



## 4.24. PT – Portugal<sup>132</sup>

### 4.24.1. 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)	Yes <sup>133</sup>
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes

- The concept of the independent producer of audiovisual works, as a legal person registered with the national registry, is related to its financial independence from broadcasters.
- The legislation itself recognises the independence of the producer when the latter has ownership of the IP rights to the produced work.
- In Portuguese legislation there is also a definition of independent productions conceived as the cinematographic and audiovisual works, including multimedia, produced with creative autonomy and freedom of choice by independent producers who have ownership of the IP rights on these works.
- The retention of IP rights by independent producers is regulated by law. Especially in cases of funding or co-production between broadcasters or VOD and independent producers, independent producers cannot transmit IP rights in their entirety to the providers for a period of at least five years after the first dissemination.
- In the case of co-production with a television provider of a work that shall be transmitted in the national territory, independent producers cannot transfer their IP rights for a period exceeding seven years.

<sup>132</sup> The summary on Portugal incorporates feedback received from Joana Duarte, expert of the Supervision Department of the Portuguese Regulatory Authority for the Media (ERC), during the checking round with the national regulatory authorities.

<sup>133</sup> Article 125 (2) of the Portuguese Law on Copyright and Related Rights No. 63/1985, as amended up to Law No. 9/2021, states that "(2) Where the author has specifically or implicitly authorised the film's projection, the exercise of the rights of economic exploitation of the cinematographic work shall belong to the producer". See the text available at <https://www.wipo.int/wipolex/en/text/583948>.



## 4.24.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Article 2 (1) (i) and (p) of Law No. 27/2007, Television and on-demand services Law (Television Law) (<i>Lei da televisão e dos serviços audiovisuais a pedido</i>)<sup>134</sup></p> <p>Article 2 (1) (j) Law No. 55/2012 - Principles of state action in the framework of the promotion, development and protection of the art of cinema and cinematographic and audiovisual activities (Cinema Law) (<i>Princípios de ação do estado na proteção da arte do cinema e audiovisual</i>)<sup>135</sup></p> <p>Regulation No. 178/2021 (<i>Regulamento n.º 178/2021</i>)<sup>136</sup></p> <p>Article 44 of Decree-Law No. 25/2018, Regulation on the Cinema Law related to the measures on supporting the development and protection of cinematographic and audiovisual activities (<i>Regulamenta a Lei do Cinema no que respeita às medidas de apoio ao desenvolvimento e proteção das atividades cinematográficas e audiovisuais</i>)<sup>137</sup></p> <p>Article 24 (8) of Decree-Law No. 74/2021, Regulation on the Cinema Law related to the collection of fees and investment obligations to which operators are subject (<i>Regulamenta a Lei do Cinema no que respeita à cobrança de taxas e às obrigações de investimento a que os operadores estão sujeitos</i>)<sup>138</sup></p>	<p>An independent producer of cinematographic and audiovisual works shall be deemed the legal person, registered to the National Cinema Institute (ICA), whose activity meets the following cumulative criteria:</p> <ul style="list-style-type: none"><li>a) a single broadcaster does not hold, directly or indirectly, more than 25% of the capital shares, or more than 50% in the case of several broadcasters;</li><li>b) (s)he does not allocate more than 90% of annual sales to a single broadcaster; and</li><li>c) (s)he has ownership of the IP rights over the produced works.</li></ul> <p>An independent production of cinematographic and audiovisual works shall be deemed the cinematographic and audiovisual work produced by an independent producer whose creation meets the following cumulative requirements:</p> <ul style="list-style-type: none"><li>a) the work is produced by an independent producer with creative autonomy and freedom of choice, namely with regard to the choice of studios, actors, means and distribution;</li><li>b) the independent producer has ownership of the IP rights to the work produced and defines the duration and limits of their contractual transfer;</li><li>c) the participation of a broadcaster in a co-production cannot compromise the quality of an independently produced work, nor have as a counterpart the transmission of the IP rights, in their entirety, to the investor.</li></ul>

<sup>134</sup> <https://diariodarepublica.pt/dr/detalhe/lei/27-2007-636409>

<sup>135</sup> <https://diariodarepublica.pt/dr/detalhe/lei/55-2012-174871>

<sup>136</sup> [https://ica-ip.pt/fotos/editor2/build/regulamento\\_178-2021\\_registo\\_de\\_entidades.pdf](https://ica-ip.pt/fotos/editor2/build/regulamento_178-2021_registo_de_entidades.pdf)

<sup>137</sup> <https://diariodarepublica.pt/dr/detalhe/decreto-lei/25-2018-115172414>

<sup>138</sup> <https://diariodarepublica.pt/dr/detalhe/decreto-lei/74-2021-170175411>



### 4.24.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
Article 2 (1) (p) of the Television Law Article 9(2) and 33(4) of Decree-Law No. 25/2018 Regulation on the Cinema Law related to the measures on supporting the development and protection of cinematographic and audiovisual activities ( <i>Regulamenta a Lei do Cinema no que respeita às medidas de apoio ao desenvolvimento e proteção das atividades cinematográficas e audiovisuais</i> ) <sup>139</sup> Article 7(3) and Article 24 (3), (8) of Decree-Law No. 74/2021	<p>The legislation itself recognises the independence of the producer when the latter has ownership of the IP rights to the produced work.</p> <p>In the case of funding or co-production between broadcasters or VOD and independent producers, the legislation provides for several measures related to the retention of IP rights by independent producers, as follows:</p> <ul style="list-style-type: none"><li>a) Independent producers have ownership of works co-produced with providers of any kind.</li><li>b) Independent producers cannot transmit their IP rights in their entirety for at least five years from the date of the first dissemination of the work in question.</li><li>c) In the case of audiovisual or multimedia works co-produced with a television provider, the independent producer may not assign exclusive broadcasting rights to the national territory for a period exceeding seven years. Such a limitation does not apply to broadcasting to foreign territories.</li><li>d) In any case the financing or co-production of audiovisual or multimedia works cannot deprive independent producers of their IP rights, where their contractual transfer is possible within the limits provided by law.</li></ul>

<sup>139</sup> <https://diariodarepublica.pt/dr/detalhe/decreto-lei/25-2018-115172414>