spada nz
the screen production
and development association

NEW ZEALAND SCREEN PRODUCTION GRANT

CONSULTATION PAPER

SPADA RESPONSE

3 March 2014

TABLE OF CONTENTS

EXECUTIVE SUMMARY

SPADA supports the Government's aims and objectives for the New Zealand Screen Production Grant (NZSPG). This consolidation of and enhancement to both the Large Budget Screen Production Grant (LBSPG) for international production and the Screen Production Incentive Fund (SPIF) provide an opportunity to structure the new incentive scheme so that it will be more efficient to administer and generate strong growth within New Zealand screen industry over the longer term.

The issues that this initiative raises are complex. SPADA seeks to follow up this written response by meeting with Government officials within the next week or so to work through the details, in particular on the key issues we have identified and addressed in this document. Specifically:

- **Domiciled New Zealand Companies** only should be eligible to access the NZSPG for NZ Productions. To that end, SPADA proposes amendments to the SPIF criteria to ensure, among other requirements, that an applicant NZ resident company must receive a share of the income from the production that is generally commensurate with the expected value of the NZSPG, with the position for the recoupment of such share of income to be similar to that of any other equity investors in the production. These amendments will underpin IP value for New Zealand.
- **Equity vs. grant for NZ Productions** with QNZPE between \$15m and \$50m raises serious questions for SPADA and for the screen industry. While we welcome the lifting of the SPIF \$15m cap to create a new second tier of up to \$50m, we disagree with Government that NZ production companies can benefit and grow when the NZSPG takes an equity position from dollar one. The implications for NZ production entities financing NZ feature films or television projects of scale where the QNZPE is between \$15m and \$50m are manifold. There is a significant negative impact on cashflowing options which in turn risk undermining the entrepreneurial skills needed to grow NZ screen production businesses.
- **An alternative approach for NZSPG equity** is being put forward by SPADA in which the two-tier NZSPG for NZ productions would limit Crown equity to amounts calculated on QNZPE between \$15m and \$50m. Further, SPADA proposes that returns from that equity be held in escrow within a multi-year revolving trust that can be accessed by the NZ production entity responsible for delivering the commercial success from which these returns are derived. The returns held in escrow in individual production company 'trusts' would be ring-fenced for use only in connection with the development of new IP and/or business growth.
- **Points test for NZ productions with QNZPE over \$15m** is preferable to the subjective and potentially conflicted assessment of a panel. Indeed such a test was contemplated by Cabinet, and SPADA has developed one based on track record, export potential and ownership. The test is included in this response.
- **Official Co-Productions** are a highly valued vehicle the Government is providing for NZ producers to collaborate with producers in 14 countries already and with new ones in negotiation. SPADA is concerned that efforts to synchronise NZSPG terms between the former LBSPG and SPIF do not disadvantage official co-productions. We therefore disagree with the suggested removal of 'Total Production Expenditure' calculation that is available for SPIF and remains crucial for official co-productions. It is noted that the NZSPG is only payable on the QNZPE, and so criteria need to be clear.

- **International Productions' additional 5% grant** with its two-stage approval process may not deliver the certainty and administrative clarity which has been a feature of LBSPG and its marketing to international producers. SPADA is also concerned that the 'significant economic benefits' test as currently proposed will fail to capture recurring series and possibly PDV work that have shown to deliver economic benefits over a longer term. We are suggesting some modifications to the test, and would recommend that bundling be retained.
- **Other** items that are not covered in Consultation Paper do deserve, SPADA believes, further consideration. Two are being highlighted: (i) introduction of a training levy on all NZSPG payments (there could be a maximum) or a point within the tests for NZ productions' business and International productions' economic benefit; and (ii) establishment of a stand-alone Certification Office within NZFC that is separate from its Business Affairs operations to avoid any potential conflicts that could now arise with the Crown equity component.

SPADA also suggests that Government give consideration to re-naming NZSPG the New Zealand Screen Production Incentive or NZSPI. This would avoid confusion regarding the introduction of equity alongside the grant which is the feature of the incentive for International Productions and New Zealand Productions under $15m.

1. INTRODUCTION

In principle SPADA is very supportive and encouraged by the proposed changes to the Screen Production Incentives, especially as Government's stated intended aim is to "*help ensure a screen industry that is more sustainable, (and) brings greater long-term economic benefits to New Zealand*". SPADA fully concurs with Government that this will only be achieved by "*building a strong base of local New Zealand screen companies and talented individuals developing unique IP*". Furthermore, it is vital that the ownership of this IP is retained in New Zealand and by New Zealand residents or domiciled companies.

SPADA also recognizes that international production activity in New Zealand is extremely valuable to the screen sector both fiscally and from a skills capability perspective. The domestic and international servicing sectors for film and television are totally interdependent. Even as the domestic industry develops, international production will always remain integral to the screen sector and will continue to require ongoing and consistent support in order to remain competitive internationally.

SPADA's comments are therefore made in the context of seeking to ensure that Government's intentions and rationale for the incentive changes have the best chance of being delivered upon.

1.1 Collaborating with MBIE and MCH

The 19 February Consultation Paper sets a deadline for responses of 4 March. SPADA Executive representatives and members have attended the consultative workshops held in Auckland, Wellington and Dunedin last week.

We acknowledge the tight timeframe faced by Government officials and NZFC as administrator to meet the 1 April target date for the new NZSPG to be operational. The issues raised in the Consultation Paper and addressed herein by SPADA are complex. SPADA is ready to meet with MBIE, MCH, Film NZ and NZFC to work through the details and ensure that the new NZSPG is an efficient incentive scheme that generates over time the results sought by both Government and the screen industry.

If together we get this right now, that collaborative effort will reduce the likelihood that future substantive amendments may be required.

1.2 SPADA Endorses NZSPG Consultation Aims

Specifically SPADA wants to ensure that the following aims are met:

(a) The incentives are:
- workable
- provide value for New Zealand
- do not result in unintended consequences; and
- do not result in high transactions costs.

(b) Thereby encouraging and stimulating:
- more local producers to develop NZ IP content for the NZ and international market
- the growth of businesses that can compete successfully in the global screen market and retain key IP ownership in NZ

- the growth of mid-sized NZ-based productions that can compete successfully on the world stage and attract more international productions while our domestic industry develops; and
- a stronger domestically-sourced screen industry that over time is less dependent on taxpayer incentives.

(c) Consequently resulting in the NZ screen sector:
- building scale and developing the means to become more financially sustainable and internationally competitive
- building the skills and connections to be able to engage and compete internationally
- generating revenue streams through more frequent commercial success for reinvestment in new IP;
- growing less dependent on incentives for future business growth.

This response includes in Appendices 1 and 2 SPADA's proposals for specific changes/additions to NZSPG criteria, and in Appendix 3 SPADA's detailed response to the Consultation Paper and answers to the questions therein. These appendices form an integral part of this document.

2. PROPOSED SOLUTIONS TO KEY ISSUES

SPADA has identified the following key issues:

- clarity that the incentive's benefits at 40% for New Zealand Productions can only be accessed by domiciled New Zealand companies;

- implications for the equity vs. grant outlined for NZ productions with QNZPE between $15m and $50m that could result in the Government's aims not being achieved;

- treatment of official co-productions as a further Government measure to achieve those aims; and

- value of objective tests – points tests as envisaged in the Cabinet Memorandum – in objectively measuring eligibility as opposed to discretionary processes involved in the panels suggested for both International Productions (additional 5% economic benefit grant) and NZ Productions (new 40% incentive on QNZPE between $15m and $50m)

We are therefore in this Section 2 focussing on discussion of these issues and proposing efficient methods of resolving these, with the ultimate goal of improving the New Zealand Screen Production Grant (NZSPG) in terms of its effectiveness, give maximum certainty to screen production business and reduce – or at least not increase – compliance burden and costs, especially for NZ productions.

2.1 Domiciled New Zealand Companies for NZ Productions

SPADA acknowledges that one of the NZSPG's aims is to harmonise the existing LBSPG and SPIF. However, this can lead to inadvertent problems. We believe it is vital that this be addressed with respect to the definitions of eligible companies.

NZ producers/production companies will only grow and retain key IP if they can directly benefit from the incentives. The economic benefits Government desires the screen sector to deliver can only be delivered by NZ producers whose businesses are domiciled in New Zealand and are investing and reinvesting in New Zealanders and New Zealand stories.

A genuine NZ producer must therefore be an absolute requirement to be able to apply for the domestic NZ Production 40% incentive.

The applicant must be a NZ resident company, carrying on business in New Zealand and with either its central management or control in New Zealand, or its voting power controlled by NZ resident shareholders. Further, that applicant NZ resident company must receive a share of the income from the production that is generally commensurate with the expected value of the NZSPG, with the position for the recoupment of such share of income to be similar to that of any other equity investors in the production.

Appendix 1 sets out the proposed amendment to the eligibility requirements within the current SPIF criteria.

Note: these amendments do not apply to International Productions accessing the 20-25% incentive.

2.2 NZ Productions with QNZPE between $15m and $50m

SPADA endorses the underlying objective of Cabinet's welcome decision to lift the SPIF cap of $15m:

> *"Support for NZ productions also helps to build scale and local edge and allows New Zealanders to see their own stories on screen. There is a missing middle of NZ productions, however. Incentivising NZ productions in the $15m - $50m production bracket would also <u>contribute significantly to building a base for a more financially sustainable and internationally competitive screen sector that, over time generates more domestically-owned IP and becomes less dependent on incentives</u> to attract mobile international production."*

SPADA is concerned that the business development impact of introducing 'equity' has been little understood by Government. At a time when NZFC is introducing new initiatives to build NZ screen production industry business capabilities, the move to 'equity' for productions with QNZPE between $15m and $50m – and then to apply that equity to the full value of the 40% NZSPG from $0 to up to $50m – is perhaps the most detrimental Government policy shift domestic producers have faced in some time.

NZSPG 'equity' reduces NZ producer equity available through the grant, thereby reducing the producer's share in the recoupment chain and control of IP in the production.

To quote SPADA's UK counterpart PACT:

> "*Arguably the biggest barrier for an independent producer seeking to develop their business is that they rarely secure a significant share in the recoupment chain, or retain intellectual property rights. It is hard to raise investment when your business doesn't share the profits when it has success.*"

This new equity/recoupment position is inconsistent with the 20-25% grant for International Productions. International Productions (and their offshore production companies) get 20-25% grant with no requirement for residual benefits to New Zealand in form of IP ownership, revenue share, etc. Yet domestic productions/production companies are now penalised with 40% equity from dollar one where these benefits are inherent to the production.

2.2.1 'Equity' Contradicts Government's Aims

The proposed equity/recoupment position contradicts and undermines the Government's objectives to grow sustainable NZ-domiciled screen production businesses with capacity to develop IP ownership and grow in size and international reputation for high quality product. IP ownership is valueless without a corresponding income stream; it is imperative that NZ production companies control their own revenue stream (producer's equity), if they are to become less reliant on incentives.

The Cabinet Memorandum recognises this:

> *"Encourage screen business to develop resilient business models, for example, by generating and controlling IP."*

This introduction of the 'equity' tier within the NZ Production incentive scheme reinforces the 'fee-for-service' model that has long plagued New Zealand film and television production funded predominantly by NZFC and NZ On Air. It fails to build on the SPIF opportunity for producers to take their 'seat at the table' and a greater stake in the success of their projects. And where commercial success is achieved, benefit from downstream revenue can be employed by NZ producers to build and grow businesses and develop subsequent projects (IP) thus alleviating reliance on existing government funding.

2.2.2 Cashflowing with NZSPG Equity

Under the SPIF, grants have been cashflowed by the NZ producer. It is recognised that a lack of entrepreneurial producer skills are an impediment to the growth of the NZ domestic screen sector. NZ producers accessing SPIF have developed financial discipline and gained valuable business understanding about debt financing and its requirements. And importantly for business growth, SPIF cashflowing has been instrumental in attracting other investment and/or new financial players. Here are just two examples of the value that SPIF cashflowing has added:

- **BOY** – the equity investor offset some risk by cashflowing the SPIF and subsequently invested in WHAT WE DO IN THE SHADOWS; and
- **TRACKER** – a French bank cashflowed SPIF, UK Tax Credit and pre-sales which, without the SPIF transaction included, the package's assets would have been deemed too small for the bank's consideration. This was the bank's first transaction in New Zealand and it is eager to do ongoing business in the country; whereas in contrast, the major UK bank cashflowing pre-sales in the international market has yet to have approval from its credit committee to transact in New Zealand.

We believe there will be increased transactions costs incurred by NZ producers of higher budget productions of scale not being able to bundle cashflowing of a grant with other incentives and pre-sales, etc. So it is likely that more financiers will be required with resultant increased costs for smaller and riskier transactions. By way of example:

- **BOY** – the equity investor also cashflowed the SPIF and the budgeted finance and legal fees represented 6.99% of the total budget.

- **TRACKER** – the SPIF, UK Tax Credit and pre-sales were cashflowed by one lender and the budgeted finance and legal fees represented 8.96% of the total budget; and
- **UNDER THE MOUNTAIN** – the SPIF and pre-sales were cashflowed independently of each other by different lenders and the budgeted finance and legal fees represented 10.76% of the total budget.

More significantly, the imposition of 'equity' will limit NZ producer's ability to be entrepreneurial by reducing their exposure to financial instruments, their capacity to attract new investors and develop new financing models. The alternative being proposed by SPADA in 2.3 below takes this into account.

2.2.3 NZSPG for NZ Productions: Grant vs. Equity

The new two-tiered structure with 'equity' for $15m to $50m is inconsistent, not only with International Productions, but also with NZ Productions budgeted under $15m which do not attract significant private equity. Therefore it is likely to serve as a disincentive for NZ producers to develop IP requiring production budgets over $15m and an artificial incentive to reduce budgets below $15m.

There is no international precedent for an incentive taking an 'equity' position.

It is inconsistent with New Zealand's closest comparable equivalent incentive, the Australian Producer Offset where its 40% rebate is uncapped and no equity position taken. Australia has co-production treaties with most of the same countries as New Zealand. The more straight-forward non-equity structure under the Offset makes Australian producers more attractive partners for overseas producers with co-production projects. This represents a further disadvantage for New Zealand producers with projects of scale.

2.3 SPADA Alternative Approach re NZSPG Equity

SPADA strongly believes that the NZSPG for both tiers of NZ Productions should be on a level playing field with International Productions, that is, the incentive continues to be delivered as a grant. However, we also believe there is an alternative approach that Government should consider that would deliver assurances to Government that there is tangible public benefit when a project is commercially successful. And further that NZ production companies responsible for that success also share in that benefit with the capacity to reinvest in new IP and ultimately grow their businesses in New Zealand.

2.3.1 SPADA Two-Tier Alternate Structure

This alternative approach retains the two-tiers; however, Crown equity would be focussed exclusively on the new second tier for NZ Productions of scale with a QNZPE of between $15m and $50m.

The design of this alternative is straight-forward:

- 1st tier with QNZPE up to $15m as currently available within SPIF with a 40% grant; and
- 2nd tier for QNZPE of between $15m and $50m in the form of equity investment by the Crown with returns on that investment to be held 'in trust' by the NZFC for the NZ production company (being the parent company/s of the SPV established solely to make the production) responsible for generating those returns to draw down for agreed expenditure on new IP development and/or production company investment in a new qualifying NZ production.

This alternative two-tier structure offers numerous advantages.

It retains the financing mix that enables the NZ production company to structure cashflow of NZPSG grant below $15m with pre-sales and other incentives. It should allow the NZ producer to include cashflow of the NZSPG equity portion of the production financing, if that too will attract more private investors and limit financing costs. It encourages entrepreneurial business while maintaining Crown equity in a position that does not risk undue control of creative elements or the underlying IP developed by the NZ producer.

In both tiers, revenue generated by commercial success will enable the NZ production entity to reinvest in its core business.

In addition, where increased appropriation of public funds may be required for the new 2nd tier NZ productions of scale, not previously eligible, the revenues held in trust will reduce demand on NZFC and/or the NZSPG for future productions.

It establishes a win-win environment for both the Crown and the NZ production company. It represents a partnership committed to success. The NZ production company has a vested interest in

(i) ensuring the best possible recoupment position for both the basic grant below $15m (producer equity) and for the Crown equity investment at 40% of QNZPE over that $15m threshold, and in

(ii) maximising commercial success to generate returns on all investment and profits.

There are numerous examples overseas of government screen funding agencies managing revolving development funds as an integral component of business stability and growth strategies. But revolving trust funds derived from production returns do not exist[1]; most agencies reassign in whole or in part their revenues from equity investment and profit participation to the responsible production entity. And, as noted, in no case overseas is an incentive (tax credit or rebate) employed as equity.

This proposal is therefore a uniquely New Zealand one. It is fiscally responsible, achieves the Government's objectives and guarantees commercial success will be used for future productions.

2.3.2 Administrative Parameters for 'Revolving Success Trust'

SPADA suggests the following practical guidelines be adopted under which the NZFC and the NZ Production entity would agree to operate the 'revolving trust'. The NZ production company/producer would have the power to drawdown funds with NZFC's role limited to ensuring the following guidelines were met.

- Maximum $150,000 drawdown for development on any single project that is consistent with NZFC Act Section 18 'significant New Zealand content' and where IP is controlled by the NZ

[1] The Performance Envelopes that existed within Telefilm Canada from 2002 to 2012 were based on box office performance (vs. equity recoupment) and operated only on an annual financial year basis. Production companies with an envelope were required to be fully-committed and 90% drawn down/disbursed by end of March. Uncommitted/drawn down funds reverted to Telefilm.

production entity. (Note: given a complex VFX film could easily cost more to develop there should be discretion to apply for higher amounts on case-by-case basis.)

- Maximum $400,000 drawdown for development on a slate of projects that are consistent with NZFC Act Section 18 'significant New Zealand content' and where IP is controlled by the NZ production entity. The producers could not also access NZFC development on the same projects.
- Drawdowns of up to $150,000 per year for the production entity's business development including but not limited to engagement of staff and/or business/financial growth consultants, overseas travel required for co-production and/or market distribution/sales, etc.
- Drawdown for investment on any single new NZ production would require that production to meet NZSPG criteria for NZ Productions, and:
    - If QNZPE is under $15m, this production company equity could not be applied towards the minimum 10% non-NZ Government funding requirement for feature films and 25% for television and other formats; or
    - If QNZPE is over $15m, this production company equity would offset Crown equity being sought under NZSPG.

The concept will support the long term business stability and growth of successful NZ production entities. NZ production companies establishing a trust within NZFC escrow account could designate a 'key person' within the company for purposes of future corporate evolutions or disputes. Given the time involved in development and production financing, the 'Revolving Success Trust' would operate on a multi-year revolving basis until such time as – if ever – the NZ production entity responsible ceased operation. Should that occur any funds remaining in the trust not otherwise linked to a key person could be returned to the Crown, or transferred to NZFC for development or investment in new original New Zealand screen stories.

2.4 NZ Production with QNZPE over $15m 'Business' Points Test

SPADA notes that in its Minute, Cabinet directed that NZ productions now eligible for this new expanded second tier *"… be subject to scoring a certain number of points on a points test relating to business as well as cultural factors."*

The Consultation Paper in Section D contains a revised cultural test on which we have comments in Appendix 3.

Here we suggest a transparent objective test for the 'business' factors contemplated by Cabinet.

$15m to $50m Eligibility Test	**Points Available**
A – Track Record	
A1 – Festivals and Markets	1
A2 – Awards	1
A3 – NZ Audience	1
A4 – International Sales	1

A5 – International Audience	1
A6 – Producer Experience	1
Total – Section A (minimum 2 pts)	**6**
B – Export Potential	
B1 – Sales or Distribution Advance	2 (0-2)
B2 – Pre-Sales	3 (0-3)
B3 - Cast	2 (0-2)
Total – Section B (minimum 2 pts)	**7**
C - Ownership	
C1 – Copyright Ownership	2 (0-2)
C2 – Recoupment and Profit Participations	2 (0-2)
C3 – Other Relevant Matters	3 (0-3)
Total – Section B (minimum 3 pts)	**7**
Total – minimum 8	**___ (out of 20)**

With regard to Track Record, the points available in A1 through A5 are applicable to a writer, director or lead producer. The full explanation for this test is set out in Appendix 2.

NZ producers developing a project of scale need certainty and transparency from the outset. Financing an NZ production with a QNZPE of $15m or more represents a major undertaking: multi-party, multi-jurisdictional financing is very complex and specialised. Few NZ producers have yet done so and NZFC staff and Board have limited experience in this area and none in TV at this budget level. Similarly we have a very limited number of suitably qualified NZ-based external advisors and those are likely to be in a position of potential conflict of interest.

Decision-making on qualification cannot be subjective or be left to an inexperienced and unqualified panel.

In reality no one, not even Hollywood studio executives can provide *"assurances that only high quality material will be produced"* as there are no fail-safes in this industry. But we suggest this test establishes some clear and measureable parameters. It retains ability for an Incentive Panel to be convened in extraordinary circumstances – e.g. if a project is very borderline or in dispute over interpretation.

2.5 Official Co-Productions

New Zealand has entered into formal binding co-production arrangements with 14 countries and is in negotiation with 4 more countries as well as expanding the 'film only' agreements with China and Korea to cover television. Official co-productions are recognised by the Government as a valued mechanism to expand production opportunities for NZ producers/production entities.

2.5.1 Co-productions: Beneficial Tool for NZ Producers

Co-productions are an increasingly important mechanism for NZ producers to finance NZ feature films of a bigger scale. For example the vast majority of the larger budget NZ films (RIVER QUEEN, THE VINTNER'S LUCK, DEAN SPANLEY and TRACKER) have all been official co-productions. Without co-production finance these films would not have been made.

The MCH review of co-productions which formed part of the Screen Sector Review clearly illustrated the financial value of co-productions to the NZ screen sector. Between 2002 and 2010 NZ participated in 10 official film co-productions with total budgets of $114m. In contrast, budgets for the 10 domestic films made in the same period totalled $45m. Furthermore the co-productions attracted $68.6m of offshore funding and earned revenues of $21.6m vs. $3.5m and $5.5m respectively for the domestic films. NZ government investment made up 37% of the total budget of the co-productions compared to 87% for the domestic films.

2.5.2 Assessing NZ Elements for QNZPE between $15m and $50m

New Zealand's co-production treaties and MOUs generally state:

> *"A co-production film shall be fully entitled to all benefits which are or may be accorded to domestic films by each of the Parties under their respective laws."*

The proposed NZ Production 'business' points test addresses treatment of official co-productions in respect of assessing IP and net income for projects where the QNZPE is in excess of $15m. This treatment is consistent with the fact that any SPIF grant on an official co-production is only payable on QNZPE; that fact will remain within the new NZSPG.

2.5.3 Retain 'Total Production Expenditure' (TPE)

Section D of the Consultation Paper raises the issue of removing TPE as a quantifiable measure from the NZ Production incentive, primarily because it is not a factor of measurement within the International Production grant.

The removal of TPE would impact negatively on the qualifying threshold for co-productions as NZ Productions.

Similarly basing the qualifying threshold on the total budget less above-the-line items, production company overheads, contingency and financing fees is likely to impact negatively. Given the nature of co-production these budget items are likely to be higher than a domestic film.

TPE should therefore be retained as the basis for calculating the threshold for co-productions, the above-the-line cap and overheads cap.

Removing TPE from the NZ Production incentive would potentially limit the viability for a New Zealand producer of undertaking a co-production: an undesirable outcome for the sole sake of uniformity between two incentives with ultimately very different aims.

2.6 International Productions: Points Test for Additional 5%

SPADA is concerned that the Government's high-level objectives may not be fully met with the introduction of a two-stage process to determine the additional 5% spend.

To quote the NZFC Report "Growing the Screen Sector: Proposed Screen Production Grant" presented in late October 2013 to the Minister for Economic Development and the Minister for Arts, Culture and Heritage:

> *"Adding a discretionary fund to the existing LBSPG would provide more flexibility in terms of responding to individual applications but would provide for less certainty and transparency.*
>
> *This suggests the need for a rules-based instrument under which the rebates are determined on the basis of an objective test but with some flexibility."*

SPADA also notes that the PDV sector will be affected by the proposed definition of the additional 5% grant for significant economic benefit. Post-production is of critical value for NZ and international screen production and should not be unduly disadvantaged by incentive changes and/or enhancements.

2.6.1 Points Test vs. Test + Panel

The two-stage process set out in the Consultation Paper risks undermining the Government's aim of making the process flexible and pragmatic. International producers/studios/ production companies are looking for new clear and concise criteria which the LBSPG delivered on. New Zealand competes with numerous overseas jurisdictions offering incentives. Some like BC Film with its varied tax credits (including some bonus tax credits) offer online calculators which, though not final, provide a very solid estimate of the incentive(s) value to the international production.

SPADA does not believe that submitting 'economic benefit' proposals to a panel will deliver on flexibility, objectivity, consistency or transparency. Decision-making by committee introduces questions regarding objectivity, the ability to deliver a consistent and fair decision-making process when the composition of the panel may change, issues regarding conflict of interest, as well as concerns regarding provision of commercially sensitive information to other industry practitioners.

New Zealand should be able, with all the experienced production personnel who have worked on LBSPG projects, to come up with a sufficiently comprehensive and fair points test on which the additional 5% can be awarded … and defended. Clearly, the NZSPG administrators should have the ability to convene a panel in extraordinary circumstances – e.g. if the project is very borderline or in dispute over interpretation.

2.6.2 'Significant economic benefits' Test for International Productions

Having looked closely at the Consultation Paper's points test in Section C, SPADA cannot fully endorse the criteria or weighting proposed for 'significant economic benefits' test.

Mandatory minimum qualifying QNZPE threshold of $30 million is too high. The threshold should be lowered to $15-20 million, or bundling should be retained. The proposed minimum threshold will exclude too many productions which otherwise would have been eligible under the points test. The following feedback has been received from SPADA members with extensive experience in International Productions illustrates just how:

"Of the ten LBSPG's I have worked on, only one of those applications (LEGEND OF THE SEEKER) would satisfy the qualifying QNZPE threshold of $30 million. The seven seasons of POWER RANGERS series under Disney would not qualify for those spend unless they were able to be bundled. They would have just qualified with 15 points under the point system."

"EVIL DEAD would not qualify for the QNZPE and would have only 14 points under the points system. One reason for this is in "Question D2 - Repeat Business" - 1 point if the screen production is a subsequent series or sequel to a production previously filmed in NZ. This does not incentivize or reward producers or studios that bring repeat business to New Zealand, such as EVIL DEAD."

"SPARTACUS would have hit the QNZPE of $30M for all seasons other than the Prequel; however, those budget levels have gone away and doubt that any of upcoming series in development will be able to hit 30M - therefore drop to $20M at least (SPARTACUS would have scored just 15 points out of 29 in stage 1 assessment and because 30M was 1 point)."

SPADA believes significant economic benefits can be measured by the points test modified to address weaknesses including:

- A1 QNZPE – include bundling provision and provide more realistic spread such as: mandatory minimum $20m with 1 point for $20m, 2 for $30m, 3 for $50m, 5 for $100m, 7 for $200m
- B1 Shooting – increase to 3 points with 1 point for 50%, 2 for 75% and 3 for 100%
- D2 Repeat Business – given the likelihood of this being a more achievable economic benefit than D1 in relation to copyright, give this more well-deserved weight through higher number than only 1 point.

There may be additional measureable points that could be added to this test. SPADA is available to discuss how the modifications suggested above and perhaps others to be put forward by the PDV sector could enhance the range of International Productions – feature films and TV series – that New Zealand attracts and deliver the significant economic benefits we are all seeking from the NZSPG.

2.7 Other

SPADA is making comments on other changes being tabled in the Consultation Paper. These are covered in detail in Appendix 3. We would welcome the opportunity to discuss these further with official, acknowledging that time is of the essence in relation to implementation target date of 1 April 2014.

We are proposing a new initiative, not contemplated in the Cabinet Memorandum: a **0.25% Training Levy** to build skills and capability within the screen industry. There are skills shortages that are hampering business – both for NZ Productions and for International Productions – such as currently production accountants. The levy would be applied all payments under the NZSPG up to a suitable maximum. Appendix 3 expands on this concept and on an option for including points in both the NZ Productions 'business' test for QNZPE between $15m and $50m and the International Productions 'economic benefit' test. This initiative also represents an additional visible public benefit flowing into the New Zealand economy from the incentive.

SPADA also recommends that a new 'Certification Office' be established within NZFC to administer the NZSPG, official co-production agreements and certification of New Zealand films under Section EJ6 of the Income Tax Act. Such a separation of responsibilities from the NZFC's Business Affairs as negotiator on equity investments is now important to avoid real or perceived conflicts given the new NZSPG 'equity' component.

3. Conclusion

SPADA remains committed to working with Government to achieve the aims and objectives of the NZSPG. Our members are all working to build business sustainability and contribute to the growth of new Zealand's screen industry.

We appreciate this opportunity to provide our written response to the Consultation Paper and reiterate our offer to meet as soon as possible with MBIE, MCH and NZFC to work through the details and ensure that the new NZSPG is an efficient incentive scheme that generates over time the results sought by both Government and the screen industry.

APPENDIX 1: DOMICLED NEW ZEALAND COMPANIES FOR NEW ZEALAND PRODUCTIONS

Proposed amendment to the eligibility criteria for applicants for the domestic 40% incentive with changes red-lined.

Note: these do not apply to international productions accessing the 20-25% incentive

Residency Status

Only New Zealand citizens resident in New Zealand or permanent New Zealand residents can apply for the ~~SPIF~~NZSPG. In any event they must be New Zealand residents for tax purposes.

An applicant must either be:

(a) a New Zealand resident company (a company is a New Zealand resident company if the company is incorporated in New Zealand, ~~or~~ it carries on business in New Zealand and has either its central management or control in New Zealand, or its voting power is controlled by shareholders who are residents of New Zealand); or

~~(b) a foreign corporation operating with a fixed establishment in New Zealand for the purposes of lodging an income tax return (both when it lodges the grant application and when the grant is paid). Advice can be obtained from the Inland Revenue Department (**IRD**) on whether a company is a fixed establishment in New Zealand for the purposes of lodging an income tax return; or~~

(c) a New Zealand resident partnership (a partnership is a New Zealand resident if all of the partners in the partnership are New Zealand residents for tax purposes).

If the applicant is an SPV established solely to make the production in New Zealand the SPV must either be owned by:

(a) a New Zealand resident company (a company is a New Zealand resident company if the company is incorporated in New Zealand, it carries on business in New Zealand and has either its central management or control in New Zealand, or its voting power is controlled by shareholders who are residents of New Zealand); or

(b) individual shareholders, the majority of whom who are residents of New Zealand; or

(c) a New Zealand resident partnership (a partnership is a New Zealand resident if all of the partners in the partnership are New Zealand residents for tax purposes).

Share of Income of the Production

~~Generally,~~ The applicant shall ~~be entitled to~~ receive a share of the income from the production that is generally commensurate with the expected value of the ~~SPIF grant~~NZSPG, with the position for the recoupment of such share of income to be similar to that of any other equity investors in the production.

APPENDIX 2: NEW ZEALAND PRODUCTION WITH QNZPE OVER $15M POINTS TEST

$15m to $50m Eligibility Test	Points Available
A – Track Record	
A1 – Festivals and Markets	1
A2 – Awards	1
A3 – NZ Audience	1
A4 – International Sales	1
A5 – International Audience	1
A6 – Producer Experience	1
Total – Section A (minimum 2 pts)	**6**
B – Export Potential	
B1 – Sales or Distribution Advance	2 (0-2)
B2 – Pre-Sales	3 (0-3)
B3 - Cast	2 (0-2)
Total – Section B (minimum 2 pts)	**7**
C - Ownership	
C1 – Copyright Ownership	2 (0-2)
C2 – Recoupment and Profit Participations	2 (0-2)
C3 – Other Relevant Matters	3 (0-3)
Total – Section B (minimum 3 pts)	**7**
Total – minimum 8	**___ (out of 20)**

SECTION A – TRACK RECORD
With regard to A1 through to A5 the point is applicable to a writer, director or lead producer (and who were credited as the same).

A1 - Festivals & Markets
1 point can be awarded if a feature film has screened in the last ten years at any of the following 'A' list film festivals: Sundance, Berlin, Cannes, Venice or Toronto.

1 point can be awarded if a TV or other non-feature format has screened in the last ten years on a major network in the UK (BBC, ITV, Channel 4 or Channel 5, SKY) or USA (ABC, CBS, NBC Universal, Fox, The CW, PBS, A&E Networks, Discovery Communications, HBO, Starz and Netflix inclusive of their – or their parent company's – satellite and cable channels or affiliates).

A2 – Awards
1 point can be awarded if a feature film (in relation to the writer, director or lead producer) has been nominated or won an award in the last ten years at any of the following film festivals or major awards: Sundance, Berlin, Cannes, Venice, Toronto, Academy Awards, Golden Globes, BAFTA.

1 point can be awarded if a TV or other non-feature format (in relation to the writer, director or lead producer) has been nominated or won an award in the last ten years at any of the following TV festivals or awards: Banff, Edinburgh, Monte-Carlo, Emmy, Golden Globes, BAFTA, and Royal TV Society.

A3 – NZ Audience
1 point can be awarded if a feature film released in the last ten years has achieved NZ gross box office of at least $1 million.

1 point can be awarded if a TV or other non-feature format screened in the last ten years have screened in a prime time slot on NZ terrestrial free-to-air television in the last 10 years.

A4 – International Sales
1 point can be awarded if a feature film released in the last ten years has generated at least $1 million of international sales or international gross box office of at least $5 million.

1 point can be awarded if a TV or other non-feature format screened in the last ten years has generated at least $1 million of international sales.

A5 – International Audience
1 point can be awarded if a feature film released in the last ten years has been sold or released in at least 10 territories.

1 point can be awarded if a TV or other non-feature format screened in the last ten years has been sold or released in at least 10 territories.

A6 – Producer Experience
1 point can be awarded if the lead producer has produced in the last ten years at least one production of a similar or greater scale and which would have qualified for at least 2 points from A1 through A5.

SECTION B – EXPORT POTENTIAL

B1 – Sales or Distribution Advance
1 point can be awarded if there is a Sales or Distribution Advance or License Fee of between 5% and 10% of the budget.
Or

2 points can be awarded if there is a Sales or Distribution Advance or License Fee of more than 10% of the budget.

<u>B2 – Pre-Sales</u>
1 point can be awarded if there are Pre-Sales to 2 territories (excluding New Zealand).
Or
2 points can be awarded if there are Pre-Sales to 3 to 5 territories (excluding New Zealand).
Or
3 points can be awarded if there are Pre-Sales to more than 5 territories (excluding New Zealand).

<u>B3 - Cast</u>
1 point can be awarded if a lead actor/s has been nominated or won an award for their performance in a feature film, being an Emmy, Golden Globe, BAFTA or Academy Award. Awards at major festivals (as specified above in A2) for performance can be included.

1 point can be awarded if a lead actor/s have starred in a feature film that has grossed more than $50 million worldwide.

1 point can be awarded if a lead actor/s have starred in a TV or other non-feature format that has screened in 50 territories or more.

SECTION C – OWNERSHIP
In respect of any film (including television and other format screen productions) certified by the New Zealand Film Commission as an 'official co-production' pursuant to one of New Zealand's bilateral film co-production agreements the co-producers share of copyright, recoupment and profit participations will be deemed to be the New Zealand producer's share.

<u>C1 – Copyright Ownership</u>
1 point can be awarded for New Zealand ownership of copyright, if at least 50% of the copyright in the production is owned by New Zealanders or New Zealand resident companies (a company is a New Zealand resident company if the company is incorporated in New Zealand, it carries on business in New Zealand and has either its central management or control in New Zealand, or its voting power is controlled by shareholders who are residents of New Zealand).

1 point can be awarded if New Zealand ownership of copyright is commensurate with the proportion of the budget provided by New Zealanders or New Zealand resident companies.

<u>C2 – Recoupment and Profit Participations</u>
1 point can be awarded if the New Zealand recoupment and profit participations are commensurate with the proportion of the budget provided by New Zealand investors or New Zealand resident companies.

1 point can be awarded if New Zealand equity investors, including producers with their own 'Incentive Equity' have a recoupment and profit position equivalent to other equity investors.

<u>C3 – Other Relevant Matters</u>

Up to 3 additional points may be awarded, at the discretion of the Incentive Committee, for business development outcomes based on:

- the extent to which creative control rests with New Zealand citizens or residents or, in the case of an official co-production, is shared proportionately to the co-producer's share;

- the extent to which the project supports the development and employment of New Zealand key creatives to make New Zealand films; and
- the potential for the New Zealand producer to achieve significant business growth out of the production.

APPENDIX 3: SPADA COMMENTS ON CONSULTATION PAPER

SECTION C: INTERNATIONAL PRODUCTIONS

Comments

Additional 5% grant for international productions

- The additional 5% grant should not be an exception to the rule
- SPADA does not agree that the Government will satisfy its high-level objectives with the introduction of a two-stage process to determine the additional 5% spend; and defeats the Government's aim of making the process flexible and pragmatic.
- Production companies have to satisfy both points test and mandatory spend before qualifying for additional 5%
- SPADA does not believe submitting proposals to a panel will deliver on flexibility, objectivity, consistency or transparency. Decision-making by committee introduces questions regarding objectivity, the ability to deliver a consistent and fair decision-making process when the composition of the panel may change, issues regarding conflict of interest, as well as concerns regarding provision of commercially sensitive information to other industry practitioners.
- International producers/studios/ production companies looking for new criteria that is clear and concise; which the LBSPG delivered on.

Significant economic benefits points test for international productions

- SPADA does not agree with current criteria or weighting proposed for significant economic benefits test.
- Mandatory minimum qualifying QNZPE threshold of $30 million (clause 3.6) is too high. Lower threshold to $15-20 million (or retain bundling). This threshold will exclude too many productions which otherwise have been eligible under the points test. Following feedback received:

  "*Of the ten LBSPG's I have worked on, only one of those applications (LEGEND OF THE SEEKER) would satisfy the qualifying QNZPE threshold of $30 million. The seven seasons of POWER RANGERS series under Disney would not qualify for those spend unless they were able to be bundled. They would have just qualified with 15 points under the point system.*

  "EVIL DEAD would not qualify for the QNZPE and would have only 14 points under the points system. One reason for this is in "Question D2 - Repeat Business" - 1 point if the screen production is a subsequent series or sequel to a production previously filmed in NZ. This does not incentivize or reward producers or studios that bring repeat business to New Zealand, such as EVIL DEAD."

  "SPARTACUS would have hit the QNZPE of 30M for all seasons other than the Prequel; however, those budget levels have gone away and doubt that any of upcoming series in development will be able to hit 30M - therefore drop to 20M at least (SPARTACUS would have scored just 15 points out of 29 in stage 1 assessment and because 30M was 1 point)."

- SPADA believes significant economic benefits can be measured by the points test modified to address weaknesses. There needs to be greater weighting of value of key aspects of production, i.e., repeat business (D2) - particularly with regard to long form TV - as well as acknowledgement of productions that are 100% shot in NZ (e.g. POWER RANGERS, LEGEND OF THE SEEKER, SPARTACUS) to reflect strong economic benefits/returns (D2 currently only measures 50% or 75%). E.g.

- A1 – QNZPE – include bundling provision and provide more realistic spread such as: mandatory minimum $20m with 1 point of $20m, 2 for $30m, 3 for $50m, 5 for $100m, 7 for $200m
- B1 – Shooting – increase to 3 points with 1 point for 50%, 2 for 75% and 3 for 100%
- D2 – Repeat business – given the likelihood of this being a more achievable economic benefit than D1 in relation to copyright, give this more well-deserved weight through higher number than 1.

Questions for consideration

3.8. *Do you agree that the criteria and weighting proposed for the significant economics test are appropriate? If not, why not, and what would you change?*

NO – see comments above.
SPADA does not support a two-stage approach to qualifying for the additional 5% grant for international productions
SPADA proposes greater weight be given to key areas of the points test that deliver on significant economic benefits, for example repeat business (D2), productions that are 100% shot in NZ
SPADA supports reduction in the minimum qualifying QNZPE threshold from $30 million to $15 million

3.9. *How does the proposed test affect PDV activities?*

SPADA does not have a view but defers to the post-production sector to comment.

3.10. *Do you think the proposed criteria that the panel will use to asses "wider economic benefits" can be clarified?*

YES – see comments above.
There should not be a panel but a definitive and subjective points test to determine if productions can access an additional 5% grant for international productions. A panel should only be convened to evaluate borderline applications or interpretive disputes.

3.11. *Do you anticipate any unintended consequences or behaviour arising out of the proposed points test and panel assessment process?*

YES – see comments above.

SECTION D: NEW ZEALAND PRODUCTIONS

<u>Comments</u>

New Zealand productions with QNZPE over $15m

- *'Equity' position contradicts Government's aims*
    - The proposed equity/recoupment position contradicts and undermines objectives to grow NZ businesses of scale, develop IP ownership and sustainability. IP ownership valueless without corresponding income stream. Imperative for companies to grow that they control their own revenue stream (producer's equity).
    - Reinforces fee-for-service model rather than downstream revenue. Producers need 'seat at the table' or some 'skin in the game' and a greater stake in the success of their projects. This approach is reinforcing the existing flawed NZFC funding model.
    - Need to encourage shift from 'getting films made 'orientation to longer term 'building business' focuses. Paradoxically companies cannot move from a fee for service model until they have adequate resources and those resources only come from focusing on film's downstream revenue potential.
    - This revenue can be used to build and grow businesses and develop subsequent projects (IP) thus alleviating reliance on existing government funding.

- *Should be a grant not equity*
    - Inconsistent with the 20-25% grant for international productions. International productions (and offshore production companies) get 20-25% grant with no requirement for residual benefits to NZ in form of IP ownership, revenue share, etc. to NZ entities. Yet domestic productions/production companies penalised with 40% equity from dollar one where these benefits are inherent to the production.
    - Inconsistent with projects under $15m which do not attract equity. Therefore disincentive to produce productions over $15m and artificial incentive to reduce budgets below $15m.
    - What approvals (that a standard equity investor would have – script, budget, key creative talent, etc.) will be exercised? Any investment criterion needs to be definitively defined.
    - Is this appropriate for an incentive scheme and inconsistent with sub $15m and international productions?
    - How is this equity investment to be managed?
    - No international precedent and inconsistent with nearest equivalent the Australian Producer Offset – 40% rebate uncapped and no equity position taken. Australia has co-production treaties with most of the same countries as New Zealand. Makes Australian producers more attractive partners for overseas producers with co-production projects.

- *Cashflowing of equity will make projects harder and more expensive to finance*
    - Increased transactions costs will occur by not being able to bundle cashflowing of grant with other incentives and pre-sales, etc. More financiers required and increased costs for smaller and riskier transactions.
    - Will limit producer's ability to be entrepreneurial as less exposure to financial instruments, ability to attract new investors and develop new financing models.
    - Cashflowing of SPIF has been valuable in teaching producer's financial discipline and understanding debt financing and its requirements.
    - Cashflowing of SPIF has been instrumental in attracting other investment – i.e. BOY – equity investor offset some risk by cashflowing the SPIF and subsequently invested in WHAT WE DO IN THE SHADOWS and TRACKER – French bank cashflowed SPIF, UK Tax Credit and pre-sales without the SPIF transaction would have been too small.

- Low risk of cashflowing NZ incentives encourages investors to assume greater risk on future projects – i.e. NZ investor who part cashflowed SPIF on BOY has made subsequent equity investments in NZ films.

- *NZFC Panel unworkable*
  - Any test needs to be entirely objective and non-subjective - a rule-based objective points test vs. a subjective panel.
  - Productions/producers need certainty and transparency from the outset.
  - Inconsistent with points test for 'content' and additional 5% for international productions.
  - Multi-party, multi-jurisdictional financing is very complex and specialised - NZFC staff and Board have limited experience or knowledge (especially in respect of TV) and hence are not well equipped to make these judgements. Similarly very limited suitably qualified NZ based external advisors and likely often to be conflicted.
  - Reality no one can provide *"assurances that only high quality material will be produced"* as there are no fail-safes in this industry.
  - Conflict of interest for NZFC if already an equity investor in the film.

Official co-productions

- *Co-productions should be assessed on NZ elements*
  - NZ's co-production treaties and MOUs generally state, *"A co-production film shall be fully entitled to all benefits which are or may be accorded to domestic films by each of the Parties under their respective laws."* On that basis dispensation should be given to co-productions in respect of assessing IP and net income if the QNZPE is in excess of $15m.
  - The extent to which IP is owned by New Zealanders or NZ entities and the NZ producer/production company share in net income should only be directly commensurate with the co-production split – i.e. if it is an 70/30 co-production in favour of NZ, 70% of the IP and net income should be owned by the NZ producer. This is consistent with the fact that any SPIF grant on a co-production is only payable on QNZPE.

Questions for consideration

4.15. Do you agree that the criteria and weighting proposed for the significant New Zealand content test are appropriate? If not, why not, and what would you change?

YES. See also next point.

4.16. In particular:
a. should there be mandatory point requirements in Section A?

Current requirements in Section A should be maintained.

b. should there be different point requirements for film and other screen formats?

YES – see comments below (Eligible Formats).
The points for film and other screen formats should remain with current differential, but monitored to ensure compliance with intent.

4.17. Do you agree that the matters to be taken into account by the NZFC in determining whether an equity investment will be offered are appropriate? If not, why not, and what would you change?

NO – see comments above.
It should be a grant and there should be no equity investment; SPADA proposing alternative two-tier structure.

There should not be a panel but a definitive and objective points test to determine if films can access a grant for NZ productions with QNZPE between $15m - $50m. SPADA is submitting test. Panel convened only for borderline applications and/or disputes resolution.

4.18. *Do you anticipate any unintended consequences or behaviour arising out of the proposed points test?*

NO. But refer to 4.17, so there will be consequences if 4.17 is not changed. SPADA is proposing solution through alternative structure for second tier.

SECTION D: OTHER KEY CHANGES TO CRITERIA

<u>Comments</u>

Eligible formats

- *Different points requirements creates potential for unintended consequences or behaviour*
    - The different point requirements for film and other screen formats for NZ productions, and if the existing distribution requirements still apply, there is the potential for unintended consequences or behaviour – i.e. an intended film project cannot reach the 20 points for a film but has in excess of 15 points. What is to prevent a producer classifying their project as a TV format? The project could be released in cinemas worldwide excluding NZ where it meets only the TV distribution requirements. The availability of between $1m and $20m of funding is going to be far greater than the lost NZ box office revenue. This should be monitored with option in future to make the points for film and other screen formats the same – both at 15 points.
    - Retain distribution requirements with administrative flexibility (i.e. not requiring Cabinet approval) to adapt to future changes in audience trends and technology.

Total Production Expenditure (TPE)

- *Co-productions are a vital tool for NZ producers*
    - Co-productions are an increasingly important mechanism for NZ producers to finance NZ films of a bigger scale. For example the vast majority of the larger budget NZ films (RIVER QUEEN, THE VINTNER'S LUCK, DEAN SPANLEY and TRACKER) have all been official co-productions. Without co-production finance these films would not have been made.
    - The MCH review of co-productions which formed part of the Screen Sector Review clearly illustrated the financial value of co-productions to the NZ screen sector. Between 2002 and 2010 NZ participated in 10 official film co-productions with total budgets of $114m. In contrast the total budgets for the 10 domestic films made in the same period was $45m. Furthermore the co-productions attracted $68.6m of offshore funding and earned revenues of $21.6m vs. $3.5m and $5.5m for the domestic films. NZ government investment made up 37% of the total budget of the co-productions compared to 87% for the domestic films.
    - The removal of TPE would likely impact negatively on the qualifying threshold for co-productions and potentially limit the viability of undertaking a co-production.
    - Similarly basing the qualifying threshold on the total budget less above-the-line items, production company overheads, contingency and financing fees is likely to impact negatively. Given the nature of co-production these budget items are likely to be higher than a domestic film.
    - TPE should therefore be retained as the basis for calculating the threshold for co-productions, the above-the-line cap and overheads cap.

Qualifying New Zealand Production Expenditure

- *Lack of clarity provided – is expenditure on goods acquired or rented offshore and brought into NZ and used on the screen production eligible under NZSPG? Treatment of NZ crews working overseas on productions e.g. co-productions or location shoots.*
  - QNZPE definition should include the above expenditure and certain expenditure incurred during principal photography in a foreign country.
  - Ability to import equipment not available in NZ provides added benefit for NZ crew of exposure to new equipment.
  - However the current SPIF definition should remain otherwise co-productions could be unduly penalised.

Bundling

- *Retain in interests of maximising potential economic and business benefits*
- The bundling provision under the old LBSPG was redundant due to the lowering of qualifying threshold.
- If the mandatory threshold for qualifying expenditure for the economic benefits points test remains at $30 million then the bundling provision would become more relevant.
- May also be relevant for PDV.

<u>Questions for consideration</u>

5.8. Do you agree with the proposed changes to the definition of eligible formats?

YES.

5.9. Do you agree that the concept of TPE can be dispensed with for the NZSPG and that the threshold for co-productions be as set out in paragraph 5.4 above?

NO – see comments above.
The current TPE should be retained as the basis for calculating the threshold for co-productions, the above-the-line cap and overheads cap.

5.10. Do you agree with proposed changes to the definition of QNZPE?

UNABLE TO PROVIDE ANSWER – see comments above
Clarity required – what is actually being proposed.

5.11. Do you agree that bundling provisions can be dispensed with?

NO – see comments above.
The bundling provisions should be retained.

OTHER ITEMS RELATED TO CONSULTATION PAPER

Implementation and certainty

- *Resilience, flexibility and longevity are integral to the incentives take-up and on-going success*
  - The reliability and certainty of the incentives availability will be paramount importance to potential applicants. Productions have long lead times and there needs to be certainty that the incentives will be in place for future production dates.
  - Have the incentives been confirmed (without amendment) for a definitive fixed period?
  - Unclear from Government announcements and papers which refer to a 'Review' date of October 2014. Is this a full review or a review of demand on annual appropriate?

Eligibility

- *NZ producers/production companies will only grow and retain key IP if they can directly benefit from the incentives*
  - The economic benefits Government desires the screen sector to deliver can only be delivered by NZ producers whose businesses are in NZ and are investing and reinvesting in New Zealanders and NZ stories.
  - A genuine NZ producer must be an absolute requirement to be able to apply for the domestic 40% incentive.
  - The applicant must be a NZ resident company, carrying on business in NZ and with either its central management or control in NZ, or its voting power controlled by NZ resident shareholders.

- *Refer Appendix 1 - for proposed amendment to the eligibility requirements.*
- *Note: these do not apply to international productions accessing the 20-25% incentive.*

Administration

- *The NZ Screen Production Grant should be administered by a standalone unit within the NZFC*
  - The SPIF and LBSPG are currently administered by the NZFC Business Affairs Department.
  - This creates the potential for a clear conflict of interest when the NZFC is an equity investor in a project and this will become even more pronounced with the $15m - $50m 'equity' proposal.
  - Integrity and transparency are vital components in the success of any incentive scheme. It is also imperative that efficiency is maintained and that staff have the ability to direct their full attention to applications without distractions.
  - This is consistent with international best practice –i.e. the BFI and Screen Australia both have standalone 'Certification' units.
  - The NZFC should establish a Screen Production Grant and Co-Production Unit responsible for administrating the grants and for certification of official co-productions and NZ films under Section EJ6 Income Tax Act.

Training Levy

- *Building skills and capability is integral to the industry's ongoing development and growth*
  - Introduce a mandatory training levy on all productions that receive the incentive.
  - Levies have been used for this purpose in many other industries and countries (most notably and successfully in the UK with the compulsory 0.5% Skillset levy).
  - A levy was proposed in the 2010 Jackson Court Review of the NZFC.

- The levy should be calculated as a fixed percentage of 0. 25% of the QNZPE and payable as condition of receiving the NZSPG. This would potentially generate some significant funding for skills and professional development, so a cap could be set at a maximum of $250,000 per production:
    - $12,500 on $5m QNZPE
    - $25,000 on $10m QNZPE
    - $50,000 on $20m QNZPE
    - $75,000 on $30m QNZPE
    - $250,000 on $100m QNZPE
- The levy should deducted at source and paid into a professional development and training fund administered by the NZFC on behalf of the industry and governed by an independent industry representative board. That board would determine on annual basis the training and upskilling priorities that need addressing for that upcoming year and would allocate funding accordingly.
- An option also to add measureable financial commitments to specific training or professional development initiatives could be included as a point or points in the International 'economic benefit' test and NZ 'business' test.

Name

- *The word "grant" sends the wrong message*
    - Grant makes the NZ incentives look like free and easy money.
    - Rename the incentives 'NZ Screen Production Incentive'.

Other

Clause 14 of the Cabinet Minute stated:

*"**invited** the Minister for Economic Development, the Minister for Arts, Culture and Heritage and the Minister of Broadcasting to report back to the Cabinet Economic Growth and Infrastructure Committee in February 2014 on <u>further changes that may be needed to encourage the development of resilient screen sector in New Zealand</u>."*

SPADA supports the maintenance of the existing screen sector agencies and does believe there is any value in any form of amalgamation. The NZFC and NZOA need to remain as standalone entities.