



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

Conecta Creative Lab, Conecta Fiction,  
Cuenca, Spain, 16 June 2025

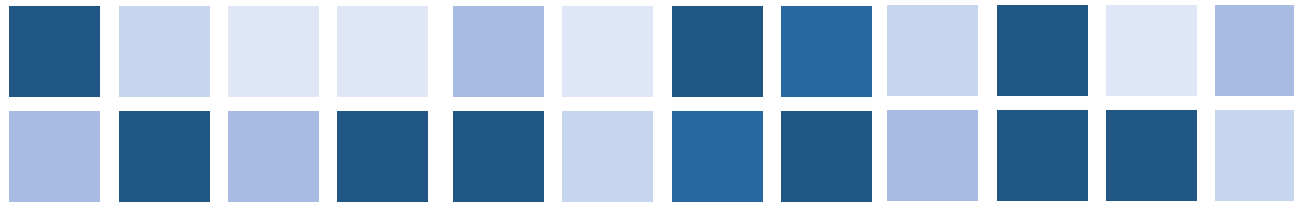
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## Why the interest?

# 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.*

## 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

## 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*

## 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**

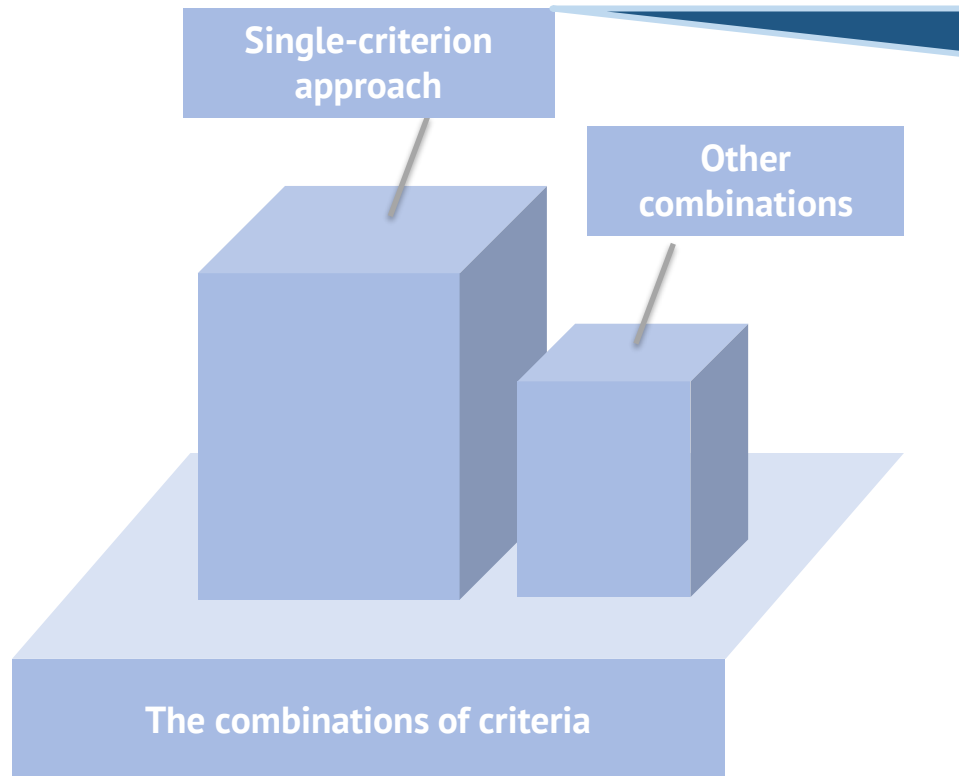


## Majority use of the ownership criterion

-  *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)*



## 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**



## ***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”?*



## Austrian & Danish Film Funds

### Upstream relationship in focus

*Producer has a partial  
financial/operational  
relationship with an  
AVMS provider*

*Producer is (or not)  
independent as per the  
film fund's rules*

### IN PRACTICE

#### What is examined

*AVMS provider A*

*Producer*

#### What is not

*Other downstream  
relationship*



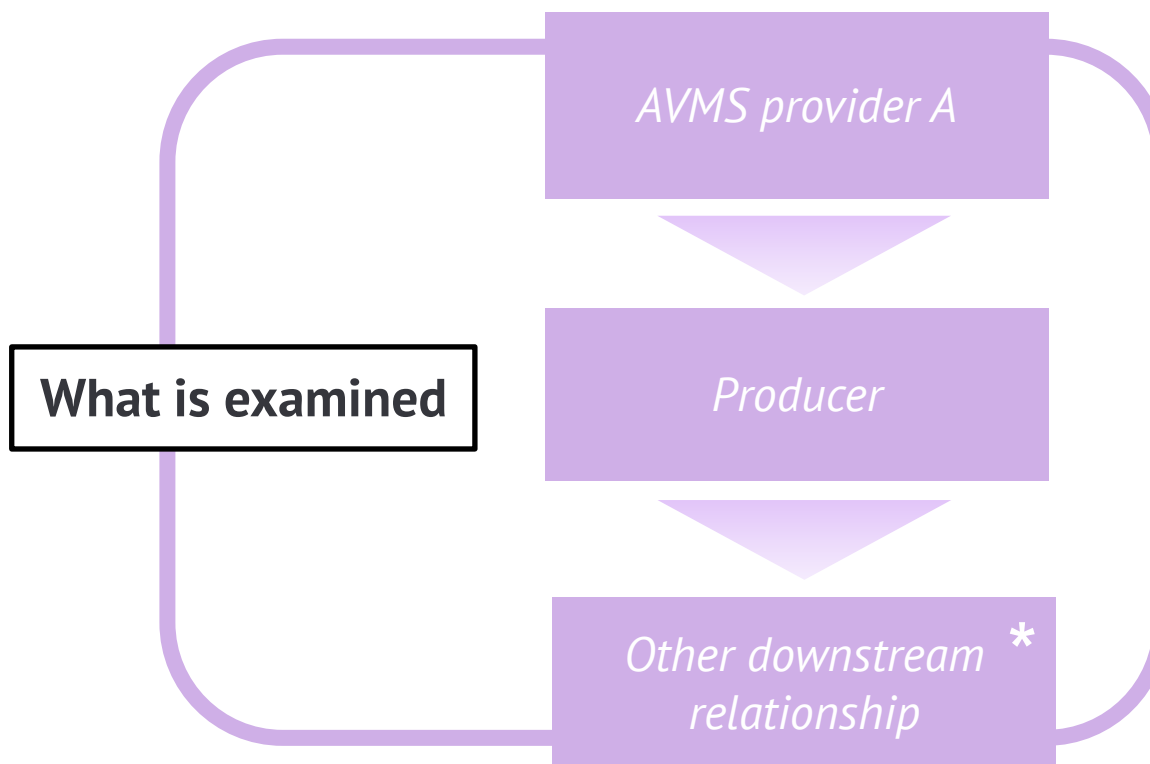
Norwegian Film Fund

## Case-by-case analysis

*Producer has a partial financial/operational relationship with an AVMS provider*

*Producer is (or not) independent as per the film fund's rules*

## IN PRACTICE



**\* Independence may remain when producer supplies content to multiple services.**

# SELECTED EXAMPLES FROM THE PUBLIC SUPPORT CONTEXT

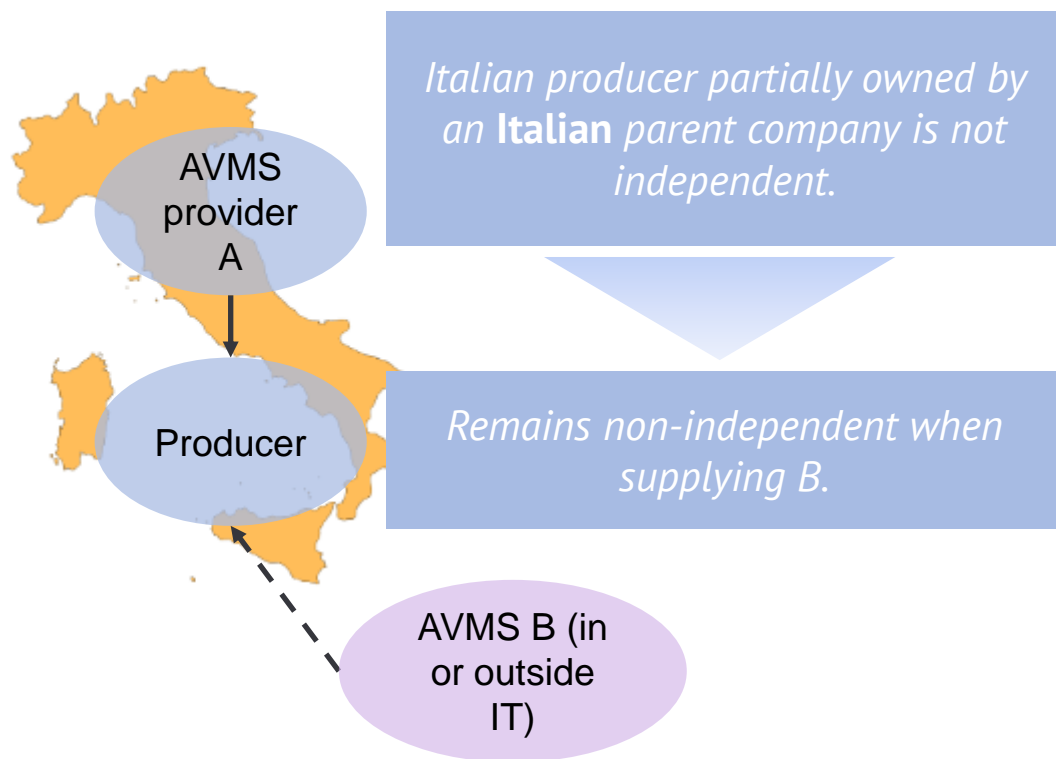
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Italy

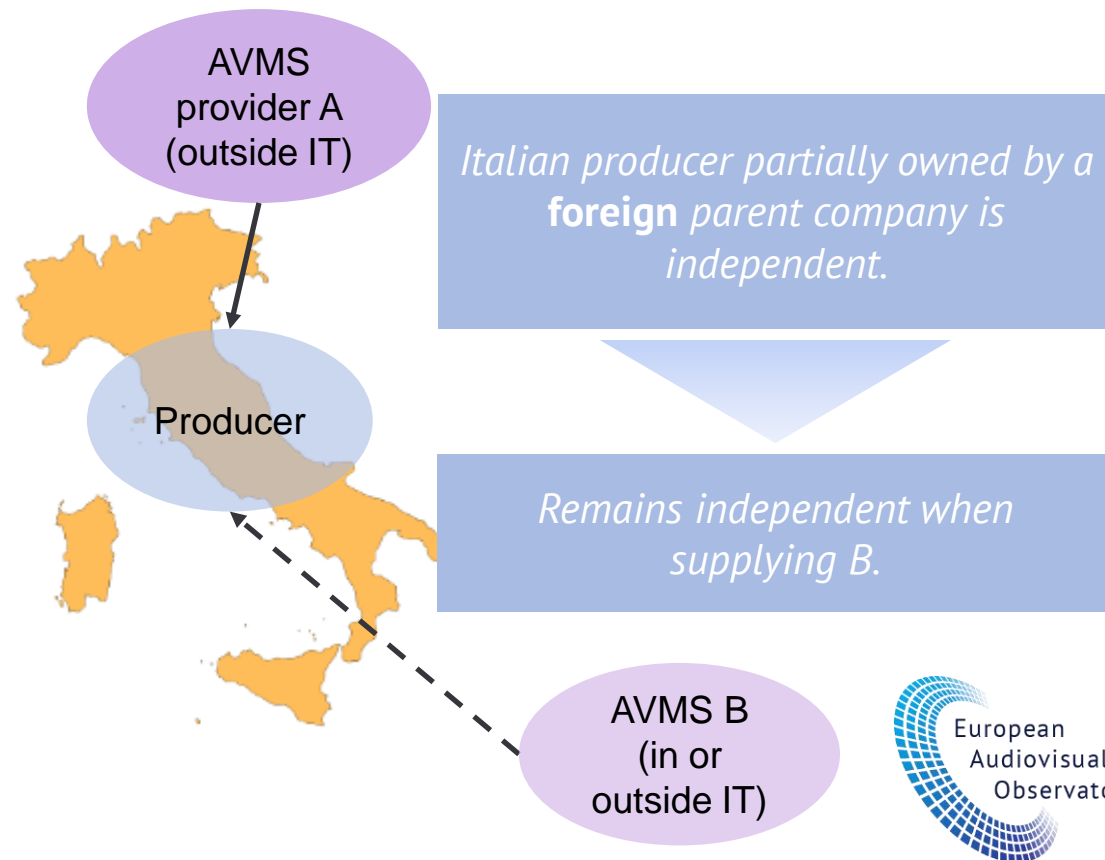
## Scenario 1

*Upstream relationship takes place in Italy*



## Scenario 2

*Upstream parent company does not broadcast in Italy*



# Thank you!

## For more information see the full report!

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