and feed into the same "web".

2.2.2. Conclusions from the 'production of culture perspective'

The 'regulation' facet of the 'production of culture perspective' leads one to conclude that the dynamics of IPR related regulation can have substantial effects on the production of TV formats and associated objects of cultural production. As noted in the previous chapter that IPRs, specifically copyright law, have not provided a precise and enforceable regulatory framework to assist trade in TV formats. Given the theory of production of culture perspective under the regulation facet, one can surmise that not only there are some regulatory constraints which assist in format creation (such as a 'notion' of copyright protection which helps the industry advance format trade to some extent), there are no active impediments acting against creation of format copycats (i.e. the IPR notion is existent but not strong enough). To strengthen this assertion, the researcher undertook a content analysis of format rights disputes over the last 20 years to understand in detail the regulatory framework concerning TV formats (see section 4.1 'Bournemouth Format Rights Dispute Database' of Chapter 4).

The ‘markets’ facet of the ‘production of culture perspective’ leads to the conclusion that markets play an important role in the creation of TV formats as well as their imitations; therefore solutions to this need to arise from the market. In other words, the conditions of markets can assist in checking the growth of format copycats. Formats do not sell on their own – they require a consistent inducement from originators and distributors to create a demand, backed by marketing, to create new markets to reach new customers. Thus, formats are increasingly found in emerging television economies. Moreover, the diverse and innovative nature of television formats is a result of market structures, i.e. relationship and dynamics between producers, distributors and broadcasters. Further, a concentrated TV format industry, with a few strong format distributors, will be in a position to protect their formats better than a number of independent format sellers dotted around the world.

Finally, the television industry has some industry conventions which help to regulate relationships between programme producers, distributors and buyer/ broadcasters. Thus, industry conventions may be responsible for dissuading potential format imitators.

The above conclusions, besides those from other two strands of literature, were used to create theoretical propositions to be moulded into an interview protocol and examined using semi-structured interviews with format industry professionals (Sections 6.4 and 6.7 of Chapter 6). This eventually gave rise to a definite theory of format protection and exploitation.

2.3. TV formats and marketing

Despite their popularity and contribution to international trade, television programmes and formats have been considered a lower form of culture by critics (Whannel 1992 cited Casey et al. 2002). Other forms of ‘low culture’ are films and popular music while ‘high culture’ is said to exist in cultural objects such as painting, sculpture, classical music, etc. While ‘high culture marketing’ pertains itself only to bringing its products within the ambience of

the intended audience¹⁰ (Bjorkegren 1996), ‘popular culture marketing’ is closer to marketing of goods and services in which notions of product development, distribution and brand management may be applied.

Since marketing entails ‘working with markets to satisfy human wants and needs’ (Kotler 2003), it can be argued in extension that ‘marketing’ plays an important role in the success of popular cultural products (Bjorkegren 1996; Colbert 2000). For cultural producers, weighed down by the ephemeral nature of their products¹¹ which creates considerable uncertainty about their optimal commercial reception (Hirsch 1972; Bjorkegren 1996), marketing is a strategy to secure a favourable response from intended recipients of these products. Moreover, marketing differentiates these products and thereby promotes them against a competitor’s product (Havens 2003). Marketing can also play a role in establishing a cultural genre. For example, once a music artist is ‘launched’, the right ‘marketing can play an important role in being likened by a wider audience, thereby dictating the artists’ next recording with the label; and hence in turn establishing a genre (Negus 1999).

Numerous interconnected global changes in worldwide broadcasting have caused ‘marketing’ strategies to become entrenched in the industry. The emergence of new economies (in Asia, Eastern Europe and Latin America) and the creation of large open markets (EU, NAFTA, and others); worldwide broadcasting deregulation by governments (resulting in increased FDI¹² by western companies in emerging markets); increased competition and creation of oligopolistic networks (such as the vertically integrated Newscorp); and technological developments (control over how the audiences consume media); have all led to an increased fragmented consumption of television products (Sinclair et. al 1996; Bellamy and Chabin 2002). Thus, marketing became inevitable for television programming. The new emphasis on marketing was evident in the global

¹⁰ ‘Audience’ and ‘viewers’ are used interchangeably in this thesis.

¹¹ As consumers are not able to easily compare and choose similar but competing products.

television business by television brand management, creating and sustaining local partnerships and effectively responding to cultural differences. Hence, marketing, which was long considered as the combination of simple promotion and public relations (Eastman et. al. 2002) targeted at television viewers and within the industry, slowly started turning strategic.

The flow of television programming has mostly been studied through the lenses of macro-economic and cultural exchanges. Restricting their thoughts to the cultural ‘role’ of international marketing of television programmes, few have studied ‘how’ television programmes are marketed internationally (Hoskins & McFadyen 1990). In an early study of TV programmes marketing, Rofekamp (1987 cited Hoskins, McFadyen & Finn 1994) identified a low-cost and simplistic approach utilized by the industry ‘to publicize’ its products to the extended industry internationally – the programme makers would mail the videotape copies of their shows to the prospective buyers!

Hoskins & McFadyen (1990) found that an international coalition (say between US producers and an international partner) increased the marketability of a programme internationally as the foreign partner understood very well the programme’s attributes desired by its own domestic audience whereas the US producer could pool in financial resources and world class production values. Other means of marketing television programming were identified as advertisements in trade-press, trade-press reviews, and, in-person sales calls to prospective buyers (Havens 2003). These strategies not only helped the distributors or programme producers to inform buyers about their forthcoming shows but also re-enforced the decisions of broadcasters who had bought the shows earlier (Eastman et al. 2002). Further, it was observed that business to business programme merchandising also helps to gain visibility within a

¹² Foreign Direct Investment

specific broadcaster or channels premises and thereby within the minds of the decision makers working there.

2.3.1. *Trade fairs - annual marketing rituals*

Trade shows have been identified by Penaloza (2001) as serving important functions of establishing identities of participants, instructing them in the business culture, and fostering common-sense assumptions (or conventions introduced earlier) about how the industry functions. Earlier, Sinclair et al. (1996) had specified that programming was often bought and sold at such arenas on the basis of the company's reputation or distributors' clout, in job-lots and sight-unseen where judgments seem highly subjective and arbitrary; and very rough, broad genre expectations helped the gatekeepers to rationalize their choices.

Specifically, in cultural studies, cultural gatekeepers were identified as responsible for appraising and acquiring overseas programming through the use of their own individual perceptions of international programming (Sinclair et al. 1996; Havens 2003; Harrington & Bielby 2005). The actual arena where these gatekeepers (or 'surrogate consumers' according to Havens, 2003) met and performed their television buying was identified as international television trade fairs. Examples of leading international trade fairs of television production are NATPE (Las Vegas), MIPTV (Cannes), DISCOP (Budapest) and Asia Television Forum (Singapore). Here, gatekeepers (or programme acquisitions executives, also known as buyers) were impressed upon by sales and distribution executives from the seller's company, using various promotional and personal selling means.

Though some argued that few substantial sales actually happened in TV trade-shows or sales markets, (Brennan 1999 cited Havens 2003), it was established that trade fairs served important functions for the marketing of international television shows; functions such as *“facilitating efficient networking”*, *“concretizing power relations amongst participants”*,

“differentiating similar products and providing a terrain for producer’s corporate brand identity” (Havens 2003, p.19).

Some even argued that globalisation (Waisbord 2004) provided an easy interconnect between programming industries, and laid the foundation for “stealing” of programme formats because of the interconnection. Similarly, TV trade fairs were also regarded as platforms for imitation of formats. Bandhu (1992 cited Thomas 2006), claimed that television trade shows provided a fertile ground for mass plagiarism of ideas where producers and directors ascertained what content is suitable for ‘cloning’ or copycatting. This led the researcher to conclude that if format distributors feared format imitation at international television trade fairs, they will take measures of ensuring confidentiality to keep potential copycats away.

The above literature helped the researcher assume that trade-show infrastructure and dynamics play an important role in the international trade of formats. Attending one of the main international television trade fairs created a pecking order and provided the ground rules for business relationships which were then utilized to leverage sales and protection. This legitimized the creator as the first originator of the format and helped dissuade attempted imitators from offering similar products. The risk that formats will be imitated during this trade fair was countered using a complex web of confidentiality ensuring measures such as vetting buyers, logging their details meticulously and sharing information in stages, sometimes one to one after the trade fairs was over.

The above conclusions, besides those from other two strands of literature, were also used to create theoretical propositions to be moulded into an interview protocol and examined using semi-structured interviews with format industry professionals (Sections 6.1 and 6.6 of Chapter 6). This eventually gave rise to a definite theory of format protection and exploitation.

2.3.2. Programme brand identity

Generally, a brand in marketing is *“a name, term, sign, symbol, or design, or a combination of them, intended to identify the goods or services of one seller or group of sellers and to differentiate them from those of competitors”* (Kotler 2003). It is seen as a tool to build and communicate the trust and reputation of items and services of a company (Nilson 1998). De Chernatony and McDonald (1998) simplified the complex entity of a brand as a *“cluster of functional and emotional values”* with the functional being what the customers receive and the emotional how they receive it. Hence, a brand exists to help consumers differentiate between various goods or services and choose the right alternative; an option not existing when goods and services are sold as a commodity.

Initially, branding in television was thought in terms of design, logo, channel idents, and other visual or aural aspects of ‘on-air marketing’ which channels used to engage in (Lambie-Nairn 1997; Meech 1999; Meech 2001). Lambie-Nairn (1997), considered one of the pioneers of television branding in the UK, laid emphasis on the broadcaster’s channel brand to evolve a clear and attractive brand identity to effectively convey the nature and rationale of programming. Gaggio (1999) defined broadcast branding as *“to separate one channel from the competition, especially in interactive TV environments which offered scope for multiple channels, using a distinctive, relevant on air personality.”* Heyer (1999) found that branding channels in an era of audience fragmentation gave the advertisers a good fit for offering their own brands as the channel brands usually had pre-established loyalty and connection with a particular type of audience. As Griffin (2002) surmised, a successful brand in television is not only the image it conveys – it is every bit the actual programming content that consumers are watching!

Nowadays, a great paradigm shift in multi-channel digital television has occurred where content creators or format makers make greater profits than

the content conduit or broadcasters (Todreas 1999). Such format makers engage in building their brands so that these brands stand out from other content creators. Thus, there is a strong relationship between a format brand and the channel it is broadcast on because “*any viewer dissonance for a programme or a channel can affect the other and vice versa*” (Singh 2004).

One of the most important elements of building a brand is through the brand identity which must be defined and managed as the brand continues to grow. The use of graphic identity ‘bibles, identity charters, books of standards and visual identity guides, all help firms forward the key message or core substance of their brands (Kapferer 2000). Thus, the deepest values of a brand are represented to the outside world through codes of outward recognition. The lesson for format developers is that if they wish present viewers with a recognizable format in the midst of close imitations, they need a consistent brand identity. This brand identity will help the format create a lasting brand image in viewer’s minds and thus an imitation will not be able to occupy this space, leading to better exploitation opportunities for the original format.

2.3.3. Programme brand extensions

Riezebos (2003) further provides advantages of embarking on a branding strategy; such as financial (higher sales, higher margins and guarantees of future income); strategic (strong position in relation to competition, less dependence on any one supplier, and, ability to attract highly skilled managerial and technical staff); and finally managerial (ability to introduce brand extensions or endorsements and potentially exploit its brands in the international market).

Since service brands, such as television programming, are based on a series of performances, they run the risk of being considered as commodities (McDonald et. al. 2001). To overcome this, programme brands

are made tangible – so that customers can be presented with a favourable set of perceptions. For example, the BBC regularly produces books and memorabilia of their major programmes brands – this helps to build an enhanced relationship with the viewer. Children’s channels are particularly keen on extending their programmes brands in other domain. Such channels have destination viewers (not casual surfers but viewers who seek a programme or channel for a particular programme). Even the BBC’s presence in the children’s programme market gives it very strong brands (Fimbles, Tweenies, etc.) and the brand presence is fortified by being available for the children across media platforms. These brands are licensed into various consumer goods domains to maximise the presence of the brand and earn additional revenues. The commercial arm of Channel 4, 4 Ventures, has created powerful programme brands in order to generate lucrative brand extensions across Channel 4’s portfolio of comedy, entertainment, music and films (Mutel 2004).

From a format developer’s point of view, brand extensions and merchandising can provide ancillary benefits which help build a format brand and also protect it from imitators. Extending the format into consumer goods such as children’s merchandising in water bottles, lunch boxes, school events, and other cultural goods such as ‘branded quiz shows’, ‘video and computer games’, books and ‘behind the scenes’ documentaries on DVDs – all of these creates an atmosphere where a potential imitator is dissuaded from entering the same brand space in the market.

2.3.4. Programme brand & its channel fit

In the digital multi-channel world, the strategic shift of television viewing from a time based paradigm to a content based paradigm has many brand implications for television programming. Swain (2001) contends that advertiser brands are shifting from borrowing value from existing content and appealing to a captive audience, to creating advertisements with the inherent value of content. Such value is created by using programme

concepts such as advertiser funded programming, advertorials, shopping channels, interactive sites and gaming propositions. In other words, more avenues are opening for the programme brand.

In marketing television products, a brand has a special meaning for viewers. It is represented as positioning the programme in terms of values, viewers associations, distinct markings, a logo, graphic guidelines, programme packaging, and a general look. Singh (2004) sees this as a contract and promise of quality between a broadcaster and the viewer configured in a way of addressing the viewers. The fit between the broadcaster and programme’s brand identities reassures viewers – it is a way for them to situating themselves in contemporary media.

The above literature led the researcher to assume that visual brand identity and channel fit were important for the marketing of formats. A television format has to carve out a visual niche as it competes with its carrier’s (the broadcaster) visual appeal. A format with a well defined visual brand identity stands a better chance at being successful in the market (and hence being protected from a competitor) even if the central idea of the format is copied. A clear fit between the format and its carrier is essential as a lack of fit can lead to a dissonance in the viewer’s mind where a copycat with marginal differentiation can score over the original.

The above theoretical propositions were moulded onto an interview protocol and examined using semi-structured interviews with format industry professionals (see Sections 6.9.1). It helped to give rise to a definite theory of format protection and exploitation.

2.3.5. Producer’s corporate brand and reputation

Corporate reputation gives companies distinct advantages over their competitors. By examining companies in a variety of industries, from international fashion, investment banking and packaged goods, to US

business schools, Fombrun (1996) found that they competed for prestige and to achieve celebrity by nurturing, exploiting and protecting a *reputational capital*. This form of capital was generated as a hidden asset by companies when they developed strong and consistent images in the minds of their buyers, suppliers and consumers. Such companies were able to entice more customers and command higher prices on the demand side as well as have a greater clout with suppliers and pay lower purchase prices on the supply side.

The corporate brand has been identified to assist in safeguarding or differentiating the company's products. Corporate brands help to maintain credibility of product differentiation in the face of imitation and homogenization of products and services (Hatch and Schultz 2003). Here, differentiation entails positioning the company. Strong corporate brands are said to provide extra economic value to the company's products and services thereby intertwining the product and its company even more (Fombrun 1996; Ind 1997; Knox 2004).

Further, while product brands mainly target consumers, corporate brands enter and stay as images in the minds of organizational and community members, investors, partners, suppliers and other stakeholders (Hatch and Schultz 2003). Fournier (1994) claimed that there is a great need for the comfort and reassurance of a long-term relationship when the consumer experiences greater insecurity, therefore the presence of a corporate brand identity is valuable as “*consumers trust the ‘old time favourites’*” (Franzen and Bouwman 2001, p.170) and “*respect brands that are able to stay in the market and that everyone knows*” (Langer 1997 cited Franzen and Bouwman 2001, p.306).

In broadcast television, corporate branding has rarely been used by commercial broadcasters aiming their products historically at a mass audience and thus averting a consciously defined brand identity. On the other hand, cable operators with their immense need to clearly establish an

identity in a multi-channel environment have accepted corporate branding as a key to attract audiences and build loyalty (Chan-Olmsted and Kim 2001).

From the above, it can be proposed that corporate identity of the format developer (or distributor) helps in format brand building, even if the content is marginally differentiated from the competition. The corporate identity of the format developer (along with that of the distributor, director, writer, etc.) can formulate or ruin a business venture with a buyer though this does not extend to the final viewers (Harrington & Bielby 2005). Hence, UK's Fremantlemedia and Netherland's Endemol have a corporate brand identity as specialist sellers of 'well-developed music talent show and reality TV formats' such as 'Idols' and 'Big Brother'.

From a formats developer's viewpoint, a production company with a developed corporate identity will be able to score over format imitators because of the reputation and trust of the corporate brand to influence buyers. For example, a BBC format will less likely be copycatted since it will instantly be recognized as 'an imitation of the BBC'. Thus, buyers are less likely to buy the imitation, if other factors such as availability and price are not taken into consideration.

The above theoretical propositions were moulded onto an interview protocol and examined using semi-structured interviews with format industry professionals (see section 6.9.4). It helped to give rise to a definite theory of format protection and exploitation.

2.3.6. Programme genre as a brand

A genre denotes a type or classes of sub-products within a literary product (Abrams 1999 cited Desai & Basurao 2005) and is today a defining element in the production and distribution strategies of most cultural products (Becker 1982; Desai & Basurao 2005). Consumers use genres as handy,

convenient and easy methods to categorize and make sense of cultural product types. Further these genre labels, because of pre-associated attributes, act as control variables in choosing a cultural product (Austin & Gordon 1987 cited Desai and Basurao 2005; Bielby & Bielby 1994).

Thus, genre can be interpreted as the brand or ‘a shared value set’ of cultural production, thus format makers are expected to restrict their offerings to specific genres especially when introducing formats to a new territory or market. Granada Media, one of UK’s leading format distributors and production houses, once had programming sales divisions in the company by ‘genre’, calling them ‘brand heads’, to exploit genres to their full potential (Bulkley 2004). Many other format makers and distributors have started using genre to differentiate themselves from the crowd and build their brand identities. Havens (2003) saw these genres as brands when he recognized that corporations such as Werner International, King World International and Playboy TV International – all established as global experts in ensemble situation comedies, game-show formats and erotic programming, respectively.

The above literature clarifies how a format genre (having a distinct brand value) can be used for protection against imitators. The format is considered protected as long as too many imitators, in the same market, do not attempt to copy the original. Too many imitation attempts will take turn the format into an industry genre – free for all to capitalize on. Hence, innovation of a non-genre format may be seen as a protection strategy.

2.3.7. Programme brand innovation

The following literature provides branding strategies which can help to protect formats and their ideas from being copied by close competitors. Where the original creator of the product or service keeps innovating and recreating the successful elements of a brand, either by maintaining its leadership in performance or increasing its benefits, it gives copycats a

moving target (Kapferer 2000). Though the first innovator in a market runs the risk of becoming the ‘absolute’ reference for the innovation, therefore having its innovation copied, first mover advantages outweigh losses from being a sitting target. For example, Celador UK continually kept innovating its world famous format ‘*Who wants to be a Millionaire*’, sold to more than 104 countries, through a centralized UK based consultancy system, localized innovations, extension (or spin-off) programming and so on¹³.

There can be several strategic advantages accruing to a format maker by embarking on a branding strategy. A differentiated and valuable brand in the eyes of the consumers has little to fear from competing brands as a strong brand creates ‘consumer inertia’ which acts a barrier for consumers to change their buying habits easily (Reizebos 2003). De Chernatony & Macdonald (2003) speak of brands existing at various levels in a certain hierarchy, i.e. at the generic, expected, augmented and potential levels. At the generic level, brands identify only functional and descriptive values of the product and hence this can give rise to a lot of ‘me-too’ competitors. At the expected level, though brands again seek to address certain functional values such as motivation, it offers more opportunity to differentiate oneself from the competition by offering a reasonable satisfaction to differing motivations. The real opportunity to gain a competitive foothold over competition arrives with the brand moving on to the augmented level – here the producer add certain benefits which are not available with any other closer competitor, thereby providing a greater respite from competition, at least until the competition catches up at each stage! When augmentation becomes standard, the search for the potential level kicks in. This involves going back to the drawing board and completely re-engineering the brand’s main offerings.

To summarise, the above literature indicates to format makers that they need to ‘keep the target moving’. Brand innovation theorists suggest that it

¹³ The format was later sold to The Netherland’s Twowaytraffic (which was itself bought over by Sony Pictures International).

is best to innovate, rather than seek to protect status quo. Here, imitation is a given and the best way in which a branded format can survive is to keep innovating and adding additional elements to attract newer viewers towards itself and away from similar competitors. The requirement is to beat the imitators at their own game. Further, speed is essential in branding. Since brands are well-known entities, a format originator/ distributor should not wait for copycats to materialise – a proactive strategy is to launch in as many markets, as fast as possible, to protect formats from copycats.

The above theoretical propositions were moulded onto an interview protocol and examined using semi-structured interviews with format industry professionals (see section 6.9.2). It helped to give rise to a definite theory of format protection and exploitation.

2.3.8. Producing nation as brand

In television programme marketing, a clear image of the producing nation can also play an important role in its reception from programming buyers (O’ Shaughnessy and O’ Shaughnessy 2000 cited Havens 2003). Over the years, Latin America has acquired a reputation for telenovelas, Britain for its game shows, Japan for its animated programming and Holland for its reality TV shows. Thus, as long as a new product aligns itself to the programming nation’s image, it stands a chance of favourable response from programming buyers. This is because the producing nation a programme comes from starts being recognized as a brand. However, this strategy runs the risk of making the product less universal in its appeal; therefore some distributors avoid nationalist associations in their programming.

The above element of literature points out to a format marker that a producing nation’s brand may be considered a protective layer against imitators. A copycat format will have lower chances of success than the original if it is not from the original format maker’s country. For example, a British copy of a Dutch reality TV format may have less success

internationally as The Netherlands already has a reputation for creating reality TV formats. Or Latin American telenovela makers will be less favourably accepted as compared to German or Indian telenovela makers because the telenovela genre (i.e. brand) is associated with Latin America.

The above theoretical propositions were moulded onto an interview protocol and examined using semi-structured interviews with format industry professionals (see section 6.9.5). It helped to give rise to a definite theory of format protection and exploitation.

2.3.9. Driving Fans through viral marketing of formats

There is a unique juxtaposition of the commercial and the artistic in the marketability of any cultural product. BJORKEGREN (1996) has argued that 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. It follows that strategies of ‘word of mouth’ or ‘viral’ marketing, where the audiences get involved and spread the word about the show, may be of importance for marketing television formats.

In the past, fans of television programmes may have been considered as obsessed individuals full of inconsequential knowledge of programme trivia. However, increasingly, the importance of nurturing fans as a method of furthering the programme brands in new cultural markets is taking root amongst broadcasting circles. It is recognized that fans provide ‘word of mouth’ support and act as catalyst for drawing in more audiences to a cultural product.

One famous cultural product which creatively utilized the word of mouth effect is the film ‘The Blair Witch Project’. In this the filmmakers created a website which went “*beyond promotion, biographies and the usual trivia to creating an arresting experience that enthralled users and simultaneously*

spurred curiosity about the movie” (Klien and Masiclat 2002). The drivers of marketing the film were fans who started interacting with the film as an experience and spread the word through the internet.

The above ‘viral’ initiatives utilize internet and mobile technologies to open consumers to cultural producers by providing opportunities for interactive engagement, both on and off-air. An increase in on-air audiences may result due to off-air viral activity.

From a format maker’s perspective, fostering fan communities may provide benefits. A format maker may be able to foster fan communities by creating specialist magazines, fan events, ‘fansites’ (websites of fan communities), format extensions, fan based merchandising, etc. A positive fan activism ensues, which in turn creates audience loyalty towards the original format while creating negative viral publicity for the imitator; thus leading to the imitator’s failure in the market.

The above theoretical propositions were examined but were found lacking in corroboration after analysing the semi-structured interviews with format industry professionals. Thus, though these propositions were moulded onto the interview protocol, it was discarded at the analysis stage.

2.3.10. *Conclusions from ‘TV formats and marketing’*

The previous strand of literature, pertaining to TV formats marketing and branding, provides a number of theoretical propositions for the effective protection and exploitation of formats. These propositions, summarized below, were moulded onto an interview protocol (see Appendix 11.2) and examined using semi-structured interviews with format industry professionals.

In summary, the theoretical propositions for protection of formats from a marketing viewpoint were, a) creating trade-show infrastructure and

dynamics to create ground rules for business relationships and leveraging protection, b) having a strong visual brand identity which also fitted its carrier channel’s identity, c) extending the format into as many consumer as well as allied cultural goods, d) aligning to an established producer’s or distributors brand, e) aligning to the brand values of a producing nation, f) keeping a moving target by constant brand innovation, g) introducing a format different from a pre-existing genre, and h) fostering fan communities to drive fan activism.

2.4. TV formats & media economics

Economics looks at how the economy allocates scarce resources, with alternative uses, between unlimited competing wants (Hoskins et al. 2004). Media economics is concerned with the application of economic principles to the understanding of communications based businesses and firms - showing how economic constraints govern the functioning of media and cultural product markets. Whereas general economic theories work at individual household, market and national levels; media economics works primarily at a market level and looks at conditions and structures in the media markets, and focuses on the deployment of financial and other resources to meet the needs of audiences, advertisers and society (Picard 2002 cited Küng 2008). A related branch of economics where ‘culture’ is considered the most important means of production is cultural economics. Here, firms dealing with arts, music, broadcasting, film production, communication systems, the internet and other media are studied. Media economics may overlap with cultural economics, though it is considered more content neutral than cultural economics which tends to be more normative in nature (Picard 2003).

Within media economics, one finds three distinct traditions of inquiry – the theoretical tradition (which explains choices and decisions affecting communication systems markets), the critical tradition (concerned with issues of welfare economics in communication businesses), and the applied

tradition (analysing the structure of communication markets and the study of trends and changes). Applied economics studies have tended to provide some strategic responses to economic problems faced by media firms or consumers (Picard 2003). Important contributions to the applied tradition of media economics include Picard (1989, 2002); Albarran (1996); and Alexander et al. (1998) [all cited Picard 2003]. Looked through the lens of economics, the research problem at hand, i.e. the conundrum of growing international trade of television format rights in the absence of any specific legal framework, appears to be one belonging to applied media economics.

2.4.1. Differentiating characteristics of media products

Media industries are seen as a part of a larger set studied by economists under the heading of cultural industries. The reason for categorizing some industries separately under the heading of cultural industries is because of the importance of ‘cultural content’ which these information goods producers deal with (Towse 2003). Some features of such cultural industries are, i) fixed cost of making an original cultural good is high whereas the marginal cost of making a copy is low, ii) their products are risky and subject to radically uncertain reception from the audiences, thus financial and marketing powers are magnified providing an entry barrier to competitors, iii) industries in this sector rely heavily on intellectual property rights for their existence, and, iv) firms seek not only economies of scale but of scope¹⁴, hence successful firms have to keep diversifying their portfolio rapidly into risky territories. These characteristics may help explain why there exist only a few global firms which dominate production of large scale media products (Towse 2003; Hoskins et al. 2004).

Further, Caves (2000) who first applied contract theory to media businesses provides more differentiating characteristics of cultural industries. These

¹⁴ Economies of scope exist if the total cost of producing two (or more) products within the same firm is less than producing them separately in two (or more) nonrelated firms. Situations of scope arise when one product is a by-product of the other or the same factors of production contribute to these products.

include a) Uncertain Demand (in creative industries ‘*nobody knows*’, i.e. the chances of success of a well defined and researched product cannot be robustly estimated, creating a problem for allocation of economic efficiencies); b) Intrinsic motivation of creative workers (economists assume that workers are extrinsically motivated through pay and other benefits, however in creative industries, the workers may actually be intrinsically motivated because of reasons such as prestige, fulfilment, and satisfaction; thus terming this characteristic *arts for art’s sake*); c) Products require diverse skills (creative products are usually brought together by many people each having diverse creative skills. Here each person’s role is unique and cannot be substituted easily or readily, this means that if one worker fails to deliver his or her part, the net effect could be zero for the overall product. For example, one ‘out of tune’ musician can spoil the harmony for an entire orchestra. Also known as the multiplicative production relationship, Caves called it the *motley crew* characteristic); d) Differentiated products (there is no ‘most efficient way’ to produce a cultural product from existing resources or technology - there are varied ways to create a cultural product and even consumers value these products in different ways. The *infinite variety* characteristic, indicating the array of actual creative products from which consumers or intermediaries choose from); e) Vertically differentiated skills (the skills of creative workers may be of a varied quality and sometimes this is apparent only to professional peers or similarly trained eyes. However, it may be necessary to combine these differentiated quality inputs in order to create a cultural product - the net effect of which is not known either to the producers or the consumers. Consumers may have a mental list of which artist is of a good quality and this may differ from the producer’s or creator’s notions of quality. This characteristic is called the *A list/ B list* property); f) Essence of Time (cultural products are profitable if they provide revenues as soon as they are available on the market - any delays reduce the profit potential. This is because all or most costs are incurred before the availability of the product on the market, hence the value of a certain revenue today is more than its value tomorrow, terming it the *time flies* characteristic); g) Durable products and durable rents

(copyright provides the final characteristic of cultural products. Once a product is created, its productive life can be extended to extract economic rent¹⁵ for a long time or to use it as a basis for creating other cultural products, terming the durability of cultural products the *ars longa* characteristic).

In addition to the above, Vogel (2007) postulated a managerial version of frequently observed characteristics that set media firms and products apart from other industries.

- i) *Profits from a very few highly popular products are generally required to offset losses from many mediocrities.*
- ii) *Per unit marketing expenditures tend to be large relative to total unit costs of operations or production.*
- iii) *Media products often derive a large proportion of their returns from ancillary or secondary markets; with a corollary that price-discrimination opportunities between classes of consumers having different demand elasticities can be exploited.*
- iv) *The cost of capital and the amount of it required for operations becomes a formidable barrier to entry by new competitors.*
- v) *Many products and services, including movies, records, television programmes and sports contests, have public good characteristics.*
- vi) *Many products and services are non-standardized, which means that there is freedom for the entrepreneurial spirit to thrive within the oligopolistic firm structure. In order to foster the entrepreneurial spirit, the firm provides a wide range of financial and production arrangements, including option contracts.*
- vii) *Technological development makes it ever easier and less expensive to manufacture, distribute, and receive entertainment products and services.*
- viii) *Introduction of new media may diminish the importance of existing forms; the older forms are rarely rendered extinct.*
- ix) *Demand for media cuts across all cultural and national boundaries.*

(Vogel 2007, P. 494-496)

¹⁵ Rent (an economic concept) is unwarranted monopoly profit (Towse et al (2008)).

The above three lists of characteristics describing the economics of cultural products provide a good starting point for the analysis of format exploitation and protection. Those that readily explain the basis of international trade of television formats are: low or non-existent marginal costs of subsequent versions of a format, economies of scale and scope, a high uncertainty of demand, and, marginal durability induced by dependence on property rights such as copyright. Moreover, format firms that are best resourced and positioned to exhibit the above characteristics will be able to exploit and protect their formats effectively.

It follows specifically from Caves (2000), since formats have an uncertain reception potential from viewers, distributors will ensure that previously successful formats are introduced in the market. Moreover, formats require differentiated specialist skills and technical knowledge to produce – convincing the buyers that the format is worthless without this technical knowledge helps in protecting the format. Similar to the proposition established by the marketing discipline, introducing the format in as many markets as possible helps as time is of essence when selling format licences worldwide. Finally, though it can be suggested that copyright may not protect formats per se, format distributors may be able to signal ‘copyrightability’ of formats to deter copycats, by using signals and rhetoric from intellectual property practices. This will effectively make the entire industry recognize certain formats as intellectual property of a company.

The above conclusions, besides those from other two strands of literature, were used to create theoretical propositions to be moulded into an interview protocol and examined using semi-structured interviews with format industry professionals (see Sections 6.2, 6.3 and 6.5 of Chapter 6). This eventually gave rise to a definite theory of format protection and exploitation.

2.4.2. *Media economic analysis of formats*

2.4.2.1. Cultural capital and cultural discount

In the last 200 years of economic thought, industries have tended to see manufactured or physical capital (such as plants, machinery and buildings) as the driving force of economic growth. As economic thought expanded, the importance of other forms of capital, such as human capital (inherent characteristics of productive people working in organizations) and natural capital ('bounteous' non-renewable as well as renewable gifts of nature as well as the systems and networks linking their operation), became apparent. However, the element of production that provides more value than other forms of capital in media industries is *cultural capital* (Throsby 2003). Cultural capital provides a way for media industries to appropriate existing forms of culture and arts as capital assets in order to produce further cultural goods and services. It is different from other capital goods (as a basis of production) because it is seen to be a result of specific human intervention, thereby resulting in some inherent value and symbolic meaning not available in other forms of capital. Within the media industries, cultural capital is known as '*content is king*'. This means is that companies with access to or ownership of the cultural capital (expected to reap maximum profits) get the ability to commandeer the maximum marketing efforts and equity valuation advantages (Vogel 2007, p. 41), thereby accruing strong competitive advantages.

A quiz show packaged into a television format (such as *Who Wants to be a Millionaire*) may be considered a capital good which is licensed to various territories and hence becomes a basis for creation of similar formats (even unlicensed copycat versions). On its own, a quiz show may not be considered cultural capital, but it does become so when its specific elements of sound, graphics and dramatic tension are packaged in a set way, tested in front of a market or audience, and accompanied by technical know-how and production guides.

What economic imperatives ‘render global’ cultural goods such as television programmes and format? Acheson (2003) opines that scale economies, public good attributes and correspondingly low costs of reaching a broader audience encourage suppliers to extend the marketing of cultural products. He, however, cautions that there may be a stage of cultural adjustment whenever foreign or non-native cultural products appear in a given market.

“Foreign roots may promote but are more likely to hinder acceptance of innovations. If there is a suspicion of outside influences, foreign roots may even be ‘manufactured’ by nationalistic opponents of an innovation”.

[Acheson (2003, pg.249)]

Furthermore, it has been argued that television viewers prefer domestic television programmes to foreign made programmes, and hence demand is greater for domestic programmes (Tracy & Redal 1995 cited Hoskins et. al. 2004).

“Viewers find it difficult to identify with the style, value, beliefs, history, myths, institutions, physical environment and behavioural patterns. The reduction in appeal of the foreign program relative to a domestic equivalent has been labelled the “cultural discount”. [Hoskins et al. 2004, p.48]

The above points to the reasons why television programmes makers seek global markets and when there is a cultural obstacle to the acceptance of a foreign made programme (either through culturally mandated roles of characters, the ethnicity of actors, the language or the dialect), programme makers can sell the formats, or template, so that the programme is remade according to local needs. Hence, television formats provide a unique opportunity to overcome the cultural discount (Steemers 2004) as only the central idea and managerial consultancy is licensed in format sales. When the format is remade in a territory, the buyers ensure that this is made according to local customs and tastes.

The demand for cultural goods is characterized by the positive addiction in consumption of cultural goods. Steigler and Becker (1977 cited Schulze 2003) introduced the idea of marginal utility of cultural consumption increasing with the ability to appreciate (a particular form of) cultural good. An example could be the ready acceptance of Hollywood films even in those markets of the world where English is not easily understood (or perhaps the film is poorly dubbed due to poor local technology transfer); the audiences being more interested in the technical advancement and the story-telling, in short the cultural capital, of Hollywood. Another example is the growing allure of Bollywood (Indian films from the Mumbai film cluster) in European countries such as the UK or the Netherlands, not traditionally associated with appreciating such ‘song and dance’ foreign language films.

Schulze (2003) develops this notion of positive addition into the international arena by suggesting that international trade in cultural goods across borders cannot take place until people have accumulated enough personal consumption capital for this unfamiliar art. Once the positive addiction sets in, it increases until the foreign cultural good becomes part of the national culture. However it may be noted that this cultural discount is asymmetric i.e. one country can accumulate cultural capital for the other country’s culture but the opposite may not be true. This can help explain why reality television formats from the Netherlands may find a ready market in Argentina but a Latin telenovela format will struggle to be shown on Dutch television unless it is radically modified, a notable exception being *Ugly Betty*, which may indicate a slow acceptance of the telenovela culture - though it can also be argued said that *Betty* in Colombia (the originating nation for this format) is not the same as *Betty* in USA or India.

2.4.2.2. Comparative advantages

From the supply side, economies of scale available to more resourceful firms or countries provide a reason for supply of high quality cultural goods from a country (i.e. USA compared to Iceland) or media firm (Endemol

compared to a TV formats producer in Israel, for example). However, the Theory of Comparative Advantages applied to media products by Hoskins et al. (2004) provides some interesting variances. The theory suggests that every nation is better off specializing in such media goods in which it has a comparative advantage and trading some of these media goods for others in which it has no advantage. By doing so, all nations benefit. They explain this theory by citing that the US has comparative advantage in films and television programmes stemming from its market size, language, climate, and a geographically concentrated and competitive industry environment (Hollywood).

The television format makers of Western Europe (particularly the UK and the Netherlands) operate in highly competitive markets resulting from various reasons such as the deregulation of media and the infusion of private financial capital into media industries, government encouragement of a unified television landscape in EU, multiple media outlets in search of more content, and most importantly, convergence of telecommunication and broadcasting paradigms. Surviving and adapting to these environments, television producers created comparative advantages in making formats, advantages not available to producers from countries with large television media markets such as China or Brazil. For example, among the many innovations introduced by Endemol (a Dutch television formats producer) – which forced traditional television programme makers to rethink their sources of value – was the addition of convergent internet and mobile platforms to their television formats (Küng 2008). Endemol’s formats were linked to websites which produced revenue generating content while the use of telephony revenues was integrated in their format business plans. These innovations soon became the benchmark for close rivals within the same geographic setting, thereby providing the Dutch television formats industry with a comparative advantage, even compared to television markets with larger economies of scale such as the USA.

2.4.2.3. Principle of minimum differentiation

Economics provides a rationale for imitating of television formats through the Principle of Minimum Differentiation, emerging out of the welfare economics approach. Hoskins et al. (2004) argue that for media that rely on advertising revenue, editorial content may be influenced either through self-censorship or as a result of pressure from advertisers, who are interested in the maximum audience available to the shows they associate with. Where the number of firms is small, competition for the mass audience may result in a lack of diversity as each broadcaster wishes to cater to the advertisers in a market looking for a certain type of programmes.

In other words, the ‘lowest common denominator’ programming problem in popular free-to-air television programming is something emerging out of advertiser’s willingness to support the television shows with maximum audience shares (Withers 2003). It is seen that one type of programme in a given market tends to have a higher audience share than other types of programmes and hence most channels aim for similar programme types to keep the advertisers on board. This may help in explaining the willingness of channels to acquire programme types (i.e. formats) with or without rights from original producers, particularly as the legal framework is not conclusive on formats. Inevitably, channels would have to legally buy rights for popular finished programming and cannot simply copy finished programme signals as this would be illegal under established copyright law in most countries of the world, mostly harmonized under the TRIPS¹⁶ obligations of WTO¹⁷ member states.

2.4.2.4. Distribution networks in format trading

Vogel (2007) justifies the importance of a distribution network to media products. *“Distribution power trumps control of content: The best content in*

¹⁶ TRIPS or the ‘Agreement on Trade Related Aspects of Intellectual Property Rights’ is an inter-government agreement on an international basis to adhere to some common legal principles for formulating the intellectual property rights (including copyright) of their nations.

the world is not worth anything if it cannot be made readily available to audiences. This is then the imperative for spread ... content seeks maximum distribution and distribution seeks maximum content.” [Vogel (2007, p.41)]

The above notion of distribution is practiced by large formats originators and distributors who not only introduce newer and better formats with greater frequency but are able to provide access to buyers by having their distribution offices around the world or regularly attending the various television content markets around the world (Steemers 2004). Being in close touch with buyers ensures that their formats reach the widest possible audience in the shortest possible time. This helps to licence out a format or its option to a buyer or a competitor i.e. independent producer is able to make a similarly formatted show without buying any format rights licence.

Companies such as Endemol International (Netherlands) or Fremantlemedia (UK) not only have their distribution offices or strategic tie-ups in key television markets of the world, but they also actively buy local production companies to access local human resources and networks. For them, physical presence in distribution brings about effective trading of their formats.

2.4.2.5. Structure of format firms

Monopolistic competition refers to a situation in economics when there are many firms of somewhat differentiated products and in which some control of pricing and competition is possible through advertising. An oligopolistic structure is similar, except that, there are only a few sellers of close substitute products and their pricing decisions may affect the pricing and output decisions of other firms in the industry.

¹⁷ WTO or the World Trade Organization used international trade as a mechanism to force or bring most member states to sign the TRIPS agreement.

Owen and Wildman (1992 cited Hoskins et al. 2004) classified television producers as engaged in monopolistic competition as they argue that entry is not difficult and the international television market is not concentrated. However, Vogel (2007) suggests that most media business firms tend to fall somewhere in between monopolistic competition and oligopoly and as soon as 1 firm takes a rival's reaction to price change, then they shift towards an oligopoly.

Shy (2001 cited Vogel 2007, p. 42) provides a characteristic of networked firms (such as in broadcasting, cable, etc.) suggesting that because of the huge upfront sunk costs of developing the first unit of a product or service *“together with almost negligible marginal cost implies that the average cost function declines sharply”* as the number of product or service units sold increases. This suggests that competitive equilibrium does not exist in the structures of such industries and hence the markets are often characterized by dominant leaders that capture most of the market, again hinting at oligopoly to existence in the media industry.

In the formats industry, large firms lie between a loose monopolistic competition and oligopoly, with dominant ones being Endemol International (Netherlands), Fremantlemedia (UK), and the BBC (UK). Thus their principal product - the format - may itself be susceptible to close substitutes and subject to buyer's information and their access to suppliers. Hence, firms may find themselves competing in an oligopolistic environment.

2.4.2.6. Gatekeepers of formats

Cultural, including media industries, differ from other industries also because of 'gatekeepers' (Caves 2000, Towse 2003, Steemers 2004, Küng 2008). Media firms select from an abundance of supply of media goods from which to mass produce and market media products, thereby acting as gatekeepers between media suppliers and media consumers (audiences). This has potential to create distortion to widely accepted demand and

supply rules of economics applied to media businesses, hence the role of gatekeepers must be kept in mind when embarking on an economic analysis of media products. Media businesses may be engaged in a distorting relationship between media creators and consumers by deciding which cultural goods are created.

In international trade of television formats, there are several gatekeepers between a format developer and the consuming viewer. Küng's (2008) value chain¹⁸ of television formats highlights the gatekeepers. First is the format distributor company which buys formats from originators to sell to international clients – this distributor is in the value chain as it has better resources, expertise and networks for international sales of television formats than the originator based in a certain territory. The distributor is the first level of gatekeeper and it decides which formats are best suited to a certain international market depending on earning potential, suitably qualified and networked buyer-producers, broadcasters with the right brand fit for the format as well as optimum audience reach, etc. The second level of gatekeepers is the buyer who may or may not find a format suitable depending upon their territory's cultural or their company's requirements. The buyer pitches these formats to broadcasters / networks who own the conduit for reaching the audiences. The broadcasters, acting as the third level of gatekeepers, are constrained by requirements of advertisers who are the revenue generators for the broadcasters. The advertisers then act as the fourth level of gatekeeper. Each gatekeeper may not allow a format to reach an audience and if it does so, it may try to modify few elements of the format. The difference between the format originator's concept and what the audiences finally sees is mediated by the mutual bargaining powers of these gatekeepers.

¹⁸ Value chain was introduced by Porter (1985) where he used value as an economic entity suggesting that firms or organizations come together in a chain of events to produce products or services. The resultant value is more than the combined value of the individual resources -the surplus representing profit.

2.4.2.7. Contract theory and formats trade

Caves (2000, p.10) explains specific problems of the media industries by drawing on analytical resources of industrial economics to provide a unique ‘contract theory’ – where “artistic” creative inputs are combined with “humdrum” capital inputs to create joint products. Contract theory suggests that most creative products are created due to a set of incentive contracts where instead of specifying each party’s exact contribution (as in a complete contract); the incentive contract links each party’s reward to the value it adds. Incentive contracts benefit from effective enforcement mechanisms such as reputation. This is because most creative constituencies are usually concentrated or well linked and hence transgression of contracts will ensure exclusion of the transgressor in future cultural productions.

Challenges such as decision rights in incentive contracts¹⁹ are solved through *options* where cultural products are produced in stages or activity windows offered to a certain cultural producer to fulfil parts of a deal. This reduces risks of failure of the overarching contract. The reason for this is that when costs are sunk progressively and information on the product’s quality revealed gradually, rational decision makers can carry projects to completion that realize enormous ex post losses, also explaining why creative projects (such as films or television programmes) are sometimes abandoned after large investments are made in them.

2.4.2.8. Role of externalities

The role of externalities needs to be understood when studying international formats trading. Vogel (2007, p.30) suggests that media transaction prices are affected by prestige, potential for political or moral influence, or access

¹⁹ In which who decides which course of action to take in what time period because different artists may have differing ways in which to achieve overarching objectives.

to certain markets. The notion of transaction price can be extended to the entire trade dynamic of formats trading.

2.4.3. Formats trading and the economics of property rights

Among the various traditions of economic analysis such as microeconomics analysis, welfare economics, macroeconomic growth theory, public choice theory and political economy which have found their home in media economics, the format rights protection conundrum can best be explained through property rights economics. Though welfare economic analyses studies the conditions for achieving maximum efficiency of the use of resources and hence is one of the most widely used approaches to studying media industry problems; here the researcher studies property rights of formats which are traded in a market and hence allocated to those who can make the most efficient (and profitable) use of them.

Property rights approach of economics provides a rationale for existence of copyright protection and the basic structure of copyright law (Landes 2003), to create rights in the intangible property to promote economic efficiencies. For example, once a television format has been created in a certain market, there is a sunk cost which cannot be recovered by the originators in that market. Without any property rights, there will be no economic incentive for the format creator to trade his format with other territories and make profits. Others may be able to recreate the format for free. Only if the format creator is successful in preventing unauthorized versions of his formats, an economic rationale may be come into being i.e. the creator can seek appropriate compensation from licensors. This enables development and risk-taking resulting in more number of better formats being available on the market in future. An ability to sell formats, strengthened by copyright law, may also reduce production inefficiencies i.e. since the original format creator has gone through the steps such as market and audience testing in one market, the buyer may not have to duplicate these efforts, thereby

providing economic efficiencies to the production of formats. This is the economic approach of property rights to formats trading.

The above has the potential to justify Coase’s theorem that the onus of dealing with the external effects of property rights is shifted to the market (Towse 2003) once property rights are guaranteed by law and the differential of bargaining power between the transacting parties is minimum. As long as transaction costs are incorporated alongside property rights, the market outcome of these rights is not affected and hence this approach is increasingly being used to solve media policy problems. However, since property rights of formats are not precise or enforceable in IP law, property rights approach may not be able to deal with the protection of formats.

2.4.3.1. Economic costs of property rights

Trading format rights may be considered ‘rent-seeking’ by the original format creator since the original costs of the formats are usually recovered from the first market the format is created for. Any additional revenues forthcoming to the format creator is artificial rent either induced by property rights or a market induced monopoly. Moreover, there are costs to society if we relied solely on property rights for an economic solution to formats trading; for example it may become too costly for potential producers of formats to get clearance from copyrighted formats and hence the supply of formats may suffer in the world. In addition, there are administrative and enforcement costs which further make a wholly property rights approach unsuitable for the formats industry to use for protection of format rights.

2.4.3.2. Protection of expression, not ideas

Economists hold that most original ideas in copyrighted works are trivial and involve small expenditures of time and effort relative to the cost of expressing those (Landes 2003). Hence, format rights creators cannot protect their ideas and will find it very difficult to arrive at an economics

justification of protection of their ideas. Of course the expression of their finished and expressed format is copyright protected. However, format rights protection is not about protecting the licence for the original expression but for selling the main idea or technical know-how of the format.

Economics provides a harsh judgment on demands of format creators for copyright protection on format rights. As per the doctrine of merger, if there are only a handful of ways to express a certain idea, then that expression is not worth providing copyright protection as doing so will effectively protect the idea, thereby creating enormous administrative, enforcement and access costs for follow-on format creators using a certain idea. This indicates that from a property rights point of view (within an economic environment) there is low justification to the protection of format rights.

2.4.3.3. Protection against copying only, not duplication

Whenever a producer creates a format based on someone else’s format (licensed or otherwise), this is interpreted in economics as independent duplication and not copying or pirating. From an economic point of view, there is no “free riding” which has taken place as well as no loss of welfare to the original producer, thereby not undermining any incentive to produce formats in the future (though ‘rent’ may have been curtailed). Moreover, if independent duplication was not allowed under property rights, format creators would spend less time creating new format but trying to enforce their rights in territories around the world.

2.4.4. *Economic alternatives to copyright law*

There are several alternatives which have been suggested to copyright within the property rights approach of economics. An alternative applicable to the format rights problem is of the ‘business model’ variety; such as being first to market and lead time advantages (Towse et al. 2008).

Boldrin and Levine (2002 cited Towse et al. 2008) argue that the freedom of contract and having the first mover advantage is sufficient basis for a competitive market of ideas. This is seen in format rights licensing that the firm which first introduces a format idea in certain type of expression can be the one regarded by the audiences as ‘original’. As long as it is able to sustain audiences on other elements of programme quality, a copycat will usually be considered just a copycat, thereby endearing the original to audiences, advertisers and broadcasters.

The above, however, only helps explain format imitation within one market or territory. In the international market of formats, Liebowitz’s idea of indirect appropriability can be useful. Liebowitz (1985 cited Towse et al. 2008) argues that the demand for copiable originals increases due to unauthorized copying and that the total value of copyrighted material increases hence. Though in formats, there is no finished programme which is being sought for making copies, the increase in the format’s value can provide extra economic rents in those territories where the format has not been copied, thereby duly compensating the format’s original makers or copyright holders.

2.4.5. Conclusions from ‘TV formats & media economics’

The property rights approach of economics provides a limited explanation for format rights imitation and their growing international trade. Since format imitation is a problem of independent duplication, it fails to satisfy the free-riding criteria of property rights economics. Hence, expansion or contraction of property rights may not explain why international trade takes place in formats. However, alternatives to property rights economics, emerging from the media economics literature, provide clues to format protection and thus exploitation. These alternatives were the basis of theoretical propositions, in addition to the ones summarized from the previous two strand of literature, ‘production of culture perspective’ and

‘marketing’. The following propositions were moulded into an interview protocol and examined using semi-structured interviews with format industry professionals (especially, see Sections 6.2, 6.3, 6.5, 6.7 and 6.8 of Chapter 6). This eventually gave rise to a definite theory of format protection and exploitation.

The theoretical propositions, arising from the media economics strand of literature, are summarized as:

1. Formats require differentiated specialist skills and a high level of technical knowledge to produce; hence convincing the market that the format is not worth buying without this technical knowledge helps in protecting the format. Creation of elaborate support manuals and technical support further assists this aim.
2. Enhanced distribution networks of format firms provide them with an express connection with buyers in each territory, keeps them abreast of copycat attempts which can thus be neutralized through business relations and other strategies. This also provides a speed to enter as many markets as fast as possible.
3. Format originator gather advantages on overcoming the cultural discount when selling formats in international territories. The closer the format is to the territory’s national culture, more will it be accepted by local audiences, hence creating positive audience affinities with the format. Copycats will not try to attack an already localized version well accepted by audiences.
4. Format firms gather advantages by overcoming monopolistic competition and aiming to become consolidated and operate as part of an oligopoly. This reduces chances of buyers replacing their formats in favour of close substitutes, thus allowing them to command premium rents in the international market. Extra profits

from this offsets copycat attacks in territories with low revenue expectations, providing a level of indirect appropriability.

5. Formats originators accrue advantages by reducing the number of gatekeepers in the format value chain, thereby keeping a fit between their original territory and a culturally discounted version in the buying territory.
6. Option agreements rather than outright licences and strategies to monitor internationally the reputation of buyers encourages the buyers (or potential copycats) to pay for format rights, thereby increasing the shelf life of the format. Seller’s reputation (or corporate branding) also helps in the same way.
7. Though IP rights are not guaranteed or conclusive in any jurisdiction that format originators and distributors trade in, maintaining the rhetoric of IP rights and operating under such a notion, besides other legal rights such as confidentiality agreements, provide time for the pursuance of strategies to exploit a format before an imitation attempt.

3. Methodology

This research, carried out over a period of three years, from October 2006 to October 2009, has been an interdisciplinary study utilizing philosophies and norms from law, marketing and media economics disciplines.

Interdisciplinarity became a natural choice for this researcher since this research wanted to *“answer a question and solve a problem by addressing a topic that was too broad and complex to be dealt with adequately by a single discipline or profession”* (Klein & Newell 1998). Interdisciplinarity offered *“a workable solution as a middle ground between the philosophical dogmatisms”* (Johnson & Onwuegbusie 2004) of law, marketing and media economics. Disciplinary knowledge and concepts from the three diverse disciplines were integrated in such a way that the resulting understanding was expected to be greater than simply the sum of its disciplinary parts. Where *“the goal of synthesize is creation of a new theory or original knowledge”*, a rich interdisciplinary research accepts contradictions between disciplinary systems of knowledge (Seipel 2005).

For ease of management and to reflect an interdisciplinary research design, this research was segmented into two studies - content analysis of reported format disputes and semi-structured interviews with format industry professionals following a sequential explanatory strategy (Creswell 2003). It has been a straightforward design with clear, separate stages of data collection where collection and analysis of content analysis data was followed by the collection and analysis of semi-structured interviews data. The findings of semi-structured interviews were interpreted once the results of the content analysis were available to the researcher.

3.1. Aims and objectives

Research Aim: To study how television formats are increasingly traded internationally in the absence of a precise and enforceable regulatory framework.

A preliminary reading of trade journal literature and some articles on television format rights led the researcher to create specific objectives for this research. These objectives were:

Objective 1: Assess the growing economic contribution of television formats as traded objects and highlight the paradox of format imitation.

Objective 2: Assess the usefulness of IP based regulatory framework (such as copyright) as a legal protection mechanism for protecting formats.

Objective 3: Create and examine theoretical propositions of market based strategies of format protection (to emerge from conceptual framework).

3.2. Secondary research – trade journal review

To meet Objective 1, a literary review of secondary data was conducted to assess the growing economic contribution of television formats as traded objects while illustrating the paradox of format imitation.

This was a desk based secondary research which reviewed trade journal articles accessed from industry journals such as ‘Broadcast’ (widely subscribed television trade journal in the UK), Broadcasting & Cable, Screen, Variety and Video Age as well as traditional academic search resources. Other sources of information included WIPO²⁰, DCMS²¹, EIPR²², ‘FRAPA’²³, PACT²⁴, and ‘BBC’.

Findings from this secondary data serve as the introductory material for this thesis (sections 1.2 to 1.6). These findings also helped the researcher to choose appropriate disciplines of literature (cultural theory, marketing and media economics) to be reviewed (justification and details in section 1.1).

²⁰ World Intellectual Property Organization, a WTO body.

²¹ Department of Culture, Media & Sports (Government of UK)

²² European Intellectual Property Review

²³ Format Recognition and Protection Association

3.3. Study One (primary research) – content analysis

Objective 2 was met by carrying out Study One which assesses the limits of copyright law as a means of protecting formats, by conducting a content analysis of 59 format rights disputes reported in the trade press and in online services. In the resultant bespoke database, format disputes are categorised by jurisdiction, ground of dispute and decision or settlement.

Content analysis has been defined as a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use (Krippendorff 2004). In this research, the same unit of analysis (i.e. ‘instance of format imitation’) along with its codes and sub-codes was applied to 59 format dispute reports to find replicable and valid inferences. Several advantages of content analysis assisted the researcher to choose this method of inquiry to investigate format rights disputes. Firstly, content analysis allows a historical perspective over time for texts (in the case of this research, format dispute reports), and secondly, it is unobtrusive and provides positivist and factual results which are unadulterated by human opinions or a reliance on memory. Moreover, it is one of the closest form of inquiry to establishing ‘hard facts’, along with experiments, and provides an overall feel of how ‘all the variables fit together’ (Bryman 2004).

The content analysis aspect of this research was informed by recent advances in legal empirical research. Baldwin (2008) defines legal empirical research as “*collection of original materials relating to legal institutions, procedures and personnel in a rigorous and systematic manner in order to uncover, understand and explain regularities and patterns in the way they operate in practice*”. Since the late 1980s, empirical legal research is increasingly important to and valued by policy makers, law reformers, the judiciary, academics and practitioners (Genn et al. 2006).

²⁴ Producers’ Alliance for Cinema and Television

This research is informed by the methods advocated for conducting empirical legal research. These methods include the ‘content analysis’ of records, reports and other documentary sources kept by official bureaucracies, specialist and publicly available search engines and professional reporting institutions such as trade journals. In the content analysis, the researcher collated format disputes from known selected sources (described below) and analysed them according to pre-defined codes. Some of these codes were, ‘grounds of dispute’, ‘nature’ and ‘type’ of dispute, etc. Described below are the steps involved in conducting this content analysis as well as the resultant database which emerged from this analysis.

Firstly, 41 unique format dispute reports were collated through an issue by issue search of a specialist trade weekly ‘Broadcast’ over the last 20 years (1987 to 2007 for the purposes of this research). ‘Broadcast’ (along with its online version Broadcastnow.co.uk) is the definitive resource for the TV and radio industry in UK, delivering business-critical information and news on commissioning, production, facilities and technology. It has a circulation of more than twelve thousand (ABC audited²⁵) and readership of over seventy-two thousand industry professionals (Broadcast 2009).

Physical access of this trade journal was necessitated as no online or microfiche search facility was available, hence physical copies of this oversized trade journal were read and digital photographs were taken of articles which contained any information relating to a format rights dispute in any television territory of the world²⁶. Bournemouth University’s library had physical access of the previous 4 years issues (2007 to 2004) of Broadcast while past issues (from 2003 to 1987) were accessed from the British Film Institute’s library in London. A total of one thousand (1000) weekly editions

²⁵ Owned by the media industry, ‘ABC’ verifies and reports on media performance in UK, providing a major trading currency for media owners and buyers across print, events, digital and evolving platforms.

²⁶ The researcher was aware that a disproportionate number of reports may appear from UK, European and US territories whereas reports from the rest of the world may be under-reported. The next stage of searches using online media overcame this limitation.

of Broadcast (at the rate of 50 editions per year for 20 years) were read and searched. Later, the digital photographs of relevant articles were categorized into specific years and ascertained if they contained any relevant information such as the main unit of analysis ‘*instance of format imitation*’. Photographed articles which did not contain such information (either being commentaries or editorial regarding format rights disputes) were discarded. The remaining photographed reports formed the core sample of content analysis conducted using pre-defined codes (see section 3.3.1).

Secondly, key phrases such as ‘television format’, ‘television copying’, ‘television copyright’, and ‘format rights dispute’ were fed in specialist academic search engines such as HeinOnline, LexisNexis, and Westlaw as well as online public search engines such as Google and Yahoo. This step yielded unique reports of format rights disputes not found using the first step i.e. the trade weekly ‘Broadcast’. Thus, a total of 18 unique format rights disputes were unearthed using this step.

Thus, overall 59 unique reported format disputes were content analysed.

3.3.1. Content Analysis codes

The main unit of analysis used for this content analysis was ‘instance of format copycatting or imitation’. This was further broken down into eight (8) pre-defined codes which were ‘Year of dispute’, ‘Edition of Broadcast/ Other Source’, ‘Dispute Jurisdiction’, ‘Plaintiff or Claimant’, ‘Defendant or Alleged Copycat’, ‘Grounds of Dispute’, ‘Actual Legal Action/ Threatening Only’, and ‘Judgement/ Ruling or Settlement’.

Furthermore, a few number of working codes such as Taxonomy (Primary), Taxonomy (Secondary), Taxonomy (Tertiary), ‘Gone to Court?’, ‘Ruling favouring claimant/ defendant’ and ‘Ruling upholding copyright infringement?’, assisted in creating descriptive observations from the

content analysis. A permanent Dispute ID (configured as the variable ‘*Year-Serial-Source*’) did not play any analytical role but it provides for additions of disputes as and when they are available in public knowledge. A remarks column provides some qualitative information on the respective disputes.

Knowledge of format rights dispute requires continuous updating due to the highly variable nature of format imitation heightened by a dynamic international trading environment. In order to ascertain imitation behaviour, imitation variables in the present formats trading environment (i.e. at one point of time) were isolated from dispute reports. These imitation variables, such as ‘the location of dispute’, ‘court action or threatening behaviour’, ‘ruling or out-of-court settlement’, etc. informed the researcher’s pre-defined codes. A screen-shot of the codes in use for the content analysis is provided below (*one line has been divided into two for ease of presentation*):

<u>Dispute ID (YR-NO-SRC) (permanent)</u>	<u>Year of Dispute</u>	<u>Issue of 'Broadcast'/ Other Source</u>	<u>Dispute Jurisdiction</u>	<u>Plaintiff / Claimant of Original Format</u>	<u>Defendant/ Alleged Infringer</u>	<u>Grounds of Dispute</u>
1994-04-BR	1994	19-Aug-94	Spain	Endemol Entertainment (<i>Love Letters</i>)	Antena 3 (Spanish broadcaster's <i>to-be-broadcast</i> show)	Copy infringement

Continued...

<u>Outcome of Dispute</u>	<u>Actual Legal Action/ Threatening only?</u>	<u>Judgement / Ruling / Settled out of Court/ other means?</u>	<u>Remarks / More Information</u>
right settlement	Endemol sued Antena 3 in a Madrid (Alcodenas) Court and won the case.	Ruled in favour of Endemol, Antena 3 was barred from making and broadcasting similar show.	Endemol took Antena 3 to Court as it wanted it original to Tele 5 as <i>Love Letters</i> . The judges ruling was decisive. Endemol had a different format 'All you need is love 3. Endemol was also seeking to buy an independent presence in Spain.

Figure 1 Screen-shot of 'Format Disputes Database' Codes

Study One helped the researcher conclude that IP laws, such as copyright, mostly failed to provide a precise and enforceable instrument for protection and exploitation of formats. Several cases were highlighted where either

copyright or other legal rights ‘failed to’ or were ‘weak to’ protect formats from imitations. Thus, by extension the trade of format rights suffered.

3.4. Study Two (primary research) – semi-structured interviews

Objective 3 was met by conducting Study Two. The researcher proposed theoretically, from a review of academic literature, that market based strategies such as managing the brand, distribution, cultural fit with host territory, etc. were utilized by format originators in order to protect and trade in formats. These propositions were examined by conducting semi-structured interviews with a purposively built representative sample of format industry professionals.

Denzin and Lincoln (1998) put forth interviews as the art of asking questions to produce “*situated understandings grounded in specific interactional episodes*”, influenced by the personal characteristics of the interviewer. Thus the interview produces contextual meanings of concepts where the interviewer tries to create the reality of the interview situation. Fontana and Frey (cited Denzin and Lincoln 1998) call interviewing the most powerful form of human interaction, notwithstanding the residual ambiguity of the spoken word. Corbetta (2003) contends that a semi-structured interview style gives both the interviewer and the respondent ample freedom, while ensuring all relevant themes are dealt with and all necessary information collected. The use of semi-structured interviews in this research is validated by Bryman (2004) whose “*collection of data on more than one case and at a single point of time in order to collect a body of data in connection with two or more variables to detect patterns of association*” translates into Study Two of this interdisciplinary research.

For this research, forty-six semi-structured interviews were conducted in English using a digital audio recorder in four separate rounds. Three rounds were conducted at different international television trade fairs - Discop East Budapest in June 2008, Asia Television Forum Singapore in December

2008 and NATPE Las Vegas in January 2009. These trade fairs, typically lasting for 3 or 4 days, occur once a year and are locations where format distributors and buyers converge from all over the world to interact and transact; hence these were ideal locations to find a large number of respondents under one roof. A fourth round of interviews was conducted at the premises of Fremantlemedia²⁷ (a leading format distributor based in London).

The researcher gained paid access to two of these fairs (in Budapest and Singapore) as a participant / academic observer while access to the third (in Las Vegas) was provided as part of an education fellowship. After every round, the digital audio recorder was connected to a computer to store the output audio file for each interview. A preliminary review and sorting at the researcher's office led to discarding five interviews as it emerged that these five respondents had no comprehensive knowledge or informed opinions about format trading (they being support staff representing a distributor at a trade fair or were sitting-in for a colleague who had backed out at the last minute due to a business engagement). The remaining forty-one interviews, ranging from fifteen minutes at shortest to one and a half hours at the longest, formed the core data set which was meticulously transcribed (see Appendix 11.3 for a sample transcription) and then systematically analysed using a coding technique (explained in Sections 3.4.3 and 3.4.4).

Typically, each interview was pre-arranged before arriving at the trade fair with a senior manager or functionary of a format developer or distribution company. This person was chosen using a defined sampling strategy. The interview protocol, used to guide the interview, was sent to this person earlier through email. In this email, the researcher assured anonymity of the respondents (owing to the confidential nature of business strategies sought) as well as mentioning that the findings will be used only for scholarly purposes. The researcher attempted to keep an hour long slot for each

²⁷ Respondent access at Fremantlemedia (London) was arranged through a linked research project titled 'Exploitation of TV Formats' funded by the ESRC (Grant No. RES 186-27-0012).

interview though on the actual trade floor, modifications to the plan were inevitable due to rescheduling, cancellations and on the spot additions. A typical working day for the researcher during these trade fairs began at 9 am and ended at 5 pm. The time not used during the interview was spent in making observations of the trade floor dynamics and of interactions during after-hours socials and cocktail parties. A similar strategy was employed for interviews conducted in Fremantlemedia.

The researcher had decided against conducting any telephonic interviews to maintain depth of the topics being discussed as well as to establish trust with the respondents. The medium of telephone proves to be a disadvantage in creating trust thereby causing respondents to be less willing to engage in exploratory discussion. Also, the telephone does not allow the interviewer to gauge the visual cues of the respondent (Saunders et al. 2003), thereby minimising the level of in-depth interpretation of the said word.

3.4.1. Interview protocol

Study Two was conducted using an interview protocol (see Appendix 11.2). At the same time, rambling by the interviewees i.e. moving away from the protocol was encouraged, thus allowing the interviewees considerable time and freedom to answer on their own terms and conditions (Bryman 2004) by providing their own exploratory interpretations of format rights protection along with any anecdotal evidence. Thus, the interview was not based upon a set of rigid pre-determined questions and prompts; additional or complementary issues that were raised eventually formed part of the study's findings.

The interview protocol incorporated the theoretical propositions about market based protection and exploitation strategies such as Format Brand Management, First Mover Advantage, Power Relations and Clout, Access Control, Confidentiality, Reputation and Gentlemen's Agreements i.e.

Industry Conventions. Respondents could decipher their knowledge of format protection and trade according to this interview protocol (containing the theoretical propositions) as well as moderate their views as per territory, format genre and company size. The strategies were not laid out in a symmetric manner so as not to bias the respondents but to encourage them to provide exploratory responses. Moreover, there was space to illicit exploratory responses of strategies not already on the protocol as well as space to revisit views on legal protection (such as using IP laws). The last element provided the researcher with a triangulation element so that he did not miss any intellectual property or other legal regime that the industry used for format protection.

3.4.2. Interview respondent sample: purposive

Purposive sampling was used to select the target interviewees for the semi-structured interviews. The purposive sampling method is appropriate where the researcher has confidence that only specific people will be able to shed light on the issues at hand. Moreover, this form of purposive based sampling was necessary to deliberately select decision making professionals in order to obtain perspectives which were particularly informative (Saunders et al, 2003). A disadvantage of purposive sampling is that it does not allow for simplicity of implementation as seen in other forms of sampling and makes it difficult to keep biases at bay when sampling individuals, but it is highly convenient for small numbers of samples (Corbetta 2003), as in this research.

The target set consisting of senior managers and functionaries from several format distribution companies as well as format developers. They represented large diversified television programme producers and distributors to independent niche format makers. Since they worked in international business, all spoke fluent English and came from countries such as UK, USA, France, Germany, Australia, India, Chile, Argentina, Korea, Japan and the Israel. The names and contact details of the target

were ascertained through the ‘participant databases’ which the researcher gained access to by registering as a paid participant or education fellow.

Details of format industry respondents are represented here to reflect the range of the data collected. All together thirty three (33) format originating and distributing companies from fourteen (14) countries represented their views in this research. The detailed break up is as follows:

- ✓ Eight from UK: All3media International, Bazal, BBC Worldwide, Chello Zone, Fremantlemedia Ltd., ITV Global Entertainment, Lambert Studios and Zodiak International .
- ✓ Six from USA; Endemol North America, Fremantlemedia North America Inc., Granada America, RDF USA, Small World International Format Television and Telemundo International.
- ✓ Three from The Netherlands: 2waytraffic, Absolutely Independent (The Format Agency) and Endemol International bv.
- ✓ Three from Germany: Bavaria Media Television, Fremantlemedia GmbH and SevenOne International GmbH.
- ✓ Three from France: 10 Francs, TVONLY & Zorn Production International.
- ✓ Two companies from Australia: Australian Broadcasting Corporation & Passion Distribution.
- ✓ And sole country representatives such as Telefe International (Argentina), RCN Television (Colombia), Telemedia InteracTV (India), Armoza Formats (Israel), Nippon Television Network Corporation (Japan), MBC Plus Co., Ltd. (Korea), Telewizja Polska (Poland) & Sparks Network (Sweden).

The actual names and company affiliations have not been provided in this thesis²⁸, due to confidentiality reasons. However, the following titles along with their company types, used to provide quotations in the Data Analysis chapters, draws a good picture of the respondents.

CEO (North America) of large British format producer; **CEO** of a mid-sized British format producer; **Chairman** (North America) of large Dutch format producer; **Creative Director** of Media Licensing for a large British format producer; **Distribution Head** of a large German format producer; **EVP** (Worldwide Production) of a large British format producer; **Flying Producer(s)** of a large British format producer; **French** format producer (Independent); **American** format distributor (Independent); **International Format Sales Manager** of a mid-sized Dutch distributor; **International Sales Manager** of a small Australian format distributor; Leading **Television Consultant** from Britain; **Licensing Manager** of a large Dutch format producer; **Managing Director** of a large German format distributor; **Owner** of a small format production company from Israel; **President** (North America) of large British format producer; **President** of a large Swedish format distribution network; **President** of an independent mid-sized Dutch format distributor; **Programme Sales Manager** of a small British format distributor; **Regional Director (Asia)** of a large British format producer; **Regional Director (Asia)** of a mid-sized Indian format producer; **Research Manager** of a large British format producer; **Sales & Acquisitions Manager** of a large British format distributor; **Sales Director** of a large US telenovela company; **Sales Executive** of an independent French format producer; **Sales Head (Asia)** of a mid-sized Australian format distributor; **Sales Head** of a large Colombian format producer; **Sales Head** of a mid-sized format producer from Poland; **Sales Head** of large format producer from Argentina; **Sales Manager (Asia)** of a large publicly funded British format producer; **Sales Manager** of a mid-sized Japanese format producer; **Senior Manager** of a large Korean format distributor; **SVP - Content Partnerships** of a large British format producer; **VP Business & Legal Affairs** of a large British format producer; **VP Sales** (Germany & Eastern Europe) of a large British format distributor; **VP Sales** of a large British format producer; **VP - Brand Development** of a large British format producer; **VP - Content Development** of a large British format producer; **VP - Participation TV** of a large British format producer

²⁸ These are available for auditing purposes.

3.4.3. Interview analysis: coding-based pattern matching

The core data of forty-one (41) interviews was analysed using a coding technique - a well accepted social science strategy of managing and making sense of qualitative data (Bryman 2004). This not only validated the theoretical propositions but also unearthed hitherto unknown strategies of format protection to yield a formal theory of market based protection and exploitation of formats.

Strauss & Corbin (1998 cited Bryman 2004) suggest ‘reviewing data transcripts and naming component parts’ as a significant method of analysing qualitative data. They mention three levels of coding, namely; open coding which yields concepts which are later to be grouped and turned into categories; axial coding where data, after it has gone through open coding, is put back together in new ways after marking connections between categories; and finally selective coding, where a core category is selected and systematically related to other categories, refining them in the light of the core category.

Open coding was partly achieved through the use of the interview protocol (created from a review of three literatures as well as an analysis of quantitative data of format rights disputes). This yielded a coded set of categories. However, exploratory responses which did not correspond to the propositions underpinning the interview protocol had to be channelled into new open codes. Further, axial coding provided an opportunity for the data to be matched with the existing pattern of strategies found in the interview protocol. This was repeated for the open codes which had emerged at a later stage. Finally, three core categories (formalizing and transacting know-how, managing the brand & social and distribution networks) were selected as selective codes to systematically relate the axial codes to these and formalize a theory of market based protection and exploitation of formats.

The use of coding has also been questioned (Coffey & Atkinson 1996 cited Bryman 2004) as a means of good qualitative data analysis as there is an apprehension that continuity and context will suffer as a result of apportioning data into categories. This limitation has been recognized by the researcher while interpreting data. In the absence of a competing method of managing and analysing large chunks of qualitative data, coding seemed most appropriate. Moreover, as far as possible, a narrative style of presentation of the data has been preferred while retaining many original phrases of the interviewees, presented in the data analysis chapters in italics and quotes. Furthermore, relying on original phrases of the interviewees provides coherence to the categories and prevents inaccurate categorisations.

The process of coding followed in this research is exemplified in this section by providing the initial set of open codes used to analyse data, the axial codes which emerged later on and the selective codes. Let us look at an example of how the researcher broke down respondent's words into meaningful findings for this research.

*“When you **buy** the original, you get a **format bible** and consultancy, so with the format rights in your hand, you get the know-how which enables you to be much faster than the market.”* [Managing Director of a large German format distributor]

The above quotation was assigned an emergent open code 'Selling Format Bibles' while analysing the interview transcript of a respondent. This was considered an emergent open code since it did not appear as one of the codes from the interview protocol.

3.4.4. *Set of open, axial and selective Codes*

<p style="text-align: center;">Open Codes</p> <ol style="list-style-type: none"> 1. Audiences knows copycats 2. Changing ecology of formatting – movement towards originality 3. Confidentiality & Access Control protects formats 4. Copycats provide bad quality, hence they fail 5. Cultural Localizations – effective exploitation and better market reception. 6. Different type of copycat practices 7. Diminishing copycatting rate – social norms emerging 8. Disintermediation helps protection – deal directly with broadcasters 9. Established markets are fertile for formats, but some challenges remain. 10. Established TV markets are big copycats, not the other way around. 11. Format development and creativity 12. Format sales staff misinformed about rights and legal situation surrounding formats. 13. Formats in new media 14. Formatting Telenovelas 15. Frustrations with format copycatting 16. Honour, Shame, Trust, Relationships 17. Industry Structure and Format Company Types 18. Information Flows protect formats 19. IP posturing & Threat of suing 20. Licence & Sales Fees 	<ol style="list-style-type: none"> 21. Managing the format and its corporate brand 22. Marketing promotions 23. National capabilities in format industries 24. Other strategic advantages of format producers 25. Post dispute settlement mechanisms 26. Power relations and retaliatory measures 27. Preference for market based means and other legal approaches to protection 28. Receptivity of FRAPA 29. Selling Format Bibles 30. Selling Technical Know-How 31. Sale of Consultancy (Flying Producer System) 32. Sale of non-Consultancy elements 33. Scale of Production & Enhanced Distribution Network 34. Speed to Market – First Mover Advantage 35. Strict Contracts provide consistency 36. Success in America opens gates worldwide 37. Tape Sales 38. Trade Fairs, Markets, Gatekeepers 39. Viral Marketing for formats 40. Voting Problems 41. Why are formats traded?
<p style="text-align: center;">Axial Codes</p> <ol style="list-style-type: none"> 1. Confidentiality & Access Control 2. Norms based trading – Reputation, Shame, Trust 3. Emerging markets: not copycats, are fertile for formats, challenges 4. Enhanced distribution network, scale of production, speed to market 5. Industry structure, company types, why format trade grows? 6. Registration systems 7. Formats and new media 8. Flow of Information, Legal Departments, deterrent letters 9. Localisations 10. Brand Identity, Innovation & Extensions 11. Power-play, clout, blockades 12. Preference for market based measures 13. Receptivity of FRAPA 14. Sales of Consultancy (Bibles, Production Know-how, Flying Producers) 15. Trade Fairs and Markets 	<p style="text-align: center;">Selective Codes</p> <ol style="list-style-type: none"> 1. Formalizing and transacting know-how 2. Managing the brand 3. Social and distribution networks

Figure 2 *Set of open, axial and selective Codes*

Another emergent open code, ‘Selling Technical Know-how’, appeared on the basis of the following quotation.

*“...with all the knowledge, the graphics, the décor, the sets, the lights, and everything else – you buy not just a TV format but a really extensive product with a lot of **knowledge behind** it of **how to work the game**, **how to attract the audience** and have them interact and so on”* [Trade Events Manager of a large Dutch format producer]

Several such emergent open codes were created and when patterns in these codes were categorized together, it gave rise to the axial code ‘Sale of Consultancy (Bibles, Production Know-how & Flying Producers)’. This axial code categorized together with the axial code ‘Confidentiality and Access Control’ eventually provided the selective code ‘Formalizing and Transacting Know-how’.

3.5. Reliability, validity and trustworthiness of findings

3.5.1. Reliability and validity of content analysis findings

Reliability has been defined as the consistency of measure of a concept (Bryman 2004). The findings of the content analysis in this research are expected to have a high reliability since the data (i.e. format rights dispute reports) was sourced from multiple sources - trade journals as well as online search engines. In other words, the multiple information sources stabilise each reported format dispute and provide consistency leading to a high reliability.

Validity refers to the issue of whether an indicator that is devised to gauge a concept really substantiates it (Bryman 2004). Face validity of the content analysis findings is high following an independent audit (Brody 1992) by academics from the legal discipline within more than one UK universities. These academics concurred with the sampling strategy and commented

that the findings had face validity despite the known limitations highlighted in the ensuing section. In addition, the content analysis findings have content validity which involves *“the systematic examination of the test content to determine whether it covers a representative sample of the behaviour domain to be measured”* (Anastasi & Urbina 1997) since they were amply examined by format industry professionals, policy makers and academics who attended the ‘ESRC TV Formats’ research dissemination seminar (*detailed in section 10.2*) where these findings were graphically presented.

3.5.2. Trustworthiness of interview findings

While reliability and validity (as per their absolute measurement-based meanings) are considered reflexive forces acting upon quantitative research (Bryman 2004), an alternative reflexive criteria for evaluating qualitative research, such as interview based data, is forwarded by Guba & Lincoln (1994 cited in Bryman 2004). They equate reliability and validity to the trustworthiness of qualitative research; trustworthiness being made up of credibility (the research’s acceptability to others), transferability (the research’s significance to the aspect of the social world being studied), dependability (the research having followed an auditing approach throughout) and confirmability (not allowing theoretical inclinations or personal biases to have coloured the course of research).

Firstly, the findings are credible and transferable as they were acceptable to the main actors in the social world that was being studied. The findings were presented at the ‘ESRC TV Formats’ research dissemination seminar (*detailed in section 10.2*) organized in London on 16th June 2009 at the premises of Fremantlemedia, a leading formats developer and distributor. This seminar was well attended by format industry professionals, legal practitioners, policy makers and academics who all concurred with the interview findings and the theory developed for the protection of television format rights. Hence, it can be further inferred that the findings are

contextual and significant to the protection of cultural objects trading in the absence of a strong regulatory framework. Further transferability of the report can be undertaken through a detailed reading of this chapter which contributes to the thick description of the research process (Writing@CSU, 2004).

Secondly, the findings are dependable since this research follows an auditing approach where the reader can see the building blocks of data and findings. To facilitate this auditing approach, an interpretive framework, consisting of the interview protocol and a sample of interview transcript, have been provided as appendices (11.2 and 11.3), and the coding technique is illustrated in the text (section 3.4.4). Another means of addressing verification of findings was an auditing by the supervision process in which any inherent inconsistencies were clarified through periodic reviews of methodology and analysis. The supervisory team also provided reflexive feedback to identify data analysis procedures.

Thirdly, the findings are confirmable since they followed a form of respondent validation (Brody 1992; Miles and Huberman 1994) called ‘member checking’ (Kirk & Miller 1986). The researcher checked his analysis of interviews data with respondents at Fremantlemedia, a leading format production and distribution firm in London (see Appendix 11.6 for an example of a ‘member checking’ correspondence). The findings are also confirmable as any personal bias has been avoided by the use of careful purposive sampling. Transcribed interview scripts were shown to the supervisory team (who had subject-specific knowledge) and they were asked to ascertain if the findings were logical and plausible.

3.6. Limitations

Research findings cannot claim to be without limitations, however, strategies to minimise the impact of limitations can produce superior results.

A limitation of content analysis findings may arise since the reported disputes are sourced primarily from a single source – the trade journal ‘Broadcast’ – rather than court documents, as is the nature of disputes which do not finally reach a court of law or are settled outside. This sourcing strategy means that a bias or error introduced by a reporter or journalist may have crept into the database. For example, journalists are known to oversimplify specific legal language to make it accessible for a non-specialist readership. This limitation can be countered on two levels.

Firstly, in the absence of a competing source of information, where court documents are not available and when the industry deems an event or a resultant settlement highly confidential, a report in a trade journal or on the internet, as long as it can be corroborated, is the best possible source for this study. Hence, this limitation is mitigated to a large extent. Secondly, while one source was used primarily, each entry was verified by other means such as an internet search or word of mouth through industry professionals. For example, the database was updated after completion of semi-structured interviews and in this way qualitative knowledge augmented the database.

Another limitation of the content analysis findings may arise from the fact that inter-jurisdictional comparisons were made for format disputes mostly depending upon copyright protection and other IP law elements such as confidentiality and trade secrets. While IP law is largely homogenised around much of the international trading world (owing to most countries signing the TRIPS agreement which mandates that minimum standards of protecting intellectual property are incorporated in national legislations), there are still some finer differences amongst them. Instead of being defeated by such concerns, the researcher felt that the intention of comparing data units as per the codes of the content analysis was to arrive at macro conclusions about the effect of copyright or other IP law on format protection, rather than comparison of the relevant laws themselves. Hence, comparisons here were justified.

A general limitation of interview findings is that the respondents were unduly influenced by exposure to the research title and objectives. To counter this limitation in the findings, it can be said that the design of the interview protocol laid out the themes to be explored but did not in any way indicate a desired outcome. It simply gave choices while asking for more information. Moreover, several respondents disagreed with one or more of the themes in the protocol, indicating that the experienced industry professionals were not influenced by the researcher.

A potential limitation of interview findings arises since some respondents have prevented the researcher from mentioning specific data units (e.g. names, figures etc.) pertaining to specific business information that can be used by competitors. While the researcher agrees that additional information may have added to the value of the findings, every effort was made to divulge as much as possible of a known phenomenon in the format industry within the constraints of industrial confidentiality.

3.7. Ethical considerations

Only confidentiality ensures that interviewees speak freely. Thus, the interviewees were ensured of the same when contacting for interviews. Thus, the names and company affiliations of the interviewees have been made confidential but to aid context, work titles have been divulged in this thesis.

Furthermore, there was an attempt to establish trust and rapport with the respondents. The interview protocol was sent in advance by email so that the respondents could familiarize themselves with the topic being researched and the interview time could be spent on discussing issues rather than laying groundwork. The researcher tried to be pleasant, sincere, sensitive and non-evaluative (Sekaran 2003) while the interview was being conducted. Moreover, the researcher had taken prior appointments before

arriving for interviews to collect primary data, the interviews mostly starting and ending at previously arranged times.

Finally, the ethical research policy²⁹ of Bournemouth University was adhered to while conducting the interviews.

3.8. Reflection on conducting an interdisciplinary research

Only a few students, particularly at a doctoral level, tend to pursue an interdisciplinary research since the current system of doctoral education encourages specialization, and consequently, is inhospitable to interdisciplinary scholarship (Golde & Gallagher, 1999). Nevertheless, this researcher decided to pursue his research using interdisciplinarity, with the belief that interdisciplinary research alone can escape the fragmentation of knowledge (Stern, 1986). In other words, interdisciplinary research is one which appropriately combines knowledge from many different specialities as a means to shed new light on an actual problem. Since this research deals with a realistic problem of international trade, it was apt that an interdisciplinary approach be utilised (a further exploration of this theme has been provided at the outset of the thesis [see section 1.1]).

A practical aspect of conducting this research was the issue of gaining knowledge and reconciling research methods from more than one discipline, i.e. cultural theory, marketing and media economics. The researcher had a background in marketing practice as well as teaching, hence understanding marketing as well as media economics literature appealed to the previously learnt skills of the researcher and posed no problems. However, the knowledge of regulatory mechanisms and the sociology of culture represented a steep learning curve, with phases where the researcher exerted to master the relevant knowledge from each discipline. For example, for three months during the early stages of this

research, the researcher was completely immersed in an uninterrupted study of copyright, utilizing several key texts and scholarly articles.

Interdisciplinary inquiry, when effectively and successfully executed, consistently considers a variety of intellectual and practical questions not normally asked in ordinary disciplinary pursuits (Brewer, 1999). This can also lead to the peril that the creation of a literature review which informs the theoretical framework can seem disjointed. This researcher faced a lack of common taxonomy and nomenclature for key concepts within the three different disciplines mobilized to provide the theoretical framework. The lack of common nomenclature created problems for the right terminology to be used in the interpretive frame. Thus, there was always the underlying concern that the interview protocol was subject to a terminology informed by a somewhat disjointed nomenclature. The researcher had to resort to extra vigilance and a verbal re-explanation of concepts to respondents, while exposing the protocol to interviewing, to overcome a clash of terminologies and labelling.

Beyond mastering concepts of language and concepts, the researcher had to reconcile issues such as ‘how to unearth the constituent truth in different disciplines’ and to integrate that into a whole, at times resolve conflicts between research paradigms and methods. For example, the use of questionnaires is perfectly normal in a marketing research, the use of a case study method is typically seen to provide depth to sociology as well as regulatory studies, and the use of quantitative surveys forms the basis of many economic studies. This research had to decide on a research tool, independent of the paradigms its underlying academic theories came from. Eventually, a content analysis of format rights disputes provided the opportunity to unearth some regulatory and economic issues, while semi-structured interviews provided a depth to these as well as sociology of cultural products and marketing issues.

²⁹ The researcher followed the research ethics policy of Bournemouth University available from http://www.bournemouth.ac.uk/research/graduate_school/Documents_and_resources/documents_an

4. Data Analysis: Format Rights Disputes

In order to understand that copyright law did not protect formats conclusively, the researcher systematically collated and content analysed format rights disputes over the last 20 years. Presented here is the evidence of the resulting comprehensive database of format rights disputes (court cases and reported instances) since the late 1980s, when format rights disputes first started appearing in courts of law (interestingly, the seminal format rights case *Green v Broadcasting Corporation of New Zealand*, 1989 was found to be the 2nd such case). The analysis of data contained in this database, through the means of content analysis method discussed in the ‘Methodology’ chapter, sheds empirical evidence on the type, nature and other descriptive observations of the disputes over the last 20 years of international formats trading.

4.1. Bournemouth Format Rights Dispute Database 1987-2007

The next 17 pages provide the findings in the form of a combined database containing details of all 59 disputes collated therein.

<u>Dispute ID (YR-NO-SRC) (permanent)</u>	<u>Year of Dispute</u>	<u>Issue of Broadcast/ Other Source</u>	<u>Dispute Jurisdiction</u>	<u>Plaintiff / Claimant of Original Format</u>	<u>Defendant/ Alleged Infringer</u>	<u>Grounds of Dispute</u>	<u>Actual Legal Action/ Threatening only?</u>	<u>Judgement / Ruling / Settled out of Court/ other means?</u>	<u>Remarks / More Information</u>
1987-01-OT	1987	All England Law Reports & http://www.copyright.theft.biinternet.co.uk/rockfollies1.html	UK	Fraser & Others	Thames Television & others	Breach of Confidence	Yes	Ruled, in favour of the plaintiff	Don Fraser who was the manager for The Rock Bottom Group (Gaye Brown, Diane Langton, Annabel Leventon) entered into a contract with Thames Television to option a series on the lives of the Rock Bottom group. Though there was some written paperwork, most of the contract was oral, according which Thames were to offer the lead roles to the aforementioned artists to use the series ideas and only if they refused on first instance, was Thames free to cast other artists for the series. It was held that Thames breached the confidence in this contract.
1989-01-BR	1989	04-Aug-89	New Zealand	Hughie Green (Opportunity Knocks)	Broadcasting Corporation of New Zealand (Opportunity Knocks)	Copyright Infringement, Passing off	Yes	Ruled against the plaintiff. No action.	Hughie Green sued BCNZ in High Court of New Zealand in 1979, claiming that the NZ programme contained certain features of his original programme, including the name, various catchphrases used by Green, the use of "sponsors" to introduce contestants and a "clapometer" to measure studio reaction. The highest NZ Court dismissed the case in 1983. Green then took it to the Privy Council in UK which also dismissed it in 1989. Green was unable to provide tangible scripts of his 'format' and the Courts did not see his programme concept as a 'dramatic' work capable of copyright protection. In the words of the Lordships of the Privy Council, "a dramatic work must have sufficient unity to be capable of performance". Secondly, Green failed to show if his format, broadcast on British TV, had any reputation in New Zealand or the defendant had caused any financial harm to Green while the show was broadcast in New Zealand and hence no action of passing off could be allowed.
1989-05-OT	1989	European Intellectual Property Review 1989, 11(2), D25-26)	New Zealand	Wilson (writer of concept <i>The Kiwi Kids</i> , 1979)	Broadcasting Corporation of New Zealand (The Kids from OWL)	Copyright Infringement, Breach of Confidence	Yes	Ruled, in favour of the plaintiff, \$25,000 awarded as damages to plaintiff.	Wilson created the 'The Kiwi Kids' format for a children's series detailing how a disabled boy and girl fought evil with a stick and wheelchair to do good. BCNZ went on to make a similar series called 'The Kids from OWL' after being in negotiation with Wilson and having full access to her original material. In Court, it was held that there was sufficient evidence that Wilson's format which BCNZ infringed was capable of being copyrighted besides being responsible for breach of confidence with Wilson. Damages were awarded to Wilson.

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1990-01-BR	1990	21-Sep-90	UK	Diverse Productions (untitled 'treatment' of a sex series)	London Weekend Television, an ITV contractor for their series <i>Sex Now</i>)	Copyright on the 'treatment' of an idea'; & non-payment of development fee.	No - threatened, but not filed.	Settled Out of Court. LWT paid Diverse Productions an undisclosed sum of money and Diverse accepted LWT's moral and legal rights in <i>Sex Now</i> .	Settled on May 3, 1991. LWT had clarified that the idea was put forth by Oliver James, a writer and Diverse was brought in only as a line producer, which in any case failed to get validation from Independent Broadcasting Authority as an educational programme; prompting LWT to redevelop the idea. Diverse claimed that LWT changes were minor in nature only. Diverse had first gone to the Office of Fair Trading for upholding their programme idea and payment of development fees. OFT asked Diverse to solve it mutually as it deemed it a contractual dispute.
1990-02-OT	1990	Entertainment Law Review 1990, 1(5), E80-81)	Canada	Hutton (<i>Star Chart</i>)	Canadian Broadcasting Corporation (Good Rockin' Tonite)	Copyright Infringement, Breach of Confidence	Yes	Ruled, in favour of the defendant. No copyright found to exist in plaintiff's work. No confidence was found in negotiations as information was already public knowledge.	Hutton had created a nightly music video format called <i>Star Chart</i> which was co produced and broadcast on CBC. Three years after <i>Star Chart</i> had ceased to be in production, CBC created its own similar looking programme. Hutton tried to assert copyright in the show but the Court ruled that Hutton's work copyrightable within the boundaries of a dramatic work; there was only genre based similarities between <i>Star Chart</i> & CBC's programme; hence there was no substantial copying. On the question of breach of confidence, music video formats had already proliferated Western television and hence there was held to be no confidentiality in the idea, hence it couldn't be breached.
1991-03-BR	1991	07-Jun-91	UK	Darlow Smithson (untitled 'programme series suggestion')	Lagan Television (<i>Malpractice</i> series)	Copyright on the series idea.	No. Only row reported in trade press, though it was labelled a 'legal row'	Settled out of Court. Lagan told the press the matter had been resolved.	Smithson's accusation against Lagan suggested that they had 'Never been approached by Lagan for use of the programme idea' but a similar series proposal has been submitted by Lagan to Three East.
1992-01-BR	1992	20-Nov-92	Sweden	Action Time (<i>Love at First Sight</i>)	Danmarks Radio & Television (<i>Hjeter Pa Spil</i> [Heart game])	Copyright Infringement	Yes	Ruled. Undisclosed payment sum paid by Denmark Radio to Action Time.	Action Time had sold a format to TV4 in Sweden and felt that Danmarks Radio created a competing copy in Denmark after rejecting an offer to buy a licence. Danish programmes were watchable all over Scandinavia, i.e. including Sweden, hence this action in Sweden. Stephen Leahy, creator of the show and CEO of Action Time hailed the development as "reaffirmation of our rights to market the show and protect our ideas". In UK, the format was seen on Sky One by UK audiences.

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1993-01-BR	1993	05-Nov-93	France	BBC Enterprises France (Noel's House Party shown on NTV France)	TF1 (Extraordinaire) & Plaisance Films	Copyright on their popular hidden camera format!	No; only threatened.	Communication between the companies led the programme to be taken down from TF1's schedules.	According to the report there was a non-committal response to BBC's first communication, but the threat of legal action brought TF1 to communicate and resolve the matter.
1994-01-BR	1994	14-Jan-94	UK	Fremantle International (Let's Make a Deal, Password, Shop till You Drop, Supermarket Sweep)	Plus Communications and Technology Guernsey (for the respective Turkish language versions of Fremantle's gameshows)	Copyright Infringement	High Court writ, claiming \$100,000 licence fee on each show plus 8% interest till it is not paid.	Not known	Report said "Failure to pay licence fees for all rights needed for the production and broadcast of the Turkish language versions of the programmes". It is apparent that Fremantle chose a light weight opponent to set an international industry precedent through means of threatening and legal coercion.
1994-02-BR	1994	25-Mar-94	UK	David and Kathy Rose (independent)	C4 (for Superfan quiz in Don't forget your toothbrush show)	Copyright Infringement	report said "began legal action"	Not known	Reported in September 30th edition, see below. Roses said that they had devised the original idea and gave it to C4 commissioning editor Seamus Cassidy.
1994-03-BR	1994	22-Apr-94	Germany	WDR Germany (Medisch Centrum West)	Endemol Entertainment & RTL (Stadtlink)	Copyright Infringement, [Plagiarism, copying drama series]	Yes	Not known	WDR claimed that Endemol & RTL plagiarised Medisch Centrum West to make Stadtlink [interestingly WDR had bought rights to MCW from Endemol in the first place]
1994-04-BR	1994	19-Aug-94	Spain	Endemol Entertainment (Love Letters)	Antena 3 (Spanish broadcaster's to-be-broadcast show)	Copyright infringement	Endemol sued Antena in a Madrid (Alcodenas) Court and won the case.	Ruled in favour of Endemol. Antena 3 was barred from making and broadcasting similar show.	Endemol took Antena 3 to Court as it wanted it's original format to be sold to Tele 5 as Love Letters. The judges ruling was described as 'emphatic'. Endemol had a different format 'All you need is love' licensed to Antena 3. Endemol was also seeking to buy an independent producer to increase its presence in Spain.
1994-05-BR	1994	26-Aug-94	UK	Tintagel Productions (UK)	Anglia TV & US based Multimedia Productions (for the talkshow Vanessa)	Breach of confidence; breach of contract	Planned - actual not known.	Not known	Tintagel and Multimedia were to produce a US style talkshow and involved Anglia to raise additional resources. Then Anglia and Multimedia decided to do it alone, leaving Tintagel to hang out to dry!

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1994-06-BR	1994	30-Sep-94	UK	Thomas Murphy (independent)	C4 and Planet 24 Productions (for <i>Stop the Alarm</i> quiz in <i>The Big Breakfast</i> show)	Copyright infringement, 'stealing game show format'.	High Court writ, claiming damages.	Not known	Similar happened in March 1994, see above. <i>Further information is being sought.</i>
1994-07-BR	1994	16-Dec-94	UK	Gary Nash (independent)	BBC (<i>Good Fortune</i>)	Copyright ["Plagiarising show idea"]	No, but long and expensive fight by complaints to the BBC, finally taking the matter up to the board.	Settled for undisclosed measures in 1995.	Actual date of dispute unknown, year known as 1994, settled in 1995. Nash claimed that his ideas were rejected 4 times by BBC and that BBC's <i>Good Fortune</i> bore an uncanny resemblance to Nash's proposal including use of the same suggested host Gloria Hunniford.
1995-01-BR	1995	01-Sep-95	UK	Endemol Entertainment (Love Letters)	Granada TV (for the ITV show <i>The Share Richie Experience</i>)	Copyright; Endemol threatened to seek redress from international copyright bodies!	Endemol placed an advertisement in 'Broadcast' showing similarities between the 2 shows!	No further action.	Endemol's <i>Love Letters</i> had already been sold as a <i>format</i> to RTL Germany, TROS Netherlands, VTM Belgium, TV3 Norway, Tele 5 Spain, TV3 Denmark and TV4 Sweden. Granada clarified that one of its development executives came up with the idea when the UK government changed its rules on where couples can get married (one of the show's unique features). The ad in Broadcast was aimed at the UK television industry professionals to name and shame Granada.
1996-01-BR	1996	12-Jan-96	UK	Reg Grundy Productions (with UK rights to <i>Man O Man</i>)	Granada TV (for the ITV show <i>God's Gift</i>)	Copyright Infringement	Report said "seeking High Court injunction" to prevent Granada from broadcasting the show.	Not known	The main idea in <i>Man O Man</i> is that female contestants eliminate male contestants on their toe sucking abilities! Grundy accused Granada that it has created <i>God's Gift</i> based on a format for which Grundy had bought UK rights from the original German creator Prime Time International.

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1996-02-BR	1996	24-May-96	UK	Edward Joffe (Video View)	Carlton Productions, Diverse Productions, Thames TV & Multivision Communications (The Little Picture Show)	Copyright infringement; Breach of confidence	High Court writ seeking injunction to stop production and broadcast of the programme series, along with damages and costs incurred in the action.	Not known	The first 2 series were produced by Joffe and from the third series onwards, Joffe claimed that the named companies had continued to make the series based on the same ideas but a different name and producer.)
1996-03-BR	1996	14-Jun-96	UK	Geoffrey Lomas (who created and submitted a format <i>Time the Break</i>)	BBC (Big Break)	Copyright Infringement	High Court writ seeking injunction to stop BBC making further use of the format until some settlement is reached.	Not known	Lomas claimed Big Break was a combination and modification of his original format which was in fact made by BBC2 as Pot the Question and for which he even received royalties! BBC retorted that it had acquired the format from elsewhere in 1987!
1998-01-BR	1998	30-Jan-98	New Zealand	Bazal (UK Production company) creator of the format <i>Changing Rooms</i> .	BBC Worldwide (BBC2's UK version <i>Changing Rooms</i>)	International Sales / Contract Dispute	No. Communication between the companies ensued and a satisfactory deal for all parties was being worked out while the report was published.	Commercial Settlement	BBC Worldwide broadcast its version on the public broadcaster TVNZ while Bazal's was planned on the commercial TV3 (along with a sponsor) in April. Bazal asserted its rights to the international sales of its format. BBC Worldwide asserted its rights to the international sale of the BBC2's (UK) version of the series! Both wanted to sell their formats in New Zealand.

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1998-02-BR	1998	18-Dec-98	UK	Rachel Wilberforce (for <i>Starstruck LA/ Hollywood Hopefuls</i> series proposal)	September Films (Desperately Seeking Stardom)	Copyright infringement, breach of confidence	Was considering while this report went to press.	Not known.	Wilberforce alleged that September turned down and then lifted the series format, even after she was made to submit all her research and footage she has shot in LA. This format was also optioned by MBC (UK). September Films said it was an in house executive who had come up with the idea in view of September's other well established Hollywood based programmes.
1999-01-BR	1999	21-May-99	Denmark	Celador Productions (<i>Who wants to be a Millionaire?</i>)	Danmarks Radio Television (Kvit Eller Dobbelt... Double or Nothing)	Copyright infringement; 'blatant ashamed rip-off', there is no subtlety about it'	Celador sues DRTV in a Copenhagen Court seeking injunction to prevent the show being transmitted on grounds of copyright infringement	Ruled through Marketing Practices Act. DRTV was forced to shut-down the show after the Court issued an injunction against it. DRTV appeal which was turned down in July 1999.	Celador licensed the format to DRTV's competitor TV2 but this wasn't going to be ready till next year. The Court did not offer copyright protection to the format but to the exact lay-out of the show and considered, according to the Marketing Practices Act in Denmark, that DRTV's version was a deliberate imitation of Celador's and hence designed to confuse audiences. DRTV also was held to have full knowledge of Celador's format before embarking on creating its show and hence a casual similarity was not an appropriate defence.
1999-02-BR	1999	21-May-99	Australia	Celador Productions (<i>Who wants to be a Millionaire?</i>)	Seven Network and Action Time Productions (<i>Million Dollar Chance of a Lifetime</i>)	Copyright	In Australia it was considering legal action.	Not known.	In Australia, Celador licensed it to Nine Network. Interestingly, see Action Time as accuser in an unrelated dispute in 20-Nov-92!

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1999-03-BR	1999	26-Nov-99	The Netherlands	Charlie Parson's Castaway Productions (Survive!)	Endemol and Jon De Mol Productions (Big Brother)	Copyright Infringement	Writ issued in a Netherlands Court against the 2 defendants.	Ruled against the claimant. Defendant was cleared of all charges. Castaway appealed.	Castaway asserted that Survive was a copyright work because of its unique combination of 12 elements and that 'Big Brother' was an infringing copy. In June 2000 the claims were dismissed at trial. In June 2002 the Dutch Court of Appeal upheld that judgement. Castaway and Planet 24 then appealed to the Dutch Supreme Court. The Dutch Court of Appeal took a pragmatic view of the issue basing its judgement on the similarities between the relevant programmes. The Court concluded: "A format consists of a combination of unprotected elements... an infringement can only be involved if a similar selection of several of these elements have been copied in an identifiable way. If all the elements have been copied, there is no doubt that copyright infringement is involved. If only one (unprotected) element has been copied, the situation is also clear: in that case no infringement is involved". The Dutch Supreme Court agreed with the Court of Appeal in deciding that the Survive format was a copyright work, but that the Big Brother format was not an infringing copy.
2000-01-BR	2000	31-Mar-00	Australia	Hat Trick Productions (<i>Have I got news for you</i>)	An Australian producer	Copyright	Not known	Settled out of Court.	No further information.
2000-02-BR	2000	09-Jun-00	USA	Charlie Parson's Castaway Productions (Survive!)	Endemol and Jon De Mol Productions (Big Brother)	Copyright Infringement	Writ brought against Big Brother in a US Court.	Ruled against the claimant.	That 'Big Brother' infringed the copyright of the 'Survive!' format (see Dispute No. 1998-03-BR). The case was brought to a US Court as Castaway was hopeful of success in the US after the debacle in Netherlands.
2000-03-OT	2000	Variety International http://www.variety.com/article/VR1117780866.htm I AND Edinburgh Evening News http://www.newsuk.co.uk/newsuk/prinItem.do?ItemID=53103666	Australia	Endemol Enterprises & Bazal UK (<i>Groundforce</i>)	The Nine Network (<i>Backyard Blitz</i>)	Copyright Infringement 'total rip-off', 'copycat version'	Planned, further action not known.	Not known.	Endemol had optioned this gardening show format to Kerry's Stokes' The Seven Network in Australia while Kerry Packer's The Nine Network came up with its own version, ostensibly as a spin-off of their own Burke's Backyard. In both shows, a husband or wife conspires with the producers to transform the garden while their partner is out. According to Endemol, the development " showed a complete disregard by the Nine Network of all existing international format trade practices... "

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2001-01-BR	2001	13-Apr-01	Australia	Screenime Productions Australia (Popstars) and distributor Target	Thames TV (formerly Pearson) and 19TV (<i>Pop Idol</i>)	Copyright	Threatened to go Court while complaining to FRAPA for resolving the dispute.	FRAPA helped to mediate between the companies and settle the dispute on undisclosed terms.	The format is essentially a search for a solo artist allowing the viewers to vote from home. Screenime claimed that the idea of Pop Idol was too close to that of Popstars.
2001-02-OT	2001	NY Times 'Survivor' v. 'Boot Camp' In Latest TV Lawsuit AND 2006, Sharpe Article on Copyright	USA	Survivor Productions LLC	Fox Broadcasting Co	Copyright Infringement	Yes; asking for an injunction to prevent the show from continuing on air and for unspecified damages.	Settled out of Court	The creators of "Survivor" and its network CBS accused Fox and the creators of "Boot Camp" of stealing the concept behind their show. CBS said that the format as well as the "look and feel" of "Boot Camp" was a deliberate copy of "Survivor" and thus an unlawful theft of intellectual property. "Boot Camp" was identified in newspaper reports by critics as similar to "Survivor" in many ways, with the format being often cited. CBS had been pitched the series first but in a format not nearly so similar to "Survivor" and that the show changed after it went to Fox. Fox said there was "absolutely no basis" for the claims made by CBS and that "the shows are very different and we believe this is a frivolous lawsuit." The case was dismissed after the parties came to an out of Court settlement.
2002-01-BR	2002	04-Oct-02	UK	Castaway Television (<i>Survivor</i>)	Granada & LWT (<i>I am a Celebrity ... Get me out of here</i>)	Copyright Infringement	Yes, plaintiff sought injunction against the broadcast of the defendant programme.	Settled out of Court, withdrawn in UK after a US Court dismissed a similar case brought by the plaintiff in the US.	Castaway claimed that the idea of 'I'm a Celebrity... was stolen', and, 'contrary to widespread belief the show was not made by or with the consent of Castaway'. LWT retorted saying that it was a treatment by its executive Peter Davey written during filming of another documentary <i>The Place of the Dead</i> (where Davey stayed in a Borneo jungle) that led to the format. The treatment happened to be the key in Granada & LWT's defense preparations. The story was revisited by the press in the 3rd Feb 06 edition of Broadcast.

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2002-02-0T	2002	Lex Orbis New Delhi Newsletter www.lexorbis.com AND International Finance Law Review http://www.iflr.com/includes/magazine/PRINT.asp?SID=511419&ISS=12009&PUBID=33 AND http://www.indiantelelevision.com/headlines/y2k2/mar/mar11.htm	India	Anil Gupta & others (Swayamvar) [Taal Communications]	Kunal Dasgupta & Others (Shubh Vivah) [Sony Entertainment Television India]	Breach of Confidence	Yes	Ruled, in favour of plaintiff, the Court granted an injunction. And lead time of 4 months was provided to the plaintiff to get the show on air, failing which the defendants were free to broadcast theirs.	The plaintiff conceived the idea of 'Swayamvar', a reality television show concerning match-making in Indian culture. The plaintiff shared a concept note on this with the defendants. Later, the plaintiff came across a newspaper report informing that the defendants were coming out with a similar sounding reality match-making show. The plaintiff sought injunction from the Delhi High Court. The Court held that the concept developed and evolved by the plaintiff was the result of the work done by him upon the material which may be available in the public domain. However, what made the concept confidential was the fact that the plaintiff had used his brain and thus produced a unique result applying the concept. Eventually, the defendants created their show with a different name but a similar concept.
2002-03-0T	2002	FT http://proquest.umi.com/pqdweb?did=104813245&id=13&Fmt=3&clientId=15517&RQT=309&VName=PQD	China	BBC Worldwide & ECM Productions (The Weakest Link)	Shanghai Oriental TV & Wangfeng Media (Fortune Test)	Copyright Infringement	No	No further action.	No further information ...
2002-04-0T	2002	BBC News http://news.bbc.co.uk/1/hi/world/asia-pacific/1800204.stm	China	A London based television company	Shenzhen Cable (Go Bingo)	Contract	Yes	Ruled, Court forced payment to the plaintiff.	Incomplete news item, though indications are that the Chinese cable channel was forced by the Courts to pay outstanding dues incurred on a format sale.

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2002-05-0T	2002	NEWS UK http://www.newsuk.co.uk/newsuk/prinItem.do?ItemID=234306351 AND OUTLAW http://www.outlaw.com/page-3008	USA	Survivor Productions & CBS (Survivor US series)	Granada and ABC (<i>I'm a Celebrity</i> US series)	Copyright Infringement	Yes	Ruled, injunction refused, case dismissed.	Survivor Productions sued the producers of 'I'm a Celebrity... (US)' arguing that the show was an unlawful copy of its Survivor format. Both featured individuals in remote locations, living off the land and being subjected to one-by-one elimination by viewers' telephone votes. Both programmes had UK and US versions. 'I'm a Celebrity' was being produced by Granada and US TV network ABC, both of which were sent a warning by Survivor Productions and CBS stating that they must not broadcast or licence in the US "any programming that is based in whole or part on the 'Celebrity' series or that otherwise infringes any intellectual property rights in 'Survivor'. Note that UK's Castaway Productions, creator of 'Survivor', has sued Granada in the English High Court over the UK version of 'Celebrity', seeking damages and an injunction to prevent further infringement. The main differences between 'Celebrity' and 'Survivor' was that the latter featured unknown individuals competing for cash while the former featured minor celebrities with the money raised by phone voting given to charity.
2002-06-0T	2002	The Tribune (Newspaper, North India)	India	This is Your Life Productions USA (<i>This is Your Life</i>)	NDTV & Zee Telefilms (<i>Jeena Isi Ka Naam Hai</i>)	Copyright Infringement	Yes	Continuing..	A Rs. 20 lakh (£ 25,000) damage suit was filed against NDTV and Zee Telefilms by California based TYL in Delhi High Court claiming that its radio & television format "This Is Your Life", debuted in USA in early 50s and was copied by NDTV in the form of "Jeena Isi Ka Naam Hai" (JIKNH) telecast by Zee TV. TYL alleged that JIKNH copied distinctive and original elements of its format hosted by presenter Ralph Edwards. JIKNH, hosted by Bollywood actor Farooq Sheikh, invited politicians, sportspersons, film stars, celebrities etc. and traced their personal and professional lives. TYL said its programme had been broadcast in many countries such as UK, New Zealand and Australia for several seasons and Ralph Edwards had won several awards. It argued that it was vested with the IPRs of the programme, the main accusation being about a series of similarities between the two programmes, particularly the manner in which a celebrity was subjected to intense questioning on his life, and which unfolds through his family members, friends & colleagues. The case is going on....

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2004-01-BR	2004	20-Feb-04	UK	Endemol (<i>Celebrity Big Brother</i>)	Five (UK Channel) & Princess Production (<i>Back to Reality</i>)	Copyright Infringement ["rip off"]	No, letter of complaint	Not known	Endemol's lawyers found many similarities between <i>Celebrity Big Brother</i> and <i>Back to Reality</i> and decided to send a letter of complaint calling <i>Back to Reality</i> a "rip off". Five stuck to its stand and even had a few ex-Big Brother contestants to take part in their programme.
2004-02-BR	2004	06-Aug-04	USA	Ricochet, C4 & RTL (Supernanny)	Fox Networks (Nanny 911)	Copying, no formal complaint.	No	Not Known	Before producing Nanny 911, Fox had tried to buy the originals but was outbid by rivals. Further info on Nanny 911 (the alleged infringer) is further on sold to many territories Details in 22 April Broadcast.
2004-03-BR	2004	06-Aug-04	USA	NBC (<i>The Apprentice</i> featuring Donald Trump)	Fox Networks (<i>The Rebel Billionaire</i> featuring Richard Branson)	Copying, no formal complaint.	No	Not known.	No further information.
2004-04-BR	2004	17-Sep-04	UK	Simon Fuller's 19TV (<i>Pop Idol</i>)	Simon Cowell's Syco & FremantleMedia (<i>The X Factor</i>)	Breach of Contract, Copyright Infringement ["rip off", "copied the show's bible", "breach of contract as similar staff working on both"]...a total of 25 similarities were claimed between the shows.	Yes, for £100m	Settled out of Court with Simon Fuller (creator of Pop Idol) getting a stake in X factor.	Fremantle was co-producer of 19TV's Pop Idol; and thereafter was co-producer and co-owner of The X Factor. Various accusations included: 1. Fremantle used the 300 page production bible of 'Pop Idol' for 'The X Factor' 2.Half of 59 staff, including senior producers were same people on both shows 3.Thirty technical aspects which were copied included music, lighting, structure 4. Fremantle's own past legal letters to producers worldwide were evidence that it had knowledge of format copycatting 5. Presenters on Pop Idol used to use the phrase 'We're looking for the X Factor'. Fremantle refuted all allegations saying there were differences in both the shows.
2004-05-BR	2004	01-Oct-04	USA	Mark Bethea (independent producer)	Mark Burnett (producer of <i>The Apprentice</i>)	Bethea says he brought Burnett the idea in 2000	Yes	Not Known	No further information.
2004-06-BR	2004	01-Oct-04	USA	Tiger Aspect + Channel 4 (<i>My New Best Friend</i>)	Fox (<i>My Big Fat Obnoxious Fiance</i>)	Breach of confidence	Not known	Not Known	Tiger Aspect contended that Fox was shown the format. They didn't buy the original and produced their own similar looking version.

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2004-07-BR	2004	01-Oct-04	USA	ABC (The Chair)	Fox (The Chamber)	Copyright infringement ["Looked exactly the same"]	Yes, separate lawsuits.	Both Failed	Presumably, both accused each other in different states of the US.
2004-08-BR	2004	01-Oct-04	USA	CBS (Rock Star)	Fox (Untitled)	Same concept of a talent hunt show where the winner replaces the lead singer of a band.	Not known	Not Known	No further information.
2004-09-BR	2004	01-Oct-04	USA	RDF (Wife Swap)	RTL2 (Frauentausch)	Copyright infringement	No	No	RDF had optioned the Wife Swap format to RTL in Germany, which hesitated for some time in producing the show. RTL2 (RTL's sister channel) seized the opportunity and produced the show without RDF's involvement. RTL did want to take a sister company to Court and RDF wasn't sure of succeeding in a Court action without RTL's support.
2004-10-BR	2004	01-Oct-04	USA	Mark Burnett & NBC (<i>The Contender</i>)	Fox Networks (<i>The Next Great Champ</i>)	Inappropriate Boxing Procedures	Yes	Ruled against claimant.	Mark Burnett had approached Fox with the idea but had eventually sold it to NBC. So Fox did a deal with Endemol and Oscar De La Hoya's Golden Boy Productions (sic) to make <i>The Next Great Champ</i> and get it to air before NBC's version.
2004-11-BR	2004	01-Oct-04	USA	Leigh Ann Burton (Independent Producer)	Oscar De La Hoya & Golden Boy Promotions (<i>The Next Great Champ</i>)	Breach of Confidence	Yes.	Ruled against claimant.	Burton alleges she filed a treatment with the Writer's Guild of America which she faxed to De la Hoya's Golden Boy Promotions, enquiring whether the company wanted to develop the project. She alleges that she pitched the idea to De La Hoya in a meeting and he and his company agreed not to use the idea without her consent unless she was appropriately compensated.

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2004-12-OT	2004	EIPR	Germany	F2 (L'école des fans) France	German Broadcasting Corporation (Kinderquatsch mit Michael)	Copyright Infringement, Unfair Competition	Yes	Ruled against the plaintiff; format was deemed unprotectable by German Copyright Act. No competition was established between the disputants. The claim for an injunction was refused.	F2 had broadcast 'L'école des fans' since 1997 following a pattern where children sang on a stage, were interviewed by a celebrity, their performance was graded and the host distributed them presents. F2 offered the format to German Broadcasting Corporation, which declined the offer and later transmitted a show called Kinderquatsch mit Michael following the plaintiff's show pattern. F2 claimed exclusive rights to this format which it alleged was plagiarised. The defendants argued that formats cannot be protected under copyright law. The plaintiff's claims were rejected by a Regional Court and then the Court of Appeal. The German Supreme Court confirmed that since the plaintiff did not claim copyright infringement on their show's transmission, but on the general format of the show, they were not infringing of copyright. A distinction between episodes of a TV series, which were characterised by a plot creating a fictional world linked by elements of content; and a TV format, linked by elements of form; were central to this case. The Court emphasised that a TV format could be created using different means such as logo, basic concept, participants, remarkable phrases, theme songs, set design, certain style of camera work, lighting or editing, all of which had no direct link to the created product. Copyright law could only protect the result of processing material not its pattern of production. Hence a format did not constitute a protected work and therefore cannot be protected under copyright law.
2004-13-OT	2004	IPD	UK	3 separate claims by Mr. Melville, Mr. Boone and Mr. Baccini	Celador Productions Ltd. (<i>Who wants to be a Millionaire</i>)	Copyright Infringement	Yes	Ruled, against the plaintiffs.	Separate though very similar cases were filed against the respondent but summary judgement was not issued because of unique elements of each case. However, all three cases were dismissed due to a combination of inappropriate legal procedure and lack of evidence from the plaintiffs.

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2004-14-OT	2004	Swan Turton	Brazil	Endemol (<i>Big Brother</i>)	TV SBT (<i>Casa Dos Artistas</i>)	Copyright Infringement	Yes	Ruled in favour of claimants. The Court made an award of damages to Endemol of approximately £400,000, and to their Brazilian licensee of over £1million. The judge stated, "the whopping similarity between both programmes does not stem from chance, but from a badly disguised and rude copy of the format of the	Endemol entered into negotiations with TV SBT and had provided substantial information on the Big Brother format. TV SBT did not acquire a license and produced a similar programme "Casa Dos Artistas" (the Artist's House). Endemol and its Brazilian licensee (TV Globo) sued TV SBT seeking an injunction and damages. The defendants claimed that a reality show is no more than an idea, citing the lack of scripts; further claiming that the format bible was "a simple manual that describes methods and procedures. Based on expert academic opinion the Court found that the Big Brother format enjoyed copyright protection under Brazilian law as Brazil was a signatory to the Berne Convention. It observed that the format "contemplates a programme with a beginning, middle and end, with meticulous description, not only of the atmosphere in which the people will live for a certain period of time but also the places where cameras are positioned. The format consists of details such as the use of microphones tied to the participants' bodies, linked 24 hours a day, music styles, activities, etc."
2005-01-BR	2005	07-Jan-05	USA	RDF Media (Wife Swap)	Fox Networks (Trading Spouses: Meet your new Mommy) & Producers Rocket Science Laboratory	Copyright & Trademark Infringement [Ripping-Off RDF's flagship format]	Yes, for £9.5m (\$18m)	Settled out of Court after a long time (source: Industry Interviews)	Fox's show had a twist over RDF's as it included a cash prize, not in the original. However Stephen Lambert, head of RDF, said "This is the most clear cut case of copyright theft in the history of reality genre"
2005-02-BR	2005	28-Jan-05	Belgium	Tailor-Made Films (<i>Come and have a go if you think you are smart enough</i>)	VRT - Belgian public broadcaster (<i>De Thuisploeg</i>)	Copyright Infringement [direct copy]	Sought an injunction against the show	Failed to get injunction as the judge claimed he was not in a position to reach a verdict and "disqualified" himself!	Appeal planned for damages; note that Tailor-made had been in touch with VRT but did not produce because of budget differences.

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2005-03-BR	2005	11-Mar-05	New Zealand	Celador International (You are What you Eat)	12 Yard Productions UK, TV2 NZ & ScreenTime Productions NZ (<i>Eat Yourself Whole</i>)	Copyright Infringement	Threatening letters to all 3 in NZ, saying if they deny infringement, the matter will be taken to Court.	Not known	New Zealand based dispute. CI says 12 yard's show is a rip off. "Virtually identical to our well known format", MD of CI. "Infringement of our format". However 12 yard said they were aware of the simultaneous production of similar shows but had never seen CI's show earlier, moreover there were major differences such as Eat Yourself Whole concentrated on "health disorder" rather than just "obesity".
2005-04-OT	2005	Managing IP	UAE	FremantleMedia	Local UAE Producer	Copyright Infringement	Planned	Not known.	No further information.
2005-05-OT	2005	Arts Law Centre of Australia	Australia	Nine Films & Television Pty Ltd (<i>The Block</i>)	Ninox Television Limited (<i>Dream Home</i>)	Unjustifiable threat of copyright infringement and deceptive conduct under copyright law.	Yes	Ruled, Court ruled that copyright did not subsist in the works which were being alleged as copied.	Nine commenced proceedings against Ninox alleging that Ninox made unjustified threats of copyright infringement against Nine. Ninox had accused Nine of infringing copyright in their show Dream Home by producing and broadcasting The Block series. Prior to making The Block, Nine licensed the right to produce and broadcast Dream Home in Australia from Ninox. Dream Home was screened by Nine in 2000 and after this Nine decided to discontinue the licensing deal. Nine then went on to produce and broadcast The Block series. Ninox claimed that the production and broadcast of The Block infringed their copyright as it reproduced a substantial part of its format. The Court noted copyright is not infringed when someone independently creates a program without copying or where there is no substantial reproduction, or similarity to, the material in which concepts are embodied. Nine argued that they independently created The Block and that there was no substantial similarity between The Block and Dream Home. The Court compared the key elements in the programs and concluded that there was no infringement.

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2005-06-0T	2005	BBC News	USA	Roaring Entertainment (<i>Million Dollar Idea</i>)	ABC, Simon Cowell & FremantleMedia North America (<i>The Million Dollar Idea</i>)	Copyright Infringement, Trademark Infringement, Passing Off	Yes	Not known.	In July 2005, Simon Cowell (famous judge and creator of the Pop Idol format) and the ABC network announced plans for The Million Dollar Idea, which was to reward contestants who came up with the best business schemes. Roaring Entertainment, the creators of an existing show called Million Dollar Idea, said it was a "patent rip-off". Though Cowell's team said that the two formats were very different and their was an original idea, based on a BBC format called Dragon's Den which was devised by businessman Peter Jones. Roaring Entertainment said Million Dollar Idea began in 2003 and was syndicated to 125 stations across the US. It allowed budding inventors and entrepreneurs to pitch their ideas to experts, with the most promising proposals winning services worth \$50,000 (£28,000) to develop their products. The ABC show was of a similar genre. The company and Million Dollar Idea's creators and hosts Jean Golden and Todd Walker say they offered the show to ABC in early 2004. They filed the legal case in Los Angeles and sought unspecified damages.
2006-01-BR	2006	13-Jan-06	UK	Kevin Chail (writer)	BBC2 (<i>Whose Britain is it Anyway?</i>)	Copyright infringement, breach of confidence	Complaint to NUJ & Society of Authors	NA	No further information.
2006-02-BR	2006	12-May-06	Malta	Endemol International (<i>Big Brother</i>)	TVM Malta (L'Isplun)...also included were WaterMelon Communications, P&D Communications & Melita Cable TV.	Rip off, blatant reproduction, infringement of format copyright	Yes, Endemol filed suit against the broadcaster, producer, cable transmitter	Court ruled in favour of Endemol, and ordered seizure of TV studio equipment, and froze bank accounts of the defendants to satisfy financial damages of the plaintiff.	Wim Hoen, intellectual property rights manager at Endemol International said that the company was delighted with the Maltese Courts' decision which fully vindicated their view that this production was in breach of Endemol's rights.

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2007-01-OT	2007	IFLA	France	Saranga Productions (Crise en direct)	Canal Plus (C'est déjà demain) & others	Passing Off	Yes	Ruled, in favour of plaintiff, Court awarded damages of €150,000 and other relief.	The defendants sought proposals from production companies for a politically themed programme and the plaintiffs presented their format titled Crise-en-direct. The defendants then commissioned a different company to produce a programme called C'est déjà demain using themes and characteristics in the plaintiffs' format. The plaintiff brought an action for 'passing off' in respect of C'est déjà demain. The defendants argued that they had independently developed their programme before they met with the plaintiffs. They also argued that the plaintiffs' format had no independent economic value because it lacked originality using themes and characteristics from the public domain. The Court found no evidence that the defendants had already developed their programme before meeting the plaintiffs. The issue of originality was not relevant to establishing passing off, unlike in copyright law. The Court ruled that the broadcast of the defendants' programme had caused the plaintiffs loss by depriving them of the opportunity to market their format to another broadcaster. The defendants were ordered to pay damages of €150,000.
2007-02-OT	2007	Spicy IP Blog	India	Urmi Juvekar Chiang	Global Broadcast News Ltd./ CNN-IBN (<i>Summer Showdown</i>)	Copyright, Breach of Confidence	Yes, seeking injunction and damages	Injunction was granted by the Mumbai High Court.	Plaintiff created a reality TV show format concerning citizen activism to solve civic problems and shared the idea in the form of a detailed concept note with the defendants. After some negotiation, the defendants created their own format on the same lines without involving the plaintiff. The Mumbai High Court ruled that there was sufficient originality in the plaintiff's idea to be considered protectable under Indian Copyright Law and hence the defendants were guilty of infringing the plaintiff's copyright and breaching of confidence while negotiations were on.

4.2. Content analysis findings

Empirical observations from the data are discussed below. As seen in the table, a total of 59 format rights disputes were collated before conducting a content analysis on them. Of these, 41 were accessed from Broadcast and 18 were accessed from other sources including legal academic research sources such as Hein Online and Westlaw besides open public search engines such as Google and Yahoo.

Quantitative Observations from Format Rights Disputes Database 1987-2007								
Sr. No.	Type of Observation	Broad-cast	Out of	Other Sources	Out of	Sub Total	Total	%
		A	B	C	D	E=A+C	F=B+D	G=E/F
1	Copyright primary focus of	34	41	13	18	47	59	80%
2	Breach of Confidence primary focus of	3	41	2	18	5	59	8%
3	Contract Tort was the primary focus of	2	41	1	18	3	59	5%
4	Passing Off was the primary focus of	0	41	1	18	1	59	2%
5	Other factors contributed							5%
6	Breach of confidence - secondary focus of	3	41	4	18	7	59	12%
7	Passing Off - secondary focus of	1	41	1	18	2	59	3%
8	Trademark - secondary focus of	1	41	1	18	2	59	3%
9	No. of court filings (disputes became cases)	23	41	15	18	38	59	64%
10	No. of disputes ruled (overall)	10	41	12	18	22	59	37%
11	No. of disputes ruled (to court cases)	10	23	13	15	23	38	61%
12	Court rulings favouring claimants	3	10	8	12	11	22	50%
13	Court rulings favouring defendants	7	10	4	12	11	22	50%
14	No. of copyright infringements held (overall)	3	41	4	18	7	59	12%
15	No. of copyright infringements held (in rulings)	3	10	4	13	7	23	30%

Figure 3 Descriptive observations from content analysis

4.2.1. Taxonomy of format rights disputes

An analysis of the primary nature of all reported format rights disputes collected in the database yields revealing trends. As graphically illustrated below, format rights disputes pertaining to imitation can be categorized according to the focus or the main accusation of the format claimant. In other words, in some disputes there is an outright claim of copyright infringement of ideas and other things from the claimant’s format. In other cases, the originator claims a breach of confidence more than copyright infringement while in still other cases, a claimant insists that the infringer is ‘passing off’ as the claimant’s format. Nevertheless, in a vast majority of format copycatting disputes (80%), the claimant insists on copyright infringement of his format.

Four clear types or nature of disputes are encountered in format rights disputes. Not surprisingly, the majority of disputes are based on copyright due to the presumed paradigm through which legal functionaries have looked at format rights. However, a good 8% of these disputes centred on breach of confidence – a slightly lower than expected result. Interestingly, a respectable 5% of the disputes were centred on contract tort, where the parties involved disagreed on a certain aspect of the original contract, and only 2% were disputed as ‘passing off. In terms of other factors, which constituted the remaining 5 %, interesting claims ranged from inappropriate boxing procedures to unjustified threat of copyright infringement amounting to deceptive business conduct.

An illustration of the emerging taxonomy of format rights disputes is provided below in the form of a pie-chart.

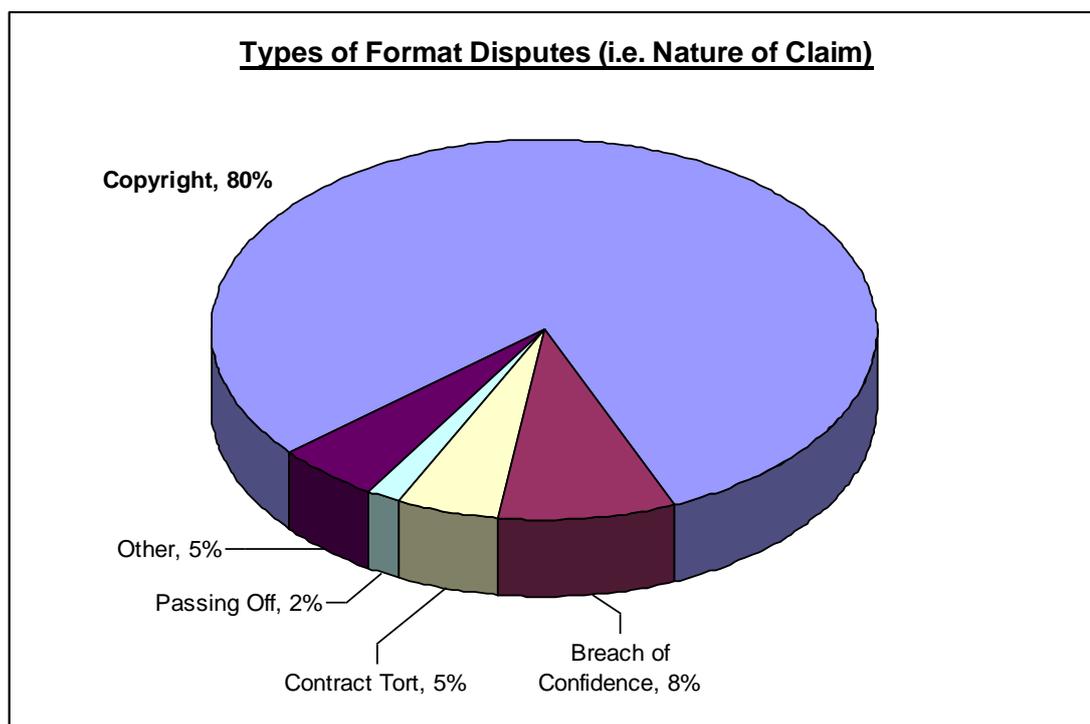


Figure 4 Types of format disputes

4.2.2. Format disputes per country/ territory

Furthermore, the content analysis yields a breakdown of the countries or territories in which these format rights disputes have emerged. It may be noted that since the main source of the information has been a UK trade magazine, not surprisingly a majority of the disputes (18 out of 59) were those that took place in UK. This could however also be consistent with the fact that since UK based producers are one of the largest producers of formats, they could more be at the risk of copycats and hence get involved in disputes. The disputes are domestic (i.e. between UK producers) as well as international (i.e. between a UK producer and a non-UK alleged copycat; this may count as an international dispute owing to the fact that the UK format producer may be choose to file a case in the jurisdiction where the copycat format appears).

The other countries active with format disputes are USA, Australia and New Zealand. Again, domestic as well as international disputes are seen. However, in the case of India, though there are 4 format disputes, 3 are domestic and only 1 is international.

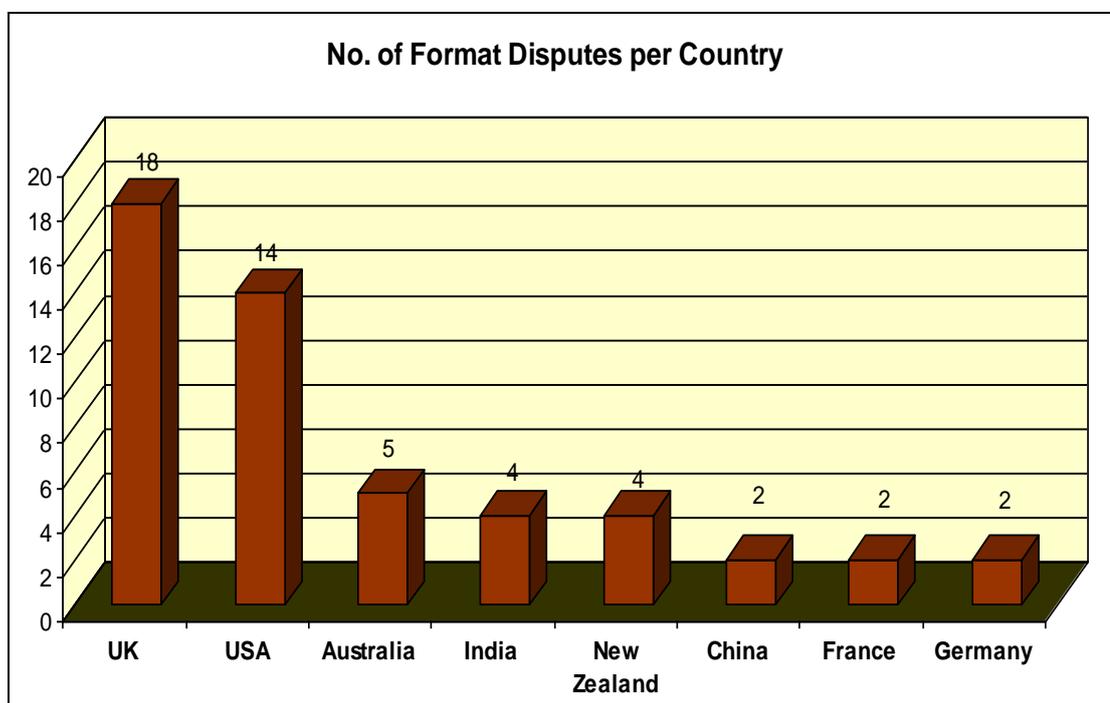


Figure 5 Format disputes per country

Despite being prolific television markets, China, France & Germany appear to have had only 2 format copycatting disputes which could be ascertained using all possible means. In the case of China, even these 2 disputes have been sourced from inconclusive reports and hence cannot be further substantiated until this stage.

Not seen in the graphical illustration above are a total of 8 disputes consisting of 1 each in Belgium, Canada, Denmark, Malta, Spain, Sweden, The Netherlands and UAE. All of these were international disputes.

4.2.3. *Format disputes year-wise*

Finally, analysis of the number of disputes per year helps illustrate some interesting observations. Firstly, though the spread of disputes per year starting from the late 1980s is uniform with a small number of disputes per year cumulatively around the world, there are 2 big spikes of activity in disputes. The first spike is seen in 1994 with 7 disputes and the second one appears in 2004 with 13 disputes.

The causes and effects of these spikes in dispute activity were not the focus of this research. However, for someone wishing to conduct such a research, two pointers may come in handy. In the year of the first spike i.e. in 1994, the UK format producers called on the UK Patent Office through the Department of Trade and Industry (precursor to the Department of Culture, Media and Sport) to look into their demand for a sui generic format protection right as part of an IPR based solution. However, the government's response was that existing IPR solutions provided adequate protection for television formats. Failing to get support from the government, leading format producers tried to create an industry-wide body for lobbying, internal industry-wide pressuring or policing and mediation. This body, called FRAPA, came into being in 2000. However, as can be seen from the graph below, FRAPA did not appear to be effective as the number of disputes kept on increasing peaking at 13 in 2004.

The second spike in dispute activity seems easier to explain since this coincided with the development of internet based information exchange and it became much easier for format ideas to travel farther to be imitated.

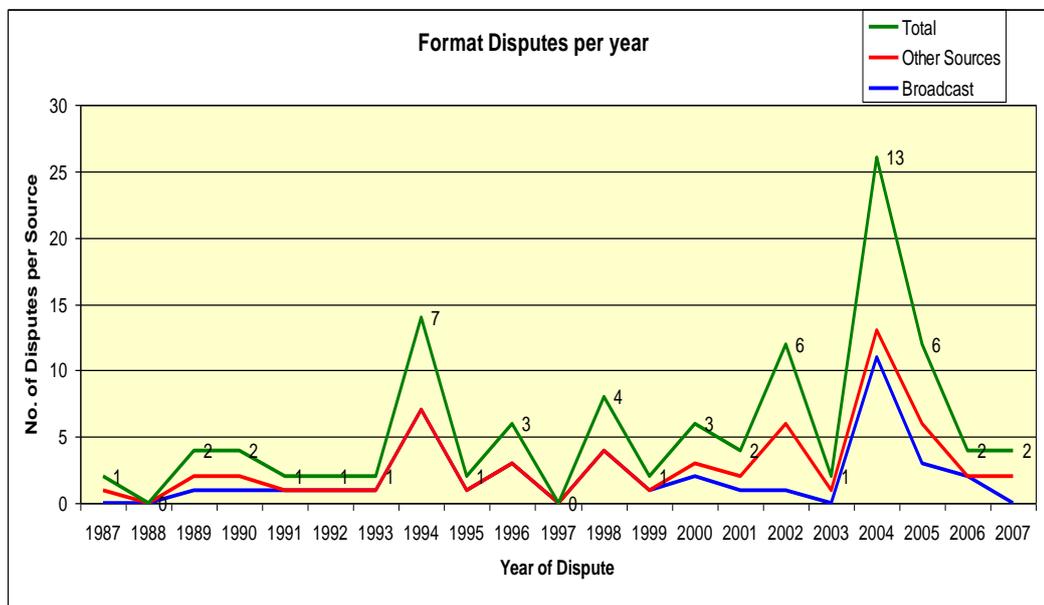


Figure 6 Format disputes year-wise

4.2.4. Court case related and other statistics of disputes

Of the total disputes analysed, though a respectable number (64%) actually went to court i.e. where there is an instance of legal filing in some form, a little more than half of these (61%) were ruled upon i.e. where there was no out-of-court settlement. However, this translates to only 39% of disputes being ruled upon by courts compared to overall format rights disputes.

Interestingly, despite copyright being the main claim of a vast majority of format creators, they may also include a secondary claim of breach of confidence. This is seen in 12% of the cases where breach of confidence was the secondary focus of the dispute.

Of the cases ruled upon, only in 30% of the cases, was copyright infringement held by the courts for the claimant. This translates to only 12% of overall disputes recorded. And this figure becomes more interesting when one is reminded that 80% of claims are copyright infringement based.

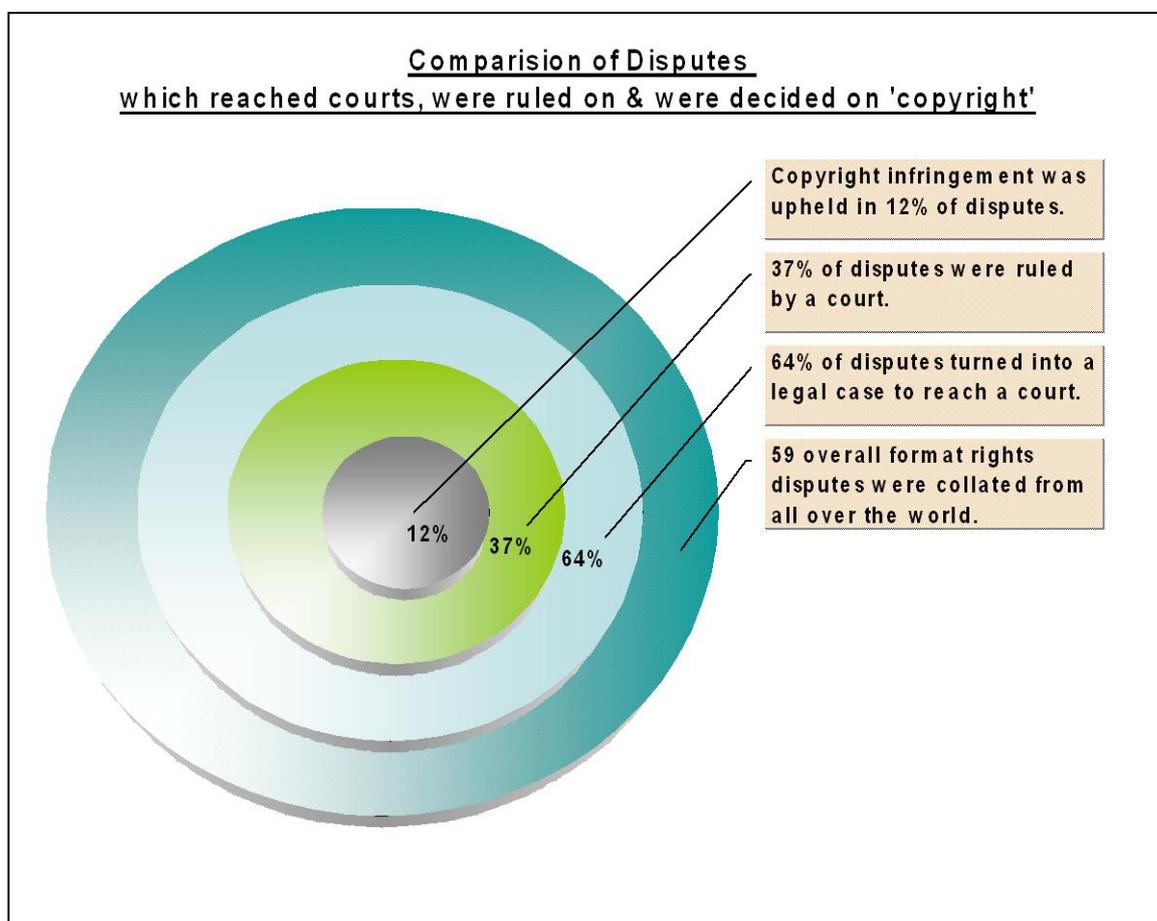


Figure 7 Comparison of disputes ‘ruled on’ and ‘decided on’ copyright

4.2.5. Rulings for / against claimants

The ratio of court rulings favouring claimants and defendants is 1:1. Though this cannot be attributed to any single factor, it does indicate that the chances of winning a format rights court case claiming copyright infringement is at least 50%, which is better than what industry representatives expect anecdotally. This graph, when shared with format

industry professionals while the researcher was conducting qualitative interviews, led them to evoke a strong response of surprise, instantly getting much interested in the qualitative aspects of the research.

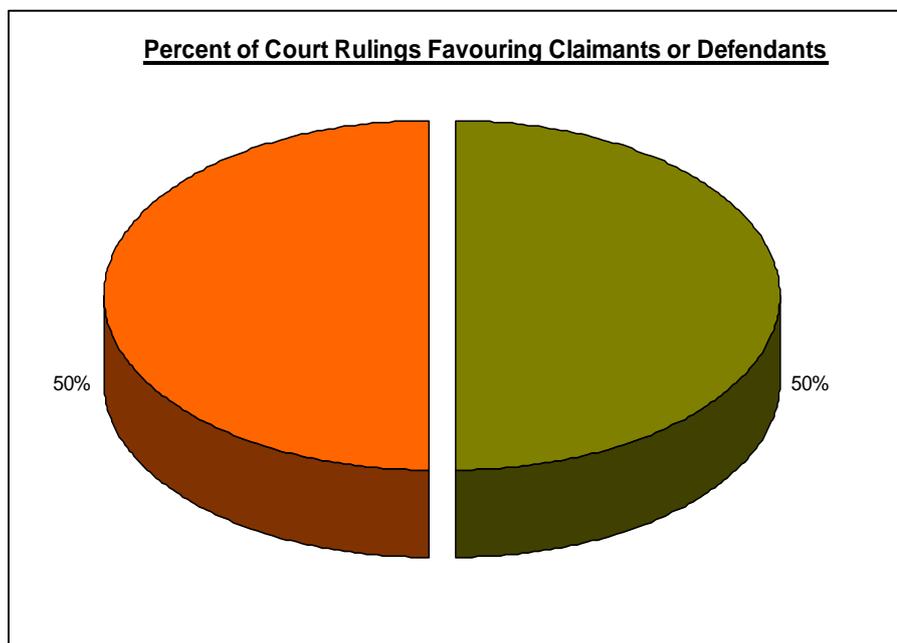


Figure 8 Percent of court rulings favouring claimants or defendants

4.3. Conclusion from content analysis

Contrary to suggestions in the existing literature as well as conventional understanding in the format industry, results from the content analysis suggest that copyright law did provide some chances (or a notion) of protection of television format rights. To say that copyright was completely ineffective in format rights disputes was found to be an inconclusive argument since half of copyright based disputes which went on to become court cases were judged in favour of a defendant while the other half in favour of a plaintiff. However, the results also showed that a very small percentage of disputes ever became court cases - majority of them were either settled out of court in a commercial manner or were abandoned by the initiating party for unknown reasons.

Added to the above majority are the disputes which never became public or were ever reported. It is this substantial number of format rights disputes where market based strategies were used by format originators and distributors to engage with a copycat that this research focussed on. Thus, the next stage of semi-structured interviews based research was employed, to build upon this content analysis, and to unearth market based protection strategies.

5. Data Analysis: 'IP without IPRs'

This chapter reports on the findings from the responses of semi-structured interviews with format industry professionals conducted by the researcher at three leading international television trade fairs, namely Discop Budapest, ATF Singapore and NATPE Las Vegas. Findings and discussion presented in this chapter incorporate the exact words from a set of respondents which pertain to a code being addressed. These codes then form the basis of 'IP without IPRs' strategies employed by the format industry to exploit and protect formats.

5.1. Preference for market based means to protect formats

“Format theft is obviously an issue for the industry, and it is difficult as copyright law in different countries varies and if you decide to take legal action you often end up suing one of your potential buyers. So it is very tricky.” [CEO, mid-sized British format producer]

Most format originators and distributors highlighted a growing trend of formats being copied by small producers or broadcasters not wishing to buy a licensed version. At the same time, the format industry is mostly unwilling to engage with legal remedies to protect their internationally traded formats. This is justified through the IP rhetoric in the industry, which on one hand maintains looking for alternative means to protect formats, and on the other hand suggests that creation of format rights will amount to an unnecessary and damaging legal interference in format trade.

“Most of the times, when there is a possible infringement, we first settle that in-house. We have internal department which compares the infringement to our own internally registered version and if there is an overlap they pursue a legal response.” [Licensing Manager of a large Dutch format producer]

When asked which type of solution they preferred for protection of their formats, respondents overwhelmingly answered in favour of market based means such as initiating a direct contact with a suspected infringer and going through other market based protection strategies (see whole of Chapter 6) to make the infringer reconsider making the copy or pay a licence fee retrospectively.

“The best way to solve things is to discuss them. You always approach the other party which you think is breaching your rights and if you can prove that ... most of the times you go for a settlement.” [International Format Sales Manager of a mid-sized Dutch format distributor]

“The format business has established itself but in Japan we do not rely upon the law to protect us.” [Sales Manager of a mid-sized Japanese format producer]

Though legal remedies are not the industry’s first choice, some senior level respondents conceded that having a notional protective covering of law helped them maintain a layer of legitimacy around their protective business strategies. Suspected copycats are threatened with legal action, using copyright rhetoric as a ground, that they either stop producing an unlicensed version or pay a licensee fee in retrospect.

“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 is aware of how dubious that legal protection is, particularly at the creative end. So what drives the format industry is not what is legally protectable or the rights, it is traced back to the simple initial impulse which helped to sell a format in the first place – “since it worked over there therefore it has a fairly decent chance that it’s going to work here as well”. Therefore we have formats which go around the world and achieve very similar results almost everywhere it goes, despite uncertain legal protection.” [EVP (Worldwide Production) of a large British format distributor]

“We definitely prefer non legal means – we are running a business. It’s expensive going to the courts and for lots of other reasons. Even if I have to go to the courts in UK, the protection of formats is still an area where we don’t have a lot of handles despite case law in UK and Holland unless it is literal copying. And most of the times its not literal copying and that’s always the risk that a court will say that since its based on a general concept and they have changed the building blocks so its different.” [VP Business & Legal Affairs of a large British format distributor]

“Four or five years ago, there was a real rash of rip offs, people producing shows that were rip offs, particularly in the time that we were launching The Apprentice, there were a number of ‘me too’ shows and that has largely died off in the last couple of years. That’s not about that the fact that anyone was taken to court and sued - in fact quite the opposite, those cases that went to court actually failed. It almost universally that those rip off shows failed because there is a lot more to a format than what you see on the television screen.” [EVP (Worldwide Production) of a large British format distributor]

The absence of dependence on legal remedies makes format producers and distributors depend on a mix of several business strategies to protect their formats. Some of the preferred methods cited were creation of relationships, constantly innovating formats and localization formats to the local culture (these and others are described in detail further on).

“Legal recourse or solution on conflict of IP matters is one I would put way down the list.” [Regional Director (Asia) of a large British format distributor]

“...there have been some issues with branding, passing off and trademark infringements ... but you are always making the assessment weather it is worth spending the time and money trying to prove something or that ultimately it is going to be a waste of your time. You have got to be

pragmatic about these things because you could spend your whole life chasing around tiny potential infringements of your IP and you would never get to do any real work.” [VP Sales of a large British format distributor]

Though a large majority of format producers and distributors are in favour of market based means for format exploitation and protection throughout the world, there are some voices which look for consistency provided by a legal or governmental body. These are smaller format producers who are starting off in the business and have not yet accumulated the social capital or information sources required for the functioning of the market based strategies.

“It’s hard to say which line that divides a format from an idea - because ideas can be similar. So I think we need a legal solution that will stretch the line. It should be clear when you cross that line or when you use other people’s ideas. I get more and more requests for formats on a daily basis from each market. Hence, it will be great if it worked internationally – it will be great if European Commission should take some steps to resolve this problem.” [Sales Head of a mid-sized format producer from Poland]

5.1.1. Legal remedies – when or not are they used?

Theoretically, a format right could help format developers in clearly defining format ownership, in real life format originators do not wish any interference from law making bodies. The industry feels that a specific format right will encumber producers with bureaucracies such as filling forms, fulfilling registration procedures, commissioning international searches to find prior formats to be circumvented sufficiently and expect adherence to a single format version without leaving any leeway for format innovation. Such encumbrances are expected to create operational as well as motivational challenges for format producers and the creativity involved in format creation.

“...from a network point of view, it’s a ‘no’ because a producer may find it very difficult. It may have a negative effect on our creativity, because we wouldn’t know if a show that we are producing has been ‘format righted’ in South Africa, for example.” [Sales Manager of a mid-sized Japanese format producer]

Many format producers, even when they are optimistic of taking a copycat to court for blatantly copying their format, believe that factors associated with legal proceedings such as cost, time elapsed between approaching a court and getting a judgement, and seeking information about copied works come from far off regions in the world; all factors deter them from seeking legal remedies. Most importantly, the end result of a case (i.e. winning or losing a format case) is the biggest uncertainty which format producers wish to avoid when they avoid legal redress for format protection. A lost case sets a prejudicial precedent thereby indirectly encouraging copycats from around the world.

“In case it’s a European country, we can go in for a trial but if it’s a far-away country, we cannot depend on the judicial system. Even in some European countries it takes years and years and there are sometimes no satisfactory results.” [Sales Executive of an independent French format producer]

“With legal you don’t go far with the results. Its expensive, it takes a lot of time and there is an insecurity of the legislation when it comes to format protection. Maybe it might be better to sue to make a point but it’s more efficient to solve an economic way out.” [Managing Director of a large German format distributor]

“If China copies some Korean programme, we sue them but it takes maybe 3 years or 4 years. And we don’t want to use that programme anymore, – it’s a matter of speed for us – how fast we can approach to sue them. But we usually don’t want to sue them because it takes very long in the courts

and it spoils our relationship.” [Senior Manager of a large Korean format distributor]

Some format producers tend not to initiate legal proceedings against copycats because some copycats are broadcasters who otherwise buy finished programming from these format distributors. Involving legal institutions spoils future relationships with regards to non-format sales. There are also instances in emerging territories, when a copycat is so small a company, that winning against it is immaterial. An international distributor cannot expect to get compensation from a small TV station in a small country even to cover the costs of litigation, let alone get damages for infringement.

The above would lead to the belief that format producers never take a suspected infringer to court in a pragmatic business oriented world. That is not true, as well. There are instances when suspected format copycats have been taken to court by an originator or a distributor. Behind such a move is a belief that a distributor wishes to indicate to the entire territory that it takes its intellectual endeavour seriously and that it is ready to fight for it through the courts. Furthermore, such a strategy can be expected in a large and important television territory such as Western Europe or USA, making it noticeable by the world television press thus giving the distributor/originator mileage in the industry both for the company and the individual format. Controversies have been known to re-ignite interest in dying format properties.

“We are involved right now in Switzerland with regards one of our formats. One of the reasons to go into litigation is to show the outside world, particularly during this credit crunch, that we do monitor what’s going on and we value our intellectual property. This is a very strong signal to the market.” [VP Business & Legal Affairs of a large British format distributor]

“If it harms our image strongly or if it will set a big precedent for the entire market, then we go to court - it depends on the territory. If a rip off happens in Armenia, nobody notices, but it is Netherlands or Sweden, that would be the talk of the town.” [VP Sales (Germany & Eastern Europe) of a large British format distributor]

“We decided to go into litigation because the channel who we think is infringing our formats – they didn’t reply at all to our letters and they had been talking to our sister company in Germany quite extensively about production and then they pulled out and later appeared with a very similar programme.” [VP Business & Legal Affairs of a large British format distributor]

5.2. Information enhances protection capability

In order to counter copycat attacks, whether using legal means or the more efficient market based business strategies, the format industry needs to secure fast and reliable information from around the world. Television has grown phenomenally in the last 60 years – there are thousands of television stations in over 200 countries of the world. No reliable or authoritative number exists on the number of such stations though it is safe to estimate that there may be thousands of hours of programming being broadcast daily in the world. This makes it extremely difficult for format originators and distributors to keep a close eye on the use of their formats and gain information on format trade deals throughout the world. Interested parties receive hundreds of emails, text messages, news broadcasts, and personal phone calls on a daily basis. Thus, the format industry had to organize its unique flow of format trade information.

Before discussing the dynamics of such a complex information flow in the format industry, let us recount the underlying factors which have contributed to this flow. The global communications revolution utilizing internet based protocols have changed the way the industry used to get to know about

format launches, upcoming programmes, programme ratings, audience feedback, etc. Online and physical versions of the industry’s well subscribed trade magazines such as *C21*, *Variety*, *Screen* and *Broadcast* help professionals sitting thousands of miles apart from each other in remote territories to know in real time which format is bought and sold, and which format is expected to gain momentum in another territory. A format getting high ratings in competitive television markets such as UK or USA are instantly on the radar of potential buyers as well as copycats. Buyers sitting in these territories are able to view and download formats episodes in part or full through dedicated *ftp* (file transfer protocol) based systems instituted by distributors (for example, Fremantlemedia has a proprietary system called ‘*Insight*’). Even potential copycats can view format clips through fan action i.e. audiences who upload clips or entire episodes of formats on user generated content sites such as ‘YouTube’.

“We have an in-house video system on which we put our shows from around the world and send an email around to prospective buyers. It’s becoming so incredibly quick that buyers often approach us knowing well about the show. Having worked out quickly who has the rights to the show, they will be knocking on our doors for it.” EVP (Worldwide Production) of a large British format distributor.

Finally, following the logic of seamless flows, information of copycats attempting to launch their unlicensed version also reaches the format owners and distributors faster in today’s connected world. Dedicated information scouring staff in large format distribution companies ensure that this is relayed to in-house legal and commercial teams well in time to put in place preventive actions to stop the copy from being made or traded.

5.2.1. Spotter’s network

Amongst all the types of information flows which the industry institutes, the oldest and most reliable form is the ‘*spotter’s network*’. In this, a format

distributor cultivates a select core group of informants from across several key territories. These informants, who are freelance production executives, act as a dedicated conduit of information from within that territory or the region to the format company’s headquarters. In some cases, the informants are so secretive that only one or two handlers in the headquarters are aware of the informant’s identities.

“The spotter’s network is so secretive that I only know the names of the spotters... the aim is to get the knowledge of promising shows coming through from our competitors rather than trying to spot rip offs...you don’t know what you don’t know but we have a pretty good network out there.”

EVP (Worldwide Production) of a large British format distributor.

“Because of the network, we find out about copying of our format fairly early on. Spotters from US, Holland, Australia, Scandinavia ... they feed us things about what is being developed.” [SVP of a large British format distributor]

On getting the information from the spotter’s network, in-house legal and commercial relations teams evaluate a suspect format and if there is sufficient similarity with their own production, they initiate negotiations and other business means to ensure the suspect production does not go ahead or visibly shifts away by making changes so that it does not resemble the original format.

“It’s a small world - everybody knows the shows coming out. You have broadcasters from America having their scouts sitting in London looking at the European market; or producers from France with their scouts sitting in Germany... So if there is a new successful show coming from any of the key territories, certainly those scouts will communicate the information.”

[Managing Director of a large German format distributor]

5.2.2. Proprietary & in-house information agencies

Because of the premium on information in the format industry, several proprietary information agencies cater to the information needs of the format industry. These complement traditional ratings and information aggregates such as *BARB* (Broadcaster’s Audience Research Board) from UK, *Nielsen Media Research* and its various associates (from USA but operating in several countries) and *Eurodata* (from France, operating at the entire European market). An example of one such proprietary information agency is WIT (World Information Tracking) headed by Virginia Mouseler operating from Paris. Such agencies have been known not only to offer customized television tracking information but also an off the air DVD of the world’s latest formats. Thus, such a service can theoretically be utilized by copycats who wish to copy a format but do not have access to the format from other open sources.

“If I am a subscriber of a service and I ask them if there is a new format, they can tape it and send it to me as information, which means if you want to get something you can get hold of it. So the information is available.”

[Owner of a small format production company from Israel]

Further, large format distributors also have specialised in-house divisions with dedicated research teams who analyse information about new and emerging formats from across several markets as well as their buyers. Control over the information is a key advantage of using an in-house or a proprietary information source.

5.2.3. Trade community relations

Besides covert, proprietary and in-house forms of information gathering employed by format originators - relationships and informal communications within the format community play an important role in cementing information

flows. In many cases, a broadcaster who has bought an original format informs the distributor of a competitor in that broadcaster's territory coming out with the format's unlicensed version. This it does, simply to safeguard its investment in the licensed version knowing that large format distributors pursue copycats. In other cases, business contacts in a territory provide information to a distributor in order to create a closer relationship hoping for favourable business terms in future transactions. This information flow takes place on mutual exchange basis.

“Obviously as an organization we can't have eyes everywhere and the network is also a self containing system tendency where people inform each other. And also we get told and hence inform out clients.”

[International Format Sales Manager of a mid-sized Dutch format distributor]

“The people who try and spot rip offs are usually our local production companies in their territories or in territories where we don't have a production base and where we have licensed our format to a broadcaster they will come and tell us of a rip off taking place or it could be a production company we have a good relationship with, they come and tell us.” EVP (Worldwide Production) of a large British format distributor.

“If somebody steals the show, the competition will tell us. That's what happened in one of the Central European countries a couple of years ago. One channel there produced a pilot on one of our shows without telling us. The competition came and told us ... If they couldn't buy (from us), everybody in Hungary or Poland knows what kind of shows that we have, so if one of our shows goes into production, they come and ask us if that's the case. And if we say no, we haven't started production on it or have licensed it.” [Managing Director of a large German format distributor]

Another trend towards banding together of several smaller format companies, especially from emerging economies, is to create an

information exchange network which conserves resources. This network is independent from any one single proprietary or covert information exchange mechanism and is thereby able to create information gathering synergies. In other cases, industry members become members of national level trade groups (such as PACT³⁰ in UK) where they meet on regular intervals to discuss format trade issues including rouge clients, difficult territories, etc.

“From what I see more and more companies are joining in order to share information and protect their formats.” [Sales Head of a large Colombian format producer]

“In France we have a very strong cooperation of independent producers and distributors. We are a huge group and we speak to each other very much. I have friends in well known format companies, so as soon as I meet a channel I ask her some advice.” [Sales Executive of an independent French format producer]

“One of our main things is that we ask around – asking have you worked for this person and how have you found them etc.? Also, contacting companies whom that the client has worked for in the past. That’s the kind of thing that we do at the moment. It’s such a small industry that you will hear very quickly who is doing what.” [Sales Head (Asia) of a mid-sized Australian format distributor]

“...the moment you have a good idea in the international market - immediately there are 3, 4, 5 similar ideas that emerge. The most efficient way to track it is to have connections in as many territories. Because of competition, when somebody is stealing, the other one will come and right away tell me.” [Owner of a small format production company from Israel]

³⁰ Producers Alliance for Cinema and Television

5.3. In-house legal departments & ‘deterrent letters’

“There is no real IP right. What we do as a company is we scare people. That’s a way to protect your IP right, to send a letter and so on... If legal-wise we think we will never win because of the legal situation in that jurisdiction is not in place, we just use our size and our budgets to wear the other party down.” [Licensing Manager of a large Dutch format producer]

The term ‘IP’ has become the format industry professionals’ jargon to refer to a format, the ownership of which is clearly defined. Several respondents during this research used the term ‘IP’ to refer to formats. It can be inferred that the use of this terminology helps a company’s representative take a tough posture with regards ownership of the company’s formats and that a certain degree of such posturing exhibited to potential buyers helps in attaining format sales.

“It is important that you make a lot of noise legally to scare people off.” [VP, Content Development of a large British format distributor]

During a dispute, the aggrieved party may use aggressive IP posturing using in-house legal teams and use legally oriented language in deterrent letters to threaten copycats suspected of infringements. It is accepted in the industry that the threat of suing is more important than actually suing a copycat. This posturing assists future sales of formats to potential buyers in the following way. It provides an opportunity for distributors to guarantee in return for buying a licence that they will work aggressively towards stopping unlicensed versions in a territory. IP posturing, threats and deterrent letters all works towards demonstrating intent to pursue and protect.

“I have never seen major American studios suing a small company and bringing them to American courts. But they use their own lawyer to send a stern letter – saying we have a problem with your copying and if you still

break the law, we will sue you and in that case you will need to spend this amount of money. Most usually decide to stop copying.” [Senior Manager of a large Korean format distributor]

Sometimes the threat to sue has been carried out in real life, particularly when the need to showcase format ownership to a buyer is higher. This is because buyers need to be convinced of the distributor’s potential to safeguard the format from the competitors in a territory market.

“In Spain, we are suing a subsidiary of a big format producer for a show which we perceive as a copy of ours. We had it on a small channel and they deliberately rushed it to air on a leading channel after our show had been announced. Because they were the first to the market, it succeeded and killed our show. And since it was a very big investment for our buyer broadcaster and who was very upset, we felt that we had to go to court there though it is highly possibly that we are not going to win.” [EVP (Worldwide Production) of a large British format distributor]

Usually found at a format distributor’s head office, in-house legal departments help in several ways. Firstly, the full time lawyers in these departments deal with the intricate commercial details of international format trade - processing of requests from production territories about rights situations, acquiring formats from creators to distribute further on, finalising contracts in licensing territories, giving practical advice to staff in production territories on how to handle ‘difficult’ situations, having discussions with format owners or licensees about implementation of formats or, having discussions with flying producers about how the launch of a format has developed. Such tasks usually make up the work of an in-house legal specialist of a format originator or distributor.

“Litigation is a very small part of my work. If there is litigation, it takes a lot of my time, even if there are 2 or 3 cases on my desk, these will take a lot of

my time but in end it's a small part of our work. We don't litigate a lot.” [VP Business & Legal Affairs of a large British format distributor]

Secondly, having a large in-house legal department helps format distributors to exhibit its exploitation and protection prowess when negotiating with format originators and owners. Format originators, who lack such capabilities, partner with those distributors who can show enthusiasm for the worldwide protection and exploitation of a format being negotiated. In-house legal departments provide a sense of legitimacy to the proposed business venture between the two format parties. Consequently, buyers engage with a format distributor in a responsible manner and treat the format with respect if the distributor has a strong in-house legal department.

“If behind me is a big production company, there are fewer problems and people will not copy easily. If someone knows that we are an independent they can copy us easily. The name of the big production company is enough, they don't even have to move and people are scared of them in the market. You know that behind them there are 20-30 lawyers and people don't want to mess with such companies. If you have to fight for years and years, it's going to cost you more than just buying then its better to pay the format fees.” [An independent format producer from France]

“Guys like Sony have a big legal department and a wave of attorneys that can write very mean stern letters.” [Independent American format distributor]

“These departments stop copycats, because they know that they have a bigger company to contend with, which just means that we have a better legal department.” [Sales & Acquisitions Manager of a large British format distributor]

Thirdly, having an in-house department with full time legal personnel contributes to a unique posturing mechanism developed by the format

industry. It sends a strong signal to the market that an originator or distributor is serious about pursuing infringements of its intellectual endeavours. This is achieved by routinely scanning the television industries worldwide through information channels described above and using market based solutions to solve a dispute. One of the first communications to suspected copycats is to send them ‘*sternly worded*’, ‘*cease and desist*’, ‘*deterrent*’ letters to stop them from producing a format closely aligned to the company’s original.

Deterrent letters act as unique form of posturing developed by the format industry. In order to increase the effect of the perceived layer of protection through copyright and related legal regimes (discussed earlier), the industry has evolved this system usually based on the resources of their in-house legal departments. The deterrent letters not only lay down to the claim of the sender to the suspected infringer regarding the ownership of a format but also indicate that legal retaliatory measures will ensue if the infringement is not stopped forthwith.

“Most of the times I have contracts 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.” [VP Business & Legal Affairs of a large British format distributor]

“Within Korea, it is easy, the legal recourse is not that expensive, and we know our competitors very well. So we just approach our lawyers and even a letter from the lawyer, it works without even going to a court.” [Senior Manager of a large Korean format distributor]

“I think it’s important to establish in the letter when the format was created with information on some kind of registration – we do that internally on our website – then you can prove that such a format existed before any pirate created their own.” [President of a large Swedish format distribution network]

Format distributors use deterrent letters to force suspected copycats to come to a negotiating table and to pay format fees, mostly retrospectively, for a format the latter copied without the knowledge or assistance from an originator/ distributor. Hence, deterrent letters act as a posturing mechanism as well as a reactive business strategy to score over competitors whenever the ownership of a format is not clearly ascertained.

“We got advice from our legal department to send a letter using certain legal language and signatures of legal functionaries and advisers of our company – we send it to that company. Luckily, it worked. They accepted the fact that it was our format. Actually it came out to be in our advantage because we then had a very strong negotiating position because the format was already used and they were afraid of the law suit and hence we got a good price.”

[Sales Head of a mid-sized format producer from Poland]

6. Data Analysis: Market based Protection Strategies

6.1. Confidentiality & access control

Exercise of elaborate confidentiality measures to control access of potential buyers and other industry members to formats act as one of the most important strategies for the protection of formats. Such a control is manifested through a range of tactics, such as securing format related transactions and format assets. These consists of allowing selective viewing of format pilots on the producer’s website and selectively releasing tangible format elements such as production bibles, style guides and marketing materials to trusted partners.

“When format owners have something new or exciting they keep it really quite till the time they are ready to pitch with a bang”. [Sales Manager (Asia) of a large publicly funded British format production company]

6.1.1. Methods of maintaining format confidentiality

Format catalogues and sometimes entire episodes are available to be watched on line by potential buyers on the dedicated websites but they have to register their details in order to get access. In this way, suspected imitators can be kept away from a *'hot property'* until the originator has secured sufficient sales.

“You can’t just go on our website without asking to view. There is a record of everybody and what they have seen. So if we hear of a format in Brazil which is exactly the same as one of ours, we can turn to those producers and say to them that they have seen our format on line several times”. [The President of an independent mid-sized Dutch format distributor]

Format originators and distributors never release format consultancy elements such as format bibles unless they start getting paid for a format licence or ‘rights option’. Some respondents may still send full episodes to trusted buyers and they recognize that in the format trade, decisions to buy a format may depend upon the ability to actually see on screen the attractiveness of a format. Hence, confidentiality as a strategy, while providing a short term solution to the problem of copying, does not provide either a long term or a satisfactory solution. In case of telenovela formats, where accessing the original format’s scripts are very important, format producers have a similar but more step by step method of maintaining confidentiality.

“Confidentiality is maintained in 2 levels. Initially we want everyone to know that we have a great programme in our catalogue. As we advance in discussion to a stage where a channel gets ready to option a programme, we sign a confidentiality agreement where we acknowledge what we are trying to sell to the buyer and what they are trying to acquire. The vetting of buyers starts when we start asking for money and then we can find out who the real buyers are and who is just trying to milk information. Though to figure out a telenovela you just have to watch the original episodes, however there are elements which are very proprietary, for example set design, better angles for the cameras and so on - this type of proprietary information is worth paying for.” [Distribution Head of a large German format producer]

“If there are a lot of producers in a territory, like in Russia, we give the client only the titles of the formats pertaining to the genre that they are looking for. We then invite them to visit our website to see some more information. If they like a particular format on our website, I do a personal synopsis and presentation of the format description for the client. If it interests them, only then do I send them the screeners. Thereafter we ask the client to sign an option agreement by paying us a fee before getting access to our telenovela

formats. Not signing the option means they don't get access to our scripts.”
[Sales Director of a large US telenovela company]

In addition to maintaining confidentiality of formats on their website, format distributors run site statistics to analyse not only who logged in but also which territories are interested in what type of programmes. One respondent from Poland shared how he found out that statistics helped him to deduce that more educational or documentary type formats were popular in Asian territories while crime based TV series were popular in Russia. Thus, site statistics helped this head of a mid-sized format distributor to focus his sales strategy as per the territory trade fair that he visited.

It was emphasised by several respondents that maintaining access control comes only when a company's internal procedures and systems are configured appropriately for this. The Licensing Manager of a large Dutch format production company maintained that before a format licence is sold to any company to recreate and broadcast it, *“the company has an internal procedure where it registers the format in-house”*. They then proceed to produce the format only through their *“own operating companies”* where there are *“no outsiders involved”*. This access control is considerably reduced in favour of potential licensees.

“We don't show anything to people that we think are bad. Some formats we only show to people we think are capable enough to do it, some are big producers and some are not, it doesn't make sense to provide insights into a product to a buyer that we think will never be able to produce it.”

The above effectively showcases the heightened confidentiality maintained with regards a format and that an originator or distributors treats it as a central property to be safeguarded from competitors and copycats. In order to further streamline the process of avoiding leakages of format ideas and concepts, some large format producers have stopped producing printed catalogues for potential buyers to peruse at trade fairs or to be sent out in

mailers. This ensures that only potential buyers with a history of purchases or a safe reference see a new format on the distributor's website.

“Lots of people come to us during the trade fair and ask for our catalogue but we don't have one. I ask for their requirements and get back to them with suggestions. So the process is much filtered. In the beginning we send a trailer but no original tapes. The production bible is only released after the contract signature and first payment. If I know a client and he is asking for a blank budget to make the calculations in some cases and I know them already that they will never rip me off, I give them a blank budget but we are very restrictive in the first instance.” [VP Sales (Germany & Eastern Europe) of a large British format distributor]

Another way in which the confidentiality around a format is strengthened is by having strong written confidentiality agreements in place. Format distributors, in a position of power, make less powerful potential buyers sign strictly worded confidentiality contracts whereby the buyer accepts that a format under negotiation containing certain specific elements belongs exclusively to the distributor and that for a few months or years after the beginning of the negotiation, the buyer cannot create such a format independently or buy a similar format from another party. Though such written agreements safeguard distributors from buying parties they are negotiating with, it still leaves the prospect of others attempting to copy their format if the latter are able to find a leak in confidentiality.

“We can protect ourselves from the channels we have signed these agreements with but we cannot do anything with channels with which we don't have such agreements.” [Regional Director (Asia) of a mid-sized Indian format producer]

“It's mainly about having clear and concise agreements. It's always about creating communications producers and the company and the buying party. In terms of governance of these agreements, it's about having eyes and

ears on the ground and having relationships in the market so that you can get information when required.” [VP Business & Legal Affairs of a large British format distributor]

6.1.2. *Varying levels of confidentiality*

Confidentiality is maintained variably by producers of different sizes and scales of production and having varying types of relationships with buyers. Format producers who have an established brand may be able to utilize the confidentiality much more easily whereas smaller producers may be required to compromise confidentiality in order to market their formats. For some smaller format originators the issue of keeping format information confidential and at the same time allowing access for marketing purposes acts as a business barrier while for larger format distributors the varying level of confidentiality surrounding formats may simply be a nuisance.

“All our trailers are on the website without any passwords and hence free. One client said recently that if she needed to input a password, she wouldn’t bother watching – she will send it to the little people in the research department.” [The owner of a mid-sized Israeli format production house]

“It’s a catch 22 situation – as you have to sell a format but you can’t keep it in your pocket...” [Sales & Acquisitions Manager of a large British format distributor]

“As we try to expand globally, we are now entering the borders of TV land, where there are not only new opportunities but also IP problems... the difficulty that we face we is that on one hand, we constrain ourselves not to show everything outside the group, on the other hand if we want to open new territories. We have to open our catalogue to them as well...so it’s a double sword.” [Licensing Manager of a large Dutch format distributor]

It was emphasised by most respondents that existing business relationships and a level of generated trust moderate the level of confidentiality required when introducing formats in a market.

“Everyone in the market shows their formats briefly to give a flavour of the idea. If a buyer is interested, we send out a sample tape. But we don’t give a sample tape to everybody, because you need to have some relationship from before. If someone says I am from a US TV station, so please give me a tape as I want to buy your format, we would not do that. Plus, we put legal warnings on the sample DVD, saying this is only for information.” [Senior Manager of a large Korean format distributor]

“I have been doing this for 12 years, so whether it is a broadcaster in Norway or a producers in Sweden, we will only sell to somebody we know. You totally have to rely on your business relationships in all markets. And I think that’s a key thing: I will never send a paper format, something that hasn’t been produced, to somebody that I do not know.” [Independent American format distributor]

“If it was the GMA network in the Philippines or if it is Reshet from Israel – they are big renowned format buyers for those territories – happily hand over the pilots. If it is a third party distributor from another territory and who is doing your job in there in which they can be of benefit sometime, that’s when I hold back a little bit sometime.” [Sales Manager of a small Australian format distributor]:

6.1.3. Challenges for maintaining confidentiality in formats

Despite the elaborate attempts by format producers to maintain secrecy in their format information, potential buyers tend to resist signing non-disclosure agreements as it increases levels of bureaucracy and reduces their ability to seek similar type of formats from other format suppliers. This is not only the case for small producers - the unwillingness of potential

buyers to sign confidentiality agreements was showcased by some large producers as well.

One respondent, a sales director with a large US telenovela firm, indicated that she usually sent out non-disclosure forms to potential clients but she noticed that though clients '*signed the piece of paper*', they did not really respect the agreement because they knew it will not be challenged by her.

“My experience is that clients don’t want to sign any NDAs; because that will prevent them from accessing similar but better ideas from our competitors. So they try to keep their options open. I tried in the beginning but now I have given up on that altogether.” [President of a large Swedish format distribution network] echoing the sentiment.

“We don’t have any NDAs for people to sign up because it will limit yourself. You have to be open – you have to take risks. And the risk nowadays is less, particularly if you already have produced formats.” [The President of an independent mid-sized Dutch format distributor]

Since potential buyers resist signing confidentiality agreements, format producers have devised other means of proving that they disclosed 'implied confidential information' during specific negotiations with potential buyers. Originators and distributors keep detailed records of communication in case if the same needs to be produced in a court of law to initiate an action of breach of confidence against an alleged copycat. Though this option is rarely exercised, the format industry finds it a useful tool to retain for future use. Retaining such records help an originator prove ownership of concepts if mediation is entered into in a dispute.

“When we send a full format episode to a client, we ask them to sign a confidentiality agreement but major companies and broadcasters don’t sign. So, I have no option but to keep evidence of any communication with a prospective buyer. From commercial point of view, we are still exploring

how open we need to be in sharing the information... [The owner of a mid-sized Israeli format production house]

“Every conversation that we had with a person or a company is written down and is in a database. So we keep a close track record of what we have.” [The International Format Sales Manager of a mid-sized Dutch format distributor]

Another respondent, the sales manager of a small Australian format distributor concurred that to protect formats, the important thing is to have a trail of paper work *“which you can show that you have been in discussion with this person so that when people reject your format and a month later you hear that they have done something very similar with slight tweaks - you can bring it up if you want to.”*

The confidentiality discussed above is not restricted to only new format negotiations. It extends to information on previous format disputes, initiated in a court of law or otherwise, as well as post-dispute settlements which are mostly commercial in nature. One respondent, owner of a mid-sized format production company from Israel, on one hand provided a rich insight into a format dispute between his company and a major European distributor, but he specified repeatedly that no names and specific examples may be used in this report as even a slight leak of his post-dispute settlements may be prejudicial to his future business dealings.

6.2. Speed to market: first mover advantage

The next important strategy analysed from interviews is a tendency to distribute formats with high speed so that the distributor and the buying broadcaster gets a first mover advantage in a territory.

Broadcasters in most territories attempt to be faster than their competitors to get the rights to produce the season’s most popular formats from around

the world. Format distributors, too, attempt to reach as many territories as possible. This combined action protects a format from a copycat since a very short time lag is available between the format's first broadcast and the production of its licensed version; this time being not enough to respond with a cheaper unlicensed version. Thus this strategy is intended to ensure potential copycats are beaten in their own game.

“One thing which helps to stop theft (of formats) is enhanced information flows as broadcasters are getting to know about our formats more quickly. They phone us to get the version up on air in 3 months whereas in the past it would have taken much longer giving an opportunity for copycats to have nipped in.” [Creative Director of Media Licensing for a large British format distributor]

'Speed to market' can be considered an emergent strategy which format producers have developed to protect formats. When the core idea of a format can be used by anyone without paying a licence fee, originators felt a need to reach a market first by producing their own version or selling a licence in as many territories as possible at the earliest. Failure to do so creates a void where copycats attempt to usurp the format and approach broadcasters based on similar lines.

“... Its got to do with getting out there first and creating the first relationship with a local broadcaster so that you are able to sell your version before a copycat approaches them.” [Creative Director of Media Licensing for a large British format distributor]

“...when you are the first one to have a product, then in a way you have a better claim ... if you have a good idea and you don't move, someone will come with the same idea. It happened to me in Israel, a creator came to me with an idea similar to All3Media's Cash Cab where you enter a game show by simply getting into a city taxi modified for the format. This creator did the same thing about going into people's apartments, he came to me many

months ago and since I did not move fast, I now see a large broadcaster in USA is doing something similar...” [Owner of a small format production company from Israel]

“We have usually been the first to air and being first to air helps a lot. Because of the risk of copycat shows and because of advancements in technologies where broadcasters around the world can see new shows virtually 24 hrs after they have been broadcast – the pressure is now on to get things rolled out quickly.” [Senior Manager of a large British format distributor]

Most respondents felt that first movers get the best opportunities to create well established brands with loyal audiences – subsequent formats on similar lines are looked upon by audiences as copycats (irrespective of the reality). The first in the market establishes a standard.

“There was this battle with Star Academy to see who will get first to the market because we found that where markets which had taken Star Academy, Idols didn’t perform that well and vice versa. 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 won’t accept it and will take the first as the original. For example in France, Star Academy was shown on TV before Idols and that’s why Idols didn’t do very well there.” [Research Manager of a large British format distributor]

Large producers utilize this strategy in combination with having a large scale of production bases or offices throughout the world whereas smaller producers depend upon trade fairs or informal networks in quickly accessing buyers around the world.

“Speed to market is the key to protecting our formats. We have offices and production bases in every major television territory. Know-how of successful previous versions coupled with a highly skilled technical team ensures that

we get the commission to produce a licensed version.” [SVP, Content Partnerships of a large British format distributor]

Typically the speed of rolling out a successful format has increased from about 2 or 3 territories in a year in the early 90s when the fledgling format industry was taking root to more than 20 to 30 territories in a year in 2008.

“In the late nineties, it took a long time for these shows to travel. Even Idols which was a big success in the UK, in its first year had only two sales in South Africa and Poland. But that growth is still relatively slow compared to ‘Hole in the Wall’ which has sold to 32 countries in one year!” [EVP (Worldwide Production) of a large British format distributor]

“The first is the one which knocks the best. But in any case it doesn’t keep you the leader, you have to sustain being the best. By doing new things, the competition is good, because it makes your own improvement.” [Sales head of large format producer from Argentina]

It must be remembered that speed on its own is not enough to sustain interest in the audience and deter copycats attempts. Some copycats will copy despite being the second in a market in order to gain from the momentum of a successful genre. Therefore, speed to market is considered one of the complex sets of strategies which originators and distributors employ to protect and exploit formats. Where there are advantages from a strategy, there are some disadvantages as well. For example, format product quality may suffer from a hurried production. Similarly, a cultural misfit may occur which can kill a format in a particular territory thereby creating a serious threat to the very existence of the format genre in the entire market.

“The Apprentice was sold to 14 countries in 6 months. On one hand that’s fantastic, but then you have to manage all those territories and in order to avoid complications in the market, we had to rush few of our productions.

That’s the tragedy of copycat shows - if a copycat reaches the market first and fails, then the genre dies and we don’t get to sell our show in that territory. In a hurry to reach the market first, we sometimes do mistakes in product development. Germany was a classic example where there was a bidding war between RTL and Proseiben where RTL won in the end. So Proseiben went and commissioned their own ‘business reality’ show (similar to The Apprentice) in which they rushed their show to air and it was such a disaster that it was cancelled after 3 shows. The consequence of that RTL accelerated the production of our show The Apprentice and the result was that our show was a failure in Germany.” [EVP (Worldwide Production) of a large British format distributor]

“... it’s a 2 edged sword where it’s great to get all those sales and the need to get on air before the copycats arrive, but it does mean that things are being done really quickly. About The Apprentice, we got to the end of that year and of about 12 productions around the world, only 2 of them got re-commissioned and that’s a very bad failure rate.” [EVP (Worldwide Production) of a large British format distributor]

6.3. ‘Enhanced distribution network’ & ‘scale of production’

The previously discussed strategy of speed to market works effectively only if it is complemented by the developer having an enhanced distribution network. Further, a good distribution network works best if the scale of production, i.e. near simultaneous format replication in several territories, is also geared up. The distribution network provides closer relationships in each territory where the format has potential while the scale provides opportunities for removal of duplication of efforts and removal of inefficiencies. Useful format making techniques discovered in one location can be utilized in another in a short span of time. Moreover, close physical presence on the ground provides for closer relationships with format buyers, broadcasters and local audiences so that a closely fitting localized format version is made in a particular territory.

“We don’t have a problem with piracy because we work with local production companies that guard our IP. They have a good relation with the channels on a daily basis and it complicates the relation if the channel steals their property. If they want them to be a good supplier and have a good healthy business relation, one party cannot steal. So, local presence is one of the best ways to protect your format. And that’s what all the large companies are doing – Endemol, Fremantle, Distraction are all doing the same. It’s not only good for business but also good for protection.”

[President of a large Swedish format distribution network]

“Most of our biggest formats have been bought in and then sold all over the world – we are not known as a creative company but rather a production/distributor having bases in several key territories around the world.” [EVP (Worldwide Production) of a large British format distributor]

“Being local means that the company is noticed - a copycat can surely expect our local representative to knock on their doors in case of a suspected infringement.” [SVP, Content Partnerships of a large British format distributor]

Territories in which format developers usually have production bases include the big Western European television territories such as UK, Germany, France and Spain as well as USA, Australia and Brazil. From an exploitation viewpoint, these bases provide for multiple income avenues as these subsidiary units of the parent distributor approach a broadcaster with the proposal of a format and produce it as per the broadcaster’s budget. Income for the production bases, and hence the parent, arises firstly from charging production costs to the broadcaster and secondly by selling a territory licence fee for the format. From a protection viewpoint, this scenario is ideal as production know-how does not need to be shared with a third party and only a fully made format is shown to the audience without any confidential information leaking out to competitors during the production

stage. Further, consolidated up to date marketing information with comparable graphs etc. can be sent to a potential territory to increase the chances of repeat commissions from that territory. This type of distribution may be called ‘**high-level format distribution**’.

“We have production operations in all the sizeable territories you could think of plus offices in a number of other countries where we don’t produce yet. When we get a new format in, there are internal systems about telling the people from different territories what this new format is and also what its key marketing points are. We have a research department in London which tracks the ratings performance of our show around the world. And we are good at quickly disseminating positive ratings information to the territories. So the territories are armed with fantastic marketing information, our marketing department produces marketing materials such as posters that are used for promos.” [EVP (Worldwide Production) of a large British format distributor]

There are several advantages in this type of distribution which are either less prevalent or absent in other types of distribution. High level format distribution provides better production control to a format distributor. The company, through its production base, becomes rapidly aware of the strengths and weaknesses of a format and the way the audience reacts to it in the initial phase of broadcast; hence adjustments can be made in real time. Production executives in these bases tend to have well developed relations with flying producers from the distributor’s headquarters. Flying producers principally impart informal technical know-how as well as act as the distributor’s eyes and ears in a territory – hence these flying producers find a more trusting working environment in these production bases. The result is a fast to market well created format.

“Don’t forget that we are a global company with our own production bases in 28 territories. We just don’t sell to broadcasters and let them do whatever they want. We have our own production companies and they behave as

good corporate citizens on the whole.” [SVP, Content Development of a large British format distributor]

“Where we don’t have success with coming up with new ideas internally, but 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 (Worldwide Production) of a large British format distributor]

In smaller territories, however, even large format distributors do not find it efficient to have fully functional production bases. They usually have a liaison or sales office which is responsible for selling a format licence for a fixed or flat fee to the licensee broadcaster. The broadcaster is then free to have the format produced in-house or through a third party in that territory. Territories which fall in this group include Russia, China, India or Canada. Income opportunity for the format distributor arises only through the flat licence fee, making this scenario less ideal than having a production base. Also, there is always a danger of technical know-how leaking out to competitors because of the number of parties involved in the format value chain in this type of distribution. Nevertheless, having a liaison office gives the distributor a link to a territory because of which information about potential copycats can be obtained very early on and they can be deterred from ripping off a format by using mutual bargaining powers and industry specific retaliatory measures (discussed further on in this thesis). This may be called ‘**mid-level format distribution**’.

“We are an international worldwide production and distribution company with offices in 21 countries - anyone who places a format with us for distribution gets access to all these territories. Presence on the ground enhances the ability to protect our formats. In other words, the way we are

structured and built, helps protection.” [EVP (Worldwide Production) of a large British format distributor]

“Due to our global presence we often have the ability to visit a live recording somewhere.” [Licensing Manager of a large Dutch format producer]

In a mid-level distribution scenario, however, the format distributor is not aware of the expertise and background of the production company which is entrusted by the licensee broadcaster to produce a format in a territory. Flying producers may find that it takes a long time before they can create a trusting and effective communication channel with territory producers. The flying producers may also be seen as ‘*sheriffs coming to town*’, and sometimes their prescriptive solutions may be resented by the local producers.

“A big part of our success of getting repeated commissions of our formats in various territories is to do with the fact it is usually our own producers in these territories.” [EVP (Worldwide Production) of a large British format distributor]

In the first 2 types of distribution, one recognizes that large international format distributors are able to utilize the strategy of being close to their buyers and broadcasters through production bases and territory offices. The third scenario is exhibited by smaller distributors who are able to sell only a format licence or an option from one or two locations, such as a London or Paris office. At the most, they are able to attend a regional trade fair in Singapore, Budapest or Dakar. This does not provide the advantages associated with the first two scenarios. The income from a format sale is only through the licensee or option fee, though sometimes this can be augmented by the sale of technical know-how and consultancy. Further, the distributor has to depend upon third party information networks for information about suspected copycat attempts by rival producers or

broadcasters in a territory. This may be called ‘**low-level format distribution**’.

Low-level distribution is also used by large format distributors to penetrate as many territories around the world where it is unsuitable for them owing to financial or logistical reasons to have a production base or a territory office. It must be noted that once the format has been sold in the developed television territories, revenues arising from sale of options or format licenses in smaller territories represents only incremental income but it fulfils a marketable premise for the company that their *‘format is watched by the entire world’*. This valuable premise gives a global touch to a format, thereby enhancing the corporate brand of the originator/ distributor.

The size and scale of production of a format distributor may also be responsible for a buyer having certainty on a distributor’s format. The buyer / broadcaster knows that in case of a copycat attempt in its territory, the high level distribution arrangement will ensure full support is provided to the licensee to aggressively engage with the copycat. The distributor's scale of operations is also a draw for niche format originators who do not have the resources to protect and exploit their formats and hence partner with such distributors to access a larger market.

“We have just sold one of our formats to a large format distributor for 21 territories. They have got offices in so many countries around the world so they have people going and meeting broadcasters in all those territories so that’s advantageous for the format as well. They will be going in and meeting broadcasters on a fortnightly if not weekly basis and they really understand the territory, what sells there and so on, what the broadcaster is looking for, up to the minute information etc.” [International Sales Manager of a small Australian format creator/ owner]

“If your company has size, scale and production expertise, that gives buyers confidence. We can bring over the original producers of these shows so

they can talk about what went wrong and how to correct it. So we can refine the show for a certain market.” [President (North America) of large British format producer]

6.4. Power play & retaliatory measures

The consolidation of the format industry in the last 10 years has had a tremendous impact on the protection of formats. Companies such as the UK based Celador who had a few popular formats such as *‘Who wants to be a millionaire’* have either moved out of format distribution or their catalogues have been amalgamated into larger distributor’s libraries³¹. Instead of *‘single show sellers’*, format trade has entered into the hands of large multi-territory distributors or producers like Fremantlemedia, Endemol, All3media and Eyeworks. Rivalry to these corporations in format distribution is provided only by established Western broadcasters such as the BBC (UK), Prosebensat (Germany) or ABC and Fox (USA).

At the same time, the broadcast industry has become highly competitive with large television territories being cornered between two or three giants. There has been a lot of restructuring and consolidation leading to fewer channels that have deep budgets to make high profile formats. While these channels want the opportunity to broadcast high profile formats, none of them wish to alienate the consolidated format distributors who own format and non-format programme libraries. Hence, they do not willingly copycat or broadcast a copycatted version of a format. These dynamics of relationship between consolidated broadcasters and consolidated distributors in major television territories lead to protection of format ideas. This is yet another way in which the market has found a solution to the problem of format imitation.

³¹ *Millionaire* was since bought by the Dutch company 2wayTraffic and which in turn was bought over by the US based 'Sony Pictures Television'.

“We are one of the biggest companies in this business in the world and if you want to put your nose out of joint by ripping off one of our formats, one we will take whatever action we can and two we will stop trading with you which means you will never get the best formats in the world.” [SVP, Content Partnerships of a large British format distributor]

“Because we have a lot of successful formats, we are big in size and that helps us in preventing others from copying us.” [EVP (Worldwide Production) of a large British format distributor]

“Size matters... companies like Fremantle and Endemol are very powerful and have significant impact in the market in any country. If they say that a channel is stealing our property, everybody will react to that. They take it more seriously when it comes from them; it’s much more difficult for a smaller company to claim rights.” [President of a large Swedish format distribution network]

Most respondents suggested that since larger distributors could threaten to take copycats to courts due to their resources, the latter were cautious of copycatted formats coming from large distributors. Instead copycats prefer copying formats of smaller distributors because they lacked the financial resources to threaten legal action on copycats. Moreover, there is less to lose if the relationship is soured with a smaller distributor.

“People are less likely to rip off a format if it comes from a bigger company because they have the means of starting legal proceedings against you. The Endemols and the BBCs of the world have such power, size and resource. If you fall out with the BBC, where is your programming going to come from? They have the might to take you to court.” [VP Sales of a large British format distributor]

“Companies like RDF, Fremantle or Endemol have a lot of clout besides people working in-house - they could really take on copycats. The little guy

has to be careful who to pitch to. We pitch formats to broadcasters who are reputable in their territory – where you can get feedback in the market on what they have licensed from other distributors.” [International Sales Manager of a small Australian format distributor]

“Larger companies have the financial backing to take things forward. So as a distributor of our own formats we just have to be careful on who we speak to, be aware of people who are ripping formats off and how they operate and make sure that when we are dealing with them.” [International Format Sales Manager of a small Australian format production house]

While larger format originators and distributors exhibit their power and clout to deter potential copycats, they themselves have the potential to be a source of harassment for small independent format originators and producers. A few small distributors who acted as respondents in this research complained that they were aware of situations where an independent format originator/ producer had pitched their format to a larger distributor who had misused their privileged position and misappropriated the format. The independent originator/ producer may not be able to get appropriate compensation as it needed to maintain relationships in a territory. Some independent originators are, however, not deterred by the power of such distributors and have initiated legal action over this issue.³²

6.4.1. *“Play by the rules or be blocked out.”*

The power and clout exhibited by large format distributors help them to put in place strategies to retaliate against format copycats. One of these is the *'no further business'* strategy which aims to completely block copycats out of television trading in a certain territory. In this strategy, information exchange mechanisms play an important role to weed out undesirable copycat elements. Even if a distributor is not affected particularly by a

³² One such dispute has been highlighted in the format rights database (Refer to Case No. 2007-02-OT Urmi Juvekar Chiang v CNN/ IBN India).

copycat’s actions, and if there is evidence that a copycat has copied even a rival’s format, this strategy may be used to blacklist copycats so that the entire industry becomes aware of its nature and actions and hence is wary of future dealings.

“There is always a settlement through the licence fees – the smoothest way. If people are not open for that, we just neglect them and dry them up and do not pitch to them anymore. And our partners will also know of it and the entire business will know of it. Because the law is not protecting the business, the business must contain itself and reject people who do that. And size of course matters. It matters when you still need to do business with these people.” [International Format Sales Manager of a mid-sized Dutch format distributor]

This effective retaliatory method works mostly against copycats who are also broadcasters. It is put in action by threatening to stop supplying them with non-format programmes such as dramas, documentaries and other entertainment genres from the distributor’s large programme ‘archive library’. This consists of finished programming which needs minor or sometimes no change before being broadcast. Many broadcasters around the world depend on such programming because it is available off-the-shelf and is relatively cheap to buy and broadcast than to produce or commission it themselves. Distributors usually recoup the cost of making such a programme from large television territories and once this programme becomes part of a library, it is sold for minor incremental revenues – a win-win solution for distributors as well as broadcasters. This balance is threatened to fall in disarray if a broadcaster wilfully copycats a distributor’s format having good market potential.

“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.” [SVP, Content Partnerships of a large British format distributor]

“We try to protect our formats by using our power as a large producer. We are the distribution company of a TV group called ProSeibenSat1 Media Group and we have TV channels in Germany, Scandinavia, Benelux and Eastern Europe – 24 free TV channels. We distribute their formats plus we have agreements with Israeli, Spanish and many other producers. We also work as an independent distribution company where we have a huge catalogue and we get regularly a lot of fresh programming from all over the world. That makes us an important partner for our clients. If someone steals from us, we will not deal with them again. If the people recognize that you have interesting shows coming on a regular basis, they will be more careful (about copycatting). You could have the same interesting show, the same innovative show handled by a small company where the client would know it’s once in a lifetime (for the small company) the harm to the copycats is nothing if they copy.” [Managing Director of a large German format distributor]

“Because we come out with more and more outstanding formats, the broadcast community understands the importance of keeping good relations with Fremantle... plus we have the potential to tie in our format’s licence sales to tape sales... hence broadcasters tend not to jeopardize relations with us by bringing out a format too close to our own.” [EVP (Worldwide Production) of a large British format distributor]

“Generally speaking, there would be a lot of companies that would not want to fall out with us. That would not be in their best interests as they buy a lot from us, they would want to keep the relationship with us.” [VP Sales of a large British format distributor]

Being blacklisted is a situation which any broadcaster or producers fears since format distributors also distribute other types of format as well as non-format programmes which the broadcaster or producer may wish to access in the future. Though small and medium sized format distributors depended

more on this strategy, they are not able to enforce it strongly - particularly if a copycat was larger in size than them.

“We support the industry by not licensing from companies that don’t follow the same and we share information with the companies that do things by the book.” [Sales Head of a large Colombian telenovela format producer]

“If there is a channel, say in Armenia, who is making rip offs or who is blackmailing competitor channels, we blacklist them.” [VP Sales (Germany & Eastern Europe) of a large British format distributor]

“It is clear that if they copy our format and go ahead to produce it without paying any licence fee, firstly we won’t deal with them anymore. And we will tell this to all the French distributors, we won’t keep it to ourselves.” [Sales Executive of an independent French format producer]

6.4.2. Format tape sales

A tape sale takes place when a format made in one territory, for example American Idol made for US audiences featuring US based talent, is sold as a finished programme to a country where it can be broadcast without any major changes. For example in Canada, though Canadian Idol was created independently as a licensed version it never surpassed the ratings success of American Idol in Canadian television screens. Even in non-English speaking countries, where American culture has a positive resonance, tape sales of American Idol were successful. In Malaysia, for instance, the distributors of the format sold merchandise from the American version!

“Tape sales of formats such as American Idol have been done to 150 or 160 countries (more than even the format sale). That is perhaps because the American version is probably the best and its almost a spectacle... it is so big, well produced and slick... it doesn’t matter who you are, as long as you have the singing talent, you can make it big. In UK and in a few other

places, American Idol has become more popular the local version.”

[Creative Director of Media Licensing for a large British format distributor]

While acting as a brand and product quality driver for recreation of formats, tape sales also play an important role in protection of formats from copycats. Once the audience of a certain territory is exposed to the high quality of an original format through a tape sale, it is reasonable for audiences there to expect the same international quality and content style in its localized version. Copycat producers, who by definition will put together a copycat version in a hurry so as to reach the market before the licensed original arrives, are not able to provide the same quality and style as the original. This works in the favour of the original format’s expected reception in the market. At the same time, since broadcasting a tape or finished programme on air is infinitely faster than recreating a format in a territory, tape sales are able to arrive on a territory’s screens even before a hurried copycat. This buys valuable time for the original format producer to sell a licensed version in that territory and get enough time to allow for a systematic production.

Tape sales also act as demand stimulating indicators and viewer behaviour assessing devices – audience data from those exposed to the tape of a format can help towards recreation of a format in that audience's territory.

“The international growth of Idols was initially slow but it got a major push from tape sales of American Idol where territories which had bought American Idol wanted to create their own local versions. Eventually it has been sold to more than 43 countries. Tie-in with tape sales (i.e. American Idol) helps set a benchmark for local versions which only Fremantle can deliver, hence copycat producers are not successful with broadcasters.”

[VP, Content Partnerships of a large British format distributor]

Refusal to sell tapes can act as a retaliatory measure when format producers wish to send a strong signal to the market by punishing a copycat

producer or broadcaster for copying an original format. Large format companies such as Fremantlemedia, Endemol or BBC are in a better position to utilize this strategy as they have a larger format library and can refuse sales of a popular finished format tape to a broadcaster which has aired copycat format versions in the past.

“It helps that we (plus companies such as the BBC) have very strong tape sales operations. These broadcasters around the world not only rely on us for formats but also finished shows – tape sales – so if you alienate Fremantle or BBC, you are cutting off your supplies.” [EVP (Worldwide Production) of a large British format distributor]

6.5. Production consultancy

Production consultancy is considered an important fulcrum on which the format industry rests. It has become acceptable for a format sale to be accompanied by a detailed consultancy which is achieved through the use of a 'flying producers' system and a *'format bible'* which is similar to a SOP (standard operating procedure) manual found in the licensing and franchising businesses.

Production consultancy removes duplication of time, finance and training resources and inefficiencies faced when solving similar production challenges of territory producers across the worldwide scale of production. Having access to production consultancy means that mistakes made by one territory producer may be avoided during a subsequent format production in another territory.

“Before the buyers would say what do we need you for? It's a wall, three chairs on one side, it's a roulette wheel and a puzzle board, what do we need you for? I think the market place has become much more educated about it now.” [Independent American format distributor]

“If you decide to rip off a format you only have access to a DVD and online kind of information – you have to create the knowledge yourself and there is a bigger risk that you will run into the same problems that the original creators and producers did when they started off.” [President of an independent mid-sized Dutch format distributor]

“We are transferring knowledge to from larger territories smaller ones. So the bible of Idols is the same bible whether it is being made in US or a third world country such as Vietnam.” [VP, Content Development of a large British format distributor]

At a basic level, production consultancy may consist of a base agreement covering only a format bible in return for the format rights to a territory. Further, other optional elements of consultancy may be added on in modules. This can be scaled up to include a full polished pilot, a localized ‘treatment’ (similar to a script in drama), number of days of flying producer visits per series, stationing a residential consultant during the life of the series, and so on. Some distributors tend to bundle in a lot of these elements especially in the first few series so that the buying territory’s learning curve increases sharply, the buyer having the right in subsequent series to opt out of a few of these bundled elements.

“A format is an idea but its always a way to produce for the form so we give advice on how to produce etc. How much depends on the contract - some people just sell a bible, or you can sell your physical advice, or you can go to the country and stay 2 weeks for the pilots.” [CEO (North America) of large British format producer]

Moreover, production consultancy can take the form of consolidated centralized workshops. Large format distributors, with planned simultaneous productions of a format across the globe, are in a position to organize territory producers for workshops in a central location. For instance, Fremantlemedia Ltd. (where the researcher spent 3 weeks on a research

project) organizes international training workshops at its London headquarters. These workshops provide territory producers with theoretical background along with field visits to production studios where a format is being produced. This experience provides a real feel of the format to the territory producers before they initiate productions in their respective territories.

“We did a workshop for producers on Got Talent India was to fit in with the UK recoding tour of Got Talent. The production for Britain’s Got Talent was on its recording tour in January and it usually covers London, Manchester, Cardiff, Glasgow, etc. And we did two workshops. We did one just for the Indian team and Manchester turned out to be the best dates for them, for us and for the UK production. So we had six people from India who came for Manchester recording. And we always try to do is combine a pre-production meeting with an actual recording to show them because to show them saves us three days of talking. So what we did at the end of January was we did a big international workshop in London, which is more of mixture of productions on their second series or third series and what we tied that in with the London recording.” [Flying Producer of a large British format distributor]

Though much of the format industry understands the value added by production consultancy, its implementation is not always without contention. This research has identified instances where buyers bought a licence for the first few series of a format and then modified the third series to claim it as their own format so as not to pay any further licence or consultancy fee. In some other cases consultancy agreements were terminated by broadcasters only to find that advertising and other types of revenues (such as phone-in, text-in, etc.) accruing from the format lowered substantially after the consultancy was terminated. Hence, the consultancy was promptly reinstated with the format originator/ distributor.

“A European channel felt ‘why do we need these guys to do this show?’ They terminated our contract and did the show themselves. But they soon realised that the revenue generated by them was less than half of what we were creating in the number of call-in etc. Though they had seen our format, they really didn’t have expertise in the shows because you have to understand the psychology of the interaction of creativity and intelligence, there are analysts who analyse each puzzle, questions are localized etc. – so after a few months they invited us back.” [Regional Director (Asia) of a mid-sized Indian format producer]

6.5.1. Format bibles

The format bible has come to be regarded as a basic minimum which a format originator or distributor supplies with a format rights licence. Format originator's insistence that *‘there is a lot going on under the surface’* in terms of production techniques and decisions not visible to a broadcaster and its territory producers³³ makes this element of a format licence responsible for the success or failure of a format in a certain territory. Searching for the right talent to feature in a format, creating story lines in a seemingly real life or 'reality' formats; mentoring and guiding the format talent's performances, are all examples of challenges faced by territory producers. The format bible goes a long way in providing solutions to these challenges and thus, makes format production a simpler and faster process for the buyer/ broadcasters.

“When you buy the original, you get a format bible and consultancy, so with the format rights in your hand, you get the know-how which enables you to be much faster in the market.” [Managing Director of a large German format distributor]

³³ In this thesis, territory producers are the actual line producers of a format in a territory where its licence has been sold and its production begun. These line producers are always under the management of executive producers who are the representatives of the broadcaster.

“We have an executive who used to work for a competitor and they had created a dating show without paying a format fee and 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 format who by that time was also working here. 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 to actually shape the drama. This was a classic illustration of copying an end product without realising how to get there.” [EVP (Worldwide Production) of a large British format distributor]

“After a track record of a popular format like ours which has been on air in more than 60 countries – with all the knowledge, the graphics, the décor, the sets, the lights, and everything else – you buy not just a TV format but a really extensive product with a lot of knowledge behind it of how to work the game, how to attract the audience and have them interact and so on”
[Trade Events Manager of a large Dutch format producer]

Format bibles may normally be accompanied by ‘*style guides*’ that define the on-screen look and feel of the format on the screen as well as off-screen in merchandising alliances. The style guides contain descriptions and visualization of logos, font styles and sizes as well as background styles and colours amongst other things. A typical format bible along with a style guide may be a voluminous document running anywhere from 60 to 300 printed pages of an A4 sized paper.

Other elements of a format which may find their way in a format licence package be computer software to assist the format and telecommunications software which specifically assist the interactive elements such as call-in and / or text-in. In several instances, such telecommunications requirements may be outsourced to a dedicated third party service provider

Representatives of the format originator/ distributor who provide guidance on the format's recreation are termed as flying producers.

available in the territory. Even raw clips of music as well as unique pre-shot content (such as ‘funny home videos’ or ‘cop chases’) are sold by distributors as format material to be localized and repackaged by buyers as a format in respective territories.

“With our formats such as ‘Funniest Home Videos’, it’s about buying some of the content clips as well as the technical expertise on how to do it. It’s worth somebody’s time paying for the expertise, the materials and other content. So it’s a package deal which is worth paying for.” [Programme Sales Manager of a small British format distributor]

6.5.1.1. Format bibles protect formats

Most respondents felt that a format bible was such a central document to a format that having access to it could be a reason for increased copycat attacks by a buyer after an unsuccessful sales negotiation. Since the format bible allows a copycat to understand the intricacies of a format without having to make the copycat version visually similar to the original, originators and distributors make sure that they control access to their bibles similar to the access of the format's pilots and episodes available on the internet or proprietary format databases (confidentiality discussed earlier). Non availability of the format bible makes the copycats make several strategic mistakes in the production cycle which affect the quality and audience receptivity of the copycat. This indirectly protects the originator's format. Hence, format distributors again depend upon confidentiality agreements laying out payment stages to be followed for exchanges of specific elements in a format bible and allied production consultancy. Thus, one comes to the conclusion that a format bible may be indirectly protecting formats.

“The technical know-how or the ‘production bible’ is the crown jewel which Fremantle wishes to protect. We never release it without a contract having been signed though the legal teams are sometimes slower than the

production team and there is pressure from within to release the bible or let a ‘flying producer’ visit a territory.” [SVP, Content Partnerships of a large British format distributor]

“When one of our formats was infringed in Turkey, they had screened our episodes from many different territories of this show, plus they had all the information from us of how we make the show, they knew all the different elements that make the format.” [VP Sales of a large British format distributor]

“If you want to copy one of our formats properly, then you really have to get hold of the bible – something which we hold relatively tightly.” [EVP (Worldwide Production) of a large British format distributor]

Control over format bibles is easier in high level distribution, i.e. in territories where the distributor has a production base and the bible is regarded as an internal document. However, in mid and low level distribution, information leaks from the format bible cannot be completely ruled out as the document is handed out to a broadcaster or a third party producer. It is interesting to note that despite the importance attached to the confidentiality of a format bible and ostensibly because of the strict confidentiality agreements controlling its exchange, there were no any reported disputes of format bibles being casually passed around the industry without the knowledge of the originator. Moreover, considering the close-knit nature of the industry, such leaks can also be traced back quickly to a source; thus retaliatory measures can be installed to avoid future transgresses.

6.5.2. Flying producers system

A human interface of production consultancy exists in the form of *‘flying producers’* who are experienced members of staff from a format distributor's largest territory. These people have previously worked on a successful production of a format and know its intricate details and nuances. The flying

producers are so called because they ‘fly in’ to a buyer’s territory when required to assist the territory producers in producing a format. Large format owners and distributors such as Endemol, Fremantlemedia, All3Media and Distraction are known in the industry to have an effective flying producer system in place.

“If you have access to people who created the original show, you get access to all that knowledge going on under the surface. Otherwise, you are only guessing what it is - then you make mistakes because you don’t actually know the true source of where the magic comes from.” [EVP (Worldwide Production) of a large British format distributor]

“Flying producers are the recipients of an evolving body of knowledge which they carry with them to the next production.” [EVP (Worldwide Production) of a large British format distributor]

The ‘flying producer’ service may be built into the licence agreement which a distributor signs with a buyer/ broadcaster. Typically this is in the form of a number of days of paid consultancy per series where the buyer bears most of the expenses for having this experienced producer visit the territory.

Flying producers are also used as ‘buying scouts’ by format distributors when they buy in formats from format originators. They sit in on the original productions and learn from the people who first created the format. The flying producers are the ones who then write the format bible which forms the basis of the format’s distribution and recreation throughout the world. In this sense, the flying producers are the core human element of a format recreation cycle. Without ‘flying producers’, knowledge transfer between the originators, distributors and buyer/ broadcasters will not be smooth.

“We not only sell these shows but we can bring over the original producers of these shows so they can already talk about this went wrong and this we

can correct. So we can refine the show for a certain market.” [President (North America) of large British format producer]

An important role of a flying producer is to identify copycat versions of their company’s format. Once a flying producer’s attention is drawn to a suspected copycat version, he or she acts as a conduit of communications and expertise to assist the in-house legal team of the distributor in making comparisons between their original version and the suspected copycat to establish if escalation of a dispute is warranted.

“Most often I am the face of the company and I am asked by the broadcaster why we haven’t don’t do anything about the rip offs. I report any incident to the legal team but it’s very difficult to define a rip off. Instead of playing with teams of 4, they play with teams of 2. So trying to find the unique bits is really hard. So one of the best ways to protect the format is to have people like me on the ground so that the buyer’s production is best on track to adhere to the format successful in another territory so that the rip off has a natural death by being unsuccessful.” [Flying Producer of a large British format distributor]

6.5.2.1. Sheriff’s men or cultural imperialists?

“When I came into this department, I felt that we were seen as a police force. And I didn’t quite want to be seen as the Chief Constable of the company...” [VP, Content Development of a large British format distributor]

The role of the flying producer in the format production cycle comes out as most intriguing. Managerial staff at format distributors described the role of flying producers in benevolent ways defining them as *‘imparter of knowledge to a smaller television territory’*. On the contrary, a more pronounced 'controlling and policing role' was observed when talking to the flying producers. They saw their role as the *‘eyes and ears of the format*

owner’ so that they could ‘police the implementation of the format guidelines’.

Though a detailed study of these divulging views is a separate research project, it is sufficient to infer here that the divulge resulted from managers' wishes to showcase a benign view of the flying producers practice (since misapprehensions have arisen in territory producers around the world owing to ethical concerns of losing professional independence) while flying producers were concerned with indicating that they were the 'brand enforcers'. Plus, the flying producers may have seen themselves as contributing to one of the main aims of this project i.e. protection of format rights. Hence, they have tended to overemphasise their roles and position which highlighted alignment and control of company objectives. Illustrating his role, a veteran from a large formats distribution company compared format buying to *‘buying coke from Coke Corporation where the buying party gets access to the magic ingredient but in return agrees not to change the flavour or taste of coke in order to use its name on the label’*. The flying producer, he mentioned, is responsible for governing the original flavour of the format.

“Flying producers help the company roll out formats in various territories as close to when it was originally produced in a certain territory, we do allow certain little deviations mainly to do with the culture of the country. But in general, we try and keep to the original format.” [Flying Producer of a large British format distributor]

Flying producers are authorized to make deviations from a format on account of the buyer's culture, budget or infrastructure while assisting in its production in a territory (*these are discussed in the ‘Localisations’ section of this chapter*). All the same, the mere presence of the flying producer in a territory makes buyers go the extra mile in executing the format production as close to the original as possible. For instance, while recreating Fremantlemedia’s ‘Hole in the Wall’ in Malaysia, the facilities of the studio

did not match expectations of the format’s guidelines – the studio was not high enough to accommodate a raised water pool for the show contestants to fall into if they could not go through a cut-out in a plastic wall. This created problems for light angles and so on, due to which shooting could not commence. A flying producer was called in for help but knowledge that flying producers had been summoned made the territory producers resolve the situation problem in an innovative manner. They dug a hole in the studio floor creating a real life pool in their own studio!

An atmosphere of professional clashes of independence and ethics was observed between flying producers and territory producers working on the same format. This tension can get exacerbated when the territory is an ex-colony of the nation from where the flying producer belonged to. Similar tensions arise in nations where they have a high sense of national pride. The following two quotes interestingly illustrate this point.

“I used to work in the company’s Istanbul office where I used to see flying producers from London coming in and I would hear what my Turkish colleagues were saying - the hostility which was understandable because in countries where there is a colonial background, we come over from England and ask them to do things in our way.” [Flying Producer of a large British format distributor]

“Howard, our flying producer, was in a meeting with one very powerful station manager in Greece during the making of ‘Lets make a Deal’ in Greece. This station manager, who always had to have his own way, ended up having a stand up argument with Howard saying he was the owner of the station and it was his responsibility what goes on the show. Howard being the representative of the format owner said it was his responsibility of what worked in the format and what didn’t. Suddenly this station manager pulled a gun from his drawer and put on the table saying he was the guy with the gun and will have his way, upon which Howard

quickly found merit in the other argument!” [EVP (Worldwide Production) of a large British format distributor]

Most flying producers counter such flashy situations with a clever play of diplomacy. They emphasise to the territory producers that they learnt the same through experience and by committing mistakes earlier in that format – mistakes which are too costly to replicate. Further, working according to the cultural norms of a territory assists the flying producers at their job. For example, in certain male dominated cultures, female flying producers tend to adjust their consultancy role to that of an adviser.

“I have seen it go very wrong with a previous colleague of mine. The situation used to become very volatile, very colonial – she would be screaming at the director in a rude fashion. You don’t do that to a man in that culture. Also because I am a female I am aware that I can’t go much in a certain direction and be really dogmatic. So I can’t be as tough as my male colleagues are but I always try not to burn any bridges and that they can always talk to me.” [Flying Producer (female) of a large British format distributor]

“I have got very good at making people think it’s their own idea – I am very aware of how they feel. Normally I try to make friends with people and use that to make a good show. The idea is to not to tell them you think it is a good idea but that you have learnt it that it is a good idea.”

6.6. International television trade fairs and markets

Television trade fairs act as a regular feature in the format trade cycle. These annual events, lasting from 3 to 6 days, take place in few major gateway cities from where format distributors can access territory buyers. Amongst the several trade fairs that take place globally, well attended ones include MIPCOM and MIPTV in Cannes, France (both are considered global platforms for all television programme buyers and sellers); NATPE in

Las Vegas, USA (a syndicating market catering to the entire North and South American regions); DISCOP Budapest, Hungary (catering mainly to the Eastern European and Russian region); and ATF Singapore (predominantly catering to the Asian region). The fairs usually consist of a market floor where the format industry does business with each other. Programme and format sellers have dedicated well appointed stands or offices suites while a series of planned seminars and/or industry meetings besides evening socials are organized for the participants. The fair organizer is paid some fee for attendance and access to business contacts in such a consolidated manner under one roof.

“(Trade fairs are) like the gathering of the tribes.” [VP, Content Development of a large British format distributor]

The ease and speed of 21st century communication technologies with live streaming, downloading and video conferencing facilities should have sounded the death knell for television trade fairs, but they seem to have survived the test of the time. While television executives do not necessarily wait for a trade fair to launch a new format, attendance provides valuable relationship and social capital building opportunities. Fairs provide face-to-face interactions and facilitate relationships which drive business decisions in the ‘people centred’ television industry. Such relationships lay down a roadmap of hierarchies to decide which businesses are larger players or who are the most innovative or dynamic with audiences. These fairs are the grounds through which industry members mutually recognize each other. Fairs also provide an opportunity to access all the potential buyers at the same time to allow producers a blitz style of format promotion.

“Trade fairs are used only to build relationships for formats. Most large formats 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 (Hole in the Wall) that’s where a trade fair helps to create an event around the format and pitch the show to a range of

broadcasters.” [SVP, Content Partnerships of a large British format distributor]

“The reason why we come and why everyone else comes is because you have to come to be seen by others. The best way to do business is face to face. You can do deals, you can sort out issues, and you can get to know someone much more quickly than you can by emailing back and forth or telephoning them.” [Programme Sales Manager of a small British format distributor]

“Attending a trade fair is absolutely important...you are making it known in the market that this is our format. We have got a particular strong format which we have launched in MIP. We had the host who is in the pilot come down to Cannes and do a live run through and we invited prospective buyers to come and watch it and people walking by in the fair also saw it. So people got to know what we have – that we are a young distributor and that we want grow fast. So it was an interesting way of using a live event to market a format.” [International Sales Manager of a small Australian format distributor]

“It’s an opportunity to test a product on a market – it’s our first time in this Singapore market and it’s an opportunity for us to test this market and see what the channels are looking for. To have an idea of what is happening in a certain part of the world, it’s important to go to a country or region and engage with the advice and opinions.” [Sales Executive of an independent French format producer]

Television companies of all sizes, ranging from international multi-territory satellite broadcasters to niche format producers with only a handful of paper-based formats on offer attend these trade fairs. The only barrier for a small format producer in being able to attend these trade fairs could be the exhibitor’s or buyer’s fees which can range from hundreds to sometimes thousands of US dollars.

“You can’t be at all the markets, there are too many. We have a small budget, but MIPs and MIPCOMs are one of the most important markets for us at the moment. We were the first Japanese broadcaster to exhibit at MIP probably more than 30 years ago and we have been attending ever since. Now, we are considering going to Asian markets because these are closer.”
[Sales Manager of a mid-sized Japanese format producer]

“The trade show particularly is important as you get a condensed access to so many different people that you probably won’t do on a day to day basis. I think it is fundamental.” [Sales Head (Asia) of a mid-sized Australian format distributor]

Besides the above advantages, a fair is probably the only time in a year where the entire business community comes together under one roof where they can discuss diverse issues facing the industry, thereby laying a foundation for joint action, government lobbying etc. Besides inter-company communications, trade fairs also provide an opportunity for a large format producer to bring together their format sales staff from various locations for combined briefings and quick format launches.

“It is about sitting down with our buyers as well as one of the few opportunities that the whole company could come together. Before the fair, we internally decide a list of priority formats we wish to push at the market. Plus, ‘VP of Worldwide Production’ does a couple of hours in front of the whole selling team by going through the main formats we are focussing on the market and their key selling points to arm them. And then they will do the same thing in other trade fairs with a new set of formats.” [EVP (Worldwide Production) of a large British format distributor]

“There aren’t number of moments in the year when we can get representatives from all our productions territories together, plus the people in other territories we don’t have our own production operations but we

licensed the formats to either broadcasters and people who sell our formats. In formats markets, we present all the new formats that we have acquired in the past 1 year and these representatives present the new formats that they have developed. They do roughly 10 mins on each show so quite quickly one could sweep all the key people who are doing the selling get a preview of the shows and on the key marketing points.” [EVP (Worldwide Production) of a large British format distributor]

Though trade fairs are similar in nature and provide a platform comparable to each other, there are subtle differences between them as communicated by respondents. On the surface, the difference of location works well into the positioning of a fair as well as helps physical proximity of a majority of sellers and buyers. For example, NATPE is very well attended by programme buyers and sellers from all across the Americas, though a good number of European companies may be present to access the US market. In fact some markets have become so big now that smaller markets offer participants a much more relaxed environment conducive for intimate business discussions. For example, the market in Budapest is considered to be one which is smaller but friendlier in terms of access to the relevant people; whereas markets such as MIPCOM can get overwhelming for first time buyers and sellers.

“MIP and MIPCOM are our favourite markets. I think NATPE has descended in the last couple of years. Because there are so many markets now and I think the timing of NATPE is not so good. Well, NATPE was originally created for really the syndicators in the US. And now with syndications happening through the stations directly, there is not really much of a need for a syndicator’s market. So I would rather than take my money to MIP and MIPCOM. And I would do individual sales trips. It’s much more effective to take a flight to Warsaw or Stockholm, have some lunch, dinner or tennis and that’s the fun part of international business, it’s much more social and personal. So I would always spend my money on this.” [Independent American format distributor]

“MIP TV is one of the important trade fairs for us.” [EVP (Worldwide Production) of a large British format distributor]

“I have been here for 4 years, and what I like about this market is the opportunity to meet in a very casual manner. At MIPCOM, with its back to back half hour meetings and people running all over the Palais, you bump into people and say, ‘Oh I forgot to get a meeting with you.’” But here it’s a much more relaxed environment. Obviously it’s much more focused on the Eastern European market but there are people from South America, UK, Asia, etc. so it’s a growing market – and I hope it doesn’t become too big.”
[Independent American format distributor]

6.6.1. Trade fairs may be grounds for copycatting

Trade fairs may be fertile grounds for ‘getting inspired’ or in other words, copying formats which are launched for the buyers at these trade fairs. Therefore, format producers attempt to create a scenario where confidentiality is strictly maintained. For example, the researcher was made aware of several new format launches at three international trade fairs that he attended, however entry into the launch programme or the launch packs of these new formats were available only to a select pre-vetted lists of potential buyers; only a few general advertisements were displayed within the trade fair grounds (where entry again was highly regulated).

“Trade-fairs are our biggest marketing tool but at the same time it is easy to steal ideas from trade fairs.” [Trade Events Manager of a large Dutch format producer]

“You need to introduce somehow and the trade fair is the best way because you get the right business people here. Of course there is the risk that someone will copy illegally but I personally believe that for such fairs trust worthy people to come and do business with you. Before each market I

research whom I have appointments with and something about their company's past and so on. [Sales Head of a mid-sized format producer from Poland]

“...In markets you only meet people you already know or have done business with – so you notice immediately that someone is brain-picking. Ok, then you do a polite conversation with let them go and do some research before you meet new people with your colleagues / old network in the industry asking them if they knew the new buyer and so on... is he trust worthy etc...that how we exchange information with each other and since everybody wants to have the business delves in.” [President of an independent mid-sized Dutch format distributor]

6.7. Industry conventions that mimic social norms

This research further found that the format industry has developed a set of industry conventions which mimic social norms such as reputation, shame and gentleman's agreements. It was established at the beginning of this chapter that format copycatting is a major problem for the industry. Some overarching strategies were discussed to mitigate the effect of copycatting or retaliating against copycats. Despite this, there is a strong feeling amongst the industry that industry-wide conventions are developing to govern the trade of formats. These conventions result in the industry becoming more conscious in the last few years besides becoming closely knit due to information technologies and increased personal attendance at trade fairs and industry events.

“Given the size of our company it really is remarkable that we rarely get into disputes ... it's also a reflection of the fact that the problem has dimmed over the last few years in terms of infringements... if you go back 5 or 6 years, there was a lot of activity in terms of people infringing other people's formats.” [EVP (Worldwide Production) of a large British format distributor]

A leading British format consultant commented during a format panel discussion during one of the trade fairs visited by this researcher that the focus of the industry was shifting from answering *‘if copycatting was a problem’* to concentrating on international trade since it was assumed that *‘business norms had set in which allowed trade to work’*. According to this major consultant, international format trade had grown fast in the previous 10 years due to buyers and sellers respecting each other’s rights. Hence, mutual trade was developing because of mutual respect of rights. Despite these business norms settling in, however, every year there are reports of format rights disputes or filing of court cases alleging the same.

“If somebody has been ripped off by a company, we don’t want it to happen to our competitors. We want to eliminate (the rip offs) off the market, if they are not behaving the way the majority of the people see fit, we will get rid of them for the good of the whole industry.” [VP Sales of a large British format distributor]

“There are some people who consider distributing a copycat (at a market). But those distributors are suicidal as the expert buyers in the market would see and make a distinction between the original and the copycat – they would go for the original and wouldn’t consider this company as a serious distribution company anymore.” [Managing Director of a large German format distributor]

Hence, as format trade develops and expands, there is a greater move towards structuring it to follow certain parameters that allow for originators / distributors to feel confident that their formats are not infringed. The law may not protect format rights but so long as there is mutual recognition of these rights in the trading community, trade can continue to grow.

6.7.1. Reputation

Reputation effects were found to be based on long standing relationships and mutual trust between format trading companies. Some reputation effects attributed to audience activism were also found in responses. The format industry is closely connected with distributors, buyers and broadcasters increasingly engaging in a trust based business relationship. Business takes place through references and known contacts while acquaintances from trade fairs formally become business associates only through time and mutual visits to each other’s offices. Maintaining a personal touch to these relationships, through tactics such as 'taking clients out on expensive meals' and 'offering gifts', is seen as integral to 'establishing trust' in this industry. Trust is seen to be steadily growing in the nascent format industry.

“Especially once you start working together on a big project, you have to establish personal chemistry and trust and you have ensure that you are on the same wavelength and speaking the same language, even if it’s not English (laughs).” [Distribution Head of a large German format producer]

“(Trust in the industry) nowadays is much more than before. Actually we are competitors and friends. Everybody respects each other’s business.”
[President of an independent mid-sized Dutch format distributor]

With regards to trading formats in emerging economies, respondents from large format distributors, felt that the same level of mutual trust and a web of multi-layered relationships can be used to succeed in business. In other words, relationships can help protect and exploit formats where legal and retaliatory strategies may not be suitable.

“It’s a mistake which some Western companies have made is that they have come in and sold formats as though it’s a commodity...you can’t do that in China.” [Regional Director (Asia) of a large British format distributor]

“I don’t get so worked up about (format copycatting) in China it as much as folks in London might. The answer in the Chinese market is not just to sue someone - because that destroys 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 (Asia) of a large British format distributor]

Contrary to above view, there were some respondents from independent and smaller format developers who eyed emerging economies, particularly from Asia, with suspicion when it came to formats trading (this is developed further in the *'Emerging Territories'* section). On one hand they felt that regulatory frameworks and their enforcement did not protect them as much in emerging territories as they did in Western territories. This assertion is flawed because, as the researcher establishes in this thesis, legal regimes contribute only marginally to the protection of formats and that there is no increase in the copycatting in emerging territories due to ineffectiveness of regulatory regimes. It is also an indication of how general IP rights challenges faced in developing worlds see a reflection in TV format sales which ironically do not principally depend upon IP rights protection for their trade. On the other hand, these respondents felt that the reputation effects were effective only when trade happened between established television territories of Western Europe and USA. They felt that emerging territories (such as Asia, Eastern Europe or Latin America) lacked a complex reputation and trust based trading mechanism. They felt that in these territories, company reputations were not developed to an extent where they feared a negative impact from developed territories. Here, a better strategy for protecting formats resorted to were discussed earlier i.e.

confidentiality of format elements and consultancy as well as retaliatory measures, if power relations allowed.

“...with the world growing, more and more territories are buying formats so that it means that territories are stepping into the business who are not experienced in the format industry – we have to sort of teach them how it works and we find some struggle in certain territories.” [President of an independent mid-sized Dutch format distributor]

“Sometime what happens is that the person you are dealing with really respects your IP but not necessarily the producers. I am not going to name countries or companies who told us that we will watch it but we will not show it to our producers because if we do you can forget about selling your format because they are going to rip it off in any case.” [Sales Manager (Asia), large publicly funded British format producer]

Even within emerging territories, there were feelings of distrust for distributors from other emerging territories. Again, this may be unjustified and not on account of any personal experience but rather borne out of notions transported from other cultural industries such as music or film where piracy poses a major problem. For instance, when asked whom he would trust with information regarding a format pilot, a Polish distributor commented:

“I will obviously trust companies such as ART and other public broadcasters in European countries but not in certain markets such as Eastern Europe where the Author’s Law (meaning copyright) is not so much developed and sometime they are not aware that they are breaking the law and people are also not aware that they are breaking it.”

6.7.2. *Gentleman’s agreements*

Despite some of the reservations voiced about creating seamless trustworthy relationships, the format industry mostly concurs on another industry convention which mimics social norms – that of gentleman’s agreement. Such agreements are neither written nor oral; these are implied agreements based on trust whenever format trading parties divulge information to each other regarding their formats. A legally binding confidentiality agreement may be a further logical step, but many format traders do not enter into it (*because of reasons discussed earlier in the 'Legal Preference' section*).

Buyers / broadcasters who do not conduct themselves according to these gentleman’s agreements and create imitations, risk being exposed to shame (as discussed below) and when that does not work, have industry sanctioned retaliatory measures instituted against them.

“One of the best ways to protect your formats is that people are scared of getting a bad reputation ... what is happening in the industry is that a gentleman’s agreement is forming that we cannot steal anymore because you cannot sell and steal at the same time ...” [VP Sales of a large British format distributor]

“Gentlemen’s agreements are still the corner stone of most global television business where most large companies observe other people’s IP.” [SVP, Content Partnerships of a large British format distributor]

“We back gentleman’s agreements and hence we haven’t had much problem with piracy at all” [President of a large Swedish format distribution network]

6.7.3. Shame

Words and phrases such as ‘*shamefacedness*’, ‘*taint*’, ‘*honourable thing to do*’, ‘*scarred of getting a bad reputation*’ were used frequently by respondents. These showed a strong value attached to this social norm emerging in the industry. The relative inter-connectedness of the industry, strengthened through contact from trade fairs and other regional events provides opportunities for creation of personal relationships and rapport. Decisions made by a relatively small and well connected group of decision makers, especially in key format territories of Western Europe or USA, can be personally traced. Hence, a company’s action may be regarded as a personal action where responsibility can be personally fixed. Thus, notions of ‘shame’ and ‘taint’ emerged.

“Probably there is a degree of shamefacedness within the same market if you are putting on a copied show after an original has gone on air – particularly if it is a cheesy copy.” [EVP (Worldwide Production) of a large British format distributor]

“...this is such a young industry that there are some industry icons that are in place now...I think that’s sort of behaviour will go away because at the end people are personally held responsible for these things.” [Licensing Manager of a large Dutch format producer]

“...the entire industry is trying to work with each other...the whole industry is based on trust. If we want to, we can rip each other off any time. But shame is probably one of the factors that make everybody keep in check.” [Licensing Manager of a large Dutch format producer]

“I think that 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.” [EVP (Worldwide Production) of a large British format distributor]

“(If someone breaks that agreement) they get a bad reputation and everybody gets very upset. Obvious piracy rarely happens because that is too bad and nobody wants to have that stain on your forehead.” [VP Sales of a large British format distributor]

Such is the 'shame' in the event of getting a bad reputation that some copycats prefer to create '*loosely inspired*' versions instead of closely aligned ones to the original. Since such a practice cannot be stopped using reputation effects, other strategies pertaining to confidentiality of product, technical consultancy or managing the brand may be used in this instance to protect the original format.

To counter the points of those respondents who felt that reputation effects are ineffective in emerging territories, a variation of the reputation effect has been noticed. In this, an aware audience acts a watchdog to a broadcaster to deter it from copying formats known to exist in the world. The reputation effect emanating from audiences can be found in Asian countries where there is a culture of '*keeping face*' or '*saving face*' in public or in a peer group or society. In the past, Korean producers and broadcasters were known to routinely copy formats from European countries but the situation is changing because of the '*shame to keep face*' in front of the audience as audiences become more aware and connected due to internet based information exchange.

“Nowadays TV stations normally buy formats because they don’t want to take a risk against the public. The station may lose face with the public - on internet sites people start complaining about that and no producer can survive that situation. So the company decides to close the programme. This kind of pressure from the audience works well. Hence it has become a practice in Korea to caption any format bought from abroad with something

like “this programme has originally been produced by so and so....” [Senior Manager of a large Korean format distributor]

“People understand and are aware what a format is and that buying a format is different from making a copy. So somebody is copying a format, then the audience usually has seen the original on the internet and says that this is exactly copied from the other country’s format. “Did you buy that?” they ask the TV station...so it is difficult to copy.” [The Senior Manager of a large Korean format distributor]

The similar notion of ‘shaming’ copycats amongst audiences is prevalent in Japan where format originators drive negative publicity in the trade press against the alleged copycats.

“If we start a show and the competitor copies us in the next few weeks, then it will be covered in the news and industry trade...viewers start saying something about the issue and this will cause promotion about our show as the audiences will say the other network will copy a show only if our show was good.” [Sales Manager of a mid-sized Japanese format producer]

‘Shame’ may also be understood in the format industry to represent the shame of an entire territory or market. Copycats contribute to the discrediting of their territory so that format sellers start becoming suspicious of other buyers from there. Thus, there is an incentive for all buyers from within a territory to ensure thorough collaborative action and information exchange so that potential copycats do not contribute to the discrediting of their territory.

“Competitors share information about rip offs because they want to protect their market place. Because it is discrediting the entire territory if one channel is making copycats then it’s not only hurting the channel but the image of the entire country... it’s a matter of pride...” [Vice-President Sales, German Speaking Europe & Eastern Europe]

Such reputation effects are also seen in Western markets where audience savoir-faire (i.e. awareness) helps protect formats from copycat attempts. The growth of network technologies such as the internet has made audiences stop being passive viewers and start connecting with each other through chat rooms and discussion forums to exchange information and educate themselves on television programmes and formats. Savvy audiences spread negative publicity about copycats, thus helping to protect the originator's version. It must be remembered here that the first strategy discussed in this chapter – speed to market – is key because audiences tend to associate 'first on screen' with originality; thus there is a possibility of such information spreading through the internet and viral modes.

“...copycats fail when the public is savvy. Firstly they know about the original version from international news and secondly they are able to decipher a copycat attempt.” [EVP (Worldwide Production) of a large British format distributor]

6.8. Localisations

The format industry has evolved a willingness to modify their formats to appeal to local audiences. The researcher terms these changes as 'localisations' throughout this thesis. Localisations ensure that recreated local versions receive better reception from audiences in their respective territories. Initially when television programme exports began in the 1960s, foreign (i.e. Western) programmes were simply dubbed to provide cheap schedule fillers favoured by broadcasters. Towards the early 1990s, it became acceptable that viewers engage positively with programmes and formats made with localisations of language, accent, personality, content, visual styling. This was one of the main reasons for the advent of the format industry in which 'localisations' play an important role in providing the local touch to a format.

“We often say in America ‘inject it with steroids’ as everything in America is bigger – our plates are bigger, our sodas are bigger, our houses are bigger, our people are bigger. It’s just part of that whole American expectation of being bigger, louder and more dramatic.” [Chairman (North America) of large Dutch format producer]

“The way to market formats is less traditional in terms of sales but more marketing oriented in terms of creating the right cultural fit for a broadcaster in a territory. Local, cultural and commercial specificities are taken care of to reflect the values of the local market.” SVP, Content Partnerships of a large British format distributor

Localisations need to tread a fine balance between the original and local version of a format since the essence or basic premise of a format is lost if the similar idea, theme, pattern or structure is not followed in all territories due to unnecessary localisations. When a format has been produced in a few territories, originators and distributors are able to decipher the elements that work best generally for audiences – however each territory has specific nuances which the territory producers are able to implement. In this thesis, the researcher has identified 4 types of localisations which format originators put in place to ensure that their formats are considered to be made locally for a territory audience. These are cultural, visual, nationalistic and business-based.

“The more that you can ensure that the buyers’ expectations of that format are fulfilled, then the more successful that format will be. That is the secret about formats travelling.” [EVP (Worldwide Production) of a large British format distributor]

“(Our format in India) has Indian presenters, Indian sets, Indian designs, the native language as per the region and the questions are related to concepts which Indians will readily associate with...how can ask Indians know how many floors there are in the Leaning Tower of Pisa? So something related

to their surroundings, current events, Bollywood, cricket, etc. is included in our quiz format.” [Regional Director (Asia) of a mid-sized Indian format producer]

6.8.1. Cultural localisations

An interesting example of cultural localization is observed in Fremantlemedia’s popular format ‘*Idols*’. Its ‘*Indian Idol*’ version looks most different to other *Idols* versions from around the world. The *Idols* format works on the notion that audiences get involved in voting for their favourite contestant in the hope that they are creating their next big ‘pop star’ in their cultural milieu, in other words an *Idol*. In India, however, standalone pop stars - though not non-existent - do not command as much fan following and recognition as ‘playback singers’ who lend their voices for Bollywood stars to lip sync on screen. Hence, *Indian Idol* is much more Bollywood oriented in terms of the choice of songs, judges, set design, and so on than other *Idols* versions. A unique connection has been observed between two different types of cultural products – a Western musical talent show and glitzy Bollywood.

“A format can have the same structural elements as long as the cultural elements of the country are taken care of. As long as it doesn’t look like a Western show supplanted into local schedules, then it will work.” [VP, Content Development of a large British format distributor]

The way judges interact with contestants can also lend to a cultural localisation. Part of the attraction for *Pop Idol* in UK had been the caustic comments of one of its judges Simon Cowell who had generated his fan following for the way he lambasted contestants on the format. Irreverence besides public rudeness, is understood differently in different cultures and hence the same is acceptable or not on that country's television. Simon Cowell and his comments were considered acceptable in UK but since such comments were taboo on American public life, Simon Cowell (who was a

judge for American Idol as well) had to be mellowed down by producers. Similarly, in most Asian territories such as Singapore, India, etc. where public culture is seen to be much more polite, the distributor had to ensure that judges followed local customs and traditions. For example, Indian Idol featured judges who would speak to the contestants in the *guru-disciple* tradition of teaching Indian classical music.

Cultural localisations tend to take a unique flavour when producers sell formats to countries with a strong religious belief and control. For example, reality format makers in Islamic countries are *'careful not to mix males and females - we couldn't let them live in a house together'*. Other things such as *'hand holding'* on the show are edited out in countries like Malaysia on account of *'the Islamic thing'*, as one flying producer reiterated. These localisations not only have to be performed by Western companies selling their formats to countries considered different from their culture such as Asia or Middle East. Even within Western cultures, there are localisations which are done to a format. Many respondents during this research felt that formats tend to go through many changes before they are shown on screens in other Western countries.

For example, in the US, formats originating in Western Europe are considered timid and hence territory producer have to *'ramp up things'* to make *'everything big and bold'*. For example, British producer Granada Media's *'Hell's Kitchen'* format can be used to illustrate the changes which formats undergo before being recreated in the US. The format was originally launched in the UK with celebrity chef Gordon Ramsay's edgy language consisting of the 'four lettered' word liberally sprinkled throughout the format. Though the US producers decided not to change the delivery style of Gordon Ramsay (the central character of the format, replete with usual use of profanities on screen) but as per US television customs, producers bleeped out inappropriate use of language wherever necessary to make it acceptable for US audiences. Even from a scheduling point of view, the format underwent changes in the US. In the UK, there is an

acceptability of the audiences to watch a show in stripped form where Hell’s Kitchen was run for every single night for 2 weeks. The American buyer-producers made it into a once a week format over several weeks keeping in mind the viewing habits of Americans.

Unfortunately for format producers, sometimes territory localisations can mean a failure when the audiences do not respond to them.

Fremantlemedia’s ‘*Hole in the Wall*’ format failed in the US despite a string of fast sales and successes across the world. Fremantlemedia had bought the rights to a daytime programme segment from Fuji TV of Japan and had developed it into a full fledged light-hearted, ‘*played for laughs*’ format which acted as a ‘*vehicle for comedy*’ in which celebrities played for points in a non-serious way. American buyers Fox Studios decided to create it as a serious played for money competition, ‘*a game of sport, athleticism and competition*’, where audiences from the street could compete for a \$100,000 prize. The essence of the show was lost on audiences and the US audiences did not accept this localization. The US version of this format lasted for only 3 episodes!

Finally, Asian territories tend to translate most format titles that they buy. Sometimes in China they do a Chinese name and an English name in the same sentence or phrase – so they do want to retain an association to the original format and indicate to audiences that it is a licensed format version.

“The name or title of the format is important to us only in Japan. But when we go to international markets, as the original titles are in Japanese, we wouldn’t use them. For example, Dragon’s Den is originally known as ‘Money of Tigers’ in Japanese. Once its title was translated to English as ‘Dragon’s Den’, it created a brand for us.” [Sales Manager of a mid-sized Japanese format producer]

6.8.2. *Visual localisations*

Sometimes the differences appearing in a format may not be due to underlying reasons such as cultural attitudes or social mores but more visual differences of responding to stimuli. On-screen colour is one stimulus which is usually localized in a format. For instance in Mexico, an American format called ‘*Family Feud*’ distributed by a large British format company needed to have ‘*every colour in the rainbow*’ but in Sweden it ‘*was much cooler and simplified*’. The Swedish colour scheme would not have worked for Family Feud in South Africa which responds to a range of ‘*bush colours – oranges and yellows*’. Again it had to be ‘*orange in Ukraine or Holland*’, owing to the special affinity these territories had for this colour.

The flying producer of a large British format company reflected on an account of how disagreements over the colour scheme to be employed in the format played a deciding role in shelving of a format licence sale.

“I have been in situations with third party formats where the owner’s format bible specified down to the pantone colour number and I went to Brazil and they said they didn’t do those colours – they were very yellow and very green. The format owner did not shift and it was one of the reasons why the format did not get made as the broadcaster did want to alienate their audiences”. [Flying Producer of a large British format distributor]

6.8.3. *Nationalistic localisations*

Besides cultural changes, audiences in some territories respond well to nationalistic overtones. Part of the allure of formats is that it allows territory buyers to infuse the recreations with liberal connotations of nationalistic fervour.

Let’s begin with the imagery of a format. The set design for Fremantlemedia’s ‘Britain’s Got Talent’ is UK's national flag - the Union

Jack. The flag is part of the show’s general backdrop and titles; even judges are sometimes interviewed sitting in front of a big bellowing Union Jack. This is conceivable in UK because audiences live in a compact country, with a rich nationalistic heritage that favours such an overtly patriotic visualization. However, the buyers of India’s Got Talent, launched on a private Indian satellite channel, did not wish to imbue the format’s recreation with any patriotic fervour. This could be owing to a regionally fragmented and diverse India where urban satellite audiences found it easier to engage with a neutrally themed or even a Western oriented cultural product. If the format had been launched on the national broadcaster Doordarshan, it might have featured a more overtly branded Indian flag as the format’s backdrop.

Similarly, this nationalistic flavour creates challenges for format distributors in countries such as Germany where format buyers tend to be careful about using the German national identity as an overt programme theme. Hence, a format with exclusive nationalistic tones is modified not to represent such values in certain countries.

“Usually the title of our show is the same in most countries. In Germany, however, they didn’t call it Idols because of the overhanging feelings from their Nazi past and the negative connotation with idolatry.” [VP, Content Development of a large British format distributor]

“We had to change things like the titles for Idols as these were not suitable in some countries. In Russia, the word is still understood in religious terms. In Germany, the nearest translation to it was considered ‘Fuhrer’. Plus we couldn’t use it in Arabic, hence it was called ‘Superstar’ in the pan-Arab region.” [Flying Producer of a large British format distributor]

Other situations where format producers have had to adapt due to nationalistic sensitivities included formats which were created for an entire geo-linguistic region spanning several different countries, sometimes not on

very friendly terms. The Arabic version of Idols ‘*Superstar*’ was made in Beirut by a Lebanese broadcaster but was shown across pan-Arabia, from Jordan to Saudi Arabia. On screen nationalistic euphoria could not be used as a tool to emotionally engage audiences across the region. On the contrary, territory producers had to keep nerves in control when they had Iraqi and Kuwaiti contestants on the same show. Or when angry Lebanese protesters took to the streets when it emerged that the winner of the first series was a 19 year old Jordanian woman!

6.8.4. *Business-based localisations*

Besides cultural, visual and nationalistic localisations, format producers tend to incorporate business-based localisations according to territory conditions. An example is the concept of prizes or prize money given to winners of competition based formats. Fremantlemedia's '*Idols*', being a singing talent search at its core, usually awards recording contracts with its parent company Sony BMG (or a similar sponsoring partner) as the prize for winning a series of the show. But, where recording companies do not exist, innovative and culturally sensitive prizes were incorporated in the format. Specifically, in the pan-Arab region, where there is a strong culture of singers singing at the parties of influential and rich people, the prize was modified – '*Superstar*' winners were put in touch with concert promoters and this acted as an incentive for format contestants.

Other business localisations may be centred on the budget of a territory buyer as some territories cannot afford to pay as much as the original prize money when the format first launched in a Western European territory. For example in a format called 'Distraction', contestants are distracted by having things thrown at them or given electric shocks to create a setting for them to answer quiz questions. In the original format on Channel 4 in UK, the winner wins a car but before they can have it, the host asks them a series of questions and every time they get an answer wrong, the host damages some part of the car such as the headlight or the windscreen.

Fremantlemedia, the creator of the format, had to undertake changes to the prize in those territories where they could not afford to give away a new car every week!

“In some countries, they cannot afford celebrity teams so we allow adaptations to come into being. Sometimes we will allow them a certain different end game as they cannot play for a big prize so they can play for fun.” [Flying Producer of a large British format distributor]

“Flying producers accommodate changes which will suit the buyer’s budget, their requirements, and their infrastructure and so on. In Estonia, which is a smaller market, with formats such as Farmer Wants a Wife, we allowed less number of farmers to compete or less number of intended wives to compete – that’s got to do with the size of the television market and how many episodes we think the format will be sustained for. With shows such as ‘Price is Right’ we allow them to make a half hour show instead of a 1 hour show and so on.” [Flying Producer of a large British format distributor]

Format makers stress that the premise of formats being successful is that the programme is *‘about the people of a country’*. The localisations tend to complement rather than take away from the format structure and the core idea of the format. Hence, through incorporation of local sensitivities and local brands, formats makers try to make the format real for the people.

“The point I am making is that the more that you can ensure that the buyers expectations of that format are fulfilled, then the more successful that format will be.” [EVP (Worldwide Production) of a large British format distributor]

6.9. Managing brand identity, extensions & innovation

“In today’s markets, a format has to have a strong brand. As we in France say, make it a media brand – it’s the only way to produce and find advertisers. You can protect a brand more easily just than a simple format.”
[Sales Executive of an independent French format producer]

6.9.1. Understanding the format brand

A format brand consists of a set of propositions which a brand manager creates around a television programme such as a game show, a reality show, etc. These propositions may be expressed across several planes, for example ‘personality’ or ‘tonality’ or ‘attributes’ describing the values and the core benefits of the programme to the audience while trying to differentiate it from competitors. Format brand managers manage this brand by analysing all ‘touch points’, such as the on-screen broadcast, the online activity and the ancillary activity, where an audience member interacts with the brand, so that the consumer proposition recognized earlier is consistently communicated at each point.

“The reason that I buy a format is that it is practical for marketing purposes - the brand name is important. For example, if I now create a format called ‘War’, so I take ownership of the format War. Sometimes companies are buying formats just to get ownership of the brand name which is very important.” [Owner of a small format production company from Israel]

“We go to third parties who use those brands to make sure they comply with our guidelines whether it is just visually or as an experience with people interacting with our application. In Idols, for many years I personally commissioned each Idol logo to make them identical in visual style. We also developed a style document which accompanies the format bible. This tells us how to represent the brand visually outside the broadcast arena. Right

from the time the first Idols programme was made, it was felt within the company that this was going to be our ‘Millionaire’ - our big format - and one of the ways we could help that was to give it a brand. It was about retaining control of that in a way of pointing to it and saying that’s Idol and that’s not...” [Creative Director of Media Licensing for a large British format distributor]

The format’s brand identity (consisting of a recognizable logo, colours, fonts, style, etc.) is a way to provide a visual appeal and recognition to fulfil the above proposition. Format branding serves as a means of providing a perceivable difference to similarly propositioned formats within the same genre. In other words, a branded format has a better potential to be recognized by buyers and audiences. This gives the format ‘*a sheath of protection*’ through which copycats cannot attack. For large format producers, a successful brand is one which meets organizational objectives of travelling to several well developed television markets around the world – each company may have its internal criteria to decide what constitutes a brand for them.

“For us a global TV format brand is one which has the potential to go to 3 of our 5 key production territories of US, UK, France, Germany and Australia and that can be re-commissioned and run for at least 3 series. Second point it needs to have the long term ability to drive about 5 million Euros year on year across the enterprise division i.e. across distribution, consumer products, online, etc.” [VP, Brand Development of a large British format distributor]

Format distributors develop format brands by having consistency in the perceptible and visual elements which surround a format. Such may consist of the format’s graphics, the title and theme music, its logo and overall design, programme structure, etc. This consistency, in large format companies, is understood obsessively whereby they mandate to all producing and licensing territories not to change any branding elements.

This dogged insistence on branded elements is communicated through the tools of production consultancy, such as format bible and style guides, while these are reinforced on the ground level by flying producers who act as the eyes and ears of the distributor.

“For many years I commissioned the title sequence for the format from an agency - which is quite unusual because that will normally be done by the producer of the show. We commissioned the exact same title sequence with just the name and the logo changed for all the territories. In the end, we did about 18 or 20 versions but if you were to watch them back to back, these will be identical except for the nominal change in the title and logo. That was a very deliberate decision right from the beginning and that I suppose helped in creating a protective sheath around our formats.” [Creative Director of Media Licensing for a large British format distributor]

“We run bi-yearly reviews, we tend to have 2 to 3 year business plans and we also use the flying producer’s concept that go from territory to territory making sure that the format brand is consistent across all territories.” [VP, Brand Development of a large British format distributor]

“Often there is a lot of similarity between our format and other programmes - if you strip all the branding out then most of our programmes are realistically very similar to format belonging to other people. So we try to tangibalize the format brand so that is becomes more definable in so far as the IP that we have. My team develops a brand or an identity for the life of the formats outside of the broadcast arena and then protects that and exploits it commercially.” [Creative Director of Media Licensing for a large British format distributor]

The above comment highlights the importance the industry attaches to the visual surround of a format. Format buyers recognize that the value of a format brand goes beyond the actual on screen elements. Successful formats can provide a publicity opportunity not only for the advertisers and

sponsors who get associated with the format brand but other parties such as the format judges and hosts who use the format to revive interest in their celebrity value, the talent who use the format to get a break into the entertainment industry and finally, the broadcasters who gamble by investing in the format in the hope of gaining maximum viewer-ship in markets.

6.9.2. Evolving and nurturing the format brand

Research methods such as focus groups are regularly used on mature formats to make their customer proposition relevant for audiences as the series progress year on year. Format originators/ distributors organize focus groups with audiences or run surveys with broadcasters to ascertain changes which need to be done to contestants or the talent, the show's hosts or judges, the structure of the show, audition methods, etc. These changes over a period of time run the risk of making the format different from when it was first launched, say 6 or 7 series ago.

“When we launched Idols, it had a very distinct pattern of the audience. For the auditions phase, we had an upward curve of the audience, and the group stage when they cut down to the final 12, the viewers will tune out for some reason. And the final live stage it will go up again – it was a U shaped curve and we discovered that this was the same pattern in all countries. So the middle section was made compact and a bit more dynamic so that we didn't lose so much of the audience in between.” [Research Manager of a large British format distributor]

“(Innovating a format brand) might complicate things from a protection point of view because the clearer the idea better it is to prove ownership. Once you start to divert to different directions it becomes unclear what the format is and what is not.” [President of a large Swedish format distribution network]

On one hand, format makers’ requirements to respond to audiences’ changing needs leads to reinvigoration of the format brand as time progresses. On the other hand, a format's basic premise is to be easily recognizable and offer a differentiated offering in the midst of the morass of similar entertainment products – this it achieves by the format brand identity described earlier. Many in the industry feel that this diverging nature of evolving formats makes them an easy target for copycats. Others, however, feel that keeping abreast of copycats by constantly evolving them is the best way of adapting to copycat attacks by giving them a moving target. Here again, being a large format distributor with a global scale of production or licensing territories helps in taking successful ideas from one territory and implementing them in others.

“If you want to keep a format brand alive, you need make it anew, especially in the original country. You might want to change the time slot or take a series break, because people get bored otherwise of seeing every week. So take a break and let the audiences want to see it again.” [Sales & Acquisitions Manager of a large British format distributor]

6.9.3. Ancillary benefits of branding formats

In some sectors of the entertainment industry, business models of licensing and merchandising programming content are well established. Content is treated as a brand and the use of the brand by partners and licensees is typically ‘*signed off*’ by brand managers – this strict control helps the brand owner to steer the positioning of the brand. For example, if a manufacturer wants to launch a product prominently featuring Disney’s cartoon character Nemo, it signs agreements with Disney Corporation on how the character will be represented and used. Companies such as Disney with enormous resources and experience are industry leaders in treating their content as made for merchandising brands while ensuring that their own distribution network carries it forward to retailers and end customers.

While a television format is beginning to be regarded as a portal into a larger commercial world, vertical integration as displayed by corporations like Disney is yet to be seen in the format industry. Format originators/distributors indicated that they found an uphill task convincing broadcasters to treat formats and their branded elements such as visual signage, logos, styles, etc. with the same reverence as they would provide to a Disney character or brand. However, with the passage of time, format distributors became successful in initiating format extensions and entering into merchandising partnerships. Brand extensions of successful formats such as DVDs, online and mobile interactive engagement and live events are now created routinely and the format brand is licensed to several merchandising partnerships across diverse customer product groups such as children’s toys, board games, books and cosmetics. This drives synergies between format distributors and other product brand owners. In the last 10 years that international trade has been growing in the format industry, the above pattern of licensing is getting entrenched. Some of the companies which can be considered as the pioneers of format licensing are Fremantlemedia, All3Media and Granada Media from UK and Endemol from Holland.

“Idols was deliberately conceived as a brand, not just a TV show, but we effectively borrowed from other industries. My background is in licensing, merchandising and sponsorship and in those sectors there is a long tradition of pointing to the logo and filing a trademark to make sure people use it correctly and check everything before signing off its use by any party. We imported a lot of these techniques and applied them to television entertainment for the first time.” [Creative Director of Media Licensing for a large British format distributor]

“Idols has been licensed into ancillary products and merchandising such as interactive games, T-shirts, there is an Idols car, Idols perfume. A strong brand has several benefits – its can leverage a whole host of products. Not only does it open up various revenue opportunities but it also embeds the

products in people’s lives and feeds that back to make audiences loyal to the TV show.” [EVP (Worldwide Production) of a large British format distributor]

“In American Idol, we have things ranging all the way from traditional merchandising such as T-shirts, video games and websites to a Disney branded event where you can go to Disney World and take part in American Idol! Everything carries our logo and our colour scheme which comes out of the format’s style guide and the strict central review process.” [Creative Director of Media Licensing for a large British format distributor]

“In terms of the way our company has been set up, we have a division which acts as the brand manager while another division is charged with getting most value possible out from these formats ... when you are assessing the value of something that is under development, to look at the commercial side of how it will develop is equally important than deciding what it is going to look on the television screen.” [VP, Content Development of a large British format distributor]

Few reasons have been identified for a strong merchandising or licensing inter-connect of format brands with other off-screen branded properties. One of these can be traced to the buyers’ or broadcasters’ requirement to spread the risk of investing in a format that has multiple avenues or ‘touch points’ (introduced in the beginning of this section) to engage with audiences. Generation of audience loyalty for any touch point of the brand can translate into loyalty for other touch points – thereby benefiting the format brand overall. Another reason is that the some of these touch points may serve as individual revenue generators, for example text or phone revenues provide a respite to broadcasters at a time when broadcast advertising revenues are declining because of the fragmentation of the advertising budgets with advertisers questioning the effectiveness of mass advertising on television.

6.9.4. *Format corporate brand*

According to industry respondents, the corporate brand of a format originator/ distributor is more important in the short run to sell formats in a business to business scenario when the format has not yet gained a good brand for itself. Very popular format brands such as ‘*Idols*’ or ‘*Who Wants to be a Millionaire*’ are not affected by their corporate brand, illustrated by the fact that a change of ownership of the format does not affect its reception in the buyer’s market. In cases where buyers do not trust a new format, despite success stories from larger television markers, the distributor's corporate brand becomes the essential trust factor on which a format sale is made. There were, nevertheless, some instances as cited by respondents where distributors sold formats on the strength of their corporate brand, calling it ‘*the next big thing*’, but the formats did not do well in a territory market.

“One of the issues that Fremantle has as a company is that we have grown through acquisitions. So I don’t think the name of Fremantle as a production company really resonates. And our shows have defined us and not our corporate brand – so we are a company from where you are more likely to know Got Talent or Hole in the Wall came from than the other way around. Your corporate identity is your trade or how you are known in the trade but it’s the product that drives your revenue. You are always as good as your last product.” [VP, Brand Development of a large British format distributor]

“I think the brand of the format company is important. For example, we regard Endemol highly in the format business. So you know when we need a format we go to Endemol first and ask them what kind of idea do you have, etc. But sometimes the title of the format becomes very popular and hence important as a brand in itself. But usually it is the company brand like Endemol is something we know would have loads of successful ideas.” [Senior Manager of a large Korean format broadcaster]

6.9.5. *Nation branding benefits to formats*

Almost half of all formats emerge from UK but it is the United States which makes them famous to be sold to other territories, both in the West and emerging ones. In other words, a format may have originated elsewhere, such as UK or the Netherlands but it starts getting worldwide attention from buyers at trade fairs once the US version starts broadcasting. For example, the first version of Fremantlemedia’s Pop Idol, which was successful in UK, was sold only to South Africa and Poland in the first year of existence. The format became popular only after American Idol was launched in the USA. The same can be said about BBC’s popular format ‘Strictly Come Dancing’ that became famous after being made as ‘Dancing with the Stars’ in the USA.

“In the late nineties, when the format industry first started taking off, the key moment is perceived to be that of Millionaire which became successful in America and suddenly you see it rolling out all over the world.” [Senior Manager of a large British format distributor]

Respondents did not attribute the same phenomena to success of a format in a large Western European territory such as France or Germany. This can be explained as follows. Firstly, one needs to look at the changes which formats undergo before they reach American viewers. American versions go through several levels of cultural revisions and audience testing due to the availability of a larger development budget. Hence a highly polished, glitzy and good quality format emerges after final production. The scale and quality usually surpasses that of the original emanating from another territory in Western Europe. This lays a benchmark from which territory producers can choose the level they best think fits their respective territories.

“Despite that most formats come from the UK, it’s the US which makes it really famous. For example, Pop Idol was really huge in UK but it got very

famous because of American Idol. The same with Dancing with the Stars (which started as Strictly Come Dancing in UK)” [Sales Manager (Asia), large publicly funded British format producer]

Second, one needs to consider the established brand of the US popular cultural industry. American popular cultural products such as films, music, computer games etc. have a much better brand established in the minds of international consumers. The effects of these do not escape television buyers who are acting on behalf of their audiences. Hence, the brand of the American popular cultural establishment helps sell formats subsequent to success on American screens as these formats are then considered to have been Americanized.

“A lot of times we have clients who don’t really know that those formats come from the BBC and once they hear something from the US and they go ‘wow’ – we live in a world where everything is commercialized and US stars are better known than UK stars and hence the same applies to formats.” [Sales Manager (Asia), large publicly funded British format producer]

“The lesson we have learnt was that the format sells better if has been broadcast first in the UK or the US.” [Creative Director of Media Licensing for a large British format distributor]

Such is the allure of formats from the US that some channels use the US version to test the market (broadcasting it with either subtitles or dubbing) and only once it engages sufficient number of viewers, does the format get recreated in that territory as a local version. The quality of the US version sets a benchmark for audiences as well as broadcasters to expect and producers to deliver.

Similar to the positive receptivity which the USA has for selling its cultural exports, the UK has a strategic advantage with regards its language. Since the first run of a UK format (or its pilot) is usually made in English, it is

easier for a distributor to access more buyers in a trade fair than a distributor trying to sell a Hebrew language format from Israel. English is a global language and people from all countries can watch something in English and understand it. Respondents often cited the example of the Colombian company RCN's format 'Betty, La Fea' which was sold around the world helped by the fact that it's English language version, produced by ABC in the US, was hugely successful in USA, UK, Canada and Australia – this made buyers pay more attention to the format at trade fairs.

UK format creators have a further advantage in having broadcasters in UK who are highly risk taking because of which innovative ground breaking formats can be launched and tested in a highly developed television market – format producers may not find such risk taking in purely commercial genres in other countries.

Some other countries use strengths gained in other industries when selling formats internationally. For example, German format makers are from a country that has excelled in manufacturing and high specification engineering – transferable skills such as eye for detail and diligence are transformed into format production know-how and streamlining production processes for shooting and processing thousands of minutes of footage required for reality television shows. This cumulative skill is highly valued by format buyers.

“One of the things that work in our favour is that we have a solid reputation for technical matters with the other programmes that our company has been selling for 30 years now. The buyers really appreciate our craft skills and technical aspects such as lighting.” [Distribution Head of a large German format producer]

“Sometimes there are doubts if a German idea could work in creative products simply because of preconceived notions of what nation is good at what - some nations are known for some types of formats. High-end British

documentaries from BBC and ITV have really established themselves as true market leaders, Americans are seen as the nation which entertains the world, so we as a German company have to come up with a surprise factor. We have to justify to the market about German romance in a telenovela using the heritage of romance in German art and literature.” [Distribution Head of a large German format producer]

6.9.6. *Format branding protects from copycats*

Branded formats attract the attention not only from legitimate buyers/broadcasters around the world but potential copycats as well. It must hence be ascertained if this increased awareness of the well branded format is translated into copycat attempts or the contrary is true – that copycats are deterred from copycatting such formats. The industry's opinions are divided on being queried if branded formats are copied more than unbranded ones. A small section of respondents argued that branded formats are copied more easily, basing their view on the assumption that a distributor invests resources on formats with a high potential – something read by copycats as well. They further argued that potential gains from copycatting outweigh chances of facing retaliatory measures from large format owners.

“The bigger the format brand the bigger the chances that someone will rip you off.” [President of an independent mid-sized Dutch format distributor]

“A company brand doesn't stop copycats....large format companies such as Endemol and Fremantlemedia come across a lot of copying of their formats...we have a saying in Holland, “If your neck is higher than the rest, it gets taken off faster”. [Trade Events Manager of a large Dutch format producer]

At the same time, a majority of the respondents believed that branded formats from a large corporate format producer have a better chance of protection than an unbranded one. Firstly, a copycat attempt on a branded

format is easily noticeable and traceable. Secondly, a large corporate house is better equipped in industry relationships to create tough reputation effects as well as retaliatory measures against the alleged copycat; measures ranging from sanctions of not selling them library based programming and footage to threats of boycott from the industry (*these have been addressed in detail in an earlier section*). These abilities provide confidence to small format originators/ producers to place their formats for international distribution in the hands of large distributors and to have them well branded on a large scale. Thirdly, audiences recognize a branded format much easily through its many touch points.

“We chose to sell to Endemol because they are a reputable brand and they will look after your brand and nurture it. I think that a format sitting with a larger company such as Endemol may have better protection.” [International Sales Manager of a small Australian format distributor]

“We try to protect the relationship with our client...they have of course paid for something that they think is unique...and they invest a lot in it and one of the things they want in return is that we help them protect the brand at least in their own market.” [Licensing Manager of a large Dutch format producer]

6.9.7. Promotions establish originality

An interesting strategy of protecting formats was discovered during interviews with respondents. Since formats were a business to business product, promotional tactics that are used to attract consumers may be considered inappropriate and a wasteful expenditure for format selling. It would appear sufficient, as some respondents agreed, for distributors to concentrate their marketing efforts into relationship building by visiting territory offices and meeting potential buyers/ broadcasters.

“The promotion of formats is less traditional. Rather than taking out advert in a trade magazine, it works better to create local relationships and modify

our format property to suit local tastes. It is about creating the right pitch so that local broadcasters get convinced about the format – so a lot of personal selling is involved.” [SVP, Content Partnerships of a large British format distributor]

“...Mass marketing thing where you give out bags indiscriminately to everyone is one thing, but where you know someone and want to strengthen the relationship by taking someone out to expensive lunches still may work in TV.” [Programme Sales Manager of a small British format distributor]

The importance to engage in personal selling of formats does not, however, stop large distributors from indulging heavily in innovative promotions. It was observed by this researcher that trade fairs were turned into festive grounds with a lot of hectic activities. Distributors were seen initiating promotions ranging from organizing fashionable events such as ‘*boat parties*’ and ‘*Hollywood style premiers*’ to handing out promotional materials such as delegate bags embossed with the livery of ‘*the season’s hottest format*’ and even a tape measure from the format ‘*Village on a Diet!*’ It may be summarised that such promotional tactics helped the distributors to build brand awareness so that buyers remember a format long after they leave the market and go back to their territories. Other promotional techniques, borrowed from the retail and consumer product sectors, such as sending out press releases or having features inserted in trade publications were quoted as being used frequently to promote a format’s brand.

“We do a blitz promotion. We wait for MIPTV or MIPCOM and then we go out with a very intense communication. We put stuff online and on print; we have brochures, trailers, and a big sales team which does about 500 - 600 meetings with clients in those 4 or 5 days. So if we have a new show, in 4 days it’s communicated to everybody.” [Managing Director of a large German format distributor]

“We have a lot of advertising at the markets, we advertise in all the major trade publications, on the internet, on print, we also have press releases that go out, we have events such as cocktail parties on a boat in MIP and Cannes ...” [Sales & Acquisitions Manager of a large British format distributor]

“We also promote formats in our website, we issue catalogues, and we get our catalogues accessible not only during markets such as these but also film festivals. We also have a special programme with all the Polish embassies – we run a programme with our country’s Ministry of Foreign Affairs where we can use the cultural Polish posts around the world to make our catalogues accessible to buyers and to organize screenings of our programmes and films.” [Sales Head of a mid-sized format producer from Poland].

Promotional materials are meant to be taken back to a buyer’s offices where the information about the format is expected to be percolated down to other staff members and in the process through an entire territory. A respondent shared how she had once given all her potential buyers *‘clocks styled in the design of an upcoming format’*. At other times, format distributors have been known to create a live version of their game-show format within trade fair premises and invite fair participants (buyers and other sellers) to participate as contestants.

The above end customer styled promotions in a B2B scenario indicates that promotions play an important role in identifying the true originator or distributor of a format. Promotions not only enhance the esteem of a format distributor’s brand, but they help to legitimize a format brand as belonging to a certain distributor. This way of effectively stamping ownership on the format in the eyes of the trade community is helpful because any subsequent attempt by another distributor to promote a similar format will be compared with the first. This gives the first to be promoted an advantage and a mark of originality within the trade community. When format brands

mature over time, promotions help to infuse life into them by signalling to the market that the format is still worth the distributor spending valuable resources on. Hence, promotions underline the status and superior resource capability of a distributor and its formats.

“If we learn from the Latvian and Austrian example, they couldn’t really prove their allegation that we had copied their format because they hadn’t marketed it well. If they had, we would have been in much more trouble because they could have told the industry that we were the copycats. So it’s really important to make your formats be seen in the market because it’s yours. We attend trade shows such as these, and print a catalogue (of which we distribute about 2000 copies all over the world) plus the formats are on our website. So letting the market know is very important in proving ownership.” [President of a large Swedish format distribution network]

“With our successful telenovela, it’s almost like any other form of business to business marketing. Initially, we tried to create awareness but by now the product has been in the market for 2 years and its sold in more than 20 territories. But we still do adverts in the trade journals, we have banners in the markets – all these act as a reinforcement to tell the buyers who have acquired our format that this is a great show and we so believe in it that we still spend money to keep it rolling.” [Distribution Head of a large German format producer]

7. Data Analysis: Protection through Registration Systems

Registration is not a requirement for copyright protection in most countries of the world but some format developers are comforted to have their latest format registered with an organization so that if required in a court of law, they can produce evidence of them having being the first to create a format. Though registration may not provide any expanded copyright protection, it can work towards defending an originator from an opportunistic claimant. In case of a dispute, the developer can produce the registration details in a court of law to prove ownership and the year of development for the format. The effectiveness of this assumption has not been sufficiently tested in courts of law though proving by way of records that they had taken steps towards producing that format has helped developers successfully defend legal action from opportunistic claimants claiming that the format is theirs.

Registration of formats is an elusive proposition, owing to a highly changeable nature of an original format - which makes it very easy to create a derived but unrelated version claiming to be original in its own right. Nevertheless, there have been attempts in some countries, as synthesized below through an analysis of semi-structured interviews, to institute format registration systems.

7.1. FRAPA and its effectiveness

The format industry occasionally tends to use mediation to resolve its format rights disputes. However the need for such mediation is in decline, according to several respondents. Since mediation is a confidential process between the disputing parties, very less information ever comes out in the open. A way to gain some insights into the phenomenon of mediation, hence, is to look at the dynamics and receptivity of a trade body called FRAPA, which claims to be the industry's principal mediator.

The attraction for mediation can be found in the belief that television industry professionals understand the specific requirements of the industry better than a court of law. This may be due to the ever-changing nature of television programming which tends to outgrow legal regimes meant to protect it. Hence, professionals dealing with such processes on a daily basis are expected to be best prepared to handle disputes and crises. Moreover, such professionals also have social sanction within a closely knit trade body, where decisions made by them will be respected and implemented.

“Mediation is a great thing. Disputes can be resolved quite well by the peers rather than by courts sometimes because who understands the TV industry better than the industry as long as you have people that can give objective decisions on formats that have been infringed.” [VP Sales of a large British format distributor]

FRAPA, which stands for Format Recognition and Protection Association, a trade body of format developers from around the world, was formed with a focused resolve to counter the threat of format imitation and to give the industry a lobbying voice. In existence since the last 10 years, FRAPA claims to have successfully mediated in more than 80 cases of format rights disputes, though very few of these disputes are known publicly. FRAPA has been able to attract several large and small format developers and distributors (such as Fremantlemedia UK, Absolutely Independent Netherlands) as its members. Yet, many established format developers (such as BBC and several others from outside Europe) have remained conspicuously absent from its membership list.

“Some people do put their formats on the FRAPA website to register them but I don’t how much legal protection does it actually get them across countries ... it has to be individual producers who may do it. But it is not our company policy to register formats on FRAPA.” [Sales & Acquisitions Manager of a large British format distributor]

The first international example of a format registration system is FRAPA's proprietary format registry. This is accessible through their website³⁴ in two modes – paper and digital. In the paper version, a print-out of the format's treatment (similar to a script) and other details are sent to FRAPA's headquarters to receive a stamped declaration on paper asserting that a particular format has been registered with a 'neutral third party' i.e. FRAPA. Format pilots can also be sent on a DVD to receive this paper declaration. In the digital mode, a special software is downloaded on a format registrant's computer and this software, while being connected to FRAPA's registry servers, creates a digital 'fingerprint' of a format's e-copy (usually typed on a word processor such as Microsoft Word). This digital fingerprint, FRAPA claims, can be produced in a court of law to authenticate the date of registering the format when required. In the digital version, a registrant has to pay a small amount for buying registering credits whereas the paper registration is provided free of cost to those who wish to use the service. It is important to note that the validity accorded to such a certificate by a court of law has not been tested by the industry.

Though FRAPA's website mentions that it has a highly subscribed registry of formats, it transpired during the interviews that the registry was not utilized fully and served a token role only. The researcher also observed that the effectiveness of FRAPA was being questioned on several counts. Firstly, aspersions were cast on the method of gaining membership of FRAPA - one respondent narrated an incident where a Middle Eastern producer was not allowed to join FRAPA on the basis of an allegation of format imitation made by a large British format distributor who had substantial clout within FRAPA. Another format producer, from Latin America, felt that FRAPA was akin to a 'Western Boy's Club' based in a Western European territory³⁵ looking after the needs of just a few format producers and that it lacked broad acceptability in the industry.

³⁴ Visit www.frapa.org

³⁵ FRAPA is principally based in Cologne, Germany with a representative office in the USA.

Some respondents felt uneasy at the unprofessional way in which FRAPA was run. They complained that it was happy to collect membership fee but did not give much value in return. Even this researcher's several attempts over a period of 2 years to make contact with the organization using the phone numbers and emails provided on FRAPA's website did not yield any response.

“I was so disappointed by what came out of FRAPA, which for the last few years was zero that I wasn't sure what I was paying for – so I stopped my subscription. I was curious if someone will call me from FRAPA asking me why I stopped it, but nobody did.” [President of an independent mid-sized Dutch format distributor]

7.1.1. FRAPA in decline?

There may be several reasons why FRAPA is seen in a degree of disarray in the format industry. On the surface, internal politicking and a conflict of interest between its constituent members may be seen as the causes of its decline. There have been instances, given the close-knit nature of the format industry, where senior functionaries of FRAPA have been from one of the disputant companies. In this scenario, maintaining objectivity has been questioned by some members leading to an erosion of credibility of the mediation service offered. Moreover, since the results and proceedings of dispute mediation is publicly not available, even for non-disputing FRAPA members, it is a contributory factor in FRAPA's deteriorating stature in the industry. Some respondents also felt that FRAPA had shied away from providing them any information about imitation disputes in which the respondent's company was not involved.

“Bourne partly by the inactivity of FRAPA lately, I started an informal group called the ‘Formats Exchange Group’ based in Amsterdam. We actually all agreed that an organization like FRAPA needs to be given new energy. So

that’s why we met yesterday and FRAPA has agreed with us – so we have agreed to see each other again in Cannes. One of the suggestions is to take FRAPA away from the German market and moved to Netherlands or London where there is an understanding of formats and their copyright.”
[President of an independent mid-sized Dutch format distributor]

“FRAPA members are mindful of their credibility. When we published our dispute with a Swiss company - FRAPA’s president, who is also our head of production in Germany, wanted to release a press comment on behalf of FRAPA. But we asked her to refrain as it might have caused a perception of bias in the industry.” [EVP (Worldwide Production) of a large British format distributor]

In FRAPA defence, however, some respondents felt that its impartiality stemmed from the fact that it was not a punitive body but only tried to bring together the disputing parties to settle issues. However, if it was not for a more strategic reason for its decline, FRAPA still would have continued to attract support from a section of the industry, guided by the rationale that disputes that cannot be solved bilaterally must not go to a court of law thereby running the risk of negative judgements that create unwelcome legal precedents of formats being not protected under law.

The more strategic reason for FRAPA’s gradual decline can be attributed to the changing nature of format trading. For a while, FRAPA was the only international body which developers could turn to for a solution to the increasing imitation of formats between the years of 2003 and 2005³⁶. This was a time when the industry had not yet perfected market based strategies of format exploitation and protection, while establishment of these strategies have meant that an organization such as FRAPA is no longer required. FRAPA, thus, sees itself metamorphose into a consultative and educative body of format developers and distributors who meet at annual trade fairs to

³⁶ As illustrated in one of the statistical graphs emerging from the analysis of Formats Rights Disputes (see Chapter 4 ‘Data Analysis: Formats Rights Dispute)

exchange best practices. Occasionally, FRAPA is used for lobbying government for tax incentives and other welfare actions.

“When you buy the format, you don’t buy the legal right, you buy the knowledge and knowhow from the producer. So sometimes I sell a show which is not even a format – it’s like a docu-soap but thanks to some clever ideas behind it, I am able to sell it as a format because people want to be sure that it is done in the best way. And we have produced success and they want to reproduce that. So a format in my mind is nothing to do with legality, it has to do with production and business know-how.” [President of a large Swedish format distribution network]

“Mediation cases should be used as an example of how you can solve infringements to educate the industry.” [President of an independent mid-sized Dutch format distributor]

7.2. Other registration systems

Other forms of format registration systems being used by sections of the format industry to get satisfaction that their formats are safe from imitators as reported here. An online search for copyright registration on the internet throws up hundreds of website based in several parts of the world offering ‘*worldwide registration*’ of copyright works including formats. One of these services, often mentioned by respondents in interviews, is File Reg (www.file-reg.com), operating out of the Netherlands and having customers mainly in USA and the UK. This has a similar system to FRAPA’s digital online registration system.

Further, there are systems indigenous to a country, for example in India where copyright law provides for registration, several television and film makers consider it worthwhile to get their work registered at the ‘Copyright Office’, a Government of India cell under the Department of Education.

Furthermore, individual distributors such as Endemol have an internal department totally dedicated to documenting, registering, analysing and trying to protect their formats which they consider their ‘IP’. This IP is defined sometimes based on an understanding of IP law in the jurisdiction they operate in but mostly based on industry custom.

Some respondents felt that format rights protection could be arrived at through establishing an international registration system. But when probed further, almost all of them felt that a registration system is an impractical solution owing to the derivative nature of television programming in general and formats in particular.

“With an international legal institute where you can register a format everyone will know who originates the format... however there is no clear line on where the original ideas come from.” [Sales Executive of an independent French format producer]

“If we can make a clear protection of formats from a legal standpoint - that will be highly advantageous to the industry. With a legal procedure, registration etc...that will be fantastic. However, in order to elongate the life of a format producers tend to make slight changes to keep it afresh. Hence, a registration system will make life difficult for such producers. At the same time, once it is on air and if there is a registration body who takes on the responsibility of registering it, I will appreciate that.” [President of a large Swedish format distribution network]

8. Data Analysis: Formats in Emerging Markets

8.1. Emerging markets are fertile for formats

Major format makers in the world are increasingly engaging with emerging television markets (or territories as the industry prefers to call them). The researcher had referred to these emerging economies as BRIC (or Brazil, Russia, India and China) in the literature review chapter. In this section, the argument remains the same, though the classification is refined to consist of China, Russia, India (including pan-Arabia) and Latin America, which is now called CRIL in this thesis. CRIL territories have been chosen based on a qualitative analysis of growth potential and strategic importance which large format makers attach to such emerging territories.

The increase of format trade in these emerging CRIL territories is tempered with the realization that the dollar value of sales is not approaching that of a Western European or US territory because of substantial differences in exchange rates. However, first mover advantages outweigh the lower profit potential for years of entering these markets. Moreover, most format makers tend to regard emerging markets as additional to their core European markets and hence any sale, with minimum costs, is better than no format sale outside their core markets.

“...we have certainly done deals where people have paid us substantial amounts of money – I don’t think the amounts of money people pay in Asia are anything like they will pay in Europe or the States – but it’s getting better and we are positive about it.” [Regional Director (Asia) of a large British format distributor]

Format distributors are open to exploit their products in any territory which seek them at trade fairs or through established business channels but formats readily find successful exploitation only in territories where they

have a strong cultural connect. This has been highlighted in the previous chapter (section *Localisations*). Some respondents felt that in some territories there were problems of exploitation because their formats were not suited to those markets.

“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 Production) of a large British format distributor]

Further, cultural affinity comes in handy for format trade. Japanese format makers, for instance are able to find eager buyers in countries with a closer cultural affinity with Japan, such as Taiwan or Korea. Even in countries such as China, Japanese formats may be sold especially if the audiences are not made aware of the origins of the format – owing to a negative connotation which Japanese products evoke in Chinese minds due to acute tensions in their history. Other larger countries in the region trading formats with each other may include Malaysia, Indonesia and Singapore.

8.2. Less copying in emerging markets

Overall, emerging market regions are considered tough to enter by most Western format originators/ distributors due to cultural reasons. This is true only until the first sale is made in the biggest territory of that region. This usually opens the doors for successes in other countries of that region. For example, a successful sale from a Western format distributor into China may open doors for the format to be sold in countries such as Vietnam or Myanmar, thus opening up the entire South Asian television market. The fear of not selling formats to emerging markets due to copycatting concerns is less for a majority of established format distributors who exhibit the sophisticated exploitation and protection strategies as discussed in the previous chapter. However, for new small and independent format

producers, who simply depend upon legal protection and have not yet perfected the market based strategies, the situation is less than clear.

“The lesser developed TV markets respect added value. So where you think you might be ripped off more often, they do tend to be more serious about it as they really need the support whilst in territories like Spain, everybody can make whatever you want, so they don’t really need our help.” [Licensing Manager of a large Dutch format producer]

“You might expect that there may be an increase of infringements in such territories, in fact we see that since legal-wise not everything is settled here, they are much more cautious and careful with our IP. Whilst in a territory like the UK, there is so much legal history that it is easy to make an infringement without getting caught - everybody knows exactly where the difficulties are and how to change the format in something - we cannot stop them”. [Licensing Manager of a large Dutch format producer]

Many respondents from larger format developers, that have executed format licenses or have done co-productions in emerging territories, considered the emerging territories better than Western territories at observing industry customs regarding format rights. This is because emerging territories lacked high specification television knowledge and hence were ready to pay for technical know-how in order to grow faster than their territory competitors. Moreover, companies from these territories were new to the international format trading networks - they were careful not to alienate larger format sellers in the market by trying to copycat one of the popular formats. Hence, unusual territories which have worked well for format distributors include Kazakhstan, Armenia or Vietnam.

At the same time, these respondents believed that emerging territories were usually unaware that IP laws do not necessarily protect formats, contrary to the predominant rhetoric of IP surrounding formats in trade fairs and negotiations. Thus, lack of awareness of the limits of regulatory frameworks,

and thus a fear of legal proceedings at the hands of a more resourceful global company, is another reason why emerging territory producers shy away from straightforward imitation of formats. These emerging territory buyers are not able to push the boundaries of *‘format inspiration’* unlike imitators in established television territories such as America or Western Europe.

“What I have heard from our affiliate is that some territories are really dangerous. They were talking about Spain mostly ... In some European countries it takes years and years [for court cases] and there are sometimes no satisfactory results.” [Sales Executive of an independent French format producer]

The contention, that emerging markets are better at respecting format rights, is contested by smaller format producers or those who have not had much success with format exploitation in emerging territories. These smaller players have not been able to perfect the unique business models of format exploitation and protection in such territories (discussed in detail further on). A reason for this judgement is consistent with fears that most ills associated with intellectual property rights - such as pirating of finished cultural goods or a lack of IP protection over the buying and selling of these goods - are prevalent in emerging territories such as China or India. The same fears are transported to format rights trading, which ironically depend only marginally on the protection provided by IP laws. The notion that IP protection for format rights is lax in emerging economies and more stringent in developed economies of the US and Europe was found embedded in the minds of this small section of respondents.

“There are certain territories in the world which haven’t yet been established in the format business and in those territories, people are a lot more wary about doing deals of formats or being ripped off, I don’t deal with China or Asia, but I have heard some stories...” [VP Sales of an independent Australian format distributor]

“Some territories are not very used to the notion of intellectual property. I have seen this in a previous job in Central and Eastern Europe where the company I worked for plainly lost even at the summary injunction stage because the judges were not familiar with the law of IP protection.” [VP Business & Legal Affairs of a large British format distributor]

Some other respondents maintained that the mechanics of the format industry are not understood by emerging territories buyers. Hence, they engage in educating the emerging territories to the business ethics and customs of the format industry. The notions which need educating, according to this section of the respondents, is paying for an idea or option agreement, recognizing that ideas and resultant expressions may be ring fenced by individuals or companies and that one who invests in developing a format, needs to be compensated. This points out that there is strong education agenda being pursued by Western companies to teach emerging territories about format industry norms and customs regarding respecting format rights.

“I met a company from Turkey recently ... showed them what our formats were and they said, “We will go to the broadcasters and pitch them. If we get any commissions, we will come back to you.” And I said it doesn’t work like that. You need to take an exclusive option on the format you are taking and then you are the only person licensed in that territory to talk to broadcasters about that. You pay a fee and that’s what you get for that. We can’t have 20 production companies going to broadcasters with our formats. So when we explained this to them, they said “that’s fine, that makes sense”. So sometimes it’s just a matter of explaining how the industry works and so on.” [VP Sales of a large British format distributor]

“You have some smaller markets which are still in the learning process of commercial habits, mostly ex-communist countries. It really had improved a lot over the last few years, because they know that in the meantime, it

would destroy business relationships with everyone.” [VP Sales (Germany & Eastern Europe) of a large British format distributor]

Having showcased that format rights may not necessarily be more at risk in emerging territories, there is some truth in the assertion that formats rights are contested more in developed television territories. A majority of respondents evidenced that format copycatting tends to be more widespread in established television economies, such as Germany, owing to the awareness that IP laws do not protect format rights. However, trade continues to grow where format originators/ distributors are able to put in place market based protection strategies (discussed in the previous chapter).

“Germany is known to be one of the worst and that’s because there have been some published decisions which say that formats cannot be protected. So that has emboldened copycats. It still hasn’t affected us too much as our parent company is based in Germany and their affiliates know if they produce a show which is a copy of ours then they are not doing us any favours. So we don’t suffer from it too much in Germany but others have.” [EVP (Worldwide Production) of a large British format distributor]

“It happens in the biggest countries on the best channels - it also happens here in Germany. I know of big channels in Western territories having done that to other big channels – it’s not an Eastern European problem.” [Managing Director of a large German format distributor]

“My home country Germany is known for being a rip off heaven! Because when Millionaire became big, there were a lot of shows which were strangely similar.” [Distribution Head of a large German format producer]

“...Germany is the worst country for this as out there format producers don’t have any copyright. And they rip off everything.” [President of an independent mid-sized Dutch format distributor]

8.3. Trading formats in China

“In areas where China is developing economically, notions of IP are strong and they understand that products they develop need protection. One of the foremost ‘lawyers cum professors of IP’ in China once told me that in the West, IP has emerged over a period of 140 years since the Berne and Paris conventions; one cannot expect a country like China which has economically liberalized only a few decades ago to have the same standards immediately.” [VP Business & Legal Affairs of a large British format distributor]

The opportunities which China offers to format distributors evoke strong responses from the industry. China beats India to the top spot of interest by the format industry despite India’s burgeoning media market³⁷. Indian programme buyers were conspicuously absent from the three international television trade fairs that the researcher attended, including one in Singapore which is a short distance away from India. However, Chinese buyers were observed doing brisk business at these trade fairs. None, however, saving Hunan TV (a Chinese satellite channel), accepted the invitation to take part in this research. The researcher feels that this could be due to the title and nature of the research which pre-disposes it specifically as exploring ‘intellectual property’ issues – things which some Chinese businesses may be wary of engaging in a discussion about. Even the trade representative of Hunan TV (a company with many format co-productions with Western companies currently running on its schedules) did not wish to comment on format rights protection in China – he merely commented through an interpreter: *‘notions of intellectual property were different in China to that of the rest of the world’*.

³⁷ A separate research can provide these reasons for why the format industry feels China provides more opportunities than India for format trade, it is possible to conjecture due to the researcher’s Indian background that India’s home grown television market, which is regionally fragmented and

The above stance does not stop Western companies entering the lucrative Chinese television market which has been steadily been opened by the Chinese government to foreign owned investments and content, subject to an upper limit and cultural and national interest control mechanisms. Major format originators/ distributors indicated that they regularly engaged China as it represented a huge opportunity - many Western media brands, such as the BBC and CNN, already had a strong resonance with audiences there. Chinese television buyers have started buying formats from Western companies modified through localisations that help fit them into the overall Chinese cultural and national mix. Format sellers were of the opinion that the Chinese television producers greatly benefited from the expertise and quality training they gained from international format companies and their products.

“We do format sales across the whole of Asia and countries which are good for us in formats are upcoming markets such as Vietnam (we have done 2 formats there ‘Karaoke King’ and ‘Queens and Spots’), Malaysia (we have The Great Malaysian, recreation of The Great Briton format) and China (where we have the Dancing with the Stars and Just the Two of Us).” [Sales Manager (Asia), large publicly funded British format producer]

8.3.1. Misconceiving format rights challenges in China

Small format producers or distributors were suspicious of emerging territories, particularly China, because of reasons highlighted towards the beginning of this chapter. Some respondents of this study voiced concerns about the challenges faced in China when trading in formats. But when they were prodded about any personal instances they might have faced, none said they had done so. They mentioned that their opinion was based on China’s reputation as having generally overarching challenges towards protection of IP rights.

linguistically diverse, poses challenges for format originators with regards to localisations. China, on the other hand, is relatively homogeneous linguistically and culturally.

“I think part of it is because of pirating. There isn’t much respect for intellectual property in China and so it is hard to protect your format rights there.” [Chairman (North America) of Dutch format producer]

“I think China doesn’t have any copyright law at – that’s a major concern. And I think we will be extremely cautious of dealing with anyone in China ... We have not pitched formats to China because of that very reason. ... We get concerned when we are sending in screeners to them ... not only China but other Asian territories that I deal with.” [Sales Representative of a large Australian broadcaster]

The above comments are evident of the misconceptions which exist in part of the format trading world whereas (as we see further down), the reality is far from the simplicity with which the above respondent comments. There may be IP rights challenges in China for cultural products such as Hollywood films, popular music and software, all of which suffer from piracy attacks. And seasoned format professionals understand that lessons from cultural piracy cannot be generalized to mean format copycatting. A market based business centred approach is used by Western companies who successfully trade in formats in China.

“In Asia, you have educate certain territories to pay for formats... you still have to explain to them what a format is and why do you have to pay the fee...they do think that they can make the format once they see the idea and think why should they pay BBC Worldwide or Fremantle or Endemol when I can make it myself.” [Sales Manager (Asia), large publicly funded British format producer]

“Our most successful one in China so far that we did earlier this year (2008) was Saturday Night Takeaway that we licensed to Hunan TV – they paid us the money and there were no particular problems with that.” [Regional Director (Asia) of a large British format distributor]:

8.3.2. *Format business style in China*

Like most territories, business culture is unique in China. Any non-Chinese company would do well to be immersed in the culture to have any fruitful business. One of the several practices noticed about format business in China was that most Western distributors had a full fledged representative office in Hong Kong as this provided them a vantage position of being within Chinese political territory but culturally in a more open media landscape so that their formats and business ideas could first be tested. Moreover, international format distributors had entered into co-production agreements with Chinese production houses before approaching Chinese broadcasters with their format rights.

“There are different people in different parts of Asia and you have to understand how to do business in different ways and how you can blend into it. I suppose you can see us as the office in Hong Kong as a middle man between the UK mentality and the Asian mentality and our job is to bridge that gap.” [Regional Director (Asia) of a large British format distributor]

For example, Fremantlemedia’s *‘Hole in the Wall’* emerged as one of the biggest successes in China in 2008. Though Fremantlemedia produced the show in several of its production territories around the world besides selling the format rights & associated consultancy to other licensing territories, the style followed by the company in China was different. Here, it partnered with SMG New Entertainment Group to produce this format.

“I am extremely proud to bring this format to China ... from start to finish, we co-managed the production; this show is a co-production in the truest sense.” [Chief Representative of Fremantlemedia China, quoted in an online news report.]

International format producers enter into partnerships with local Chinese production houses not only because localisations need to be addressed effectively, but also because Chinese laws allow only 50% foreign ownership for audio-visual producing companies, ostensibly to provide moderation of cultural exposure for Chinese nationals. Moreover, most format content is subject to ratification from Chinese government, again a reason why a local partner is a useful addition when engaging in the formats business in China.

Typically, a format distributor asks its own production subsidiary to approach a broadcaster in a territory with the format rights and the proposal to recreate the format as per the broadcaster’s requirements in exchange for a budgeted production fee plus a percentage of that as format rights fee. In territories where the distributor does not have a production base, the business style involves providing the format rights and associated consultancy to a broadcaster who then decides to produce the format as per their requirement – the distributor gets a flat fee for the format rights and the consultancy, if any. Large format distributors, thus, endeavour to have their own production bases in all key territories to maximise their revenue potential.

In contrast, the format business style in China is different. In this, a nominal licence fee is received for the format besides a substantial share of the advertising revenues as income. The format distributor arranges for a commercial sponsor or advertiser to pay for time slots on the schedule allotted by a broadcaster. The margin between the production costs of the recreated format and the payment by the advertiser works as a profit for the format distributor can then be shared with a format owner.

“Format deal making in China is very different. The way to deal with them is that you have to sell a format to a broadcaster. If they like it, they will give you time slots for a certain amount of episodes but you have to sell or broker the time in minutes to advertisers. In other words, you as producer

are also responsible for the funding of own production. For us as a foreign company that is difficult, unless we partner with a local advertiser.”

[President of an independent mid-sized Dutch format distributor]

“Chinese audiences realise that our shows are of better quality than the shows they see on Chinese TV, so the official local version of Got Talent would contain a certain matter of kudos. This means that well heeled audiences will want to watch it and this in turn means sponsorship money will follow. As Chinese broadcasters expect the format to come in fully funded, if you can bring in a few big sponsors - that helps greatly.” [SVP, Content Partnerships of a large British format distributor]

“Even 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. And that’s worked well - we haven’t sold the big shows in Vietnam by our normal business method that the broadcaster will pay us but by teaming up with these big worldwide companies that they want to put across through our show. And then we have produced successful series by giving the assurances that the programme will be good enough to run as an international programme. So that’s been renewed for the third season so it must be working for the other partners.” [SVP, Content Partnerships of a large British format distributor]

Similar to a unique business style for selling formats, there are some operational challenges which Western format makers may feel when recreating their formats in China.

The issue of Chinese government rules which do not allow live audiences to vote in game shows is an interesting one which deserves a mention. On the surface, this appears to be a position that the government does not want to encourage a sense of participatory power and by extension, a feeling of democracy. Since most popular international formats, weather game shows

or reality, are built around the notion of viewer engagement and voting, format distributors in China have had to creatively localise formats. Instead of live audience votes, format creators have resorted to using studio audiences and not calling it ‘*voting*’ so as not to irritate the content censor board – they tend to call viewer interaction with a much more innocuous name such as ‘*opinion counting*’.

There may also be some operational issues in touring the entire length and breadth of this huge country for talent search type shows to be considered authentic and representative of the entire Chinese society. The local partners are known not to underwrite such expensive and lengthy propositions - hence the risks for format distributors are larger in some senses. Hence, innovative solutions may need to be devised to counter this problem.

“We also talked about having a tour so if we offer the sponsor more than just an on-air package, you would not only be touring auditions but touring a winner's show or a finalist's show across the country that would sell tickets and have branding opportunities, then that would also be something exciting to the sponsor. For us as a format owner it is fairly daunting to promise a 50 day tour for a show which has not even gone on air - it's not an obvious route to take because that would mean us committing an enormous amount of money to underwrite the tour.” [SVP, Content Partnerships of a large British format distributor]

8.4. Formats in Russia and Eastern Europe

Russia and east European territories such as Hungary, Poland and Ukraine are considered the second most important territories with a potential for profit by trading in formats. After the collapse of the Iron Curtain in the early 90s, these territories offer an eager market for all things Western – from fashion to religion. Television programmes, especially formats, have steadily found fans in such territories.

“More of our formats are sold into Russia than anywhere else in the world. The woman who sells into Russia for us is a very good and the Russian TV market has been booming over the years.” [EVP (Worldwide Production) of a large British format distributor]

Russia is considered a strategic territory as it acts an indicator to nearby erstwhile Eastern bloc countries. A successful format sale in Russia can mean additional sales for a format seller in countries such as Lithuania, Estonia, Bulgaria, Ukraine or Georgia. Similarly, audience’s dismissal of a format, either because of a bad quality production hastily put together induced by the threat of an unlicensed version or because recommended consultancy was not implemented, can result in the above countries not buying the format. Hence, Russia is looked upon with a strategic viewpoint by most international format developers.

“We have sold most of our big formats into Russia but that is where our involvement stops. They don't really welcome our flying producers. They send us little or no information on what or when they are doing something - they sometimes go off format and create extra episodes and so on. By not involving us, if a format fails in Russia it has knock-on effects. Its success or failure filters through all places where we sell in that region.” [SVP, Content Partnerships of a large British format distributor]

Russia is a market where format owners and distributors need local market knowledge and contacts. Many format makers, including large multinational ones, have had difficult experiences in the past by trying to set up independent production bases without any local support. Hence, respondents clearly suggested the need to partner with a local company to succeed in Russia.

With regards the respect for format rights, large format producers have devised business methods to exist in Russia, similar to what they would

have done in any other territory by not depending too much on law. However, it is again the small format makers who face serious format rights challenges in Russia and nearby territories.

“Theoretically format theft can happen anywhere in the world but in Russia we have to be very careful and monitor when they broadcast the programmes sold to them and monitor when the licences need to be renewed.” [Sales Head of a mid-sized format producer from Poland]

“Russia is difficult. They pretended in our case several times to go for a deal – wanted to close a deal and in the meantime somebody else took advantage of the knowledge that they gained – took the idea, changed it little bit and broadcast it - you have created your first rip off! [President of an independent mid-sized Dutch format distributor]

8.5. Formats in India (including pan-Arabia)

Despite India not being considered a top market for format sales, distributors remain confident of utilizing the opportunities offered by private satellite broadcasters in India. Private satellite channels in India try to differentiate themselves in the market by providing cutting edge programmes while the state broadcaster, with a much larger audience and advertiser base, prefers not to buy in formats and devises its own game shows and event based programming. The fragmentation of the Indian market and thus the lower production budgets available do not favour large formats. But this is also provides an opportunity. Linguistically diverse India offers multiple recreations of formats to be made, for example in languages such as Tamil, Bengali, Punjabi or Gujarati with their large number of audiences and existing channels besides a host of other languages from across India. In reality, such an opportunity has been availed of only by a handful of format makers – most have tended to be satisfied with a single version sale on Hindi channels broadcasting from Mumbai or New Delhi.

“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 (Worldwide Production) of a large British format distributor]

“Private satellite TV (in India) is young and vibrant and they are looking to buy known and successful shows from abroad, for example the channel Colours established itself alone on the back of Big Brother (Big Boss in India). India is a wash of different races, classes etc. so probably you could never find a programme that suits entire India.” [SVP, Content Partnerships of a large British format distributor]

The Indian television market is considered mature in terms of dealing with format rights as buyers and producers are comfortable with the value that a format rights licence offers. Since India is new to international formats, territory producers here still need the expertise and consultancy offered by international distributors.

“When Indian Idol launched 4 years ago, it was new and exciting; and rated brilliantly and it really put Sony TV (the broadcaster) on the map. Now everybody else does the same in the same slot - so where Sony owned that Friday night where they had Indian Idol and its results on Saturday, everybody else is now coming to that space knowing that it absolutely works. And you see the rating for Idols slowly reduce over the 4 years to the point where we had very serious discussions as to whether it would come back. But the decision was it was a flagship which still did well and it was best to revitalise it rather than cancel it. Hence, we have looked at the freshest ideas from across the world to infuse into Indian Idol.” [SVP, Content Partnerships of a large British format distributor]

The pan-Arabia region works by definition of the footprint of certain satellites which broadcast to this region. A programme on a powerful pan-Arabian satellite has the potential of reaching countries all the way from

Northern Africa to the Arab nations and to Iran, Iraq and Pakistan. Moreover, selling format rights into individual countries may not be feasible on account of big budgets needed to produce a licensed format version. Even if a format is modified to suit a certain country's budgets, a large and unified footprint of the satellite channel it is broadcast on means that only one version can ever be produced. Thus, it blocks out selling to anywhere else in the region.

“We have also looked at selling some programmes into North Africa - certainly Tunisia, Algeria, Morocco, Egypt - doing a block of those countries or even individually. But mostly those countries are blocked out because you have done a one big deal in that region and they don't have the money so maybe you can do a Family Feud in Tunisia but you couldn't do a Tunisia's Got Talent.” [SVP, Content Partnerships of a large British format distributor]

The above conundrum gave rise to regional versions of formats in the pan-Arabia region. Fremantlemedia was one of the first international companies to successfully recreate their Idols format (known as 'Superstar') in this region. The rights to 'Superstar' were sold to Future TV, a Lebanese producer cum broadcaster based in Beirut broadcasting to the entire Middle Eastern region on a satellite. This was made into Superstar Arabia which has gone on to become one of the most popular television programmes in the history of the region – a TV programme which momentarily created a unified Arabia in the region.

There are several operational challenges for format distributors and producers in this region. Serious cultural, nationalistic and business localisations need to be done to be successful in this region (some of these have been addressed in the *Localisations* section of the previous chapter).

8.6. Formats in Latin America

Several trends characterise formats trading in Latin America. Audiences in this territory have been engaging for generations with telenovelas, which are similar to long running soap operas. Formats, as understood in the rest of the world, are not readily watched by audiences in Latin America. Budgets are smaller due to advertisers staying away from such risky products. However, international format makers have studied these challenges to find opportunities. Two responses have emerged – one is of creating pan-Latin American versions, similar to the strategy in the pan-Arabic region, secondly Western format companies have started diversifying their portfolio of formats by delving in telenovela formats – a unique micro-niche of this industry.

“Latin America generally lags a couple of years behind in terms of picking up global formats. In Latin America, a lot of television is dominated by telenovelas and local drama – there isn’t that much of a tradition of entertainment formats.” [EVP (Worldwide Production) of a large British format distributor]

Format rights of telenovela formats are sold in ways similar to entertainment formats from other parts of the world. These consist of licenses of varied packages of scripts, storylines, style guides, set designs, musical scores, camera angles, on-site consultancy and production know-how. However, localisations tend to be easily done in entertainment formats. Sometimes the cultural differences between selling and buying territories may be so strong that the telenovela format may become completely unusable for a buying party. Reasons cited range from differences in notions of relationships between men and women, the amount of respect showcased between characters of the same family, the way generation members interact with each other and so on.

“We sold the format of our successful German telenovela and they refilmed all the scripts but only 30 episodes ended up being shown. It didn’t work out because there was a feeling that even though there were local actors in the scene, they were not behaving like such because of our script”. [Distribution Manager of a midsized German format production house]

Though most companies active in selling telenovela formats are from South America, with the largest ones being from Brazil, Mexico, Argentina and Chile, some Western European companies have started diversifying in this market, partly in response to the preference for the genre in the region. Most markets for these telenovela formats are in Eastern Europe and the Far East owing to preference of themes such as *‘family discord’* and *‘economic struggle’* in similarly developing countries of the world. Nevertheless, as seen in the literature review with the case of Colombian format *‘Betty La Fea’*, there have been some instances of telenovela formats which have been sold to developed Western television markets.

“In Latin America, the Chilean version is very difficult to sell as opposed to the Mexican or the Venezuelan due to the Chilean accent. But Chileans are extremely talented writers. So we acquire their library so that we can sell their formats. It works because its gives us leverage i.e. more to be able to offer.” [Sales Director of a large US telenovela format company]

The other method which format distributors came up with linguistically united Latin America was to sell an overarching regional format right to a single producer or satellite broadcaster with a strong enough footprint. This way they could side-step the popularity of telenovelas on main terrestrial broadcasters to start introducing entertainment format to audiences. Also, very few countries had sizeable enough television markets to have the budgets for individually recreating these entertainment formats. Hence, instead of selling an individual version to Colombia, Argentina, Chile, Ecuador or Venezuela; a single pan-Latin American version beamed from

Brazil – the biggest TV market of the region. This strategy was used successfully by Fremantlemedia’s *‘Idols’* format.

“The problem in Latin America is mostly money. We make Idols in Brazil but it took some time to convince the schedulers to give it a good slot between all the telenovelas that they broadcast so that Idols can reach a young demographic to have a proper viewership. So, Idols in Brazil goes out on Sony, a satellite channel, which reaches the whole of Latin America.” [SVP, Content Partnerships of a large British format distributor]

9. Conclusion

This research has solved the conundrum of growing international trade of formats in the absence of a precise and enforceable regulatory framework by developing a theory of market based strategies of format protection and exploitation. This research studied the increasing trade of formats despite format imitations, from a wider academic lens incorporating theories from diverse academic fields such as law, cultural theory, marketing and media economics (the justification for this has been provided in section 1.1 at the beginning of the thesis). These diverse theories gave rise to theoretical propositions which were then examined using semi-structured interviews. The resultant findings were synthesized into an integrated theory of format rights protection and exploitation.

This concluding chapter details the journey of this research from the theories comprising the conceptual framework, to the creation and examination of theoretical propositions, and finally to the incorporation of resulting findings into an integrated theory. The researcher provides here the market based strategies which were synthesized from an analysis of semi-structured interviews with format industry professionals, and links them back to relevant academic literature and conceptual framework.

9.1. Link of key findings with literature

At the outset, the research concludes that the format industry does not depend in practice on a proprietary regulatory framework, such as intellectual property rights, to protect their cultural produce from imitation and, thus, to trade in them. This paves the way for a complex set of market based ‘IP without IPRs’ strategies such as formalizing production know-how, managing the brand and enhancing distribution and business networking capabilities, as synthesized in this research. Nevertheless, existing regulatory frameworks such as copyright, trademark law and the

law of confidentiality complement the ‘IP without IPRs’ strategies by deriving a notion of legitimacy from law.

Several reasons have been synthesized in this thesis for the format industry’s aversion to rely on formal regulation for the protection of formats. Three important ones are that regulatory frameworks increase complexity; that they are too resource intensive in an industry whose main product is time-bound and struggling for viewer attention in saturated television markets; and that they can harm business relations.

Legal complexity increases if format developers are expected to register formats with proprietary registration systems or commission international searches to avoid recreating previously existing formats. Importantly, restricting international formats to an ‘original version’ leaves no room for innovation that drives continued audience reception. In other cases, even if there are sufficient grounds for legal action against format imitators, most format developers are deterred from doing so due to the high cost of legal proceedings and the extended time taken for adjudication.

Moreover, since there is no consistency of adjudication using current regulatory frameworks, the industry tries not to accrue negative legal precedents that can encourage format imitators. In many cases, format developers also produce other television programming such as drama and documentary, and are in existing business relations with broadcasters and other producers (who may be imitating their format) – initiating legal proceedings puts a strain on such existing business relationships. Finally, where format imitation happens in small television territories in developing countries, developers cannot expect to cover litigation costs, or win damages by using law (although when an imitation happens in a commercially important territory, some developers may wish to send across a message about the importance of their format rights by initiating legal action or threatening to do so).

Thus, in the absence of reliance on a regulatory framework, a majority of the format industry depends upon market based strategies of format protection as summarized below.

9.1.1. Formalizing and transacting know-how

Formalization of production consultancy and technical know-how in ‘format bibles’ helps buyers avoid duplication of production inputs and thus saves time, finance and other resources when solving production challenges in a licensee territory. These ‘format bibles’ capture that *‘there is a lot going on under the surface’* and that on-screen look and feel of the format is not easily replicated by the licensee. Flying producers, experienced members of staff from a format’s most successful territory, police the implementation of know-how. Consultancy clauses in format licences vary with some providing only a base agreement where a format bible is provided to the buyer; other elements such a produced pilot, a localized treatment, scheduled visits from flying producer, resident consultants, centralized producers’ workshops and so on are built up in modules as per the buyer’s requirements.

The above findings concur with Caves’ (2000) contract theory. Format distributors provide ‘option rights’ to buyers for a specific time period – if the buyer does not use the window to produce a show based on this format, the original producer can sell it to another buyer. Moreover, format deals do not represent complete contracts – there are several stages in which the buyer has the option to purchase a paper format in the first instance, then a finished tape (or DVD), then associated software (if any) and finally consultancy – each stage representing a unique step of the incentive contract.

The reason why ‘formalizing and transacting production know-how’ through format bibles and flying producers is considered an important strategy for format protection is because without such consultancy, a potential imitator is not able to replicate the nuances of making the imitation a success.

Without consultancy, an imitation made from scratch is not only late in a fast moving saturated television market, but it can also suffer from strategic mistakes committed by the imitator in order to rush the production, thus indirectly protecting the original and providing it an opportunity for exploitation in that market. Moreover, flying producers act as the eyes and ears of a developer. On occasions they may be asked to identify potential imitations of their company’s format in a licensee territory. By becoming a conduit between the territory and the in-house legal team of their company, flying producers initiate an awareness of imitation attempts and help to contain these in their infancy - this helps to protect a format.

Exercise of elaborate confidentiality measures to control access to formal consultancy elements such as format bibles further assists in protecting formats. Confidentiality may be enhanced and legitimized by using existing regulatory frameworks such as ‘non-disclosure agreements’. However, securing assets such as format pilots and bibles and maintaining a logged control over physical and online visitors to any form of format activity (such as trade fairs or the website) are central to this strategy of ensuring confidentiality. For example, large format distributors no longer produce printed catalogues for potential buyers at trade fairs as this can provide a layer of information to potential imitators.

9.1.2. Managing the brand

The second group of format protection strategies are grouped as ‘Managing the brand’. These consist of creating a formalized brand identity, innovating to align with audiences’ changing needs, extending in revenue generating avenues, localising to create the right audience perceptions and promoting vigorously.

A format brand consists of a set of propositions which a brand manager creates around a television programme such as a game show, a reality show, etc. These propositions are expressed across several planes, for

example ‘personality’ or ‘tonality’ or ‘attributes’ describing the values and the core benefits of the programme to the audience while trying to differentiate it from competitors. Format brand managers manage this brand by analysing all ‘*touch points*’, such as the on-screen broadcast, the online activity and the ancillary activity, where an audience member interacts with the brand, so that the consumer proposition recognized earlier is consistently communicated at each point. Format brand managers insist that buyers persistently follow brand guidelines, communicated through style guides and format bibles. They ask producers to seek approvals before deviating from these in local productions. Since a brand identity provides a perceivable difference to similarly propositioned products within the same market, a format with a developed brand identity has a better potential to be recognized by buyers and audiences - giving it ‘a sheath of protection’ through which imitators cannot attack. Imitation of a branded format is easily noticeable and traceable in the format industry.

The above findings are consistent with the brand theory of Kapferer (2000) that central to managing the brand is the brand identity and a consistency of approach. De Chernatony and McDonald (1998) theory about a brand being a cluster of emotional and functional values is also supported through these findings.

Market research ensures that format brands remain relevant for a territory’s viewers by using focus groups with audiences and surveys with broadcasters. This can lead to changes in format elements such as type of contestants, the show’s hosts and judges, the structure of the show, audition methods, etc. Such responsiveness to audiences’ changing needs leads to reinvigoration of the format brand as time progresses. This keeps formats abreast of imitators by constantly innovating and adapting them.

De Chernatony & Macdonald’s (2003) theory, about brands moving along the spectrum of generic, expected, augmented and potential levels by constantly innovating and providing a moving target to ‘me-too competitors’,

is evidenced in the above findings. Kapferer’s (2000) theory, that constantly innovating brands provide copycats a moving target, is also corroborated through these findings.

Localizations have been shown to be used by format managers to create the right perceptions in and achieve better reception from licensee territory audiences. This research highlights several types of localisations - cultural, visual, nationalistic and business. Cultural localisations, respecting the fact that different cultures respond to different sets of emotions and decision making patterns, modify a format to reflect the same. Examples include patterns of public display of affection, threshold and style of humour, notion of politeness vs. rudeness, linguistic style, religious sensitivity, as well as the on-screen acceptance of glamour. Visual localisations appear due to differences in visual stimuli such as acceptability of certain colours. Nationalistic localisations induce loyalty based feelings in those territories where nationalistic overtones help position the local version as truly local, though in some territories the opposite is done to avoid any negative connotations with a nation’s or a region’s history. Business localisations modify a format’s prize mechanism due to affordability of a licensee or due to the territory’s established scheduling and programme length patterns. Though an indigenous imitator is capable of intrinsically incorporating a few localizations, it cannot pre-empt the original’s planned localisations and may replicate too much of an original, just to be true to a successful format. Thus, localisations work eventually in an original’s favour by defeating an imitation.

Localisations were first theorised by Throsby (2003) as a cultural discount borne on cultural capital – findings of this research reinforce ‘cultural discount’. Encouragement for certain type of entertainment products to undergo cultural adjustments to overcome cultural discount is substantiated in the above findings (Acheson (2003) and Hoskin (2004). Steemers’ (2004) assertion that television formats are global because they overcome the

cultural discount is also exemplified the notion of format localisations introduced in the findings.

A format brand can be licensed and extended into online and mobile interactivity, live events, and merchandising partnerships across diverse consumer product categories such as children’s toys, board games, books, DVDs, and cosmetics. The need to spread the risk of investing in a format with multiple revenue generation ‘touch points’ as well as its propensity to generate audience loyalty across these touch points benefits the format brand. Such a calibrated approach to driving format synergies cannot be easily replicated by an imitator.

Riezebos’ (2003) theory on brand extensions, providing benefits such as strong position in relation to a competitor, ability to introduce brand endorsements and potentially exploit brands in international markets, is endorsed in the above findings.

Corporate brands of format developers are trusted by buyers and this trust cannot easily be replicated by imitators. Originating from a well branded corporate developer assists a format in being protected. Further, buyers at trade fairs associate certain format genres with a certain country; for example positive attributes accrue to UK and the Netherlands that are known in the industry as innovators of formats in a certain genre. Moreover, countries such as USA which have an accrued positive brand value for popular culture, gain from nation branding in format genres such as musical talent shows and reality television, which uses objects of American music or celebrity culture. Here, a format’s American version may sell better than even a locally produced version. Other nations are known to utilize skills and expertise such as language, programming or engineering, perfected in unrelated traditional industries, to market their format to buyers. The above brand values cannot be simply imitated by a licensee territory imitator.

The above findings verifies Schulze (2003) who introduced the concept of positive addiction to cultural produce of certain countries by people who accumulate personal consumption capital for such goods. Similarly, the works of Hoskins and Mirus (1998); Sinclair & Cunningham (2000); White (2003 cited Harrington & Bielby 2005), who found merit in market dynamics for the dominance of US cultural products in importing television markets, are also evidenced in the international trade of television formats.

Finally, format promotions are considered a legitimate strategy of protecting formats. Handing out promotional materials and organizing events around the launch of a format helps to identify the true originator of a format. This legitimizes a format brand as belonging to a certain developer and thereby stamps a mark of ownership on the format in the eyes of the trade community. Any subsequent attempt by an imitator to promote a similar format is considered an imitation in the industry, and seen in conjunction with the third group of strategies (see below) it deters imitations.

9.1.3. Distribution dynamics & industry conventions

The third group of format protection strategies consist of having enhanced distribution systems to reach television markets as soon as possible, retaliating against repeat imitators using business networks and utilizing industry conventions of reputation and shame played out in annual trade fairs of the industry.

This research has found that an enhanced distribution network provides faster format deployment as well as opportunities for closer relationships with licensee territory buyers while a larger scale of production removes duplication of efforts and creates efficiencies. A format deployed in a licensee territory thus may leave no room for an imitation. Emergence of industry conventions that mimic social norms, such as reputation, gentleman’s agreements and shame, also check the growth of imitators. If all else fails, the industry formulated system of retaliating against repeat

imitators by blocking access to programme libraries or blacklisting them, helps long term protection of formats.

Three levels of format distribution have been synthesized in this research. High level distribution, where format originators / distributors have their own production bases in key format recreation territories, provides best opportunities for protection. Here, production know-how is not transacted with a third party and thus the prospect of confidential information leaking out to competitors is minimal.

Mid-level distribution happens when originators/ distributors find it inefficient to have a full production base in a smaller territory and hence make do with a liaison or sales office. Here, protection of formats is compromised as technical know-how can leak out to competitors because of the number of parties involved in the format value chain. However, the liaison office provides a link to the territory from where information about potential imitators can be obtained and other market based strategies can be employed to deter them.

Low-level distribution, exhibited by smaller distributors who only sell a format licence or an option, is the worst situation for format protection. Here, the distributor depends upon third party information networks to be appraised of suspected imitation and leaks of format bibles and style guides cannot easily be traced due to the number of parties involved.

A larger scale of production deployed by a format distributor also helps in format protection. It is this scale that provides buyers with certainty that their investment will not be wasted because of imitation attacks. This is because high level distribution will ensure full support to the licensee to aggressively retaliate against an imitator. The above findings support Küng's (2008) value chain analysis of international formats by specifying details of the role of the format distributor in the value chain.

Further, speed to market along with a first mover advantage protects a format from an imitator since a small time gap is available between the format's original broadcast in one territory and the production of its licensed version in a licensee territory. This gap is not enough for an imitator to respond with an unlicensed version. First movers also get the best opportunity to create an established identifiable brand.

First mover and lead time advantages were suggested by Towse et al. (2008) as a viable alternative for cultural products where intellectual property law fails to provide sufficient incentives for creation and investment. Kapferer (2000) also talked of an innovative brand being served by first mover advantages. The above set of findings validates the theories of first mover advantages and confirms these to exist in the formats industry.

An interesting finding of this research has been the emergence of a set of format industry conventions, which mimic social norms such as reputation, shame and gentleman's agreements, to protect formats. Conventions of buyers and sellers respecting each other's rights are setting in to allow format trade to flourish in the absence of strong specific legal rights. Reputation effects, based on long standing relationships and mutual trust between format companies, allow the format industry to be closely connected with distributors, buyers and broadcasters. Business takes place through references and known contacts while trade fair acquaintances become business associates only through a prolonged period of contact or through mutual visits to respective territories. Informal gentleman's agreements based on trust are entered into by format trading parties whenever they divulge format information to each other. Buyers who do not conduct themselves according to these gentleman's agreements risk being 'tainted' in the industry. 'Shame' or 'taint' is another social norm which has emerged as an industry convention owing to the interconnectedness of a small nature of format professionals in senior positions in the industry where decisions are personally tracked and personal reputations are at stake.

Such is the notion of ‘shame’ that the actions of a few imitators from a certain territory or region can discredit an entire territory or region.

The above protection strategies can be considered as format industry conventions. Theories by Becker (1974) and Sanders (1982), arguing that a focussed and structured artistic output taking place in a network where people shared conventions and understandings that made collective action simpler and less resource intensive, are corroborated in the above format protection findings. Thus, research proves the existence of ‘industry conventions’ and ‘social norms’ in television formats trading and adds to the literature in these subjects. These findings also endorse Fombrun’s (1996) theory that reputational capital provides distinct advantages for companies – research findings suggest that an increased protection of formats is advanced by the corporate reputation of a format developer or distributor.

Failing all else, consolidated format distributors utilize some retaliatory actions they have devised to deter the activities of imitators. Distributors can refuse to sell a popular format’s ‘finished tapes’ (for instance, an original American Idol tape to a Malaysian broadcaster which will attract audiences without any format localisation) by using copyright law which protects finished expressions of formats. Moreover, a powerful distributor with industry clout formulates a policy of ‘*no further supply*’ of programmes from its library or of ‘*no further business*’ with its various subsidiaries while convincing other members of the format trade community to mete out a similar fate to a repeat imitator.

Reputation also plays an important role when contracting parties falter on contracting promises (Caves 2000). If a format buyer decides to produce a formatted show by substantially modifying format elements not authorized by the seller (thereby effectively recreating the format) in its second season (i.e. second year of the would be contract) on a network and hence refuses to pay the agreed format rights fee, the seller has few options from a property rights point of view to enforce the buyer to continue paying the

rights fee. Though breach of confidence and elements of contract law may be used in litigation (or the threat of the same), considering the aversion to regulatory frameworks highlighted at the beginning of the chapter, format producers may rely on the reputation aspect. Hence, the transgressing buyer may not benefit from further format rights options or other finished programming from the format producer.

The above strategies of format protection are implemented through international trade fairs such as MIPCOM, NATPE, DISCOP and ATF. These trade fairs act as a gathering of the tribes for the format industry and provide opportunities to launch new formats and create valuable relationships and social capital. Such relationships facilitate creation of hierarchies to decide which firms are the larger players or who are the most innovative. A trade fair is the only time in a year where the entire format community comes together under one roof to discuss diverse issues facing the industry such as format imitation, thereby laying a foundation for joint action, government lobbying etc.

The above findings illustrate the role of trade fairs in the format industry and further add to their understanding, first initiated by Penaloza (2001) and Havens (2003) who claimed that trade fairs served the function of establishing identities of participants, instructing them in the business culture, and fostering shared conventions about how the industry functions.

9.1.4. Information gathering & in-house legal capabilities

Certain generic capabilities have been isolated which allow for one or more of the above market based protection strategies to be employed by format developers. Information gathering expertise, backed by a dedicated imitation disclosure mechanism, plays a role in employing timely market based strategies to prevent format imitation. Disclosure strategies include the use of in-house research personnel, specialist television research data aggregators, covert spotters in key television territories, and developing

better relations across several key television territories so that news of format imitation travels fast to a format originator.

The use of in-house legal teams assists in the management of format rights and related contractual issues besides advising sales and creative staff in trade negotiations and international business regulations. Furthermore, these act as a signalling and posturing device to the format industry when an aggrieved distributor wishes to use aggressive IP posturing and legally oriented ‘IPR rhetoric’ in its ‘cease and desist’ deterrent letters to suspected imitators by laying down specific claims of the originator and threats of potential legal action. This aggressive posture validates the developer as one who seriously acts upon imitation attempts, thus buoying confidence levels in buyers and thereby resulting in increased sales for such a developer’s formats.

9.2. Theory of TV Format Protection and Exploitation

As evidenced in this chapter and illustrated in the figure below , market based strategies of format protection have been synthesized from an analysis of semi-structured interviews, based on theoretical propositions which in turn were developed from literature and were contained in an interview protocol. A few strategies have also been synthesized through an analysis of exploratory responses during the interviews. These market based protection strategies can be classified into three groups, **‘Formalizing and Transacting Know-how’**, **‘Managing the Brand’** and **‘Distribution and Industry Conventions.**

Theory of TV Format Protection & Exploitation

(Singh, S., 2010)

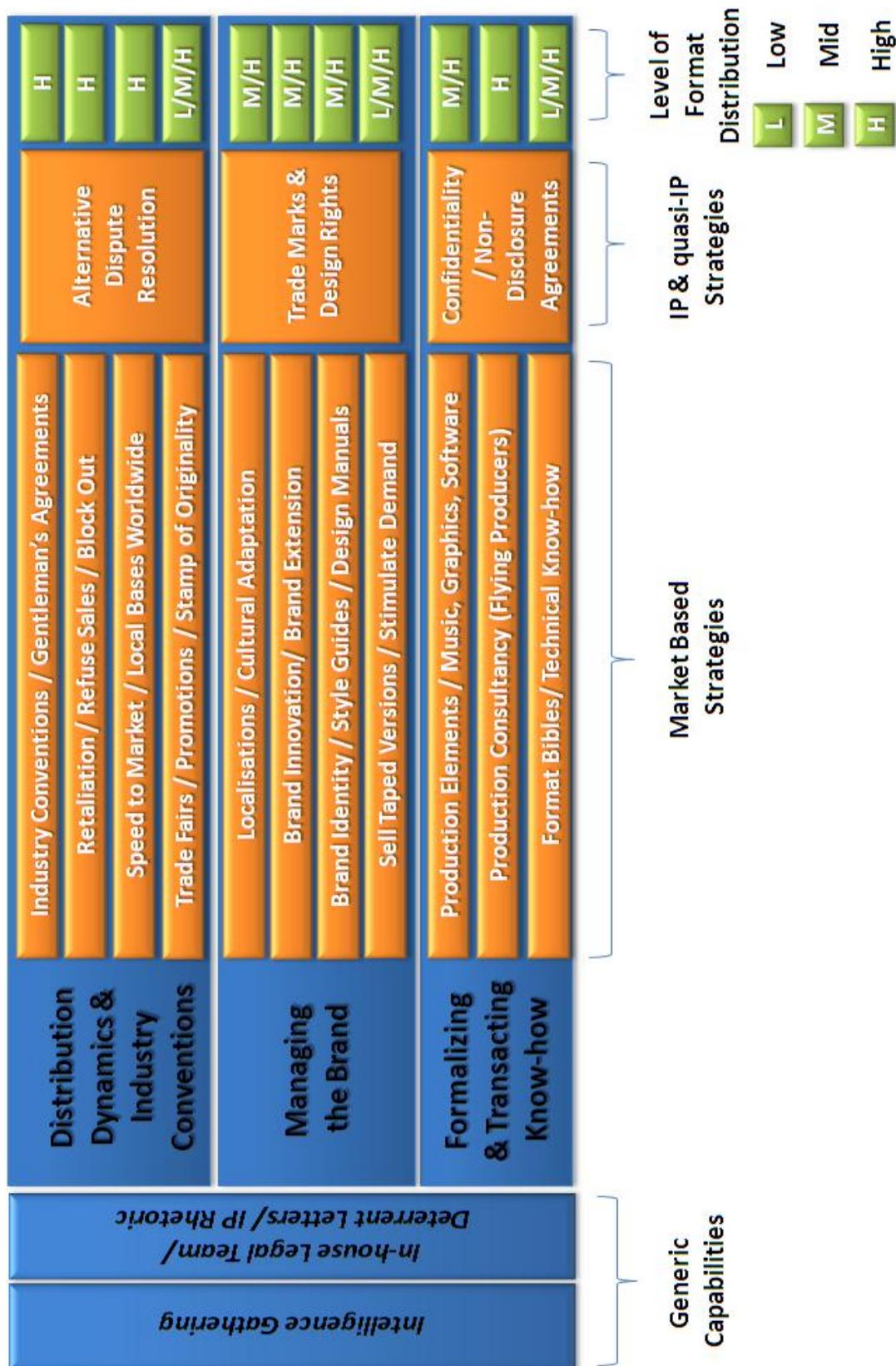


Figure 9 Theory of TV Format Protection and Exploitation

The first group, termed ‘Formalizing and Transacting Know-how’, is characterised by an attempted formalisation of knowledge which can then be transacted. Respondents spoke of technical know-how, production knowledge and programme making expertise that resides behind the camera, and is not visible on screen. These include elements such as ‘how to source contestants’, ‘how to involve audiences’, ‘where to place the lighting’, ‘how to pace a series’ and so on. All of these are combined in documents such as the ‘format bible’ which are implemented by flying producers, and supported by raw production elements (such as music, graphics, software, etc.). The market based strategies in this group are legitimized under a complementary quasi-IP based strategy of using confidentiality and non-disclosure agreements.

The second group of market based protection strategies involves treating the format as a brand and to be managed as such. Key protection strategies in this group include communicating a consistent brand identity through ‘style guides’ and ‘design manuals’, innovating the format brand which becomes harder to imitate as a moving target, and localising the format’s key elements to overcome ‘cultural discount’ which endears the format to viewers. Brand extensions such as merchandising, product placements and other tie-ins give a further protective shield which imitators find difficult to overcome. Selling tapes of original format productions help to test the market potential of a format and stimulate responses from audiences, thus reducing an imitation window for a potential copycat. Elements in this group are provided legal legitimacy using IP based strategies of obtaining trademarks and design rights for several elements of a format.

The third group of market based protection strategies concerns dynamics of distribution capabilities and mutually respected industry conventions. If enhanced distribution arrangements enable a speedy roll out of a format using local production bases, an ‘early-to-market’ format can become a ‘category killer’, leaving little space for competing shows in the same genre.

Also relying on the structure of distribution networks, are industry conventions that conceive of social norms as sources of incentives (in the tradition of the law & economics literature). Imitators face retaliations in the form of reputation sanctions during trade fairs, or denial of access to content and library programming that they desire. Moreover, the emergence of ‘shame’ or desire for a positive social capital, amongst industry peers as well as audiences in some instances, keeps a check on rampant copying of formats. Elements in this group are legitimized using quasi-IP based strategies of arranging format registries and alternative dispute resolution services.

Underlying the above three groups of strategies are two generic capabilities. The first relates to the gathering of market intelligence or ability to spot copying trends, and responding to copying by putting potential imitators on notice. The second is a sophisticated legal capability that enables elements of all three groups of strategies by producing non-disclosure agreements; contracting over production bibles, logos and trademarks; instigating alternative dispute resolution; and drafting deterrent letters. A graphical interface to the theory of ‘TV Format Protection and Exploitation’, i.e. Figure 9, illustrates the dynamic relationships between the market based strategies, the complementary IP and quasi-IP strategies and the generic capabilities – all of which together help to achieve an optimum protection level for a format laying a foundation for effective exploitation in international markets.

The level of distribution, the format is exposed to, is a phenomena discussed earlier in this chapter. This is represented with the letters H (for High), M (for Mid) and L (for Low) levels of distribution. These letters on the graphical interface indicate at which level a market based or IP/quasi-IP strategy is utilized by a format firm. It may be noted that the level of distribution can be correlated with the resource capabilities of a format firm. Hence, certain protection strategies can only be utilized once a format firm

operates, say, a high level distribution, while others can be utilized at a low or mid level of distribution.

Interestingly, the complexity of the strategies also increases with the increase in the level of distribution. In the model (Figure 9), ‘Trade Fairs’ and ‘Trade Promotions’ help to establish a mark of originality for the format creator/ distributor in the trade market. Since it is a less resource intensive and less complex strategy to use, it is seen being used more frequently in the format industry. This strategy is particularly suited to a low level format distribution system. On the contrary, ‘speed to market’, is a more resource intensive and complex strategy, denoting a high level format distribution, and is encountered less often in the industry. High level strategies help to provide a higher level of protection while low or mid level strategies provide a corresponding level of protection to the format.

The above model can be utilized by firms utilizing a low or mid level distribution of their formats to increase the protection, and thus exploitation potential, of their formats by striving for a high level distribution, contingent upon their resource capabilities and their readiness to handle complex strategies. In this way, this model is posed to provide a protection and exploitation benchmark for smaller and medium sized format firms who usually are given to practice a low or mid level distribution of their formats. At the same time, the model is useful to format firms from emerging economies that do not have experience in international format trading and thus, want a ready-made tool to arrange format protection and exploitation strategies.

On the other hand, larger firms in developed television markets, such as in Western Europe and Americas, who are easily resourced for a high level distribution, may be able to use the model as a reflexive tool to plan and administer a format protection and exploitation campaign.

9.3. Areas for future research

The researcher has demonstrated in this thesis that the ‘IP without IPRs’ theory of market based strategies allow the TV formats industry to effectively protect and exploit their formats. Thus, this research provides a theoretical contribution to the strand of literature that alternatives to intellectual property rights can provide sufficient incentives for producers and developers of cultural goods. This means that formalized regulatory regimes are not necessarily required to foster creativity and innovation. In the future, the researcher wishes to continue to add to this research strand, through theoretical as well as empirical work.

There are several examples of cultural product industries where forms of regulation are imprecise or unenforceable but where market failure has not happened. Cultural products such as recipes in haute cuisine (Fauchart & Von Hippel 2007), magic tricks (Loshin 2007) and comedy (Oliar & Sprigman 2008, Decherney 2009) are some which have been identified as cultural product based industries that fall into the negative space of IPR protection and where norms and industry conventions based IP system are evolving. Here, there is a need for empirical testing to formalize the market based ‘IP without IPR’ solutions each industry has evolved in the absence of a precise and enforceable regulatory framework.

The ‘IP without IPRs’ model also exemplifies the growth of the TV formats industry in emerging economies. It explains that format rights are respected more by television firms in this growing part of the industry rather than by firms belonging to more developed television industries of the world. On one hand, this can be due to the propensity of firms in developed markets to extend the boundaries of formalized IPR as well as the ‘IP without IPRs’ strategies to create imitations masked as ‘inspirations’. On the other hand, it can also be the need for firms in emerging economies to attain access to an international quality television product while at the same time trying to be highly resource efficient. This theme needs further elaboration, and when

researched, will help to provide a balancing, pro-South perspective to the view that emerging economies are apathetic and disrespectful to any notions of IPRs.

This thesis also highlights the subdued effectiveness of format industry trade associations such as FRAPA to control the imitation of formats or to provide a post-imitation mediation services, despite their claims to the contrary. However, an interesting development supports FRAPA's claim. The World Intellectual Property Organization (WIPO - a specialized agency of the United Nations and constituent of the World Trade Organization) works towards a balanced and international IP system under an international mandate. WIPO has tied up FRAPA in April 2010 to provide alternative dispute resolution (ADR) services for format rights disputes. On one hand, this development validates the worthiness of undertaking this research project and showcases its real life significance to the international trade of cultural products. Moreover, it provides for an acute timing of the publication of results from this thesis. On the other hand, it raises the question why WIPO would have tied up with FRAPA, given that trade associations such as FRAPA have been found, through an analysis of empirical data contained in this thesis, to be losing a broad appeal in the formats industry and that market based market approaches are sufficient for the protection and exploitation of formats.

It may be accepted that the above development exemplifies WIPO's stated position to drive towards ADR services in particularly complex international disputes of copyright (and other IPRs) (through international treaties such as the New York Convention 1958 which aims to provide a finality and enforceability of ADR awards). However, the impact of this on the format industry, and its variously resourced and sized companies, calls for further study. This proposed study is particularly relevant as private individuals and companies, besides WIPO, have also been noticed by the researcher to have entered the lucrative ADR services sector.

10. Original and Wider Contribution to Knowledge

10.1. Original academic contribution

The aim of this research was to fill the gap in knowledge created by the paradox of growing international trade of television formats amidst legal uncertainty about their protection. Legal strategies of format protection leave an explanatory gap in trading of formats. This is filled with the development of an empirically researched integrated theory of format rights protection and exploitation. Utilizing an interdisciplinary approach, the researcher firstly empirically evidenced the legal uncertainty of the protection of format rights by means of a content analysis resulting in a bespoke database of format rights disputes. Secondly, using empirical evidence from semi-structured interviews, the researcher developed an integrated theory of format protection and exploitation. This theory, consisting of a set of 3 strategies (1) formalization and transaction of know-how, (2) managing the brand, (3) distribution dynamics and industry conventions, fills the gap of understanding the growing international trade of format rights in the absence of a precise and enforceable legal regulatory mechanism. In summary, a *‘theory of format rights protection’* and a *‘formats rights dispute database’* are original contributions to knowledge.

From a policy point of view, the *‘theory of formats rights protection’* questions assertions that proprietary legal rights of protecting cultural goods are the best way of ensuring competitiveness and growth of cultural industries. Using the case of television formats, the researcher has demonstrated that alternatives to proprietary legal rights (such as formalizing know-how, localizing brands, distributing effectively and shaping business norms in social networks) can enable businesses to thrive in environments where intellectual property rights are either non-existent or not fully enforced. Contained in this thesis, the ‘IP without IPRs’ model shows empirically that alternatives to strong IP protection can help cultural industries flourish.

At the same time, the *‘theory of formats rights protection’* also lays the foundation for format developers from emerging economies to position their business strategies for competitive advantage. Particularly as cultural industries grow and cultural exports become a strategic focus for governments in emerging media economies such as China, India, Russia and Latin America; the theory developed in this research, along with the *‘format rights dispute database’* will be of great use to cultural industries in these countries.

The empirical analysis generated in this thesis has also formed the basis for research papers and other publications (evidenced below).

10.2. Research funding

In 2008-09, this research benefited from a funding grant from the Economic and Social Research Council (UK) [**Grant No. RES-186-27-0012³⁸**] whereby elements of the grant research (such as creation of database, generation of interview protocol and interviews within senior managers at Fremantlemedia.) found their way into this research. Thus, this research received an academic validation and encouragement from one of the highest ranking research bodies in the world.

Key outcomes of the ESRC funded research included:

- ✓ The database of TV format rights disputes emerging from the content analysis in this thesis formed the central part of the grant project. It yielded a taxonomy of rights disputes, besides other statistically useful observations.
- ✓ Many aspects of this research were appreciated by international academics as well industry professionals. The project is now publicly

³⁸ The lead investigator was Prof. Martin Kretschmer from Bournemouth University, UK.

available in the form of a digital learning and teaching resource at <http://tvformats.bournemouth.ac.uk>.

10.3. Publications and dissemination of findings

The results of this research have been disseminated through research papers at international academic conferences, a dissemination seminar attended by an international audience of television executives, lawyers, academics and policy advisors, a forthcoming scholarly journal article and an accepted book chapter (details below). As evidenced in the previous section, the results of this thesis also found academic acceptance through the rigorous scrutiny process of the Economic and Social Research Council (UK). The process of carrying out this research as well as disseminating its results through web-based video case studies was appreciated by ESRC (UK) and they have invited the project researchers to create a research process case study.

In summary, some avenues used by this PhD research to disseminate its findings, in part to seek wider academic validity, have been the following:

- ✓ Kretschmer, M. & **Singh, S.** (2009) “IP without IP - A model of international trading in TV formats”, to be submitted to a journal of international standing such as Research Policy, Organization Science or Long Range Planning.
- ✓ (Forthcoming book chapter) Kretschmer, M., & **Singh, S.** (2010) Exploiting Idols – Trading TV Formats without IP Protection In: Zwaan, A.J. (eds.) *Your Fans are Waiting, an academic volume on Idol*. Durham: Duke University Press
- ✓ (Online resource) Kretschmer, M., Wardle, J. & **Singh, S.** (2009) ESRC TV Format Rights Project - Launch of Online Resource

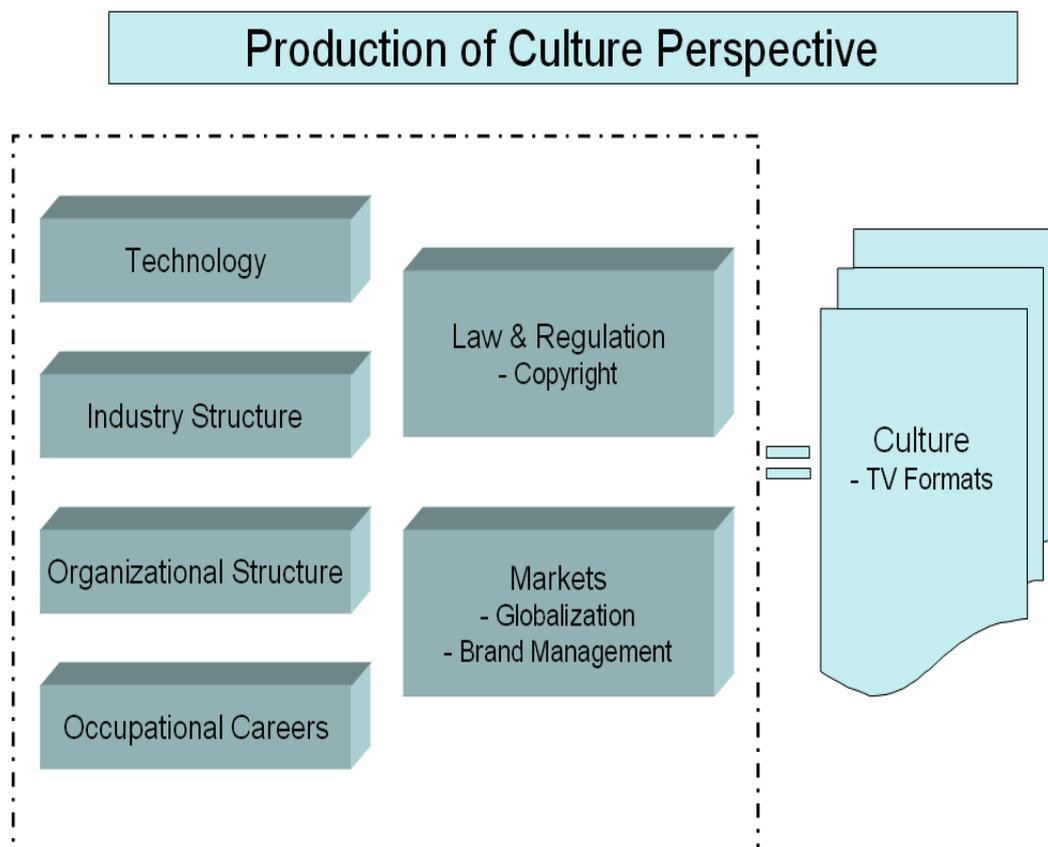
<http://tvformats.bournemouth.ac.uk> on 16th June. Fremantlemedia Ltd. (London).

10.4. Research papers at key conferences

- ✓ **Singh, S., 2010.** Trading Idols in the absence of a regulatory framework. In: the International Conference on Strategy and Organization (ICSO). 14th & 15th May. Institute of Management Technology (IMT). Ghaziabad (India).
- ✓ Kretschmer, M. & **Singh, S., 2009.** The Paradox of TV Formats. Why pay for something that is free? In: the First Annual ISHTIP Workshop. 26th & 27th June. Università Bocconi, Milan (Italy).
- ✓ **Singh, S., 2008.** Marketing Strategies for Television Formats Protection. In: Television without Borders – Trans-national and Translational Exchanges. 27th-29th June. University of Reading (UK).
- ✓ **Singh, S., 2008.** Empirical observations on television format rights disputes from 1987 to 2007. In: DIME/CIO Creative Industries Conference. 22nd, 23rd May 2008. Birkbeck College, University of London (UK).

11. Appendices

11.1. ‘TV formats and the production of culture perspective’ – graphical representation



Adapted from Peterson & Anand, 2004.

11.2. Interview protocol

Legal and Non-legal strategies for international protection of television format rights - Interviews Protocol
© Sukhpreet Singh, Lead Project Researcher, Bournemouth University

❖ Non Legal Protection– 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– Business networks, access control and other strategies

- **Power Relations & Clout (*Big boys can get away with it*)**
 - Depends on territory or country OR genre OR company size/ resources available?
- **Access Control & Confidentiality (*attending trade fairs, showing format to registered buyers, forms to track who has seen the format, etc.*)**
 - Depends on territory or country OR genre OR company size/ resources available?
- **Trust (*Gentleman's Agreement*) and Reputation**
 - Depends on territory or country OR genre OR company size/ resources available?

❖ Legal Protection – Copyright and other IP Rights

- **Current IP laws (copyright, etc.) are 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/ 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?

❖ **Other things** which help protection of format rights? Suggestions on increasing protection...

11.3. Sample transcribed interview

Yoko Takashima (YT), NTV, Japan
& Tim Crescenti (TC), Independent American Format Distributor

Interview Dated 27th June 2008

Transcribed on 5th July 2008

SS: Hi Yoko, I understand your company buys and sells formats. Could you give me a brief summary of what you do, i.e. what exactly is your business?

YT: Our main business is broadcast, so we produce in house, we broadcast. And whatever we broadcast and produce, we try and see if there is any potential in selling that overseas, outside Japanese market. And also since we are a broadcaster, we although very rarely but we do acquire formats from abroad.

SS: Ok, that's interesting. So when you buy formats what kind of things do you look at?

YT: It's totally up to the producers. But I don't get involved with that, as my job is about selling.

SS: Ok, so tell me about your feelings about protection of formats generally? What do you think about...

YT: It's very difficult. I think the format business has established itself but in Japan, as far as I know, it's not protected by law. So, it's simply a business we do. It's not something we rely upon law to protect us.

SS: So, if someone copies you in Japan, what do you do?

YT: There is not much we can do.

SS: So you loose business to say, a competitor's programme on another channel ...

YT: We try not to do something that our competitors are doing, as we know we can do something better.

SS: But what if you started something and they have copied you in the next 2, 3, 4 weeks...

YT: So then it will be covered in the news, industry trade...viewers will try and say something about which it, which will cause a bit of promotion about the show as well...."the other network's show looks like the one on NTV".

So they wouldn't copy unless our show was good.

SS: So if they copy, then your show was good and hence your show gets more publicity...

YT: In a way...I mean from a legal side...I don't know what that would stand...

SS: No that's fine. From a market point of view, what would you say if you had a format and someone copies you in that market, what will you do?

TC enters the conversations...

TC: Kill them (laughs all around)...First of all copycats are usually inferior anyway, so according to a natural selection, in the end the copycat is the one to be failing. But in the beginning, you totally have to rely on your business relationships in all markets. And I think that's a key thing: I will never send a paper format, something that hasn't been produced, to somebody that I do not know.

SS: How do you sell it then?

TC: Thankfully I have been doing this for 12 years, so weather it is a broadcaster in Norway or a producers in Sweden, we will sell to somebody we know. Paper formats are really hard to protect, that's the most difficult thing. So my advice last week to the class in Banff was put something on tape. If you have to shoot a demo, you shoot something where...one that helps you in the development process anyway, for once you put something on tape, you have little more substance...um, put as many elements in that format that are protectable ...

SS: Like what?

TC: I mean, for instance we had a show in the UK – we did a pilot a few years ago when I was with the Regression Channel. So initially we talked to people about this regression show, that we want to take people to their past lives, and maybe go explore what happened...that's more of a documentary. So it was decided to reveal this information to 2 reporters who had a certain number of days to interview a certain number of people...so these numerical definitive elements then add up to becoming a format. So any control factor, anything you can control, is the best thing you can do. I remember a few years ago, when Who wants to be a millionaire had started - I hadn't even seen it in UK, I travelled to Denmark and I was sitting with this broadcaster and she asked me “Do me a favour, take a look at the Denmark version from another broadcaster and then look at Who wants to be a millionaire and let me know your thoughts”. So I came back to my hotel room and I saw these graphics, a certain amount of lifelines, and then when I looked at the UK version – I go, Holy Cow! It's the same exact show.

SS: And it went to court as well. And they lost.

TC: Yeah.

SS: So would you guys say it depends from country to country or territory to territory? This protection issue...

TC: Ahh...yes, because in certain countries or territories, you have no idea what's going on there?

SS: Like what?

TC: Like in Africa, for a small production company or a small format company like us, we don't have the sales to resource production staff to sell to South Africa or in South America. So all we know someone can go our website, look at a promo and possibly try to copy it but the best thing you have is the production expertise and the production knowledge – that's the guarantee that the show will be done right.

SS: Ok that's interesting, how about power relationships, for example you mentioned that you are a small guy, you have to extra vigilant...but if you are big company you would necessarily have a legal department ...

TC: Yeah, guys like Sony have a big legal department, a wave of attorneys that can write very mean stern letters. But the other things that they have, they have leverage...and that's what a big studio can provide. Even when I was working with Sony and Fox, and were trying to fire formats: one of our selling points will be: “we can protect your formats. If someone tries to rip you off, we have the half of The Newly Wed Game, I think it happened in Panama at least 10 years ago, and we licensed to another broadcaster in Panama, and strangely enough 3 weeks before our official Newly Wed Game format, the competitor had something very similar on the air. So Sony was able to send a letter to them, basically saying, “If you ever want to buy a Sony property again - something like Spiderman 3, Charlie's Angels 3 - you better pull the product”. They pulled the show! So Sony in this case offered the leverage as a key resource.

SS: I think you have already mentioned about the trust or the gentleman's agreement, i.e. you sell to people you know and those you trust...

TC: Yeah, relationships. That works in formats as I have been doing this for about 12 years. And Yoko has been doing this for how long?

YT: Nine years.

TC: So you have those relationships. Certainly you can go to FRAPA and deal with them too. And they have been successful in a few areas, still it's difficult in some areas. Depends how much energy you want to put in.

Probably that’s true in anything. But relationships are certainly a key factor.

SS: Tell me about promotions – for example if you are selling formats and if you want to entice buyers, what kind of promotions do you do?

YT: Oh, we want to do more than we do now.

SS: What do you do?

YT: We don’t do much (laughs around)...but one of the things that is good for us is that we are a network. We broadcast whatever we produce. So the formats that we bring to the market have been broadcast already in Japan, at least. So, it gives us protection because we can say we aired this 10 years ago, or yesterday or whatever – I mean in the past. So if something similar comes up, we can argue that our show was aired prior to theirs. I think with the internet and video sharing sites becoming more popular, its easier for people to get ideas from around the world because (SS its all interconnected)...yeah because 10 years ago, you wouldn’t have Youtube to take a peek at what’s popular in the opposite side of the globe. And then to be at the market and really have your presentation ready at least.

SS: So how important is this market?

YT: This market? Well, this is my first time. So I am trying to figure it out myself...

SS: Have you been here before Tim?

TC: I have been here for 4 years, and what I like about this market is, for example the opportunity to meet you, in a very casual, you know. I remember MIPCOM – its back to back half hour meetings, with people running all over the Palais. And you always bump into people and say, ‘Oh I forgot to get a meeting with you.’ But here its much more relaxed environment. Obviously its much more focused on the Eastern European market but there people from South America here, from UK, obviously Asia, so it’s a growing market – and I hope it doesn’t become too big (all laughs).

SS: But tell me is the market good or bad for format protection? Because if you are presenting your ideas, and if someone...you know....

TC: I don’t think it’s bad. Certainly it’s good for you to generate the buzz. (YT concurs...yeah) We had the last market at BANF. I sold a format there which debuts on ABC next week called ‘I survived a Japanese gameshow’! The original is very big in Japan and I sold that to 16 countries and in MIP last year, we had a frenzy, even if it has nothing to do with our client NIPPON, it was a paper format created by 2 Danish guys who pitched it to me. I had a relationship with ABC whom I could trust – I wouldn’t go to any networks with a paper format – but here I had a relationship. Anyway, in that market we were inundated at the Nippon booth, all these people

coming up to us and saying, ‘What is this big in Japan show?’ ‘What is this I survived a Japanese gameshow format?’

SS: So being at a market really helped you guys generate the ...

YT: You can’t be all the markets, there are too many. (TC concurs, Yeah sure). And if you want to focus on say, Eastern Europe, its better to come here than go to MIP, because...

SS: So do you have a priority of markets if you have a certain budget?

YT: We have a small budget, but MIPs and MIPCOMs are one of the most important markets for us at the moment. We were the first Japanese broadcaster to exhibit at MIP probably more than 30 years ago and we have been attending ever since. We consider going to Asian markets because it is closer...

SS: So where in Asia go you sell?

YT: Generally, Taiwan, Hong Kong, Korea are our 3 biggest markets. Of course Malaysia, Indonesia, Singapore and some others where I guess Japanese content is well received in these territories than others. But in terms of formats it is harder to sell to these countries than to South East Asia. So depending on where you want to sell...

SS: Any particular markets favourite for you, Tim?

TC: MIP and MIPCOM, and I think NATPE has descended in the last couple of years. Because there are so many markets now and I think the timing of NATPE is not so good. Well, NATPE was originally created for really the syndicators in the US. And now with syndications happening through the stations directly, there is not really much of a need for a syndicator’s market. So I would rather than take my money to MIP and MIPCOM, I would do individual sales trips. It’s much more effective to take a flight to Warsaw or Stockholm, have some lunch, dinner or tennis and that’s the fun part of international business, it’s much more social and personal. So I would always spend my money on this.

SS: I think you have touched upon something interesting here about promotion such lunches, or tennis ...what else do you guys do to entice buyers?

YT: Sometimes you could get them gifts or nice mementos that we would do at Sony all the time. I remember once we introduced 2 shows, Black Jack Bowling and Russian Roulette, at a market. And we had these nice clocks which we sent to all our clients as a follow up. And when you go to their offices, it’s a welcome reminder of our show. And we heard from people like Michelle Rodrigues (from Distraction) at BANF last weekend that they used to do similar things. For example, they would play the format as a

game at a buyer’s party...to give everyone a flavour of the show!

SS: Excellent, I think we have covered most of the points. One last question to both you guys: how about the brand? Do you think the brand plays a strong role in protection? For example, the Idol brand comes from Fremantle? So is the Idol brand important or that it comes from Fremantle important?

TC: I think the name is important. Unfortunately, I hate the word ‘brand’, because we are in the business of doing TV shows, they look at it and say it has to have some merchandising, some online site, some SMS connectivity, T-shirts, CDs, toys....so they are buying more than a television show...

YT: ...yeah, when we produce our original shows in Japan, and since advertising money is going down as sponsors have a lot of venues to spend their advertising budget, we need to build the brand and do licensing and online stuff to generate revenue. Also, the name or title is important for us in Japan, but when we go international markets, the original titles are in Japanese, we wouldn’t use the same. For example, Dragon’s Den is one of our formats – it’s not Dragon’s Den in Japan. It’s ‘Money of Tigers’ in Japanese, and although ‘Dragon’s Den’ may not make much sense in English too, it created a brand for us. So it’s the Dragon’s Den brand, not ‘Money of Tiger’ brand.

TC: Yeah the brand also adds another few layers of protection to the format. As I said earlier, more the layers to it, more the depth, better the protection possible. And all these elements add to the protection rather than just have an idea for a television format.

SS: Finally, if someone was to say to you that we would like to institute a special legal ‘format protection right’ what would you say?

TC: I would say that is great (YT concurs that will make our lives easier). That would be terrific....

YT interjects: From a sales point ‘yes’, from a network point ‘no’. A producer may find it very difficult. It may have a negative effect on our creativity, because we wouldn’t know if the show that we are producing has been ‘format righted’ in South Africa, for example.

TC: Yeah, there are times when some shows are pitched to us, and we would say ‘oh, we did that show 14-15 years ago.’ Japan is very innovative and there are many talented shows but probably 60% have been produced elsewhere. So, real difficulty in finding whose legitimate idea it has been. And I am sure you have done your research on the ‘I am a Celebrity’ vs. ‘Survivor’...and when that one came back to say that was not a rip-off, I was like ‘what?’ The Supreme Court justice became Steven Spielberg and said, ‘it was shot with a different artistic flair’...I mean put some people on an

island, give them some immunity challenges, somebody wins in the end, that's Survivor! (laughs all around).

YT: It's hard, it's hard to say how you look at formats.

SS: So what do lawyers tell you what protects formats from a legal point of view?

YT: From a legal point of view, my lawyers tell me you can't protect a format. The idea is not copyrightable. It's not protectable. So the brand and logos, etc. are important. Because logos, you can trademark. And then have something on tape, have very physical things created, then that can be something that lawyers may be able to work things out on. Otherwise, they say Yoko sorry, Japanese law wouldn't protect formats.

SS: Excellent, any final points you guys have?

TC: I think formats are less protectable in Germany too. But I always say, as I did to this class last week, the more that you have the better it is. A format to me is like a recipe. If you go to a fancy restaurant, and order this wonderful lasagne, and if you want to recreate it, you have 2 options. You can either go and spend 3 months trying to buy the right tomato sauce, the right paprika, the right garlic, and you keep trying and failing....or you go to the chef and you say, I will pay you a 1000 bucks, can you just give me the recipe? And then you go, you can adapt it a little bit, but at least you have the original formula. So I think that's the thing about formats. At the beginning, people do try to rip off but usually the first and the best is the one that lasts than the knockoffs. There is a reason why you pay for the production knowledge and expertise. I think the market has become a little bit more educated that they realize that. Before they would say what do we need you for? It's a wall, three chairs on one side, it's a roulette wheel and a puzzle board, what do we need you for? I think the market place has become much more educated about it.

The second part is also that they know if they rip off something from us, six months from now, we might have a real in demand format and “you aint go to get it, coz we are going to remember...” (laughs all around)

SS: I think we have ended on a very positive note, particularly the recipe analogy being very illustrative. And we touched upon reputation, clout, brand and so on....Tim Cresenti and Yoko Takashima, Thank you so much for taking part in this interview.

TC & YT: Thank you so much.

11.4. Screen-shots of popular international formats

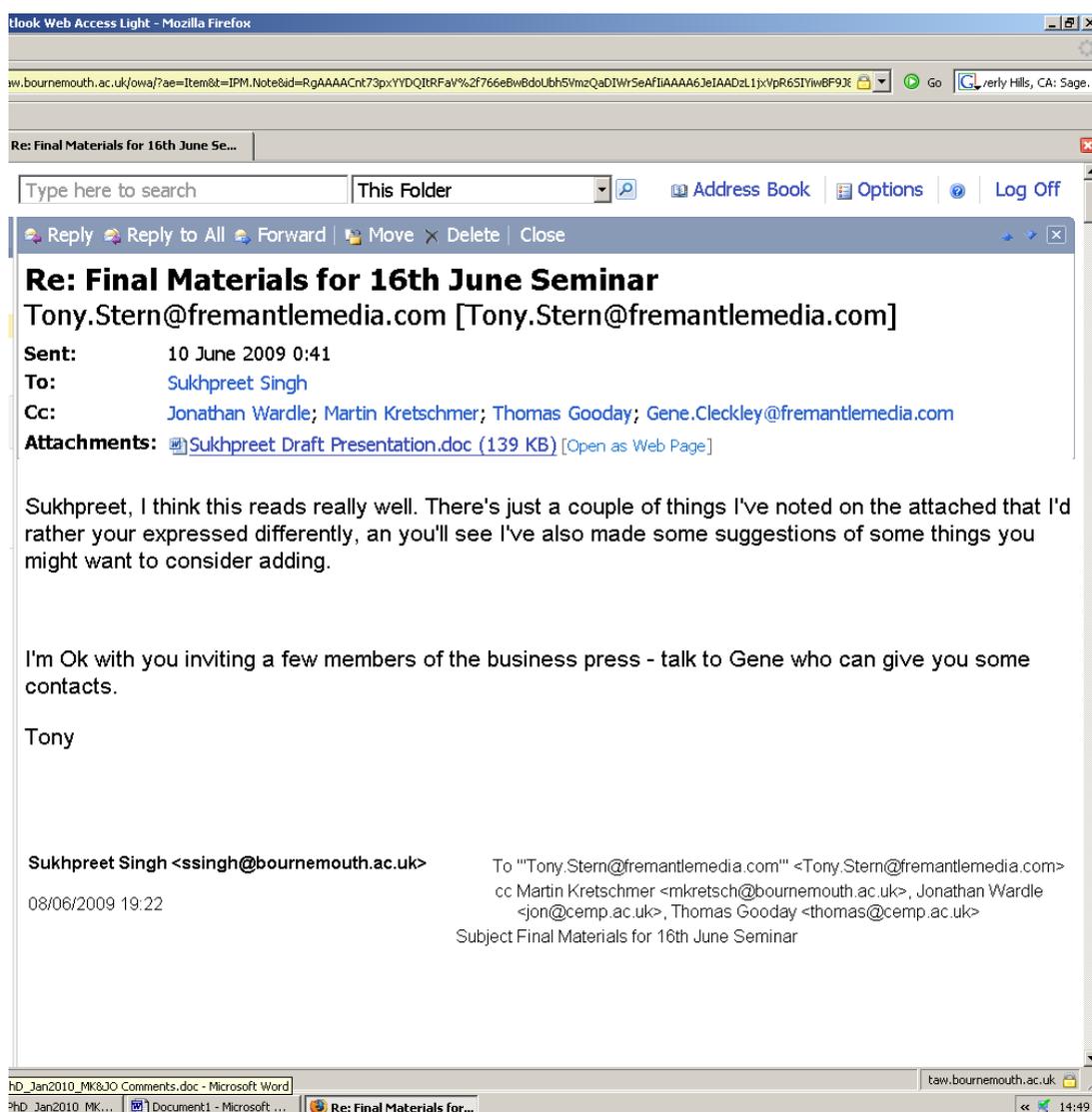


11.5. Chronological launch of a popular format (Idols)

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	Česko Hledá SuperStar	February 2004	TV Nova
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

11.6. Example of 'Member Checking' Correspondence

In the following image, the researcher illustrates how he satisfies 'member checking' with one of the interview respondents. In this instance, the researcher had analysed the semi-structured interview data and presented preliminary results as part of a research dissemination seminar organized at Fremantlemedia's premises (an outcome of the ESRC grant associated with this PhD research).



12. Glossary

Brand extensions	The format <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, haircuts, 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 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-incidental 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).

<p>Format Copycatting (also sometimes called Format Plagiarism/ Pirating/ Rip-off)</p>	<p>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.</p>
<p>Format Distributor</p>	<p>A company or individual who sells formats from other companies or individuals on an 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.</p>
<p>Format Owner</p>	<p>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.</p>
<p>Format Producer</p>	<p>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).</p>
<p>Format Rights/ Format Licence/ Format Options</p>	<p>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.</p>
<p>Format Series/ Season</p>	<p>A format may run stripped on a channel’s schedule say from Monday evening to Friday evening, 1 hour a day; or it 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</p>

	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.
Format trade	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).
FRAPA	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.
IPR	Intellectual Property Rights, an umbrella term used since the 1960s to describe a group of legal rights to intangibles, such as patents, copyright, trademarks, 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.
Licensing Territory (also see Production Territory)	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.
Merchandising	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.
Phone-in revenues	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 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

	<p>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.</p>
Tape sales	<p>‘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.</p>
Further information on formats rights trading	<p>http://tvformats.bournemouth.ac.uk</p>
Format Recognition and Protection Association (format industry body)	<p>http://www.frapa.org</p>
Wiki on <i>Idols</i>	<p>http://idol.wikia.com/wiki/Idol_series</p>

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