Legislation of Television Formats: Challenges and Opportunities in Protecting Format Rights in the Global Content Trade Industry

Kosidichimma Anyanwu

School of Media, Technological University Dublin, Dublin City, Ireland

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ABSTRACT

The protection of television format rights as intellectual property provides a difficult and complicated terrain for artists, producers, and legal professionals in the dynamic and ever-changing global content trade business. This paper explores the opportunities and problems related to format rights protection in the international content trade sector. It draws attention to the difficulties confronted by producers, artists, and legal experts in defending novel formats in a setting that is changing quickly. It highlighted how crucial it is for organizations like the Format Recognition and Protection Association (FRAPA) to support format owners and developers, as well as how crucial it is to establish industry standards and promote collaboration. Stakeholders can strive for improved innovation in a competitive market, fair trade practices, and legal clarity by negotiating the complexities of format recognition and protection.

INTRODUCTION

The broad range of television series, reality shows, and entertainment formats that engage and entertain audiences across cultures as a result of cross-border trading is shaped in large part by format developers and owners. However, the potential for distinctive formats that are original and innovative to continue capturing viewers' attention over a long period at international scales is essential to the content trading industry's success. Yet such international reach also raises a salient issue – a staggering lack of robust legal protection for formatted products in dynamic environments. Formats by their complex nature in defining what the ideas truly entail, as well as the originality of the concept are vulnerable to cloning and copying. This paper primarily aims to analyze the challenges and opportunities in protecting television format rights within the global content trade industry. It examines the current legal frameworks and industry practices to provide insights into how stakeholders can better navigate the complexities of format protection, particularly in diverse legal environments such as Nigeria.

For industry stakeholders, such as producers, broadcasters, creators, and attorneys, defending format rights as intellectual property presents a difficult and multifaceted task. The intricate nature of formats, which encompass a blend of creative concepts, structures, and presentation styles, complicates the task of defining and safeguarding these intangible assets in a global context. Recognizing and protecting format rights within current legal frameworks presents several difficulties for judges who are tasked with resolving disputes about formats.

In light of this, organizations like the Format Recognition and Protection Association (FRAPA) represent important advocates of format owners' and developers' rights, promoting fair trade practices, format recognition, and protection. FRAPA plays a crucial role in influencing the legal landscape and advancing a more equitable environment for format creators and owners by establishing industry standards, offering legal counsel, pushing for legislative reform, and encouraging collaboration among industry professionals.

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Howbeit, the impacts of such organizations may not be as straightforward in countries like Nigeria laced with informalities in its media economy, as it may be in Western and more streamlined markets.

The following sections explore the web of possibilities, though complex, as well as challenges that stakeholders in the global content trade industry must negotiate while attempting to protect format rights. In the rapidly shifting digital age, it becomes critical to explore the many facets of format recognition and protection, from the subtleties of legal frameworks to the changing dynamics of format trade practices. The Nigerian media industry is briefly exemplified, considering its legal terrain of content production and format rights.

Format Legislation Issues

The term "format" is seen largely as a business transaction between the licensee and licensor. However, the idea of formats is simply understood within the industry as episodic program concepts for airing shows such as reality or on-demand content. Esser (2013) extends that the perception of formats from a contractual angle embodies an understanding of formats as intellectual property. Therefore, noting an absence of the Intellectual Property Rights (IPR) approach in law, Esser further echoes the Format Recognition and Protection Association (FRAPA). Thus, most judges have remained reluctant to recognize formats beyond generic program ideas lacking in upholding copyright infringement claims. This follows the observation that regulation differs widely across countries. Consequently, Esser (2013, p. 144) notes that 'copycatting without acknowledgment and remuneration of format developers and owners still occurs, to varying degrees, and especially in countries where legal protection is lacking.' Although, as expressed in (Winslow, 2003) FRAPA's copyright law expert, Christoph Fey, highlights that the lack or very little existing copyright protection for format right holders is also the case with developed markets. Similarly, Zeal Television's Director of International Television, Andrea Jackson, agrees that the lack of legal protection is a real concern in the industry at large. This means that the issue of format protection transcends any single nation or region based on local resources and is a global issue. In fact, Malbon (2006) argues that format rights, as a legal category, are not recognized in any country. However, in certain cases attempts towards its recognition are tied to complicated legal processes. Esser, however, argues that 'despite the fact that legal protection is precarious, the format business has continued to grow and there is anecdotal evidence that, now that the format trade is firmly established globally and 'unlicensed copying is decreasing' (2013, p. 144). This decrease in unlicensed copying can be easily attributed to the more recent emergence of regular formats licensing system under various national/local copyright laws in addition to global formats registration with FRAPA.

Furthermore, according to Coad (2012), the wind is very much blowing in favor of format protection worldwide, with important decisions in 2011 in Brazil and France. In Brazil, the Court of Appeal upheld the 2003 decision, which accorded copyright status to Big Brother. A Brazilian court also allowed a claim by Fremantle Media, its "*Got Talent*" format and a Paris court upheld another *Big Brother* claim on behalf of Endemol. Therefore, Coad concludes that this also teaches the market that the 'key to format protection is in sending out signals that you will take seriously the business of protecting your Intellectual Property (IP); not only for your sake but also for the sake of your licensees' (Coad, 2012).

Chalaby also observes that 'despite these obstacles, evidence shows that TV formats are increasingly granted legal protection against copyright infringement.' For example, after years of fruitless attempts, a Spanish court agreed for the first time that a TV format could be subject to copyright protection (Chalaby, 2015b, p. 472). Yet, the widespread global uncertainty in an official legal protection framework for formats highlights the complexity of measuring and appropriately distinguishing among copied, cloned, unlicensed, and other forms of adaptation that may not be included in the standardized GTF's indices of formalized programs.

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In a brief historical reference, studies on copycat programming in Western Europe can be traced back to the 1980s and 1990s, predating the advent of the term "format" among scholars and broadcasters in media industries. The collection edited by Alessandro Silj that appeared in English in 1998 was outlined as a 'paradigmatic moment for such studies', in noting that: 'Entitled *East of Dallas*, the collection was intended as a critical contribution to the "Dallasization" (or "Americanization") debate. This occurred among European media researchers following the opening of private television channels in Western Europe and the importation of US prime-time soap opera series such as Dallas as programmers sought to fill their expanded broadcast hours' (Moran, 2009a, p. 16). Through an examination of the generic program response to *Dallas* by several European broadcasters, Moran notes that the study of 'various new soap operas in television systems such as those of France and Germany were examined as generic spinoffs of the US program' (p.16). However, Moran added that they (remakes or adaptations of the original shows) were *loosely* based on these predecessors and *therefore* did not require any kind of format licensing for their development.

Television program adaptation and remaking began to receive increasing recognition as one which was far from occasional and accidental by the 1990s. Several television genres cropped up, for example, game shows like US *Wheel of Fortune.* This era saw an 'increasing recognition that television program adaptation and remaking were far from occasional or accidental' (Moran, 2009b, p. 16). As Moran notes, such an increase was documented in relation to several television genres. Around this time, the term "syndicated", such as used in Skovmand (1992), referred to formats in an analysis of multiple licensed adaptations of the US *Wheel of Fortune* by various Nordic broadcasters. Another example was Cooper-Chen (1994), who tracked a significant number of similar formats from the United States and elsewhere across 50 different television markets across the world in one of the pioneering examinations? of present-day TV formats.

Since television program adaptation and remaking became recognized in the 1990s, several scholars and broadcasters have increasingly discussed the issue of copycat and unlicensed formats in the media and entertainment industries around the world. Meanwhile, as cited by Zwaan and Joost De Bruin (2012, p. 14) 'the format industry is not necessarily reliant on legal protection. It certainly helps that there is a degree of perceived legal protection, but the industry at large is aware of how dubious that legal protection is,' says the Senior Manager at Fremantle Media (FremantleMedia, 2009). Moreover, 'subjecting the circulation of formats to a source might not be a simple task' (Navarro, 2012, p. 26). This is because, as Navarro observes, violators tend to change the formula slightly before claiming ownership over the new version, a practice embedded in the concept of formatting itself. It thus makes format theft more difficult to punish given the assumption that a formula will be adapted to specific television cultures. Also, quoting the media giant's Executive Vice President (EVP) of Commercial and Business Affairs:

What drives the format industry is not what is legally protectable or the rights – it is traced back to what is the initial impulse for a television commissioning editor or buyer to buy someone else's TV format – because that impulse is as simple as 'since it worked over there, therefore it has a fairly decent chance that it is going to work here as well', i.e. there must be some chemistry in the show that works with the audiences. Therefore, *Idols* is a shining example which goes around the world and achieves very similar results almost everywhere, despite uncertain legal protection (Zwaan & Joost De Bruin, 2012, p. 16)

Existing copyright laws do not provide sufficient legal protection for television formats in terms of enforceable legal actions. Therefore, this loophole often forces companies to seek other legal grounds elsewhere due to its lack of copyright laws (Winslow, 2003). Such alternatives, Winslow cites the head of media and entertainment practices in *Haldanes*, John McLehan, may include anti-competition laws or breach of confidentiality laws. For instance, notes the industry's John McLehan, the use of breach of confidence law proved successful in 2013 in a court in India, where a local channel received an injunction based on a producer's claim that the channel used information gathered during meetings to produce pirated versions of a proposed show. In another Danish instance, Winslow explains how the entertainment company

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Celador won a lawsuit pertaining to a pirated version of the global format, *Who Wants to Be a Millionaire?* This had been achieved under anti-competition laws, which prohibit unfair competition in business. Malbon (2006) also describes other forms of legal rights that can be eligible to support limited copyright laws in the format right protection such as confidentiality rights, passing off laws, trademarks, and design protection.

As stated by the *European Broadcasting Union* (EBU, 2005), in order to have a television format benefit from copyright laws, it 'requires that the format (1) has found expression in a certain perceptible form and (2) that originality is expressed'. Also, as stated in FRAPA (2011, pp. 10–11) report, "a TV show is made of several copyright works (literary, artistic, musical, etc.), and when "these elements or other features are combined" they form a "dramatic work" ". For instance, *Big Brother* has not been deemed an infringing copy of *Survive!* by a Dutch supreme court. This exoneration was due to the claim that the combination of 12 elements within *Survive!* When taken together, was considered a 'copyright work', which could be 'sufficiently unique and specific to be original'. This means that *Big Brother* was not found to have copied *Survive!* Within the premise of a wholistic copyright work (FRAPA, 2011, p. 17).

Another example is the *Opportunity Knocks* case in New Zealand in the 1980s. According to FRAPA, format rights discussion usually starts from this point. The producer and presenter of the popular British television show "Opportunity Knocks" between 1956 and 1978 on ITV, Hughie Green, objected to the unauthorized adaptation of his talent show under the same title. The Broadcasting Corporation of New Zealand ("BCNZ") created a similar program from 1975 to 1978 in New Zealand. Hughie Green claimed that he wrote the scripts of the shows. He found various similarities between the shows including the same form of introduction for each competitor, the same stock or catchphrases, and using a "clapometer" to measure audience reactions. Nonetheless, after a second appeal to the Privy Council in the UK, the ruling found that precise evidence was absent as to what the scripts contained. Consequently, the ideas inferred from the scripts were not the subject of copyright. Therefore:

The Court's decision, in that case, not to protect a few elements of a talent show (including a "clapometer"), is cited as the reason why copyright fails to protect formats. However, copyright law around the world has developed in the 22 years since that case, and Courts in countries such as Belgium, Brazil, Canada, the Netherlands and Spain have protected formats through copyright law. Germany and the UK, on the other hand, continue to be difficult countries for format creators to pursue copyright claims. (FRAPA, 2011, p. 13)

In another historical example, Survivor Productions LLC and CBS Broadcasting Inc. sought an interim injunction in the USA in 2023, against Granada plc, Granada Entertainment USA, and ABC Inc. These companies produced and broadcast the TV format *"I'm a Celebrity… Get Me Out of Here!"* The claimants argued that the show infringed on their "Survivor" format, citing similarities such as participants living in remote locations and being eliminated based on viewers' votes. The defense highlighted key differences which included that – "Survivor" featured unknown individuals competing for cash, whereas "I'm a Celebrity" involved minor celebrities with voting proceeds going to charity. The court refused the injunction and ultimately found the formats "substantially different in concept and feel", with the judge noting that "Survivor" had a serious, competitive tone, while "I'm a Celebrity" was more humorous.

As Chalaby (2015a) observes, while the industry's favorite line of defense has traditionally been copyright laws, the outcome of copyright laws is most likely uncertain following a number of reasons. These reasons conclude that not all formats are equal before the law. For instance, scripted formats that come with characters and storylines are easier to protect than quiz shows, themselves easier to protect than variety and reality programs (FRAPA, 2011). Also, considerations according to (EBU, 2005, p. 70) that 'inspiration is allowed' as well as weighing 'the competing benefits of protecting IP rights against the right of free access to information' increase the prevalent uncertainty of legal outcomes.

Format rights are harder to impose [or less certain] in the absence of legal protection or in countries where

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legal processes are convoluted (Esser, 2013; Keane, 2004). Malbon (2006) argues that format rights, as a legal category, are not recognized, perhaps, with or without the presence of uncomplicated and functional legal processes in any country. Therefore, Malbon suggests that the format industry merely devised this term with reference to game shows and "reality shows". This is suggestive of an effort to fend off copycats from the most susceptible format genres. However, he states, 'although the law does not protect a format in itself, a degree of legal protection is gained by deploying a range of legal rights, including copyright, confidentiality, passing off, trademarks and design protection.' In consensus with this as an efficient strategy, Malbon suggests a practice of enlisting these rights by savvy format creators and producers as part of their format's bible or format's documentation.

Apparently, protecting new content poses a tremendous difficulty for artists, producers, and legal professionals in the absence of strong legal frameworks that recognize formats as intellectual property. Without unambiguous and consistent legal protection for formats, it is difficult for individuals and companies to claim ownership of their creative works and stop others from using them without authorization. The absence of security can result in problems like unapproved copying and format plagiarism, which can damage the originality and marketability of content.

Format owners' and developers' rights are vitally protected by groups such as the Format Recognition and Protection Association (FRAPA). However, effective measures to curb format infringement are hampered by the fragmented nature of regulatory regimes across different countries. To address these issues, experts stress the urgent necessity for a global strategy for format rights protection that is both consistent and comprehensive.

To maintain the sustainability and integrity of the content trade industry in the face of changing digital landscapes and cross-border trade dynamics, legislative clarity must be improved, fair trade practices be supported, and industry stakeholders be encouraged to collaborate. Through the resolution of these concerns, the industry may enhance the safeguarding of artists' interests and sustain a flourishing atmosphere for content innovation and trade. A few other explanations of copyright law applications in the media industry are as follows:

Format Copyrights

In audiovisual content and entertainment, different genres enjoy better copyright protection than others. Apart from the music and graphical elements,

For example, different types of formats such as scripted formats or programs, quiz shows, variety shows, and reality shows attract diverse levels of protection – it is easier to protect scripts by literary copyright while reality or variety shows requiring spontaneous interaction between host and participants are increasingly difficult to protect (FRAPA, 2011). As FRAPA's (2011) report reveals, copyright works must be fixed or recorded in a certain medium such as in writing or recording, to attract protection. They also require a degree of inventiveness which varies from jurisdiction to jurisdiction. Therefore, in a television format, one of the identified challenges in pursuing a claim for infringement of copyright is identifying the copyrighted work. The industry currently relies on the format bible to prove that a format is a protectable copyright work. The format bible is required to set out as much detail about the content and structure of the format.

Copyright law does not protect a genre, type, and style because their scope is too broad, and providing them protection would greatly hamper creativity. As to precisely what elements of storytelling, music, and format shows constitute a genre is a moot point. Some elements are obviously a genre: there is no copyright in a 'game show', 'quiz show', or 'reality show' in itself. That is, even if, you were transported back in time and became the first person to come up with the idea of a game show and proceeded to produce one, you will

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not have copyright in something as general as the idea of having a game show on TV. Just as the creators of *Survivor*, who believed they had developed a new concept in reality shows, [which they probably did], could not gain copyright in something as broad as a reality show (Malbon, 2006, p. 112).

In the above discussion, the limitations of the use of copyright laws in format protection are given. While copyright laws may be used to protect format rights, there are underlying distinctions pertaining to what constitutes an original and unique format. By this, it can also be argued that certain global formats, with their early market entry, may have built their formats on general ideas to attract more remakes than other types of formats. As an instance mentioned above, *Survivor* failed to 'gain copyright in something as broad as a reality show'. The following summarizes parameters that easily govern the adoption of copyright as a form of legal protection of format rights:

Copyright can only be granted in a format material that exists in a tangible form. In other words, materials must be typed into a computer, written on a page, or recorded into a playback device to be recognized as a tangible product. Copyright by acquiring tangible form may suffice. Hence, there is no requirement to register the copyright. In copyrighting, genres are like abstract or basic ideas which cannot be copyrighted. (For instance, trying to copyright a genre such as games, reality TV, or quiz genre is like trying to obtain a patent for mobile devices, transport systems, and so on. It is only possible to copyright a very specific constituent of a genre, i.e., America's Got Talent, The X-Factor, just like it is only possible to gain a patent for the specific mobile device invented, i.e., iPhone, Nokia, etc.)

Particular problems arise with format shows regarding copyright because they invariably make heavy use of genre elements and lack detailed scripts with plot lines and characters as normally understood in terms of comedies and dramas. There are a number of legal cases, particularly in the United Kingdom and Germany, that illustrate the courts' reluctance to find there is copyright in a format – even if the format exists as a completed TV series (Malbon, 2006, p. 116).

Although copyright is made tangible by writing down or recording, it also covers a core concept that may otherwise be communicated by other means. That is, copyright governs more than literally written texts. Therefore, it is not possible to evade copyright laws by simply paraphrasing a script or tangible 'treatment' while maintaining the originator's core concept. The distinctions as to what constitutes copyright infringement remain unclear, and the decisions depend on the court's investigation approach (Malbon, 2006).

Trademarks and Design Protection

Format originators may also choose to protect their formats comprehensively by registering a trademark over the title of the show. They can also protect their ideas by creating original theme music and other musical and other sound motifs during the show that help provide it with a unique look and feel (and which have copyright) and registering the design over aspects of the set.

One disadvantage of designs and trademarks is that they ultimately need to be registered in each country in which you seek protection. This can be time-consuming and expensive. The advantage of copyright is that once you gain copyright in the country in which the work is created, it automatically gains recognition in most countries throughout the world without any need for registration (Malbon, 2006, p. 125).

Passing Off

In terms of passing off, a format originator "can sue an alleged copycat if their format is a 'direct appropriation of achievement' – that is if the copycat show is appropriating the brand recognition and achievements of the original format." This is the case in Germany, for instance, where "the original format owners must prove that the alleged copycat has taken a free ride on the back of the original format owner's

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achievements." However, the author notes that format originators or owners must have developed sufficient recognition in the marketplace to succeed in the case. This requires that the original format has sufficiently unique qualities of originality and quality. Concurrently, in a French scenario, passing off is determined when an alleged copycat is said to have "made an extensive or exact imitation of the original format to such a degree that it causes the public to confuse one format with another. The 'public' must be the same, that is to say, the product or format must appeal to essentially the same audience." (Malbon, 2006, p. 123). The other legal perspectives, as highlighted in Moran's extensive study of format laws, from which a format originator may take actions for alleged infringement, include breach of contract, unjust enrichment, and unfair competition.

These discussions on copyright laws and trademarks are valuable to help ascertain how informalized practices infringe on a format's rights within legal frameworks. As such, it may be deduced that slightly altering the global expressions of the format during its local adaptation may result in a potential cultural innovation instead of infringement of licensing agreements or breach of contracts. These are parallel issues to the copycatting of format contents or products as further discussed below.

Nigeria's Legal Framework Regarding Intellectual Property (IP) and Format Rights

The term Intellectual Property (IP) comes from the notion of creativity originating from the mind. Fatoba (2019) explains that Intellectual Property owners also have certain rights attached to their creations duly protected by law, in a similar manner to which real property owners are accorded certain rights. Hence, IP Law in Nigeria consists of three major areas that recognize property rights as intangible products of the mind. These areas include copyright, which pertains to artistic and literary expressions; patent which oversees inventions and innovations; and trademark for protecting symbolic information. These bodies of law concern are recognized at the federal level and are governed by federal statutes as well as administered by federal agencies (Fatoba, 2019).

Copyright is the legal protection granted to creators of literary, artistic, and scientific works. It encompasses both economic and moral rights. Economic rights allow creators to control the distribution and financial benefits of their work, enabling them to restrict usage without permission. Moral rights ensure that creators are acknowledged for their work and protect the integrity of their creations from derogatory uses, alterations, or distortions (Compos Mentis Legal Practitioners, 2024). "The creator of a copyrighted work, usually referred to as the author of the work owns the copyright in the work in the first instance. However, the author is at liberty to transfer his rights to a third party. In such a case, the person who has obtained the right by transfer or other legal means becomes the owner of copyright" (Nigerian Copyright e-Registration System (NCeRS), n.d.). Authors and copyright owners in Nigeria enjoy extensive rights over their works. These include:

1. Reproduction Rights: Control over the reproduction of the work in various forms, such as print and digital media.
2. Performance Rights: Rights to public performance, such as staging a play or broadcasting a work.
3. Recording Rights: Rights to record the work in media like CDs, cassettes, or digital formats.
4. Translation and Adaptation Rights: Rights to translate the work into other languages or adapt it into different formats, such as from a novel to a screenplay.
5. Distribution Rights: Control over the commercial distribution of the work, including sales, hiring, or rental

While registration is not a prerequisite for copyright protection, the NCC offers a voluntary registration scheme through the Nigerian Copyright e-Registration System (NCeRS). This scheme helps maintain a databank of authors and their works, providing additional legal security and facilitating enforcement efforts.

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Protected Works

Under the Nigerian Copyright Act of 2022, the following works are eligible for copyright protection: literary works, musical works, artistic works, cinematographic films, sound recordings, and broadcasts. This protection is automatic upon the completion of the work and does not require formal registration (Nigerian Copyright e-Registration System (NCeRS), n.d.).

Legal Framework

The Nigeria Copyright Commission (NCC) is the regulatory body responsible for enforcing copyright laws and protecting the rights of content creators. According to the NCC, the Nigerian Copyright Act of 2022 is the country's primary statute governing copyright. It follows the Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004. This Act, along with several regulations, forms the backbone of Nigeria's copyright legal framework.

Key regulations include:

1. Copyright (Optical Discs Plants) Regulations 2006
2. Copyright (Collective Management Organizations) Regulations 2007
3. Copyright (Levy on Materials) Order 2012

These regulations address various aspects of copyright protection and enforcement, ensuring comprehensive coverage for different types of works and usage scenarios (Nigerian Copyright e-Registration System (NCeRS), n.d.).

International Treaties and Compliance

Nigeria is a signatory to numerous international treaties, enhancing the protection of intellectual property rights beyond its borders. These include the Berne Convention, the Beijing Treaty on Audiovisual Performances, the WIPO Copyright Treaty, the Marrakesh Treaty, the Paris Convention, the Rome Convention, and the WIPO Performances and Phonograms Treaty, among others. Nigeria's adherence to these treaties ensures that works by Nigerian creators receive protection in other member countries, reflecting the territorial nature of copyright protection ("NIGERIA IP Country Fiche," 2021).

Intellectual Property Beyond Copyright

Nigeria's intellectual property laws also cover patents and trademarks, ensuring comprehensive protection for inventions and symbolic information. However, while the Copyright Act aligns with the TRIPS Agreement, other IP laws have not been fully updated to reflect TRIPS provisions, potentially impacting enforcement effectiveness ("NIGERIA IP Country Fiche," 2021). Furthermore, Nigeria's legal framework for intellectual property and format rights is essentially comprehensive, supported by both national laws and international treaties. The Nigerian Copyright Commission plays a critical role in enforcing these laws and protecting content creators.

Challenges

Despite continued government efforts in establishing and instituting robust frameworks, Nigeria faces unique challenges, such as enforcement issues and the prevalence of a significantly informalized media economy. Nigeria's media landscape, particularly its film and television sectors, has been deeply influenced by historical and socio-economic factors. The historical reluctance of marketers to support high-quality productions in the Nigerian film industry highlights a longstanding challenge. A notable example is the

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1999 film "Aba Women Riot" by Eddie Ugbomah, which faced resistance from marketers who demanded more violent content to ensure market success (Obiaya, 2011, p. 141). This historical trend underscores the tension between artistic integrity and market demands, illustrating how economic pressures have historically shaped Nigerian media content. Two decades later, the industry still faces challenges from diverse sectors of the media such as resistance from marketers, making films and programs on tight timelines, and minuscule budgets (France 24 English, 2016), including unofficial redistribution of scripted and unscripted content amongst others.

Copycat And Unlicensed Format Adaptation in International Media Industries

Some of the studies and texts analyzed suggest factors that influence format imitation occurrences in different industries. However, these factors arguably transcend their specific cultural demographics to other demographics that look alike in terms of cultural content and style. It must also be noted that the idea of cultural similarities is identified as one of the factors influencing format imitation and has been studied in format adaptation as the 'cultural proximity' principle. The other factors noted below include informalized media markets; and the attitude of people towards knock-off cultural products.

Format imitation (or copycatting, as the industry prefers to call it) has emerged as a by-product of the growing international trade in formats. As there are relatively low barriers to disseminating information in the digital world, imitators routinely scan the international TV scene for format solutions that they can recreate without paying any license fee. Copycats change elements of the original format and localize it without the involvement of the originator. This, according to the original producer, is theft of their format rights – treated by the originator as 'intellectual property' – leading to accusations of format plagiarism or format copycatting. However, there are no specific laws anywhere in the world that govern formats as intellectual property rights (Zwaan & Joost De Bruin, 2012, p. 14).

Similarly, in Nigeria as an example, format protection is not explicitly known primarily because the available copyright laws are yet to be tested in any court of competent jurisdiction over it. This is despite the claim that, in practice, many creators of original television formats are seeking protection using copyright and trademark registration (Aroture, 2016). However, Aroture advised that 'since copyright only protects the expression of an idea and not the idea itself, I encourage creators of television format in Nigeria to remember to record the exact details of their format on paper' (2016, p. 1). Then, they can take it a step further and register the document with the Nigerian Copyright Commission, NCC, through the Nigerian Copyright e-Registration System (NCeRS) as literary work. Next, creators should take advantage of the protection afforded from registration in Nigeria and register titles of their television format with the Trademark Registry in Abuja, Nigeria.

However, there are still pertinent legal frameworks governing intellectual property (IP) rights, potentially covering protection for television format concerns. These include the copyright act (as amended), Cap. C28, Laws of the Federation of Nigeria, 2004 and the trademarks act, Cap. T13, Laws of the Federation of Nigeria 2004 and updated Laws of 2022. Also, some media-specific institutions and regulatory bodies established to govern IP in the country include the NCC, under the Copyright Act, to regulate creative works such as artistic and literary works, music, cinematography, and publishing. It also consists of the Nigerian Broadcasting Commission Act (Cap. NII LFN 2004) and is vested with regulating and controlling Broadcasting rights, licensing, and assignment.

According to Fung (1998), the copycat phenomenon includes borrowing, inserting, and modifying other cultural texts to augment local production. Unlicensed programming, and its resulting intellectual property infringement, is invariably a product of the copycat phenomenon or copycatting. While this occurrence has been identified as a common phenomenon in various media and entertainment industries around the world, a quick snapshot of common underlying factors may provide a better understanding for future studies of the

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phenomenon. For example, in 2012, BBC terminated one of its shows, *Something for The Weekend*, hosted by Tim Lovejoy and Simon Rimmer. Instead, the TV show hosts went to replicate the same format with Channel 4, under a different name, *Sunday Brunch*.

Another example was the show, *Top Gear*. During its last season to be aired on BBC, the presenters Tiff Needell, Quentin Wilson, and Vicki Butler-Henderson decided to reproduce the show for Channel 5, using a similar name *Fifth Gear*, and embodying the same features as *Top Gear*. Yahoo News said 'they even wanted to use the Top Gear name, but the BBC wouldn't allow it'(Arnold, 2016). There was also the case of the exact copy (an almost shot-for-shot) of the TV show, *Big Bang Theory*, titled, *The Theorists*. The copycat show, The Theorists, was made for Belarusian TV under the Belarusian government. The different production countries made it impossible for the original show owners, Warner Bros, to sue for copyright infringement. Again, there was the case of the mindless copying of *The Great British Bake Off* by a new show titled *The Big Allotment Challenge* and numerous other examples (Arnold, 2016).

Moran and Keane's work, *Television Across Asia* (2004), provides extensive insights into copycatting, within Asia's largely creative and cultural production hubs, including China, Hong Kong, India, and the Philippines. These studies suggest that copycatting is more likely to occur in less developed, lesser formalized, and[or] lesser organized media markets. For instance, while studying the incidence of format copycatting and cloning in the Indian media industry, Thomas and Kumar (2004, p. 125) observed the 'lack of a comprehensive television guide of all channels available in the Indian market and any Indian city', since 'many guides that were published [in the past] did not survive financially'. It should be noted that broadcasting stations have a statutorily recognized responsibility to let out information about their programs to the audience in advance of airing. Television guides provide this platform to inform and assist their audience to evaluate not only the possible differences in the highlights of their programmes but also to empower them to make informed choices of the ones to watch at their discretion and convenience. They also noted limitations to information access such as 'a limited programme schedule' being only available in a daily newspaper in Bombay, Mumbai. In addition, they noted that the appearance of only a select few channels in such programme schedule did not reflect existing scores of channels.

Again, in a similar study of format cloning and copying in Hong Kong, Fung and Ma (2002) suggest an interconnection of people's attitudes with the state of copying practices in their media and entertainment industry, as is the case with Hong Kong. The researchers note for instance, that, from a cultural perspective, Hong Kong people are 'intrinsically predisposed to consume modernity from Japan, New York, London, and other modern cities deemed to have a higher place in the cultural hierarchy. Therefore, this is thought to influence their normalization and acceptance of copying' (Fung & Ma, 2002; Keane et al., 2007).

The studies above represent a fraction of the massive and growing body of research on this subject. However, they point to some of the critical factors of interest within the scope of this work. Hence, with big, often informal markets such as the Nigerian media as an example, several factors must be considered. Such factors include thriving informal media markets, an attitude of people towards imitation, and cultural proximity principle are significant in analyzing copycatting, cloning, and unlicensed format practices embedded within the Nigerian media and entertainment sector.

The Nigerian Regulatory Dilemma – Need for Better Government Regulation of Production Organizations

Television broadcasting in Nigeria and worldwide aims to inform society and educate and entertain it through its programming. The available programs can be classified into different categories such as News, Music, Documentary, Reality TV, Cartoon, Sports, Drama, Soap Opera, Discussion, Interviews, and Religion. Some television stations in the country, like the NTA, broadcast all these program categories at various times. In contrast, others, like privately-owned stations such as African Independent Television

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(AIT), restrict their program formats to some of them. However, different types of format programs such as reality TV and Soap Opera shows are the most recent to be broadcast on the country's television stations. Local versions of their global television program formats such as *The Apprentice Africa*, W*ho Wants to be a Millionaire? Strictly Come Dancing, Big Brother Naija, MTN Project Fame*, and many others have been variously produced and aired in the country.

The Nigerian format industry is embedded in the country's thriving informal economies. Whereas Nigeria's legal framework for intellectual property and format rights is comprehensive, and supported by both national laws and international treaties, it experiences practical challenges – as well as successes – in regulating format products and intellectual properties of creators. For instance, the adaptation of the legacy business format program "The Apprentice Africa" in 2008 showcased the blend of formal and informal economic practices in media production. The show itself, legally adapted, was successfully executed within informalized and unstructured frameworks, raising concerns about the vulnerability of ideas to unstructured and unregulated content marketers and street copycats.

Furthermore, while there has been more potential for growth and evident rapid transformations over recent years, the Nigerian television and film production industry is still saddled with poor infrastructure, incessant power cuts, unprofessional crews, and a potential lack of quality production. At least, these were some of the industry's views peddled as to why 2020's *Big Brother Naija* was produced in South Africa. Proponents of these views highlighted them as "strictly a business decision, based on numbers-crunching that makes a South African production an easy choice." At the same time, Nigerian media stakeholders and producers such as Ogunpitan and concerned citizens condemned the strategy. Ogunpitan expressed that:

That position is reaffirmed by the feeling that it's only in South Africa that the house can be sourced, quality crew and technical facilities sourced. There is much to be appreciated in this position. Nigeria is a very hard place to produce anything. Those of us in the industry battle every day to make things work. Unfortunately, we do not have any other country to run to. Our investments are here, and we die or live by our acumen, talent and ability to manage the local environment (QED, 2017).

It could be possible to control such a situation through government regulations. However, integrating the informal economies into the formal economies is a huge challenge for government policymakers because operators of these informal economies avoid government regulation and taxation, a consequence of which slows down the processes of institutionalization of economic activities. As Ogunpitan in another interview reacts:

Now here is the issue. Can government and regulators continue to stare at a situation where Nigerians are making investments, despite all the challenges we face in the industry, and not regulate, protect, and provide trade opportunities for those investing in Nigeria, like their citizens? All of us in the industry need to understand the stakes. The media continues to represent one of the most potent forces for employment, taxation, setting an agenda for development, changing paradigms, and bringing a nation together. (QED, 2017)

The production veteran explains that the continued demystification of Nigeria, its people, and its environment is cause for worry. Thus, it spells unnecessary trouble for the country if it is continuously positioned by South African brothers as one where nothing works, as Nigerians can make any situation work, despite a plethora of challenges. Preserving informality is important as it forms an integral and effective part of doing business. However, there needs to be some form of regulation on an industry level to protect the informal economy, perhaps even with its workforce.

Protecting Formats as Media Products without Borders

Program format is one of the many tools for conveying information on television, and it is usually selected

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based on the target audience, their preferences, and the content of the message. However, global program formats have fluid characteristics. Firstly, as traded commodities, they easily cross international boundaries, thus making global television program formats the foremost media product without borders. Secondly, as social and cultural artifacts, they quickly assume sociocultural identities different from those of their originating country on adaptations. Moran and Aveyard (2014, pp. 21–22) argue that global formats are templates for the program's reproduction rather than shows ready for transmission and that while pre-formulation is part of the appeal of formats, these templates are also flexible. The above characteristics of global formats cannot be used to effectively describe informalized formats available in Nigeria because they inherently do not have franchising and remaking qualities in their structures. Nevertheless, these aspects of informalized formats present us with interesting features worth closer scrutiny, and avenues for extensive research.

The discussion emphasizes the limitations of the present copyright laws in defending television formats, which has resulted in companies for other legal ways to defend their intellectual property rights. The specific nature of format rights may not be sufficiently addressed by conventional copyright laws, so industry participants are looking into creative ways to protect their work against unauthorized replication and adaptation. This move towards alternative legal strategies is a reflection of the understanding that, in the constantly changing context of content trade, stronger and more specialized protections are required.

Industry insights show that the incentives for format replication frequently put commercial success and audience engagement ahead of regulatory protections. This focus on commercial appeal highlights the difficulties that producers and creators have in striking a balance between the need to protect their formats from being exploited. Therefore, it is recommended that stakeholders carefully analyze the intricacies of format recognition and adaptation in order to navigate the complicated terrain of disputes linked to formats. Industry players may advance a more just and long-lasting content commerce environment by finding a balance between supporting legal requirements and encouraging creative cultural innovation. The industry can promote an atmosphere that values innovation, creativity, and legal integrity by raising awareness and taking proactive steps to address format rights. This will ultimately improve the longevity and protection of cutting-edge content formats.

CONCLUSION

In conclusion, the complexities of legal protection for holders of format rights pose substantial challenges for the content trade sector and have an impact on innovation and creativity in general. Format plagiarism and copycatting are encouraged by the absence of explicit regulations protecting format rights as intellectual property, leaving producers and artists open to the threat of unauthorized copying or adaptation. In hybrid industries such as Nigeria's intersecting formal and informal sectors of the media, it is more challenging to substantiate format protection, though, primarily because the available copyright laws are yet to be tested in any court of competent jurisdiction over it. This is despite the claim that, in practice, many creators of original television formats are seeking protection using copyright and trademark registration.

Furthermore, the rights and means of subsistence of format originators are endangered by the lack of strong legal frameworks, which also creates risk and uncertainty throughout the content trade ecosystem. The subjective nature of formats and the complications of cross-border disputes present judges with a plethora of challenges when recognizing formats as intellectual property, highlighting the critical need for specialized expertise and clear legal guidelines.

The Format Recognition and Protection Association (FRAPA) is an example of advocacy working to defend format owners' and developers' rights. FRAPA is a resolute advocate for format recognition and protection

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thanks to its diverse approach, which includes setting best practices, offering legal advice, advocating for legislative reform, raising awareness, facilitating networking and collaboration, and keeping an eye on industry trends.

While it has its limitations in terms of coverage especially within largely informal markets, FRAPA is a valuable ally in a challenging environment, providing assistance, direction, and representation in navigating the intricate terrain of format-related conflicts. The organization ultimately ensures that the rights and achievements of format creators and owners are appropriately acknowledged and protected for future generations as we work towards a just and sustainable content commerce sector.

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