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# TRANSNATIONAL TELEVISION DISTRIBUTION AND CO- PRODUCTION CHALLENGES

## A KIRCHMEDIA AND SONY PICTURES TELEVISION CASE STUDY

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**Abstract:** This article explores the production and distribution process for television co-productions and explains the potential benefits and risks compared to other media joint ventures. Using a detailed case study of one television series within a larger co-production agreement between a German rights trader and a Hollywood studio, the author analyzes production and distribution challenges and complex contractual arrangements within the context of global media trade. Co-productions are situated between acquiring rights to scripted and completed television programs, and acquiring adaptation or television formatting rights. The author suggests that potential difficulties in co-productions has led television producers to seek contexts with more predictable and successful distribution outcomes. There has been an evolution in the structure of co-productions, with new models, new contracts and new production practices.

**Keywords:** television co-productions, transnational media distribution, scripted television, joint ventures, television formats, business models

### 1 Introduction

In this case study, I examine the dynamics of production and distribution for a U.S.-German television co-production, unpacking the many difficulties the German partner encountered. This complicated and unsatisfying joint venture differs from the simplicity of acquiring finished content on the one hand, and the likely reliability and risk mitigation of licencing adaption rights on the other. In light of these built in risks, and mindful of a checkered past, as television producers and broadcasters contemplate joint ventures they are careful and cautious in evaluating the potential costs and benefits of transnational production arrangements.

This case study involves one television series, within a larger co-production arrangement, nested within an even broader output agreement, between a German rights trader and a Hollywood studio. I analyze the television production and distribution challenges, and also the complex and risky contractual arrangements that contributed to the implosion of the German media company.

The television series in this case study was *V.I.P.*, a syndicated action series produced from 1998 to 2002, starring *Baywatch*'s Pamela Anderson.<sup>1</sup> The Hollywood studio was Sony Pictures (via Columbia-TriStar International Television, later renamed Sony Pictures Television International). The German media company was KirchMedia, and when Germany's second largest media conglomerate plunged into insolvency in 2002, it sent shockwaves through the German and global media economies.

When compared to the acquisition of a typical finished product, television that is scripted and completed, co-productions are designed to provide increased creative control and profit sharing opportunities to the parties involved. But there is the potential for uncooperative co-production practices, and dodgy and deceptive accounting, especially when one partner controls more of the production and distribution apparatus, and then disregards the good faith pledge of a joint venture. There can be conflicts over the creative process during production, and there might be disagreements over financial management and accountability, and so the potential benefits of a co-production can be reduced, leading to creative discontent, and financial troubles. In the conclusion we will discuss a resurgence in transnational television co-productions, where the contracting parties are mindful of potential pitfalls and work towards joint venture success, both creatively and financially.

## 2 Co-Producing Television Series

When Germany's KirchMedia agreed to co-produce the Pamela Anderson series, *V.I.P.* with Columbia/Sony in 1997, it anticipated another European success story, along the lines of its profitable co-production of *Baywatch* (All-American/Pearson, 1991-2001). As a part of its long-term output deal with Columbia/Sony, KirchMedia funded half of the production costs in exchange for half of the worldwide distribution rights. Beginning with the 1998-1999 season, Columbia/Sony produced four seasons of the series, and *V.I.P.* was a modest U.S. syndicated television success.

The international reception was far different, however, as *V.I.P.* launched poorly around the world, and was a financial disaster for KirchMedia, in Germany and across Europe. In addition, because of disputes over the creative direction, production costs and accounting, and marketing cooperation, this and other co-productions were a particular sore point in its overall output deal with Sony. In a memo from October of 2001, Klaus Hallig, the President of KirchMedia US, presented a bottom line:

Having examined the history of our co-productions with Columbia, we must conclude that they screwed us the same way that they treat their other profit participants, by inflated expenses, phantom budgets, the hiding of product placement monies, etc. If all of the above taken together does not make for the enhancement of the ugly Hollywood image, I don't know what else we would have to add to it.<sup>2</sup>

Failed contract renegotiations and threats of legal actions around the Sony contract and other media product output deals with the Hollywood studios, contributed to KirchMedia's collapse into bankruptcy in 2002.

I have published about transnational distribution of finished programming previously, drawing on my professional experience as a development, production and distribution executive for German broadcaster, producer and rights trader KirchMedia.<sup>3</sup> In my research, I have unpacked large-scale output deals, between German television companies and the Hollywood studios, and examined the launch of the German pay-television satellite service that relied upon U.S. programming packages.<sup>4</sup> I have also written about the U.S. market for television formats.<sup>5</sup> In this article, I will follow this arc of research, tracing transnational television distribution, with finished, co-productions, and television formats, as variations.

Media companies around the world may acquire finished television programming from regional sources or from the Hollywood studios, but media outlets have also chosen to enter into co-production agreements to share risks, access audiences, and exercise some measure of control over the production process and the final product. In the past few decades, the Hollywood studios and associated television distributors have expanded the range of their sales methods beyond scripted and completed productions and co-productions, to include formatted television productions as well.<sup>6</sup> In the world of transnational media joint ventures, there have been cyclical transitions between trends of favoring traditional television co-productions or formatted programming.<sup>7</sup>

A traditional international co-production involves two or more countries. Within the pan-European context, for instance, this can allow for fulfillment of quotas and investment via government subsidies. European media outlets can join together to co-produce television or feature films and such *treaty co-productions* allow for larger production budgets and potential audiences.<sup>8</sup> Co-productions may afford a budget capable of elevating production values, allowing for distribution in territories beyond those of the specific partners.<sup>9</sup> A German and French co-production may travel throughout Europe, whereas one produced by one or the other may see more limited distribution across borders.

Through co-productions, television industries across Europe have also banded together to provide a counterweight to American industrial muscle. Over the years, European co-productions have found success, being less expensive and widely compatible, and have served to reduce European acquisition of American programming.<sup>10</sup> The turn to format sales and treaty co-productions over the last few decades has decentered media trade, allowing other media producers to more effectively compete with American television distributors.<sup>11</sup>

In decades past, American television programming has proven highly desirable for a variety of reasons, including consistently high production values. As a result, so-called *output deals*, where studios deliver the bulk of their product for television to a broadcaster, have been a popular, though problematic, economic arrangement between many television companies and television program producers at the Hollywood studios.<sup>12</sup>

In the late 1990s, German broadcaster and rights trader KirchMedia was licencing finished series for sale to German broadcasters (or to broadcasters across Europe in some cases) via output deals with multiple studios. Such five- or ten-year output deals, or other limited deals, included dozens of new and library television series for terrestrial broadcast throughout Europe, or satellite broadcast on KirchMedia's newly launched satellite service, Premiere.<sup>13</sup>

For example, KirchMedia acquired broadcast rights to *Dawson's Creek*, *Just Shoot Me*, *Party of Five*, *Seinfeld*, and many other series from Columbia/Sony; *Buffy the Vampire Slayer* (and *Angel*), *Dharma and Greg*, *The Simpsons*, *The X-Files* and other series from Fox; *Charmed*, *Diagnosis Murder*, *Frasier*, *JAG*, *Sabrina the Teenage Witch*, *Sex & the City*, *Will & Grace*, many *Star Trek* series and many other series from Paramount; *ER* and *Friends* from Warner Brothers; *The A-Team*, *Battlestar Galactica*, *Highlander*, *Knight Rider*, *Kojak*, *Magnum P.I.*, *Miami Vice*, *The Rockford Files* and many other series from Universal. KirchMedia sold rights to all of these series in Germany, primarily to ProSieben and SAT.1, broadcasters KirchMedia controlled. KirchMedia sold rights to some of these series to terrestrial broadcasters throughout continental Europe as well.

In addition to these many and various output arrangements for finished series, KirchMedia entered into a series of co-production arrangements with Hollywood studios, beginning in the 1990s and continuing into the 2000s. KirchMedia sought to include a co-production piece into its output deals as a way to mitigate the dependency (and economic damage) of such expensive output deals.<sup>14</sup> The mixed results of such co-production strategies – in product and profit – have caused rights traders and media importers to reevaluate their product mix, and encouraged a turn to formatting, which afforded a production process that is even more easily controlled and customized.<sup>15</sup>

### 3 The Logic of Co-Productions

In past decades, German private television companies turned to television and feature film co-production activities with the Hollywood studios to exert more influence over the American product they were receiving. Non-treaty co-production endeavors, like those with the United States, do not carry the pan-European cultural and financial benefits of treaty productions, and yet the dual advantages, of American production expertise and American distribution prowess were attractive.<sup>16</sup> Those who enter into co-productions with Hollywood are familiar with the accompanying caveats, and may recognize that what they consider to be a 'co-production' may have aspects of a 'co-financing' deal.<sup>17</sup>

In many co-productions with an American-based studio or American independent production entity, the foreign partner joins the agreement precisely because of traditional American strengths in production and distribution, and the American partner may control much of the production and distribution system as a result. This means that the foreign partner is usually coming at the project from the outside and has to adhere to certain restrictions regarding access and influence. Even if the contract allows for creative input, history and practice may run against such input.

This is further complicated by the fact that the foreign partner represents one position within a complex, interdependent process. For television co-productions, first there is the production itself, involving producers, writers, cast, crew, sets, locations, etc. Second, there is a lead production entity (e.g. a major studio) with various creative executives, publicity and marketing executives, lawyers, etc. Third, there is the American outlet (a network, syndication distributor, or streaming services), with their set of executives. There is often another layer made up of advertisers, who may be involved in storylines or other production considerations from a product placement perspective. Finally, there is the foreign partner or partners and their executives. This complex hierarchy, or layering of co-production players, remains a significant factor, even as co-production contracts, practices, partner assets (financial and creative), and categories and conceptions (i.e. where does "foreign" fit into a transnational media market?) have shifted and evolved over the last few decades.

While the ability of a foreign partner (in a U.S.-initiated joint venture) to influence the production and promotion processes is related to the extent of its financial participation, there is often no precise calibration to determine its impact on the production. In addition to the willingness to assume greater risks in the hope of reaping greater rewards, the logic behind co-productions, therefore, is the determination on the part of the foreign partner to exercise control over both the creative and the financial aspects of a co-production project.

In a 1997 publication, Hoskins et al. laid out a series of *benefits* and *costs* of international co-productions, discussing how co-production partners may avoid some risks, but often encounter others.<sup>18</sup> They point to multiple benefits, or positive results, of co-productions, including the pooling of financial resources, access to foreign subsidies, access to foreign markets, access to foreign projects and talent, access to foreign facilities and locations, access to production expertise, and possible reduced production costs. Hoskins et al. define multiple costs, or negative results, including costs of corporate coordination, increased shooting costs, loss of creative control, as well as:

*Opportunistic behavior by the foreign partner (Cheating).* There is the possibility that the partner may 'cheat' by under-allocating resources to the international co-production in the hope of a 'free ride,' or by providing misleading information regarding the level of costs or revenues to be shared. However, there are considerable deterrents to such behavior since producers can ill afford to acquire a reputation for opportunistic behavior. Not only are the consequences of being caught cheating serious but also, we suspect, the likelihood of the word spreading is high.<sup>19</sup>

Despite potential deterrents, however, Hollywood studios have occasionally engaged in ‘opportunistic behavior’ without regard for ‘being caught cheating,’ through notorious accounting practices, for example. A foreign media company may take on a Hollywood co-production in order to buy into increased financial participation and influence the creative outcome, and yet, in some cases, neither of these goals is met.

#### 4 KirchMedia Co-Productions with Columbia/Sony

In the spring of 1998, as a part of several arrangements including broader output deals, KirchMedia was co-producing four different television series, with two of these set to premiere in the fall. First, KirchMedia was contributing \$400,000 per episode towards the ongoing Paramount produced, UPN action series, *Viper*. This arrangement was little more than a co-financing arrangement within the much larger output arrangement with Paramount (though KirchMedia had some input into casting, along with distribution rights for continental Europe). Second, KirchMedia was launching a co-production of *Air America*, a syndicated action hour starring Lorenzo Lamas, with independent production company Franklin-Waterman. Third, KirchMedia had entered a new co-production of a CBS network series, a remake of *Fantasy Island* starring Malcolm McDowell, with Columbia/Sony. And finally, KirchMedia was launching a co-production of Pamela Anderson’s syndicated action hour *V.I.P.*, also with Columbia/Sony.

*V.I.P.* was aired in syndication in the United States and sold to multiple broadcast companies and independent stations, including the Fox owned-and-operated station group. KirchMedia’s output deal with Columbia provided the context for multiple co-productions (see Figure 1 below). The first co-produced television network series between Columbia and KirchMedia was *Dark Skies* (1996), a short-lived sci-fi drama. The co-production agreement required series selections from Columbia’s often limited offerings, with run-of-series commitments carrying all renewals forward.<sup>20</sup>

| Columbia/Sony-KirchMedia Co-productions of TV Network Series |                         |             |              |               |
|--|-------------------------|-------------|--------------|---------------|
| Season   | Title                   | US Network  | # of Seasons | # of Episodes |
| 1996-1997  | <i>Dark Skies</i>       | NBC         | 1            | 20            |
| 1997-1998  | <i>Sleepwalkers</i>     | NBC         | >1           | 9             |
| 1998-1999  | <i>Fantasy Island</i>   | ABC         | >1           | 8             |
| 1998-2002  | <i>V.I.P.</i>           | Syndication | 4            | 88            |
| 1999-2000  | <i>Secret Agent Man</i> | UPN         | >1           | 12            |
| 2000-2001  | <i>Young Americans</i>  | WB          | >1           | 8             |
| 2001-2002  | <i>Pasadena</i>         | FOX         | >1           | 13            |

Figure 1. Network television co-productions between Columbia and KirchMedia.<sup>21</sup>

The terms of these arrangements divided the world in half, with Columbia having the United States and Canada as its so-called home territory, and KirchMedia being granted Continental Europe as its home territory. The rest of the world was designated the Shared Territory, where Columbia distributed for both parties. Shared Territory revenues for the television series were pooled and divided, but only after Columbia deducted a 15% distribution fee and any additional distribution expenses. For *V.I.P.*, the rights granted for these co-productions were, ‘for all media, now known or hereafter devised (except theatrical exhibition), and to exploit the ancillary rights in and to the Series, including without limitation, merchandising and music publishing rights (but excepting book publishing rights) for a term commencing on the date hereof and continuing in perpetuity’.<sup>22</sup>

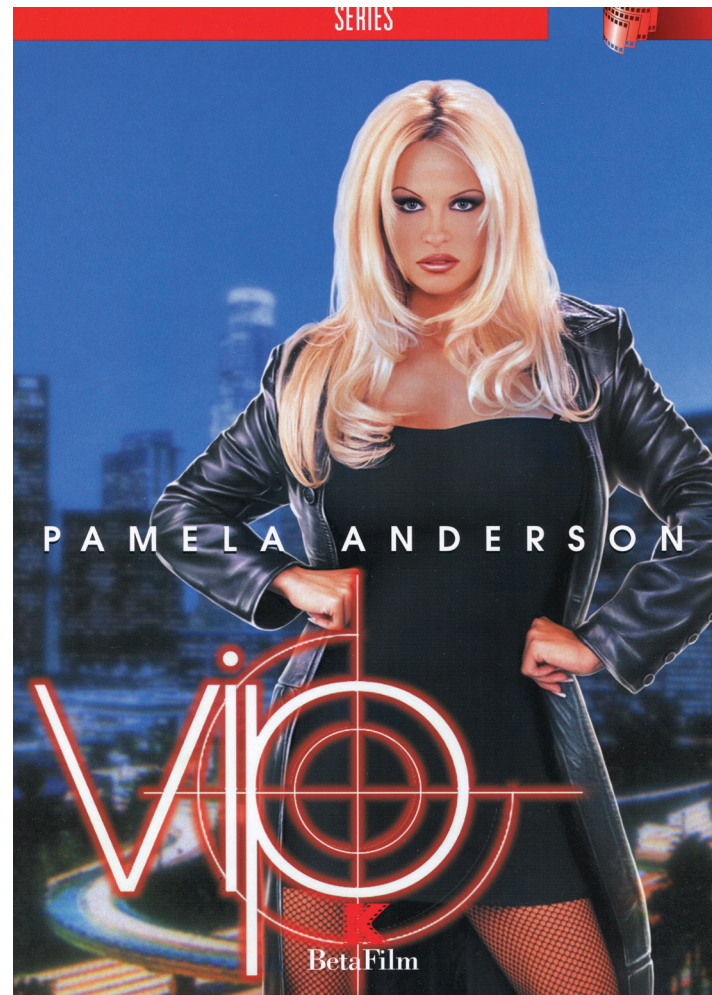


Figure 2. KirchMedia International Sales Brochure for *V.I.P.*<sup>23</sup>

## 5 The *V.I.P.* Co-Production

When KirchMedia agreed to co-produce Pamela Anderson's new series, *V.I.P.*, it anticipated another European success story, along the lines of its profitable co-production of *Baywatch*. KirchMedia provided half of the production costs in exchange for a half-share in worldwide revenues. *V.I.P.* was picked up by Columbia's syndicated television division, and offered by Columbia's international television division to KirchMedia as a co-production opportunity in the spring of 1998. The production budget was set at €1.56 million (US\$1.42mil) per episode, with KirchMedia's share being €781,000 (US\$710k) per episode, 50% of the cost of each episode. Sony/Columbia produced four seasons of the series, for a total of eighty-eight episodes (22 episodes per season).

After agreeing to the *V.I.P.* co-production, KirchMedia was eager to exploit the series throughout Europe and commenced its sales operation. It was believed that the series would sell well and play well in the same territories where *Baywatch* had performed strongly.

| <b>Select KirchMedia Sales for <i>V.I.P.</i> Season I</b><br>(As of November 2001, US\$1 = €1.1) |                     |                        |
|--|---------------------|------------------------|
| <b>Territory</b>   | <b>Sales (in €)</b> | <b>Sales (in US\$)</b> |
| Germany  | 5.5 mil             | 5 mil                  |
| Poland   | 3.9 mil             | 3.6 mil                |
| Italy  | 2.4 mil             | 2.2 mil                |
| Spain  | 1.7 mil             | 1.6 mil                |
| France   | 1.3 mil             | 1.2 mil                |
| Denmark/Norway/Sweden  | 1 mil               | 914k                   |
| Russia   | 390k                | 357k                   |
| Portugal   | 260k                | 238k                   |
| Netherlands & Luxemburg  | 240k                | 219k                   |
| <b>Total Sales (including all markets)</b>   | <b>€18 mil</b>      | <b>US\$16.5 mil</b>    |
| <b>Total Per Episode</b>   | <b>€810k</b>        | <b>US\$740k</b>        |

Figure 3. Approximate sales for *V.I.P.* by select territory.<sup>24</sup>

As Figure 3 indicates, European markets signed on across the continent and initial sales for *V.I.P.* were promising. At the time, €810,000 converted to US\$740,000, which covered KirchMedia’s license fee of US\$710,000 per episode. Since KirchMedia was to hold distribution rights in perpetuity, the *V.I.P.* co-production appeared to be heading for success.

## 6 ‘The Right to Consult’

According to the *V.I.P.* Co-Production Contract (1999), KirchMedia had the ‘right to consult’ with Columbia regarding the direction of the series on an ongoing basis:

[KirchMedia] shall have the right to consult with [Columbia] with respect to all major creative elements of the Series and [Columbia] will give good faith consideration to any and all suggestions by [KirchMedia] with respect thereto; provided that [KirchMedia] acknowledges that [Columbia’s] decisions shall be final over all aspects of the production of the series.<sup>25</sup>

Though KirchMedia had this ‘right to consult,’ prior to the *V.I.P.* co-production, this ill-defined right had not been exercised beyond the initial pitch meeting, where the project was described in broad terms, and a cursory review of a preliminary budget. Columbia had carefully complied with final delivery requirements, sending all necessary elements for dubbing (digital video masters, separate music and effects tracks, copies of the scripts, etc.) to KirchMedia’s headquarters in Munich.

If Columbia provided scripts before this final stage, however, they were sent over after the episode had already been shot, and when final cuts were supplied, they were available only after they were locked. The ‘right to consult’ clause was interpreted to mean that KirchMedia was presented with an initial pitch and encouraged to submit a wish list of guest casting suggestions. Columbia had done little else to solicit input from their co-production partner. For the foreign partner working with Hollywood, however, the purpose of a co-production was to better affect the outcome of the broader acquisition process, and in 1998 KirchMedia sought to more actively co-produce *V.I.P.*, in order to exercise more control over the creative content of the series.



There were certain aspects of the initial *V.I.P.* pitch—about a ‘bodyguard to the stars in Hollywood’—that made the project especially interesting. Pamela Anderson was considered an internationally known sex symbol. Many television series projects lack immediately identifiable stars, and worldwide appeal is an even rarer commodity. Pamela Anderson provided a name that would make for easier marketing and sales throughout the KirchMedia territories. *V.I.P.* promised a combination of action and sex, an ideal recipe for success in transnational media distribution.<sup>26</sup> These factors were considered crucial to an initial sales and marketing campaign.



Video 1. *V.I.P.* Opening Credits, Season One.

Production of season one of *V.I.P.* began in May of 1998. KirchMedia solicited and received outlines and scripts, dailies and rough cuts. In return, KirchMedia submitted a series of notes encouraging certain creative choices. Columbia’s creative executives functioned as a filter between KirchMedia and the producers and writers on the set, as notes went through them. Very soon after production commenced, KirchMedia expressed concerns about the creative direction of the project. KirchMedia executives were pleased with the “slick, sunny, and colorful” look of the pilot and early episodes, and felt that certain characters were appealing, but they also thought that the episode suffered from a “confusing and implausible plot with no real villain,” and noted that “the show is trying too hard to be funny,” with “numerous one-liners that fall flat”.<sup>27</sup>

The domestic ratings were strong at launch, but the demographics were unusual, with the predictable audience of young men, but also including teenage girls and young women. The prevalence of the latter demographic was seen as connected to an emphasis on scenes with the predominantly female cast. At that time, the perception was that these scenes would appeal more to teenage girls and young women, and potentially alienate young male audiences. KirchMedia had signed onto the production expecting a solidly male-skewing action series, but it soon became clear that the series was appealing to different demographics (i.e. girls 12-17), which might make it more difficult to program and receive advertiser support.<sup>28</sup>

By the second season, KirchMedia felt that the humor in *V.I.P.* had become too sarcastic, filled with inside jokes, and that this poorly executed humor threatened to overpower the more straight-ahead action dimensions of the show.<sup>29</sup> The concern over these perceived weaknesses in the series continued to increase, especially when Columbia did not seem able to direct the producers to shift the direction of the series in response to their co-production partner's requests.



Video 2. *V.I.P.* Opening Credits, Season Two.

By the end of season two, KirchMedia had come to realize that *V.I.P.* was quite different than *Baywatch*. On the level of casting, *Baywatch* was attractive to KirchMedia because of David Hasselhoff, who was popular throughout Europe because of his previous series *Knight Rider* and his European music tours. Pamela Anderson did not join the cast of *Baywatch* until the third season, and even then, she was part of a larger ensemble. In *Baywatch*, the characters were

heroic; they were lifeguards who literally saved lives. The melodramatic plots (i.e. 'schmaltz') encouraged viewers to identify with the various interpersonal predicaments that the characters faced.

In contrast, the overall tone of *V.I.P.* was much less heartfelt, lighter in tone, even sarcastic and cynical. The characters of *V.I.P.* were more hip than heroic, in part because the dangers they faced were not realistically presented. As *V.I.P.* Season III approached, KirchMedia requested a major reevaluation of the creative aspects of the series, asking that *V.I.P.* re-emphasize several key elements:<sup>30</sup>

- The Bodyguards as Heroes.
- Strong Adversaries and Sympathetic Victims.
- Early Introduction of High Stakes.
- Plausible and Schematic Plots.
- Consistent Action Beats.
- Humor within an Environment of Tension.

Following industry practices at that time, the dubbing process for pan-European distribution commenced only after the first full season of episodes was shot and completed in the U.S. Therefore, there were no television ratings for *V.I.P.* from any of territories on the continent to provide direct evidence of the appeal, or lack thereof, until well into in the series production process. In this case, *V.I.P.* did not launch in Germany and other European territories until many months into production of the second season. As a result, executives at KirchMedia had to wait for more than one year to see how the series would perform in their territories.

## 7 The Unvarnished Truth about *V.I.P.*

In September of 1998, Doris Kirch, the head of acquisitions at Germany's SAT.1, and daughter of KirchMedia founder Leo Kirch, wrote an enthusiastic letter to Los Angeles-based Kirch representative, Klaus Hallig saying, "We have just received the first version of *V.I.P.* and I wanted to let you know that I think it looks just great! We will definitely air it in our best primetime slot on Friday at 8:15pm".<sup>31</sup>



Figure 4. Publicity for Germany's SAT.1 Television Network.<sup>32</sup>

One year later, when *V.I.P.* actually launched in the Fall of 1999, SAT.1 was less bullish on the series' prospects. *V.I.P.* debuted in the German market in a primetime slot on a Friday, but was almost immediately shifted to a much weaker timeslot on Sunday afternoons. SAT.1 cancelled the series before broadcasting the entire first season. Elsewhere in Europe, the news was even worse, with a consistent pattern of low ratings and cancellations. France cancelled after ten episodes, Norway after eight, and Sweden after six.

Columbia's ratings for the international territories, where they were distributing for both co-production partners, were no better: Australia cancelled *V.I.P.* after eight episodes, and the United Kingdom's satellite broadcaster SKY1 was drawing few viewers to the series. In South America, *V.I.P.* was distributed via Sony's own, but small satellite channels.<sup>33</sup>

In November of 1999, the author collated ratings from the KirchMedia territories, and sent a memo to Columbia with overseas ratings information for the first season of *V.I.P.*:

The unvarnished truth is that *V.I.P.* is far from a success—though it has performed well in the United States, it has performed poorly in almost every major territory throughout the rest of the world. On the one hand, such poor performance is surprising—who knew Pamela Anderson would be a flop in countries that love *Baywatch*. On the other hand, I have been raising warning flags for the past six months about certain overall weaknesses with the show that appear to be exacerbated in the European territories.<sup>34</sup>

As these initial, disastrous ratings from Europe and around the world were coming in, *V.I.P.* was shooting the final episodes of its second season. In addition, Columbia had just contracted with the Fox O & Os and other syndicated stations to produce two more seasons. As the KirchMedia-Columbia co-production contract stipulated a *run-of-series* commitment, KirchMedia was to be burdened with the rights to at least eighty-eight episodes of *V.I.P.* The European networks were eager to buy a Pamela Anderson series, but most were cautious enough to sign up for one season only. KirchMedia was not able to extract run-of-series or even long term contracts from its European clients.

In some cases, KirchMedia was forced to renegotiate contracts as part of the packages they had sold. As a result, subsequent seasons of *V.I.P.* were extremely difficult to sell. France's TF1 cancelled the series and did not renew. KirchMedia's world sales division did manage to place the series with the smaller French network, M6, but the per-episode license fee from France dropped from €59,000 (US\$55,000) to €13,000 (US\$10,000). Figure 5 details the sharp decline in revenues from season one, to season two, to season three.

| Select KirchMedia Sales for 'V.I.P.' Seasons 1-3<br>(as of November 2001, in €) |              |              |              |
|---|--------------|--------------|--------------|
| Territory   | Season 1     | Season 2     | Season 3     |
| Germany   | 5.5 mil      | 1.4 mil      | 1.4 mil      |
| Poland  | 3.9 mil      | 520k         | 540k         |
| Italy   | 2.4 mil      | 1.2 mil      | ---          |
| Spain   | 1.7 mil      | ---          | ---          |
| France  | 1.3 mil      | 285k         | 285k         |
| Denmark/Norway/Sweden   | 1 mil.       | ---          | ---          |
| Russia  | 390k         | ---          | ---          |
| Portugal  | 260k         | ---          | ---          |
| Netherlands & Luxemburg   | 240k         | 90k          | 90k          |
| Totals (all current markets)  | €18 mil      | €5.4 mil     | €2.3 mil     |
| <b>Totals Per Episode</b>   | <b>€810k</b> | <b>€245k</b> | <b>€104k</b> |

Figure 5. Approximate sales numbers for *V.I.P.*, season 1-3, by country.<sup>35</sup>

KirchMedia had contracted to pay €781,000 (US\$710k) for each episode of *V.I.P.*, and the first season, sold long before the series aired in any European market, brought in a solid €810,000 (US\$740k) per episode in sales. After the series launched, and after it performed poorly or was cancelled in multiple markets, sales for season two plummeted

from €810k to €240k per episode, with season three bringing in just over €100k per episode. And, in the fall of 2001, there was little movement on Season 4 sales, and KirchMedia was on track to recoup just €25 million (US\$23mil) of a €68 million (US\$62mil) investment in the four-season *V.I.P.* co-production.

In this case, at least, the realities of a U.S. television series failure overseas went unacknowledged by boosters in the press. In the Fall of 1999, Time Magazine (inaccurately) noted:

The international market can't seem to get enough of buxom women in bikinis who enjoy a little kick-boxing on the side. Following the lucrative example set by *Baywatch*, which airs in 144 countries, these action shows have gone global, and many of the new arrivals are joint productions of American and overseas companies. "The international market is what makes these shows work," says Jeff Dellin, vice president of research and program strategy for Studios USA, which produces and distributes *Xena: Warrior Princess*. "Domestic is the gravy". *V.I.P.*, for instance, is already translated into 10 languages.<sup>36</sup>

When the first European ratings indicated that *V.I.P.* was not working in Europe, KirchMedia went back to Columbia to re-emphasize its critique of the series' creative direction.<sup>37</sup> From KirchMedia's perspective, the series was poorly produced and lacked necessary promotional support. Multiple memos and meetings were not effective in convincing Columbia to change course.

## 8 Financial Accountability in Co-Productions

There are two goals for those who would enter into a co-production with Hollywood, and both entail taking on greater risk in the pursuit of greater reward. First, the foreign partner puts up more money up front in order to get a larger rights package, meaning broader distribution territories, merchandising rights, a longer license term, etc. This demonstrates optimism about the prospect of doing business with Hollywood. And second, the foreign partner seeks greater creative and financial control over the product that they are getting from Hollywood. This demonstrates caution about the challenges of dealing with the Hollywood studios and what they produce.

After it was clear that *V.I.P.* was going to be an ongoing, and incredibly expensive failure, and after Columbia refused to adjust the series creatively, KirchMedia began a concerted campaign to minimize the overall costs of the co-production. In memo to KirchMedia US lawyers in August of 2001, Wolfgang Hahn wrote:

It seems to be time to revisit our *V.I.P.* and potentially other co-financing agreements. Columbia seems to subsidize our shows more and more with product placements, the revenues of which should be deducted from the overall budget and benefit both partners...I am under the impression that Columbia is currently creating the plots for *V.I.P.* around the brands of boat manufacturers, car dealers, and soft drink companies. Firestone Tires is probably already negotiating for a revised image campaign. We are being taken to the cleaners. Let us take care of the ironing.<sup>38</sup>

KirchMedia questioned the budgetary information that Columbia had provided, and asked about the numerous product placement deals which suddenly exploded onto the screen in the second season.

In March of 1998, Columbia had delivered to Kirchmedia a 'Preliminary Budget' for *V.I.P.* and production was slated to begin in May of that year.<sup>39</sup> Typically, television productions compile a *pattern budget*, which covers the total expenses for each episode, and an *amortization budget*, which breaks out one-time costs for the season (like the standing sets). Preliminary pattern and amortization budgets go through several revisions up until the start of production, and then, after each episode is completed, a final episodic budget is generated and compared to the pattern budget blueprint, to ascertain whether a particular episode was over or under standard budgeted costs.

KirchMedia had a brief meeting with Columbia to discuss the original, preliminary pattern budget which indicated costs of €1.56 million (US\$1.42mil) per episode, but never received any further budgets as production began for *V.I.P.* season one. Initially, concerns about the budget were secondary, with KirchMedia concentrating on negotiating a working relationship with Columbia regarding fulfillment of launch publicity requests, and the creative direction of the series – getting rough cuts delivered to KirchMedia allowing time for notes, for instance, was a major issue during the majority of the first season.<sup>40</sup>

It wasn't until the next to the last episode of the first season, when creator and executive producer J. F. Lawton mentioned episodic costs of just €1.38 million (US\$1.25mil), that the possibility of Columbia's budget inflation became an issue worthy of exploration.<sup>41</sup> As preproduction on the second season of *V.I.P.* began, KirchMedia asked for the new pattern budget. Months later, after continuous follow-up with the producers and with domestic and international executives, Columbia finally provided another budget. The most noticeable difference between the original preliminary budget of March of 1998 and the version presented in June of 1999, was that Columbia was claiming that costs for *V.I.P.* had risen by exactly 5%, from €1.56 million (US\$1.42mil) to €1.64 million (US\$1.49mil) per episode, the precise maximum increase that the co-production agreement allowed for.<sup>42</sup>

In the June 26, 1999 issue of *TV Guide*, Pamela Anderson boasted about her role in the production of *V.I.P.*:

**“I'm in charge,” Anderson says, matter-of-factly. And she is. As an executive producer, she is involved in most aspects of production, including casting, budgets, hairstyling, costumes, and even the overall look of the show. “I am really educating myself on how much things cost. We have a \$1.3 million budget, and it is such a big budget for a one-hour syndicated show”.**<sup>43</sup>

In addition, Russ Krasnoff, President of Programming and Production, volunteered the fact that union regulations prohibited the *V.I.P.* budget from rising above US\$1.3 million (€1.43mil) an episode.<sup>44</sup> KirchMedia asked for current and continuous information, but Columbia maintained that no other seasonal budget or final episodic budgets were available.

As the second season production began, KirchMedia was keeping a close eye on the production values of each episode of *V.I.P.* In several cases, for instance, Columbia wanted to shoot episodes in four or five days, instead of the standard seven days. Such proposed 'bottle' or 'clip' shows included flashbacks to previous episodes, to the point where half the pages of the 'new script' had already been shot for earlier episodes.<sup>45</sup> KirchMedia's position was that it didn't make sense to be paying twice for the same footage, especially as KirchMedia executives believed that they were being charged for half of an artificially inflated budget.

Another major issue of financial accountability concerned Columbia's use of product placement in *V.I.P.* (and in the *Young Americans* co-production as well), as a way to lower production costs.<sup>46</sup> As co-producers of *Baywatch*, KirchMedia was familiar with the cash-or-kind transactions that accompany product placement. The challenge was to dig for information, or otherwise compel Columbia to share full details of the actual costs of production, and how product integration factored in.

Beginning in the second season, script pages started including key *mentions* of brand names, and rough cuts featured close-ups of Aquafina water, or Corona beer, of the front grill of the new Cadillac STS, or an extended, two-minute montage sequence of a cast member riding the 'new Ducati 990 race bike.' KirchMedia asked for information on this practice, “[i]n the last few episodes it has become clear that *V.I.P.* is stepping up its utilization of Product Placement to reduce its production costs. We are ready and willing to discuss how these savings will be passed along to us”.<sup>47</sup>

Over the course of four seasons of *V.I.P.* products placed included automobiles from Daimler/Chrysler and GMC; boats from Donzi; motorcycles from Ducati; electronics from Apple, Sony Ericsson and Nokia; firearms from Heckler & Koch and Glock; clothing from Calvin Klein, Candies and Versace; food/drink products from Pepsico, Snickers and Corona; and a variety of home and health products. Columbia was persuaded to provide some information for about

a dozen of the product placement arrangements, although none of the information Columbia made available covered money or *quid pro quo*. Columbia maintained that ‘we do not receive any cash compensation in exchange for this product placement, nor does such product placement reduce our production costs’.<sup>48</sup> This did not satisfy KirchMedia’s quest for answers, given incomplete information regarding product placement agreements, and Columbia’s refusal to provide final budgets by episode.

In January of 2001 and in response to the accumulation of financial questions, Wolfgang Hahn notified KirchMedia headquarters in Munich that, “[w]e are in discussions in regard to the correct budgets and overall status of the series. Please stop any payments for *V.I.P.* until further notice”.<sup>49</sup> By the summer of 2001 the overall relationship between KirchMedia and Columbia was strained, and the various co-production issues remained unresolved, with each side maintaining a hardline position. In the middle of production of *V.I.P.*’s third season, KirchMedia felt it necessary to confront Columbia more directly:

Unless Columbia provides us with immediate access to the necessary information (including without limitation episodic budgets and product placement/advertising information), as has been requested numerous times over the past nine months, we will be forced to initiate an audit covering all production and distribution aspects of *V.I.P.* We are disappointed that months of conversations and meetings have led us to this low point in our co-production relationship, but we are no longer able to accept Columbia’s unilateral dictates with respect to our co-productions, which are not in accordance with the spirit or the letter of the parties’ agreement.<sup>50</sup>

Columbia’s response was to point directly to KirchMedia’s failure to fund their *V.I.P.* co-production:

It has always been and continues to be [Columbia’s] objective to make our co-productions work as smoothly as possible...In the spirit of co-operation, please note that KirchMedia has thus far not provided any payment for its share of Season 3’s production costs. The receivable balance for Season 3 of *V.I.P.* now stands at \$15.8 million.<sup>51</sup>

Moreover, KirchMedia’s account balance for all Columbia product had soared to over €77 million (US\$70mil), and both parties were contemplating lawsuits.

KirchMedia, however, was already embroiled in lawsuits with Paramount Pictures and Universal Studios, and the company did not look forward to another expensive legal action against another Hollywood major studio.<sup>52</sup> In an effort to avoid a lawsuit, negotiations were ongoing to extricate KirchMedia from its ten-year output deal with Columbia. Columbia had offered various *buyout* numbers to KirchMedia, calculating lost revenues for the remainder of the term. Columbia proposed payments totaling €220 million (US\$200mil) over a few years, claiming that this reduced KirchMedia’s obligations by more than €550 million (US\$500mil). In this broader context, KirchMedia’s complaints regarding financial mismanagement of €11 million (US\$10mil) for the *V.I.P.* co-production was portrayed to be a smaller point.

In March of 2002, Columbia and KirchMedia seemed to be reaching a mutually agreeable solution, having hammered out an Amended and Restated Term Sheet after many months of negotiation.<sup>53</sup> The original term of the output arrangement, of five years, plus a five-year renewal option, was reduced to seven years total. For this adjustment, Columbia required a €66 million (US\$60mil) payment as a ‘contract restructuring/termination fee,’ immediate payment of outstanding invoices totaling some €165 million (US\$150mil), and adherence to a strict payment schedule for further balances of approximately €193 million (US\$175mil) by the end of the year.<sup>54</sup>

Among other sweeping changes, the contentious co-production portion of the output agreement was gutted and reversed, stripping away the broad distribution and merchandising rights and reducing the arrangement to a de facto co-financing agreement granting television rights for Germany only. All previous co-production rights, which KirchMedia had held within their continental European territories in perpetuity, were returned, and any pre-existing sales contracts were transferred to Columbia. KirchMedia and Columbia signed the revised agreement on March 17,

2002. KirchMedia failed to meet the immediate €66 million (US\$60mil) obligation, and the revised contract did not go into effect. KirchMedia declared bankruptcy a month later, on April 8, 2002.<sup>55</sup>

## 9 Confronting the Risk of Co-Productions

By the summer of 2001, it became clear that KirchMedia's co-productions with Columbia were a losing proposition. For KirchMedia, there was no upside, and the inevitable downside was a huge drain: the co-produced series and television movies sold poorly, and KirchMedia contended that Columbia had 'abused the relationship'.<sup>56</sup>

Part of the attraction of a co-production for the foreign partner is the opportunity to take on more financial risk in exchange for the possibility of more financial reward. KirchMedia contributed half of the money for their co-productions with Columbia in exchange for half of the world. More precisely, KirchMedia distributed the various series throughout continental Europe, and Columbia (which held North America) distributed the series throughout the rest of the world, the 'shared territory', for both parties.

By 2001, five years after the initial *Dark Skies* co-production with Columbia, KirchMedia had received very little in revenue from Columbia's distribution of that series in the shared territories. The contract stipulated a 50-50 split for the shared territories, but allowed Columbia to collect a distribution fee of 15% of the 50%, and also to claim various additional distribution expenses. As a result, KirchMedia's share of the *Dark Skies* shared territory revenues equaled just 30% of the revenue for this first co-production in the agreement. At the end of five years, and including seven television series co-productions, KirchMedia's net of shared territory revenues was just €2.2 million (US\$2mil), or just 13% of all shared territory revenues collected. A charitable interpretation was that shared territory revenues took many years to collect, and were much smaller than expected. KirchMedia was convinced, however, that Columbia was either managing the territories poorly or misrepresenting revenues.<sup>57</sup> KirchMedia was pouring tens of millions into a co-production agreement, and hundreds of millions into an output arrangement, even as their financial stability was steadily eroding in a number of respects.<sup>58</sup>

KirchMedia's optimistic sales materials for *V.I.P.* described Pamela Anderson's character as having "the street smarts to nab the bad guys, and a natural buoyancy that keeps her afloat whenever she's in hot water".<sup>59</sup> Well, 'natural buoyancy' or not, the series sank like a stone in Europe. In sum, *V.I.P.* was a financial disaster for KirchMedia, and because of the disputes over the creative direction, production costs, and marketing cooperation, the series was a particular sore point in their expensive programming output deal with Columbia/Sony.

The poor performance of *V.I.P.* and of other co-produced product, and multiple conflicts within the entire output agreement signaled an imminent breakdown in the economic relationship between a Hollywood studio and its primary trading partner in Germany. As KirchMedia's Hahn noted, 'Columbia and KirchMedia did not succeed in the creation of a mutually beneficial co-production business, and are unlikely to agree on a proper form of accounting, and should therefore call it a day'.<sup>60</sup> Whatever the potential advantages of a co-production with a Hollywood studio, this Columbia/Sony vs. KirchMedia case study, concerning *V.I.P.* and much more, reveals a harsher reality, where anticipated benefits can become a major liabilities.

## 10 Mitigating Risk in Transnational Television Joint Ventures: Lessons Learned

This specific case study of a co-production agreement between KirchMedia and Columbia/Sony examines a range of potential benefits, and an especially wide variety of risks in co-productions between media companies and across



borders. Co-productions are situated in between acquiring rights to scripted and completed television programs on the one hand, and acquiring rights to format and adapt a television property on the other. When compared to the simple licencing of finished product for transnational distribution, co-productions can allow for increased creative control and profit sharing.

As explored, however, the potential for opportunistic behavior exists, especially in hierarchical arrangements of co-productions, where one partner controls all of the production and much of the distribution system. There is substantial potential for uncooperative co-production practices and dodgy accounting. There can be conflicts over the creative process during production, and there might be disagreements over financial management and accountability, and the potential benefits might evaporate and the risks might rule the day.

Those acquiring media content might prefer to secure television formatting rights in order to receive many of the benefits of a co-production, but also to avoid potential risks involved in transnational joint ventures<sup>61</sup>. Formatting has become popular in the media trade business, as it allows more opportunity to calibrate creative consultation and shared control of the production and distribution by the respective partners<sup>62</sup>. Formatting can deliver proven success for lower cost, and formatting always and directly contributes to the local production infrastructure, creating the conditions for further media industry growth<sup>63</sup>.

There are many, and better, ways to structure co-productions, of course. Patterns from the Hollywood studios have been overwritten and revised in recent years, with new models, new contracts and new production practices. Since Hoskins et al. from 1997, there have been other estimations and calculations of the benefits and drawbacks of co-productions<sup>64</sup>. Certain central factors remain, like spreading economic risks and (hopefully) sharing financial success, and also overcoming the challenge of finding and delivering on a shared creative vision. Some satisfaction will be found with projects that have equal relevance in multiple markets because of the show's setting or shared cultural history, though this is not necessary to successful joint ventures. Norway's interest in co-productions began in the mid-2010s, as Scandi-noir content previously considered domestic fare found select audiences around the world<sup>65</sup>. According to a 2019 Scripted Series Report, from Mediamétrie's Glance, crime series accounted for 41% of prime-time series worldwide, up three percentage points on the 2017-18 season<sup>66</sup>.

The pursuit of new models, new contracts and new production practices includes joint ventures that pair television producers outside the U.S. with American broadcast/cable companies, for distribution domestically and abroad. France-based Gaumont, opened a U.S.-based production studio in 2011, and co-produced *Hannibal* with NBC, beginning in 2013<sup>67</sup>. The BBC has a long-standing partnership with AMC Networks, as the two organisations co-own the BBC America channel, which broadcasts much of the corporation's programming to American audiences. Their partnership extends to co-productions as well, with *The Night Manager*, a limited series released in 2016 on AMC<sup>68</sup>. The BBC, via its BBC Studios Los Angeles, also launched a joint venture with Lionsgate in 2018 to co-develop and co-fund scripted formats and original IP for the US market.<sup>69</sup> In these joint ventures, each of which showcase the high standard of television production from Europe, we see a reversal of the flow, and a de-centering of a transnational co-production process. Successful co-productions match partners that have a shared vision, similar production processes and, most importantly, a mutual trust that each party will honor the contract and work towards shared creative and financial benefits.

## Notes

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## Biography

Paul Torre received his Ph.D. from the University of Southern California's School of Cinematic Arts. His media industry experience includes positions in film and television development, production, marketing, distribution and legal affairs. He served as Vice President of Programming and Production for the German media conglomerate KirchMedia, working in Hollywood and overseeing television co-productions and arranging international distribution with the major studios. His research and publications explore entertainment industry structures and practices, media regulations and policies, the interplay between U.S. and global media markets, and how new technologies are shaping the media business models of the future.