



4.16. IE – Ireland⁹⁷

4.16.1. 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 ⁹⁸
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes, for PSM-commissioned content

- The Broadcasting Authority of Ireland (BAI) was dissolved on 15 March 2023 and has been replaced by *Coimisiún na Meán* (CnaM).
- The BAI rules are still in place and are now the CnaM rules.
- Irish legislation foresees that the CnaM will draft criteria as to the definition of independence when preparing a scheme for funds to be granted to support the production of European works.
- To that end, the regulator should take into account the ownership status of the production company, the number of programmes supplied to one and the same provider, as well as the ownership of rights.
- In the case of the public service broadcaster (PSB) commissioning independent producers to produce content, negotiations on the retention of IP rights shall be driven by the principles established in the Code of Fair Trading Practice: Guidance for Public Service Broadcasters, published in 2017 by the CnaM's predecessor, the BAI.
- According to the BAI Code, the parties shall agree on the acquisition of all platform rights by the PSB for a maximum duration of five years.

⁹⁷ The summary on Ireland incorporates the feedback received from Declan McLoughlin, senior manager at the Media Commission (*Coimisiún na Meán*), during the checking round with the national regulatory authorities.

⁹⁸ Article 124(1) of the Copyright and Related Rights Act 2000 states that:

Without prejudice to the right of an author to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between an author or a prospective author of a copyright work and a film producer, the author or prospective author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the work of the author in the film.

See the text available at <https://www.wipo.int/wipolex/en/text/520188/>.



4.16.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Article 159F(5) of the Online Safety and Media Regulation Act 2022 (OSMR Act) ⁹⁹	According to Article 159F(5), the CnaM will prepare a scheme to support the production of European works, in which the Media Commission will determine the independence criteria for a producer of European Works. The OSMR Act advises the regulator to have regard to the following criteria: a) the ownership structure of the production company; b) the number of programmes supplied by the producer to the same media service provider; c) the ownership of the rights on a specific programme (the right to broadcast the programme, the right to make it available to the public or the right to use the programme for commercial purposes).

4.16.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
Article 5.2 of the Code of Fair Trading Practice: Guidance for Public Service Broadcasters (2017) ¹⁰⁰ This BAI Code offers guidance to PSBs on the format of a code of fair trading practice in which they shall set out the principles the PSBs shall apply when agreeing terms for the commissioning of programming material	A PSB is deemed to commission the production of an audiovisual work from an independent producer when the PSB finances at least 25% of the total production costs before work on the making of the programme commences. When agreeing terms for the commissioning of programming material from independent producers, a PSB may negotiate on the retention of IP rights by the producers: a) For primary rights (“all platform rights”), ¹⁰¹ the BAI/CnaM Code advises that the parties agree on the acquisition by a PSB of all platform rights for Ireland for five years, unless otherwise agreed by the parties. Additional time-limited primary rights may be acquired by the PSB for broadcasting to the Irish diaspora ¹⁰² for the fulfilment of the PSB’s objective. The BAI Code includes the possibility of a time extension. b) For “other rights” (other than those covered under “all platform rights”), ¹⁰³ the BAI/CnaM Code advises the parties to negotiate these

⁹⁹ <https://data.oireachtas.ie/ie/oireachtas/act/2022/41/eng/enacted/a4122.pdf>

¹⁰⁰ https://www.bai.ie/en/media/sites/2/dlm_uploads/2019/11/20171115_BAIGuidance_COFTP_vfinal_AR.pdf

¹⁰¹ Any platform on which the content might be broadcast/streamed to include radio, television and online platforms such as websites, the RTÉ Player for example. This also includes content broadcast only online (e.g. RTÉ Gold, music content only broadcast online).

¹⁰² Terminology used in Irish legislation to designate Irish communities outside Ireland.

¹⁰³ Other rights here may include, for example, marketing rights, selling rights, usage and archival rights, etc.



from independent producers.	rights separately should the independent producer wish to make them available. The BAI/CnaM Code forbids the insertion in the PSB code of the automatic bundling of rights as between primary and other rights (unless so agreed by the parties).
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