Screen Production and Development Association of New Zealand Inc.
Waka Pāpāho

Box 9567
Wellington
New Zealand

Tel: (+64 4) 939 6934
Fax: (+64 4) 939 6935

Email: jane@spada.co.nz
Web: www.spada.co.nz

22 April 2003

The Screen Production Industry Task Force
C/- Industry New Zealand

Via email: spi@industrytaskforces.govt.nz

Comments on the Screen Production Industry Task Force Report.

Thank you for the opportunity to comment on the Screen Production Industry task Force Report ('the Report').

SPADA is the largest screen industry organisation with over 325 members. Our mission is to be *the leading advocate for a robust screen production industry which strives to enhance a diversity of New Zealand screen culture*. We have sought comment from our members, by email, meetings and telephone conversations, both while preparing this paper and on the draft itself. This paper has been discussed and approved by the SPADA Executive, our elected board of ten industry members.

We appreciate the lengths taken by the Task Force and the Government to articulate issues clearly and to provide a path forward.

General Comment:

We are impressed with the scope of thinking and the scale of what has been achieved. We are unaware of any similar document prepared on industry issues which matches the research and practical steps proposed in the Report. The Task Force has done an excellent job.

It is encouraging that a strategic approach is being taken to industry growth. If the initiatives proposed can mesh in with and complement the activities of existing industry organisations, as well as providing new strategies and leadership, the synergies will be immense.

Comments on Recommendations:

Recommendation: A Screen Council be established to provide a leadership voice for the industry and ongoing independent advice to Government on ways to grow the Screen Production Industry (p17)

We believe the concept of the Screen Council is good. We are well aware that the only ‘official’ voice of the industry is through the funding agencies, those agencies generally only focusing on discrete aspects of the screen industry and from a public funding perspective. Industry members and organisations like SPADA have intermittent access that is rarely official and certainly not privy to machinery of government matters.

A Council is also the best mechanism to ensure that the Report is actioned and, among other things, to begin to provide an oversight on and strategy for the various government funds being allocated to the industry or in the industry’s name.

An extra role for the Council might also be to provide a linkage into the activities undertaken by the other industry task forces. We assume that some of the business issues in particular might be similar to other industries and that there might be a useful exchange of information and strategies between the sectors.

The brief of the Council is considerably wider than that of the Task Force. Thus it will be important to ensure that Council membership comprises a cross-section of the industry. It would be a useful process for nominations to be sought (including self-nominations) to ensure industry buy-in.

In particular, as well as the important needs of the ‘larger’ production businesses, careful attention needs to be paid to how small independent companies can be encouraged to develop and grow. Those companies operate differently, with the classic small business issues of under-capitalisation, low infrastructure and intermittent project development. Not all will wish, or be able, to grow into larger infrastructures.

The business development needs of these smaller entities cannot be overlooked. These companies play a vital role in talent development and in producing films and television programmes which may or may not achieve a significant commercial return but which are still important. While individual smaller companies may not initially contribute substantial amounts to the industry growth targets, they are still a vital part of the industry and collectively provide significant outputs. This is especially so for feature film production where there can be long periods of low economic activity followed by confirmed projects involving comparatively high budgets.

We are a little confused about the scope of Council activities. On one hand the Report says the Council is there to implement the Report (p14), to focus on economic development issues (p17); but also envisages a leadership voice on ‘all matters’. These various ideas in turn are slightly different to the Terms of Reference on p18.

The potential activities of the Council are so widespread that unless considerable funding is made available, there is a danger of dilution. From our perspective the three key areas which require a primary focus should be:

- development and implementation of a coherent five-year industry growth strategy with a whole-of-Government focus
- development of an industry education strategy
- provision of coordinated industry policy advice to Government

There are clear crossovers into some areas of SPADA's work that we would evaluate over time. It would be useful for a strategic approach to be taken to work currently being done, or being done in part or for which the capability is there but the funding is not. For example, if existing industry organisations were able to be project service providers to the Council, at the very least, the spin off effects of Council work could be synergistic rather than simply duplicated or fragmented.

Funding provided by government for industry-related research projects and the like can have a 'multiplier' effect by using industry organisations and personnel to provide services.[1]

The worst outcome, from an industry association point of view, would be for a large increase in submissions work (eg. to the Council). This is already a significant burden on associations but a vital part of advocacy work on behalf of members. It is generally expensive and time consuming, and affects revenue-generating capacity and membership servicing capacity.

The Council structure envisages a very large 10-15 member board and a very small 'secretariat'. There are governance issues which should be evaluated carefully. A board this size is generally considered unwieldy unless extensive use is made of sub-committees, perhaps with the full board meeting less often. Even then, there is a danger that the secretariat spends more time on board management than initiating and completing projects.

We assume the Council will appoint its own secretariat. It should be free to do so.

The above are, in essence, comments on detail. We reiterate our strong support for the creation of a Screen Council, which must be adequately resourced.

Recommendation: Training and recruitment programmes in marketing and distribution for New Zealand producers developed by the Screen Council in association with Industry New Zealand and Investment New Zealand (p23)

We support this recommendation. We attach as an appendix our producer training overview paper for information (we understood it was to be tabled at a Task Force meeting but have received no feedback). We reiterate our previous comments that a synergistic approach, in this case involving SPADA, would be beneficial so that work already undertaken can be built upon with minimal duplication.

---

[1]A classic example is the $100,000 awarded in January by Industry New Zealand to REDA in Wellington for yet another scoping study. The Minister's press release was headed "Wellington screen production industry gets $100k". In fact it is ratepayer-funded REDA and a private consultancy (PWC?) who 'get' the $100k and it is industry organisations and personnel that are asked to provide advice and input on such projects for free. If such contracts are awarded to industry organisations - or at least tendered out - which in turn contract economic and similar specialist consultancies, the funding directly helps the industry.

Recommendation: The Screen Council and Industry New Zealand review the market intelligence requirements of the industry and recommend ways in which such information can be collected and disseminated (p23).

We support this recommendation. Involving SPADA and the guilds is essential.

Recommendation: The Screen Council works with the Ministry for Culture and Heritage and MFAT to facilitate the wider use and advantages of co-production treaties (p25).

We support this recommendation.

Recommendation: Allowing software research and development costs to be written off as incurred (p26).

We support this recommendation.

Recommendation: Coordination, synergies and acceleration of broadband (p27).

We support this recommendation.

Recommendations (p30):
A review of the role of the funding agencies with respect to their intellectual property claims over productions to ensure that agency practices do not impede the exploitation of intellectual property for the benefit of New Zealand producers and the maximising of New Zealand commercial activities

The review investigates the removal of the recoupment requirement from Ministry of Culture and Heritage-funded projects that have a primarily cultural imperative.

We support these recommendations. While Te Mangai Paho is not mentioned, we assume it would be included in such a review. We note the recoupment recommendation applies also to Te Puni Kokiri-funded projects on p50.

This review should also consider the current positions taken by broadcasters and how changes could be implemented.

Recommendations (p32):
The Screen Council, in consultation with Industry New Zealand, identifies appropriate training programmes both in New Zealand and overseas for industry practitioners – not just producers but also entrepreneurs, lawyers, and financial managers

Business skills become an integral part of tertiary training courses related to the industry.

Industry New Zealand co-ordinates dissemination of information brochures, and ensures there is a wider understanding of economic development programmes already available.

Special BIZ courses targeting the screen production industry are run by Industry New Zealand.

We support these recommendations. Involving SPADA would be valuable. Access to funding and/or underwriting for comprehensive training initiatives is a serious problem that needs to be addressed in a coordinated way. At present the NZ Film Commission is assuming all responsibility for film producer training and is directly accessing other government funds to do so, while recently changing longstanding policy by declining funds for SPADA to provide training. There is little in place for those not yet in the NZFC 'net' (normally those who have projects in development) and none for television other than on-the-job training.

The addition of specific industry business skills papers in industry-related degrees and diplomas is especially important for producer training.

Recommendations (p34):
Upskilling the business capability in the industry by initiating special business training courses for experienced industry practitioners with an emphasis on a global perspective.

Attracting business professionals from outside the Screen Production Industry.

We support these recommendations. Involving SPADA would be useful. We have some history in coordinating such courses.

Recommendations (p36):

The Screen Council pursues the establishment of a film/television capital investment fund based on a portfolio of projects, and works with producers, cultural funders and private and Government financial investors to achieve this.

The Screen Council encourages one or more of the trading banks to establish at least one specialist entertainment finance division, or subsidiary company, modelled on the international entertainment finance banks.

The Screen Council is charged with showcasing key companies to financial capital providers.

We support these recommendations. We note that the early work of Project Blue Sky was devoted to this issue and we believe the timing may now be better for such initiatives to succeed. In essence the problem at the time of Project Blue Sky was to amass sufficient suitable projects across production companies in order to pull together a substantial investment proposal.

Australia is managing to do this, notably with the benefit of a confirmed taxation arrangement.[2] The lack of banking specialisation in New Zealand is a problem, as well as the uncertain tax environment.

---

[2] For example, Macquarie Bank has again teamed up with the Nine Network and Hoyts to launch another unlisted managed fund for investment in the Australian film and television production industry. Aimed at building on the success of the companies' first such fund, launched in March last year, the new offer is seeking to raise funds to produce, finance, distribute and market commercial films and television productions selected predominantly for their potential commercial appeal. The new fund will offer a 100% tax deduction over time on investors' subscription amount. The minimum investment is $5,275, inclusive of a 5.5% application fee. (source: Screen Hub, April 2003)

We note that there is unlikely to be any significant private investment in screen productions if the current taxation uncertainty remains unresolved and the proposed Mass Marketed Tax Scheme rules are enacted.

Recommendation: The Screen Council works with Government to establish an industry incentive scheme that benefits both domestic producers and foreign productions (p37).

We support this recommendation. We especially support the concept of requiring local entities to be used (this develops the capability of line producers) and we are also anxious to ensure that any incentives apply equally to New Zealand producers as well as offshore producers. It is critical that this is taken in context - namely, a mechanism such as in Australia where an incentive applies to productions with A$15m budgets, effectively excluding almost all domestic product in that country, must not be used here in such a form.

We are one of the only countries in the world where some kind of screen industry-specific incentive package is generally unavailable. The Report suggests that the USA does not provide incentives (p36). This is of course not the case - most states in America offer tax, payroll and/or location incentives at the very least.[3]

We noted Dr Cullen's comments on Radio New Zealand the day after the Report was released. He is correct in saying that the industry had not been able to put up a comprehensive case for incentives. This does not mean that there is not a case for incentives; it means simply that the screen industry does not have the necessary financial and technical resources to carry out the required analysis.

The key difficulty is that no agency has been willing, or charged with, looking at a strategic overview of incentives and tax policy. It is not the IRD's job, and other government agencies have been unwilling to take up the issue and drive solutions. Put simply:

- Industry growth is dependent on expanding revenue sources
- The two key such new sources are domestic private investment and foreign investment
- Domestic private investment is hampered by lengthy disputes with the IRD driven by zealous investigators and inconsistent policy, often introduced with retrospective clauses
- Foreign investors are offered significant deals in other territories, making the case for production investment in New Zealand weaker
- So the case for growth becomes very difficult.

There is no overseas model that can be instantly adopted in New Zealand. But neither are we aware of any 'compare and contrast' work being done here to provide policy makers with a case for action. This kind of project is difficult, technical and expensive. This is a key output for the Screen Council: to put a cogent case, supported by intensive research, for a package of options which will assist companies in attracting project investment. It is also incumbent on the Government to consider this with an open mind as an important new initiative.

[3] See, for example a recent paper prepared on the Californian industry outlining comparative state, federal and international incentives (although we do note the author is confused about Peter Jackson's country of origin). The paper *Motion Picture Production In California* (Jones, 2002) is at http://www.library.ca.gov/crb/02/01/02-001.pdf

Recommendation (p37):
Clarification of taxation rules in the following areas:

- *The interpretation of 'double head fine cut', especially given that film production techniques have changed markedly in the past 20 years;*
- *The definition of limited recourse loans;*
- *Inland Revenue's non-standard balance date policy;*
- *The tax treatment of shelf companies;*
- *Inconsistent interpretations between different offices of Inland Revenue; and*
- *The amount of time it takes to obtain binding rulings.*

We support this recommendation. The lack of consistency and clarity in taxation policy and treatment has been a longstanding and significant problem for many of our members. This problem has been exacerbated by constant changes to the legislation and will only be made worse if the Mass Marketed Tax Scheme rules are enacted. Again, a piecemeal approach is being adopted, right at the time when the industry is seeking a coherent overview.

An additional area which could be investigated is the Companies Act and Financial Reporting Act obligations for companies with more than 25% foreign ownership. These obligations can prove onerous for foreign production companies, particularly those who may only be present in New Zealand for a short time.

Recommendations (p38):
New technology, research and development, and marketing needs of the post-production sector are given specific treatment in any consideration of tax or other incentives for the industry.

The Screen Council works with Government to investigate effective incentives for the development of post-production technology.

We support these recommendations. The capital-intensive nature of post-production means that, without appropriate support and international business attraction, investment in state-of-the-art technology is difficult to maintain. This in turn affects New Zealand producers and how they sell their projects and services supported by leading-edge equipment.

Recommendation: Foreign productions utilise and develop New Zealand's capability and infrastructure as a pre-requisite for any future Government incentive or assistance schemes (p42).

We support this recommendation. Government support provided without such a framework, which exists in many other territories, would be unconscionable (as well as a waste of money). For money targeted at the industry to be spent wisely and well, it is vital that as many local companies as possible are directly and indirectly supported, so that their chances of growth are maximised.

Recommendations (p43):
Film New Zealand be responsible for developing the marketing package and plan for New Zealand Screen Production.

Film New Zealand be allocated long-term Government funding to implement a co-ordinated New Zealand film industry marketing plan.

All regional film offices are co-ordinated under Film New Zealand in order to qualify for Government funding and for the New Zealand Local Government Film Protocol Compliance Certificate.

Clarification and rationalisation of the roles and responsibilities of Film New Zealand and the various Government agencies involved in attracting foreign production.

We support these recommendations with one proviso. The wording of the first two recommendations has an unclear meaning. Film New Zealand is not responsible for marketing in the way described: it should be responsible for developing, implementing and servicing a plan (presumably in consultation with the Screen Council?) for <u>marketing New Zealand offshore as a filming destination.</u>

Requiring the regional film offices to work in with Film New Zealand, especially if government funding is offered, is vital for coordination and delivery of a coherent marketing message to the world.

The clarification of Film New Zealand's role and responsibility along with those of the government agencies is critical. It needs to be independent in order that it can devise initiatives which positively affect the industry.

Recommendation (p47):
A review be led by the appropriate ministries (Ministry for Culture and Heritage and Te Puni Kokiri) to assess the following:

- *The relevance of the governing legislation of NZ On Air, the New Zealand Film Commission and Te Mangai Paho; and*
- *The funding required by Government funding agencies in order to adequately carry out the range of responsibilities with which they are charged*

We support this recommendation. We recommend that, included in a legislation review, a review of the current MOU for each funding agency and an analysis of the effectiveness of how each is translated into strategic and operating plans should also be undertaken. It would shed more light on how effective the legislation is and whether all agencies are harnessed adequately into the overall goal of industry growth.

Assuming this is the goal, Industry New Zealand or the MED should also be involved in the review. Other agency goals (cultural production, te reo, minority audiences etc) have been a prime focus for many years: the goal of industry growth is not necessarily in conflict with these but is certainly not a clear strategic priority for any agency.

Recommendation (p49):
A review of NZ On Air policies to consider:
- *Increasing industry practitioner participation on the funding board.*
- *Greater flexibility in funding commitments between financial years.*
- *A review of the practice of treating programme funding as equity, acknowledging the benefits of allowing producers to retain and exploit the intellectual property in their programmes.*

The review investigates the removal of the recoupment requirement from Ministry for Culture and Heritage-funded projects that have a primarily cultural imperative.

NZ On Air develops a funding criteria for regional television having regard for content, cost and audience size.

We support these recommendations in principle. We especially support a comprehensive evaluation of equity and recoupment policy to ensure that these policies are harnessed to enable industry growth.

We are less certain whether NZ On Air should develop new funding criteria for regional television, particularly if additional Government funding and a clear policy directive do not accompany such a move. We do understand the contribution such stations make in, for example, providing training opportunities for new entrants to the industry. However a comprehensive cost/benefit analysis needs to be undertaken as the commercial case for regional television is unclear, the audience levels poorly measured and the potential for significant demands on the public purse may be high.

Recommendations (p50):
The Maori Television Service, Te Mangai Paho and the Screen Council work closely together to ensure Maori contribution to growth strategies for the industry.

A review investigates the removal of the recoupment requirement from Te Puni Kokiri-funded projects that have a primarily cultural imperative.

We support these recommendations as per our previous comments on similar recommendations.

Recommendations (p52):
The New Zealand Film Commission recognises risk and reward when negotiating producer recoupment and profit positions.

All funding allocations by the New Zealand Film Commission are made public at the time of decision making.

The Board of the New Zealand Film Commission is weighted heavily with experienced film practitioners.

The New Zealand Film Production Fund be maintained beyond the eight year period and is funded on a three year commitment for a minimum of two three-year periods.

We support these recommendations. All are critical to a fair, transparent and effective organisation.

The continuance of the Film Production Fund is also vital. Its positive impact is already apparent and its ability to support bigger budget films that attract national and international finance and attention is clear. Without the Fund, the film industry is doomed to making a handful of low budget films in an international market already crowded with such production. It must be remembered that even Film Fund films are low budget by international standards.

Recommendations (p55):
The setting up of a Code of Practice to govern TVNZ's dealings with independent producers.

Government encourages TVNZ to discuss in detail with the industry its new international strategy to
(a) explore opportunities for co-operation

(b) draw on the independent industry's extensive experience

(c) ensure that TVNZ plays a constructive role in securing and growing New Zealand industry players place in the international market.

Government, TVNZ and the Screen Council engage in a review of the issues of intellectual property as they affect the New Zealand screen production industry ownership and exploitation of intellectual property rights in New Zealand productions.

We support these recommendations. SPADA has been pursuing a Code Of Practice with TVNZ for two years now as it became increasingly obvious that such a document was necessary. We have already commenced discussions and appreciate the recognition of this important issue by the Task Force. We would wish SPADA to be involved in all activities and initiatives.

The recoupment issues to be examined in relation to the funding agencies should also be considered with the state broadcaster position. Industry growth needs to be considered holistically.

Recommendation: The Maori Television Service fosters the growth of independent production companies by the removal of the recoupment requirement from MTS programmes (p56).

We do not understand this recommendation. MTS does not, and should not, have an equity stake in programmes (except in some cases for a limited right in merchandising income) because it does not contribute any funding. Perhaps the recommendation means Te Mangai Paho?

A useful additional recommendation would be to encourage MTS, as the Task Force has done with TVNZ, to set up a negotiated Code Of Practice.

Recommendations (pp59,60,61):
The implementation of the Tertiary Education Strategy in relation to the Screen Production Industry – must be planned and managed in a way that gains maximum benefit for the various stakeholders.

A "Screenmark Federation" be set up within the Screen Council to provide the primary mechanism for Screen Production Industry participation in the implementation of the TES.

Government works with the Screenmark Federation to develop ways of adapting the Modern Apprenticeship Scheme or developing an alternative tailored to the creative sector.

We support these recommendations. We agree that setting up an ITO again is not feasible. With other organisations, SPADA was associated with the former screen ITO. The experience was not a happy one, mainly because the statutory and bureaucratic needs of the education sector did not mesh with an industry founded on comparatively small companies, independent contracting and uneven workflows.

It is important that formalised industry input can be made into tertiary training for industry crafts. Few industry organisations and personnel have the time or skills to gain a comprehensive understanding of tertiary education sector operations. The Federation would be a valuable addition to the sector, to ensure the industry is being delivered appropriate numbers of well-trained new entrants, that good industry personnel are used as tutors and that education funding is being well targeted.

It is also important to recognise the difference between academic-oriented ‘film studies’ and ‘media studies’ courses. These are not designed specifically for employment outcomes and are not areas on which the Federation should focus. It is the craft training courses and schools where the industry/education interest should intersect.

As well as the traditional industry-specific training issues, it must not be forgotten that the creation of the Maori Television Service and the rise of Maori production houses create special training needs, not the least of which is training and upskilling in te reo.

Recommendations (p61):
More government resources be devoted to up-skill industry professionals with a particular emphasis on areas that will help the industry achieve the maximum revenue growth in the short and medium term.

The Screenmark Federation, working in conjunction with relevant Government agencies, should identify needs, plan and co-ordinate existing and new initiatives with selected training providers for up skilling industry professionals.

We support these recommendations. We draw your attention again to our producer training scoping paper attached.

Thank you for the opportunity to comment. We look forward to the rapid implementation of the Task Force recommendations.

Jane Wrightson
Chief Executive

[sent unsigned by email]