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07-07-2020



FRAPA NEWSLETTER: JULY 2020



Lisette van Diepen, Marphes Media

Better together

Alone we can do little, together we can do so much...

I'm reporting from the Netherlands which, as you will know, is a small but deeply creative and hugely successful generator of formatted ideas that sell all over the world. And it's not just the big guns are based here: we are proud to say that there are lots of medium and smaller sized creative companies that come up with great IP and productions. As a freelance consultant, I am lucky enough to work with a diverse

group of people from a diverse size of companies.

On the formats front line over here, I've observed the recent reliance on the classic formats such as *Who Wants to be a Millionaire?* and *Dragons' Den*, which are returning comfortably to our screens season after season. And yes, particularly now. That's good news if you happen to have a superbrand in your cupboard, but what about the next generation of fresh, exciting ideas? What's new and where's it coming from?

For my part, as a format consultant, I'm mining every catalogue I can find for unearthed gems; those positive, uplifting primetime formats that bring uncomplicated pleasure to audiences (and broadcasters) living in a complicated world. As our industry squares up to the covid pandemic, channels are demanding pitches for shows that can spring into production in September, or formats with a reassuring track record of success. Both of those requirements are, of course, tall orders.

There's also clear evidence from the FRAPA membership that many of you are busy developing your own formats. Our Format Registration System has seen a surge in traffic, as members are refining and refreshing existing concepts. This burst of creative energy is one of the few upsides of these strange days, which have made us all pause, whether we like it or not. But I've also noticed another unexpected upside — a new collaborative spirit that is bringing together former rivals in new and surprising ways.

Among the recent partnerships that have been formed by the least likely of collaborators are a Benelux distributor now working to exploit a paper format that was created by international creators from two different countries. I've also been briefed about two extremely competitive Dutch indies that are pooling their diminished resources to use the same distributor to sell their IP internationally. In addition to Talpa Network's Fastest Way to Screen format-accelerator project, new private format funds are being set up for young creative companies. These are just some of the ways we Dutchies are helping the world to find out about our IP, and protect it by announcing it, registering it and launching it.

The examples above illustrate what I believe is a gathering trend — and one that I hope will stay with us long after the coronavirus has been vanquished (or vanquishes itself). It seems that our industry has suddenly woken up to the potential of co-operation and connection. Not that I wish to compare

Bringing the focus back to the formats industry, questioning our procedures and methods is not only a sound commercial instinct but it can also lead to inspiration. Much has been made of the 'new normal' — a phrase that has already become so hackneyed as to be meaningless. In reality, it's up to us to

saving lives in a pandemic to saving the life of a business, but the covid crisis has shown in the starkest possible terms that global collaboration is the only way for us to remain safe. For businesses, it's also our best chance of remaining solvent.

decide to do things differently: partner with our competitors, pool our resources, give vulnerable freelancers a chance. I think we'll be surprised by the quantity and quality of the ideas that will be generated.

It's smart to be flexible and open minded. But right now, it's more than smart — it's survival.

FRAPA management board member Lisette van Diepen is a media specialist and content consultant at Marphes Media

FRAPA SERVICES

THE GOOD BOOK The Format Bible Generator

At the heart of format protection is the production bible — a cross between a DIY manual and a style guide that details every element of a format, from story worlds and the mechanics of game play down to costumes, colours and catchphrases.

In 2016, the UK High Court confirmed in *Banner Universal Motion Pictures v Endemol Shine Group & Anor* that TV formats are potentially capable of being classified as a 'dramatic work' under UK copyright law, and are thus potentially eligible for copyright protection. It was a landmark case for the formats industry which, until then, had lacked constructive guidance in this area. As tools for describing and defining dramatic works in granular detail, the ruling also underlined the value of bibles as protectors of intellectual property.

In addition to IP protection, bibles also serve as shows passports. By facilitating the transfer of expertise from original producer to adapting producer, a good bible helps formats to travel further, faster and more safely. Unfortunately, there a lot of bad bibles out there — a fact that prompted FRAPA to team with Michel Rodrigue and Justin Scroggie of consultancy The Format People to create the first incarnation of the FRAPA Format Bible Generator back in 2012. The tool, which has been refined and developed over the intervening years, gives FRAPA members access to an industry-standard bible template, along with comprehensive checklists, guiding notes and best-practices example. It comes in three industry-standard templates: game

shows, reality and factual, and scripted formats.

The Format Bible Generator was conceived to make bible-writing easier, cheaper and more efficient. As Rodrigue puts it: “The Format Generator won’t write your bible for you — but it’ll give you all the help you need to write a great bible yourself.”

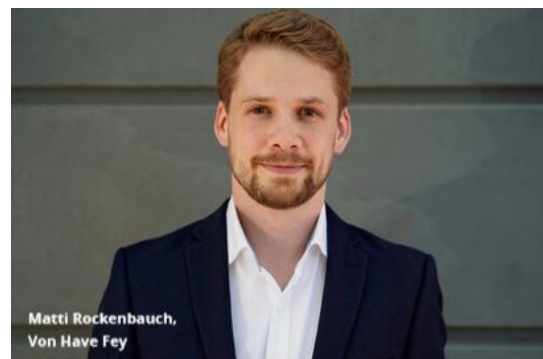
[See the Bible Generator tool](#)

LEGAL PERSPECTIVE

FORCE MAJEURE OR MAJOR FRUSTRATION?

We already know that covid-19 will have profound financial, economic and social consequences. But it’s also becoming clear that it will impact on businesses’ rights and obligations under contracts, and may well trigger the ‘nuclear option’ of force majeure. Copyright and media-law attorney Matti Rockenbauch of Von Have Fey, a law firm specialised in entertainment law based in Berlin and Hamburg, throws some light on the challenges ahead — and the need for good old-fashioned common sense.

Quite obviously, the world was not prepared for covid-19 and its effects were hardly imaginable. It is therefore not surprising that format-related contracts rarely contain a word about epidemics or even pandemics. Some insurance providers may even refuse to cover losses due to covid-19. From a legal perspective, the question is therefore how to deal with both existing and future contracts in light of the risks associated with covid-19.



One way or another, it all comes down to the question of whether or not the disruption caused is to be considered force majeure. Oftentimes, contracts provide for an extraordinary right of termination in such cases. However, since corona is affecting every aspect of our lives, can this mean every decision made in connection with it is automatically due to force majeure? Hardly. Does a producer who preventively closes his business to protect his employees really have no other choice? Maybe. Does the assessment change in the case of an official order — for example, to pause production? Depends. The answer is primarily to be found in the existing agreement and, secondarily, in the applicable laws. Without clear contracts, hard-fought legal battles can be expected.

Therefore, a balanced design of future contracts will be key. That means preemptive damage control, depending on the type of contract and the stage the project is in. Is the format still in development or already in pre-production or production? Are option periods or other deadlines about to expire?

In any case, it is important on the one hand to explicitly address risks caused by covid-19. On the other hand, a 'nuclear option', meaning the right to terminate, may not always be in the best interest of all parties. Instead, one should ask: will the project come to a complete or just a partial halt? How would an option period precisely be affected by a lockdown? Also, what are the legal consequences — deferral of payment, suspension of delivery deadlines? Should termination (only) be the measure of last resort? Insurance companies will also be more inclined to cover damages if the risks are managed with common sense.

NEW MEMBER PROFILE

Brazilian journalist and broadcaster André Anelli hosts and co-ordinates weekly agribusiness news show Nosso Agro on TV Bandeirantes. "But my ambition is to bring original new formats to Brazil, and to develop and present my own formats," he says. "And it would be good to earn some money too!"

Tell us about your first steps into formats?

"So far, I've registered one format with FRAPA — a musical competition called Hit Brasil — and I'm now in development on a game show, which I'll be submitting to FRAPA in the coming month. My next step is to find a partner to help produce pilots of my formats, because selling a show off paper is a much harder proposition. I'm hoping the station where I work as a TV presenter will be interested in helping me achieve my goals..."



What's happening format-wise in Brazil?

"There's a healthy format market in Brazil, because we love television here! On

average, every Brazilian spends four hours a day watching TV and that's undoubtedly risen during the coronavirus crisis. TV Bandeirantes, where I work, airs local versions of several international formats — Masterchef, X Factor, The Apprentice — and they all deliver good audiences. It's the same with our rivals: Brazil's biggest broadcaster, TV Globo, is now on the 20th season of Big Brother and it continues to pull in big numbers. But it's still a huge challenge to convince Brazilian broadcasters to take a risk on a new format. Like broadcasters everywhere, they'd rather invest in a show that has been tried and tested around the world.”

Is format theft a concern?

Yes — and it's one of the reasons I joined FRAPA. We have to be protected against this unfair practice. In Brazil, we had a famous case of format theft about 20 years ago, which some FRAPA members will remember. Big Brother was offered to Silvio Santos, Brazil's most famous TV presenter and the owner of SBT, the country's third-biggest station. Santos had access to the content of Big Brother, but chose not to buy the format. Then, some months later, he started presenting a very similar show called Casa dos Artistas. Santos and SBT were sued successfully by Endemol and TV Globo, which had acquired the Brazilian rights to Big Brother. Even so, Santos had had time to produce at least four series of Casa dos Artistas — with huge success — before the show was banned by the courts. I don't think we've had any format theft in Brazil since then, which shows the deterrent effect of legislation.”

How are you coping with covid-19?

“Covid-19's impact in Brazil has been huge. Most people are staying inside and working from home when possible — even though our president is against the idea of lockdown. In my case, I go into TV Bandeirantes once a week to record *Nosso Agro*, but 80% of the show is currently being produced online, from my home office. Our staff go out to report on something only when there's absolutely no risk to anybody. At the moment, only news shows are still in production in Brazil — reality TV, telenovelas and all entertainment shows have been halted.”

Why have you joined FRAPA?

“Being part of the FRAPA family allows me to trade my formats safely and with less risk of theft. And if the worst happens, I know I'll have the best support available. Being a FRAPA member is very helpful to format newcomers like me. It not only gives you a better idea of the value of your IP but, most importantly, it gives you

access to other people in the business. I hope I can exchange ideas and experiences with other FRAPA members — maybe even trade with them and become friends. And every FRAPA member now has a friend in Brazil.”

NEW FORMAT OF THE MONTH

50 MEN, 50 MATS

Genre: *reality*

Producer: *Small World International*

Take 50 male yoga virgins, one ‘Wellness Warrior’ and a VW camper van and you’ve got the ingredients for Small World International’s latest reality format.

50 Men, 50 Mats (8 x 60 mins) explores what happens when you introduce ‘unwoke blokes’ to the traditionally female-dominated world of yoga. Occupying a niche somewhere between reality and social experiment, the format aims to equip men of all ages and backgrounds with the physical and mental tools to lower their anxiety and stress levels, and become the best — or at least better — versions of themselves.



At the start of each episode, philanthropist Caleb Jude Packham — aka the Wellness Warrior — takes to the road in his VW Kombi (complete with juice bar) in

search of 50 male yoga novices between the ages of 16 and 60. Caleb isn't interested in the usual yoga suspects. His mission is to find hard guys in tough environments, from prison cells to city boardrooms, from football fields to oil rigs. Caleb and his sidekick then create a pop-up yoga studio wherever they happen to be — in a car park, on a military base, on a factory floor — and set about breaking down the traditional stereotypes of male behaviour through the transformative medium of yoga. After the class, the men grab a juice with Caleb and discuss their first experience on the mat.

In each episode, Caleb focuses in on four men of different backgrounds, ages and circumstances. We learn more about their worlds, their truths and their struggles, and find out what circumstances led them to yoga. In the same episode, we also check on the four men's emotional and physical progress six weeks into their new regime.

"Yoga takes me outside these walls," a convict tells Caleb in the show's sizzle. "There's so much tension in here... It helps me so much." In our lockdown world, that statement will likely resonate with many viewers.

Photographs courtesy of Jez Smith

SHARP PRACTICE UNMASKED?

In mid-June, the China International Economic and Trade Arbitration Commission (CIETAC) ruled in favour of Korean broadcaster MBC in its long-running dispute against Shanghai CanXing Culture & Media over The Masked Singer.

China was one of the first overseas markets to adapt MBC's global hit. CanXing acquired The Masked Singer in May 2015 and the format went on air as The King of Mask Singer (the show's Korean title) on Jiangsu Television the following July. Although it was contracted to pay a portion of the show's profits to MBC, CanXing claimed that a political spat over THAAD missiles, which had resulted in Beijing blacklisting Korean cultural exports, made reimbursement impossible. Nonetheless, the Chinese network went on to produce another three seasons of the show, renaming it Guess Who is the Masked Singer and claiming it as its own original format.

"Since season two, CanXing has insisted that Mask Singer is an original show. It only paid MBC a licensing fee for the first season and never even settled the money from the revenue-sharing programme. But the second and third season, even the licensing fees were not paid," MBC stated in its action.

Having attempted to negotiate with CanXing, MBC finally took the case to CIETAC, which ruled last month that CanXing must disperse all pending payments as well as

the arbitration cost to MCB.

It is not the first time that Chinese broadcasters have been accused of plagiarising South Korean content. Indeed, the Korean newspaper JoongAng Daily claims that, from 2014 to 2018, China rolled out no less than 34 reality shows that bore a striking resemblance to Korean formats. The situation deteriorated with the 2016 ban on South Korean cultural imports, which effectively halted creative collaborations between the two countries. With Korean entertainment formats among the most popular on Chinese television, many Chinese producers simply renamed the shows and continued to air them.

Hyung-Chan Moon, senior manager of MBC's IP business strategy team, was forthright in his criticism of CanXing in the Korean press, pointing out that the broadcaster had also been sued — successfully — by Talpa over the Chinese version of *The Voice*. In addition, CanXing was accused by Korean writers in 2016 of failing to pay for the development of original shows “It seems CanXing has a culture of ripping off everyone,” he added. “Their tendency to steal IP was one of the reasons I refused to do deals with them when I was working with CJ E&M.”

ALL CLEAR?

FRAPA's Guide to Producing Shows for VOD Platforms

In the scramble to sell content to the streamers, many producers and distributors have found themselves falling foul of the VOD platforms' rights-clearance policies. In the excitement of a game-changing deal, it's tempting to underestimate the complexity of global rights clearance. But, as *FRAPA's Guide to Producing Shows for VOD Platforms* makes clear, clearance can be more than an inconvenient detail — it can be a deal-breaker.

One FRAPA member put it like this: “Netflix's contractual arrangements insist that all worldwide clearances, consents and legal considerations are ticked off. Basically, you're clearing everything for the entire world all in one go and that can be quite onerous.”

Delivery is another potential minefield highlighted by the FRAPA report. Distributors that fail to follow the VOD platforms' exacting specifications for deliverables can end up forfeiting their fee. “It's important to understand that the deal is just the beginning,” says FRAPA managing director Bianca Rootsart. “Too many people underestimate the back-end work needed to fulfil your contractual obligations.”



Create evidence of your work on FRAPA's FRS (Format Registration System)

[Read more](#)

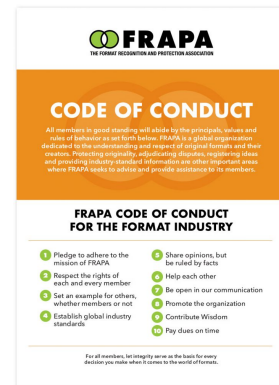


FRAPA is one of the founding partners of the The International Format Awards.

[Read more](#)

CODE OF CONDUCT

“FRAPA believes in and fights for the protection and recognition of formats worldwide. As a global organization it represents the international community of format creators, distributors and producers and, as such, believes passionately in the principles of freedom of expression and the right to fair trade. All persons associated with the creation, production and distribution of formats should have the right to be heard without fear of political interference or injection. The opportunity to exercise these basic creative rights is to be enforced regardless of ethnicity, religious beliefs, political affiliation, race or gender. We appeal to our members to respect one another’s right for free expression.”



[Read more](#)



DECLARATION OF COOPERATION

The expression and promotion of creativity is a universally recognized benefit to humanity, which is essential to the development of a global economy. It is the right of every person to create and to be heard without fear of political interference or injection. The opportunity to exercise these basic creative rights is to be enforced regardless of ethnicity, religious beliefs, political affiliation, race or gender. We appeal to our members to respect one another’s right for free expression.

In order to address, exchange and collaborate, we hold the following creative truths to be self-evident:

1. It is the right of anyone anywhere to create a work of fiction or non-fiction.
2. There is no limit to the number of works that can be created.
3. The value of the work is not in the work itself but in the creative process.
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We, the undersigned members of the global intellectual property industry, engaged in the creation, acquisition, sales, execution and distribution of content, pledge to uphold these values as a going basis, and will work with private and public institutions to foster a better understanding and establish guidelines and procedures to protect, preserve and build ideas around the world.

Global Board FRAPA, Cannes, October 10th 2014

DECLARATION OF COOPERATION

Intellectual property is the basis upon which a global economic industry grows and prospers in virtually every country on earth.

Find the declaration in your own language

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