



**SUBMISSION FROM
SCREEN PRODUCERS NEW ZEALAND
(SPADA)**

To

The Ministry for Culture & Heritage

On

**The Convergence Review: Content Regulation In a Converged
World Discussion Document**

16 October 2015

1.0 INTRODUCTION

1. Screen Producers New Zealand (SPADA) welcomes the opportunity to respond to the *Convergence Review: Content Regulation in a Converged World* discussion paper.
2. Established in 1982, SPADA is a non-profit membership-based organisation representing the collective interests of independent producers and production companies on all issues affecting the economic and creative aspects of screen production in New Zealand.
3. SPADA's submission contains its general comments on the main themes of the paper followed by its response to individual questions.
4. SPADA has no objection to the release of its submission in its entirety.
5. SPADA's contact person for this submission is:

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2. RESPONSE TO GENERAL THEMES

6. SPADA agrees with the paper's principle of "reasonable access to relevant, high quality local and global content, legally, safely and cost effectively for all New Zealanders".
7. It also agrees and supports its underlying principles and objectives:
 - involve the minimum intervention necessary to achieve desired objectives;
 - be open and transparent;
 - be technology neutral, sustainable and adaptable to technological and other changes; and
 - deliver benefits to as many New Zealanders as possible, including niche audiences not served by commercial approaches and "the market".
8. SPADA's members, and the wider screen production sector in New Zealand, are affected by policies and regulatory frameworks of the TIME (telecommunications, information technology, media and entertainment) sectors. SPADA has a keen interest in encouraging new opportunities for screen businesses to create unique local content, participate in new markets, and to compete effectively on a global scale.
9. As a representative organisation of content creators, SPADA's submission primarily addresses the policy tools for supporting local content, to ensure the continued creation of diverse new New Zealand content which is accessible to as many viewers as possible.

3. RESPONSES TO KEY AREAS

Chapter 4 - Options for Audio-Visual Content

10. SPADA believes that on-demand audio-visual content should be classified for reasons of economic fairness, clarity and audience protection. It believes that some form of voluntary system should be established which could undertake this role, either within one of the existing bodies or a new entity.
11. Should such a system prove problematic over time then SPADA suggests that the next step would be minimal changes to the Broadcasting Act to enable the Broadcasting Standards Authority (BSA) to undertake this function. It does not believe that amendments to the Classification Act are appropriate.
12. SPADA notes that the current system, with a range of regulatory - Broadcasting Act and Classification Act; and voluntary systems - Advertising Standards Authority, Press Council, and Online Media Standards Authority (OMSA) - might at first glance appear unwieldy. That does not in itself necessitate change; nor justify a new Media Content Standards Act, as suggested in Option 6 of the discussion paper.
13. Unlike television, the government cannot control the transmission and reception of internet-based audio-visual services in the same way that it can with terrestrial broadcasting. This arises from the inability to impose effective entry controls in the global internet environment, where there is also a far greater capacity for audio-visual material to be distributed across national borders.
14. New Zealand has a light-handed regulatory regime that is cost effective, and internationally recognised. SPADA takes the position that the first point of contact for a complaint should always be the distributor. That means that self-regulation is the starting point. Many complaints are effectively dealt with by industry sector organisations, reducing both the requirement on government funds and the size of the bureaucracy. It also frees up government funded regulators to deal more effectively with the more substantive complaints and standards breaches.

15. An uber-agency, which could result from the adoption of Option 6, is in SPADA's view a step too far. We are not aware of a groundswell of voices asking for such a move, and are concerned at the length of time it might take to establish; the resources it might consume; and that ultimately it may not be nimble enough to adjust to the inevitable changes in audio-visual distribution in the future.

16. Responding directly to the options outlined in the discussion paper:

Option 1 – Status quo - no regulatory intervention.

17. SPADA does not support the retention of the status quo as it believes that on-demand audio-visual content should be classified in some way. We believe this should be self-classified by the party releasing the material and as far as possible industry (rather than government) policed.

Option 2 – Voluntary code – no regulatory intervention

18. This is SPADA's preferred option at this stage - being quicker, more flexible and cheaper - it could focus more on areas of real need. SPADA does not believe that the current system is confusing to the general public and either some changes could be made to the role of an existing body such as OMSA, or a new voluntary organisation could be established to manage this process. Assistance could be provided from MCH to facilitate this if necessary.

19. If confusion does arise and/or if voluntary practices do not work over time then regulation could be explored at a later stage.

Option 3 – Extend the Broadcasting Act regime to cover on-demand content

20. This option is SPADA's second preferred option and only after a voluntary code has been trialled and given the opportunity to prove its worth. It recognises the processes that the BSA already has in place and that with some relatively minor legislative changes its remit could be broadened to include on-demand content.

21. However, SPADA's tentative, conditional support of this option, does not support empowering a government organisation such as the BSA to pre-approve or pre-classify content. Any BSA role would be simply to enforce self-classification by the distributor (online host, publisher, broadcaster etc). Nevertheless, in this fast moving world of content distribution SPADA is not convinced that legislative changes will ever be able to keep pace with audio-visual content classification in the same way as a voluntary scheme.

Option 4 – Extend the Classification Act regime to include on-demand content

22. SPADA does not support this option as it is impractical from both a cost and timeliness perspective and could lead to confusion amongst viewers.

23. While not specifically addressed by the discussion paper, there is a wide held view within the industry that the Classification Act is unwieldy and no longer fit for purpose. Current costs, in particular with regard to film, which must be met by the potential distributor, are in some instances prohibitive; and places local businesses at a disadvantage when competing with other online competitors who do not face the same compliance costs.

24. Many films can be self-classified with little negative impact on the public. Such a regime would smooth the way for more interesting content for consumers and allow local businesses to more competitively compete with international companies. A self-classification system for those films which are best unrestricted, with advice for consumers, should work. This is particularly so when those films have been internationally rated by a similar rating body. Any self-classification scheme should be accompanied by a strict regime in the event of false steps by the classifier, including the privilege of self-classification being revoked.

Option 5 – A broadcasting regime with increased self-regulation

25. This option effectively sets in place a three tier process involving self-regulation by content providers, a voluntary standards setting body and the BSA. SPADA suggests that this option could take some time to implement, over and above any changes needed to legislation; and is perhaps an awkward variation of Option 2.

Option 6: A New Media Content Standards Act

26. SPADA acknowledges the vision of this option in addressing inconsistencies in the current situation and the number of organisations setting and determining standards. However, it is not convinced that this option would provide the enduring solution suggested given the rapid changes occurring in the provision of audio-visual content. The length of time it might take to set up a new system could well mean it is out-of-date before it is implemented.

27. SPADA is aware of overarching content standards setting bodies in both Australia (ACMA) and the United Kingdom (Ofcom) and acknowledges the reputations that they have achieved. Both Ofcom and ACMA undertake a range of regulatory activities beyond content regulation and are resource heavy. Nevertheless, as outlined in the discussion paper, neither agency covers all content – Ofcom does not cover on-demand content and ACMA does not include film and video content.

28. The concept of an uber regulatory agency was not supported by SPADA in its 2008 submission to the then Labour government's digital broadcasting regulatory review; and we continue to hold that view.

Chapter 6 - Options for Advertising Restrictions

29. This section concerns itself with commercial issues. SPADA notes it does not include analysis with a public good, cultural or audience-focused lens. SPADA provides comments to add this context but notes that it is not a key issue within the discussion paper.

Does the nature of linear television still justify an advertising-free period during the week, or should advertising be permitted on Sunday mornings? Should the main religious holidays and Anzac Day morning still be marked by an absence of advertising on television and radio?

30. New Zealand's broadcast system is already largely deregulated in a way that is unusual internationally. It is out-of-step for it to have non-advertising periods for Sunday mornings, religious holidays and Anzac Day which we understand have arisen to acknowledge the religious and commemorative importance of these days. While advertising restrictions of one form or another are not uncommon internationally, as the discussion paper has outlined, these are not otherwise applied in New Zealand.

31. While the significance of Anzac Day has grown in recent years (in terms of the numbers attending memorial services) the same cannot be said for religious observance. We note that potential changes to legislation to enable shopping throughout Easter have already been announced. Given this, the difficulty of placing controls on advertising online, and the lack of controls elsewhere in print media, we question generally whether the existing advertising-free restrictions on television and radio are still relevant.

32. Sunday morning is, however, an area which may need special consideration. Regardless of the historical origins of advertising-free Sunday mornings the main benefits now, from a television perspective, are clearly cultural.

33. In recent years broadcasters have steadily shifted special interest content from across the schedule into Sunday mornings. This is now a home for important series such as *Tagata Pasifika*, *Attitude* (for people with disabilities), *Q+A* (political current affairs), *Praise Be* (church), *Neighbourhood* (community diversity) and *What Now* (children). It is highly unusual to find such experimental, innovative or special interest content in commercial time zones. We expect that, should Sunday morning advertising be allowed, such programmes would disappear in a commercial environment. The important role of television in connecting to marginalised, niche or other non-commercial audiences should not be overlooked. Sunday morning has become the place to do that.

34. We note that the television screenings of these programmes attract considerably larger audiences than their on-demand availability and do not anticipate this changing markedly in the near future.

Should the advertising-free period be extended to cover broadcasters' online content as well?

35. SPADA is not aware of any groundswell of calls for advertising-free periods for broadcasters' online content and notes that it helps compensate for loss of revenue from non-advertising linear broadcasting periods. Nor does any other audio-visual content online have similar restrictions. It would also be hard to control, particularly when many content streams come from overseas and regulating these is difficult if not impossible.

If you favour the liberalisation of broadcast advertising restrictions, should blocks in the television schedule be set aside for special-interest programming?

36. If Sunday free-advertising restrictions are lifted we believe a compensatory action should be considered. This might include scheduling blocks for non-commercial special interest content or a broadcaster guarantee to invest financially in such content. It is important special-interest content is commissioned for television platforms as these attract significant audiences. This should apply to Pay TV as well as free to air TV.

If you do not favour the liberalisation of broadcast advertising restrictions, should exemptions be allowed in the case of major events, such as international sports fixtures?

37. Yes, assuming they are carefully defined so they are an exception rather than the rule. This kind of flexibility is appropriate as it has an audience focus: the major event broadcasts need to be purchased, and there is a risk that they might not be broadcast without a revenue stream.

Chapter 7 - Election programmes – Part 6 of the Broadcasting Act

38. SPADA does not have any specific comments to make in this area.

Chapter 8 - New Zealand Content: The Government's Toolbox

The Government's Toolbox

39. SPADA acknowledges that the discussion paper has a focus on the Broadcasting Act and this is relevant to the majority of this paper.
40. Nevertheless, in a paper on convergence, and in particular in this section "*The Government's Toolbox*", it is surprising there is no reference to the other major player supporting New Zealand content – the New Zealand Film Commission (NZFC).
41. There are two reasons why this cannot be ignored – firstly because in the broader sense of the word "content" film is equally placed alongside television, online etc in a converged world. But secondly, because as well as funding film the NZFC directly funds television content (film and documentary), in partnership with NZ On Air and Te Mangai Paho (TMP), and also administers the New Zealand Screen Production Grant (NZSPG) which directly funds both film, television and other forms of audio-visual content such as animation.
42. In short, the "toolbox" currently available to government is broader than that outlined in the discussion paper.
43. This point is important because in considering the future of government support for New Zealand content in a converged world the government should be considering all of its policy levers. That it has not done so in this paper is presumably based in part on the fact that there are four broad Ministerial portfolios that it might encompass - Broadcasting, Maori Affairs, Arts, Culture & Heritage and Economic Development. This section of the paper has only been written from only one of these perspectives – broadcasting. TMP and Maori Television are mentioned in passing but as these are an outcome of Treaty settlement processes they are a special case.

Impact of Convergence

44. SPADA acknowledges that governments across the world are trying to determine the impacts of convergence and supports the New Zealand Government's consideration of this area. It is also important to draw upon relevant research to understand the impact of convergence; and there is a reasonable body of evidence that highlights the fact that *viewing* something "online" is an audience behaviour – however, it has not changed the economies of production of content, in particular, the production of local content.
45. It is the traditional media sectors, dominated by television and feature films, and the Government, that are the only significant investors in New Zealand stories at this time. The combination of incentives and government requirements has ensured New Zealand stories remain on New Zealand screens. The difficulty, moving forward in a multi-channel, converged environment, is the economies of screen production.
46. Research in the UK, Australia and by NZ On Air shows that, despite the proliferation of audio visual distribution channels, television still dominates. In 2013 the British Audience Research Board found that traditional television sets still accounted for 98.5% of total television viewing in 2013. "*The figures show that predictions of the death of the living room TV continue to be well wide of the mark*". The Australian Communications and Media Authority research published in March 2014 also found "*Despite all the talk about audience fragmentation, mobile devices and online viewing, the vast majority of Australians (96%) continue to watch free-to-air television overwhelmingly live (93%)*".
47. The NZ On Air research "*Where are the audiences?*" released in June 2014 found 83% of respondents watched live television daily, while 67% listened to live radio, and both for a considerable amount of time each day – more than any other media. These overall media consumption patterns hold true across all sub-groups in the population.
48. In SPADA's view this research reinforces not only its position that voluntary initiatives are still appropriate for managing content standards for on-demand video; but it also reinforces the relevancy and increasing importance of the current funding bodies.

Converged Funding Entity

49. The current contestable funding mechanisms to stimulate creation of local content through the offices of NZ On Air, NZFC and TMP need to be retained, supported and strengthened.
50. SPADA is aware that the government is pursuing greater efficiencies between agencies which has led to the co-location of NZ On Air and NZFC (and the BSA) as well as the absorption of Film NZ into the NZFC. This has already led to a greater working collaboration between NZFC and NZ On Air, including new funding mechanisms as mentioned above. Nevertheless, SPADA is opposed to a single or converged funding entity for the funding of new content for the audio-visual sector. Experience has clearly demonstrated that the more "gate-keepers" to funding, the more likely a greater diversity of content is produced and available to audiences.
51. The NZ On Air model (as mirrored by TMP with respect to Maori content) is an extremely successful one. Nevertheless, even this model is under threat as there has been no increase in government funding for NZ On Air (or TMP) for at least eight years, a period during which inflation has increased by 17.6%. (The NZFC has had a de facto increase in funding by \$2 million per annum in 2014 as a result of funding changes associated with the move from the Screen Production Incentive Fund (SPIF) to the NZSPG).
52. Policymakers across the world agree that effective tools for funding and ensuring the viability and sustainability of local content on screen require.
 - (a) transparency in the application of these funds;
 - (b) the most efficient use of these funds;
 - (c) that the greatest diversity and depth of subject matter is made available to audiences.

53. SPADA believes that the current range of services offered by NZ On Air, NZFC and TMP meets these criteria and supports increased collaboration between the agencies but is not convinced that further convergence between them would lead to sufficient gains in terms of cost effectiveness or content production.

Additional Sources of Funding for New Zealand Content

54. Existing funding organisations have already proven their ability to stimulate applications for high cost, high risk genres such as drama, children's and documentaries. However, aside from the payment of broadcast licencing fees there is no requirement for distributors, including broadcasters, to carry New Zealand content or contribute towards its development.

55. SPADA believes that it is timely for further consideration of ways in which distributors including broadcasters commit to local content. The area in which SPADA feels most strongly is that the provision of "public good" services by pay platforms on all electronic media should be explored as New Zealand is an outlier by international standards in its lack of obligations around local content in return for licences.

56. New Zealand screen sector competes with its international counterparts with very few (when compared internationally) protections in place for the creation of local content. New Zealand does not have any local content quotas, pay to carry obligations for its pay TV operators nor does it have a public broadcaster in the true sense of the phrase.

Support for Cultural Content

57. SPADA is supportive of government's commitment to the cultural and economic growth of the New Zealand screen industry; and would like to take this opportunity to reiterate that whilst there are opportunities for the industry in a converged digital environment – there are also increased challenges to the screen sector.

58. In a converged content landscape it is imperative that the New Zealand Government continues to support of the domestic screen production sector to:

- help ensure a screen industry that is more sustainable
- create greater long-term economic benefits to the screen industry and New Zealand
- serve audiences well, including those with legitimate interests in quality, local, sometimes niche, programming.
- build a strong base of local New Zealand screen companies and talented individuals who develop unique IP that is retained in New Zealand to ensure that success is reinvested into the New Zealand economy.

59. SPADA and its members are committed to working with Government to build business sustainability and contribute to the growth of New Zealand's screen industry.

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