



The definition of independent production for the purpose of granting public supports

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Why the interest?

NO DEFINITION AT EU LEVEL



- National definition used in the context of the obligations to promote European works, under **Article 17 of the AVMSD** and its transposition into national law
- Independence criteria set by national and regional support schemes such as **film funds**

Definition for the purpose to grant public fundings to independent productions:



Criteria often set in Cinema legislations, or Film Funds Guidelines

- The texts can directly define the independence, or
- Set eligibility criteria requiring the independence of applicants

Criteria:

Financial independence



Ownership



Producer's
content supply
quota to AVMS
provider



Producer's ability
to finance (parts
of) the work



Operational
independence



Ability to retain
IPR



The same criteria guide also national audiovisual legislations for the promotion of European independent works.

The wording:

Financial independence

Ownership

- Limited/no capital participation by AVMS providers in production company
- Limited/no capital participation by/in AVMS providers
- Limited/no capital participation by company holding AVMS providers shares
- Limited/no capital participation by AVMS providers or subsidiaries
- Limited/no capital participation by/in AVMS providers' partners
- Capital participation by AVMS providers but not in the work's financing plan

Producer's content supply quota to AVMS provider

- Limitations of sales to same AVMS providers

Producer's ability to finance (parts of) the work

- Limited AVMS provider financing in work production
- Self-financing ability

Operational independence

Ability to retain IPR

The wording:

Financial independence

Ownership

Producer's content
supply quota to
AVMS provider

Producer's ability
to finance (parts
of) the work

Operational
independence

Ability to retain
IPR

- Distinctive legal personality
- Limited/ no AVMS provider control over production company
- Limited/no control by/in AVMS providers
- Limited/no AVMS provider control over work production
- Sufficient commercial freedom of applicants

The wording:

Financial independence

Ownership

Producer's content
supply quota to
AVMS provider




Producer's ability
to finance (parts
of) the work

Operational
independence

Ability to retain
IPR

Holding/retaining
the economic rights
from copyright






Existence of a definition:

-  Use of independence
-  Absence of a definition of independence specific to public supports
-  AVMSD definition used in national public support schemes



24 countries with definition

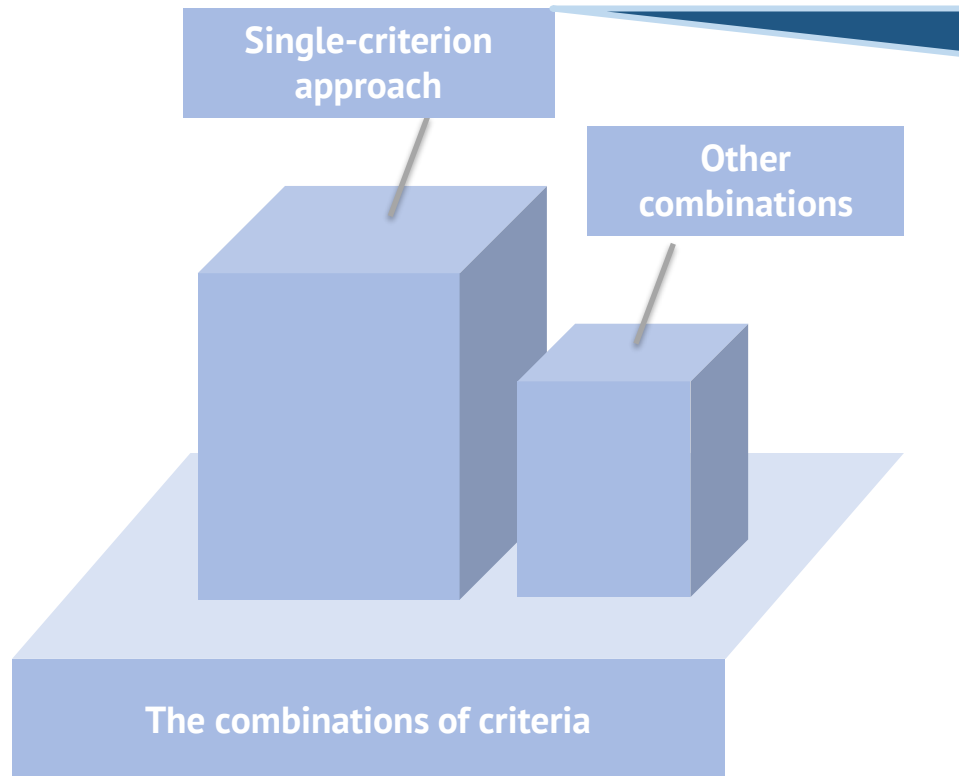
Majority use of the ownership criterion

-  Refer to ownership as a criterion
-  No use of ownership
-  Three criteria not detailed
-  Absence of definition of in the context of public funding
-  Using the definition of independence for the purpose of promoting European works (AVMSD)



**15 countries with
ownership**

Most common scenario: single criterion approach



Used by 11 countries

4 countries: ownership criterion

3 countries: Ownership or operational criterion

2 countries: IPR criterion

1 country: Ownership or content supply criterion

1 country: Operational criterion

Conclusion

Variety of approaches to defining the concept of independence for the purpose of granting public funds



The relationship between independent producers and third AVMS providers

Scenario:

- A production company is partially owned by an AVMS provider “A”, and
- This same production company produces content commissioned by a different AVMS provider “B”.
- Would the production company in question be considered as independent or not under national legislation in the context of its relationship with the AVMS “B”?



Thank you!

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➤ <https://rm.coe.int/independent-production-study-2025/1680b52643>