



4.22. NL – The Netherlands¹²⁴

4.22.1. Key Findings

Notions	Existence of definitions/rules
Independent production	Yes
Independent producer	No
Legal provisions concerning the transfer or cession of authors'/performers' rights to the producer (e.g. legal presumption, etc.) (Relationship author-producer)	Yes ¹²⁵
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of the independent production of audiovisual works is related to the ownership of the production company and its financial independence from broadcasters.
- A producer of audiovisual works shall be deemed independent when a single broadcaster participating in the financing of a specific work does not hold more than 25% of the production company shares or in the case of multi-part production more than 50% of the shares.
- In contrast, a producer of audiovisual works shall not be deemed independent when the broadcaster is fully liable to creditors for the debts of the production company.
- An audiovisual work shall be deemed independent when it is not exclusively produced by a broadcaster (public or commercial) or the broadcaster is not designated as the producer in the case of co-production.
- In contrast, an audiovisual work shall not be deemed independent when it is produced by an independent producer who in the three (3) preceding financial years supplied more than 90% of its production to the same broadcaster.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with the broadcasters.

¹²⁴ The summary on the Netherlands incorporates feedback received from Marcel Betzel, senior international policy advisor at *Commissariaat voor de media*, during the checking round with the national regulatory authorities.

¹²⁵ According to Article 45d of the Dutch Copyright Act, unless otherwise agreed in writing, the author of an audiovisual work shall be deemed to grant the producer the right to make the work public, as well as the right to reproduce, subtitle and dub the dialogue. The author is entitled to fair compensation for each form of exploitation of the work in question. See the Copyright Act 1912, as amended up to 1 September 2017, available at: <https://www.wipo.int/wipolex/en/text/468398>



4.22.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
<p>Article 2.120, Media Act 2008 (<i>Mediawet 2008</i>)¹²⁶</p> <p>Article 3, Public Media Institutions Quota Policy Rule 2023 (<i>Beleidsregel quota publieke media-instellingen 2023</i>)¹²⁷</p>	<p>The concept of independent production is related to the business model of the production company as well as to its financial independence from broadcasters. In that sense, independent production is conceived as an audiovisual work that is not produced by:</p> <ul style="list-style-type: none"> a) a public media institution; b) a commercial media institution; or c) a foreign broadcasting organisation; d) a legal entity in which an institution as referred to under a) to c), whether or not through one or more subsidiaries, has an interest of more than 25%; e) a legal entity in which two or more institutions as referred to under a) to c), whether or not through one or more of their respective subsidiaries, jointly hold an interest of more than 50%; or f) a company in which an institution as referred to under a) to c), or one or more of its subsidiaries, is as a partner fully liable to creditors for its debts. <p>According to Article 3 of the Policy Rule, an audiovisual work shall be deemed independent when:</p> <ul style="list-style-type: none"> a) it is produced by an independent producer, as mentioned in Article 2.120 of the Media Act 2008; b) it is co-produced by an independent producer and a broadcaster and the latter is not designated as the producer.
<p>Article 3.22, Media Act 2008</p>	<p>In contrast, the following works shall not be deemed independent:</p> <ul style="list-style-type: none"> a) an audiovisual work exclusively produced by a broadcaster; b) an audiovisual work produced by an independent producer who in the three (3) preceding financial years supplied more than 90% of its production to the same broadcaster.
<p>Article 3, Commercial Media Institutions Quota Policy Rule 2023 (<i>Beleidsregel quota</i>)</p>	<p>Article 3.22 of the Media Act states that for commercial media services:</p> <p>1. Independent production is deemed to be programme content that is not produced by:</p> <ul style="list-style-type: none"> a. a public media institution; b. a commercial media institution; c. a foreign broadcasting organisation; d. a legal entity in which an institution as referred to under a, b or c, whether or not through one or more subsidiaries, has an interest of more than 25%; e. a legal entity in which two or more institutions as referred to under a, b or c, whether or not through one or more of their

¹²⁶ <https://www.cvdm.nl/wp-content/uploads/2022/06/Dutch-Media-Act-2008.pdf>

¹²⁷ <https://wetten.overheid.nl/BWBR0047885/2023-02-18/>



<p><i>commerciële media-instellingen 2023</i>)¹²⁸</p>	<p>respective subsidiaries, jointly hold an interest of more than 50%; or</p> <p>f. a company in which an institution as referred to under a, b or c, or one or more of its subsidiaries, is as a partner fully liable to creditors for its debts.</p> <p>2. By order in council:</p> <p>a. further rules may be laid down regarding the application of this article and Articles 3.20 and 3.21; and</p> <p>b. it may be determined that in cases other than those referred to in paragraph 1, programme content is regarded as an independent production.</p> <p>Article 3 of the Policy Rule states that:</p> <p>1. In line with Article 3.22(1) of the Act, independent works will be understood to include:</p> <p>a. programme content produced by an independent producer in cooperation with a media institution, if the media institution does not qualify as the producer of the relevant programme content;</p> <p>b. an independent work acquired by a media institution.</p> <p>2. Independent works will not include:</p> <p>a. programme content produced solely by a media institution;</p> <p>b. programme content produced by a producer which has supplied over 90% of the programme content produced by it over the past three financial years to the same media institution.</p>
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4.22.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

¹²⁸ <https://zoek.officielebekendmakingen.nl/stcrt-2023-5500.html>