

Whose idea is it anyway?

Jonathan TR Silverman discusses what legal protection is available to creators of TV show formats

Television shows such as *Who Wants To Be A Millionaire?*, *The X Factor* and *Strictly Come Dancing* achieve huge audiences, both in the UK and abroad. So it is understandable that lawyers are often approached by clients with 'an idea for a TV programme' from which they want to protect and earn their fortune. The question is whether the law offers any real defence to clients in these circumstances.

The basic premise dictates that you can't copyright an idea, but the problem comes when addressing TV formats in trying to identify exactly what is capable of protection.

Wade & Ors v British Sky Broadcasting Ltd (2014) EWHC 634 Ch is the latest in a series of cases where claimants believe a TV show is based on their concept but they have not shared in the profits generated by the production company to whom they had made some degree of disclosure; see also *Celador & Ors v Boone* [2004] EWHC 2632 (Ch).

Red light

It's important for the practitioner to flag the difficulties for the client at an early stage, so that they proceed in full knowledge of the possible pitfalls. TV programme formats are not a protectable form of intellectual property, and past overtures to make them as such have so far come to nothing.

For the originator to have any chance of securing their

position, they need to take a number of steps over and above simply coming up with a concept that they regard as exploitable.

Importantly, where it is the client's first exposure to the sector, there is a real need to explain how it works and what (limited) protection is available, rather than go ahead blindly.



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It is foolhardy to disclose any proposal, whether to a TV production company or elsewhere, before securing at least a short-form confidentiality letter.

This letter should:

- indicate that the client wishes to disclose a new television format (which can be referred to as the 'protected material') only on confidential terms
- secure an undertaking not to share the protected material with any third party
- specify the use of the protected material to be

for the specific purpose of considering the feasibility of the project

- set out a period for which the confidentiality remains in place, say five or ten years; and
- require all materials to be returned.

Only once the confidentiality agreement has been signed should the client submit a written proposal or preferably meet with the production company to present the concept in as much detail as possible. This demonstrates the extent to which the programme has already been developed by the client and presents it as simply more than an idea.

Pitch perfect

Also point out that the way the industry generally works is that formats pitched are then subject to a detailed development procedure before being put forward to broadcasters, so as to secure a formal commission. So, the process can be fairly prolonged.

Assuming the production company shows interest, a format option and licence agreement should be put before them thoroughly setting out the basis on which the parties agree to work together, covering both how they see the project developing and how the resultant profits will be shared.

However, before that stage is reached, and even prior to the preliminary presentation, there is further advice that you can

convey to your client to bolster their rights. They include:

- putting a copyright sign on all presentation material
- considering trademark applications for the proposed name of the programme and/or any catchphrases
- designing the presentation to include as much content as possible that might be capable of being protected by copyright, such as drawings of proposed layouts, backgrounds, stage sets and designs as well as possible scripts and stage directions.

The owners of formats benefit from a bizarre mix of being first to market and the reliance on peer pressure.

Anecdotal evidence suggests that in such a tight industry where everyone knows each other, nobody wants to be seen to be stitching someone up – next time it could be them. This is little comfort, though, for those who believe their ideas have been ripped off. **SJ**



Jonathan TR Silverman is a founding partner of Silverman Sherliker
www.silvermansherliker.co.uk