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DATE: 15 October, 2015

THE NEW ZEALAND MOTION PICTURE INDUSTRY COUNCIL, MOTION PICTURE DISTRIBUTORS' ASSOCIATION OF NEW ZEALAND AND THE HOME ENTERTAINMENT ASSOCIATION OF NEW ZEALAND'S SUBMISSION TO THE MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT "EXPLORING DIGITAL CONVERGENCE: ISSUES FOR POLICY & LEGISLATION" PAPER

The New Zealand Motion Picture Industry Council (NZMPIC), the Motion Pictures Distributors' Association of New Zealand (MPDA) and the Home Entertainment Association of New Zealand (HEANZ) appreciate the opportunity provided by the New Zealand Government to make a submission in response to the "Exploring Digital Convergence: Issues for Policy & Legislation" Paper (the Paper).

NZMPIC's, MPDA's and HEANZ's members are in the business of producing, distributing and exhibiting feature films, made for television films and dramatic and non-fiction serial programming and home entertainment content both locally in New Zealand and on a global scale overseas. In addition to many of our members being long-standing companies in New Zealand, they are some of the most dynamic and innovative companies in New Zealand, constantly evolving to meet the demands of their customers and the market. Our members are directly affected by many of the issues raised in the Paper.

NZMPIC, MPDA and HEANZ commend the Government for its efforts to address how the impact convergence is having in New Zealand and to ensure that the legislation regulating the digital and communications markets is fit for purpose and able to adequately stimulate New Zealand's digital economy and enable the delivery of quality content to all New Zealanders.

For the purposes of this submission however we will be largely confining our comments to the importance of the need for measures to address illegal content in the online environment.

About NZMPIC

NZMPIC was formed in 2009 with the objective of getting film industry members together to look at furthering the entertainment offering and communicating this to consumers.

NZMPIC's members include: Event Cinemas, 20th Century Fox, Hoyts Cinemas, NZ Film Commission, Paramount Pictures, Reading Cinemas, Roadshow Films, Event Cinemas, Sony Pictures, Downtown Cinemas and State Cinemas Nelson.

About MPDA

The members of MPDA are: Village Roadshow Entertainment (which also distributes the theatrical titles of Warner Bros. Theatrical); Paramount Pictures Theatrical (which also distributes theatrical titles for Universal Pictures); 20th Century Fox Theatrical, and; Sony Pictures (which also distributes titles of Walt Disney Studios). The members of MPDA are all engaged in the distribution of theatrical film product in New Zealand. All of our members are also involved either directly or indirectly in the production of theatrical content, both locally and in international markets.

About HEANZ

The members of HEANZ are: Roadshow Entertainment (which also distributes home entertainment titles of Warner Bros.); Universal Pictures (which also distributes home entertainment titles of 21st Century Fox and Paramount Pictures), and; Sony Pictures (which also distributes home entertainment titles of Walt Disney Studios). The members of HEANZ are all engaged in the distribution of film product into the New Zealand home entertainment market i.e. DVD, Blu-Ray and online.

Our Submission

We firstly note we are greatly encouraged by the Government's long-term vision for the TIME sector as being one that that will assist our members to innovate and compete in a dynamic global environment and will also allow New Zealand consumers to access quality content, legally, safely and cost-effectively. This vision aligns perfectly with that of our members.

There is no doubt that both locally based and offshore on-demand online services have flourished in the last year in New Zealand. As the Government noted in the Paper, there were now five video-on-demand services in New Zealand: Quickflix; Lightbox; Video Ezy on Demand; Neon, and; Netflix. The Paper also noted that in addition to these services, other online content services, such as TVNZ's OnDemand, have also shown great growth. It is vital that these services are allowed to continue to develop and grow. This is a highly competitive market place, and we have already

seen the closure of Video Ezy and Ezyflix's services since the Paper was issued¹.

Combined, the on-demand online services noted above largely operate to provide all New Zealand consumers with the content that they want and where they want it, and at a fair price. However, none of these services, nor the legitimate content distribution ecosystem in which they exist, can compete with free. The very real jobs and economic contributions these services make to New Zealand's economy, as well as their continued ability to innovate and compete, should not be threatened by online services, be they local or overseas, that operate by offering illegal content.

We note the great popularity of legitimate on-demand online services in New Zealand. While it is encouraging to see legitimate online content providers be so popular with New Zealand consumers, their continued success is threatened when the content they work so hard to get to consumers so quickly and efficiently is available to those same consumers illegally for free on sites such as Kat.cr and thepiratebay.la. Sadly, both of these sites are ranked in the top 200 most popular sites in New Zealand, with Kat.cr as high as 29².

We hope the Government will continue to take action to ensure that they legitimate content production and distribution industry in New Zealand is provided with strong protection measures against online piracy. To this end, we note the success of the 'site blocking' legislation in Europe via Article 8(3) of the EU Copyright Directive. This Directive has been implemented with great success across Europe, in particular in the United Kingdom where s97A of the Copyright Act has been regularly and successfully applied by copyright holders to prevent online infringement³. We are encouraged by the recent enactment of legislation similar to the UK's 97A in Singapore⁴ and Australia⁵ and we are hope the New Zealand Government will work to specifically implement similar measures here.

We believe that a key policy underpinning any regulation of New Zealand's converged media environment must be to encourage a thriving digital economy where intellectual property rights are respected and digital theft discouraged. We suggest that the regulatory framework should contain an unambiguous statement of commitment to preventing illegal content and intellectual property infringement. This could be achieved, for example, through a statement of objects or policy, together with clear regulatory enforcement mechanisms.

Conclusion

As we were recently reminded by PwC in a report they issued in 2014, the film and

¹ <http://www.nbr.co.nz/article/crowded-nz-online-market-thins-out-video-ezy-demand-ezyflix-close-ck-p-177736>

² The latest Alexa rankings can be found at <http://www.alexa.com/topsites/countries;1/NZ>.

³ "The Effect of Piracy Website Blocking on Consumer Behavior", Danaher, Smith and Telang, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612063

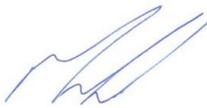
⁴ Copyright Act (Cap 63 of Singapore)

⁵ s97A, Copyright, Designs and Patents Act 1988

television industry in New Zealand provided a total of 41,416 FTE jobs (14,431 direct). PwC released a further report in 2015 that stated that five creative industries in New Zealand contributed a total of \$3.84 billion to New Zealand's GDP. New Zealand's film and television sector, of which our members are key components, contributed 74% of this amount at \$2.83 billion (\$1.30 billion directly)⁶.

Thank you for considering our submission in response to the "Exploring Digital Convergence: Issues for Policy & Legislation" Paper. We are greatly appreciative of the lead taken by the Government to address the many issues that arise in this age of convergence. We trust our concerns will be taken into account and we look forward to continuing to work with the Government to develop a strong digital economy.

Yours faithfully,



Mark Crooke
Secretary, NZMPIC



Andrew Cornwell
Chair, MPDA



John Davie
Chair, HEANZ

⁶ <http://wecreate.org.nz/wp-content/uploads/2015/09/PwC-FINAL-Summary-Creative-Sector-Report-25-September-2015-KAB.pdf>