



**SCREEN PRODUCTION AND DEVELOPMENT ASSOCIATION (SPADA)**

**SUBMISSION ON  
TELEVISION NEW ZEALAND AMENDMENT BILL 2009**

**16 July 2010**

## 1.0 INTRODUCTION

1.2 The Screen Production and Development Association of New Zealand (SPADA) appreciates the opportunity to respond to the Government's invitation for submissions on the Television New Zealand Amendment Bill (the Bill).

1.3 SPADA is a non-profit, membership based organisation that represents the interests of producers and production companies on all issues affecting the commercial and creative aspects of independent screen production in New Zealand, including film and television production companies, post production houses, production accountants, entertainment lawyers and other film industry related service providers.

## 2.0 Objectives of the Bill

2.1 SPADA understands that in summary the Bill:

- amends the Television New Zealand Act 2003 (the Act)
- replaces the TVNZ Charter in section 12 of the Act with a briefer, and less prescriptive, statement of functions (*as outlined in 2.2*)
- enables Television New Zealand (TVNZ) to determine its own priorities against a general set of functions.
- specifies that TVNZ is to provide content through a range of media, in addition to the conventional television channels;
- also creates a new Part 4A (TVNZ Archived Works) from which compensatory payments may be made to rights holders.

2.2 The **new Section 12 substituted** is as follows:

### **12 Functions of TVNZ**

- (1) The functions of TVNZ are to be a successful national television and digital media company providing a range of content and services on a choice of delivery platforms and maintaining its commercial performance.
- (2) In carrying out its functions, TVNZ must provide **high quality content** that-  
“(a) **is relevant to, and enjoyed and valued by, New Zealand audiences;**  
and

(b) encompasses both New Zealand and international content and reflects Maori perspectives.

(3) TVNZ's services must include the provision of channels that are free of charge and available to audiences throughout New Zealand<sup>1</sup>."

**3.0 SPADA agrees with and understands** the need for TVNZ to be legislatively mandated to be a multi-platform content provider for the 21<sup>st</sup> century, to be a "successful national television and digital media company providing a range of content and services on a choice of delivery platforms and maintaining its commercial performance." s12(1).

#### **4.0 SPADA'S KEY ISSUES WITH THE BILL: REMOVAL OF TVNZ'S COMMITMENT TO LOCAL CONTENT**

4.1 SPADA's principal issue on content is the lack of wording in the proposed Section 12 mandating or ensuring TVNZ's commitment to commissioning and screening of **New Zealand local content** (and public service broadcasting) as New Zealand's state-owned broadcaster.

4.2 The current proposed wording of the Bill means that there is neither obligation nor commitment to the commissioning and screening of New Zealand local content. "*Encompasses both New Zealand and international content*" does not mandate any actual commitment to significant local content. Given that international content is cheaper to purchase and those relationships with providers of offshore programming are contractually ongoing, there is little or no need to legislate for the purchase of international product. Spada is concerned that without any mandate around local content the legislatively mandated maintenance of commercial performance will be paramount and mitigate against commissioning of local content.

4.3 The Charter specified not only a commitment to New Zealand local content, but also to local programming across genres that informed, entertained and educated New

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<sup>1</sup> [www.legislation.govt.nz/bill/government/2009/0089/4.0/whole.html](http://www.legislation.govt.nz/bill/government/2009/0089/4.0/whole.html) : Television New Zealand Amendment Bill 89-1 (2009), Government Bill – New Zealand

Zealand audiences – films, drama, children’s drama and documentaries. Under the current proposed wording of the Bill, not only is there **no commitment to local content** there is **no commitment to a diversity of genres**.

4.4 SPADA is also concerned that the combination of:

- a) the current lack of clarity over TVNZ’s role in public broadcasting;
- b) the lack of commitment to local content and diversity in the proposed Bill;  
and
- c) the removal of the Charter’s commitment to supporting and promoting the **talents of the independent screen production industry**

will put at risk the future of the independent television sector – which provides the basis for our extremely successful film industry.

4.5 A clear commitment to commissioning and screening of local content is imperative to the stability of the independent screen production sector, particularly given New Zealand’s singular position in having no local content quotas, unlike all other developed countries where such quotas ensure local production levels. While local programmes consistently rate in the Top 20, and are good for TVNZ’s brand, commissioning of them is directly related to:

- a) the level of TVNZ’s commercial returns, which have been under pressure both in the fall in advertising and because of the Government’s requirement for a dividend; and
- b) its access to programmes receiving NZ On Air funding.

Overall ‘first run’ local content on NZ free-to-air networks was down by 5% in 2009 as indicated by NZ On Air’s Local Content Report. This is the first time that a drop has been recorded.

4.6 As well as the cultural significance of local content, the screen production sector is a major contributor to the New Zealand economy and television production is the backbone of New Zealand’s film industry. In 2009 the NZ screen industry recorded

gross revenue of \$2.8 billion, a 3% increase from the previous year<sup>2</sup>. As illustrated in Figure 1<sup>3</sup>, television programmes, screen production companies, contractors, and television programmes all contribute to the intricate make-up and ecology of the screen production industry.

4.7 It is ironic that, at a time when the importance of the film industry is being recognised and supported in New Zealand by way of initiatives such as the Large Budget Grant and the SPIF Grant for its:

- a) ability to attract the international dollar by way of incoming productions;  
and
- b) significantly raise the profile of New Zealand as a tourist destination

the proposed Bill could effectively undermine and remove support for the backbone of the film industry – namely the independent television sector. Without a healthy vibrant television industry, there is no film industry.

#### **RECOMMENDATION**

SPADA recommends that the obligation on TVNZ to commission and screen local content be included in the proposed new section 12 in the following manner:

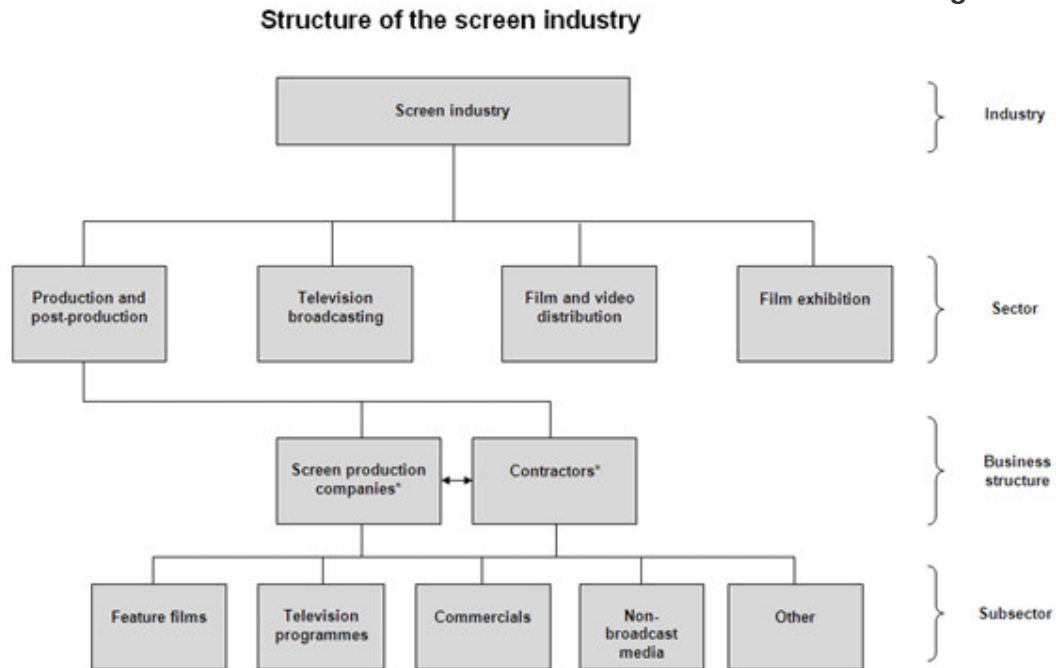
- (2)** *In carrying out its functions, TVNZ must provide **high quality content** that –*
- (a)** *is relevant to, and enjoyed and valued by, New Zealand audiences;*
- (b)** *demonstrates a commitment to local content and reflects Maori perspectives.*

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<sup>2</sup> Statistics New Zealand, Screen Industry Survey 2008/2009.

<sup>3</sup> <sup>3</sup> Statistics New Zealand, Screen Industry Survey 2008/2009.

Figure 1



\*Businesses in the production and post-production sector may be contractors as well as screen production companies.

## 5.0 SPADA'S KEY ISSUES WITH THE BILL: ARCHIVE PROVISIONS

### TVNZ Archived Works

#### Part 4A

### TVNZ Archived Works

#### Subpart 1 – Preliminary provisions

## 5.1 S. 29A - Interpretation

### “Archived work”

This section defines archived works (ie held in TVNZ’s archives) as a programme (or series of episodes comprising a programme) made by or on behalf of the Broadcasting Corporation of New Zealand or its predecessors on or at any time before 27 May 1989 and held in the TVNZ Archive, and includes an archived work that comprises a series of episodes.

### **ISSUE: Excluding Independent Productions**

Apparently the original point of the Bill was to free up works produced and owned by BCNZ; not works commissioned by BCNZ (an example of the former being “Gloss”; an example of the latter being “That’s Fairly Interesting”).

As such, it was only intended to provide for payment to a narrow class of individuals who, under the BCNZ contracts, were entitled to residuals, these being actors, musicians and composers. Anyone else, ie producers / directors / writers were employed by BCNZ and therefore had no ongoing rights to income.

The definition of “archived works” as it stands effectively unilaterally takes copyright from independent production companies and producers. The use of the phrase “by or on behalf of” will include both programmes produced by BCNZ and those commissioned by it from independent producers. These independent programmes were never owned by BCNZ but licensed from the production companies that made them and they are still owned by these production companies. Therefore, including them in the definition of archived works takes private property rights or copyright from its owners and would seem to be an unforeseen consequence of the wording of this Bill.

This could be rectified by deleting the words “or on behalf of” to ensure that copyright in independently produced programmes remain with the owners.

After discussions, TVNZ is supportive of such an amendment to the Bill in order to confine the effect of these archival provisions to works owned by TVNZ.

### **RECOMMENDATION**

SPADA respectfully requests that the wording of s 29A Interpretation be amended to read:

*“Archived work means a programme made by the Broadcasting Corporation of New Zealand or its predecessors on or at any time before 27 May 1989 and held in the TVNZ Archive, and includes an archived work that comprises a series of episodes”*

## 5.2 S.29C – Screening of Archive Works

This section provides for re-screening of archived works on:

- (1) (a) (i) its channels TV1 and TV2
- (ii) digital channels established by TVNZ
- (iii) the TVNZ On Demand Internet site
- (iv) any other delivery platform with which TVNZ may enter into an agreement for the supply of content

### ISSUE

Item (a)(iv) “any other delivery platform” is of concern as it potentially opens the door to bundling arrangements by granting of licences for free viewing platforms as part of a “bundle” or “package” which also provides for payment to TVNZ for other programmes in the bundle / package and therefore not free of charge, as specified by this legislation, but for which TVNZ could derive income. Currently the legislation restricts use of archival works from use on Pay TV with the restriction of it having to be provided free of charge.

### RECOMMENDATION

SPADA believes that there should be some specific prohibition on anti-bundling or deriving income (other than normal advertising revenue around the archive programme) from the re-broadcast of such archive works.

## 5.3 The second part of section 29C provides for TVNZ to:

- (b) grant the Maori Television Service the right to screen an archived work under any arrangement agreed between that service and TVNZ
- (c) enter into an arrangement with NZ On Screen in respect of a work that has previously been screened by TVNZ or the Maori Television Service under this section.

SPADA’s concern here is that the current wording allowing TVNZ to “enter into an arrangement” with NZ On Screen and “under any arrangement agreed between the Maori Television Service and TVNZ” wording may leave too much discretion to TVNZ to limit access, even while taking into account that it does own the works. It allows



TVNZ to control the terms and conditions under which programmes are made available and makes access rights too uncertain. If the logic is to make publicly funded programmes available for ongoing public access on other non-commercial publicly funded platforms, the current wording does not ensure this.

#### **RECOMMENDATION**

SPADA believes parameters around Maori Television Service and NZ On Screen's access to TVNZ Archive Works needs to be more defined so that there is recognition of granting the right to screen archival works under reasonable arrangements.

#### **5.4 Privacy Issues**

Even with TVNZ fully owned programmes pre-1989, there are potential problems in relation to privacy issues, given that public facts may become private with the passage of time. Whilst this aspect is more likely to apply to documentaries or factual programmes and TVNZ is only talking about drama and comedy at this stage, the Act doesn't make any distinction as to the type of programming covered.

#### **RECOMMENDATION**

Therefore SPADA would recommend the normal checks and balances relating to re screening of programmes are carried out in advance to ascertain whether there are any privacy issues in re-screening works so long after the initial broadcast/s.

#### **5.5 Protection of the Archive**

Although this back catalogue is currently owned by TVNZ, this is an opportunity – given the Government's recognition that the archive is a "unique and valuable record of New Zealand's historical, social and cultural life, and an important part of our screen heritage" - for a provision to be included to protect this archive for New Zealanders. There are also costs for TVNZ in maintaining its archive and therefore this legislation could act as a catalyst for discussion on the future of the archive.

## **RECOMMENDATION**

SPADA suggests protection could involve either:

- a) some form of statutory recognition that, in the event of any future sale of TVNZ or part thereof, this archive would not be part of the assets permitted to be sold; or
- b) Alternatively, some provision that acknowledges that TVNZ holds the archive in trust for the NZ public; or
- c) A defined trust to be set up to hold this archive material permitting TVNZ (and only that entity) to exercise its established rights (i.e as they currently have) together with the additional rights provided by the Amendment. In this way, TVNZ wouldn't lose any of its rights but the Trust would own the archive and so it would not form part of its assets in case of sale.

As the future of the New Zealand Film Archive is currently under review and may well become a Crown entity, there could be some fruitful discussions relating to the future of both archives to be held in trust with separate Crown funding for preservation, restoration, maintenance and use of programmes as archival source material for the creation of new content. As it is timely to look at all of New Zealand's broadcasting archives this discussion could also include Radio New Zealand's archive and it may be logical to examine combining all three under the aegis of a new Crown entity.

## **6.0 SUMMARY**

SPADA's commitment is to the screen production industry's commercial and cultural success, with a focus on the importance of content creation as the industry faces the challenges and opportunities of a multi-platform digital environment. SPADA is concerned that if the TVNZ Amendment Bill does not reflect in some way the importance of, and commitment to, local content the financial stability of the screen production sector could be seriously eroded.

SPADA would also like the opportunity to appear before the Commerce Select Committee hearing this Bill. If you would like us to expand on these views, please do not hesitate to contact us.

Yours sincerely

**SPADA**

A handwritten signature in black ink, reading "Penelope Borland". The signature is written in a cursive style with large, flowing loops.

Penelope Borland  
**Chief Executive**