




# Protecting Television Format Rights

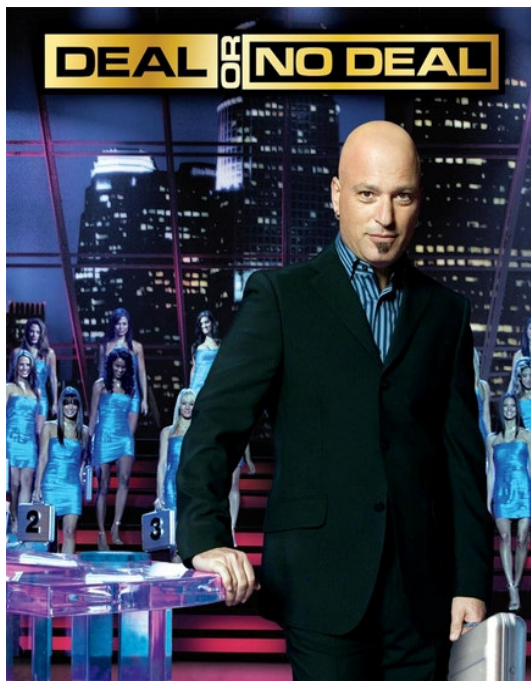
Sukhpreet Singh  
Bournemouth University (UK)

# Context

 **TV formats account for 45% of entire UK's TV export business (DCMS, '05)!**

 **Global format business are in excess of € 2.4 bn (FRAPA, '04) – expected to be € 3.5 bn now!**

 **IPRs protect creators & owners of creative output from copying – not so easy for TV formats!**



22<sup>nd</sup> May 2008

## Unique Problem

- A TV format is an idea of a TV show sold from one territory to another where it is remade as per local preferences.
- The 'actual' programme is not sold but the idea is!
- IPRs [*copyright, trademark, design rights*] & other legal remedies [passing off] - prove ineffective in protecting ideas, leading to format copycatting!



### ***Fundamental Research Question***

*With no certain specific legal framework for protection of TV format from copycats,*

- ✓ *What contributes to the increasing global trade of TV formats despite the legal uncertainty?*
- ✓ *How are formats developed, bought and sold?*
- ✓ *How is regulation responding?*

### **Research Design & Methodology**

- Pragmatic / integrative mixed methods research.
- Content analysis of 59 format rights disputes (instances & cases collected through legal databases, trade press and the internet).
- Literature based theory generation of marketing strategies as a protection mechanism.
- In-depth qualitative interviews with format sellers & buyers to corroborate theory.
- Case study [*Who wants to be a Millionaire?*] How did this successful format thrive?

# Glimpse of Empirical Data

# Protecting Television Format Rights

Sukhpreet Singh, PhD Candidate (Bournemouth University, UK)

April 2008

Format Rights Disputes Database from the TV trade weekly 'Broadcast' 1988 - 2007

(c) Sukhpreet Singh

## Broadcast

Year	Issue of 'Broadcast'	Dispute Jurisdiction	Plaintiff / Claimant of Original Format	Defendant	Infringement Claimed	Legal Action	Settlement / Ruling	Remarks / More Details
1989	04-Aug-89	New Zealand	Hughie Green ( <i>Opportunity Knocks</i> )	Broadcasting Corporation of New Zealand ( <i>Opportunity Knocks</i> )	Copyright Infringement, Passing off	Yes	Ruled against the plaintiff. No action.	Green sued BCN in High Court of New Zealand in 1979, claiming that The New Zealand 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 "dapometer" to measure studio reaction. The court dismissed the case in 1983 forcing Green to take it to the Privy Council in UK which also dismissed it in 1989. Green was unable to provide tangible scripts of his so called '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 accused had caused any financial harm to Green while the show was broadcast in New Zealand and hence an action of passing off could be allowed.
1990	21-Sep-90	UK	Diverse Productions (untitled 'treatment' of a sex related series)	LWT (London Weekend Television), an ITV contractor (for their series <i>Sex Now</i> )	Copyright Infringement of the 'treatment of an idea'; & non-payment of development fee.	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 redvelop 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.
1991	07-Jun-91	UK	Darlow Smithson (untitled 'programme series suggestion')	Lagan Television ( <i>Ma &amp; Practice</i> series)	Copyright Infringement of series idea.	No. Only row reported in trade press, though it was labelled 'legal row'!	Settled out of court. According to the news report, Lagan said 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.

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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. Action Time had sold a format to TV4 in Sweden and felt that Danmarks Radio had created a competing copy in Denmark after	Ruled. Undisclosed payment sum paid by Danmark Radio to Action Time.	Note that 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.
1993	05-Nov-93	France	BBC Enterprises France ( <i>Noel's House Party</i> shown on NTV France)	TF1 ( <i>Extraordinaire</i> ) & Plaisance Films	Copyright infringement of their popular hidden camera format	No, only threatened. After communication between the companies, the programme was taken down from TF1's schedules.	Not known	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	14-Jan-94	UK	Fremantle International ( <i>Let's Make a Deal, Password, Shop till You Drop, Supermarket Sweep</i> )	Plus Communications and Technology Guernsey (for the respective Turkish language versions of Fremantle's gameshows)	Copyright Infringement... report said "Failure to pay licence fees for all rights needed for the production and broadcast of the Turkish language versions of the programmes"	High Court writ, claiming \$100,000 licence fee on each show plus 8% interest till it is not paid.	Not known	It is apparent that Fremantle chose a light weight opponent to set an international industry precedent through means of threatening and legal coercion.
1994	25-Mar-94	UK	David and Kathy Rose (independent)	C4 (for <i>Superfan</i> quiz in <i>Don't forget your toothbrush</i> show)	Copyright Infringement	"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	22-Apr-94	Germany	WDR Germany ( <i>Medisch Centrum West</i> )	Endemol Entertainment & RTL ( <i>Stadtlink</i> )	Copyright Infringement, [Plagiarism, copying drama series]	Yes	Not known	WDR claims that Endemol & RTL plagiarised <i>Medisch Centrum West</i> to make <i>Stadtlink</i> [interestingly WDR had bought rights to MCW from Endemol in the first place]
1994	19-Aug-94	Spain	Endemol Entertainment ( <i>Love Letters</i> )	Antena 3 (Spanish broadcaster's <i>to-be-broadcast</i> show)	Copyright infringement	Endemol sued Antena 3 in a Madrid ( <i>Alcodenas</i> ) 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 its original format to be sold to Tele 5 as <i>Love Letters</i> . 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.

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April 2008

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Year	Issue of 'Broadcast'	Dispute Jurisdiction	Plaintiff / Claimant of Original Format	Defendant	Infringement Claimed	Legal Action	Settlement / Ruling	Remarks / More Details
		USA	RDF (Wife Swap)	RTL2 (Frauentausch)	Copyright Infringement	No	No	RDF had optioned the <i>Wife Swap</i> 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.
		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.
		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.
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)	Not known	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	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 Thisploeg</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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Format Rights Disputes found through other sources (i.e. not through 'Broadcast')

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Year	Source	Jurisdiction	Plaintiff / First Creator	Defendant	Infringement Claimed	Legal Action	Ruled / Settled out of Court/ other means?	Remarks/ More Information
2001	NY Times	USA	Survivor Productions LLC	Fox Broadcasting Co	Copyright Infringement	Yes	Settled out of court	<p>The creators of "Survivor" and its network, CBS, accused Fox and the creators of "Boot Camp" of stealing the concept behind the show from "Survivor". The suit asked for an injunction to prevent the show from continuing on the air and for unspecified damages. 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 and critiques as similar to "Survivor" in many ways, with the format being often cited.</p> <p>CBS filed its suit in the Federal District Court in Los Angeles, where it said it 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."</p> <p>The case was dismissed after the parties came to an out of court settlement.</p>
2002	Lex Orbis New Delhi Newsletter AND International Finance Law Review	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 the 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	Financial Times	China	BBC Worldwide & ECM Productions (The Weakest Link)	Shanghai Oriental TV & Wangfeng Media (Fortune Test)	Copyright Infringement	Yes	Indeterminate, new report misleading	<i>Indeterminate, new report misleading</i>
2002	BBC News	China	A London based television company	Shenzhen Cable (Go Bingo)	Contract tort	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.

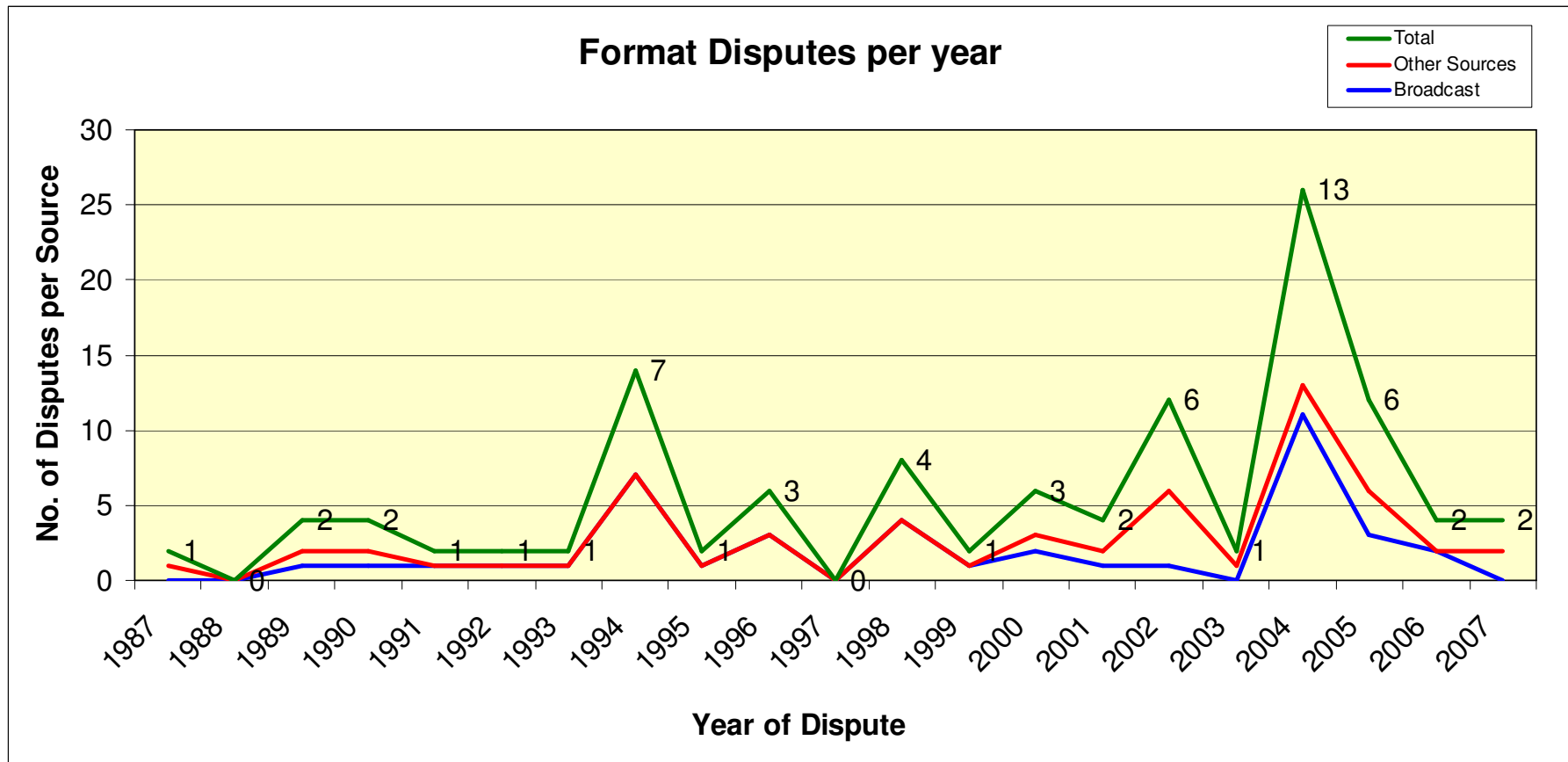
Other sources

# Observations

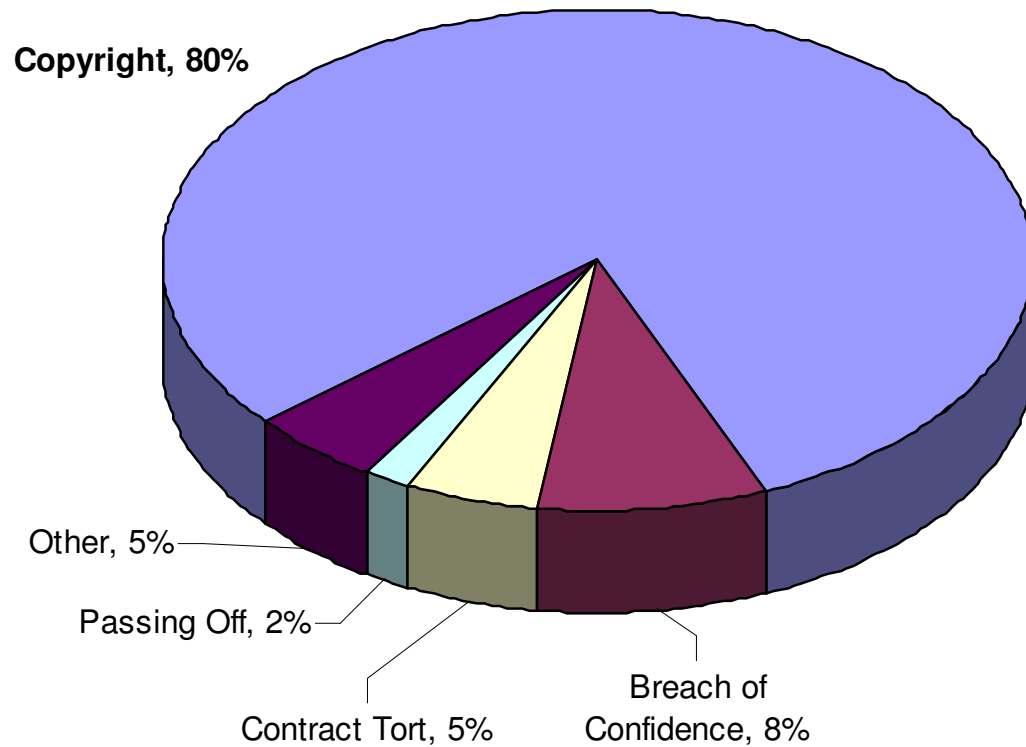
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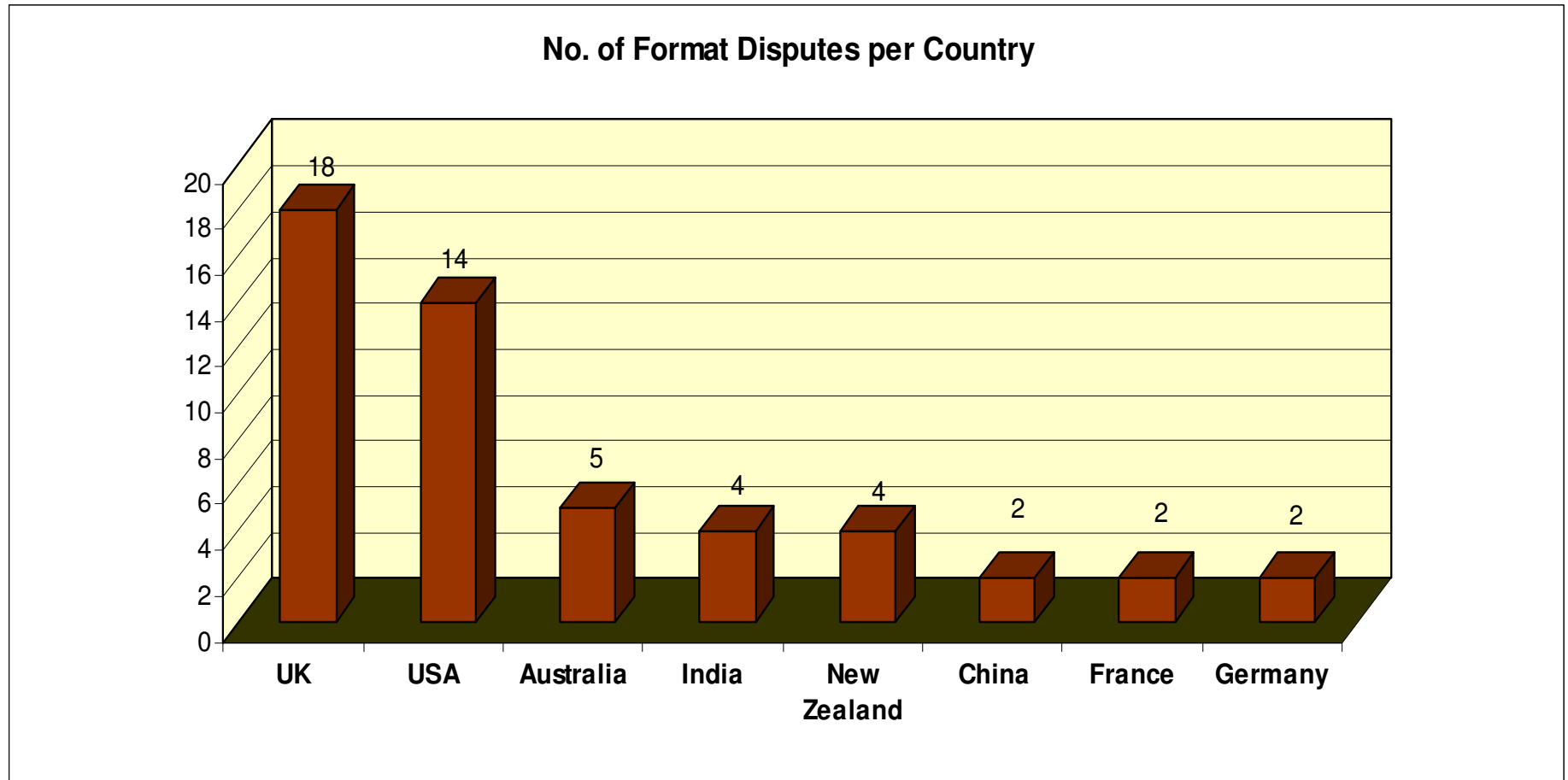
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Quantitative Observations from Format Rights Disputes Database 1987-2007									
Sr. No.	Type of Observation		Broad-cast	Out of	Other Sources	Out of	Sub Total	Total	%
			A	B	C	D	E=A+C	F=B+D	G=E/F
1	Copyright	primary focus of	34	41	13	18	47	59	80%
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%



## Types of Format Disputes (i.e. Nature of Claim)

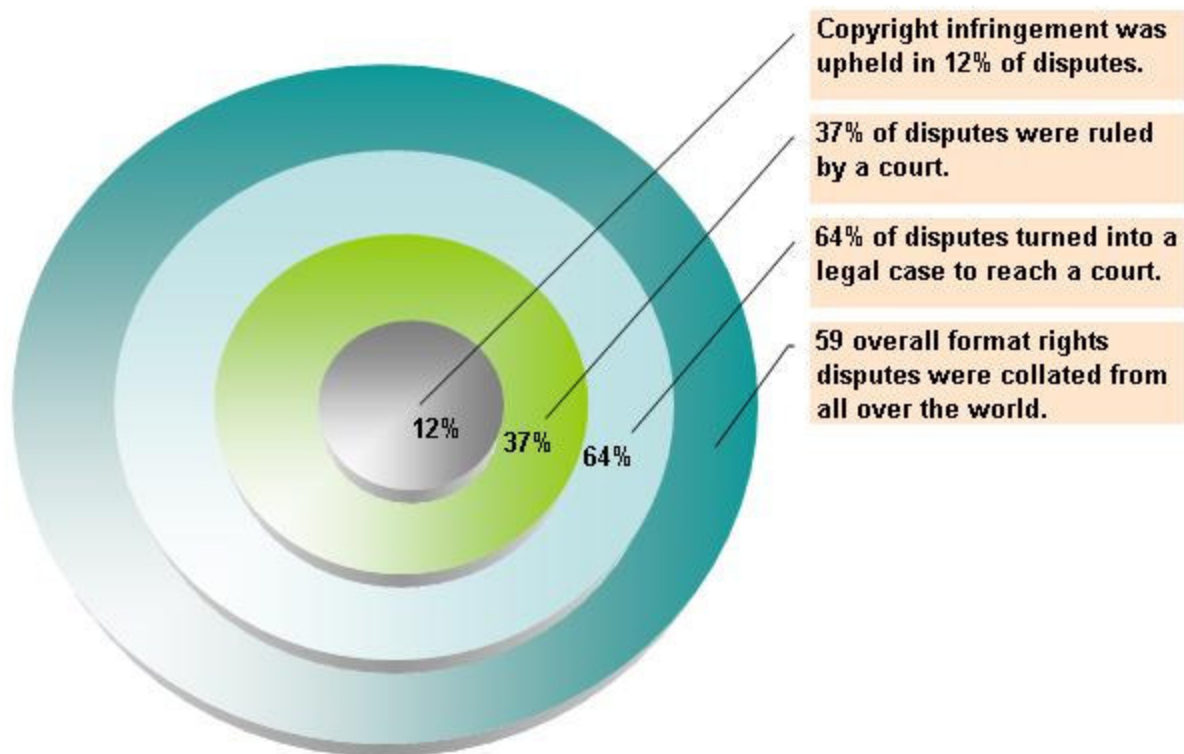


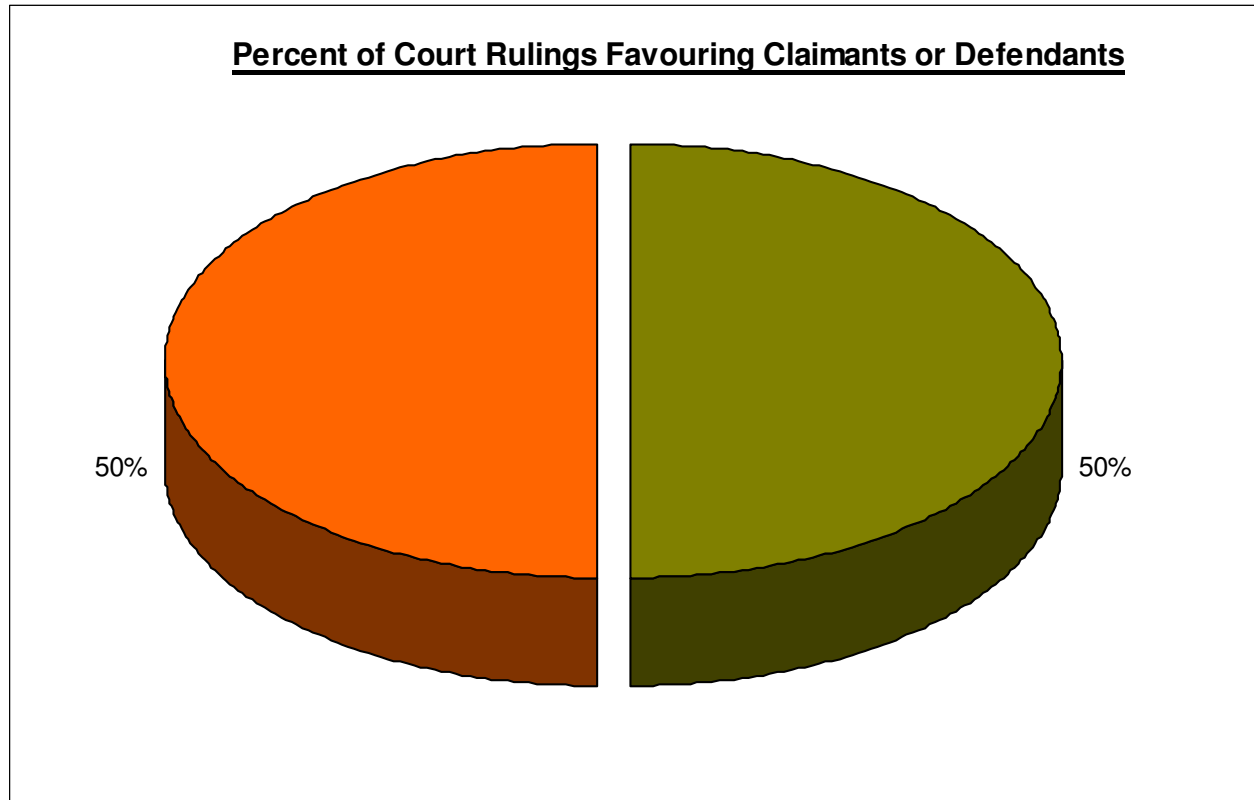


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## Comparison of Disputes which reached courts, were ruled on & were decided on 'copyright'







# Theory Generation

## Marketing Strategies for TV Formats Protection

### Strategy

- Attend international television trade-shows to showcase your format to the industry.
- Creates pecking order & ground rules for business relationships.
- Legitimises creator as originator and dissuades copycats.

### Literature

- Trade fairs establish identities of participants, instruct them in the business culture, & foster common-sense assumptions about how the industry functions (Penaloza 2001)
- Trade fairs differentiate similar products and provide a terrain for producer's corporate brand identity (Havens 2003)
- Buyers at trade fairs act as cultural gatekeepers actually responsible for appraising and acquiring programming (Harrington & Bielby 2005)

## Marketing Strategies for TV Formats Protection

### Strategy

- Develop good visual brand identity to create lasting impression.
- Create fit with the carrier i.e. broadcaster's brand to reduce audience dissonance.

### Literature

- Viewer dissonance for the channel brand can affect the reception of the programme and vice versa (Singh 2004, Drinkwater 2007)

## Marketing Strategies for TV Formats Protection

### Strategy

- Create brand extensions into spin-off programming.
- Merchandising of the format into related products.

### Literature

- Relationship of consumer and brand strengthens as it moves through generic, expected, augmented and potential levels (De Chernatony & Macdonald, 2003)
- Consumers visualize brand image as consisting of a hierarchy of attributes, benefits and values (Davis, S. in Kotler, 2003)

## Marketing Strategies for TV Formats Protection

### Strategy

- Create B2B merchandising / incentives to convert format buyers.
- Use B2B print promotions where necessary (e.g. Endemol print ads in Broadcast against Granada copying their format.)

### Literature

- Advertisements, trade-press reviews, in-person sales calls to buyers, and B2B programme merchandising gains visibility in a broadcaster's premises and the minds of the programme buyers (Havens, 2003).
- These strategies help distributors to inform buyers about forthcoming shows, provide information on shows already achieving high ratings for other broadcasters or territories & reinforce the decisions of existing buyers (Eastman, et al., 2002).

## Marketing Strategies for TV Formats Protection

### Strategy

- Create a strong company / producer's corporate brand identity to influence format buyers.

### Literature

- Corporate branding helps to maintain credibility of product differentiation in the face of imitation and homogenization of products and services (Hatch and Schultz, 2003).

## Marketing Strategies for TV Formats Protection

### Strategy

- Be in sync with producing nation's established programme brand values.

### Literature

- Clear image or reputation of the producing nation can also play an important role in its reception from programming buyers (O' Shaughnessy and O' Shaughnessy, 2000 cited in Havens, 2003).
- Over the years, Latin America has acquired a reputation for telenovelas, Britain for its game shows, Japan for its animated programming and The Netherlands for its reality TV shows (e.g. *Big Brother* and *I'am a Celebrity*).

## Marketing Strategies for TV Formats Protection

### Strategy

- Move cautiously into diverse format types (such as moving from reality to telenovelas) as one-off formats may be copied easily.

### Literature

- The reputation of the production company (as well as that of the director or writer) can make or break a deal with programme buyers though these generally fail to travel through to the actual intended viewership (Harrington & Bielby, 2005)
- Companies such as Celador are known for glitzy, heavy prize money game-shows or RDF Media (UK) has a reputation for the Swap format (e.g. Wife Swap, Boss Swap etc.)



## Marketing Strategies for TV Formats Protection

### Strategy

- Keep innovating, particularly locally, if your format has been a hit once (E.g. *Who wants to be a millionaire?*).

### Literature

- Branding creates consumer inertia – barrier to change consuming habits (Reizbos, 2003)
- Brand innovator gives copycats a moving target and remains ahead of the competition (Kapferer 1998)
- International coalitions increased the marketability of a programme internationally as the foreign partner understands the programme's attributes desired by its own domestic audience (Hoskins & McFadyen 1990)

## Marketing Strategies for TV Formats Protection

### Strategy

- Create viral marketing by nurturing fan communities.
- Fan communicates can create negative feedback about imitating formats.

### Literature

- In marketing popular culture, an emergent strategy needs to be used as the product is not entirely under the control of the producer; rather it is the audience which makes it popular (Bjorkegren, 1996)
- The Blair Witch Project – entralled users and simultaneously spurred curiosity (Klien and Masiclat, 2002)

*...Questions/ Suggestions for improvement*

*Thank you for attending...*