

Dispute Prevention and Resolution in the Format Industry

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Who is Fremantle Media?

- Alongside Endemol the largest producer and distributor of TV formats in the World
- Produce in 21 countries, license formats into the remainder
- In 2010 produced or licensed 296 Entertainment series around the world
 - 35 x Got Talent
 - 22 x X-Factor
 - 20 x Family Fortunes
 - 19 x Farmer Wants a Wife
 - 17 x Idols

Litigation is a Lottery in the Formats Business

- Very few cases have gone all the way to judgement
- Still unclear whether formats are protected by copyright
- Unfair Competition is a better cause of action
 - Defendant acted in an unfair manner
 - In doing so caused damage to a competitor
- FM has two cases being litigated at the moment

Managing Expectations of Your Clients

- Very important that your commercial people understand what is and is not actionable
 - No point embarking on litigation with minimal prospects of success
- Copyright Law does not easily cope with formats
 - Are they just a collection of ideas or an expression of the ideas ?
 - Format would have to have been worked out in detail in a 'bible'
 - Substantial similarity bar is set very high
 - Not just copied most of the elements, but also the look and feel
- Unfair Competition can be more fruitful if available
 - A number of cases in Europe where successfully prosecuted a format infringement
- Genre is not copying

Encourage and Police Your Own People From Copying

- Litigation difficulties not an encouragement to steal
- Format litigation is very expensive and time consuming
- No interest in exposing the frailty of legal protection
- Format success is not about IP but transfer of know-how
- Very few examples of successful rip-offs

Sources of Dispute

- Relatively few disputes these days in the West
- But still get a few in Eastern Europe, Asia, Lat Am
- We find most disputes start with an aggrieved broadcaster:
 - When you move a show from one broadcaster to another
 - When you have a bidding war for a format

Resolving a Dispute Without Litigation

- Focus on the broadcaster rather than the prodco
- Role of Mediation
- Relationships are vital
- Publicity can be an effective weapon
- Timing is everything
- Be clear what you want

FRAPA / WIPO Mediation

- FRAPA = Formats Recognition and Protection Association
 - Industry body formed to encourage mutual respect for format rights
 - Had a mediation service, now taken over by WIPO
- Confidential, so can't know how many disputes it has handled
- FM has been involved in two mediations
- Difficulty has been that few broadcasters are members

Importance of Relationships

- Best advice I can give is to be big !
- Few broadcasters want to fall out with Fremantle Media
- In most cases if broadcaster is a client we resolve the disputes with a letter or phone call
- But see below re:
 - Knowing What You Want, and
 - Timing

Publicity

- Few broadcasters and production companies want to be publicly accused of infringing IP
- And few advertisers/sponsors/talent want to be associated with a controversial show
- But must be used carefully
 - Don't cross the line into extortion
 - Only use it if you have a genuine case
 - If you bark, you must be prepared to bite !

Know What You Want

- Ideally you want the show stopped
 - But often just changing it is enough
- Would a format fee and credit be enough ?
 - Different for distributors and producers
- Be realistic
 - Unlikely that a broadcaster will discard a produced show

Timing is Everything

- No point waiting until a week before broadcast to make your move
 - Too late to change the show
 - Too much invested to pull it
- Need a good information network if you want to be in the formats business

Summary

- Litigation is a last resort, unless you're a gambler
- Infringing formats is extreme short-termism
- Relationships are key
- Make your claim early and be realistic

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