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NZFC
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**SPADA's Feedback in Response to NZFC's Seminar Paper (03 Oct 08)
on the Screen Production Incentive Fund (SPIF) and NZFC Co-
Investment**

Introduction

We thank the New Zealand Film Commission (NZFC) for conducting the SPIF industry seminars. The industry appreciates the on-going opportunity to provide input into the development of the SPIF criteria and guidelines, and the NZFC's co-investment policy. SPADA believes this collaborative approach creates a positive environment, which we hope will result in the effective use of the SPIF, and the creation of more New Zealand films, in conjunction with the NZFC's wider funding base.

Feedback received from SPADA members who attended the Wellington and Auckland seminars has largely been positive. Given the parameters of SPIF, it is pleasing to note that the NZFC is building a reasonable degree of flexibility into its policies for co-investment in an attempt to make SPIF as workable as possible.

In the spirit of a collaborative approach to the development of the NZFC's co-investment guidelines, SPADA would like to submit to the NZFC the following points which reflect industry questions, suggestions and feedback on the NZFC seminar document.

SECTION ONE: Screen Production Incentive Fund

6. Qualifying New Zealand Production Expenditure (QNZPE)

Producers are particularly interested in the definition being used by the NZFC of above-the-line costs as: “above-the-line costs greater than 20% of Total Production Expenditure do not qualify as QNZPE”. It has been noted that the NZFC’s definition is narrower than definition in the ‘SPIF Criteria’ published by the Ministry for Culture and Heritage.

As above-the-line costs include remuneration for principal cast a number of producers have pointed out that this may become problematic with the need for internationally recognised lead cast to attract international finance.

Suggestion: The requirement that above-the-line costs of no more than 20% of Total Production Expenditure will qualify as QNZPE may need to be a key point in the review of SPIF and its criteria.

It would be helpful to avoid any ‘creep’ on the definition of above-the-line costs being used by the NZFC for the purposes of SPIF. For example, remuneration for principal cast, director, producers and producers unit should be confined to fees rather than expanded to travel and per diem or living costs as well.

9. Processing the Grant

In the interests of transparency, and to avoid any potential conflicts of interest, SPADA suggests the NZFC publish, on an annual basis, a list of the potential independent panel members and consultants.

SECTION TWO: NZFC Co-Investment with SPIF

SPADA appreciates that the expenditure threshold of \$4million for feature film poses some issues for creating policy around NZFC funding, and may be an incentive for increasing production budgets.

SPADA is encouraged that ‘*on a case-by-case basis*’ and where a film has ‘*strong commercial prospects*’ the NZFC may consider co-investment beyond \$2.5 million. This should only be limited to sales advances, therefore meaning only films which NZ Film as the sales agent can receive investment in excess of \$2.5 million. This option

should be open to any film *'on a case-by-case basis'* that can demonstrate that it has *'strong commercial prospects'* and that there *'is a very high likelihood'* that this *increased investment 'will be recouped out of international sales'*.

4. Sales Advances

At recent SPADA Chat Rooms (attended by some of the NZFC Board members) producers were heartened to learn that the NZFC was going to be undertaking a review of the role and operations of NZ Film – the NZFC's sales agency. SPADA and its members look forward to taking part in this review and await confirmation of when this review will commence.

As noted at the Chat Rooms, the views held on the NZFC's sales agency are varied, and SPADA does not purport to hold a definitive view on its operations or role within the NZFC. However, some members hold concerns regarding the mechanisms which are used internally to trigger the attachment of the sales agency, when projects receive NZFC funding.

The NZFC Board members present at the Chat Rooms gave assurances that there is no obligation to use the NZFC's sales agency, and that it was hard for them to understand where this industry perception came from.

If the NZFC does not want to perpetuate this perception, the wording in the co-investment document does not go any way towards allaying that perception. In fact, it reiterates and reinforces this as the NZFC's standard position, to quote: *'It is generally expected that NZ Film will be the sales agent for all films in which the NZFC invests (whether or not such investment is a sales advance)'* (p12, point 4); with producers able to attach a different sales agent if the sales agent and its commercial terms are acceptable to the NZFC.

With increased pressures on the NZFC's base funding, the NZFC is applying stricter commercial disciplines to film investment, and in turn, expecting this of producers in its negotiations with recoupment positions and interest on loans. Therefore, this commercial approach does not sit well with an ongoing expectation for producers to use the NZFC's sales agency. It is in everyone's best interests to look to appoint the best sales agent for the *film*. This may see producers canvassing a number of sales agencies - assessing sales estimates and the specific requirements for his or her film when making the final appointment of a sales agency.

In the new SPIF environment there will be a greater reliance on third party finance, and given NZ Film's relatively limited track record in securing pre-sales, and lack of established film banking relationships, it may be suitable in some instances, but not in others. In every case however, the onus should be on the Sales Agency to convince the producer that it is the best 'company' to sell his or her film, rather than the producer convince the NZFC that NZ Film is not the best sales agency for his or her film.

Similarly there is some uncertainty about what is meant by '*NZFC co-investment above \$2m may include an NZFC sales advance*'. Some producers were concerned that this may mean where NZ Film is not the sales agent these films would be limited to a \$2m co-investment. If this is the case it will unduly penalise some films and disincentives producers to find the best sales agent for the film.

In light of the increased pressures on the NZFC's base funding it is timely to review in detail the current expenditure allocated towards international sales and marketing and domestic distribution initiatives relative to the film income and sales commission derived.

Suggestion: The expectation that "*It is generally expected that NZ Film will be the sales agent for all films in which the NZFC invests*" should not be NZFC's default position. We would also suggest that in view of other discussions underway, and the commitment of the NZFC to review the role of the sales agency that this policy is premature and confusing for filmmakers.

We therefore support a review of the role and operations of NZ Film, in as broad and inclusive a process as possible.

5. Recoupment

It is pleasing that there is clear recognition that SPIF is producers' equity and that the first \$2 million of NZFC co-investment, which may or may not be investment direct from the government for SPIF co-investment, will be treated *pari passu* with producers' equity.

In order to incentivise producers to keep budgets at a realistic level for the market and generate increased income for both the producer and the NZFC, we would suggest that the NZFC consider changing to a favourable recoupment structure for smaller budget non-SPIF films. SPADA suggests that this could be similar to the Irish Film Board's move to incentivise producers with a 50/50 corridor. From July 2007 producers of all film or television projects with investment by the Irish Film Board were entitled to an internal corridor of 50%. In effect, half the money invested by the Board is treated as money invested by the producer. The Board deems that it has recouped its investment when it has earned back half, the other half having been received by the producer.

Under this recoupment structure, SPADA believes the NZFC would net more income than it is currently receiving, as producers will be incentivised to maximise returns. At present many producers on smaller budget films work in effect for fees only. In addition producers will invest this income into their businesses and future projects, thus reducing the pressure on existing NZFC development, production and marketing expenditure.

We believe this is critical, otherwise there will be a perverse incentive to increase budgets to meet the SPIF threshold and this would mean more demand on NZFC funds to gain the SPIF resulting in more demand on NZFC funding and fewer films.

In addition, while SPADA understands the logic of the producer's SPIF equity ranking *pari passu* with NZFC equity up to \$2m and thereafter the NZFC taking a different position, we would suggest that it would also be sensible to introduce a producer's corridor within the NZFC's preferential position (the amount invested over and above the \$2million). This corridor could be smaller than for non-SPIF films. A twenty percent corridor for SPIF films was suggested at one of the seminars and this would seem appropriate.

6. Other Assistance

SPADA congratulates the NZFC on its willingness to consider *'making a loan to producers for the purpose of cashflowing up to 2/3rds of the estimated SPIF grant that 3rd party financiers are not willing to cashflow'*.

SPADA is cautious about the new arrangements in respect of advance funding prior to financial closing. SPADA appreciates the NZFC needs to manage its risk and that it will have less funds to risk making pre-closing loans. However it should be remembered that when the NZFC has made these loans in the past it has resulted in films being made, which would not have been possible without these loans.

SPADA is therefore conscious that the guidelines should be practical and exercised pragmatically to ensure films are made and do not falter. Similarly if 'a commercial rate of interest' must be charged (this is likely to be contentious), this rate should be set at a genuinely affordable level in relation to the film's budget.

7. SPIF Surplus

SPIF is clearly recognised as producer's equity and therefore it is hard to understand the reference as to SPIF surplus being shared. We would suggest that any SPIF surplus should be solely producers' equity.

APPENDICES

NZFC Budget Summary

SPADA appreciates that for the purposes of continuity NZFC has maintained its existing expenditure for the 2008/2009 year. However, given the increased pressures on the NZFC's base funding, producers have raised concerns about:

- The low level of feature film production financing relative to total expenditure and short films and development expenditure
- The high level of domestic distribution initiatives and international sales and marketing expenditure relative to film income and sales commissions
- The high level of administration expenditure (given the specified administration expenditure does not include all staff expenditure) relative to total expenditure

- The high level of industry support relative to total expenditure

In conclusion, SPADA is committed to working with the NZFC and the incoming government on ensuring the ongoing financial viability of the NZFC.

SCREEN PRODUCTION AND DEVELOPMENT ASSOCIATION

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