Dispute Prevention and Resolution in the Format Industry

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WIPO Seminar, 20th January 2011 at Bird and Bird
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
  o 35 x Got Talent
  o 22 x X-Factor
  o 20 x Family Fortunes
  o 19 x Farmer Wants a Wife
  o 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
  o No point embarking on litigation with minimal prospects of success

• Copyright Law does not easily cope with formats
  o Are they just a collection of ideas or an expression of the ideas?
  o Format would have to have been worked out in detail in a ‘bible’
  o Substantial similarity bar is set very high
  o Not just copied most of the elements, but also the look and feel

• Unfair Competition can be more fruitful if available
  o 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:
  o When you move a show from one broadcaster to another
  o 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
  o Industry body formed to encourage mutual respect for format rights
  o 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:
  o Knowing What You Want, and
  o 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:
  o Don’t cross the line into extortion
  o Only use it if you have a genuine case
  o 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
  o Too late to change the show
  o 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