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**ICON DIGITAL ENTERTAINMENT LIMITED  
("ICON")  
(ADMINISTRATORS APPOINTED)**  
Report by Joint and Several Administrators  
pursuant to Section 239AU of the Companies  
Act 1993 as Amended

22nd January 2008

Level 8 120 Albert Street  
Auckland  
New Zealand

*Partners*

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C A Lamberton

P J McNoe  
J L MacQueen  
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N A Milton  
C J Neves  
D B O'Connor  
S J F Peacocke  
A D Watts  
J A Wilgermein

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## **Disclaimer**

This report, statements contained herein and the investigation of Icon's affairs has been prepared and conducted from available books and records and information provided by Icon's directors, their advisers and from our enquiries.

The Administrators' investigation into the business, property, affairs and financial circumstances of Icon has been limited due to the short period of time within which the Administrators must issue this report in accordance with the Companies Act 1993 (as amended).

We have no reason to doubt the information contained in this report. The statements and opinions given in this report are given in good faith and in the belief that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached on the basis of any changed or additional information which may become available to us between the date of this report and the date of the Watershed Meeting of Creditors.

Neither the Administrators, BDO Spicers nor any employees or contractors thereof accept any responsibility on any grounds whatsoever in respect of the contents of this report, including but not limited to any liability in negligence for losses occasioned to any parties as a result of the circulation, publication, reproduction or use of this report.

All references to statutory provisions in this report are to the Companies Act 1993 (as amended).

## COMPANIES ACT 1993

### NOTICE OF WATERSHED MEETING OF CREDITORS OF COMPANY UNDER ADMINISTRATION

#### ICON DIGITAL ENTERTAINMENT LIMITED (ADMINISTRATORS APPOINTED) ("the Company") Company No. 1836900

NOTICE IS HEREBY GIVEN that the watershed meeting of creditors of the Company will be held on **Thursday 31<sup>st</sup> January 2008 at 11.30am** at **The Institute of Chartered Accountants, 27-33 Ohinerau Street, Remuera, Auckland**. Registration for all creditors and employees will open at **10.00am** with the meeting commencing at **11.30am**.

#### AGENDA

1. The purpose of the meeting is:
  - (a) to review the report of the Administrators in connection with the business, property, affairs and financial circumstances of the Company; and
  - (b) for the creditors of the Company to resolve:
    - (i) that the Company execute a deed of company arrangement; or
    - (ii) that the administration should end; or
    - (iii) that the Company be put into liquidation; and
  - (c) any other business properly brought before the meeting.

#### REPORT AND STATEMENT AS TO CERTAIN MATTERS

Pursuant to section 239AU of the Companies Act 1993, the Administrators hereby inform you that you may inspect, download and print a copy of the Administrators Report which includes:

- (a) the Administrators' comments on the business, property, affairs and financial circumstances of the Company as prepared by the Administrators; and
- (b) a statement setting out the Administrators' opinion, with reasons for that opinion, about:
  - (i) whether it is in the Company's creditors' interests for the Company to execute a Deed of Company Arrangement; or
  - (ii) whether it would be in the Company's creditors' interests for the administration to end; or
  - (iii) whether it would be in the Company's creditors' interests for the Company to be placed into liquidation.

The report is available at [www.bdospicers.com/icon](http://www.bdospicers.com/icon)

Alternatively, should you require a printed copy to be sent to you for your consideration prior to the meeting, please contact the Administrators at the address specified below as soon as possible.

Dated: 22 January 2008



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**STEPHEN J TUBBS**  
**Joint Administrator**  
**ICON DIGITAL ENTERTAINMENT LIMITED (ADMINISTRATORS APPOINTED)**

C/O: BDO Spicers  
Level 8  
120 Albert Street  
Auckland City 1010

PO Box 2219  
Auckland 1140

Phone: 09 379 2950  
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*The Administrators act as agent of Icon without personal liability*

## 1. EXECUTIVE SUMMARY

### 1.1 Progress of Administration

We, Stephen Tubbs, Brian Mayo-Smith and Shaun Neil Adams were appointed as Joint Administrators of Icon Digital Entertainment Limited (Administrators Appointed) ("Icon") by special resolution of the directors of Icon on 19 November 2007, subject to an interim order from the High Court of New Zealand dated 20 November 2007 permitting our appointment as Administrators of Icon pending further orders. On 17 December 2007 the High Court of New Zealand, by a final order of the Court, confirmed our appointment as Administrators.

Given the financial position of Icon as at the date of the Administration, in particular no cash reserves and the significant monthly losses having been incurred throughout its trading history, our strategy for the administration was based on determining whether there was a genuine purchaser for all or part of the Icon business. A going-concern sale was seen as a way of maximising the value of the business and assets for all stakeholders.

We had been made aware by the directors of potential interest in the purchase of Icon's 7 Blockbuster stores. Accordingly, the Administrators continued to trade stores with a view to achieving a sale of these stores as a going concern.

Following our appointment, we undertook a viability review of all Icon stores which resulted in 22 stores being closed. To facilitate our strategy of seeking a going-concern sale, the administrators arranged funding for Icon to meet ongoing rent commitments, staff wages and to make limited purchases of "chart" stock.

We committed to trading through the Christmas period (historically Icon's busiest sales period) with a view to maximising revenues and the value of stock.

During the course of the Administration 19 expressions were received, which can be broken down into the following categories:

- (a) Parties interested in acquiring multiple Sounds stores.
- (b) Parties expressing interest in acquiring individual Sounds/Blockbuster stores.
- (c) Buyers of Games Plus stores.
- (d) Existing Blockbuster franchisees acquiring one or multiple Blockbuster stores.
- (e) Potential liquidators of the company's stock.

Confidentiality agreements were sent to those parties that expressed interest. 12 parties completed and returned confidentiality agreements. Information memorandums were sent to those parties who entered into confidentiality agreements with us.

After extensive discussions with all interested parties, a sale of all, or a substantial part, of Icon is unlikely. We are still pursuing potential sales of individual Sounds stores and certain Blockbuster stores.

A continual review of the financial and trading performance of individual stores has been undertaken in the post administration period, the consequence of which has been a further

reduction of stores with only 6 Sounds, 2 Games Plus and 6 Blockbuster stores remaining trading as at the date of this report.

We are continuing with sale negotiations for these individual stores whilst continuing the realisation of stock through retail sales and investigating potential bulk sales of stock to third parties.

## **1.2 Watershed Meeting of Creditors**

The purpose of the Watershed Meeting is to decide the future of Icon,

The watershed meeting of creditors of Icon (“Watershed Meeting”) will be held at **The Institute of Chartered Accountants, 27-33 Ohinerau Street, Remuera, Auckland** on **Thursday 31<sup>st</sup> January 2008** commencing at **11.30am**.

Registration for all creditors and employees will open at **10am**.

A copy of this report, together with other information relating to the administration of Icon can be found at the BDO Spicers website at [www.bdospicers.com/icon](http://www.bdospicers.com/icon)

## **1.3 Proposed Deed of Company Arrangement**

A Deed of Company Arrangement (“DOCA”) has not been proposed. Accordingly, creditors are not required to consider the merits of a DOCA.

## **1.4 Administrators’ opinion**

On the basis of all the information available to us, it is the opinion of the Administrators that it would be in the interests of Icon’s creditors for Icon to be placed into liquidation.

At the Watershed Meeting, creditors will vote on a resolution to place Icon into liquidation (“Liquidation Resolution”).

Should the Liquidation Resolution be passed, then unless there are any other nominations for the role of liquidator, the Administrators will become the liquidators of Icon (Section 239ABY).

## **2. APPOINTMENT OF ADMINISTRATORS**

### **2.1 Object of Administration**

The object of an Administration is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chance of the company, or as much as possible of its business, continuing in existence; or
- (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company (Section 239A).

### **2.2 Appointment of Administrators**

The directors of Icon passed a resolution on 19 November 2007 under Section 239(1)(a) that, in the opinion of the directors voting for the resolution, Icon was insolvent, or was likely to become insolvent at some future time.

By a further resolution under Section 239(1)(b), the directors appointed Messrs Brian Mayo-Smith, Shaun Adams and Stephen Tubbs as Administrators ("the Administrators").

### **2.3 Independence**

The Administrators were appointed after an application to the High Court in Auckland had been made for an interim order permitting the Administrators to be appointed. This application was necessary because BDO Spicers had, since April 2007, been engaged by Icon as investigating accountants on behalf of Westpac New Zealand Limited ("Westpac"), the principal creditor secured by a first ranking general security agreement. In July 2007, Westpac provided further funding assistance to the Company on the basis, inter alia, that BDO Spicers would continue to monitor Icon and report to Westpac. The administrators, BDO Spicers and BDO Spicers (Christchurch) Limited, have in the last two years also been appointed (by Westpac) on various assignments including as receivers and investigating accountants of other companies in respect of which Westpac held a general security interest. BDO Spicers corporate finance team have also acted on two assignments for the Bank over that same period. BDO Spicers does not act as either Westpac's auditors or accountants. In the work that BDO Spicers does for Westpac they are not Westpac's sole service provider. Westpac have a panel of firms that they instruct.

The Companies Act 1993 restricts an insolvency practitioner from being appointed in such circumstances without the leave of the court.

An order sanctioning our appointment was made by Associate Judge Abbott at 5.30pm on Tuesday 20 November 2007. The order allowed creditors to challenge the Interim order by serving a notice of opposition by 17 December 2007. On 17 December 2007 the High Court of New Zealand, by final order of the Court, confirmed our appointment as Administrators.

### **2.4 First meeting of creditors**

A meeting of creditors was convened pursuant to Section 293AN for the purposes of:

- (a) deciding whether to replace the Administrators; and

- (b) deciding on whether to appointment a creditors committee and, if so, to appoint its members.

This meeting was held on Friday 30 November 2007 with 47 creditors attending the meeting (either in person or by proxy), with proofs of debts filed for voting purposes totalling approximately \$25.8 million.

## 2.5 Formal business at the First Meeting of Creditors

As there were no nominations for an alternative Administrator, our appointment as Administrators was ratified.

A resolution was passed to appoint a creditors' committee comprising the following:

<b>Creditor</b>	<b>Represented By</b>
1.Roadshow Entertainment (NZ) Ltd	Susan Gibson
2.Milford Centre Limited	Michael Langdon
3.EMI Music	Chris Caddick
4.Universal Music	Adam Holt
5.Sony Computer Entertainment	Alfie Atilano
6.Westfield (NZ) Limited	Margot Innes
7.Zeon Print Services Limited	Garth Holmes
8.Employees	Jessica Hogan

## 2.6 Watershed meeting of creditors

The Administrators are required to convene a watershed meeting of creditors ("the Watershed Meeting") (Section 239AT).

Before the Watershed Meeting, we are required prepare a report on Icon's business, property, affairs and financial circumstances and provide opinions on certain matters. That is the purpose of this report.

This allows creditors to be in a position to vote at the Watershed Meeting on the options available to them, as to whether it would be in the creditors' interest and appropriate for:

- > Icon to execute a Deed of Company Arrangement;
- > the Administration of Icon to end; or
- > Icon to be placed into liquidation.

We advise that the Watershed Meeting of Icon will be held at **The Institute of Chartered Accountants, 27-33 Ohinerau Street, Remuera, Auckland** on **Thursday 31<sup>st</sup> January 2008** commencing at **11.30am**. Formal notice of the Watershed Meeting is attached to this report. **Registration for all Creditors and Employees for the Watershed Meeting will commence at 10.00am.**

A form for the Appointment of a Proxy has been sent to each creditor. If you intend to appoint another person to act on your behalf at the meeting, or if you are a corporate creditor, you are required to complete and return the **attached** proxy form appointing your



representative to **BDO Spicers, PO Box 2219, Auckland 1140**, or by facsimile to **09 303 2830** by no later than **4:00pm Wednesday 30 January 2007**.

A Proof of Debt Form has been sent to each creditor. The Administrators require creditors to complete the attached Proof of Debt Form and return it to **BDO Spicers, PO Box 2219, Auckland 1140**, or by facsimile to **09 303 2830** by no later than **4:00pm Wednesday 30 January 2007 if, and only if:**

- (i) the quantum of the debt you are owed by the Company has changed from that set out in the original proof of debt form that you delivered to the Administrators at the first meeting of the Company's creditors; or
- (ii) you have not yet provided the Administrators a proof of debt form.

**Please bring a copy of your proof of debt and proxy forms if you are attending the Watershed Meeting as this will be required for registration purposes. Copies of invoices are not required to be brought to the meeting.**

### 3 COMPANY BACKGROUND/HISTORY

#### 3.1 History of Icon

The business of Icon was formed following the merger of the business and assets of JSM Entertainment Limited ("JSM"), Games Plus Limited ("GPL") and Just Sounds Limited ("JSL").

JSM was incorporated on 23 January 1995 and its shareholders are:

Stephen Mark Dods and April Maria Dods as trustees of The JSM Trust	99	shares
Mr S Dods	<u>1</u>	share
	<u>100</u>	shares

The sole director of JSM is:

Name	Date Appointed	Status
Stephen Mark Dods	15 November 1999	Current

Pursuant to a management agreement between Blockbuster Australia Pty Limited, JSM Entertainment Limited and Stephen Mark Dods and Maria April Dods dated 15 November 1999, JSM had been appointed to manage the Blockbuster video stores franchise in New Zealand.

JSM had two core business activities. The first is the management of the Blockbuster video stores franchise system in New Zealand. The second is the ownership and management of seven Blockbuster video and DVD rental franchise stores, five in Auckland and one each in Rotorua and Christchurch.

GPL was incorporated on 26 August 2005. The company shareholders are:

Adrian Robert Day, Jo-Ann Margaret Day and Cornwell Trustees Limited as trustees of The Day Family Trust	48	Shares
Stephen Mark Dods, Maria April Dods and Bradley Trustee Company Limited as trustees of the Games Plus Trust	48	Shares
Stephen Dods	1	Share
Maria Dods	1	Share
Adrian Day	1	Share
Jo-Ann Day	1	Share
	<u>100</u>	Shares

The directors of GPL are:

Name	Date Appointed	Status
Adrian Robert Day		Current
Stephen Mark Dods		Current

GPL's core business was ownership and operation of specialist games retail stores in New Zealand having purchased the business from receivers of CPI (Central Park) stores in October 2005. GPL commenced trading in November 2005 and had six retail stores, five located in Auckland and one in Hamilton. GPL was managed out of JSM.

Icon was incorporated on 5<sup>th</sup> July 2006. The company's shareholders are:

Dods Trustees Limited as trustees	5,958	shares
Stephen Mark Dods	2,901	shares
Adrian Robert Day, Jo-Ann Day and Cornwall Trustees Limited as trustees	587	shares
Delmar Hugh Richards	553	shares
Adrian Robert Day	1	share
	<u>10,000</u>	shares

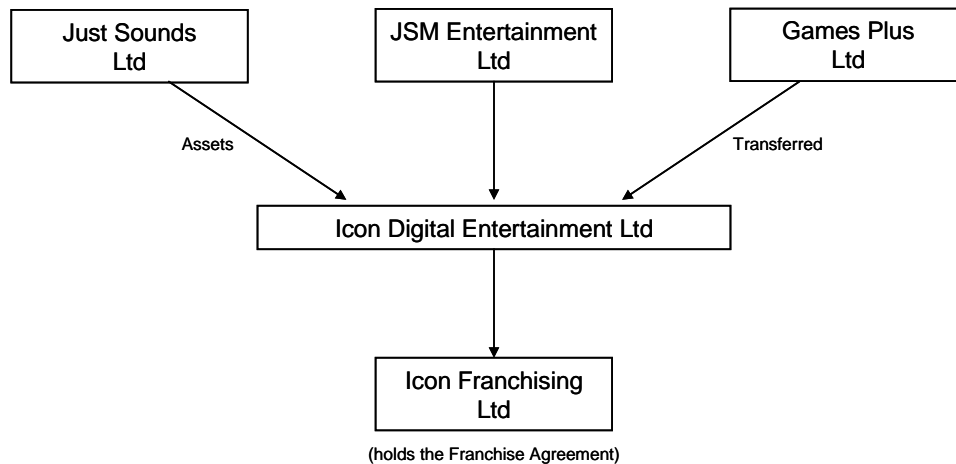
The directors of Icon are:

Name	Date Appointed	Status
Stephen Mark Dods	5 July 2006	Current
Adrian Robert Day	31 August 2006	Current

The purchase of Just Sounds Limited ("JSL") by Steve Dods' interests was completed on the 26 May 2006. The consideration paid was as follows;

Total Purchase Price	\$	\$
made up of		12,400,000
Tangible assets	3,500,000	
Intangible assets	900,000	
Stock in trade	8,000,000	
	<u>12,400,000</u>	

On 1 September 2006 the businesses (assets plus goodwill) of JSM, GP and Just Sounds Limited (JS) were amalgamated into Icon, but the transfer of the Blockbuster management agreement and franchise agreements were never authorised by Blockbuster Australia Pty Limited. Accordingly, certain assets continued to be held in the name of JSM and Icon only has an equitable interest in those assets.



### 3.2 Events leading up to Administration

Following the purchase of JSL and the amalgamation of JSM and GPL, Icon incurred substantial trading losses totalling \$3.7 million during its initial seven month trading period to 31 March 2007.

Management identified some 'one-off' costs/expenses that had been included in this period. However, even when allowing for the one off costs and expenses, Icon recorded a "normalised" loss of \$2.6 million in the period to 31 March 2007.

Given the level of losses, management reviewed overheads and made a number of changes to restructure and reduce these to a minimal level. The major overhead cost, excluding rent, was salaries and wages. A restructuring took place at Icon's Head Office to reduce staff head count, which decreased salaries from approximately \$160,000 to \$90,000 per month.

Similarly store closures were undertaken and wages costs at a store level were reduced from approximately \$201,000 to \$151,000 per fortnight.

Management advised that they instigated discussions with a group of overseas investors to inject \$3 million into the business. Initially the injection was to be made by way of equity, however subsequently the parties agreed the funds would be made available by way of debt. An agreement in principal with the investors was reached in May 2007; however the overseas investors withdrew from the proposed agreement at short notice in July 2007.

Steve Dods and his interests injected additional capital of \$2.7 million into the business and negotiated repayment plans with Icon's major creditors to facilitate the ongoing supply of new releases, which were considered critical for the business to continue trading. However, the anticipated increase in sales did not materialise and Icon's trading position continued to deteriorate.

The management accounts for the trading period from 1 April 2007 to 31 October 2007 show trading losses of \$5.8 million. Given the quantum of the current and historical trading losses, the exhaustion of both Icon's and the directors funding sources, a formal insolvency procedure became inevitable.

#### 4. SUMMARY OF COMPANY FINANCIAL POSITION AS AT 20 NOVEMBER 2007

The directors of Icon are required to provide to the Administrators a statement of company's position about Icon's business, property, affairs and financial circumstances ("Directors' Statement") (Section 239AF).

The directors were requested to complete the Directors' Statement pursuant to Section 239AF of the Act which was duly received from the directors of Icon on 17 December 2007. A summary is attached as Appendix A to this report. The Statement provides summary information on the assets and liabilities of Icon as at the date of the Administrators' appointment.

A copy of the Directors' Statement is required to be tabled at the Watershed Meeting of Creditors (Section 239AF).

We comment on the Directors' Statement as follows:

##### 4.1 Assets subject to Specific Charges

###### Goodwill

**Book Value - \$5,873,413**

**Estimated to realise- \$nil**

The Goodwill comprises the following;

Goodwill	
	\$
Purchase of Just Sounds Limited	900,000
Purchase of Games Plus Limited	5,000
Purchase of Blockbuster	2,684,000
Post Acquisition Goodwill	2,284,413
	<u>5,873,413</u>
Source : Management	

The directors consider that the Goodwill of Icon has no realisable value. Given that a sale of all or part of the business is unlikely we concur with the director's assessment.

###### Leasehold Property

**Book Value \$nil**

**Estimated to realise \$130,000**

The leasehold property recovery represents the premium paid to the Administrators for the Lambton Quay store.

**Fixtures and Fittings****Book Value \$5,235,352****Estimated to realise \$2,500,000**

The fixtures and fittings primarily comprise shop fittings at Icon's retail stores and are summarised below:

<b>Fixtures &amp; Fittings</b>	
	\$
Blockbuster *	1,340,000
Games Plus Limited *	690,000
Just Sounds Limited*	3,415,000
Additions/management account adjustments	1,049,010
Depreciation	(1,258,658)
	<u>5,235,352</u>
* Upon Purchase	
Source : Management	

The directors have attributed a realisable value of \$2.5 million to the fixtures and fittings on the basis of a going concern sale. Given that the fixtures and fittings comprise shop fittings, and that a sale all stores appears unlikely, the Administrators consider the realisable value of these assets will be significantly less than the directors have estimated.

**Motor Vehicles****Book Value- \$23,110****Estimated to realise- \$10,000**

Icon operates 8 vehicles all of which have high mileage. The Administrators consider the director's estimate of value to be reasonable.

**Computers****Book Value- \$201,602****Estimated to realise -\$10,000**

The book value attributed to computers is made up as follows;

<b>Computers</b>	
	\$
Blockbuster *	50,000
Games Plus Limited *	30,000
Just Sounds Limited*	40,000
Additions/management account adjustments	130,111
Deprecation	(48,508)
	<u>201,603</u>
* Upon Purchase	
Source : Management	

It is our experience that computers depreciate quickly and significantly. Accordingly, the Administrators consider the director's estimate of value to be reasonable.

### **Accounts Receivable**

**Book Value- \$334,965**

**Estimated to realise- \$183,416**

The accounts receivables comprise primarily an inter company account owing from Newmarket Entertainment Limited totalling \$178,339. The balance comprises voucher sales and Blockbuster franchisee invoices.

The directors have made general provisions against the receivables as set out below;

Current	50%
1 month	18%
2 month	100%
3+ month	100%

The Administrators consider the realisable value attributed to accounts receivables to be optimistic, given the inability of Icon to honour vouchers in the post administration period and the insolvent position of Newmarket Entertainment Limited which was placed in liquidation on 15<sup>th</sup> January 2008.

### **Stock**

**Book Value- \$7,707,796**

**Estimated to realise- \$3,886,277**

The director's statement of financial position states that the total stock on hand at cost was \$7.7 million comprising CD's, accessories, DVD's and games held at the individual Icon stores and at head office.

The directors estimated the realisable value of stock to be \$3.8 million on the basis of a "going concern" sale. Given this is unlikely, the Administrators consider the value attributed to stock to be optimistic.

### **Petty Cash**

**Book Value- \$25,099**

**Estimated to realise- \$25,099**

Petty cash comprises cash floats held at stores as at the date of our appointment.

**National Marketing Bank Account**  
**Book Value- \$29,981**  
**Estimated to realise- \$nil**

This represents monies banked under the Blockbuster management agreement. However the account was not designated as a "Trust Account" and the surplus has been set off against monies owed to Westpac.

**GST Refund**  
**Book Value- \$18,052**  
**Estimated to realise- \$18,052**

The directors have confirmed that a GST refund is due for the period to the date of Administration.

**Summary**

The directors estimate that there will be a significant shortfall (in excess of \$10 million) to secured creditors and that there will be no funds available to unsecured creditors.

**4.3 Historical financial analysis**

Icon commenced trading on 1 September 2006. Set out below is a summary of the trading performance extracted from the Management accounts.

**Period to 31 March 2007**

Summary Profit/Loss	Sep-06 \$000's	Oct-06 \$000's	Nov-06 \$000's	Dec-06 \$000's	Jan-07 \$000's	Feb-07 \$000's	Mar-07 \$000's	Total \$000's
Revenue	3,122	3,505	3,548	8,789	3,459	2,567	2,871	<b>27,861</b>
Gross Margin	902	1,241	306	2,962	1,195	532	675	<b>7,813</b>
GM %	28.9%	35.4%	8.6%	33.7%	34.5%	20.7%	23.5%	28.0%
OverHeads	1,471	1,512	1,569	1,868	1,753	1,711	1,916	<b>11,800</b>
NPBT	(569)	(271)	(1,263)	1,094	(558)	(964)	(1,205)	<b>(3,736)</b>

Source: Company management accounts

**Period to 31 October 2007**

Summary Profit/Loss	Apr-07 \$000's	May-07 \$000's	Jun-07 \$000's	Jul-07 \$000's	Aug-07 \$000's	Sep-07 \$000's	Oct-07 \$000's	Total \$000's
Revenue	2,230	2,313	2,176	1,943	1,935	1,767	1,755	<b>14,119</b>
Gross Margin	799	675	746	626	118	592	448	<b>4,004</b>
GM %	35.8%	29.2%	34.3%	32.2%	6.1%	33.5%	25.5%	28.4%
OverHeads	1,438	1,371	1,412	1,415	1,438	1,445	1,325	<b>9,844</b>
NPBT	(639)	(696)	(666)	(789)	(1,320)	(853)	(877)	<b>(5,840)</b>

Source: Company management accounts

**4.4 Summary**

According to Icon's Management Accounts losses totalled \$9,576,000 for the 14 Months to 31 October 2007.

## 5. CREDITORS' POSITION

As disclosed in the Directors Statement, Icon's creditors as at the date of appointment comprised the secured creditors, preferential creditors (i.e. employee entitlements) and trade creditors. Listed below are the amounts owing to each class of creditor:

<b>Creditors Summary</b>	
	<b>Estimated Claim</b>
	\$
Secured	16,372,410
Preferential	531,372
Unsecured	13,764,266
	<u>30,668,048</u>
Source : Management	

We set out below a breakdown of claims by category

<b>Secured Creditors</b>	
	<b>Estimated Claim</b>
	\$
Westpac New Zealand Limited	13,656,410
Pagamahal Trust	2,716,000
	<u>16,372,410</u>
Source : Management	

The Directors Statement includes interest payable to secured creditors as an unsecured claim. For the purposes of this report we have included the interest as a part of the secured creditors' claims.

<b>Preferential Creditors</b>	
	<b>Estimated Claim</b>
	\$
Employees	
Wages and salaries *	125,000
Holiday Pay	269,334
Inland Revenue Department	
PAYE	89,638
FBT	1,800
Lay-by creditors	45,600
	<u>531,372</u>
Source : Company records	

The arrears of wages and salaries have been paid by the Administrators.

<b>Unsecured Creditors</b>	
	<b>Estimated Claim</b>
	<b>\$</b>
Voucher Creditors	377,856
ACC	34,860
Sundry	4,410
Trade Creditors	6,469,469
Concert Tickets	52,442
National Marketing	27,139
Inter-company	6,798,090
	<u>13,764,266</u>

Source : Management

No provision has been made for additional claims from landlords in respect of the residual liabilities due under leases. Accordingly we consider it likely that unsecured creditors claims will increase.

## **6. ASSETS**

### **6.1 Administrator's approach**

Upon our appointment we commenced an immediate evaluation of Icon's assets:

- identified and located all of Icon's assets;
- immediately commenced a sale of business process;
- reviewed prior valuations;
- engaged independent valuation advice where necessary;
- requested confirmation of amounts outstanding by debtors; and
- identified leased assets.

### **6.2 Summary of sale process**

The business and assets of the Company were advertised for sale in The NZ Herald, Dominion Post and the Christchurch Press.

During the course of the Administration 19 expressions were received, which can be broken down into the following categories:

- (a) Parties interested in acquiring multiple Sounds stores.
- (b) Parties expressing interest in acquiring individual Sounds/Blockbuster stores.
- (c) Buyers of Games Plus stores.
- (d) Existing Blockbuster franchisees acquiring one or multiple Blockbuster stores.
- (e) Potential liquidators of the company's stock.

Confidentiality agreements were sent to those parties that expressed interest. 12 parties completed and returned confidentiality agreements. Information memorandums were sent to those parties who entered into confidentiality agreements with us.

In an effort to realise remaining stock in an expedient manner we have commenced negotiations with various parties.

We are considering the impact of a sale of this type against the potential realisation of stock through a retail store and we have undertaken an analytical review of the various estimated outcomes. At this stage, the Administrators consider it likely that the stock will be disposed of by a combination of retail and bulk sales.

In an effort to realise the most stock possible in a controlled manner we have during the pre-Christmas period and post-Christmas period commenced a staged discounting of stock.

### **6.3 Summary of asset values**

The Administrators are continuing to discuss sales of various Sounds, Blockbuster and Games Plus stores. At this stage it would be inappropriate to disclose commercially sensitive information in this report.

The Administrators consider to do so would prejudice the ability to maximise the return available to stakeholders.

## **7. ADMINISTRATION STRATEGY**

### **7.1 Administrators' actions to date**

Actions taken by the Administrators and their staff during the course of the Administration include:

- Having BDO Spicers representatives attend each of Icon's 40 retail sites.
- Supervising a physical stock take at each site.
- Recovering cash floats and third party items (such as Big Day Out tickets) from stores.
- Changing the locks and securing each premises.
- Preparing an inventory of fixed assets and arranging recovery where necessary.
- Arranging for insurance cover to be retained over assets at all sites.
- Obtaining detailed stock reports of ROT suppliers from the Point of Sale ("POS") system.
- Arranging meetings with major creditors to canvass support for the rehabilitation of Icon.
- Advising creditors of the appointment and affect of the Administration Order.
- Complying with the statutory requirements (such as notice and advertising).
- In conjunction with senior company management, reviewing the existing cash flow projections to determine the viability (or otherwise) of stores.
- Closing poor performing stores and making staff redundancies where appropriate.
- Repatriating stock and assets from closed stores.
- Completing the assignment of Lambton Quay lease to a third party.
- Convening a first meeting of creditors (pursuant to Section 239AN) on 30 November 2007.
- Reconstructing cash flow and forecasts to more accurately reflect the current trading prospects of the stores and the Administration costs.
- Communicating with the Creditors Committee.

With a view to maximising the realisation of the Company's assets, our strategy for the Administration has been as follows:

- Determining the appropriate level of stores to maximise sales pre-Christmas. This analysis resulted in the Administrators closing down 22 loss making stores to stem trading losses.
- Identify those stores which it was considered (based on previous trading) would achieve a positive cash contribution to 15 January 2008.
- Negotiate settlements with ROT claimants.
- Parallel import chart stock in order to drive sales.
- Attempt to find a buyer for the business and assets of Icon on a going concern basis, or undertake an orderly sale of Icon's assets including, but not limited to, the sale of

individual stores.

- Oversee the management and sorting of stock repatriated from closed stores.
- Where a prospective purchaser of an individual store has been obtained, arranged assignment of the relevant lease.
- Maximising the value of the 7 Blockbuster stores operated by Icon by continuing to trade.
- Maximise any value in the Games Plus brand (which is proving difficult given the nature of the gaming industry and the current market conditions facing games retailers).

## **7.2 Communication with stakeholders**

Documentation relating to the Administration has been posted in the Quick Links section on the BDO Spicers website, [www.bdospicers.com/icon](http://www.bdospicers.com/icon)

We have been in regular contact with Icon's major creditors since the date of appointment and have also dealt with communication from many of the smaller Icon creditors and extensive requests for information and updates.

## 8. INVESTIGATIONS

The Administrators are required to investigate the affairs of Icon for the purposes of determining whether there are issues which should be reported to the New Zealand Companies Office, and also for the purposes of recommending to the creditors the most appropriate exit strategy from the Administration.

On the basis that liquidation is recommended, it will ultimately be the responsibility of the Liquidators if appointed to consider, fully investigate, report on, and take the appropriate action in relation to voidable transactions, reckless trading or other possible offences.

### 8.1 Searches

A search of the Companies Office database for the directors indicates that they hold the following directorships with other companies, in addition to their role as directors of Icon:

#### Stephen DODS

Company No.	Company Name	Appointment
664314	JSM Entertainment Ltd	15/11/1999
1134563	JSM Eden Quarter Ltd	26/04/2001
1540870	Two and a Half Musketeers Ltd	30/07/2004
1613103	Five Pillars' Property Management Ltd	22/03/2005
1686686	Games Plus Ltd	26/08/2005
1855775	Icon Franchising Ltd	29/08/2006
1860706	Dods Trustees Ltd	30/08/2006
1967306	Newmarket Entertainment Ltd	17/07/2007

#### Adrian DAY

1269782	Fourdays Investment Ltd	18/02/2003
1686686	Games Plus Ltd	13/09/2005

### 8.2 Insolvency analysis

In the event of Liquidation, sections 292, 293, 297, 298 and 299 enables a Liquidator to pursue the recovery of certain monies or property from parties who have entered into transactions with Icon in the period prior to Liquidation.

In the case of sections 292, 293, 297, 298 and 299 of the Act recoveries may only be achieved where a company is unable to pay its due debts at the time of the transaction, or was unable to pay its due debts as a result of entering into the transaction.

Our preliminary investigations are incomplete and further investigations are required to determine whether there may have been voidable transactions and the likelihood of successfully recovering from the relevant parties.

### **8.3 Insolvent and reckless trading**

Sections 131 and 133 to 137 of the Act provide Directors owe certain duties to a company, including:

- (a) a duty not to allow the business of the company to be carried on in a manner likely to create serious risk of substantial loss; and
- (b) a duty not to agree to the company incurring an obligation that the director reasonably believes the company will be unable to perform.

An insolvent or reckless trading action is only available should the relevant company be placed into Liquidation.

Action is only warranted if sufficient evidence is available to support such an action and the personal financial position of the director(s) justifies the commercial risk associated with litigation. An insolvent trading action is a complicated and generally expensive matter to pursue.

Further investigation into the solvency of Icon and whether it is commercially sound to pursue the director(s) for a potential insolvent trading action will occur in the event that the Icon is placed into Liquidation.

### **8.4 Personal financial position of the directors**

In determining the likely recoveries from Icon's directors, the directors' capacity to pay any judgement claim(s) will need to be established. We understand that the Directors have given personal guarantees to a number of Icon creditors.

### **8.5 Costs**

The costs of pursuing an insolvent trading claim and/or voidable transactions would come from the assets of Icon or funding from creditors of Icon. Alternatively, the Liquidators could seek litigation funding to pursue any of the above actions subject to the approval of creditors.

### **8.6 Offences**

Pursuant to Section 239AI of the Act, if the Administrators become aware of a possible offence(s) under the Act committed by a past or present director(s), officer(s) and/or shareholder(s) of Icon, the Administrators are required to report these to the Registrar of Companies.

At this stage the Administrators do not propose to lodge a report pursuant to this provision. In the event that Icon is placed into liquidation there are matters that warrant further investigation. If that investigation reveals that possible offences have been committed by Icon or any director(s) of Icon the Liquidator will be obliged to lodge a report with the Registrar of Companies pursuant to Section 258A of the Act.

## **9. ALTERNATIVES AVAILABLE TO CREDITORS**

Pursuant to Section 239ABA of the Act, creditors are required at the Watershed Meeting to resolve one of the following outcomes.

- (a) resolve that the company execute a Deed of Company Arrangement “DOCA” specified in the resolution (and it does not matter that the deed to be executed differs from any proposed deed of which details were given in the notice of the meeting); or
- (b) resolve that the Administration should end; or
- (c) unless the Company is already in Liquidation, by resolution appoint a liquidator.

The Administrators make the following comments:

### **9.1 That Icon enter a DOCA**

A DOCA, if approved by creditors, binds all creditors of Icon, arising on or before the date of the appointment of the Administrator unless otherwise specified.

No DOCA has been proposed for consideration by creditors. Accordingly there is no requirements for creditors to consider the merits or otherwise of a DOCA.

### **9.2 That the Administration ends**

It is possible that creditors may consider ending the Administration which would return Icon to the control of its directors. Icon’s directors would resume control of the assets and be able to deal with them as they deem appropriate. However creditors would be able to initiate legal proceedings for the recovery of their debts, or petition to the Court to have Icon placed into liquidation.

Should creditors resolve that the Administration be terminated, Icon would be placed in a similar position to that prior to the appointment of the Administrators.

### **9.3 That Icon be placed into Liquidation**

Should creditors resolve to place Icon into Liquidation at the Watershed Meeting, the Liquidation will, pursuant to Section 241A(1)(d) of the Act, be deemed to have commenced on the date of the resolution appointing a Liquidator to the Company.

Should creditors resolve to wind up Icon, Icon is taken to have nominated Messrs Brian Mayo-Smith, Shaun Adams and Stephen Tubbs (the Administrators) to be the Liquidators.

The Liquidators are required to realise and distribute the assets in accordance with the Act and will also be required to complete a thorough investigation into Icon’s past dealings and affairs, and the past actions of the directors and report as appropriate.

The effects of the Liquidation of Icon include:

- the moratorium available under the Administration process will cease;
- the Liquidator will be empowered to recover potential voidable transactions;
- the Liquidator will be required to conduct an investigation into the affairs of Icon, and if necessary lodge a report with the Registrar of Companies.

## **10. RECOMMENDATION**

It is the recommendation of the Administrators that Icon be placed in liquidation at the Watershed Meeting.

### **10.1 Reasons for recommendation**

The above recommendation is made on the basis that no DOCA has been proposed and it is not in the interests of creditors for control of Icon is returned to the Directors.

### **10.2 Estimated return to creditors**

As a result of the ongoing uncertainty as to the ultimate realisation values of assets, it is not possible to determine the level of any distribution to either preferential or secured creditors at this time.

However, in view of the potential shortfall for secured creditors it is clear that no funds will be available to unsecured creditors.

## **11. ADMINISTRATORS' OPINION**

### **11.1 Introduction**

Pursuant to Section 239AU of the Act this is the Administrators' statement setting out the Administrators' opinion regarding:

- whether it would be in the creditors' interest for the company to execute a deed of company arrangement;
- whether it would be in the creditors' interest for the administration to end; and
- whether it would be in the creditors' interest for the company to be placed in liquidation,

and the reasons for those opinions.

### **11.2 No proposed DOCA:**

No DOCA has been proposed. Accordingly, creditors are not required to consider the merits of a DOCA.

### **11.3 Ending the Administration**

It is our opinion that it would not be in the creditors' interest for the Administration to end. If the Administration were to end, Icon would be returned to the control of the directors in circumstances which have not materially changed from the point at which those same directors resolved to appoint voluntary administrators.

### **11.4 The Company be placed into Liquidation**

On the basis of the information available to us, it is the opinion of the Administrators that it would be in the interests of Icon's creditors for Icon to be placed into liquidation.

The above recommendation is made on the basis that:

- no DOCA has been proposed and clearly it is not in the interests of creditors for control of Icon is returned to the Directors.
- Liquidation will allow a proper investigation of Icon's affairs.

### **11.5 Summary**

**We, Stephen Tubbs, Brian Mayo-Smith and Shaun Neil Adams, having regard to the information available to us, have formed the opinion that it would be in the creditors' interest for Icon to be placed into liquidation.**

Should creditors have any queries in relation to any aspect of this report, please contact Shaun Adams on either email : [shaun.adams@akl.bdospicers.com](mailto:shaun.adams@akl.bdospicers.com) or telephone 09 379 2950.

DATED this 22nd day of January 2008

A handwritten signature in black ink, appearing to read 'Shaun Adams', written over a horizontal line.

**Joint Administrator**

**Director's Summary of Company Financial Position as at 20 November 2007** Appendix A  
**ICON DIGITAL ENTERTAINMENT LIMITED (ADMINISTRATOR APPOINTED)**

	Book Value	Estimated to Realise
	\$	\$
<b>Assets subject to Specific Charges</b>		
Goodwill	5,873,413	0
Leasehold Property	0	130,000
Fixtures & Fittings	5,235,352	2,500,000
Motor Vehicles	23,110	10,000
Computers	201,603	10,000
	<u>11,333,478</u>	<u>2,650,000</u>
Less Liability to Westpac NZ Limited	<u>(13,584,410)</u>	<u>(13,584,410)</u>
<b>Shortfall carried forward</b>	<b><u>(2,250,932)</u></b>	<b><u>(10,934,410)</u></b>
Assets subject to specific securities	2,989,856	2,989,856
Less liabilities to Creditor(s)	<u>(2,751,231)</u>	<u>(2,751,231)</u>
<b>Surplus carried forward</b>	<b><u>238,625</u></b>	<b><u>238,625</u></b>
<b>Assets Not subject to Specific Charges</b>		
Accounts Receivable	334,965	183,416
Stock	4,717,940	3,647,652
Petty Cash	25,099	25,099
National Marketing Bank Account	29,981	0
GST Refund	18,052	18,052
	<u>5,364,662</u>	<u>4,112,844</u>
<b>Estimated total assets available for Preferential Creditors</b>	<b><u>5,364,662</u></b>	<b><u>4,112,844</u></b>
<b>Less Preferential Creditors</b>		
IRD - PAYE	(89,638)	(89,638)
Employees- Wages and Holiday Pay	(394,334)	(394,334)
Layby	(45,600)	(45,600)
FBT	(1,800)	(1,800)
	<u>(531,372)</u>	<u>(531,372)</u>
<b>Total Preferential Creditors</b>	<b><u>(531,372)</u></b>	<b><u>(531,372)</u></b>
<b>Estimated surplus as regards Preferential Creditors</b>	<b><u>4,833,290</u></b>	<b><u>3,581,472</u></b>
<b>Debts secured by General Security Agreement(s)</b>		
Westpac shortfall carried forward	(2,250,932)	(10,934,410)
Pagamahal Trust	<u>(2,700,000)</u>	<u>(2,700,000)</u>
	<u>(4,950,932)</u>	<u>(13,634,410)</u>
<b>Estimated deficiency of assets carried forward</b>	<b><u>(117,642)</u></b>	<b><u>(10,052,938)</u></b>
<b>Less Unsecured Creditors</b>	<b><u>(13,852,266)</u></b>	<b><u>(13,852,266)</u></b>
<b>Estimated Deficiency to Creditors</b>	<b><u>(13,969,908)</u></b>	<b><u>(23,905,204)</u></b>

This statement has been prepared on the information provided by the Directors of the Company and contained within the Company records. BDO Spicers, partners and Staff accept no responsibility whatsoever for accuracy or otherwise of the information contained therein.