

22 November 2000

Warren Hassett  
Ministry of Economic Development  
Box 1473  
**WELLINGTON**

Dear Warren

**SUBMISSION ON: Proposed Treaty for the Protection of Audiovisual Performances**

**Introduction**

1. Thank you for your letter of 20 October 2000. This submission is from the Screen Producers and Directors Association of New Zealand (SPADA).
2. SPADA is the foremost industry organisation representing film and television producers and directors in New Zealand. We have over 250 members. Our mission statement is *to be the leading advocate for a robust screen production industry which strives to enhance the diversity of screen culture in New Zealand*. An operating arm of SPADA is Film New Zealand, which markets New Zealand offshore as a filming location for foreign producers.
3. This submission has been approved by SPADA's Executive, a board annually elected by its members.
4. This submission is limited to Article 12 of the proposed Treaty and the alternatives provided.

**General Summary**

5. SPADA supports the adoption of Alternative E with respect to Article 12 as the implementation of this clause would provide the requisite degree of certainty that a producer requires to establish its chain of title to a film or television production ("the Production") for the purposes of exploiting the Production.

**Background**

6. When a producer develops a project and then contracts for its production, the producer must ensure that rights are secured from all third parties which make contributions to the Production so as to:

- a) permit those contributions to be included in the Production; and
- b) permit the Production itself (including the contributions) to be exploited in various media and by various means.

7. This can be done by an outright assignment of rights from a third party or a licence on particular terms.

8. The combination of these rights that permits the producer to include the contribution and to exploit the Production in various media and by various means is referred to as the "chain of title".

9. When a producer enters into an agreement with a sales agent or distributor for the distribution of the Production (which will include the exhibition / broadcast / additional exploitation etc of the Production) the producer must provide the distributor with a clear chain of title. A distributor will not accept delivery of the Production (and pay an advance on sales) if it is required to perfect or obtain additional rights in order for it to exploit the Production.

10. In these circumstances the producer must have contractual certainty in dealing with third party contributions such as a performer's performance.

11. Currently when a producer contracts with a performer for their performance to be included in an audiovisual work, the producer ensures that the terms of the contract permit the widest possible use of the performance - both as included in the Production (and its subsequent exploitations) and for promotional activities relating to the Production. For the reasons given in paragraph 9 above, the producer must ensure that it does not have to return to the performer at some later date in order to be able to exercise a further or new form of exploitation of the Production.

## **Options**

12. The wording of Alternative E provides this certainty whilst still permitting the parties to negotiate otherwise if the use of the Production is to be limited for whatever reason.

13. Alternative F has inherent problems in that it permits the performer who has provided their performance to a producer for a Production to bring an action against third parties who undertake any of the activities that the producer is deemed entitled to exercise. This could lead to unnecessary litigation against third parties who have been authorised by the producer to exercise certain of the performer's rights of fixation.

14. Further, it is in the interests of the producer to protect its Production and enforce its rights in the performance it has contracted from the performer. As such, it should be the party entitled to bring an action against unauthorised use of the performance.

15. Alternative G creates all kinds of uncertainties for co-productions or joint venture productions as it is not always possible, at the time at which the performance is contracted, to

identify which is the producer of the fixation, which country will have the majority of performers or even where principal photography will take place.

16. Alternative H, which effectively leaves the law as it currently stands in the respective contracting countries, does not help to streamline or grant certainty to co-productions or joint venture productions.

17. For these reasons, from the points of view of producers in New Zealand, the preferred option is **Alternative E**.

**Jane Wrightson**  
**Chief Executive**  
**Screen Producers and Directors Association**