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4.10.1. Key findings

Notions	Existence of definitions / rules
Independent production	No
Independent producer	Yes
Legal provisions concerning the transfer or cession of authors'/performers' rights to the producer (e.g. legal presumption, etc.) (Relationship author-producer)	Yes ⁷⁰
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of the independent producer of audiovisual works (natural or legal person) is related to its operational and financial independence from broadcasters.
- The independent producer undertakes the economic risk and the coordination tasks for the production of the audiovisual works and has no obligation to exclusively allocate its production to one and the same broadcaster.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

⁶⁹ The summary on Spain incorporates feedback received from Pedro Domingo Martín Contreras, senior legal advisor at the Directorate of Telecommunications and Audiovisual at the National Commission of Markets and Competition (*Comisión nacional de los mercados y la competencia* – CNMC), during the checking round with the national regulatory authorities.

⁷⁰ According to Article 88 (1) of the Spanish Copyright Act 1996/2022:

Without prejudice to the rights accruing to the authors, the contract for the production of the audiovisual work shall be presumed to assign to the producer, subject to the limitations specified under this Title, the exclusive rights of reproduction, distribution and communication to the public, and also the rights of post-synchronisation or subtitling of the work. Nevertheless, for cinematographic works the express authorisation of the authors shall always be necessary for their exploitation by means of the furnishing to the public of copies in whatever mode or format for use within the family circle, or by means of communication to the public by broadcasting.

See: *Texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes (aprobado por el Real Decreto Legislativo N° 1/1996 de 12 de abril de 1996, y modificado por el Real Decreto-ley N° 6/2022, de 29 de marzo de 2022)* available at <https://www.wipo.int/wipolex/en/text/584952>

4.10.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 112 of Law 13/2022 on Audiovisual Communication (<i>Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual</i>) ⁷¹⁻⁷²	<p>A natural or legal person shall be deemed to be an independent producer of audiovisual works for the purposes of the obligations to promote European and independent works when the following criteria are met:</p> <ul style="list-style-type: none"> a) (s)he has no operational or business link to an audiovisual media service provider who is legally obliged to contribute to finance the production of European works; b) (s)he must undertake the economic risk, as well as the coordination tasks for the production of the audiovisual works either on his/her own initiative or at the request of an audiovisual media service provider; c) it makes them available to the aforesaid audiovisual media service provider. <p>It is presumed that there is a stable link between an independent producer and a broadcaster when both entities are part of the same group of companies (in accordance with the Spanish Code of Commerce), or when the contractual autonomy of these entities is limited on the basis of exclusivity agreements.</p>

4.10.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁷¹ <https://www.boe.es/eli/es/l/2022/07/07/13/con>

⁷² As established in Article 112 of Law 13/2022, the definition of “independent producer” is only for the purposes of that Chapter related to the promotion of European audiovisual works and linguistic diversity. In fact, in other areas, such as the promotion of cinema (Law 55/2007 of 28 December 2007, on Cinema) there is in use another definition of independent producer – see Article 4(n) at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-22439>