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Biographies
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Forum on the Entertainment and Sports Industries

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Las Vegas, NV

Doing Business in China:
Challenges and Opportunities

Saturday, October 8, 2016
10:45am-12:15pm

Program Description
And Learning Objective

As the world’s largest economy and the second largest film market, China presents Hollywood with immense opportunities yet unique challenges. An expert panel with extensive legal and business experience in the Middle Kingdom will share their experiences identifying valuable opportunities with the right partners, negotiating mutually beneficial deals and navigating important regulatory requirements.
I. INTRODUCTION: GLOBALIZATION AND CHINA

The world is becoming more connected because of the increase in trade and cultural exchanges taking place between countries.\(^1\) Much of this activity is conducted over the internet and media companies have followed suit, through traditional distribution platforms as well as online. Networks in the United States, such as Viacom International Media Networks (MTV, VH1, Nickelodeon, Comedy Central, BET, Viva and Game One), Discovery Networks International (Discovery Channel, TLC, ID, Investigation Discovery, Animal Planet, Science, Turbo and Eurosport) and Scripps Networks Interactive (Food Network) are offering versions of their channels outside of the United States. Digital on demand services such as Netflix and Amazon are also offering their subscription services overseas. European production and distribution companies such as Fremantle Media (American Idol) and Endemol Shine Group (Big Brother) have successfully developed versions of their programs for the United States television market, and the British Broadcasting Corporation’s commercial subsidiaries have developed multiple versions of programs such as Dancing With the Stars and Top Gear throughout the world in addition to creating international channels such as BBC Earth, BBC Brit and BBC First, as well as individual channels in different countries (BBC America and BBC Canada).

Now, all around the world, “dozens [of] media companies are able to do business worldwide by selling the same idea, and audiences seem to be watching national variations of the same show.”\(^2\)

China’s television market is no exception. Since 2010 China’s current mature, more commercially focused media market has become a player in the international television content space with Chinese broadcasting networks airing foreign-based programming and by all accounts Chinese viewing audiences are welcoming the move.

II. OPTIONS TO EXPLOIT CONTENT

There are several options for a media company or an intellectual property owner to exploit content in different countries. The easiest and most direct way is to license the existing version of the content for exploitation in a different country. Language differences can be accommodated by dubbing the audio track into the local language or adding foreign language subtitles. However, these superficial modifications do not take into account the increasing sophistication of international audiences or cultural differences between different countries.

Creating a local version of content for a different country can increase the chances for success but will involve more financial risk, require a local partner and may result in loss of control over the underlying intellectual property. Three options for creating local versions of content are to (i) co-produce, (ii) joint venture or (iii) license the format rights.

A. Co-Production

Co-productions typically involve two or more production companies combining financial resources, editorial and/or production know-how for the production of a single program. Theatrical films, for example, tend to be co-produced, especially those shot internationally, because production and marketing costs can exceed the resources of a single studio. International co-productions can facilitate filming on location and potentially take advantage of lower costs or tax credits or incentives. A local co-production partner can provide many benefits, the most useful of which is helping address local governmental requirements and issues.\(^3\)
China generally heavily regulates co-productions and working with a local co-production partner and thereby qualifying as a “domestic production” avoids the need to comply with certain governmental restrictions. 4 China recognizes three main types of co-production: (1) joint production, (2) collaboration production and (3) entrusted production. Joint productions require equal involvement between the Chinese and foreign partner and are the most popular type of co-production in China. 5 The partners both assign key production personal and share in the risks and rewards, including copyright. Collaboration productions divide the responsibilities between the foreign partner and the Chinese partner. Typically, the foreign partner provides the financial capital and the Chinese partner provides any labor, equipment and other resources required for production. As a result, the foreign partner typically owns copyright and other rights to the content but cannot exploit the content in China unless it is imported by a government authorized import agent, such as China Film Group Film Import and Export Corporation. 6 Finally, with an entrusted production the Chinese partner is responsible for production of the content and owns controls all rights to the content. 7

B. Joint Venture

A joint venture also involves two partners, but will cover more than a single program and the partnership is typically for a lengthier period of time. A joint venture can allow a foreign company to enter the local market without having to establish a new company or presence in China and can provide the foreign company with an easier route to comply with governmental restrictions and regulations. 8

China restricts the manner in which foreign investors can participate in joint ventures in the local Chinese television market and requires that at least one local Chinese production company be a partner. There are two types of joint ventures recognized in China. The first is a Sino-Foreign Equity Joint Venture (EJV). 9 This is a preferred manner of cooperation from the perspective of the Chinese government and the Chinese partner. 10 An EJV provides limited liability but the partners must share profit, loss and risk equally. Further, foreign investors may only invest up to 25% of the entire registered capital in the form or cash or trade property rights. 11 The second type of joint venture is a Sino-Foreign Cooperative Joint Venture (CJV). 12 The key difference is that the partners do not share profit, loss and risk equally but negotiate the terms in their joint venture agreement. Contractual joint ventures are the most common method to do business in China. 13 However, the Chinese government restricts foreign ownership to 49% and imposes minimum capital requirements: US$ 2 million, reduced to US$ 1 million for animation projects. In addition, two-thirds of the content created by the joint-venture must be related to China and the local Chinese production company must hold a production permit provided by the Chinese government agency in particular by the State Administration of Radio, Film and Television (SARFT). 14

C. Licensing Formats

Formats are concepts or ideas for television programs that enable local versions of an original program to be produced that will permit the incorporation of new characters or elements that will have greater appeal to a local audience. Formats have a “distinctive narrative dimension” that comprise the substance of the original program. 15 This distinctive dimension is the unifying theme across the various versions and results in familiarity that can build audience awareness and build brand association.
Rights will be licensed pursuant to a format license agreement and will include the concept of the program (the “paper format”) and provide other program details sometimes referred to as the “bible.” The license is usually on an exclusive basis, protecting the licensee from other versions of the program, including the original version, entering the local market more than once during the same period of time. 16

The paper format describes the concept that is being licensed and includes layouts and styles. The bible is a reference guide that provides more detail and will be used as guidance for the local production team. It will also be updated to reflect changes made for different versions created for different territories. The bible will include “budgets, scripts, set designs, graphics, casting procedure, host profile, the selection of contestants and every other possible aspect associated with the show’s production.” 17 It provides direction on the format rules and how the surface may be altered, but not the “skeleton” or foundation of the program. The surface will be altered to gain local appeal through “cultural codes” – language, ethnicity, history, region, geography and culture. 18 Frequently changes will be needed to reflect different cultural sensitivities. For example, *Weakest Link*, a program that did well on the BBC in the United Kingdom was not successful in Asia because a dominant female role did not resonate with the local audience. 19

Aptly referred to as a “template from heaven”20 by producers, broadcasters, and networks alike, format licensing has become increasingly popular because it can result in significant cost savings. Developing new ideas involves risk and creating a program based on an existing format mitigates risk because there is an existing program with ratings information and market research that can support a decision to develop another version with minor adjustments to provide local appeal. 21 In addition, there will be an existing bible and access to expertise of the original program’s personnel that will likely result in potential cost savings and production efficiencies, including faster turnaround times from development to production. 22 For example, *Strictly Come Dancing* was in more than 30 territories just a few short years after its 2004 debut and *Weakest Link* was in nearly 70 territories fewer than 18 months after its August 2000 launch. 23 In effect, by licensing a format, the local producer or broadcaster can access a template that has already withstood two rounds of “research and development” —first to survive development and trialing before broadcasting executives; and secondly further testing before viewing audiences (albeit in a different territory). 24 Recycling successful television program ideas in this manner has taken much of the guesswork out of local television production in many lower cost genres such as game show and reality television. 25

Furthermore, while many countries have restrictions or quotas with respect to the amount of foreign content that may be imported into the local television market, formats are generally not affected because the production is still produced locally. 26 Notwithstanding this generally affinity towards formats, some critics purport that relying on formats to produce programming can result in less global originality and reduce opportunities for new creative content ideas. 27

a. **Historical Overview**

A better understanding of the issues that can arise in developing formats can be obtained through an historic overview. In 1950, Mark Goodson and Bill Todman produced *What’s My Line*, a successful panel game show for CBS Television that began on radio, migrated to television and was subsequently replicated in a number of foreign countries, including in the United Kingdom by the BBC. 28 Format development began to expand slowly overseas starting in the 1970’s with game shows, in particular the *Price is Right*, *Family Feud* and *Wheel of Fortune*. 29 However, format development started to become more global and increasingly created overseas rather than
in the United States by the 1990’s. From 1998-1999 the big four “super formats” all originated from Europe and revolutionized the development of formats. *Who Wants to Be a Millionaire?, Survivor, Big Brother and Pop Idol* all became known for the speed of their success in (what essentially triggered) the international television format business.  

Who Wants to Be a Millionaire? in particular attracted interest from various and many buyers throughout the world shortly after its premiere – by the end of its first year, 35 versions were licensed and before its 10th anniversary the program was in 108 territories and was the largest format of its time.

The current popularity of international formats is further evidenced by the increased attendance and presence of international industry festivals and markets where producers, production companies, and networks meet to exchange ideas and buy and sell programming, such as National Association of Television Program Executives (NAPTE), Marche International des Films et des Programmes pour la TV, la Video le Cable et les Satellites (MIPCOM), and Marché International des Programmes de Télévision (MIPTV) in the last few years. For example, in 2010 MIPTV was attended by more than 300 companies from 54 countries. Accordingly, it is no surprise that in the last few years format licensing has become a multi-billion dollar industry. In 2000, an international administrative body was even formed – The Formats Recognition and Protection Agency (FRAPA) – to service the fast growing format business to “aim to ensure that television formats are respected by the industry and protected by law as intellectual property.” In 2004, FRAPA reported that international production volume generated by format sales had reached approximately €6.4 billion in revenues and grew to €9.3 billion by 2008.

However, format licensing in China has developed at a slower rate. Just a short decade ago China was considered the “enemy of the international formats business” and during this “closed phase” potential format deals were often thwarted by potential Chinese buyers’ general preference to “copycat” formats and in the (few) instances where format fees were paid, such format fees being far from lucrative for the sellers. Initially, rather than licensing formats, the Chinese television industry tried to develop content on its own by loosely copying program concepts. These (unofficial) local versions were generally not successful and in some instances resulted in infringement claims from the original content creators, specifically *Chinese Idol*.

Format licensing began to grow in China in 2010 when Dragon TV licensed the *Got Talent* format from Fremantle Media. In its first season, the local version reached the highest audience and was responsible for roughly half of Dragon TV’s revenue for the year. Following that initial success, additional formats began to be licensed into China with increasing success. For example, in just a three year span between 2010 and 2013, more than 20 international television formats were broadcast in China, with such format-derived programming dominating the coveted Friday and weekend primetime programming slots. In contrast to “[before] the mid-2000s, [when] many of China’s television producers tried to imitate foreign television programs without getting the licensing,” in recent years (post *Got Talent*), the Chinese television market has realized that copycatting a format cannot guarantee success because whilst one can ascertain a program’s general idea by simply watching the program, they will not know how to successfully produce the program.

This trend towards properly licensing formats is further evidenced by the fact that most of the largest production companies in China are regular attendees of trade fairs such as the Shanghai TV Festival (the oldest television festival in China), the Beijing International TV Week, the China International Film & TV Expo (CITV) (which is now the biggest television program exhibition in Asia); and the Sichuan TV Festival (which is linked with the Golden Panda Award).
b. **Scripted vs. Unscripted Formats**

With respect to genres that have been most popular in format licensing, while both scripted and unscripted content have been formatted and licensed overseas, unscripted programming, particularly game shows, has been on the rise in the past because of its ability to be reconstructed at a lower cost and relative ease to recreate in a local setting.

In contrast, because the underlying creative in scripted programming is generally based on local customs or local politics, scripted formats can be more difficult to translate into international markets. Accordingly, because scripted programming tends to be culturally sensitive, a scripted program cannot be reproduced for another country as mechanically as an unscripted program and therefore export potential for the scripted format is limited. For example, a straight adaptation of the original script would not be sufficient to produce a localized version. Rather, the local production team must re-actualize the program so that every word and scene is tailored for the local audience, and as such having a format “template” and/or insight from producing a program in one territory does not necessarily travel to another. Case in point — in Latin America, telenovas, which place classic love stories and family conflicts among historical and political struggles, are hugely popular. However, with the occasional exception, telenovelas have generally struggled to find success internationally because while they provide (Latin) audiences with the opportunity to recognize themselves as members of a cultural (Latin) community, this connection is missing in a foreign market with different customs and politics.

By the same reasoning, scripted formats are most easily remade between countries with cultural similarities. For example, Chinese remakes of South Korean films — particularly of the romantic comedy genre -- such as, *20, Once Again!, Miss Granny, Blind, Architecture 101,* and *Cyrano Agency* have found success in China because Chinese and South Korean audiences share similar sensibilities on the subject.

Also, in order to help mitigate the disconnect it is common for the production of a localized version to rely on not only a bible, but to also involve the original creative team in the foreign version.

c. **Format Life Cycle – In a Nutshell**

Formats begin with the creation of an original format concept. The concept is then developed into a written description of the concept which description includes a detailed show layout of the separate elements -- which may include visual elements, titles, scripts, theme music, target audience and casting ideas, as applicable. A program is produced based on this paper format and if the original version of the program is successful in the premiere country, the format owner enters the international format television market to license its format to buyers in one or more foreign television markets directly, or more commonly by engaging an international distributor such as Netherlands-based Endemol Shine Group, London-based Fremantle Media, and London-based BBC Worldwide.
In China, the buyers that license these formats can be a television station or production company. The buyers license the television formats directly from owners or the distribution companies or with the help of format agents knowledgeable about the Chinese market such as International Programme Content Network (IPCN) and 3C Media. These format agents in effect act as advertising agents for the format by helping to translate production bibles and acting as a liaison between the format owner and the local television stations and production companies that wish to license the format. In some cases production companies will license the format and adapt for their local version, then sell the local adaptation to the television station. However, television stations that have in-house production studios often license the formats directly and localize the formats themselves.

d. Current Trends

Today, the United States and the United Kingdom are the top exporting and importing countries of formats of the multi-billion dollar television format business (see below).
However, China has become a key international purchaser of formats since 2014.\textsuperscript{51} This increase has no doubt been fueled by the impressive scale of China’s local television industry (thirty-two [32] commercial channels, plus the state-owned CCTV networks)\textsuperscript{52} as well as rapid increases in China’s television viewership during the past ten years to an average of between 130-170 minutes and an increase in the number of households that own televisions.\textsuperscript{53} From 2004 to 2010 broadcasting revenues in China’s television market experienced tremendous growth increasing from US$ 10 billion to US$ 33 billion.\textsuperscript{54}

The popularity of formats is also consistent across China’s major broadcast channels, as shown in the chart below denoting China’s major broadcasters and the international format-based television programs each channel aired in 2010 (at the onset of the formats trend in China) compared to 2013. The five networks on the 2013 chart that broadcast the most international format-based programming – Dragon TV, Hunan TV, Zhejiang TV, CCTV, and Jiangsu TV – also make up the most watched channels in China.\textsuperscript{55}

\textbf{FIGURE 4: Chinese Broadcast Channels That Aired TV Format Shows in 2010 vs 2013} \textsuperscript{56}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|}
\hline
\textbf{Broadcast Channel} & \textbf{Show Name} & \textbf{Distributor} \\
\hline
Dragon TV & Got Talent & Fremantle Media \\
& So You Think You Can Dance & 19 Entertainment \\
& Super Diva & CJ E&M \\
& Idols & Fremantle Media \\
& The Cube & All 3 Media \\
Hunan TV & Your Face Sounds Familiar & Endemol \\
& The X Factor & Fremantle Media \\
& Dad! Where Are We Going? & MBC \\
& I Am A Singer & MBC \\
& Take Me Out & Fremantle Media \\
Zhejiang TV & Tonight’s The Night & BBC One \\
& The Voice & Talapa Media \\
& Poker Face & ITV Studios \\
& Celebrity Splash & Eyeworks \\
CCTV & Thank God You’re Here & Fremantle Media \\
& Dancing With The Stars & BBCW \\
Jiangsu TV & TV Total Turmspringen & Banijay International \\
& Raid The Cage & Sony Pictures \\
& Still Standing & NBCU \\
Shenzhen TV & Generation Show & DRG \\
& The Battle Of The Sexes & Tapla \\
Guangxi TV & Identity & Shine Group \\
\hline
\end{tabular}
\end{table}
III. CHINA-SPECIFIC ISSUES

A. Government (e.g., Licenses, Restrictions)

China is well known for its censorship of the media industry. In the television industry China has three governmental agencies overseeing restrictions and censorship: (1) the Central Propaganda Bureau (CPB), (2) the General Administration of Press and Publication (GAPP) and (3) the State Administration of Radio, Film and Television (SARFT). The CPB is part of the communist party and is responsible for the daily operation of the media industry while GAPP and SARFT regulate and censor what is allowed to be viewed and produced in China.

SARFT is a thirty member group comprised of representatives from the government and other interest groups such as the Women’s Federation. SARFT not only censors content, but it also grants permits necessary to produce and broadcast television programs. SARFT can ban content that it deems unsuitable or violates the constitution in accordance with SARFT regulations in its discretion. Content that involves violence, laws, endangers national unity, state security, reputation, ethnic hatred or discrimination, ethnic customs, social disorder, insults to others, or could harm minors tends to be restricted. The process for submitting content to SARFT for review typically takes three months although the process can longer or shorter depending on the content and/or the producing parties. For example, co-produced content with a local Chinese production company could take only fifty days to review.

In recent years SARFT has imposed several restrictions “intended to lead to more innovation and original programming among Chinese [television] channels.” In October 2013, SARFT instituted a government edict wherein beginning in 2014 nationwide satellite television networks were only permitted to import one international format per year. This was followed by a June 2016 directive wherein, among other restrictions, satellite television channels that want to broadcast programs with foreign rights (e.g., formats) must submit such programs for examination by the government for pre-approval. Channels that broadcast programs without approval are banned from showing any foreign-inspired programs for one year. Further, the June 2016 edict permits no more than two foreign formats to be broadcast on satellite television channels during the evening primetime slots each year (and of the two programs permitted, only one may be making its China premiere and may only be broadcast outside of the 7:30 PM to 10:30 PM programming window).

B. Changing Content to Suit Local Audiences

Changes to content for the market in China has been done for various reasons, from governmental restrictions to cultural preferences. Typically changes are made because it “allows audiences to connect with [the program] more intimately, without the need for subtitles or voiceovers, and it allows the programmer makers to better tailor the content, the style and the humor for local tastes.” Producers have found that audiences are looking for familiar places, characters and culture on television. For example, China’s Next Top Model incorporated historical opera themes and locations rather than western themes or a generic backdrop. Another example is China’s version of Top Gear on Dragon TV, which used more well-dressed hosts (as compared to the decidedly less glamorous, more casually dressed hosts of the...
Cheng Lei, a well-known Dragon TV host, and his two colleagues, Ren Xian Qi an actor, singer and racing driver and Tian Liang, an Olympic diving gold medalist, were attired in suits. Further, while historically formats have generally been licensed from European countries, recently the import of formats from South Korea has been particularly popular in China due to the similar cultural backgrounds between the two countries resulting in lessened “localization” of the original format to suit Chinese audiences. For example, in 2013 alone four South Korean formats aired on Chinese television: Super Diva, I Am Singer, Phantom Sanchez, and Sisters Over Flowers.

Changes to theatrical films have been made preemptively to avoid subject matter that has been restricted by the Chinese government in the past. Recently the producers and directors of Doctor Strange, the latest installment in the Marvel superhero universe, allegedly changed the original Tibetan mentor to Doctor Strange in the graphic novel to a character portrayed by a Caucasian female because of concern that a Tibetan character would be problematic for the Chinese government and jeopardize access to one of the largest film markets in the world. Sony Pictures also changed the title of a recent theatrical film. Crimson Peak was banned in China due to its focus on the paranormal and raised Chinese concern with superstitious beliefs. As a result, Sony Pictures changed the title from Ghostbusters to Super Power Dare-to-Die-Team.

C. Intellectual Property Protection Challenges

Although China has a legal system in place to protect copyright and intellectual rights and both civil and criminal remedies are available, piracy and infringement still occur. This has been attributed to “cultural, social and economic factors that have caused the increase in piracy because of the lack of IP stakeholders, poor economic conditions.” However, it has also been noted that enforcement action in China has been high. For example in 2011, there were 35,185 civil copyright cases litigated in China while there were only 2,225 cases litigated in the United States. Critics argue that the comparison is deceiving and attributed simply to the larger population of China. Moreover, critics argue that although the number of litigated cases may be high, there is also a lack of actual awarded damages leaving the statistic without teeth. Chinese copyright law presently awards prevailing plaintiffs compensation for their actual damages or the defendant’s illegal profits; if the evidence is insufficient to substantiate either damages or profits, then the court may award statutory damages up to 500,000 RMB (approximately $79,000). However, average damages awarded are nowhere near the statutory limit -- from 2006 to 2009 the average damage award was 31,189 RMB (slightly more than US$ 5,000).

Further, with respect to intellectual property protection in China as applied to formats in particular, in January 2006, a judgment of a Beijing district court confirmed that a television format in itself does not enjoy copyright protection. The court stated that copyright law does not protect thoughts or ideas and according to the court, a television format itself is a mere concept or idea. Accordingly, even attempting to register a format for copyright protection is not advised because copyright registration in China requires a thorough disclosure of ideas and related documentation, including know-how, which may not be desirable due to risk of information being leaked subsequently.

D. Potential Solutions

When it comes to protecting your content or getting around the governmental boundaries, in particular in China content restrictions, the key is to have someone in the country who knows the rules and customs. Additionally someone that has had experience with the government may
be able to help the foreign company maneuver and avoid some of the complications they might run into. For example, understanding and complying with the rules and regulations imposed by the Chinese government (from production permit requirements to content regulations) can prove challenging due to the lack of clarity in documentation requirements (including documentation requirements that compel disclosure of sensitive intellectual property information resulting in information leaks and copycatting) as well as the lack of procedural transparency and consistency (resulting in a sometimes unreliable and delayed process). Accordingly, a well versed and well selected local Chinese partner can provide access to relationships with government officials and insight to help navigate the processes. 78

When it comes to protecting the actual television format, making sure that you have licensing and confidentially agreements in place can help. In particular having these agreements can protect the foundation or the “bible” of the format. Instead of looking at the format as a package that needs to be protected as a whole, an alternative and preferred approach is to protect the separate components because the different components may be protected by different types of intellectual property rights. For example, because a television format contains special and secret knowledge regarding its implementation and actual functioning in its “production bible,” this business “know-how” can be protected by licensing just this “know-how” and by strictly supervised confidentiality agreements. Similarly, production knowledge, set design, costumes, episode structures, music, rundowns, etc. may be protected separately by copyright. Trademark protection may also be sought for all the brands comprising the television format. Early identification and protection of the above is helpful to block any attempts by would be copycats. 79

All these ways prior to exposing a format in China can help prevent and/or mitigate misappropriation and/or copycatting of content.

IV. CONCLUSION

The television format business of today’s China is greatly different from a decade ago; and while the future remains to be seen, content exploitation and related import and export practices in China will only continue to evolve. As the Chinese television industry continues its quest to find success with local audiences, it must simultaneously navigate government edicts limiting how China can play a role in the international format business, on the one hand, and on the other hand, weigh the benefits a ready-made template offering potential quick to market and low risk content can have for Chinese content providers. The need to stay competitive in a content exploitation landscape with a growing number of online and streaming platforms joining the many traditional content providers already in the space will be another factor to be considered. However, as the foregoing research suggests, despite these potential hurdles Chinese audiences continue to have an appetite for foreign content.

Accordingly, the future of content exchange between China and the rest of the world will not disappear altogether, but the method of cooperation between format distributors and Chinese buyers may shift. Already, in response to such government edicts, some Chinese television stations and productions have begun to enter into co-production arrangements (rather than licensing formats). 80 Further, an unintended side effect of such edicts may result in a return to copycatting and piracy as the Chinese television producers, having now realized the popularity and advantage of overseas international television formats, may feel they are left with no other alternative.
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