



13 May 2008

Digital Strategy 2.0 Submission

Digital Development Group

Ministry of Economic Development

PO Box 1473

WELLINGTON

Emailed: submission@digitalstrategy.govt.nz

SPADA'S SUBMISSION: DIGITAL STRATEGY 2.0

INTRODUCTION

Preliminary

1. The Screen Production and Development Association (**SPADA**) welcomes the opportunity to respond to the Digital Strategy 2.0 Submission issued by the Ministry of Economic Development.
2. SPADA's submission focuses on the areas of concern detailed in its first submission on the Digital Strategy, Draft New Zealand Digital Content Strategy (January 2007) (attached).

Cont/-

Contact Details

3. SPADA's contact person for this submission is:

Penelope Borland
Chief Executive Officer
SPADA
PO Box 9567
Wellington
DDI: +64 4 939 6935
M: +64 274 534 177
E: [Penelope Borland](mailto:Penelope.Borland@spada.org.nz)

BACKGROUND ON SPADA

1. Formed in 1982, SPADA is a non-profit, membership-based organisation with three full-time staff.
2. SPADA represents businesses involved in screen production and post-production, broadcasting, distribution, lawyers and service providers. Members include WingNut Films, TVNZ, Buddle Findlay, Māori Television Service, South Pacific Pictures, Sticky Pictures, Park Road Post Production, Great Southern Television and Gibson Group.
3. SPADA's commitment is to the screen production industry's commercial and cultural health, with a focus on the importance of content creation as the industry faces the challenges and opportunities of a multi-platform digital environment.
4. Improving terms of trade is one of SPADA's key policy objectives, as strengthening the economic conditions of New Zealand screen production companies contributes to building sustainable business models. In April 2007 SPADA successfully negotiated new terms of trade with NZ On Air: the Producer now retains 75% of programme sales income with NZ On Air retaining 25%. This represents a 100% reversal of NZ On Air's previous recoupment position. SPADA is currently engaged in terms of trade discussions with broadcasters.
5. SPADA believes a strong, sustainable independent screen industry is essential in order to generate quality ideas for new programming for New Zealanders. While most of the discussion paper is written from a viewer perspective, SPADA believes that what is best for New Zealand viewers is also best for the independent screen industry.

6. SPADA believes New Zealand viewers want to hear their own voices and see their own stories and experiences on New Zealand screens, regardless of the technology. A vibrant independent production sector is essential to ensure that this continues to happen across all viewing platforms.

SPADA'S FEEDBACK ON DRAFT STRATEGY ON 2.0

Content Creation/Local Content

1. SPADA's primary focus continues to be that outlined in its January 2007 submission on the Draft New Zealand Digital Content Strategy: **content creation** and ensuring New Zealand audiences have access to the widest range of **high quality local content** through a **variety of production and distribution opportunities**.
2. In the absence of quotas, local content targets by television broadcasters are heavily reliant on access to clearly contestable funding. Support of digital content creation needs to be made a high priority so that New Zealand develops an integrated industry capacity. Establishing, maintaining and strengthening programs that support and develop creativity, through investment in the origination and production of screen content for traditional and new media, and the maintenance of a regulatory environment that encourages private investment is vital to the sustainability and growth of the industry.
3. This may involve changes to current approaches to regulatory, trade and economic policy. A greater degree of policy convergence is needed to match technological and economic convergence. Cultural policy, broadcasting policy, telecommunications policy and information technology policy should no longer remain separated as the industries they address no longer remain discrete.

4. It is interesting to note that the new fourth enable of the digital strategy is **collaboration**. In its original submission SPADA stresses the importance of an **integrated approach** to an overarching policy for **content creation**, and this can only be achieved if the various agents of change collaborate.

Protection of Intellectual Property / Copyright Issues

5. SPADA supports the principle of free and open access of information. It is far better that relevant 'orphaned' material be re-used than locked away from the public. And, in a small country with limited yearly production it is usually possible to find the copyright holder.
6. However, SPADA would also like to take this opportunity to highlight a number of key issues that must be addressed in a digital environment: **protecting intellectual property and the recompense of rights holders**.
7. The screen production industry is built on ideas, concepts, and storylines. Protecting intellectual property is vital to developing and growing screen production businesses.
8. SPADA does **not support the adoption, or exploration of the opportunity to promote the Creative Commons Licenses** in New Zealand. Although these "licenses" all grant certain baseline rights in regards to copyrighted work on file sharing networks, none of the licenses have been certified by the Open Source Initiative; which leads to citing the commonly used but overly vague statement of using a "Creative Commons license" without noting the actual license. Creative Commons licenses are not revocable. Rights issues for screen producers are more complex than other media, and involve a 'chain' of rights clearances, and other payment to other rightsholders eg for music. Therefore, signing away rights for a work in perpetuity, at no charge, to the "whole word" is not only completely impractical, it is usually not possible without infringing other's rights and permissions.

9. Without *clear* ownership of copyright there are no grounds for negotiation in recoupment, nor is there an asset-base - or potential earnings from back-catalogue - to leverage off. Loss of ownership of copyright also negates future opportunities for **growth through developing and exploiting intellectual property** in new formats, thereby curtailing the potential growth of the screen industry.
10. An industry-driven solution is being discussed for archival content where clearances and chain of title are difficult to establish. This discussion may lead to the establishment of an industry steering group to help recompense rights holders (the most complicated will be actors and musicians) where they have residual rights to broadcast revenues.
11. Some of TVNZ's archived catalogue cannot be released because of chain of title and clearance issues. If an industry solution to this problem is found, it may require some Government funding to compensate rights holders, supported by changes to the Copyright Act.
12. Benefits could be gained by updating the Copyright Act to reflect the principle that a reasonable search for a copyright holder is an adequate defense for a new 'publisher'. If the copyright holder subsequently emerges, in all-but exceptional circumstances, their entitlements would be limited to those paid to similar content providers. So if – for example - a producer cannot be found to clear an archive clip, but that work is included in a programme, s/he would later be entitled to a fee similar to those paid to other providers of similar standing and similar vintage.
13. In protecting copyright; production companies must compensate rights holders for use of their material. Therefore, to bring us back to the original principle of free and open access, government must acknowledge the inherent business costs attached to programme delivery to new platforms. In some instances the cost to production companies to clear the rights for broadcasting their programme on TVNZ6 far outweighs the license fee for broadcast. With the introduction of HD, producers must now provide new delivery material to meet the new HD specifications, there are also reversioning costs incurred to businesses.

14. The delivery of high quality programming is still an expectation of broadcasters. However, the screen production sector is expected to absorb additional costs inherent in delivering programming to a new platform, whilst managing static (or smaller) production budgets and rising company overheads. SPADA believes this inequity needs to be addressed.

Developing a Sustainable Industry – Barriers to Investment in the Screen Production Sector

15. SPADA believes access to broadband is currently one of the biggest barriers to investment in digital content. Although Telecom has recently committed to rolling out a next-generation high speed broadband network by 2012, SPADA believes this is too late given the rapid developments occurring internationally.
16. SPADA also believes the urgent introduction of a producer incentive scheme - similar to the Australian producer offset¹ - as a means of encouraging further investment in digital content and the sector's infrastructure. The Australian offset was aimed at "encouraging greater private sector investment in the industry and improving the market responsiveness of the industry", and SPADA is aware of some production companies considering relocating to Australia to take advantage of its producer offset.
17. It is anticipated the introduction of a producer incentive scheme will attract private sector finance into the industry. Currently New Zealand is potentially missing out on equivalent private sector funding into New Zealand productions.

CONCLUSION

18. SPADA thanks the Ministry of Economic Development for the opportunity to comment on its digital strategy.
19. SPADA believes a balance must be struck between cultural and commercial imperatives and market forces and regulation - to provide an environment in which the best ideas can be developed, made and distributed across all technologies.
20. New Zealand viewers will be the ultimate beneficiaries of a New Zealand focused content creation system - regardless of whether it is accessed on their TV, mobile phone, PC or whatever new technologies may emerge in the future.

¹ The offset is a tax rebate on Qualifying Australian Production Expenditure (QAPE). The rebate offered is 40% for feature films provided minimum QAPE is AUD1million, and 20% for television and new media with QAPE thresholds dependent on format or genre.

21. SPADA reiterates its belief that a strong production sector is a prerequisite for diverse and creative content. It also believes that public service broadcasting needs to be protected, strengthened and advocated for, as the independent screen production sector moves into the highly competitive, fragmented, commercial digital environment.
22. New Zealand content has to be the first thought and not an after thought of any regulatory regime.

Presented on behalf of SPADA by:

Penelope Borland
Chief Executive Officer
13 May 2008



23 January 2007

NZ Digital Content Strategy

National Library of New Zealand

PO Box 1467

Wellington 6011

Emailed: digitalcontent@natlib.govt.nz

Submission on the Draft New Zealand Digital Content Strategy

Background

1. The Screen Production and Development Association of New Zealand (SPADA) is an independent, membership-based organisation, which represents the collective interests of independent producers and production companies on all issues affecting the business and creative aspects of screen production in New Zealand. Current membership stands at approximately 360.
2. SPADA supports New Zealand screen culture by working in the areas of professional development, lobbying, membership services, communication, networking and industry support.

3. SPADA has read the November 2006 *The New Zealand Digital Content Strategy* discussion document with interest and wishes to thank the National Library of New Zealand for the opportunity to submit on it.

Draft Strategy Feedback

1. SPADA's primary focus is to help sustain and grow the domestic screen industry for both economic outcomes and cultural benefits for New Zealand. The advent of the new digital environment brings with it opportunities and challenges to ensure New Zealand audiences have access to the widest range of high quality local content through a variety of production and distribution opportunities.
2. In the absence of quotas, local content targets by television broadcasters are heavily reliant on access to clearly contestable funding. NZ On Air has been very successful at administering this contestable funding to create high quality local content; in a digital environment this needs to be retained.
3. New Zealand public broadcasting policy needs to devise an appropriate mechanism to engage satellite and digital distribution services with the production of local content as audiences for these media will continue to grow exponentially.
4. New Zealand does not want to become marginalised in one of the fastest growing areas of the modern global economy; therefore **support of digital content creation** needs to be made a high priority so that New Zealand develops an integrated industry capacity. Establishing, maintaining and strengthening programs that support and develop creativity, through investment in the origination and production of screen content for traditional and

new media, and the maintenance of a regulatory environment that encourages private investment is vital to the sustainability and growth of the industry.

5. This may involve changes to current approaches to regulatory, trade and economic policy. A greater degree of policy convergence is needed to match technological and economic convergence. Cultural policy, broadcasting policy, telecommunications policy and information technology policy should no longer remain separated as the industries they address no longer remain discrete.
6. An **integrated approach** to an overarching policy for **content creation** is key. Content creation is at the core of the creative industries in New Zealand. The government needs to formulate the policy base supported by appropriate funding and regulatory structures to ensure New Zealand's active and continuing participation in the production of screen content.
7. The New Zealand Screen Council has made a number of submissions to government relating to the **Advanced Network Infrastructure**. Access to bandwidth is a fundamental element in any well developed communications system. Without these, the ability of New Zealand to engage effectively at the cultural, political and commercial level with the rest of the world will be limited. Broadband take-up and availability of compelling content are inextricably linked. This means that there is not only a need for investment in technology and infrastructure, but also in the creative producers of content.

Success in the broadband environment will need further resourcing and the continuing partnership of industry and government.

8. The screen production industry is built on ideas, concepts, and storylines. Protecting **intellectual property** is vital to developing and growing screen production businesses.

Therefore, SPADA does not support the adoption, or exploration of the opportunity to promote the Creative Commons Licenses in New Zealand. Although these “licenses” all grant certain baseline rights in regards to copyrighted work on file sharing networks, none of the licenses have been certified by the Open Source Initiative; which leads to citing the commonly used but overly vague statement of using a “Creative Commons license” without noting the actual license.

Without *clear* ownership of copyright there are no grounds for negotiation in recoupment, nor is there an asset-base - or potential earnings from back-catalogue - to leverage off. Loss of ownership of copyright also negates future opportunities for growth through developing and exploiting intellectual property in new formats, thereby curtailing the potential growth of the screen industry.

Penelope Borland
CEO
SPADA