



4.17. IT – Italy¹⁰⁴

4.17.1. Key findings

Notions	Existence of definitions/rules
Independent production	Yes
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)	No ¹⁰⁵
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes

¹⁰⁴ The summary on Italy incorporates feedback received from Francesco Di Giorgi, Digital Services Directorate, AGCOM (*Autorità per le garanzie nelle comunicazioni*), during the checking round with the national regulatory authorities.

¹⁰⁵ In the Italian legislation the ownership of a cinematographic work belongs to the producer from the time of its creation. Article 45 of the Italian Copyright Act states that:

Within the limits set out in the following Articles, the exercise of the exploitation rights in a cinematographic work shall belong to the person who has organised the production of the work. The person who is mentioned in the cinematographic film as the producer shall be deemed to be the producer of the cinematographic work. If the work is registered in accordance with the second paragraph of Article 103, the presumption established by that Article shall prevail.

The terms “cinematographic works” and “audiovisual works” shall be considered as included in the generic term of “works of cinematographic art” as referred to in Article 2 (6) of the abovementioned Copyright Act. The same presumption is stipulated in the case of performers. According to Article 84 (1) of the abovementioned Copyright Act:

Unless otherwise agreed by the parties, performers shall be presumed to have assigned the rights of fixation, reproduction, broadcasting (including communication to the public by satellite) and distribution and also the right to authorise rental, on the conclusion of the contract for the production of a cinematographic or audiovisual work or sequence of moving images.

See Law No. 633 of 22 April 1941 on the Protection of Copyright and Neighbouring Rights (as amended up to Law No. 142 of 21 September 2022) available at

<https://www.wipo.int/wipolex/en/legislation/details/21564>



- The concept of the independent producer of audiovisual works is related to its operational and financial independence from broadcasters, as well as to the retention of secondary rights on works produced.
- The operational independence of the production company is assessed in accordance with the criteria set for the evaluation of dominant influence (*“controllo”*) in Article 51 (a)-(c) of the Legislative Decree transposing the EU AVMS Directive. The existence of a dominant influence is generally assessed in relation to the dominant influence over the votes of the production company, over the managerial decisions, as well as over its financial, organisational or economic strategy.
- According to AGCOM’s 2011 Regulation, subject to new implementation by the newly constituted Ministry for Business and Made in Italy, when an independent producer enters into a relationship with an AVMS, the assignment of secondary rights is subject to time constraints (assignment for a certain exploitation period). After the expiry of the concluded exploitation period, the secondary rights return to the independent producer.
- The concept of “secondary rights” is not determined by law. During negotiations for the exploitation of an audiovisual work, the parties may freely designate a category of exploitation rights as “secondary” based on criteria related to time and/or to territorial constraints. Usually, secondary rights are assigned to a media service provider for the exploitation of an audiovisual work either outside the Italian territory or within the Italian territory in the case that the AVMS providers – as agreed by the parties – do not own primary rights to the work.

4.17.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 3 (1) (t) of the Legislative Decree transposing the EU AVMS Directive, No. 208, 8 November 2021 (<i>Decreto legislativo 8 novembre 2021, no. 208</i>) ¹⁰⁶	A producer of audiovisual works (natural or legal person) shall be deemed independent when the following criteria are met: a) (s)he is not controlled by or connected to a broadcaster subject to Italian jurisdiction; b) (s)he does not allocate for a period of three (3) consecutive years more than 90% of the total production, determined on the basis of its annual revenues, to one and the same broadcaster; c) (s)he holds secondary rights to the works produced.
Article 3 of AGCOM’s Resolution No. 424/22/CONS of 14 December 2022 Regulation on programming and investment obligations for European works and works of	The European Quota Regulation further specifies that newly established production companies which are not controlled by, or associated with, audiovisual media service providers subject to Italian jurisdiction, are considered to be independent

¹⁰⁶ <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg>



<p>independent producers (European Quota Regulation)(<i>Allegato A alla Delibera AGCOM n. 424/22/CONS del 14 dicembre 2022, recante Regolamento in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti</i>)¹⁰⁷</p>	<p>producers for the first three years from the date of their establishment.</p> <p>The existence of a dominant influence and/or connection between a production company and a broadcaster can be assessed by reference to the provisions of Article 51 (9)-(10) of the Legislative Decree. More specifically, according to Article 51 (10) (a)–(c) of the Legislative Decree:</p> <p>The form of dominant influence exists, unless proven otherwise, when one of the following situations applies:</p> <p>a) the existence of a person who, alone or on the basis of concerted action with other shareholders, has the ability to exercise the majority of votes at the ordinary shareholders' meeting or to appoint or dismiss the majority of directors;</p> <p>b) the existence of relationships, including between shareholders, of a financial, organisational or economic nature capable of achieving any of the following effects:</p> <ol style="list-style-type: none"> 1) the transmission of profits and losses; 2) the coordination of the management of the enterprise with that of other enterprises for the pursuit of a common purpose; 3) the allocation of greater powers than those derived from the shares or units held; 4) the attribution to persons other than those entitled under the ownership structure of powers in the selection of directors and managers of enterprises; <p>c) the subjection to common management, which may also result from the characteristics of the composition of the administrative bodies or by other significant and qualified elements.</p>
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4.17.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 57 (3) (a) of the Legislative Decree transposing the EU AVMS Directive</p> <p>Annex A of AGCOM Resolution No. 30/11/CSP of 3 February 2011, Regulation concerning the criteria for the temporary limitation of the use of secondary rights acquired by</p>	<p>According to Italian legislation the parties may freely determine which category of the exploitation rights of an audiovisual work should be considered as primary or secondary rights. The categorisation is usually based on criteria related to time and/or to territorial constraints. Agreements seeking to categorise all rights as “primary” are prohibited.</p> <p>In that sense, AGCOM detailed the criteria for the temporary limitation of the use of secondary rights in 2011. AGCOM's 2011 regulation should be replaced by a new implementing text from the Ministry of Business and Made in Italy since AGCOM has not</p>

¹⁰⁷ <https://www.agcom.it/documents/10179/28826746/Allegato+22-12-2022/946cbb07-0769-4b65-8579-bbde8c4a7662?version=1.0>



<p>audiovisual media service providers, pursuant to Article 44, paragraph 5, of the audiovisual media services code (Legislative Decree No. 177/2005) (<i>Allegato A alla delibera n. 30/11/CSP del 3 febbraio 2011, Regolamento concernente i criteri per la limitazione temporale di utilizzo dei diritti secondari acquisiti dai fornitori di servizi di media audiovisivi, ai sensi dell'art. 44, comma 5, del Testo unico dei servizi di media audiovisivi e radiofonici</i>)¹⁰⁸</p>	<p>been competent since 2017 following a legislative decree dated 7 December 2017 on the “reform of the legislative provisions regarding the promotion of European and Italian works by audiovisual media service providers”.¹⁰⁹</p> <ul style="list-style-type: none">– “primary rights” are considered to be the rights for the exploitation of an audiovisual work exclusively in the Italian territory and on specific media service platforms. The assignment of primary rights may be unlimited in time (meaning for the whole duration of the copyright).– “secondary rights” are considered to be the rights for the exploitation of an audiovisual work outside the Italian territory or for the exploitation within the Italian territory on media service platforms which the parties excluded from the primary rights. The assignment of secondary rights is subject to time constraints (assignment for a certain exploitation period). After the expiry of the concluded exploitation period, the secondary rights return to the independent producer.
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¹⁰⁸ <https://www.agcom.it/documents/10179/0/Documento/e8ca734c-f641-4337-8b86-4630d38bf1e9>

¹⁰⁹ <https://www.gazzettaufficiale.it/eli/id/2017/12/28/17G00219/sg>