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NZ Ministry of Foreign Affairs & Trade

Trans-Pacific Agreement Submissions

FTP4

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Submission on the Trans-Pacific Strategic Economic Partnership Agreement Negotiations with the United States of America
(Current Trans-Pacific Partners being Brunei, Chile, New Zealand and Singapore, with Australia and Peru signalling their interest)

Introduction

1. The Screen Production and Development Association of New Zealand (SPADA) welcomes the opportunity to make this submission on the Trans-pacific Strategic Economic Partnership Agreement Negotiations (P4) with the United States of America.

SPADA

2. SPADA represents the interests of producers and production companies on all issues that affect the commercial and creative aspects of independent screen production in New Zealand.

3. SPADA members include independent producers and production companies working in film, television, commercials, video, post-production, animation

and interactive media. Other members include lawyers and accountants working in the industry, completion guarantors, and industry suppliers. More can be found on SPADA's work at www.spada.co.nz.

4. SPADA would like it noted for the record, that due to the tight timeframe for replying to this submission, and relatively little information available, it has not been able to canvas feedback from its membership base. However, SPADA believes it important to raise a number of key issues; and to table its request to be part of all future negotiations that may impact on New Zealand's screen production industry.

Background

New Zealand

5. SPADA's commitment is to the screen production industry's commercial and cultural health, with a focus on the importance of **local content creation** as the industry faces the challenges and opportunities of a multi-platform digital environment.

6. NZ does not have a local content quota as, unlike most other developed countries, it did not reserve the right to take measures over local content levels in the General Agreement on Trade in Services (GATS) negotiations. Given the lack of a quota, New Zealand's screen production industry would be concerned that the Government ensures in the P4 negotiations that there are no further limitations on New Zealand's ability to take any other measures that may be called for to prevent the erosion of or enhance local content levels via existing platforms or future new platforms.

7. Local content quotas were introduced in other countries to address the problem of broadcasting being dominated by foreign, mainly US programming, with little room for local voices to be seen and heard.

8. Against this background, the New Zealand independent screen production industry has been concerned with what it perceived as the Government's failure to make the appropriate reservations that would allow for local content quotas. This omission was seen by many as detrimental to the cultural and economic health of the New Zealand independent screen production industry; which in turn impacts on the availability of local content for New Zealand audiences.

Australia

9. Even with a local content quota and other regulatory measures in place the Australian Free Trade Agreement with the US was hugely contentious in the screen industry and the subject of much lobbying and media. The principal concern was that in agreeing to make audio-visual services subject to the FTA there was no corresponding benefit to the Australian audiovisual sector and that the agreement would only serve to enhance the already dominant position of the US audiovisual sector in the Australian economy, making it harder for the Australian industry to grow[1].

10. The overall outcome was that Australia kept its 55% transmission quota, and other cultural measures, to protect local content. However, the agreement provided for ratchet provisions; which meant the quota could go down but not up, and that the Australian government needed to consult with the US to make any changes to ensure that Australian content was 'not unreasonably denied' to Australian consumers.

11. Australia also has genre quotas for endangered and high cost genres. For example, Pay Television or subscription services providing drama programmes, are required to devote a minimum of 10% of their expenditure to new Australian drama. A summary of Australian local content regulatory requirements can be found in Appendix I. New Zealand has no such measures in place, and therefore is vulnerable to an increase in imported product; particularly in tight financial times when imported programmes are usually cheaper to purchase than commissioning original local content.

12. The central issue for the Australian cultural sector was how the FTA would affect Australia's ability to regulate local content in emerging digital services such as video-on-demand, e-cinema and interactive television[2]. It was recognised that in the future there would be new content distribution platforms and the Australian industry was concerned that current regulatory measures were not limited to existing forms of distribution.

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[1] Submission to the Senate Select Committee on the Australia United States Free Trade Agreement: Australian Writers Guild, Australian Screen Directors Association, Screen Producers Association of Australia.

Particular Issues for New Zealand

13. Whilst US programming holds a dominant position in the world market, particularly in English speaking territories, it also commands 90% local content levels (with no regulatory measures in place) in its domestic market. The US nonetheless has never been happy with its trading partners having local content quotas in place. The US continues to maintain, in the face of evidence to the contrary, that market forces are the best determinant of local content levels. [3]

14. Another issue to be taken into consideration when looking at the P4 Agreement, is that the US has free trade agreements in place with other parties to the P4 Agreement, and in its bilateral agreements with Chile and Singapore has negotiated liberalisation of audiovisual trade [with a small number of exemptions][4].

15. We cannot predict what the US government might seek to do in negotiations around audio-visual services, however, SPADA would like to flag some key areas of concern:

i) **Co-Production Arrangements**

SPADA would like to endorse and reinforce the reservation of preferential co-production arrangements for film and television productions. Official co-production status confers national treatment on works covered by these arrangements partnering with other countries, as reflected in s.18 of the New Zealand Film Commission Act which limits Commission funding to films with a "significant New Zealand content". Co-productions are a principal means of getting larger productions made and SPADA would not like to see the ability of the New Zealand government to enter into further co-production agreements with other countries at all limited by this agreement.

ii) **Investment in New Zealand Local Content**

Investment in new local content is a key measure of the health of the New Zealand screen industry. The position of first run local content on NZ screens is still relatively low in comparison with international standards, and

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[2] Ibid, p 7.

[3] *The United States continues to oppose discriminatory broadcast quotas and maintains that market forces best determine programming allocations.* National Trade Estimate Report on Foreign Trade Barriers 2002, p11. At http://www.ustr.gov/reports/nte/2002/australia.PDF

currently vulnerable due to tightening market conditions. If this agreement resulted in increased US programming in NZ, it would have an extremely detrimental impact on content providers, and would curtail NZ voices on our screens, especially if no measures could be taken to improve the situation for NZ local content.

iii) **Government Investment in the Screen Production Sector**

SPADA would be concerned about any provisions that could mean that government investment or subsidy for screen content, including for new media platforms (and those of the future) would become at all contentious or precluded by any provisions.

iv) **Digital Broadcasting Review/Pay TV/Subscription Services**

With rapid market changes and an unstable environment for the screen sector there are potential threats relating to financing, distribution and commissioning of new local content by New Zealand broadcasters and competition from Pay Television operators. A major regulatory review is currently underway, the *Regulatory Review of Digital Broadcasting*, which has already acknowledged that there may be competition and other issues in the New Zealand market which need to be dealt with. For example, as the television market fragments with digital take-up it is expected that in one form or another subscription television services will take an increasing share of the market in the future, as in other countries where 50 to 80% of households subscribe to such services.

Pay TV penetration is currently higher in New Zealand than Australia reaching 44% of the market and the **Report Back on Options to Cabinet on the Regulatory Review of Digital Broadcasting** following public consultation found that the consultation suggested prima facie evidence of a competition problem affecting diversity of voice in New Zealand broadcasting. It also stated that if serious problems were established by the review this may imply a need to reconsider the regulation of PAY TV in relation to Free-to-air TV. Therefore it is important that the P4 Agreement in no way limits or precludes measures which may be necessary to deal with and resolve these issues.

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[4] Ibid, p 6.

There is potential for increased PAY TV dominance in the NZ market which (unlike other countries) has no obligations around local content. Measures to support or enhance local content on PAY TV or other subscription services should not be precluded by this agreement. See Appendix II for international local content requirements for subscription television. While Australia has transmission quotas it also reserved the right under the Australia/US FTA for expenditure quotas for local content on subscription television, which may be imposed up to a level of 10% of programme expenditure for subscription services providing arts, children's, documentary, drama and educational programmes.

v) **Closer Economic Relations Agreement (CER)**

New Zealand currently has access to the Australian market in that NZ content is treated as Australian after the Australian High Court decision following Project Blue Sky under the Closer Economic Relations Agreement (CER) with Australia.

It is important New Zealand maintains access to the Australian market, and that nothing mitigates against such access in this agreement.

vi) **Provisions for Digital Exchange of Content and Information on Creative Works**

There are complex rights issues around New Zealand's Video-on-Demand services. The VOD services already launched are limited to New Zealand subscribers and geo-locked to ensure the protection of rights.

We would not like to see any rights or exchange provisions that required free exchange with other countries party to this agreement, as this could lead to increased costs for rights clearances and loss of international sales for New Zealand content creators and production companies.

Domestic licence fees are relatively low compared with other countries and targeting international sales is a key business strategy for New Zealand companies and the New Zealand screen industry to achieve sustainability and growth. For this very reason, much of SPADA's work of the past few years has been aimed at achieving a better share of international sales income from funders and broadcasters in favour of producers to provide an incentive for growth.

Summary

16. Overall, New Zealand's position is different from Australia in that we have very limited, if any, protection for local content. SPADA would not like to see any further erosion as a result of this agreement, any preclusion of future options or any provision that would jeopardise the position of local content via existing platforms or future new platforms.

17. SPADA supports the submissions by the New Zealand Society of Authors, the Screen Directors Guild, New Zealand Writers Guild and the Artists' Alliance.

18. SPADA would like to be kept abreast of further developments relating to the P4 agreement to ensure the organisation has an opportunity to make a further submission on this matter. SPADA would like to be consulted and involved in any aspects of the negotiations that could affect the New Zealand screen industry, content creation and distribution.

Contact Details

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Yours sincerely

Penelope Borland

Penelope Borland
Chief Executive Officer
SPADA

APPENDIX 1

CURRENT AUSTRALIAN GOVERNMENT CULTURAL POLICY OBJECTIVES FOR AUDIOVISUAL

The cultural policy objectives of the government are expressed through a range of regulatory and assistance measures designed to ensure that Australians have available to them on their screens film, television and new media that speak with Australian voices about our country and its place in the world. These measures fall broadly into three areas:

A. Regulation

Commercial television – All commercial television licensees are subject to Australian content and children's television standards that require them to broadcast minimum amounts of new Australian drama, new Australian children's programs and Australian produced television advertisements. Under the standards administered by the Australian Broadcasting Authority 55% of transmission time between 6.00 am and midnight must be devoted to Australian programs and 80% of all advertising time to Australian television commercials. In addition there are sub-quota requirements for new Australian drama, documentaries, children's drama and children's programs.

Subscription broadcasters – Channels that predominantly providing drama programs are required to devote a minimum of 10% of their program expenditure to new Australian drama.

B. Grants, Subsidies and Investment

Australian Film Commission – The AFC provides grants and investment to support the development of new Australian film, television and interactive media, as well supporting the preservation and development of Australia's screen culture and heritage through the National Film and Sound Archive and support for screen culture activities.

Film Finance Corporation Australia – The FFC provides investment in new Australian feature film, television drama and documentaries.

In addition to these Federal initiatives most state and territory governments have agencies whose purpose is to provide support to film and television production through grants, subsidies and investments.

C. Tax Concessions

Concessional tax benefits are available for investment in qualifying Australian feature films, mini-series, telemovies, documentaries and animation. This measure is designed to stimulate private sector investment in Australian production.

The Federal government also provides a tax offset for expenditure in Australia on high budget productions as a measure to attract foreign direct investment in production in Australia.

D. Other measures

Like many other nations Australia has a range of film and television co-production treaties designed to allow producers from each country to pool resources for the production of film and television. Under the terms of the treaties these official co-productions access all the benefits available to national films.

Australia regulates temporary entry of foreign actors, crew and performers under Migration Regulations;

Direct support is provided for promotion of Australian production resources to AusFilm and the Film Industry Broadband Resource Enterprise (FIBRE).

Direct support is provided for training through the Australian Film, Television and Radio School.

(Appendix 1 - Ibid, p 6.)

Appendix 2

A. International Subscription Television Regulations

	LOCAL CONTENT REQUIREMENTS
Country	***Subscription Television regulated local content broadcast time***
Canada	***Cable, Satellite and Subscription services*** >50 per cent of Canadian subscription services provided must be Canadian. 5 per cent gross annual revenues to Canadian content On top of these, the CRTC also sets minimum Canadian content and spending levels on an individual service basis. Examples include: • 100 per cent Canadian content transmission quota on CTV Newsnet • 25-30 per cent Canadian content transmission quota on The Movie Network and Movie Central. • 71 per cent of gross annual revenues for the Life network ***New digital subscription services*** *Category 1 services:* • 5 per cent gross annual revenues to Canadian content • 50 per cent Canadian transmission quota *Category 2 Services:* • 35 per cent Canadian content (English- and French-language specialty services) • 15 per cent Canadian content (Canadian content) • 30 per cent Canadian Content (music video services)
France	60 per cent European works. 40 per cent original French-language programmes.
Germany	>50 per cent European works. 10 per cent independent productions.
Greece	>50 per cent European works.
Korea	>50 per cent Korean works. Individual quotas apply for film, animation and popular song genres.
Mexico	80 per cent Spanish language (originally produced, sub-titled or dubbed). 7-8 per cent Mexican works (on advertising supported services)
Netherlands	>50 per cent European works. >40 per cent Dutch or Frisian works.
South Africa	5 per cent local television content within particular categories (private subscription television service providers) 20 per cent South African content for unencoded (public) portions of service.
Spain	>50 per cent European works. 10 per cent independent productions.
Sweden	>50 per cent European works. 10 per cent independent European productions or 10 per cent programming budget on works produced by independent European producers.

(Appendix 2 - Ibid, p 6.)