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Television Format – Enjoy the
comfort off copyright or is there
a new direction for tv-protection?
The IP-system from WIPO in
regards to the articles in the
UNHR

Master thesis
30 credits

Supervisor
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Intellectual Property/International Law
Semester 9

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Summary

This thesis is about television formats and the main question *if there is a need for a stronger protection than today*. My reason to write about the television format that it combines two interesting areas of knowledge. The mix of media- communications and the law. It is also a question of practical aspects, what does the television business want and the theoretical side of it, what can be with law as the tool. One important aspect is to look how the copyright correspond with the United Nations perspective of law. The television format is new to the legal world, but the television phenomena existed since 1950s with start in the US. The method I have chosen is pure academic, the facts and analysis is built from studies in legal journals, doctrine and judgments by the courts world over. The thesis starts in *chapter four* with a short introduction what television format is. A television format is a written or recorded idea in how to make a television show, with live and fiction segments. The characteristics feature for the show is called elements. Known television format today is *Survivor* and *Who Wants to be a Millionaire*. Most company's works after an outline called the production bible. It is a notebook with all the production details of the show. Today it is more or less a standard in the industry. Due to the detailed information, many believe that the idea, the television format is protected. This question is more complicated and it will be more elaborated in later chapters. The television format industry is at present time a multibillion dollar business where the US and Great Britain is the greatest production nations. To no surprise, they also lead the work for a stronger protection. The work started in 1994 when legal academics *Shelley Lane* and *Richard Mc Bridge* wrote a critical article and asked why the legislation had not come any further. I'll define what television is and how it's been formed in national and international law. The traditional take is that television format show is that is based upon an ideas and those has never been protected in copyright law. There is several different definitions to the format. *Karnell* is the first that tried to define the television format in a legal term. He offers a 'wholeness' perspective on the format and writes about factors that makes the show unique from others. *Gough* emphasize the style and arrangements of the elements in the show. *Moran* and *Malbon* has a more pragmatically approach and lists several points that all are used in making a television show. *Chapter five* discusses already copyrighted parts in a television format, i.e. the music, that is copyrighted as a musical work. It also answers the position of the production bible. Within the doctrine and the courts other models has been promoted, as passing off, copy as two examples *Chapter six* gives an overview over the international conventions that has formed the international copyright, the Berne Convention but also the WTO, WPPT and the Trips Convention. *Chapter seven* discusses the Human Rights roles in the discussion and the relation between UN and WIPO, critics and solutions for new developments. The organization Frapa has been formed, with purpose to see if copyright is enough or are there other alternatives. In *chapter eight* there is an overview from the biggest cases, during the past

twenty years, by courts all over the world with presenting principles. *Opportunity Knocks Case* that came in 1988 was the first case that did try if the television format has a copyright. The answer was negative and it should take yet another fourteen years until the courts came back with a positive response, this time in Brazil. The analysis in *chapter nine* deals with my own opinion.

Sammanfattning

Uppsatsen utgår det nya formen av tv skapande. Tv-format. Tv-format är TV-program som blandar verklighet och fiction. Kända program är *Robinson*, *American Idol* eller *Let's Dance*. Den stora skillnaden mellan de här serierna och en serie som *Desperate Housewives*, är att den senare är helt uppdiaktad och baserat på ett manuskript. Oftast är TV-formatet baserat på en idé som är i bästa fall nedskrivet. I nuläget finns där ingen riktigt lagstiftning som täcker in en idébaserad TV-show och många är de som tycker att tiden är inne för en mer heltäckande reglering. Två anledningar för det är den snabba spridning och lättheten att kopiera de här showerna, och den andra är förstås hur mycket pengar som finns i de här showerna. De två normgivande källorna är WIPO, på internationell nivå som skapat regelverk för immaterialrätt och den andra är den nationella praxisen. Nationell lag har valt att stå utanför frågan om TV-format utan domstolarna har fått tagit den stora delen för att besluta om hur TV-format ska skyddas. Det börjar gå i riktning för ett högre skydd. Problemet är att upphovsrätt, nationellt som internationellt bygger på att skydda materiella ting och inte endast idéer. Ett program som är bara är idébaserat löper alltså risken att bli kopierat och utan kompensering. Produktionsbolagen har nu börjat använda sig av produktionsbiblar, där hela processen är noggrant nedskrivet. Men den är i sig inte tillräcklig. Diskussionen att skydda formaten ligger främst på WIPOs bord. Nu har WIPO dock mött på motstånd från UN, som tycker att WIPO generellt tagit för stora svängar när det gäller tolkningen av immateriella rättigheter i förhållande till de Mänskliga Rättigheterna. Konflikten mellan dessa två stora institutioner äventyrar hela processen för att skydda TV-format och den stora frågan hur man ska skydda tv-formaten med respekt för Mänskliga Rättigheter.

Preface

The television format has to date been an affair between two business partners. They have agreed to sign written agreements stipulating the terms to use and produce a television format show. When the markets fails to establish good deals everyone has the comfortable copyright to fall back on. Now the market and authors wish to expand the copyright to include new phenomena like television format.

The purpose is to look if there is a fundamental for copyright law regarding television format. This is done in five steps and divided into four parts of the thesis. First part I'll build the case around television format, what it is and what is used for. Part two I'll show today law, national and worldwide. Part three I'll take on a debate that today between the big organisations, UN and WIPO. In the fourth part, I'll goes seek out if there has been any principle established by the courts. Part five is the part of the analysis is the last where I present my own opinions and feelings regarding this issue.

The discussion marks the ongoing debate between the two great norm-setting organization with aim to encourage all culture expression, namely *World Intellectual Property Organization*, WIPO and the *United Nations*, UN. Between them there is a dialogue of creative rights is as intellectual property or the human rights, or both.

The thesis also acknowledges the impact from the market and the dialogue between the entertainment business and the law. This perspective is important when many believes that the law is the tool to fulfill any need from the market. One of them is the organization FRAPA created both by lawyers and people in the television business, with the aim to establish an international format law. I have chosen to look at television series, drama and sitcom as phenomena's with several different aspects, all interrelated and important to any analysis of television influence in the global society.¹ Television is also an expression for culture and it is part of a global culture. A good example is the television tale for the reality show, *Survivor*. Its igniting spark was set off in Sweden with the show *Expedition Robinson*. But it wasn't until the American television company, got hold of the format the show was brought to worldwide success as *Survivor*. Both law and television is an expression of the culture we live in. A culture that is always in progress. The United Nations, UN has described culture as;

"a living process, historical, dynamic and evolving,
with a past, present and a future".²

¹ Sitcom is an abbreviation from the term situation comedy. Known is sitcoms are *Frasier*, *Seinfeld*, and *Friends*.

² E/C.12/GC.21 p. 3 It' states on the same page – that is an interactive process with individuals and communities give expression to the "culture of humanity".

And with this word, let's start the journey of world of television format law.³

³ Marshall McLuhan coined this phrase already in 1964. It is today consider as a metaphor the describe the internet. (at: [http://en.wikipedia.org/wiki/Global_village_\(Internet\)](http://en.wikipedia.org/wiki/Global_village_(Internet)). Last accessed 12th May, 2009).

Abbreviations

ASCAP	American Society of Composers, Authors and Publishers
BMI	Broadcast Music Inc.
Entleqv	Entertainment Law Review
CESCR	Committee on Economic, Social and Cultural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFLA	International Format Lawyers Association
FRAPA	The Format Recognition and Protection Association
HBO	Home Box Office
MPAA	The Motion Picture Association of America
PRO	Performance Rights Organisations
SVT	Sveriges Television
UN	United Nations
UDHR	The Universal Declaration of Human Rights
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization

1 Introduction

In *Desperate Housewife*, five women live in make-believe suburbia of Wisteria Lane.⁴ The NBC show *Desperate Housewife* is all about protecting its home and family. The neat façade. At least it seems so on the surface. Underneath the struggle is far more complex and concerning. Below the luxurious lifestyle lies a story of disappointment, betrayal, fear, anxiety, sorrow, grief, anger, want, desire, love, forgiveness and thoughts of unfulfilled dreams. Bouncing off from a well-furnished and appealing surrounding, any small matter arguments reveals a battle of survival.

In real life these characters, these fictitious Bree Van de Kamps of the world, need something or someone to look out for them. The answer from the global law community has been to establish the *international copyright law*. It is set out to protect the integrity of the maker and the artist that brought these characters to life in the first place. For drama series and made up Bree Van De Kamps of the world the international copyright is enough. This due to the a manuscript and a television show the characters is safe and sound as these forms is copyrighted.⁵

Reality shows on the other hand, the result will be different, as there is no protection to speak of. People that takes part in shows like *Expedition Robinson*, more known as *Survivor*, has no written dialogue or written story.⁶ The show is filmed live and lives on the premise what the contenders say or do. There are copyrighted factors as music and logotype, but the show rests on the participant's spontaneity, which has created instability in the copyright world. The 'script' for a reality show is often just guidelines to the production team that can be easily copied.⁷ Guidelines as these are the only direction since most format show is just based on an idea. The logotype, the music and the stage is important ingredients to make the show know and popular.

This thesis wraps itself around the question if successful worldwide television format shows should be given an international protection. This according to the rights and obligations established by the International organisation, World Intellectual Property Organisation, the WIPO or are the other alternatives.⁸

4 See back at the Appendix, for a description of the show.

5 There has been a discussion whether or not a character itself is protected. This could be suggested for Batman, Superman or even Astrid Lindgren's Pippi (Longstockings) Långstrump. The rules of copyright is part of the bigger field to protect creator namely intellectual property. More of that to come.

6 The reality show is synonymous to docu soap.

7 Ideas are not protected in international copyright law. Or in any national law for that matter. See specifically the part of practice. . Despite this, the text or the idea protected in international copyright law is not protected.

8 The shows is often called television format shows. In this thesis i choose to only use the television shows, or shows

1.1 Television - a social perspective

Academic studies have brought about many theories in how television contributes in our society. The impact began already when the “on-button” was pressed the very first time in the nineteen twenties’ America. It was in the depth of depression the television found its way in to our society. At this time people started to move around in search for new employment, opportunities and sometimes a new life. The government felt in already desperate times, the nationality feeling was wearing down as people was scattered all over the nation. Television believed to be a perfect tool to create one identity, connecting people over long geographical distance. Setting up televisions in public bars, café and restaurants the government could influence and exercise control over the public.⁹ For many the television is the window to the rest of the world. After the iron curtain fell in the ninth November in 1989, the countries victims to the regime invested in parabola antennas.¹⁰ Today in most household the television has its own special place and when internet revolutionized our lives one thing became truer than ever. *Television is all around us, all the time.*

With that said we all know how the television can create, good and for worse, one common identity and with a sense of belonging. Big sport events like the World Cups and the Olympics are two examples. Later on the television format shows as *Britain’s got talent*, *American Idol* is worldwide success that binds people together. In Europe the *Eurovision Song Contest* is the grand example where music has linked the countries together. Starting with Benelux, France, Great-Britain, Sweden and Denmark in the sixties the competition has grown when new countries was created, such as Russia, Belarus, Poland and Romania in 1989.¹¹

Television connects people on a everyday basis, we talk about news, sports, music and entertainment program or the life of television characters from our favorites shows. In this it also shapes and creates our realities in how we ought or wish to behave. There is a vivid discussion about norms and rules. One marking example is the uproar Expedition Robinson caused. Critics called it bully television. The academia has tried to answer what social codes, moral and principle has been created.

In order to feel part of something bigger we all have to *understand* our environment. Television is one contributor to that process with an incentive to *learn* and *educate* it’s viewer. First out was the public service channels as Swedish Television, SVT and in Britain, the BBC that was all in for educate the masses. Central was news, culture programs, documentaries and even children's program was important to induce a certain moral. Today the choice is in our hands what we find interesting and there is an abundance of

⁹ The issue of control is a measurable and a topic for culture studies. is measured and analyzed extensively in

¹⁰ Alongside with last model of the cars and designed doors.

¹¹ The Eurovision Song Contest debut was in 1956 and is today, one of the long lasted programs in the world. (At: <http://www.eurovision.tv/page/history/thestory>. Last accessed 2009-11-04).

news, documentary, drama and comedies show offered by television and on internet.¹²

Indeed, there are several aspects to mark television as an important factor in our society. But supreme to all others is *money*. Cash is king, and in the end it's about making money, much money. Many might argue if money really it the biggest factor, but money is a factor that decides the future of the show. Not even WIPO can't shy away from this fact. The last twenty years copyright protection of the maker/creator is overshadowed by principles that relates to financial compensation. Perhaps the only thing remaining is the little black box influence has stayed the same.

¹² How we look and what we chose too look at is based on statistic and studies about human behavior.

2 Purpose

The television format has to date been an affair between two business partners. They have agreed to sign written agreements stipulating the terms to use and produce a television format show. When the markets fails to establish good deals everyone has the comfortable copyright to fall back on. Now the market and authors wish to expand the copyright to include new phenomena like television format.

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"a living process, historical, dynamic and evolving,
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¹³ Sitcom is an abbreviation from the term situation comedy. Known is sitcoms are *Fraiser*, *Seinfeld*, and *Friends*.

¹⁴ E/C.12/GC.21 p. 3 It' also remars on the same page – that is an interactive process with individuals and communities give expression to the "culture of humanity".

And with this word, let's start the journey of world of television format law.¹⁵

¹⁵ Marshall McLuhan coined this phrase already in 1964. It is today consider as a metaphor the described the internet. (at: [http://en.wikipedia.org/wiki/Global_village_\(Internet\)](http://en.wikipedia.org/wiki/Global_village_(Internet)). Last accessed 12th May, 2009).

3 Method

With television format as a new area in law one of the challenges for this thesis was to find relevant literature. With few exceptions most of the material was found as articles in legal journals. The books written are still easily counted and that is why I will give them a short introduction here. The thesis is pure descriptive.

The first book written on the subject television format was the dissertation by Swedish professor Gunnar Karnell's *Rätten till programinnehållet i TV*, published in 1970. The dissertation had a huge impact and became the leading voice for a long time. Over a span of forty years television, Karnell's finding has changed. As innovating it once was, it is today considered important for mere historical aspects.

Hanne Kirk Deichmann's thesis *Programconcepter – Ophavsret till tv-formater* from 2004 has served as a guide in Danish courts and in international legal journals. It is an extensive documentation about the world of format. The major questions in her thesis are how to define television format and if the television format could be included in the ordinary Danish copyright law. Her thoughts is most important in the chapter to establish a definition for television format.

Last, but not least is the work by *Albert Moran's* *Understanding the Global TV format* from 2006. His interest is from a mainly from a business angle. He takes the view of the producers, the writers, and actors. He also takes on a sociological perspective and describes the television format as cultural phenomena and its consequences in the law.

4 Television format

1.2 Why television format?

Why then think and write about television format? Television format has promoted a new way of making TV, mixing written drama and reality. Docu soap has exploded during the last ten years and changed what television is today. And it has done so without taking an interest in traditional television production. The new genre is intriguing for the viewer, the researcher and for me as a student of law for the challenges it entails. One have to think out of the box, change the standards, vitalize and even go beyond traditional copyright law to meet the demands on the market. It is indeed curios but interesting times for television and law.

1.3 Defining television format

What is then a television format? The television format is the *idea* behind any television format show. How a television show should be produced and what it should be about. The idea is thought out and then written down on a piece of paper and presented for a production company. A format idea has general *elements* or a *characteristic* that signifies the shows uniqueness from others. With those elements, the format show is developed, created, produced and aired on the televisions network around the world. One example of a television format idea can be described like this, the elements marked in italics.

The idea is; *sixteen people* are sent to a *desert island* for *three months* with barely the clothes on their backs. Only *one will survive*. *Cameras follow their every move* as they ruthlessly attempt to overcome the elements and each other to become the ultimate [...], *the winner of a huge cash prize*.¹⁶ [My italics].

The idea is the worldwide known format show *Survivor*. Features like the song, a special designed studio setting, or the musical tune written for the show is also elements, but these are already copyrighted. The theme - is it a quiz, musical competition or a game show is also an element that singles out the show from others. Known format shows are *Who Wants to be a Millionaire*, *Idol* and *Survivor*.

Many of the programs that airs today is based only on an idea, sometimes written and sometimes not. Known feature is the live parts and written part mix that named the genre 'docu- or reality soaps'. The docusoap is different from other television programmes because of the live performances. Drama

¹⁶ It combines *docusoap*, *competition* and *human drama* making it one of the world's talked about programme. [The English company CastawayTelevision took over the license of Expedition Robinson and made its own version Survivor, gave credit to the original show, by write under the section 'Survivor Format' "also known as Expedition Robinson" on the webpage. (at <http://www.castawaytelevision.com/castawaytv.html>. Last accessed on January,20 the 2009).

or comedy show is written in detail and because of that protected in copyright law.¹⁷ Known drama and comedy shows are *L Word*, *Desperate Housewives* and *Sex and the City*.

1.3.1.1 The challenge of protecting television format

Law faces the challenge from the business world to protect the creators of television format shows. Consider the fact that the show lacks written manuscript to begin with, this is where the true challenge starts. Despite this one might think, if a show based solely on an idea, and therefore fragile and exposed to being copied why not just change this into a more protective form? In fact, is there really a problem?

The copyright law as it is today is based only on physical expression; this applies to almost all laws around the world. If you can touch it then it is a protected form. If you see it and can touch it is much more worth than if it just thought out. A song just sang and not recorded has less worth to a recorded song. Compare this with an example in criminal law. A physical evidence carries more weight than any story told by a witness. People can lie, remember it wrongly or forget. The DNA or fingerprint is hardcore fact.¹⁸ This is the bottom line for most laws and this is general for the international law. To change the law to include television format ideas in international law, conventions, treaties and so forth, is to ignore the very fundamental of any legislation.

Together with this, another obstacle is the international intellectual property law relation to the Human Rights. The international copyright law claims to follow the Human Rights. However, many supporting the Human Rights and within the bodies working to promote this rights are skeptical. The international copyright law comes with several possibilities for any creative author, to limit their rights, for example the copyright to a manuscript rights can be given away to a film company. This rights is according to the critics impossible, since any Human Rights is something you are born with and exist all the time. A copyright is considered a *tool* to fulfil the Human Rights.¹⁹

Difficult? Probably, but this is short summary of how fundament in law works and the philosophy behind it. Building an international framework only on ideas is controversial. It would change the entire view on the fundamentals of law. Are there alternatives?

¹⁷ See i.e. Berne Convention, article 2 (1).

¹⁸ This notion has unfortunately gone to far, and putting the burden of evidence on the plaintiff or the victim. The outcome is the charges of rape, where the victims story has been undermined in the lack of physical evidence in Swedish Courts.

¹⁹ More of this, further down.

1.4 Television format development

The television format success has followed the same path as the commercial broadcasting companies when it comes to be a break-through phenomena, open to new methods and operating on usually traditional markets. An example is the television development in Sweden. In 1958 the first public television channel was established to Sweden, SVT. It was the birth for Swedish public service television as it was governed by the state. It would take yet another ten years until SVT 2 came. The Swedish audience had to 'cope' with only two channels until 1987, when the first satellite channel introduced itself TV3. TV4 was the first cable channel and its introduction broke the Swedish state monopoly of television, and Sweden had to open up for a commercial market.²⁰ The business with television format began for real in international trade in the 1980 and 1990s. This progress has led to more television channels and even more time slots to fill with programme, several of them is low-cost productions.²¹

Despite the novelty that surrounds television format show, it's surprisingly to see that television was begun not in the US where most trends starts, but in Sweden and in a public service public service channel namely SVT. It was when the commercial production company Strix Television as part of the satellite channel TV3, introduced a new concept to the SVT. The show was developed and aired as *Expedition Robinson* or *Survivor*. When the Swedish channel SVT, introduced the format show or docusoap it broke old views what public service should be and took up the competition with commercial television in how producing shows.²² Expedition Robinson marked the true breakthrough for reality and docusoap.

1.5 Television Format Success showed in statistics

The trade of television format has today a worldwide market. The business to buy and sell television started in US early as the 1950s. Forty years later in 1990, this sales trend came to Sweden.

²⁰ Moran, A. p. 59

²¹ Moran, A. p. 18.

²² Deichmann, K, H, p. 36. In Sweden the introduction of Expedition Robinson in a public service channel, was controversial. It was described as bully television. The voting system and how the participant joined pacts to 'take out' the weakest member in the team, created a social and culture outcry. It was questioned if this kind of television show was good for the audience and started a debate about if there is good or bad television. Especially since it was on SVT, a channel that should serve nation interest as a whole. The entertainment executive of of SVT at that time Pia Marquard chose to leave SVT and Sweden when the protest became to high. When leaving, she did however think that the Expedition Robinson was a good television show and having no regrets. Thunberg, K. Kronholm, S. p. 6. Many argued that shows like Expedition Robinson was already yesterday news. Today we all know they were wrong. Reality show has a firm place by most network's and is often scheduled at prime-time. Prime-time is evening time, around seven o'clock to eleven pm.

Expedition Robinson was a huge gain for Strix Television, the original production company that bought and developed the show.²³ Strix did later sell the rights to the production company Castaway Television that took the format to a worldwide success. It was that companies destiny. Today the Castaway Television has only two shows, Survivor and Celebrity Survivor.

Survivor's success also paved the path to a lucrative business and has turned into a goldmine for the television industry. In a report by Screen Digest from 2004, the world trade of television format generated an unbelievable sum of 2.4 billion Euros. This also marked an increase with 22 percent from 2002. The country, which is the major importer of format, is surprisingly not, the United States followed by Germany and France. First on the ranking list to develop, produce and exporting format is United Kingdom with 32 percent and with Endemol as the biggest production company.²⁴

No doubt, people that wish to make money, fame, and television are many and for them there is an abundance of ideas waiting to be produced. American television companies can per year chose from over three hundred ideas. The competition is tough and a mere fifteen to 25 percent airs as pilots. The pilot is the first episode in a television show and works as a test. The network choose an audience in the target group. If they like the show, it will be produced.²⁵ Those who have an interest and money to produce a television format show are the big television networks. Known networks are NBC, ABC, CBS and FOX. In Europe the biggest companies is still public service channels like SVT, NRK, DR and the British BBC. Some companies are more eager to have its idea turned into a whole show that they often invest and create the shows themselves if they have the money.²⁶

The highest rumor with most produced shows is *Castaway Production*, the team behind *Survivor*. *King World* is yet another known company who developed the show *Weal of Fortune* and sold the format to 27 countries and

²³ Anna Bråkenhielm, CEO for Strix Television brought the format to Sweden in 1996. She found the format at a television fair in Cannes and bought the option rights for the Scandinavian countries for the sum of 80 000 Swedish crooners. Back home, the company polished up the format, adding the element 'competition' as a standard element. When the American market and the network CBS in particular, showed interested and wanted to buy the format, it was sold for ten million Swedish crooners. This development is a good testament to the inflation and the gain of television format. Rindbäck, C, p. 6. Formats is often traded at fairs world over. The most known is the MIPTV that began in 1963 and MIPCOM that had it starts in 1984, both situated in the hometown of movies, Cannes. Another is Rose D' Or held in Montreux. Moran, A, Malbon, J. p. 81.

²⁴ Information is from the official webpage of Screendigest. (at:

http://www.screendigest.com/reports/gttf05/pdf/GTTF05_1-n/view.html#0.0 Last accessed September 30, 2008).

²⁵ A pilot is the first episode in a show. Television network often launch a show by first testing a pilot episode on an audience for response and effect. A positive outcome can be a start for a new television show. One of the more known pilots that didn't make it as television series, but turned into a critical acclaim movie, is David Lynch's film *Mulholland Drive* from 2001. Lynch began production in 1999 for television but the test audience rejected it. He believed in the story and decided to produced it for the movie instead. Still small in ratings, it was critical acclaimed. It's a good testament of never giving up in what you believe in. (at [http://sv.wikipedia.org/wiki/Mulholland Drive](http://sv.wikipedia.org/wiki/Mulholland_Drive). Last accessed on April 7th 2009).

²⁶ Acton, P. Lind, R. Selz T, Simensky, M. p. 1.

Celador's' Who wants to be a Millionaire that went to hundred countries. For Sweden is already mentioned *Strix Television* most known for *Expedition Robinson*. All of the shows are also made as a national version. *Pop Idol, Big Brother, Survivor* etc. It generates high ratings which brings the advertiser to the grand network using an old slogan. The benefit to invest in a television format show is prize worthy. It is the ideal combination, the use of talented and creative people, combining fiction and reality, with a sense of local feeling.²⁷ Format shows usually creates a second market, the sell of merchandise. *Wedell-Wedellsborg* calls this format a *blockbuster format*.²⁸

1.6 The start of television format law

As the television formats show turned out to be money machines with high ratings, the business craved for a stronger protection surrounding the shows. This was also understood by some law scholars. In early 1990s Great Britain kicked off the television format debate. Authoritative voices in legal doctrine was *Shelley Lane* and *Richard McD Bridge* that concluded that any format law at that time was “dead letter law”.²⁹ This after the first big case the *Opportunity Knocks Case* was denied format copyright.³⁰ The English law did not include the format despite a strong copyright law. During this period television programs was sold and bought through license mostly by United States and United Kingdom.³¹ Lane and Mc Bridge stated that the format protection was totally insufficient in the UK Law and promoted for a new dawning. Their wishes were that format, should be protected, and considered close to those intellectual property rights of musical and literate works.³² They were supported by the Patent Office of Great-Britain. The office issued a *Further Consultative Document*. The office questioned why the threshold should be so high for the format if it's goal was to create a stable market. Considering the fact that there where many elements establishing a format, like music and a written script that already was copyrighted as literate and dramatic works, the format could be protected under these.

The work within the Patent Office was commended by McD Bridge and Lane saw the work;

²⁷ Moran, A. Malbon, J. p. 19

²⁸ Wedellsborg-Wedell. T. p 32

²⁹ Lane, S. McD Bridge R. 1994, p. 198. United Kingdom became the first country trying if the format was included in their own copyright law *Opportunity Knocks Case*. Lane and McBride showed their frustration when the format only could be protected and included under the term dramatic work instead of be given a independent status in the copyright law.

³⁰ More about the *Opportunity Knocks Case*, further down.

³¹ *Ibid.* p. 199.

³² They also stated that intellectual property is a right, protected by the fundamental principle of “freedom of expression” in the European Convention of Human rights, article 10. McD Bridge, R. King, W. 1995 p. 118.

“a significant step forward. Formats, which are routinely traded, and which reflect and require considerable creative input, should benefit from proper protection.”³³

It is my feeling that Lane and McD Bride wrote the first article, with the conviction that the moment to launch legislation had come. The fact is that the debate lingered on with no real changes and still waits to be decided in 2000.³⁴ As the process has been stalling new perspective has come, one of the is the discussion of the human rights. The trick will be to work out a way to balance the human rights with intellectual property rights.

1.7 Defining television format

4.1.1 The combination of all things

The core question is if copyright is part of the international law and follow the standards of the human rights. If this happens, it can be said there was a time *before* and *after* television format law. In time we will see the outcome. At present work continues of promote an internationally legislation. In this part of the thesis, I will define television format going through relevant law, court cases and doctrine. One of the first attempts to define the area was made by the Swedish professor Gunnar Karnell. He wrote that television format is the:

/.../ totaliteten av det som inom en serie TV-program utgör anspråksunderlaget såsom återkommande, programgestaltande egenskaper eller moment för någon gentemot annan på grund av likhet mellan det som i en serie förenar upphovsrättsanspråk till de enskilda programmen såsom originalföreteelser vid intrångspåstående gentemot vad som åstadkommits.³⁵ [My italics]

Karnell’s position is that one has to look at the wholeness, the totality of all the factors that makes a show unique and then create a copyright based on these collected factors. He means that the format is the;

/.../common, unifying features, appearing in such programme of a television or a radio series.³⁶

Karnell’s definition is similar to the others that have come after him, even if the television landscape has changed over the years.

Lyndsay Gough is one of the authors close to Karnell’s definition. She has in my opinion the most explicit and nuanced definition. Television format according to Gough is a:

/.../ collection of (or the sum of) the key elements and characteristics that make up the concept of a programme, giving it a unique look and

33 Net. LORD 1996, 7(5), 212

34 David Rose named his article “Format Rights – a Never-ending drama (or not)”.

35 Deichmann, H. K. p.

36 Deichmann, H, K. p. 55

feel and its broadcasting identity. *It is the style, plan or arrangement of a particular show.* [My italics].³⁷

For example, a show has the purpose to find a new star on the musical scene. First, there happen several auditions where twelve contestants are chosen. They compete each week and perform in front of a live audience and a jury of three. After each of the episodes, one of the contestants has to leave the competition when the audience has voted. This combine with a special scenography, a unique logotype and special written music, all of this element has been arranged to create the show known as *American Idol*.

Gough's last sentence about style, plan or arrangement, corresponds well with the idea from WIPO in how creativity can be regulated. Copyright for the creative is established by

*.../choice and arrangement of words, musical notes, colours, shapes and so on.*³⁸ [My italics].

It is the choice of the word, music together with other element that establishes a copyright for television format. However, it has to be an expression of ideas and not the idea itself.³⁹

Deichmann supports WIPO's position, she emphasize that

Alle programkoncepter er baseret på en eller flere idéer/.../, og oprindeligt har idéelementet været det centrale for skabelsen af programmer.⁴⁰

Deichmann wants change the choice of words. She believes the use of *concept* should be used before *format* since concept is a British synonym for an *idea*.⁴¹ Her understanding is that the concept describes better what the format is about, namely structure of ideas.⁴² Television format can also be understood as the form of different media, such as VHS- or DVD-format.⁴³

Manifested in the intellectual formulation and implementation of the content, but also in the intellectual stimulating form and manner in which the material is *collected, organised and arranged.*⁴⁴ [My italics]

Levin also supports *Karnell* and claims that characteristic elements makes the format. A game show has certain features. That show can for example not be a game show without element of a competition. She also points out that television format lacks protection in the law but the courts have at least acknowledged the fact that the format is an item to be sold and bought.⁴⁵

37 Gough, L. p. 26

38 WIPO Handbook, p. 40

39 Ibid. p. 40.

40 Deichmann, H. K. p. 71

41 Deichmann, H. K, p 37

42 Deichmann, H.K, p. 69

43 ibid. p 71

44 Deichmann, H. K, page 37

45 Levin, M. p 76,

Lambert thinks that that the writing is only one part in how the format is perceived in its ‘wholeness’. He believes like FRAPA, that the format is already protected.⁴⁶

The production companies call the television format with different names. *Fremantle Media* uses the word ‘format rights’, *Castaway Television Productions Ltd* names it simply as format. *Endemol* also names it as ‘format’. Most known format by Castaway is the ‘Survivor Format’. Format is the most used term and probably it means similar to different companies in the business. Companies part of the same business use same tools like franchising and licensing.

Albert Moran is one that objects that format is as a ‘simple matter’ already copyrighted. To ask “what is a format?” is the wrong way to go. Instead, he wants to push for a more complex picture. With a wide range of different elements that ends up in a license agreement, it is more important to ask what a format *permits* or *facilitates*. Moran talks about the ‘technology of exchange’ in the television industry. It works on the same premise as television ratings. Ratings is sometimes criticized by some, but Moran points out the importance of ratings is the exchange between the broadcaster and the financier – the advertiser. The ratings are a symbol for the market. The format works the same; it creates a structure and regulation when exchanging ideas between producers.⁴⁷ In addition, it’s legitimate the idea behind the television format. Moran and Malbon continues to have a pragmatically and practical view on format when creating the television format.⁴⁸

They list twelve elements that constitute a television format. I’ll give some example here. A *Paper format* in which there is a detailed presentation of what the format is. The *format bible* (more known as the bible) is the book with hundreds of pages in which every aspect of the production, marketing, promotion and marketing is presented. *Consultation of the production* – meaning the guidance, advice or the controlling by producers from the original show. The production company gives advice to the channels that start up a show in its own area. *Computer software* and graphics – that is the graphics, titles of the show and the special effects. *Titles* can also include trademarks, logos and written text. *Sounds*, the music, arrangements, jingles and the theme songs with written scripts is the last group but the list is not exhaustive.⁴⁹

In this section no authors has focused on define the format as an Human Right. The reasons are two. One; is that they authors talks about how to protect the television format and this should be done with whatever law one find. And two; most believers in the intellectual property and copyright

⁴⁶ Stempel, page 7. Lambert, P. p. 388. See more about FRAPA down below.

⁴⁷ Moran, A. p. 18

⁴⁸ Moran, A. Malbon. J. p. 23

⁴⁹ Moran, A, Malbon, J. p. 23

refers to the WIPO and the international intellectual property. As it will be showed later in the thesis, most believes that WIPO's law and rules are an expression of the Human Rights.

5 Legal forms of protection

In this chapter, I will answer the second question; how international law is written and especially how the copyright works for the television format. But first, let's begin with an overview of the copyright.

1.8 Copyright

The copyright is the central right for any creative work. It gives the artist right to an income and a right to the name. In the last years copyright has become a known word and a worldwide topic as the media been overflowed with articles. This especially after the possibilities to download and sharing files provided by MSN Messenger, YouTube, Facebook and today by many infamous Pirate Bay.

At first the development was consider positive. More music, more picture and movies was spread to many more people. But soon the industry realized that they were putting out too much material with no chance to getting paid. And it was then the real debate of the copyright started. A debate that has focused mostly on how to provide and protect the income for the artists and less about to protect the integrity of the name.

Copyright is one of two legal models that is categorized under rules of *intellectual property*. The other model is *industry property*. Known work that is protected is patent, trademarks and industrial designs.⁵⁰ Trademarks is a vital part of any television format as the name singles out the show from others and is used for marketing. A copyrighted work is *literary work*, *scientific work* and *artistic work* such as novels, poems, photographs, sculpture, music, television and movies.⁵¹ Both models connects the work back to it's creator and this relation guarantee any authors right to income and to be credited as the creator.

A work just has to take material form to be copyrighted. Any demands that the work should have a specific purpose or reach any standard of quality is not required.⁵² The copyright is granting or preventing that the work is being copied and reproduced without the consent of the owner.

The rights attached to the copyright are:

- owner may use its own work in any way the please
- is the owner moral and economic rights
- is the one to give authorization for any other to use their work

⁵⁰ What is Intellectual Property (at <http://www.wipo.int/about-ip/en> . Last accessed May 26th 2008.)

⁵¹ What is Intellectual Property (at <http://www.wipo.int/about-ip/en> . Last accessed May 26th 2008.)

⁵² Wipo Handbook, *ibid.* p. 43.

- is the one that grant the right that the work is being copied or reproduced

There is many ways to allow reproduction and distribution for the owner. Trips gives a *right to rent* a work. This is regarding books, films and movies. In Sweden the agency working for the *music rights* is STIM. When giving a concert or any other public performance the copyright stays with the creator or the performer. There is also *recording rights*, when making sound recording, motion picture recordings as visual recordings for film and television. For television and radio the *broadcasting right* is the rights that protects work made through communication by wires and cable to the public. For the docu-soap the show is aired and always copyrighted and can't be copied without out the consent of the productions owner.

One method to prevent an idea to be stolen is giving out license with the right to use the work, but is not bullet proof. Today different organisation offers to publish the unfinished the work in a database with the aim to give it copyright protection. With that registration there is an evidence of time and content, if someone else would copy ones work. For television format shows, FRAPA has created this opportunity against a fee. There are organisations that believe in the creator's right but not in how the copyright is written today. They have established rights to use the work with respect of the copyright but without the limitations. Their belief is closer to those who promote the human rights. Regarding 'piracy' one can be tried in public court, facing criminal charges for a crime.

5.1.1 Sign your work with ©

Strike key ALT plus 0169 on your pc and you get the symbol of copyright ©. This is one most noted feature for copyright. Even if many get scarried and respects the meaning of this sign, it carries only a symbolic value.⁵³ It doesn't have any legal right attached to it but many do respect the sign.

1.9 What does copyright protect?

For many copyright is about to protect the right for money or the right for an income. This has been promoted by WIPO and other international agreements. The debates followed about the easy access to downloading music and movies on the internet, the biggest issue has been the loss of income after unsold albums and tickets. The comment from the UN on these rights is that the moral right is *equally important* as the material right. This is one great difference between a human rights framework and any intellectual property text.⁵⁴

⁵³ If mark that the text is protected by Copyright ©; press ALT + 0169, on the keyboard.

⁵⁴ P.2 General Comment 17

In UDHR paragraph 27(2) defines the right to get credit for its own work; the moral interests. And the right to get paid for its creation; the material interest.

everyone has right to the protection of the *moral and material interests* resulting from any scientific, literary or artistic production of which is the author.⁵⁵ [My italics].

The protection makes difference how the human rights and the copyright is defined. WIPO and WTO believe that their text is human right. For the UN and CESCR it is perceived that the intellectual property and copyright is mere *tools* by many. The uniting factor is that everyone believes that copyright is an expression of human rights.⁵⁶

1.10 Television format rights

The first form of protection is made by legal figures conforming to the right in national law. In Lindsay Gough's article she discusses different aspect from today's copyright law in Great Britain. She compares the UK copyright with a possible method of including format into it. Here I present her alternative as copyright, confidentiality, passing off, trademarks and design protections. Use of this rights can prevent format to be copied.⁵⁷ I will follow the same disposition as written above so let us start with the issue of copyright.⁵⁸

Copyright offers two alternatives for format protection. It's copyright for literary or dramatic work, two areas that are protected in most national laws.⁵⁹ Does the format fit in these both categories? Let us have a look.

5.1.2 Format show a literary work

The definition of a literary work is that every work other than dramatic work is included. Literary is work that has been written, spoken or sung and is used for information, instruction or for entertainment. It can be based on a script, be written or on a videotape. The decision if the format is protected as a literary work is done by a quality test and answer if the television show is *entertaining* enough. The protection is perhaps too vague and in most case the television format is protected as dramatic work.

Gough also discuss shows like reality show. Most of television format show are realities shows. For reality show earning copyright, everything said or

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56 More of this difference of perspective to come.

57 Moran, A. Malbon, J. p 111

58 Moran. A p. 15 The three legal instrument used by the industry is copyright, breach of confident and passing off where copyright being the most important.

59 WIPO, *ibid.* p. 42.

done in the show, has to be scripted beforehand. And this obviously takes the reality out of the reality show.

The result for a game show is the very same. If the presenter, contestant and the audience does not follow a script the show it is without any copyright protection. The idea behind the game show (or any format show) Gough confirms is still not protected.⁶⁰ Easily put the format show is in general not protected by the copyright law.

5.1.3 Format show a dramatic work?

As said in start of this thesis many shows are a mixture of written drama and reality. An author has tried to link format of a docusoap and a dramatic work so it could be protected in its complete.

Gough suggests that format should be protected as dramatic work.⁶¹ A dramatic work has several components similar to a format show or a reality show as scenario, plot, music and choreography that all together are protected as a completely dramatic work.⁶²

Looking at the construction of a dramatic work it requires two parts. One that is a 'work of action' and second that it 'can be performed'. As it in most cases is unproblematic to state work of action, the second requirement of performance is trickier as showed in the case about a commercial for television and cinema. The court found elements using a special editing technique and special effects for dancing when a dance part was too advanced to be able to perform. The court did settle for that and stated that the work was capable of being played and therefore grounds for a dramatic work. The dramatic work is more about how the show is played and it seems to be a wide scope if one wishes to argue this for a copyright ground.

Copinger referred in the *Opportunity Knocks* case that he believed the show was a dramatic format. This considering the record published with details of how to produce the show, different elements in the show, directive in how the participants should act, instructions of the design and sound effects.⁶³ In this essence, it was playable.

A television format hasn't been tried as a dramatic work yet. And it remains to be seen what the court says about this conclusion. But Gough's suggestion is not so far away, considering that the definition of dramatic work and television format is similar.

⁶⁰ Gough, L. p. 26 ff. The conclusion is taken from the case dating far back as 1894. (*Hollinrake v Truswell* ((1894) 3 Ch 420. Literary work is protected in United Kingdom in 3(1) of the Copyright, Designs and Patents Act 1988 (CDPA).

⁶¹ Dramatic work is being mentioned in the English Copyright Act from 1988.

⁶² Copyright and copyright works

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work —

(a) original literary, dramatic, musical or artistic works,

⁶³ Hinton, C. *ibid.* 92

1.10.1.1 The rights of music work - a case of presumption

Music is an important ingredient to any show. Lyrics, notes and performances are protected in every national copyright law. A protectable performance is when it is sung, spoken or with music. Lyrics are protected as literary work.⁶⁴ The theme is of course a musical work. The music is obviously not enough to protect a format show but it makes a presumption of its existence. One method to establish a presumption is to use the same elements all the time. The producer of the *Who Wants to be a Millionaire* strengthened its format by making sure that elements, studio set and theme music was written into the licensee's agreement. If there were not a format there would be at least a presumption for it since the show looked similar world over.⁶⁵ It can be compared with any of the franchising ideas for stores like 7-Eleven.

1.11 The production bible

This book is today an artifact when negotiating licenses. But, remembering from above the definition of this book varies heavily. Moran believes that the bible to be one element of many constituting a format. Lambert thinks that the whole format is already protected. Deichmann's position is that a format is protected on logical grounds - if the copyright law includes the production bible and the television show is based on the production bible, then there is ergo a copyright for the programme format.⁶⁶

Regarding the importance of the production bible, Fine writes

a format is written presentation setting out the framework within which the central characters of a proposed program will operate and includes the setting, theme, and premise or general story line of the program.⁶⁷

Fine settles for the written presentation and not the completed programs. Moran takes this as evidence that the production bible is protected in the format when there is a completed programme.⁶⁸ His definition also includes TV shows, storyline of computer games, drama, situation comedies (sitcoms) and non-fiction shows as news and talk shows. Despite strong convictions by authors the production bible makes television format to be copyrighted. The bible is however protected in copyright law as a literary work.

⁶⁴ 3(1) CPDA

⁶⁵ Gough, L. *ibid.* p. 27

⁶⁶ Deichmann, H, K, p. 83.

⁶⁷ Moran, A. Malbon, J, p. 129

⁶⁸ Moran, A. Malbon, J, p. 129

1.12 Trademark and titles

Television shows and movies all have a sign or combination of signs that signifies the show. Known trademark is *Idol* and *Survivor*. This sign is called trademark and has its own status in intellectual property. There are two conventions under WIPO that focus on the issue of trademark. *Article 2* in the treaty Trademark Law is applicable for visible sign relating to goods and service.⁶⁹ *Article 16* in the Paris Convention covers trademarks of services.

Trademark can also be protected by *registration* and means that consent is required if the trademark should be used by someone else. Only the Trips *article 15* has an in-written article about registration. *The Paris Convention* members are bound to provide a trademark register. Over one hundred and fifty countries have a register guaranteeing full protection.⁷⁰ Today titles are often registered as trademarks with registration on national basis. To stay internationally protected the title must be registered in every country.⁷¹ The title has two meanings, both as a creative expression for a movie or a television and to be the description of the program format.

In the Opportunity Knocks case, the title was not given any copyright, since it was not considered a creative work. It can only be protected through the rules of trademark.⁷² Authors have claimed the title that should be included as an element in the program format and be part of the license. Title is used for the program format such as the *Who Wants to be a Millionaire*, *Jeopardy* and *Wheel of fortune*.⁷³ One reason is the marketing value of format and then when the show is aired. Plagiarism of the title is a sure indication that the format has been misused. There is strong opinion that the title is more than a name, but part of the format as whole.

Catchphrases is best describes as slogans. Deichmann means the slogans belongs to the program concept as an extension to the already protected title.⁷⁴

1.13 Genre

A specific style or type is too general to be included in copyright. This means that the type 'reality' show, 'game' show, or 'quiz' show is not copyrighted. It is too generalist. *Survivor* as a genre was a new genre on television market as Moran writes it.⁷⁵

69 *ibid* Wipo. p. 297 Holograms, non-visible signs, sounds marks and old factory marks does not includes.

70 *Ibid* WIPO. p. 77; Article 12 2 (a) Paris Convention 1883.

71 Gough, L. p.26 ff.

72 Gough, L. p.26 ff..

73 Deichmann, H, K. p. 3.3.

74 Deichmann H, K. p 32

75 Moran, A. Malbon, J. p. 111

Somewhere between writing what might generically be called a boy meets girl [a girl meets girl] comedy and the script for Punch-Drunk-Love lays the grey area of copyright.⁷⁶

Is it enough from the format television advocates? Moran believes that there is an opening for a protection. If the elements are combined in a unique way that makes the show stand out from other, there can be possibility for copyright.

1.14 Characters as concept

Are *Bree Van Der Kamp* in *Desperate Housewives*, *Carrie Bradshaw* in the *Sex and the City* or *Bette Porter* in *L Word* copyright? Lindberg has tried to define copyrighted for characters in television shows or a movies, making an analogy of format. He calls it conceptual thinking.⁷⁷ According to Lindberg, the idea behind a character is not protected. If a person or figure from a book comes alive on screen this, there is no infringement done.⁷⁸ Taking a character out from its context into another is not illegal. Lindberg includes both fictive persons and cartoons.⁷⁹

1.15 Passing Off

The most likely way to reach success when as authors concern is the remedy of *passing off*. Passing off can be described as a question of good will.⁸⁰ An example; If a company less successful is borrowing a more known company logo to boost its rumor this is a matter of passing off. It is when the local store is using the logo from example the Coca Cola, without selling the any of its merchandise, to increase its own popularity. To use a product, earning credits and good will from that other company is passing off. Put it simple your are not allowed to use goods that belongs to someone else.

The line is drawn when someone else's use name or letters making it a risk for passing off.⁸¹ To win a case of passing off the burden of proof lies on the plaintiff. Producing a television show, one has to prove that the show has an *unique* and *exclusive recognition*, amongst a *significant section* off the public.⁸² With internet, satellites, newspaper, journals it is easier making the show known to a great part of the world.⁸³

⁷⁶ Moran, Malbon, J. p. 114

⁷⁷ Lindberg, M. p.440

⁷⁸ Lindberg, M. ibid. 440

⁷⁹ WIPO. p. 105.

⁸⁰ Passing off as a legal remedy, was first constructed for industrial property as written in the Paris Convention (1967) including patents, registered industrial designs and so forth. In WIPO Handbook is more written about aspects of passing off on p. 133 – 147.

⁸¹ Drysdale, J. Silverleaf, M. p. 6.

⁸² Drysdale, J. Silverleaf, M. p. 8.

⁸³ In the *Opportunity Knocks* case the court tried if the there was a matter of passing off, as the show was broadcasted both in Great-Britain and New Zealand. But the court came back with a negative response. The second

The producers too *Who wants to be a Millionaire* made the show is identical in every country its aired.⁸⁴ This strengthens the shows trademark and makes it less vulnerable to passing off. Gough also adds that few would copy for example music or trademark since it is already copyrighted.⁸⁵

1.16 Copy

The most traditional way of misusing a creative work is copy. The law is clear; any duplication of an original work without the consent from the artist is an infringement.⁸⁶ The burden of proof lies with the copyright owner that has to establish a link between the copied work and the original work, referred as a 'casual connection'. Casual connection according to WIPO is a exact copy from an original work *or* when it is clear that the only way to make a copy is to do it from the original work.⁸⁷ The reason for the strong law against copying is the vast effect a copied show can have. An original television format faces two negative effects if the show is copied. One if its poorly copied the original show will receive bad response making it even more difficult to attract investors. With several copied shows, the interest will lack altogether.⁸⁸

1.17 Conclusion

There a several ways to protect a television format. Even if noone of them gives a a complete protection it has been argued that is is enough. And again it is clear that if the human rights is in mind, it is through reference of the WIPO. The legal method of create protection is traditional, and the goal is to establish protection.

show has not afforded any good will because the UK version was not broadcasted in New Zealand. It didn't measure up to the demand of a significant section of the public; the show was too unknown for the audience in New Zealand.

⁸⁴ Gough, L. p 2S

⁸⁵ Gough, L. p 26

⁸⁶ Reproduction is another term for copying

⁸⁷ Ibid. WIPO Handbook. p. 226

⁸⁸ Gottlieb, N. Free to air? Legal protection for tv program formats, page 35

6 International Conventions

Within the fields of industrial property and copyright, WIPO administer twenty-four treaties. Down here I will describe those most important for the television format. The first conventions in intellectual property came at the dawning of the industrial revolution. The *Paris Convention* early as 1883 protect inventions, industrial designs and trademarks.⁸⁹ But the most relevant for copyright was the Berne Convention in 1886. It can be worthwhile to remember that from UN:s perspective the rights in the convention is just one tool by many to fulfil the rights for the creator.

1.18 Berne Conventions

In Article 2 the Berne Convention defines what protected 'works' is. Work according to the convention is that

/.../ is literary, scientific and artistic, with what ever mode or expressions as books, pamphlets, drama, drama-musical, choreographic, entertainments, music, drawing, paintings, architecture, sculpture, engraving, lithography, maps, sketches, maps and photos.

The second requirement is that the creative work is in *psychical* form. It can be a script written down a paper, a story filmed on as a televised show or a photograph. The work can be saved on DVD, CD, in a layout program, as long is something that you can see. This can be a script written down on a paper, a televised show or photograph.⁹⁰ Perhaps it seems like a simple and easy term to fulfill. Make something, anything, like writing down a poem, film a wedding of your friends, photograph your lovely children, or record a tune and its copyright protected. Any work created is protected. There is no requirement too the type of creative or original. Weather is it good or bad, or if seen as an contribution to culture in general, is of no importance.⁹¹

That's why the definition of copyright creates a problem for the discussion of television format. Just the idea can't be protected.⁹² That said, the line between ideas and copyrighted material is fine and even unfair. Say that someone offer an idea for a book with a specific theme to a publishing company, they denies the idea for whatever reason, then later on the very

⁸⁹ WIPO Publication 895 Understanding Industrial Property, p 5. Other Conventions important to industrial property is the Locarno Agreement Establishing an International Classification for Industrial Designs (1968), Trademark Law Treaty (1994) and Patent Law Treaty (2000). This is logical considered the start of the industrial revolution. The progress at first physichal objects.

⁹⁰ Article 2 (1) Berne Convention for the Protection of Literary and artistic works. Others is works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

⁹¹ Moran, A. Malbon, J. p 115.

⁹² Article 2 (2). Implicit is there a requirement that the works must be in physical form.

same publishing company decides to write, and produce and published a book, alike or exactly the same idea and theme? Today this can be done, without legal ramification, but it does not feel right, if the only thing that differs between copyright protection or not, was piece of a paper.⁹³ There has surface alternatives to overcome this problem. It is to publish the idea or the non-published work on a website as an evidence if the ideas is produced later by someone else.

1.19 The Agreement on Trade Related Aspects of Intellectual Property Rights (The TRIPS)

Working in conjunction with the Berne and Paris Convention, is the *Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPS). At Wikipedia the TRIPS is said to be the first treaty that focus on trade aspects relating to the intellectual property. The convention is the core of WTO the World Trade Organization.⁹⁴ The Trips was established in 1993, with focus on the trade related issues of intellectual property. Today it has 150 members' countries.⁹⁵ The convention is the fundament of the World Trade Organization.

TRIPS goal is erasing any barriers, including intellectual property that can be a hinder to free trade.⁹⁶ The work for a world trade policy started already in 1947.⁹⁷ WIPO decided to establish a relationship between its own

93 in 1886, came the first treaty regarding copyright - the *Berne Convention for the Protection of Literary and Artistic Works*. The purpose is to give any artist that lives and works in one of the member states to the Berne Convention copyright protection for their *creative work*, article 3.

94 The World Trade Organization purpose is to promote trade globally. There is an agency within in the UN, named WTO but is stands for World Tourism Organization. The World Trade Organization is an independent organization, with no attachment with the UN. Read more at footnote 14. (at

http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm . Last accessed November 15th 2008). It function is to be an administer to the trade agreements, forum of trade negotiations and trade disputes, supervising national trade polices and promoting free trade in developing countries. The work by the WTO is done by the cooperation of other international organizations. (at

http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf . p 2 Last accessed November 15th 2008).

95 Written in the beginning of the earlier days of television and the text in the Convention is therefore. WIPO Standing Committee on copyright and Related Rights Seventh Session, May 13 to 17, 2002. p 4.

96 Preamble Trips

97 The TRIPS agreement was the first convention where intellectual property was mentioned in relation to international trade. The organization continues the work of the international cooperation that began by GATT in 1947. The WTO was created after a long wait and wish to create a third institution as a complement to the World Bank and International Monetary Fund. From the 1947 to 1994, the policies behind world trade has been formed through negation or talk by the member countries. These negotiations that took place in different part of the world was called "rounds". Decisions with the members was written into the GATT, The General Agreement of Tariffs and Trade. The WTO was created after on of these rounds by the active nations. The longest round was the Uruguay Round 1986 – 1994 that also created the WTO in 1995. This also marked the ending of the rounds and the GATT.

organization and the WTO. A resolution came in 1994 initiating cooperation between the two organizations. Despite this, the WIPO was not invited to be part of the development of Trips. The creation of the Trips has said to undermine the WIPO's position regarding intellectual property.⁹⁸

This is perhaps one of the reasons of why TRIPS agreement is often called the *plus agreement* to the Berne and Paris Convention, being the convention that fills out any of the gaps from the previous conventions. The principal purpose is to set out minimum standard for the member states of the convention.⁹⁹ But the TRIPS article 9.1 states that the articles one to 21 in the Berne Convention are privileged.

In the convention the areas included is defined of which rights that can be transferred, exceptions to those rights and setting a *minimum standard for* duration of the rights mentioned in the convention.¹⁰⁰

1.20 The Copyright Treaty (WCT)

The two treaties, the WCT and the WPPT are called the internet treaties. They focus on the copyright and neighboring rights to meet the challenges in a more and more digital world.

In 1996 the *WCT Copyright Treaty* was signed. Its purpose is to meet those technological challenges that lay ahead, issues like cyberspace, internet, e-trade and entertainment/culture and information industry.¹⁰¹ The copyright is important as a tool to motivate literate and artistic creation.¹⁰² One is to follow the development of 'convergence of information' and communication technologies. With the right given in article 20 of the Berne Convention the WCT is a *special agreement* for the contracting parties. The Director General at that time expressed his wish was to build a safe and legal market when distributing creative works and recordings on the internet.¹⁰³

p. 17. (at http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf p. 17 Last accessed November 16th 2008).

98 Halbert. D. J, 2007, p. 281

99 Agreement on Trade-Related Aspects of Intellectual Property Rights(at

http://en.wikipedia.org/wiki/Agreement_on_Trade-Related_Aspects_of_Intellectual_Property_Rights. Last accessed June 15th 2008).

100 In the preamble of the TRIPS convention, the goals

101 Based on the article 20 in the Berne Convention, the WCT is an special agreement that gives authors more extensive rights than those granted in the convention. The WCT and the WPPT is the called the Internet Treaties formed after the

102 Preamble, WO033EN Copyright (WCT), WIPO Copyright Treaty, 20/12/1996

103 (at <http://www.out-law.com/page-2224> Dr. Kamil Idris. Last accessed June 22nd 2008).

1.21 The World Performances and Phonograms Treaty (WPPT)

The World Performances and Phonograms Treaty (WPPT) was established at the same time as the WCT Convention. The convention focus on the rights as implied for the performers, and producers of phonograms.¹⁰⁴ The groups included are performers and producers. Performers are actors, singers, musicians, dancers and others that work in the field composing music and writings.¹⁰⁵

The performer owns both a moral and economic right.¹⁰⁶ The convention gives the performer an exclusive right to decide about what happens with its work. This exclusive right applies in cases of reproduction, distribution and rental rights.¹⁰⁷ Article 10 gives an exclusive right for to the performer to decide the access for the public on the internet or other ways through wire or wireless means. The producers are the ones responsible for making a record.¹⁰⁸ Article 11 to 14 gives the producer of a phonogram an equals right as the performers. The convention also gives a right to allow for individual agreements.

1.22 Related Rights

Related rights are about the performances, rights of producers of phonograms in their phonograms and their rights of broadcasting organizations in their radio and television.¹⁰⁹ The Berne Convention article 16 is protecting against copying and the spread of copies made illegally.¹¹⁰ Besides this there is no rule of protecting related rights.

This also reflects on how most of legislations focus the aspect of finance right instead of right the *moral right* that is the right to its own name. Trips has excluded the moral right all together and refers to the protection in the Berne Convention.¹¹¹

In most cases the duration of the moral right is bound to the duration of the economic right. The moment a work is been made the creator has earned the law's copyright protection together with other right's attached to the work,

¹⁰⁴ Preamble WPPT. Article 1 – The convention shall not discriminate any protection of the Rome Convention, the Berne Convention or other right and obligations in other conventions.

¹⁰⁵ Article 2 (a) WPPT

¹⁰⁶ Article 6, 7 WPPT

¹⁰⁷ Article 7, 8 and 9.

¹⁰⁸ Article 2 (d) WPPT

¹⁰⁹ WIPO Handbook, p. 46

¹¹⁰ The Berne Convention 16(1) - Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

¹¹¹ See more in the chapter Conventions focusing on the Trips.

without a registration is required.¹¹² WCT and WPPT were two of the treaties created to match the challenges from the development of the internet. The expectations were high that many countries should follow.

Obviously the copyright can always be waived by the country. This can deprive the creator it's right, both economically and morally, which is in violation to the human rights.

¹¹² Article 2 (2) Berne Convention, 1971.

7 The Work to Protect Television Format

1.23 Favourite protection – the copyright

With all of this said the questions sums up. Is the current law enough or should we rewrite the law? There are several instruments, copyright law, passing off and competitions rules that many believe to be enough. Or perhaps can the market handle itself. Many want a an international framework that all parties or countries are bound to.¹¹³ Among the believers are creators, producers, television networks with lawyers and the legal academia. However the if and why not to present an international framework has come to a halt, when the WIPO and their collegial organisation is criticised for limiting the Human Right.

Copyright is the first alternative to protect any creative work. One example is the case of Great Britain and the discussion made by Shelley Lane and Richard McD Bridge. Their conclusion is that the English national copyright could include international format productions. With FRAPA the bar has been raised even higher, it's now believed that format is copyrighted regardless of the complicated discussion of ideas. As the grand organization WIPO has formed copyright comforting to the markets and other trade organization as the WTO.

Outside the walls of WIPO's building in Geneva and outside world of copyright, voices have been raised about this *copyright supreme*. The critics mention that the copyright and its rights don't correspond with the human rights. And it is even disregarded in some treaties. To understand the depth of this, let's take a fast detour too how the rights and obligations is put together on an international level.

1.24 Defining the Human Rights

In international law, human rights are perceived as cloud that floats above all other law systems. Any norms that is created and designed for television format must follow the *Universal Declaration of the Human Rights, UDHR*. This means that creating an international rule for the television format one is required to look at the UDHR.

What is then difference of a *human right article* and an *international copyright article*? In the Human Rights declaration the article is universal,

¹¹³ Agreements between countries is referred to treaties or convention. They can either be unilateral – between two countries or multilateral with two and more states. When bound to the conventions the countries are called a *party* to it.

indivisible and interdependent.¹¹⁴ Or it said, they are not rights at all but *freedoms*.¹¹⁵ A right is always connected to an obligation and vice versa. We have a right to get paid for a work that we have done. But we have also an obligation to fulfill our work. A freedom just *is*. Everyone has a right to work and no one can deny this for anyone. This means that the article can't be limited, passed off or even put to an end.¹¹⁶

Does it make sense? In practice, this means that a Human Right exist for everyone regardless. It is rights that you are *born with and is always with you*. A right like this is the right to live, the right to speech, write and even the right to make your own family.¹¹⁷ No one can strip you from this right. Example of a Human Right is the right to live. The death penalty is obviously not a Human Right, since no one has a right to limit your right. Right to movement is another right, and this cannot be limited, for instance the right to travel to another city is in your own right. And this also means you cannot be put in a prison without any valid charges. In order to support a prison penalty, it has to be part of law system, such as the Swedish penal code.¹¹⁸ The law system corresponds to the article 6 in the UDHR – the right to a free trial.

This rights define you as a human and looked that this, we are all similar and equal. In conclusion, the human rights are with you always. It is like the air and oxygen, it is vital for each and every one all the time.

1.25 The conflict versus UN and WIPO

In some year's time the UN and WIPO has been in conflict with each other. The matter is in how to define the right for the creator according to the human rights. Paragraph 27(2) in the UNDR right to get credit for its own work – the moral interests and the right to get paid for its creation – the material interest. The emphasize of equal right to both the moral and material interest by any scientific, literary or artistic production is the biggest and greatest difference from the human rights compared to those framework in any intellectual property text.¹¹⁹ As it is inherent and with

114 E/C.12/GC.21 p. 1 In 2006 CESCR came with a guiding article of the interpretation article 15(1)(C) in the International Covenant on Economic, Social and Culture Rights. Life sometimes is it more complex and now an alluring conflict between two of the giants WIPO and the independent Trips and the Committee on the Economic, Social and Cultural Rights (CESCR) as part of the UN.

115 Whereas recognition of the *inherent dignity* and of the equal and *inalienable rights* of all members of the human family is the foundation of freedom, justice and peace in the world, (...) [My italics]. This means that human right means exist all the time, without any discrimination to gender, race, colour, religion or country you belong too. In recent years, the issue of sexuality has made a hot topic if it should be interpreted as human rights.

116 Yu. p. 1039. 2007.

117 UDHR article 3, 16 and 19.

118 Rättegångsbalken and Brottsbalken.

119 P.2 General Comment 17

worth to all persons. Intellectual property has always put most importance the right of income. The debate of free downloading off music and movies has surrounded the concerns that the artist and the business is losing to much money.

In 2006 the comment from *the Committee on the Economic, Social and Cultural Rights* (CESCR) came.¹²⁰ CESCR dealt with the meaning of the 15(1)/C in the International Covenant on Economic, Social and Culture Rights.¹²¹ It reaffirmed the previous critics about the limitations made by WIPO and WTO. The fear is that any inclusion of intellectual property will undermine fundamental Human Rights as prohibition on genocide, slavery and torture and rights as the right for life, freedom of thought, expression, association and religion.¹²² As a commentator they have their own heavy weight in the international law community. Their statement rocked the boat for the intellectual property organisations and putting WIPO and WTO work to a complete stop.¹²³

At the same way the international law is always an interpretation and extension of the UDHR. As written above there are difference too define intellectual property. WIPO and its colleges believes the intellectual rights is an expression of human rights, but the UN states the intellectual property a mere tool by many other alternatives.

WIPO's attitude is that intellectual property is a Human Right. At its webpage WIPO refers as to a complex relationship between the both system. It is said one needs a unique understanding to the true nature and it's purpose of intellectual property.¹²⁴ Read like this, WIPO puts the intellectual property first and Human Rights second. As understood above, the UNs position is that WIPO takes a huge advantages of the rights given to them.

Still WIPO's work is to promote intellectual property around the world, both on a governmental level and with the work in international organizations in accordance with the Human Rights. Paradoxolly enough the copyright and the intellectual property from WIPO has been guided by the UN's Human Rights work from the very start in 1967.¹²⁵ It was then the organization was made a specialized agency in the UN organization after being an independent organisation.¹²⁶

120 International Covenant on Economic, Social and Cultural Rights abbreviated as, ICESCR.

121 Yu. p. 1039. 2007.

122 Yu. p. 3. 2007

123 Helfer. p. 974 2007.

124 (at: <http://www.wipo.int/tk/en/hr/>. Last accessed May 5th 2009).

125 The WIPO formally gives full member status in the UN, with the signature of *Convention of Establishing the World Intellectual Property Organization*, 1967 in Stockholm. Before that WIPO was called BIRPI (United International Bureaux for the Protection of Intellectual Property that was established in 1893 to administer the Berne and Paris Convention).

126 The WIPO as said in text, is an specialized organization, and lies under the Economic and Social Council - ECOSOC. ECOSOC are one of the five main governing bodies in UN, the others are the General Assembly, Security

WIPO's true mission is today:

*.../promoting, enriching and disseminating the national cultural heritage. A country's development depends to a very great extent on the creativity of its people, and encouragement of individual creativity and its dissemination is a sine qua non for progress.*¹²⁷ [My italics].

This is big words, but WIPO strongly believes that copyright, patent, trademarks with several more intellectual property rights are the true guarantee for any development for both the culture and the society as whole.¹²⁸ Today the organization has 184 members worldwide with headquarters in Geneva.¹²⁹ At the present WIPO works for a national legal development to meet the technological challenges at present time.¹³⁰ Television formats is one of the newcomer since it's introduction to the market in 1997 in a form as docusoap. Considering the fact that the work is under a halt, the possible outcome from this conflict is that it can undermine WIPO work and even be driven the to change principles in accordance to comment from CESR and UNHR.

This is one sense a true interpretation of the UNDR article 27(1). It states that

everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.¹³¹

The first paragraph gives everyone right to be a member of a creative society and participate without any interferences.

1.26 Critics and solution

The critics wish is not to prevent WIPO to promote protection for the creative community, only to secure the integrity of the Human Rights. It has therefore launched a new perspective on the IP-rights where they argue that *intellectual property is a tool* when you work with Human Rights. Other tools suggested are copyright, royalties, patent, creating an organisation as the WIPO or even a new legal framework for television format. This is all

Council, International Court of Justice. Totally sixteen specialized agencies sorts under ECOSOC, among them Unesco, IAEA, World Bank, and the relevant for this thesis, WIPO. There is a duty to report annually to the ECOSOC, part from that, these agencies are total autonomous, but there is a cooperation between the agencies and of course with the UN.

¹²⁷ Ibid. WIPO Handbook. p 41. "Sine qua non" is a fundamental term for any growth and progress.

¹²⁸ Ibid. WIPO Handbook, p 41.

¹²⁹ Convention of Establishing the World Intellectual Property Organization (1967); Articles 5, (1 – 2(i)) and article 10. In the handbook from WIPO p. 5, WIPO works as an special agency as the other with is own governing body with staff and an elected head, constitution, budget and administration. Absolute independency as result provides WIPO with its organization for collection and distribution of author's 'fees'.

¹³⁰ The World Intellectual Property Organization, WIPO. In the rest of the thesis I will refer to it is as WIPO.

¹³¹ Article 27 (1) UDHR

good example in how to executing the Human Rights but they are not - Human Rights.¹³² The gain is that the Human Rights integrity will be safe and still promoting more creative measure to be used. The downfall is of course for an organisation like WIPO is the work already done. Is it now obsolete? What the effect will be is still unsaid.

However the General Comment 21 fills out the gap the copyright has. The comment deals with the article of cultural freedom in the UDHR. How much one want to be part of the cultural community is a free choice. It is has an inclusive approach with a non-discriminatory principle. In copyright perspective the right to be granted moral and material protection, is given to 'everyone'. This mean individual, association with others and a community or group.¹³³ Everyone is entitled to *participate* in a cultural society with *access* to education and information, as it is important to understand it's own culture and form it's identity. And by that *contribute* with spiritual, intellectual and emotional expressions. To gain this goal the rights should contribute openness through five important ways. Culture goods and service has to be open for everyone such as library, museums, theatres, cinemas sport, literature, movies and music. This also means that the venues to perform this activities has to be open. That is park, roads, seas, lakes, nature and electronic possibilities such as the internet.¹³⁴ *Acceptability* is conforming the law, policies, strategies and other measures all to make sure that cultural rights. *Appropriateness* focus on how to making a Human Right real, in respect to all that is coherent with the culture of that time. It should be respectful to to individuals, communities and includes minorities.

This mark further perspective to take note off from anyone that wish to shape the international rules. The rights has to be applicable in many situation and not always, the traditional means to give a copyright is the best. Especially mentioned are the indigenous people.¹³⁵

¹³² The declaration is non-binding to any country. A deeper followthrough of why, is made later in this thesis. The connection to the other UN-instruments was made by the conference in the United Nations international Conference, with the same name in 1968. It was said that the human rights was an obligation to all and from that two binding treaties was created; the International Covenant on Civil and Political Rights (ICCPR) 1976, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Carrying out the principles in the ICCPR and the ICESCR, several more treaties had to be established concentrating of the fundamental freedoms from the UDHR as international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child, the United Nations Convention Against Torture and many more.

¹³³ E/C.12/GC/12 p. 3.

¹³⁴ Ibid. p 4

¹³⁵ As being stated in the Charter of the United Nations, The UDHR, and the Universal Declaration on the Right of Indigenous People.

1.27 Developments

7.1.1 New Organizations - FRAPA and IFLA

The Format Recognition and Protection Association, FRAPA, was formed in Germany 2000. The organization began with a work to find a code of conduct and mediating disputes in the industry. Today over 100 companies from the television industry are members.¹³⁶ FRAPA's goal is

/...to ensure that television formats are respected by the industry and protected by law as intellectual property.¹³⁷

For them television format is already copyrighted protected.¹³⁸ FRAPA's gives three reasons for this conclusion. *First* is that format is a product of *intellectual work* and the creator of a format earns the same right and obligations as any other copyright holder. *Secondly* does that format need a financial *investment* for development, production and distribution.¹³⁹ Anyone investing in a television format should be sure to make a profit and this lies well with the material rights. *Third* out, is about a *legal certainty*. A format given copyright protection gives the product credibility to the rest of the market.¹⁴⁰

FRAPA has introduced mediations methods where legal disputes can be swift and cheap. The decision from its board is binding and cannot be appealed. The case is tried by an intellectual property lawyer and a representative from the television industry. In 2004, the court tried 24 cases. It is most mediations verdict and they are surrounded with secretary. From 2010 and onward FRAPA will cooperate with WIPO's arbitration.¹⁴¹ FRAPA has also made registration of television format on their website. The registered work is then considered to be the original. If any other claims copyright, the burden of proof lies with her or him. If it showed by claimant that a second show has been created independently, both own copyright to their shows. A true mediation tool as it seems, if it works, the future will show.¹⁴² Today FRAPA is one off the strongest advocates for television format protection and by far the most powerful organization.¹⁴³

¹³⁶ *ibid.* Rubin, J. p. 701.

¹³⁷ FRAPA (at http://www.frapa.org/about_us/background/index.html . Last accessed June 23rd 2008).

¹³⁸ www.frapa.org

¹³⁹ Article 6bis the Berne Convention, gives the copyrighted artist, both moral and economic rights.

¹⁴⁰ FRAPA *ibid.* (at http://www.frapa.org/about_us/background/index.html . Last accessed July 21st 2008).

¹⁴¹ From 2010 WIPO is part of the mediation process, when they use WIPO Arbitration and Mediation Center Partner in TV format dispute resolution. (at: <http://www.frapa.org/press/press-releases/53-frapa-and-wipo-arbitration-and-mediation-center-partner-in-tv-format-dispute-resolution.html>. Last accessed May 6th 2010).

¹⁴² FRAPA (at: http://www.frapa.org/register_formats/online_format_registry/index.html. Last accessed May 6th 2010).

¹⁴³ To expand it's position further Frapa established the C21Media International Format Awards. It holds categories as; Best Studio-based Gameshow (Production and Format), Best Competition Reality Show (Production and Format),

The International Format Lawyers Association is an active network for lawyers, established in 2004, that works as a guide for the TV-industry.¹⁴⁴ Today IFLA a partner to FRAPA. They assist help in the field of copyright, passing off, unfair competition.¹⁴⁵ And work out standard license contracts to their clients.¹⁴⁶

7.1.2 Expansion of the digital media and legislation measures

OECD presented in 2003 a paper which overlooked the expansion of infrastructure regarding broadband, internet access and telephony between the years 1997 to 2001.¹⁴⁷ The cable industry that provided internet access grew to 64 per cent, 41 per cent for telecommunication and 17 per cent of television and radio. The hype and pace around internet drove televisions companies to become an acting part of the technological development. One of many consequences of this vast expansion in internet and digital media was the growing pressure of a stronger legislation.¹⁴⁸

US is the country where the lobbying for a tighter law has been at the most. The country has an overall look on how to enforce civil and criminal actions against illegal use of copyright.¹⁴⁹ The US made a revision of their copyrights law and resemble it in the *The Digital Millennium Copyright Act*, 1998.¹⁵⁰ The act protects the copyright for DVD's and CD's. It criminalises any infringement to the copyright and makes it possible to prosecute.¹⁵¹ The act has also implemented the WIPO, the WTO and the WPPT.¹⁵²

The US put pressure on their member states to the WPPT and WCT, harmonize their national law to the conventions.¹⁵³ In 2001, the European Union adopted the *Copyright Directive*, EUCD. It requires members to harmonize their laws regarding rights to protect the copyright.¹⁵⁴ This includes any actions of DRM, regional coding's, locks of DVDs that prevents the user to make copies even for private use. In 2005 with *The*

Best Sketch Comedy Show (Production and Show), Best Reality TV Character and Format Guru of the Year. (at: http://www.frapa.org/news/C21_FRAPA_Format_Award_2007/C21_and_FRAPA_Format_Award_2007.html. Last accessed June 23rd 2008).

144 Leiman, J. p. 33

145 IFLA (at <http://www.ifla.tv/about.html>) Last accessed July 21th 2008).

146 Leiman, J. *ibid.* page 33.

147 OECD, p. 6.

148 OECD, p. 6.

149 Ponte, M, L. *Coming Attractions: Opportunities and Challenges in Thwarting Global Movie Piracy.* p. 341.

150 The work to offer law and solutions goes under the term "Digital Rights Management" (DRM).

151 The term used when talk about protecting copyright in digital media, is called anti-circumvents.

152 The Digital Millinium Copyright Act of 1998. DMCA

(at: <http://www.copyright.gov/legislation/dmca.pdf> (Last accessed May 5th 2009) p. 1

153 *Ibid.* p. 343

154 *Ibid.* p. 343

Family and Entertainment and Copyright ACT, the United States criminalised action to cam cording. There is also an operative work to intervene and stop copyright infringements. In 2005 there were over 43,000 raids, 31,000 criminal cases and millions of discs, worldwide that was taken in possession by the authorities. The raids have not been entirely accepted as they burden public resources. Some experts suggest that the film industry should focus on the civil lawsuits and using their own funds, rather than drawing on public resources to vindicate copyright interest.¹⁵⁵ At least, the entertainment industry has the money for it.

Alternative is to methods control the audience at the time for the movie-event. Supervised by the great movie organizations MPAA, theatres is sanctioned to make bag-searching, night vision goggles and written warning about unwarranted cam cording. Obviously, it is impossible to have a total control in all movie theatres world over. The risk is that the movie is going to be cam cording, and later uploaded on the internet for millions of viewer's to watch.¹⁵⁶

The critics puts rational reason in response. Is the moviegoers inconvenience worth that? And is it even legal? The movie owner's that has given a big share to the production companies are perhaps not willing to invest more money for security. If there is an alternative to protect crime, there is also alternative to increase the income for a movie. Theatres holder has the merchandise like soda, candy and popcorn. For this reason the MPAA has consider soft measure as information to the staff and the audience about policies and rules surrounding cam cording the movies. There is also a way to circumvent cam cording but the use of digital protection and creative modes in distribution.¹⁵⁷

In 2006 WIPO issued a new set of IP rights, entitled the broadcaster and broadcasting organizations, to intervene where a show is showed in one country, is broadcasted in a another country without authorization. The crime is stealing television signals. WIPO says they are working in the accordance with the Rome Convention from 1961. Technology companies as Bell, AT&T, HP and Sony objects to this new treaty.¹⁵⁸

That measures has to be done is important if one wish to uphold the Human Right and the right for a creative life. However any limitations done that is made to restrict life of others should be discuss. The business need for a bigger protecting i.e the copying and the downloading on the internet, must be meet with the need to privacy and personal integrity. The General Commentary of 21 states that any limitations has to be proportionate.¹⁵⁹ And it is reasonable to ask if the demands from the market, to have a right to

¹⁵⁵ Ibid. p. 347

¹⁵⁶ Ibid. p. 349

¹⁵⁷ Most articles and literature terms this activity as "piracy. However, I found the term has become to valued to use it in general.

¹⁵⁸ Out-law.com

¹⁵⁹ E/C.12/GC/21. p. 6

overlook internet traffic, to intervene piracy of the net is a balanced request with regards to the human rights.

7.1.3 Social Media and The Law

The world community has tried to keep up with the digital development and expansion of the internet. The internet has proved ultimate source for exchanging information, pictures, movies, music and much more. Today there are several communities Youtube, Myspace are two of the biggest. Youtube began as a community where you could upload your own home filmed clip. The market taggled along and now use Youtube to advertise music videos, events, movies and television series. Lately is the story of Susan Boyle that became world know over night after appearing in the television show *Britain's Got Talent*. The show is similar to the *American Idol* but with greater variety. Any talent as dancing, singing, joggling or joddeling can be part of the show. Interesting, is that Simon Cowell is one of the three jury members.

Facebook is a social network, based on a simple principle, friend to friend. You invite your friends and build your network, in time you get to know more people and the network grows. Facebook can be used for personal reason or building your professional network. All of the networks are designed to meet the need of the user and the market.

Spotify is a network for music, was the first successful product, to combine easy access to music and still respecting the copyright. You can make music list of your favorite songs, and listen to the music through a method called *streaming*. This offer full access to the show, but you can't download it. Critical voices has been raised, that there is still no benefit for the creators, since they can't make enough money on the new technics. *Voddler* has the same technics but is a media forum for movies and televisions series. How the outcome will be is yet to see. The two last programs are both developed in Sweden.¹⁶⁰

7.1.4 Changing the perspectives

There is a small breeze of change in the American industry. Presenting her ideas on the MIPCOM fair in 2006, President of Disney-ABC Anne Sweeney, created controversy when she claimed that *piracy is a business model*. A business model she claims is there to serve the market. Her argument is that even a pirate is for the competition for the consumer's attention regarding quality, price and availability. She also points out that

¹⁶⁰ Spotify was formed in april 2006 by entrepreneurs Daniel Ek and Martin Lorentzon. (Last accessed at the <http://www.spotify.com/se/about/press/background-info/#company-history>). Voddler was started in 2005 (Last accessed at the <http://www.voddler.com/about/>).

the industry may not like it but have recognized as a force moving forward.¹⁶¹

In fact, the only objective when the market failed she says, is the interest of the consumers. When the trade in buy and sell cds', going to the movies or buy a DVD, have increased the piracy has seen an opening to provide the same service for the customers. She promotes models to compete with the piracy instead of trying to defeat it.¹⁶²

This is with no doubt a controversial position in the worldwide quest to take out piracy. Nevertheless, it does offer a new and quite different way of seeing.¹⁶³

By looking at piracy as a business model, the movie industry can analyze the strategies that have made piracy, a global success and fashion new and innovative efforts to compete with this potent global force.¹⁶⁴

¹⁶¹ Ponte, L, M. p. 336

¹⁶² Ibid. p. 335

¹⁶³ Ibid. p. 336.

¹⁶⁴ Ibid. p. 348

8 Practice and Principles

Television format is tried in courts world over. I have chosen the most ground breaking cases to highlight the development over the years. Early case dismissed any wish for protection but it appears lately there are a change and an opening for a copyright protection. At the end of each case I'll will offer a rule or that has been established in the case.¹⁶⁵

1.28 England/New Zealand

8.1.1 Opportunity Knocks Case – Raising the issue

First time format or concept were mentioned and tried in court was with the *Opportunity Knocks Case*. It was landmark case that kicked off the juridical debate about television format. The country was New Zealand and case parties was the local producer Hughie Green versus the national television company Broadcasting Corporation of New Zealand.¹⁶⁶

The plaintiff Hughie Green was a known television producer in Great Britain. His television show had been aired in British television from 1960 to 1978.¹⁶⁷ From 1975 to 1978, a similar show surfaced in New Zealand television using the same elements as presented in Green's show. Green turned to the court arguing that *copyright infringement to the title and dramatic format*. The features in the last show was too similar, it had same elements as title, catch phrases, the 'claptometer' and use of sponsors.¹⁶⁸ However, for Mr Green the result by the court came out negative. It found there was no infringement.¹⁶⁹ The infringement of *title* was dismissed based on a prior case that stated a title can't be copyright protected.¹⁷⁰ When it came to questions of infringement of dramatic works the Privy Council, held that television format for the show

¹⁶⁵ I will now turn to the practice, the judgments from court world over. The conclusion by the courts forms a framework that is followed as binding rules when written into law, or as guidelines when you write your own agreement. If there a strong principle underlying, the likely hood is that these will turn out to hard-core law. Considering the fact that the area of television format is both global and undefined, most of the national courts, will look on how the other country has solved any issue when introduced to them. KÄLLA I AKEHURT'S

¹⁶⁶ Green Vs Broadcasting Corp of New Zealand [1988] 2 N.Z.L.R., Referred in the rest document as the "Opportunity Knocks Case".

¹⁶⁷ Ibid. Leiman. p. 26

¹⁶⁸ The claptometer is described as scheme for the order of events.

¹⁶⁹ David Rose is critical of the courts finding. He says that even if the script expressed a concept or an general idea, it still could be protected as a literary work. p. 172.

¹⁷⁰ Rose, D. ibid. p. 170. 'Dramatic Works' in the British Copyright Act is based on a plot, characters, dialogue, stage directions and music. Look further in the chapter Title and Passing off.

“/.../was not capable of copyright protection, even though some elements were repeated in each show, as *the separate elements did not sufficiently combine together to form a unified a dramatic work /.../*¹⁷¹ [My italics].

The court did not find that there was a dramatic work to be protected.

The principle behind the court’s ruling can be stated like this; same features are not enough grounds to grant copyright. If the shall be an protection the features has to be arranged in such a way that separates and makes it unique from other shows.¹⁷²

1.29 Great Britain

8.1.2 Pop Idol vs. the X Factor – the settlement

One of the most known cases is Simon Fuller versus Simon Cowell. Simon Fuller and his company 19TV is the original owner to *Pop Idol* and *American Idol*. Fuller brought a case against Simon Cowell, his company *Syco and Simco* and co-producer *Fremantle Media* that produced *The X-Factor*. At that time the show had over 30 million viewers and the stakes were high. The claim itself was on 100 million dollars.¹⁷³ The fact that Fuller and Cowell was best friends, and Cowell was one of the three-jury members on *American Idol* did add interest to the dispute. Fuller argued that Cowell had copied *The X-Factor* from the *Idol*-format. He claimed *breach of copyright* and *breach of contract*. Many off *Pop Idol*’s team also worked on *The X-Factor*, even though they had signed loyalties agreement and promise not to work on any other show.

Fuller hoped that the courts would find an answer to the question, presumably in favor to him. And many more with him wished to get clarity in the matter, but Fuller and Cowell decided to settle. The reason for the settlement wasn’t made public. Cowell stayed on as jury member on the *American Idol* including that he went on to become executive producer for the show. At Fuller behalf, he did not lose anything as his company became co-producer too *The X Factor*.¹⁷⁴

What would have come out of this ruling had been very interesting, considering how alike these shows are. The underlying principle is that probably a matter of litigation, what makes a case to be tried? When the question if two shows bares similarities, and it is a question of a copyright,

171 Hinton, C. Can I protect my TV format. p. 91

172 What the court should have said about copyright is not clear consider that wasn’t tried. The title is to protected in the trademark law.

173 Hurrell, Will, Cowell hints at US X Factor, BroadcastNow (at; http://www.broadcastnow.co.uk/international/usa/news/2009/04/is_the_us_next_for_x_factor.html. Last accessed May 5th 2009).

174 Hinton, C. p. 91.

it is admissible. Implicit, the court admits to try cases about television format.

1.30 Germany/France

8.1.3 L'Ecole des Fans – It is all about materialised work

L'Ecole des Fans was a French show broadcasted from 1997 and onward. It was a show where children from four to six went on the stage and performed a song. They are interviewed and receive a present and in the audience sit the parents. The show had also guest appearance by a known star. During the same period of time German television broadcasted a show alike *L'Ecole des Fans*. The French company sued German Television claiming *copyright infringement* as they used same basic format. The case went up to Federal Supreme Court in Germany.¹⁷⁵ According to *article 2* in the *German Copyright Act*, the work has to be material. Using same elements to shape a show similar to another is not enough for copyright.

The rule established by the court is as follow; the case is tried in the country where the infringement is done. Due to that work has to live up to national standards of copyright law- In this case the work must be materialised according to national law. Anyone that creates a work that is translational must be ready to take the consequences as there are written in other countries laws.¹⁷⁶

1.31 France

8.1.4 Saranga Production vs. Canal plus - the First Injunction

This is the first case when using elements for a television format, which actually led to a cause of action namely *passing off*. Passing off is a matter of loss off good will. It is when someone else use a product, without no consent from the creator, to make money and reputation.¹⁷⁷

The format was a political docu-drama, purposed to shed light over major world crises. Two journalists created the show. They invited an expert panel of specialist and politicians that gave their opinion of how to solve the situation. Their idea was presented to several producers and broadcasting companies, by them, Canal Plus. Canal Plus showed interest the parties went into negotiations but after some time Canal Plus broke off the talks. A

¹⁷⁵ As the plaintiff was from German, the Germany was the country to try the case.

¹⁷⁶ Pilyny, H. K, p 1 Germany: Trademarks – Protection of the format of a TV Show

¹⁷⁷ Coad, J. Adams, E. French Court Gives Protection To TV Format: Saranga Production v Canal Plus, 2005

few months after the show, *C'est déjà demain* premiered at Canal Plus. The similarities of the previous show were too alike and the creators decided to sue Canal Plus on the grounds of passing off. They also wanted an *injunction* that prohibited anyone to produce and broadcast their show *C'est déjà demain*. Canal Plus, answered by saying that they developed its format before meeting with the two journalists but failed to prove it. The burden of evidence laid on Canal Plus.¹⁷⁸

The court mentioned that the shows was different that went on air but just looking at the concepts it was the very same. Canal Plus had used element without any consent and that went against rules of competition. It also said that a format program could be a commercial item with economic value. Due to that fact the creators suffered economic damages and was awarded 150, 000 Euros. Especially considering that is was now impossible for them to offer the format to other broadcasting network.¹⁷⁹

The fact that the plaintiff argued passing off was a new alternative to argue copyright infringement and in this case, proved to be successful.

The rule established was making the television format material on the grounds of same concept. Thereby the court makes television format admissible to be tried, and can be afforded damages.

1.32 The Netherlands

8.1.5 Survivor vs. Big Brother - First court that grants a legal status to "format"

More shows based on format surfaces, the likelihood more disputes will arise. In 2002 the owners of Castaway Television and producers of *Survivor*, sued the makers behind the famous show *Big Brother* to have copied the *Survivor format*.

The theme is same but different of Big Brother in comparison to Survivor. It is a contest where the winner takes it all. The pot is a large sum of money; the contenders in *Big Brother* locked up in a house with no contact to the real world. No radio, nor television, telephone or internet. The one who remains the last in the house is the winner. This is similar to Survivor, where the contenders have to survive on a desert island with no contact with outer world, except from the camera crew that follows them everywhere. The element of competition and voting out a contender each episode is the same for both shows.

The case went up to the appeals in the Netherlands. The court stated there was a copyright infringement, a conclusion that differed highly from

¹⁷⁸ Marcangelo-Leos, P. p 1. Canal Plus Fined for Using a Programme Concept without the Originators' Authorisation

¹⁷⁹ Coad, J. Adams, E. Ibid

previous cases. The court said that a format *has* a copyright protection according to *Dutch Copyright Act*, as it meet two requirements. First, it was sufficiently original and second it was developed and executed.

Regarding *originality*, the court revised Castaway's presentation of the show, which consisted of three parts. Part 1 was a seventeen pages outline presenting the format, the creators, part two outlined the rules, and part three presented the production strategy. Analyzing the presentation the court found that *Survivor* was copyrighted. The presentation had twelve elements that made the format of *Survivor*. This term was in itself not original but combined in an original way.¹⁸⁰ This discussion looks similar to the definition made by Karnell and Deichmann own position of how to define an element.

The second requirement is if there was a *breach in copyright*. Copying itself is not substantial enough to be an infringement. In addition, copying is allowed in some countries under example the principles like fair use.¹⁸¹ The measure of copying is if the work has been *substantially copied*. As said above the court did not find any copying been done because there was too big of a difference. One aspect was the usage of the camera. At *Survivor* the contenders a camera crew followed them twenty-four hours a day, but in *Big Brother*, there was a surveillances camera installed in every room of the house. The format was alike but the outcome different.¹⁸²

The huge different from other courts was the trying court, Dutch Court of Appeal, did found that there was a format to be protected. It was for the court not the issue of originality, but more a question of numbers. In fact, how many separate elements had been copied? The court found out that format of *Big Brother* had not copied enough elements to say it was an infringement.¹⁸³

The underlying principle is yet another case, which is going in favour of materialising the television format idea. If the work has enough many elements that is been copied, this establish the copyright.

180 Moran, A. Malbon, J. p. 136; Known features/elements in *Survivor* that the court took into consideration was; 1. That a group of a different people was sent to an island, with no contact with the outside world. 2. There stay was televised. 3 The television was on 24 hours a day. 4. The group was given tasks to perform and earned gains if they succeeded. 5. The nominated each other and cast a vote, who's stay and who has to go. 6. Each of the members was allowed to take a personal item with them. 7. The winner takes it all. Moran, A; Malbon, J. page 113. Establishing where the copyright starts and end is a tricky question. The most know effort has been made by the US Supreme Court Judge Learned Hand which made an abstraction test. The purpose of the test is to draw line when ideas are used in general and when the story feels original and unique to afford copyright protection.

181 Ibid. Moran, A, Malbon, J. p, 138.

182 Ibid. Moran, A. Malbon, J. p. 140. One of the more know test that court drawn was the *Norowizian Case v Arks* ((No 2) (2000 EMLR 73). The case was important to ask if a format can be protected as a dramatic work, on the term that is a) "work of an action" and b) "being able to be performed". Ibid. Gough, L, p. 26

183 Hinston, *ibid*, page 92. 2006.

1.33Brazil

8.1.6 Big Brother again - the first case where the format owner are the winners

Big Brother has turned out to be a popular show on television as well as an issue for the courts. Endemol, format owner of *Big Brother*, offered extensive information about the show to the Brazilian company TV SBT. Provided with this production fact, TV SBT went on to launch their own show called *Casa dos Artistas*. The Brazilian production company of *Big Brother*, TV Globo, sued TV SBT, for damages and asked for an injunction to stop the airing of the show.

Endemol and TV GLOBO won its claim and paved a new path for format copyright protection. The court emphasized that a format, such as *Big Brother*, was more than just an idea of where people were locked up in a house. It has a narrative with a beginning, middle, and an end. It has specific details, when it came to the choice of music, the usage of microphones as the participants had to wear and a web community on the internet. Endemol was awarded 400,000 pounds, and TV Globo over 1 million pounds in damages.¹⁸⁴

If a show with a specific narrative, even if not written into detail, but with specific elements as usage of microphones in this case, makes an established ground for damages and injunctions. Exception for this rule is if the defendant company can show that they have created the show, independently. (The chances are probably slim).

¹⁸⁴ Coad, J. 2004. E-bulletin Swanturton. (at

<http://www.swanturton.com/ebulletins/archive/JKCBigBrotherFormat.aspx>. Last accessed December 15th 2008).

9 Analysis

We live in an ever-changing world, where the internet and the development just started. Even if format have been traded for in over fifty years the format business is at on development stage and it's open how the changes will be the next fifty years to come.

The analysis will refers to these aspects

- Legislation pros – and cons.
- The Human Rights
- The techichal development
- New perspective

There is really no reason for me to protest against a larger protection. One is of course the many participants in the television, in the doctrine, the formation of FRAPA and the voices from WIPO. They all said yes to a stronger regulation. Perhaps drafted in a convention. The courts has also opened up for the more positive outcome to the format owner. There is a wind of change.

The reasons for a stronger legislation is filled with different aspects all fitted for a global market. The format show is a worldwide business and the license market has always been global and never just between two national networks. It might even be argued that the format in it essence is made for exporting. Just look at *Survivor*, *Big Brother* and *American Idol*. Even if it started on an national level the shows has outgrew itself. With world market phenomena comes the money. And today the format market is big business generating over 1 billion dollar in revenues. The ideas are presented on the yearly television fairs as MIPCOM and Cannes. The format is definitely here to stay. The problem is of course the fast pace of the internet and the spread of music, television shows and movies. It is easy to download and copy. The market was not prepared for it and did not foresee that the consumer might act on its own without following the markets parameters. The market has been hand fallen and is not until now it seems to keep up with the speed.

The format is also easy to copy. Since there is no real copyright, the spread of a format can be transferred through by word of mouth, which in seconds turns to a multi million-television show. Sometimes by someone else as the case of *C'est déjà demain*. The market knows this and this increase the importance of intellectual property and WIPO. They have an overall responsibility to make sure that creators of intellectual property are protected through national law and international conventions. They safeguard both their right to an income, the economic right and the right to the creators own name, the moral right. And then there is the role of securing the cultural heritage. Whether or not format show, such as

Survivor, is worthy to protect to further generation, is of course in the good will of everyone. What do you think?

Then is the work within the legal field. Is there already a law and is it enough? Since the beginning the market and the trade between for example the United States and Great Britain, been ongoing. There a strong market, with written agreement, and establishment of license. A market with routine and rules one is presenting the format on trade fairs. There is the awareness from FRAPA, the continued discussion in the doctrine and the understanding from the courts.

At least the last cases in the court. If a television show is copied the courts has acknowledge the format right. In the case Survivor vs. Big Brother the Dutch court thought there was a format worthy to protect, but when tried if there copyright was infringed the court said no. The courts willingness to try a case on the ground of format copyright infringement is to give the parties a fair chance. In the case from Brazil did the court give the format owner the right and also awarded them with financial damages. If you present that a show has been copied and can show a majority of similar elements, the chance to win in a court is today realistic. The days of the Opportunity Knocks case, seems to be over. If the findings is enough to state that an international customs has been created is perhaps too soon.

In many ways the arguments for a stronger format law and perhaps I should agree on it. But I do not. We are living in world right now where is constantly changing. To write a television format law is saying farewell to development that just begun. Just look at the settlement of Fuller and Cowell. Today there is two successful shows instead of one. And inspired from those two yet another show can be produced. The best thing is to develop stronger license agreement, invest in new measures to protect an idea, as for registration.

In this is aim of the protection. The copyright as written into the Berne aims to protect the creator. In intellectual property, it means every single creative endeavor, the small thing, a sketch drawn photograph or a manuscript. In the interest of intellectual property everyone efforts is equally worth. Despite this a format protection does not aimed at the struggling artist, is aim to protect the interest of the big networks.

If we are weighing the moral and the economic right against each other, the economic right has an upper hand. Conventions like the Trips overlook the moral right, and pushes for a financial right. If you want to protect the struggling artist the economic rights does not aim for it. The economic right protects only the finished work. If you do not publish your work, the will be no income and then no economic right to talk about, this is logical. This is the same for the format. It is the broadcasted show that is still protected not the show in itself.

The notion that the Human Rights is forgotten is yet another huge dilemma that the WIPO and WTO has no real alternatives to. The UN is open for a development and a dialogue, but WIPO and the rest is settle with the fact that the are in there on mind following the Human Rights. As shown in the thesis the WIPO application doesn't protects all groups for example a minority and WTO exclude the moral right. The both pushes for a stronger copyright and a stronger legislation. The shades and nuances fall out in a perspective like this. For a form as the format working in a global arena this is perspective is to narrow.

If the talk has been to try to protect the process from idea to the television format show then it might struck at the heart of both the moral and economic right, and the overall goal for WIPO. It does not and even if I understand the theoretical discussion about idea and materialized work and the problems attached to it seem inconsistent to talk about protection of the format show and not the work behind it. This is if the wish is to protect creator and not the network.

If you try to rip of an idea from a big television format show as for example Survivor, it will with no doubt be noticed. And here there a several instrument at hands as passing of or have it tried by FRAPA. There is also the wishes that market should try to solve it without burden the public institutions. Besides a mere copy will be bleak and soon or later lose interest. There is a reason I think why the television format show that is up there on the top, has stayed on the top.

No doubt that there is much as stakes, but there are already mechanics that can protect the format holder if argued correctly. Passing off is certainly a method that I could promote for. The requirement is that, it that someone used something else without consent – which is probably an easy thing to show consider the claim in the first case. Second is the matter of good will, considering the Gough said, about a global world, a case based on good will, is not impossible to make.

I feel the Disney Director Anne Sweeny position was a fresh breeze of air. Why? It was a new perspective, with an open attitude, to the internet, to the global development and it was something else. She acknowledge the development instead of fearing it. And attaches a concrete market analysis to it.¹⁸⁵ Her position is communicative and empathic to both sides. She tries to look beyond and past the troubles that surrounds the format today. Instead to fix a problem that might not be solved she offers a new perspective. She marks that change is good, and we can either go with it, or go against it. We can promote either law or a new perspective. Is this the way for the format? In my perspective the copyright is as suggested by UN, a tool and it is too small to overlook a extensive area that grows as we speak. If we put it on hold who might say what happen tomorrow? We are still in the very beginning.

¹⁸⁵ It goes without saying I do not promote breaking the rules. And neither did she. It is just a new way.

10 Conclusions

My answer to the thesis question, if there should be an international framework for television format, the answer is no. The future is still unclear and the development is just begun. What will happen next is still open. I promote to use the passing off, usage of written agreements, the mediations of FRAPA, the guidance from IFLA and at last take the dispute to court. Rest of it up to the market to find new ways and mechanisms to promote and develop the television and still stay protected.

Supplement A

The Shows

Television format shows

American Idol

See the description above in the thesis.

Who Wants to be a Millionaire

It's a television quiz show with for thirty minutes. The show has 15 questions where the first question is worth 100 dollars and the last question is worth 1 million dollars. The difficulty of the questions get's higher for each steps. Signifying is the three help functions. The contestant can call a friend for help, have the computer take away two of the answer – a fifty-fifty chance, or ask the audience.¹⁸⁶

Big Brother

See the description above in the thesis.

Jeopardy

It is the traditional television quiz show. Jeopardy started in the United States and is one of the biggest television success with the know tagline “I give you the answers and you ask the questions”. The show began in 1964 and is one of the greatest exported formats worldwide.¹⁸⁷

Survivor/Expedition Robinson

See the description above in the thesis.

Drama series

Desperate Housewives

It takes a new grip on life in the suburbia and goes behind the facades. It centres with the five friends the children's books author Susan Mayer, the house wife Bree Van der Kamp and the Gabrielle Solis, that traded a glamorous model carrier for a life in the suburbs, Lynette Scavo the five children's mother with a fulltime work and the black cheap in the group, Edie Britt, the real estate agent, the single woman in the group, with a heart of gold, but to straight forward.

The series takes of after when Mary Alice Young, the fifth member of the group, one day (episode one), commits suicide. She leaves the housewives

¹⁸⁶ (at: <http://www.millionairetv.com/rules.html>. Last accessed May12th 2009).

¹⁸⁷ (at: <http://www.sonypictures.com/tv/shows/jeopardy/>. Last accessed November 8th 2008)

with grief's and sadness and a bundle of questions after her sudden death. The first show aired in October 2004.¹⁸⁸

L Word

It's about the love and life, centres around the couple the power couple until all breaks apart, the creative centre head Bette her loving partner and producer Tina, their friend s tennis player Dana, Alice Kit, Shane, Jenny the writer, a seeker and a explorer in love, and the mysterious café owner Marina. Many stories in the gay community in the heart of Los Angeles. The drama show was a ground breaker for promoting gay women in television. The first episode aired 25th of January 2004 on the network Showtime.

Sex and the City

A drama comedy produce by HBO, it premiered in 2004. It's centres around four women, the writer Carrie Bradshaw, the gallerist prude Charlotte, the PR of Samantha and the lawyer Miranda Hobbes. Its about the carrier, fashion and the search for love all taken place in the heart of New York.¹⁸⁹

188 (at: <http://abc.go.com/primetime/desperate/index?pn=about>. Last accessed May12th 2009).

189 (at: <http://www.hbo.com/city/>. Last accessed May 12th 2009).

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