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THE PIE AND THE CRUST

Television program formats

What is a format?

HOW THEN DO WE DEFINE A FORMAT? The term had its origin in the printing industry where it is a particular page size in a book. My word processor's thesaurus lists 13 different synonyms for the term, ranging from 'blueprint', through 'pattern' and 'design', to 'model' and 'shape'. However, where these terms suggest an aesthetic dimension in designating an object that can be copied, the term format in the phrase – television format – carries a particular industrial set of implications. In radio first and then in television, the term has been intimately linked to the principal of serial program production. A format can be used as the basis of a new program, the program manifesting itself as a series of episodes, the episodes being sufficiently similar to seem like instalments of the same program and sufficiently distinct to seem like different episodes. Similarly, behind industrial/legal moves to protect formats, lies a complementary notion that formats are generative or organisational. Thus, from one point of view, a television format is that set of invariable elements in a program out of which the variable elements of an individual episode are produced. Equally, a format can be seen as a means of organising individual episodes. Van Manin quotes a television producer who offers a more colloquial summary of this latter point: 'The "crust" is the same from week to week but the filling changes'.

Several elements constitute a format (Dawley 1994). From an industrial perspective, television programs can be divided into two types: those to do with 'reality' programs, such as news, talk and game shows; and those to do with drama, including situation comedy. In turn, van Manen identifies a series of material components of each of these types. A game show's elements, for example, include a written description of the game and its rules, a list of catch-phrases used in the program, information on how prizes are to be assembled, copies of artwork and decor designs and blueprints, and software for computer graphics. In the case of situation comedies and drama series, the concept will typically include an outline of the narrative situation of the series, perhaps with projected story-lines, together with a detailed outline of the characters. In addition, the package may also contain further elements useful in subsequent productions such as computer software, scripts and footage. The software may facilitate the production of graphics and program titles; the filmed footage can be included in both a program such as a game show and in an anthology-type program such as *Funniest Home Videos*; while the scripts can be used directly in a new version of a program, can be modified or adapted to a new setting, performers or production circumstances, or may simply be available as background material.

There are two other elements that may be in a format package and although they are not formally a part of a format, nevertheless their inclusion signifies the actual nature of the exchange taking place under the name of the licensing of a format. The first element is the Bible – a compilation of information about the scheduling, target audience, ratings and audience demographics of the program for its broadcast in its original national territory. Needless to say, it is only programs that have been successful in gathering large audiences in one territory that will be attractive for licensing purposes in other territories. The second element is a consultancy service provided by the company owning the format. The consultancy will generally take the form of a senior producer from the original production overseeing and advising the early production of the adaptation.

At this point, by way of illustration, we can briefly examine a television format package that has recently become available for licensing.

Room 101 was a light entertainment series broadcast on BBC2 in the UK in 1994. The program was described as a chat-based comedy show that each week featured a celebrity guest star. Subsequently, in 1995, the program was formatted, an operation whereby the precise production elements and their organisation, including the steps of production, were documented in a booklet known as the Format Guide, itself part of BBC Programme Format and Production Kits series ('The cost-effective way to originate your own successful series'). Like a cooking recipe, the Guide identifies both the ingredients and the sequence and manner of their combination that will produce an adaptation of *Room 101*. The booklet, prepared by the BBC, includes general notes on the host, the guest, the 'rules' of the show, the set and the individuals that constitute the production team. A second section deals with the organisation of time in the production process and includes descriptions of how an episode is researched, how choices are finalised, scripting, timetabling the studio day. Yet another part of the Guide deals with the budget and an audience profile based on audience research on the UK production. Finally the package also contains a sample post-production script based on a UK episode together with detailed studio and set plans. A note on the cover of the Guide indicates further elements of the overall package: the Format, whose rights are jointly owned by an independent production company, Hat Trick, and the BBC; Consultancy ('Advice and guidance throughout the production process'); Design ('Studio plans and set design'); and, Video Cassette ('BBC programmes for reference and inspiration'). The front page summarises the benefits of the package, most especially the format:

Repeat the winning formula – Create your own successful series of *Room 101* with BBC World Wide Television's format package. Minimise the risks – formats offer tried and tested creative ideas for reliable quality programming. Grasp the essentials – each package contains many elements you need to make an individual series tailor-made to your own particular requirements.

However, the analogy between a television program format and a cooking recipe breaks down when we consider the legal and industrial dimensions of television program formats. For if part of a format package consists of a list of ingredients and an outline of how these are to be combined, this act of documentation carries its own industrial and legal significance. Many of the elements already described exist as intellectual properties so that formatting involves not only the documenting of constituent features of a format but also involves obtaining legal clearance for their use in format adaptations. In other words, as well as having an aesthetic component, television program formats also have an important legal dimension.

The legal context

Adopting a broad historical perspective, we can suggest that, coincident with the international television industry's elaboration of the elements of the format has been the attempt to secure legal protection for the creator and owner of a format. This has been sought through three legal instruments – copyright, breach of confidence and passing-off (Mummery 1966a, 1966b; Lane and Bridge 1990). Copyright appears to be the most important of the three: certainly, it is the first area to which van Manen attends in his legal handbook on formats and it is the one that receives most attention (pp. 25–68). Van Manen cites a number of cases of legal action in countries such as the Netherlands, France, Germany and the US which were based on the perceived copyright infringement of television program formats. However, what is revealing is the fact that all these actions were lost, a view that has been corroborated several times. (cf. Fuller 1993a) To paraphrase van Manen:

The extent or magnitude of protection by the copyright act is not large: a new production can be created by changing characters or other elements in a format; the combination of the elements may be protected by copyright but such protection exists in limited degree for the individual elements; excessive imitations can be fought with the Copyright Act but the imitator who makes some minimal changes is likely to succeed. Often the strength of the format lies in the idea which forms the basis of the format and it is this which has been shown to be least protected. In any case, there are doubts as to whether program formats can be copyrighted.

(1994 pp. 25–6, paraphrase by van Canon/Moran)

This point has been reinforced by other writers (Rubinstein 1957; Burnett 1988; Kean 1991; 1957). For present purposes, it can be underlined by a brief examination of two cases where legal action was initiated on the grounds of copyright infringement. The first occurred in the US and concerned the situation comedy, *The Cosby Show*, which starred popular black comedian Bill Cosby. The matter began in 1980 when Hwesu Murray, following preliminary discussions with an NBC official, submitted short written proposals for five new shows to the network (Levine 1989). One of these was a situation comedy, *Father's Day*, which concerned a black middle-class family where the father was a lawyer. At NBC's request, Murray expanded several of these proposals. *Father's Day* subsequently grew to two pages and included the casting suggestion that actor Bill Cosby play the lead role. Late that year, NBC returned the material and indicated that it was not interested in the proposal.

In 1984, NBC aired *The Cosby Show*, a situation comedy about an upper-middle-class family where the father is a doctor and the wife is a lawyer. The series starred Bill Cosby. Murray took legal action against NBC and the packaging company that produced the series for the network. The grounds included infringement on the format of *Father's Day* and breach of implied contract. In 1987, the defendants moved successfully in a district court in New York to have the complaint dismissed on the grounds that Murray's 'ideas' (format) lacked sufficient novelty to sustain a misappropriation action. An appeal in the following year upheld this decision.

There are various anomalies in the case, most especially in the court's decision that have been discussed elsewhere (Levine 1989 pp. 139–51). For our purposes though, it is worth noting two features of the case. The first is the fact that since the US Copyright Act of 1976, the US Copyright Office has recognised television program formats as copyrightable (Libbert 1968; Fine 1988). Nevertheless, the court in this case decided that the format for *Father's Day* was not sufficiently novel as to attract legal protection. The second detail is the fact that the format existed only as a

series of verbal ideas communicated by Murray to NBC and as a two page written outline. Van Manen makes the general point that the more concrete a format is the more chance it has of attracting copyright protection (1994 pp. 69–71). The third feature is a set of specific facts associated with the case. The original format for *Father's Day* existed only as a written outline and not in the form of a finished program which might have been tendered as evidence. In addition, the circumstance that the alleged offence occurred in the same country where the original had been developed meant that legal action also occurred there.

The second case concerns a much more concrete format that was imitated in another national territory so that initial court action, following the Berne Convention, occurred in the country where the alleged infringement took place. In 1978, Hughie Green, who created, produced and compered the long running British television talent game show, *Opportunity Knocks*, was contacted by the British Inland Revenue for an account of royalty payments for a version of his program being produced by the Broadcasting Corporation of New Zealand. Green had never been approached by the BCNZ for permission to use his format nor had the Corporation offered him payment for its use. On checking the unauthorised version of the format being produced by BCNZ, Green found that it imitated all the important aspects of his format with the obvious exception of not using him as the host. Negotiations between the parties broke down and Green sued in the New Zealand courts on the grounds of passing off and copyright infringement. The action failed. Subsequently he decided to appeal the decision. Because New Zealand is a member of the British Commonwealth, the appeal was heard at the Privy Council in London. In 1980, the latter upheld the New Zealand decision on the basis that the format of *Opportunity Knocks* had little or no dramatic value and therefore no copyright could exist (Lane and Bright 1990; Lane 1992). In turn, that decision has led to debate about whether the new UK Broadcasting Act needed amendment (Lane and Bright 1990a, 1990b; Lane 1992; Martino and Miskin 1991; Smith 1991).

These two cases – the *Father's Day/The Bill Cosby Show* and *Opportunity Knocks* – highlight the uncertainty concerning copyright protection of television formats. In addition, the two plagiarised formats had no more legal protection under the other two grounds of breach of confidence and passing off. Not surprisingly, van Manen's legal handbook on formats urges producers to include in their contracts every possible means of legal protection in the area of intellectual property, including patent law, brand names and trade marks, a call that is echoed elsewhere. (van Manen 1994 pp. 69–121; Battersby and Grimes 1986; Freedman and Harris 1990; Kurtz 1990) In other words, a closer examination of the legal context of television program formats discloses that finally they may have little protection in law. That does not however prevent an elaborate legal machinery playing its part in the international format business. Formats are registered for copyright purposes, format libraries are bought and sold, licence fees are paid, legal threats are continually made and court actions launched. In fact, for the most part, format owners, producers and others behave as though formats have solid legal protection. If we turn to an examination of the industrial context of program format adaptation, then it becomes clear as to why the arena needs to appear as though it is ordered and bound by legal rules rather than chaotic.

The industrial context

In a real sense, to ask the question 'What is a format?' is to ask the wrong kind of question. Such a question implies that a format has some core or essence. As our discussion has suggested, 'format' is a loose term that covers a range of items that may be included in a format licensing agreement. The term has meaning not so much because of what it is, but rather because of what it permits or facilitates. The format is a technology of exchange in the television industry which has meaning not because of a principle but because of a function or effect. A relevant analogy is with another

regulatory function in the broadcasting industry, namely the system of program ratings. Television program ratings have often been criticised both for errors in their calculation and on the grounds that they are not accurate indicators of how audiences actually listen to radio or watch television. In fact though, such criticisms are beside the point. For finally the function of ratings is more important than their accuracy. Ratings are a mechanism of exchange between broadcasters and advertisers where what is exchanged is the 'audience'. Ratings 'work' not because they are valid indicators of what real viewers do when they watch television but because they quantify an object that broadcasters can sell to advertisers, namely a market (Ang 1991).

Similarly, the concept of a television format is meaningful in the television industry because it helps to organise and regulate the exchange of program ideas between program producers. In the past, before the formalisation of the format, the exchange of such ideas was improvised and *ad hoc*. Plagiarism – borrowing of ideas without sanction or payment – was rife. In particular, program producers from European countries such as the Netherlands, from Australia and from South America regularly adapted program ideas from US radio and later television. Early payments for the use of program ideas were *ad hoc* and more in the nature of a courtesy to the original producer or owner. Brunt, for example, notes that the BBC in 1951 paid Goodson-Todman, the US devisors of the radio game show *What's My Line?*, a total of 25 guineas an episode for the use of the format (Brunt 1985 p. 28). Clearly with the cost of development of a format (if indeed it might be said to have a cost – the cost of devising a format being amortised in a program's original production), a licence fee had to be set according to what a licensee could pay. While the originator was anxious to extract as much payment as possible, there was also a *de facto* ceiling on the level of payment; an exorbitant licensing fee for the use of a format can lead to borrowing without payment. By the late 1970s, as part of a larger formalisation of the exchange of program ideas, a regular licence fee system seems to have emerged in the international television industry (Mason 1996). In turn, this formalisation seems to have helped stimulate international trade in formats in the 1980s and the 1990s.

However, the expansion of the format market in this period can also be linked to other, more salient factors. The period has seen a dramatic change in national television systems in many parts of the world with de-regulation, privatisation and the advent of new distribution technologies. This has led to a multiplication of television channels available within national boundaries. The increase in channel choice, in turn, has the potential to fragment television audiences and, as a consequence, the ever-present industry imperative to try to ensure audience popularity for new programs is exacerbated. Obviously, the import of low-cost, foreign programs is one way to fill the expanded number of time slots in the new television environment. However, such a strategy does not necessarily ensure good ratings and, ultimately, does not expand or even guarantee existing advertising revenues. In surveying the particular significance of formats from the point of view of national television producers and broadcasters, we can note constraints relating to program imports on the one hand and national program productions on the other. In other words, why do countries such as Germany and France produce their own versions of a television program such as *Wheel of Fortune* when other countries such as the Philippines and Columbia prefer the more economical option of importing the US version? The answer is a mixed one. For some producers and broadcasters in some national territories, the overwhelming consideration will be financial and the US version will be imported and screened. However such a version will always be 'foreign': American-English will not be the language of the national population and the program may have to be subtitled or dubbed; the version will feature American contestants and host; the game in this version will draw on cultural knowledges and abilities most available to Americans; prizes will be in the form of goods and services deemed desirable by Americans but not necessarily by other national populations. However, financial considerations have also to be reckoned

against ratings success. A locally-produced version of *Wheel* will be more expensive than the imported version but, with local contestants, host, questions and references, prizes and so on, is likely to have more national appeal and is therefore likely to achieve better ratings. Certainly that seems to be borne out by some long term studies of the process of import-substitution of television programs. As a UK-based market analyst put it:

... there is an interesting counter-phenomenon occurring, which is the increasing domestic level of demand in peak time in television schedules. So, for example, American dominance of key terrestrial broadcasters around the world is dropping. In the peak 6 pm to 11 pm slots, it is very difficult now to get a major American series to work on the main channels here – BBC1 or the ITV Network. So big hit, syndicated shows like *The X Files*, *Emergency Room* and *NYPD Blue* are actually working as cults here on Channel 4 and BBC2 with a half or even a third of the audience reach that they would get in comparable markets. What we notice around the EC is this domestication of prime time means that there is some local vitality in those markets. I do believe that, long term, the domestication issue will spread. There is a classic S curve at work here. When a new channel enters the market, whether by cable or satellite subscriptions or advertising, it has very little earnings. It is therefore in a position where it has to import low-cost programming. I helped the launch of a satellite channel in the UK called *UK Living*. It was targeted to women. And the buy-ins were 95 per cent. But it was already noticeable on this minor channel that in any 15 minute day part it had only 30,000 viewers (although its cumulative audience for the week is high) that the domestic element – a couple of hours of chat and life style which we originated – were already very popular. Within 18 months ... (this program) ... had been extended to three hours. The second thing that has occurred is that a couple of American shows have been licensed to be re-made with British components. So you can already see the domestication of this minor channel. We have predicted that within five years over 50 per cent of its prime time content will be original, although, in many cases, it will have been licensed from American formats.'

(Stiles 1995)

If there is a general commercial logic at work that leads to a preference for the more expensive domestically-produced program over the lower cost imported program, then the same logic will tend to favour a format-adaptation over an original concept. An original concept is exactly that; it is untried, untested and therefore offers a broadcaster little in the way of insurance against possible ratings failure. Even if a broadcaster commissions a development, there is no guarantee that the would-be program will survive the trialling process and will go into production. And even if it does, the producer and broadcaster have no security that the program will be a popular success. Formats, on the other hand, are almost invariably based on programs which were a popular success in another national territory. In other words, formats come equipped to survive the trialling process of being tried and tested. The ratings Bible is a kind of guarantee that the format is a successful one: an adaptation of the format is therefore likely to repeat the program's original success. In addition, a video episode of the program from the other territory, recorded off-air, can be offered as an equivalent of a pilot episode for the new series (D'Alesandro 1997). Thus, for example, Reg Grundy Productions contracted to produce an American version of the game show, *Sale of the Century*, for the NBC Network on the basis of an episode of the Australian version. This kind of practice represents a significant cost saving and will help offset part of the licence fee for a format adaptation. In other words, there are significant savings in the area of

program development to be achieved through using a format from another territory rather than developing an original concept. Of course, previous success does not absolutely guarantee future success. Adaptations frequently fail with audiences. However the point is that the format-adaptation offers some insurance and security to broadcasters and, in an industry so beset with uncertainty, such a promise is worth having.

Of course, there still remains the question: why pay a licence fee for using the format, why not simply borrow the program idea without paying a fee? The answer is reasonably obvious. Unauthorised infringement may lead to costly legal action. Paying a licence fee is, therefore, a means of offsetting the cost of defending the action. In addition, the unlicensed use of a format will damage a producer's business reputation and may lead other format owners in the future not to deal with that producer. However, as the *Father's Day/The Cosby Show* and the *Opportunity Knocks* cases demonstrate, borrowings without payment continue to take place (cf. Fuller 1993; Driscoll 1994). Thus, the capacity of format owners to protect formats would seem to be directly related to their commercial strength and ability to bring legal pressure on others. The more positive reason, though, why licence fees are paid is because it appears to give access to the format's previous success in another national territory.

However – and this is an important point – in licensing a format, a producer is allowed a good deal of flexibility so far as the choice and arrangement of elements in the adaptation is concerned. There is a recognition that the original set of ingredients and their organisation may have to be varied to fit production resources, channel image, buyer preference and so on. The original formula does not have to be slavishly imitated but rather serves as a general framework or guide within which it is possible to introduce various changes to the original formula. In other words there is variation within repetition. Thus, for example, . . . the German-originated game show format *Mann O Mann* was adapted for an Italian version: the title was changed to *Beato Tra Le Donne*; the set, decor and costumes were varied; the number of contestants increased, and the program was elongated from an original length of about 55 minutes per episode to 140 minutes per episode. And indeed in the case of drama adaptations, the new version may move a considerable distance away from the original with new characters, situations and storylines, new settings, and new sounds. Thus, for example, the BBC's *EastEnders* is set in a working class part of London, the characters who have British names, such as Pete and Kath Beale, speak English with Cockney and other accents. An adaptation of that program's format, *Het Oude Noorden* (The Old North), produced by IDtv in the Netherlands, is, by contrast, set in Rotterdam and the characters, who have mostly Dutch names such as Jozefien Otteveanger and Ismael en Van Ozcan, and speak Dutch with regional accents, including that of Freisland.

Significantly, under standard format licensing agreement, the variations to a television format developed through these types of adaptation become a further part of the format with ownership vested in the original owner. Clearly, under this type of permitted variation, there is no veneration of originality; rather, the format is seen as a loose and expanding set of program possibilities. There is, on the part of the owner, the overriding imperative to gain maximum commercial advantage from everything generated from the initial set of elements. In turn, the new elements introduced as variations in the adaptation will be equally as available as the original should a further adaptation of the program be required. Thus, for example, a South American version of *Man O Man*, prepared for broadcasters in Argentina, Uruguay and Paraguay in 1996/7, drew as much on the Italian version of the format, *Beato tra le donne*, as it did on the German original. This flexibility contained in format adaptation underlines an important general point. Among the few media researchers who have noticed the phenomenon of television format adaptation, there is a tendency to assume that adaptations are a mechanical repetition of the initial format (cf. Strover 1994; Lull 1995; Sinclair 1996). Such accounts tend to assume that formats are invariably those of

game shows, a genre that is held in low critical esteem, such that adaptation is no more than a simple repetition of the ingredients in the original version of the program. Aside from a High Culture snobbery around notions of originality, this line ignores the extent to which an adaptation of a format for a particular national territory will involve considerable amounts of skill and experience in adapting, varying, amending, improvising, creating and so on using the initial format as a source. In other words, the process of nationalising a television program format is undoubtedly a more subtle and complex process than some commentary would have one believe. After all, as has already been suggested, a television format is actually a regulatory mechanism in the international television industry. The written concept of a particular format may be brief indeed so that a producer, in adapting such a concept for a particular national territory, may have the task ahead of her or him.

Finally, we should note that besides commercial considerations, national television producers and broadcasters have to consider the political implications of importing a program or adapting a format. It was noticed above, for example, that some countries import the US version of *Wheel of Fortune* while others produce their own versions under licence. Aside from cultural considerations, program imports have little in the way of a domestic financial spin-off. A national adaptation of a format, on the other hand, provides employment in the national territory and may lead to international sales of the adaptation. It will also provoke fewer complaints and less unrest among production workers, cultural critics and politicians than will imports or co-productions. And aside from employment arguments, there are also cultural arguments in favour of what is nationally produced. Here one runs into an interesting situation in that there appears to be a general reluctance on the part of national cultural critics and policy makers to make any distinction between programs wholly originated in the national territory and those that are adaptations of international formats. In practice, these two different kinds of program are regarded by media regulators and governments alike as domestic or national. Such a classification has not been the outcome of debate or enquiry: indeed, there is a general policy vacuum surrounding this aspect of format adaptation. While the classification may seem like an obvious and sensible response to the situation – after all, audiences make no distinction between the two types – nevertheless what is interesting is the lack of political debate, the fact that television program format adaptation usually does not appear on the political or cultural agenda. And yet, there are often relevant precedents and policies at work in related areas. Thus, for example, the regulation of Australian content in commercial television has never involved a consideration of the national origins of a program that is locally produced. Quite the contrary. Programs that are Australian adaptations of overseas programs are equated with programs that are based on locally derived ideas, both qualifying as Australian (Moran 1985). On the other hand, what constitutes Australian content so far as government support for Australian film production is concerned has often been more closely defined. In 1983 the Federal Minister for Home Affairs issued guidelines for film producers on the criteria that should be taken into consideration in deciding on the Australian content of a project for tax-relief purposes. The guidelines specified that the source of the script be Australian. They went on:

... where the source is non-Australian, the scriptwriter would be expected to be Australian and the subject-matter should be demonstrated to be in accordance with the above criteria (viz. the 'concept of a film can be expected not to be alien to the Australian multi-cultural experience'). '*Australianised*' versions of foreign scripts would not normally be acceptable.

(Quoted in Dermody and Jacka 1987 pp. 149–150; my emphasis)

The argument then is that 'formats' are a relatively recent development in the international television industry that has led to both a formalisation and a regulation of the movement of program ideas from one place to another. A format is a cultural technology which governs the flow of program ideas across time and space. The elaboration of what is being transferred together with its embedding in a legal framework has been a powerful means both of codifying and stimulating trade in this area. By turning to an examination of the role played by program formats in international television, we can strengthen this argument about the relational meaning of formats.

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