



Independent production and retention of intellectual property rights

AVMSD NOTE

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Independent production and retention of intellectual property rights

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Director of publication – Susanne Nikoltchev, Executive Director

Editorial supervision – Maja Cappello, Head of Department for Legal Information

Editorial team – Maja Cappello, Sophie Valais, Justine Radel-Cormann

European Audiovisual Observatory

Contributing author

Dr. Charis Tsigou, Attorney at Law at Markoulakis & Tsigou Law Firm

Proofreading

Linda Byrne

Editorial assistant – Sabine Bouajaja

Press and Public Relations – Alison Hindhaugh, alison.hindhaugh@coe.int

European Audiovisual Observatory

Publisher

European Audiovisual Observatory
76, allée de la Robertsau, 67000 Strasbourg, France
Tel.: +33 (0)3 90 21 60 00
Fax: +33 (0)3 90 21 60 19
iris.obs@coe.int
www.obs.coe.int

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Independent production and retention of intellectual property rights

European Audiovisual Observatory

Foreword

Edison's creation "The Blacksmith Shop", also known as "The Blacksmith Scene" or "The Blacksmithing Scene", stands as the first motion picture protected under US copyright law, dating back to 1893. Fifteen years later, in 1908, the "Edison Trust" saw the light: comprising the major film companies, the leading distributor, and the main supplier of raw film at the time, this trust, which included Edison, American Pathé, George Kleine, and Eastman Kodak, among others, sought to produce and distribute films. However, the exclusion of certain filmmakers by the trust led to the birth of the term "independent", not as a categorical definition, but rather as a way of distinguishing those who were refused membership. Today, in the United States, the concept of independent production remains linked to the idea of producing outside the major studio system.

In Europe too, there is no categorical definition of independent production. The notion has evolved across countries and over time, with different connotations. It has encompassed films aimed at promoting a national industry and preserving cultural identities, especially in Western European markets since the mid-20th century. But it has also referred to films that circumvented censorship in authoritarian regimes. The fact is that there is currently no unified legal definition of independent production or independent producer in Europe.

Despite this absence of a harmonised definition, independent producers have historically been at the heart of the obligations on broadcasters and video-on-demand service providers to promote European works under the Audiovisual Media Services Directive (AVMSD). The AVMSD does not provide detailed rules on the relationship between independent producers and audiovisual media service providers. However, in its recitals it sets out certain elements that should be considered when defining this independence criterion, including the producer's ownership of secondary rights in the work. Accordingly, some national laws contain specific provisions on the transfer of exploitation rights from the producer to audiovisual media service providers, using the criterion of the retention of intellectual property rights ("IPR retention") by the producer to qualify it as independent.

However, one of the difficulties lies in understanding the scope of this concept of IPR retention. On the one hand, only a few countries use this criterion to qualify the producer as independent. Furthermore, when they do, the nature of the exploitation rights concerned by the retention is not always clearly defined, and the notion of primary, or secondary rights is not understood in the same way everywhere. Overall, IPR retention is important for independent producers, as it allows them to retain some ownership of the work and creative control over it. It also gives them the opportunity to receive additional remuneration from secondary exploitation of the rights in the work.

This report seeks to unravel the complexities surrounding the notion of "IPR retention" in the context of European works and looks into the specific rules introduced in certain national legislations regarding the transfer of exploitation rights of a work by its independent producer. It includes a pan-European comparative analysis and easy-to-access country profiles and reflects the state of play as of September 2023.

The snapshot provided in this report builds on the work of our national experts, who helped us gather the relevant information on the EU-27 member states and the UK; our co-ordinating expert Charis Tsigou, IP Lawyer at TMK Law Firm, who helped us

structure and analyse the legal framework; and the media regulators across the European member states, who assisted us in checking the accuracy of the information. My warmest thanks go to all of them.

Strasbourg, December 2023

Maja Cappello

Head of the Department for Legal Information

European Audiovisual Observatory

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The report and the country summaries were drafted by the international expert Charis Tsigou, Attorney at Law at Markoulakis & Tsigou Law Firm.

Pool of national experts for the collection of data

Austria	The Austrian submission was provided by Dr. Harald Karl and Samuel Schuber of Pepelnik & Karl Rechtsanwälte GmbH.
Belgium	The Belgian submissions were provided by Olivier Hermanns, independent expert (French Community), and by Nadia Feci, doctoral researcher at both KU Leuven (CITIP) and Ghent University (Law & Technology) (Flemish Community).
Bulgaria	The Bulgarian submission was provided by Dr. Bissera Zankova, independent researcher and President of the “Media 21” Foundation.
Croatia	The Croatian submission was provided by Hrvoje Lisičar, Associate Professor of Law at the Faculty of Law of the University of Zagreb.
Cyprus	The Cypriot submission was provided by Professor Dr. Achilles Emilianides, Dean of the School of Law of the University of Nicosia.
Czechia	The Czech submission was provided by Jaroslav Tajbr, lawyer at Squire Patton Boggs.
Denmark	The Danish submission was provided by Terese Foged, attorney and partner of Lassen Ricard law firm.
Estonia	The Estonian submission was provided by Andres Jõesaar, Associate Professor of Media Policies at Tallinn University.
Finland	The Finnish submission was provided by Riku Neuvonen, Senior Lecturer of Public Law at the University of Helsinki.
France	The French submission was provided by Marc Le Roy, professor and PhD in law.
Germany	The German submission was provided by Giana Iacino, independent expert.
Greece	The Greek submission was provided by Alexandros Oikonomou, legal expert at the National Council of Radio and Television (ESR – <i>Ethniko Symvoulío Radiotileorasis</i>)
Hungary	The Hungarian submission was provided by Gabor Polyak, professor and senior researcher at Eötvös Loránd University, Mertek Media Monitor.
Ireland	The Irish submission was provided by Kirsty Park, postdoctoral researcher at the Institute of Future Media, Democracy and Society in Ireland.
Italy	The Italian submission was provided by Ernesto Apa, lawyer and partner at Portolano Cavallo, and Fabiana Bisceglia and Eugenio Foco, lawyers at Portolano Cavallo.

Latvia	The Latvian submission was provided by Ieva Andersone, partner and head of the competition and regulatory team and Lūcija Strauta, assistant lawyer at Sorainen.
Lithuania	The Lithuanian submission was provided by Kristina Juraite, Professor of Public Communication and Julija Kalpokienė, PhD candidate and junior researcher at Vytautas Magnus University.
Luxembourg	The Luxembourgish submission was provided by Romain Kohn, journalist and media expert.
Malta	The Maltese submission was provided by Pierre Cassar, Director of Marketing and Communications at the University of Malta and lecturer at the Faculty of Media and Knowledge Sciences.
Netherlands	The Dutch submission was provided by Louise Doorman, independent legal adviser.
Poland	The Polish submission was provided by Karol Kościński, attorney at law at Karol Kościński Legal Office.
Portugal	The Portuguese submission was provided by Elsa Costa e Silva, assistant professor and Mariana Lameiras, researcher at the Communication and Society Research Centre (CSRC) of the University of Minho.
Romania	The Romanian submission was provided by Dr. Manuela Preoteasa, associate professor at the Faculty of Journalism and Communication Sciences of the University of Bucharest.
Slovakia	The Slovakian submission was provided by Norbert Vrabec, associate professor at the Faculty of Mass Media Communication of the University of St. Cyril and St. Methodius in Trnava.
Slovenia	The Slovenian submission was provided by Tanja Kersevan Smokvina, researcher and assistant professor at the Social Communication Research Centre, University of Ljubljana.
Spain	The Spanish submission was provided by Joan Barata Mir, fellow at the Stanford Cyber Policy Center.
Sweden	The Swedish submission was provided by Erik Ullberg, lawyer and managing partner at Wistrand Lawfirm (Gothenburg, Sweden).
United Kingdom	The British submission was provided by Chris Banatvala, independent expert and director at Bear Consultancy Ltd.

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1. Executive summary

1.1. Scope

Independent producers have historically been at the core of the obligations concerning broadcasters in Article 17 of the Audiovisual Media Services Directive 2018/1808/EU (AVMSD), pursuant to which broadcasters are required to reserve at least 10% of their transmission time or their programming budget for European works created by producers who are independent of broadcasters.

Following the inclusion of Article 13(2) in the AVMSD, video-on-demand (VOD) service providers may be required to finance, directly or indirectly, European works. The European Union (EU) provision is therefore broad and covers both self-produced and acquired audiovisual works.

The AVMSD does not include a definition of independent producers or of independent works. However, the directive provides, in its recitals, for certain elements that should be considered, which refer to the relationship between independent producers and audiovisual media service (AVMS) providers. Recital 71, in particular, states the following: “When defining ‘producers who are independent of broadcasters’ as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights.”

Accordingly, some national legislations provide for specific rules in relation to the ownership of intellectual property rights (IPR) in the work, and, more specifically, on the ability of the producer to retain ownership of certain of these rights when dealing with contracting parties for the exploitation of the work (eg. broadcasting and on-demand services, platforms). In the context of this Note, this ability of the producer to retain certain rights is referred to as IPR retention.

The objective of this Note is to provide the European Commission with information on the retention of IPR by independent producers in the 27 member states of the EU and the United Kingdom (UK), and to offer a horizontal comparative review of the relevant national legal provisions, identifying trends and approaches. The definition (if any) of an independent producer or of independent production under each jurisdiction is examined in detail. The comparative analysis of this Note provides an overview of national legal frameworks and does not cover national practices which are out of the scope of this Note. It should be noted that issues related to buyouts and specific types of contracts, as well as exploitation rights, are not examined in the present Note.



1.2. Key findings

Independent producers play a central role in the obligations imposed on broadcasters, especially regarding the promotion of European works outlined in Article 17 of the AVMSD. This provision mandates broadcasters to respect minimum requirements in promoting European audiovisual works produced by independent producers. The aim of these obligations is to encourage the development of small and medium-sized enterprises and offer new opportunities for cultural professionals in the audiovisual field.

According to Article 17 of the AVMSD, “Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters”.

Article 17 of the AVMSD (2018) and Recital 71 of the previous AVMSD (2010/13/EU) refer only to “broadcasters”. EU legislation does not include a definition of independent production or independent producer. However, several criteria are enumerated in Recital 71 of the AVMSD (2010): “when defining ‘producers who are independent of broadcasters’ as referred to in Article 17, Member States should take appropriate account notably of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights”.

Article 13 of the AVMSD (2018) provides for a minimum quota of European works to be included in the catalogue of VOD services, without any reference to the independence of the producers of said works. In most member states, the definition of independent production or independent producer does not relate to video-on-demand (VOD) services, with the exception of French legislation.

Therefore, it is important to examine the various definitions of independent production and/or independent producer within national member states and compare the similarities or differences between the criteria invoked and those provided for in the EU legislation.

1.2.1. Existence of a definition of independent production and/or independent producer

Most of the member states reviewed provide for a definition of independent production and/or independent producer in primary or secondary legislation. Out of 28 countries, 24 have a definition of independent producer and/or independent production (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and United Kingdom). The countries without such a definition in the context of European works are Denmark, Germany, Greece and Sweden.



1.2.2. Different criteria used to qualify the producer/production as independent

The criteria outlined in Recital 71 of the AVMSD (2010) are not applied in the same manner in the different national laws, meaning that all criteria enounced in the Recital are not used always combined together. In fact, the definitions found rely on three types of criteria, namely, financial criteria; operational criteria; and a criterion linked to IPR ownership. The financial criteria refer to the economic links or relationships of control between the producer and the broadcasters. The operational criteria refer to the ownership of the production company and its business relationship with the broadcaster. Finally, the criterion linked to IPR ownership concerns the retention of exploitation rights (primary or secondary) by the independent producer.

Whereas the first two types of criteria (financial and operational) are common among the reviewed countries, the criterion of IPR ownership is more rarely used (eight countries, namely Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal). Furthermore, the countries which refer to IPR ownership as a criterion to qualify a production and/or a producer as independent do not use a harmonised understanding of IPR ownership or retention

Among these eight countries, four of them link the ownership/retention of secondary rights to the definition of independence itself, as suggested by Recital 71 AVSMD (Croatia, Cyprus, France and Italy).

Only a limited number of countries establish a relationship between IPR ownership and the producer's independence from the broadcaster (six countries: France¹, Ireland, Italy, Portugal and United Kingdom). These IPR retention rules are linked to the definition of an independent producer rather than to the definition of an independent production.

1.2.3. The criterion of IPR retention by independent producers

The criterion of IPR retention is used in a broad sense, referring to both “primary” and “secondary” rights. In this respect, it should be noted that none of the examined countries provides for a clear and harmonised definition of primary and secondary exploitation rights, or a precise description of the actual rights that each of these concepts englobes.

This analysis aims to compare these terms while, recognizing the specificities of the legal frameworks within each jurisdiction. Its objective is to find common ground for comparison, rather than create a universal definition.

In particular, significant diversity exists in relation to the notion of secondary rights among the reviewed countries. Firstly, the term “ownership of secondary rights” is

¹ In the case of France, the legislation encompasses VODs too.



often not clearly defined. Secondly, the criterion of IPR retention is principally linked to the broadcaster, rather than to the producer in the sense that relevant laws designate the IPR which may be assigned to the broadcaster rather than these retained by the producer. Thus, the definition of secondary rights retained by the producer may be deduced from a negative (*a contrario*) approach. More specifically, “secondary rights” retained by the producer should be understood for the purposes of this study as the rights to use an audiovisual work through distribution channels and territories which are not covered by the broadcaster.

In some countries (Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal), the definition of independent production/independent producer is related to the retention of IPR by the producer². However, as mentioned, these references are not direct, but require an inverse (*a contrario*) interpretation. Following the different approaches, the “primary rights” assigned to the broadcaster financing a co-production should be understood for the purposes of this study as the exclusive rights to use the work by the specific means provided for in the contract, in a specific territory and for a limited time period. Consequently, “secondary rights” retained by the independent producer should be understood as the rights to use the work through distribution channels and territories which are not covered by the broadcaster.

Conclusion

In conclusion, the notions related to IPR ownership/retention used in order to establish a producer’s independence from the broadcaster are of a remarkable variety. Generally, they encompass two distinct terms, namely “ownership of IPR” and “ownership of secondary rights”.

- The term “ownership of IPR” can be understood, for the purposes of this study, as the ownership of the exploitation rights of the audiovisual work produced by an independent producer.
- The term “ownership of secondary rights” is not defined either in a positive or in a negative way. However, secondary rights are commonly understood in the industry as the rights to use an audiovisual work through distribution channels and territories which are not covered by primary rights in the licensing agreement.

² See the following wording of this paragraph: In the member states which include the IPR retention criterion for the definition of independent production/independent producer (Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal), the focus is on the IPR assigned to the AVMS provider rather than on the IPR retained by the producer. For that reason the designation of the notion of “secondary rights” retained by the producer requires an inverse (*a contrario*) approach related to the definition of the IPR assigned to the broadcaster. In other words the IPR not assigned to the broadcaster remain to the ownership of the producer. In this sense, the “primary rights” assigned to the broadcaster financing a co-production should be understood for the purposes of this study as the exclusive rights to use the work by the specific means provided for in the contract, in a specific territory and for a limited time period. Consequently, the “secondary rights” retained by the independent producer should be understood as the rights to use the work through distribution channels and territories which are not covered by the broadcaster.



Most of the countries which use IPR retention as an independence criterion provide national rules on the retention of exploitation rights, especially when the work is co-financed by a broadcaster.



2. Methodology

The information on national frameworks was gathered through a network of national experts of the media sector from the 27 EU member states and the United Kingdom. The collection of data and comparative analysis on the different laws and rules was conducted by a coordinating expert in close cooperation with the Observatory's Department for Legal Information.

2.1. Project objective

Article 17 AVMSD has introduced obligations towards the promotion of European works created by producers who are independent of broadcasters. While promoting independent content, this article did not set criteria as to what makes a producer “independent”, nor did it impose a framework with regard to the retention of IPR by independent producers.

This Note covers relevant information up to September 2023, when the gathering of information for the production of the national summaries was completed, in order to prepare the comparative analysis.

The Note aims at identifying national definitions of independent producers, where such definitions exist, as well as references to national legislation dealing with the question of IPR retention by producers in the EU member states and in the United Kingdom.

The Note includes the information from 27 EU member states (including the French and Flemish communities of Belgium), as well as the UK, totalling 29 responses. For the purpose of this Note, the French and Flemish communities of Belgium are counted as one country, as the two communities apply similar definitions/rules.

2.2. Methodology

The methodology adopted by the Observatory includes the collection and analysis of national data, done by means of a standardised questionnaire designed by the Observatory, submitted for completion by national experts, and in turn checked by the relevant national regulatory authorities.

The methodology includes the following:

- the choice of international experts to provide assistance throughout the mapping process and the elaboration of a comparative analysis;
- the choice of a pool of national experts: mainly academics and independent researchers and consultants;
- the elaboration of a standardised questionnaire filled in by each national expert; one questionnaire per country was completed, with the exception of Belgium,



where a questionnaire was completed for the French and the Flemish communities; questionnaire responses were cross-checked by the relevant national regulatory authorities.

The questionnaire aimed at identifying, for each country, the different laws, rules and current practices in the EU member states and the United Kingdom relating to the national definition of independent production/producer where such a definition exists and the possible national rules on the retention of IPR by producers.

To determine the existence of definitions of independence and of national regulations governing the retention of IPR, experts at the national level were not tasked with examining Film Fund Guidelines or specific contractual agreements between AVMS providers and independent producers. Some national experts may have found more detailed information than what was asked for in the questionnaire (such as specific agreements with broadcasters, when these were publicly available). This type of information is included in the national summaries when provided by national experts.

2.3. Structure of the Note

The national summaries are structured around three sections:

- a first section presents the national key findings (the existence or not of a definition of independence, the existence or not of the criterion of the retention of IPR by the independent producer);
- a second section summarises the criteria used at the national level for the definition(s) of independent production/producer;
- a final section gives an overview of the national rules on IPR assignment/retention.

The comparative analysis mirrors the structure of the national summaries and provides an analysis aimed at highlighting the trends and patterns in the approach of the definitions towards independent production/producer. Tables are included throughout the report as a complement, to offer a more in-depth look at cases. The national summaries also provide more detailed information regarding the situation in each specific country.



3. Comparative analysis

This chapter presents a comparative analysis of the different legislative approaches to the definition of independent production and independent producer, the criteria used to assess the producer's independence, national rules concerning the retention of IPR by the producer, as well as an overview of the diversity existing in relation to the related notions of primary and secondary rights in the countries concerned.

3.1. Definition of independent production/independent producers

Article 17 of the AVMSD requires member states to ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or of the programming budget, for European works created by producers who are independent of broadcasters. Therefore, the definition of independent production/independent producer is of crucial importance.

3.1.1. Comparative overview of the definitions

The AVMSD does not include a definition of independent production or independent producer. Nevertheless, it enumerates a number of criteria in Recital 71 of the AVMSD (2010), such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights.

The above criteria are directly related to the broadcasters transmitting European works via linear audiovisual media services as per Article 17 AVMSD. With regard to on-demand audiovisual media (VOD) services, Article 13 of the AVMSD (2018) provides for a minimum quota of European works in their catalogues, without making any reference to the independence of the producers of said works. Most of the analysed countries define "independence" from broadcasters, but do not extend the definition to cover the relationship with VOD services, except in the case of French legislation.

The countries under review do not include a clear and uniform definition of independent production/producer, but rather enumerate several criteria to be taken into account. While there is no common definition of independence at European level, the countries under review having adopted national rules do not include a clear and uniform definition of independent production/producer, but rather enumerate several criteria to be taken into account. According to our legal analysis, the criteria that have been identified for the qualification of an independent producer or an independent production are the following:



Independent producer:

- An entity having a legal personality distinct from the broadcaster (used in 10 countries: Belgium, Cyprus, Czechia, Latvia, Luxembourg, Netherlands, Poland, Portugal, Slovakia and Slovenia),
- (Co)-producing an audiovisual or cinematographic work financially independently (including capital participation, financial contribution and financial control) (used in 20 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia Slovenia, Spain and United Kingdom),
- Owning the IPR (used by 8 countries: Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal),
- And in few countries, the artistic risk should be borne by the producer when (co)-producing an audiovisual or cinematographic work (France and Portugal).

Independent production:

- The independent production is defined either in relation to the entity involved (see above for the identified criteria), or directly by referring to the criteria presented above.

A total of 24 out of 28 countries define either independent producer and/or independent production (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia Slovenia, Spain and United Kingdom), while four other countries (Denmark, Germany, Greece and Sweden) do not provide for any definition in the context of European works. In 6 out of these 24 countries a definition of both independent production and independent producer is provided (Croatia, France, Italy, Portugal, Slovakia and United Kingdom). In one case (Netherlands) only the definition of independent production is given.

As regards the source of these definitions, in most analysed countries they are provided by primary or secondary legislation (e.g. in primary legislation in Cyprus; and in secondary legislation in France), or, in some other countries by both (Croatia, Luxembourg and Netherlands). In Ireland, the definition is to be provided by the *Coimisiún na Meán* (the Media Commission) when establishing a scheme to support the production of European works.

Table 1 provides an overview of the countries which provide for a definition of independent production/producer, as well as of the relevant sources.



Table 1. Definition of independent production/producer and sources

Jurisdiction	Definition of independent producer	Source	Definition of independent production	Source
AT	Yes	Primary legislation	No	–
BE (FR)	Yes	Secondary legislation	No	–
BE (VL)	Yes	Secondary legislation	No	–
BG	Yes	Primary legislation	No	–
CY	Yes	Primary legislation	No	–
CZ	Yes	Primary legislation	No	–
DE	No ³	-	No	–
DK	No	-	No	–
EE	Yes	Primary legislation	No	–
ES	Yes	Primary legislation	No	–
FI	Yes	Primary legislation	No	–
FR	Yes	Secondary legislation	Yes	Secondary legislation
GR	No	-	No	–
HR	Yes	Primary and Secondary legislation	Yes	Primary legislation
HU	Yes	Primary legislation	No	–
IE	Yes	Future guidelines of the Media Commission ⁴	No	–
IT	Yes	Secondary legislation	Yes	Secondary legislation
LT	Yes	Primary legislation	No	–
LU	Yes	Primary and Secondary legislation	No	–
LV	Yes	Primary legislation	No	–
MT	Yes	Secondary legislation	No	–
NL	No	–	Yes	Primary and Secondary legislation
PL	Yes	Primary legislation	No	–
PT	Yes	Primary legislation	Yes	Primary legislation
RO	Yes	Primary legislation	No	–
SE	No	–	No	–
SI	Yes	Primary legislation	No	–

³ In Germany (DE) the concept of independent producer/production is not defined at interstate level. Länder may detail the notion if deemed relevant. The concept of the independent producer is, for instance, defined by the State Media Act of North Rhine-Westphalia. Seen in terms of television programmes, this definition is related to the producer's financial independence from the broadcasters. See Article 3 (2) No. 3 of the State Media Act of North Rhine-Westphalia 2002/2022 (*Landesmediengesetz Nordrhein-Westfalen*) available at https://www.medienanstaltnrw.de/fileadmin/user_upload/NeueWebsite_0120/Zum_Nachlesen/Rechtsgrundlagen_ab_2021/Lesefassung-LMG-NRW_13-4-2022.p

⁴ According to Section 159F(5) of the Online Safety and Media Regulation Act 2022 (OSMR Act), the Irish Media Commission will issue guidance on the definition of independent production. <https://data.oireachtas.ie/ie/oireachtas/act/2022/41/eng/enacted/a4122.pdf>



SK	Yes	Primary legislation	Yes	Primary legislation
UK	Yes	Secondary legislation	Yes	Secondary legislation

Source: Analysis of the responses to the European Audiovisual Observatory (EAO) standardised questionnaire.

3.1.2. Criteria used for the definitions

As mentioned above, 24 countries out of 28 have a definition of independence (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia Slovenia, Spain and United Kingdom).

On the contrary, 4 countries do not provide a definition of independence (Denmark, Germany, Greece and Sweden) in the context of European works.

The notions of independent production and independent producer are defined by the national countries according to criteria of a different nature. In the majority of cases (23 out of 24 countries which provide a definition of independence), the legislator gives a direct definition of the two notions (independent producer/independent production) by enumerating a number of relevant criteria applicable explicitly to broadcasters, with a specificity in France where the French legislation also refers to VOD providers.

Especially with regard to the notion of independent production, in 2 out of 24 countries which provide a definition of independence (Italy and United Kingdom) such a definition is derived indirectly from the audiovisual legislation. These countries do not include a direct definition of independent production in the sense mentioned above. Instead, the independence of an audiovisual production may be indirectly assessed in relation to the entity involved. So, in one case (Italy), an independent production is deemed to be the work produced by a production company over which the broadcaster has no dominant influence and in the other case (United Kingdom) an independent production is deemed to be the work produced by an independent producer.

Definitions of both independent production and independent producers are based on three types of criteria, namely financial criteria, operational criteria and a criterion linked to the ownership of IPR.

The financial criteria refer to the economic links or relationships of control between producers and broadcasters (e.g. financial participation in the company's capital).

The operational criteria refer to the ownership of the production company and its business links with the broadcaster. "Business links" reflect the producer's business independence from the broadcaster, which is assessed by criteria of different nature (e.g. the absence of an ownership link between the broadcaster and the production company or the producer's distinct legal personality from the broadcaster).

Finally, the criterion linked to the ownership of IPR refers to the retention of exploitation rights (primary or secondary rights) by the independent producer. More specifically:



- With regard to the definition of independent production, in nine countries (Austria, Bulgaria, Croatia, France, Italy, the Netherlands, Portugal, Slovakia, United Kingdom), the criteria set out by law are of a financial and/or operational nature. In 3 out of 9 countries the definition of independent production is related exclusively to financial criteria (Austria, Croatia and Slovakia), while in another three countries only operational criteria are used (Bulgaria, Portugal and United Kingdom). In 3 out of 9 countries the definition of independent production relies on both financial and operational criteria (France, Italy and Netherlands). Finally, in 2 out of 9 countries (FR and PT) the definition of independent production is also related to the ownership of IPR by the producer.
- With regard to the definition of independent producer, in most countries (17 out of 23, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and United Kingdom), the criteria set out by law are both financial and operational in nature. In 5 out of 23 countries (Hungary, Ireland, Italy, Latvia and Lithuania) no financial criteria are used, while in one jurisdiction (France) there is no mention of operational criteria. Finally, in 7 out of 23 countries (Austria, Croatia, Cyprus, Estonia, Ireland, Italy and Portugal) in addition to the above-mentioned criteria, the definition of independent producer is explicitly related to the ownership of IPR. Table 2 provides an overview of these criteria.

Table 2. Criteria used for the definitions of independent production and independent producer

Jurisdiction	Financial criteria	Operational criteria	IPR ownership criterion	Applying to independent producer/production/both	Direct/indirect definition of production/producer
AT	Yes	No	No	Production	Direct
	Yes	Yes	Yes	Producer	Direct
BE (FR)	Yes	Yes	No	Producer	Direct
BE (VL)	Yes	Yes	No	Producer	Direct
BG	No	Yes	No	Production	Direct
	Yes	Yes	No	Producer	
CY	Yes	Yes	Yes	Producer	Direct
CZ	Yes	Yes	No	Producer	Direct
EE	Yes	Yes	Yes	Producer	Direct
ES	Yes	Yes	No	Producer	Direct
FI	Yes	Yes	No	Producer	Direct
FR	Yes	Yes	Yes	Production	Direct
	Yes	No	No	Producer	
HR	Yes	No	No	Production	Direct
	Yes	Yes	Yes	Producer	
HU	No	Yes	No	Producer	Direct



IE	No	Yes	Yes	Producer	Direct
IT	Yes	Yes	No	Production	Indirect
	No	Yes	Yes	Producer	Direct
LT	No	Yes	No	Producer	Direct
LU	Yes	Yes	No	Producer	Direct
LV	No	Yes	No	Producer	Direct
MT	Yes	Yes	No	Producer	Direct
NL	Yes	Yes	No	Production	Direct
PL	Yes	Yes	No	Producer	Direct
PT	No	Yes	Yes	Production	Direct
	Yes	Yes	Yes	Producer	
RO	Yes	Yes	No	Producer	Direct
SI	Yes	Yes	No	Producer	Direct
SK	Yes	No	No	Production	Direct
	Yes	Yes	No	Producer	
UK	No	Yes	No	Production	Indirect
	Yes	Yes	No	Producer	

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.1. Trends in the use of criteria

The majority of the countries under review (24 out of 28, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia Slovenia, Spain and United Kingdom) establish various criteria for defining independent production and/or independent producer. According to Recital 71 of the AVMSD (2010) the independence of the producers towards the broadcasters could be assessed in relation to operational criteria (such as “the ownership of the production company” and “the amount of programmes supplied to the same broadcaster”) and the criterion of the retention of IPR by the producers (“the ownership of secondary rights”).

- Operational criteria are used for defining independent production and/or independent producer in all 24 of the abovementioned countries. More specifically, operational criteria are used in 22 out of 23 countries providing for a definition of independent producer (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and United Kingdom), the exception being the French jurisdiction. Where a definition of independent production is provided, only 3 (Bulgaria, Portugal and United Kingdom) out of 9 relevant countries (namely Austria, Bulgaria, Croatia, France, Italy, Netherlands, Portugal, Slovakia and United Kingdom) use operational criteria.
- As to the retention of “secondary rights” by the producer, only a third of the countries which have a definition of independence (namely Austria, Croatia,



Cyprus, Estonia, France, Ireland,⁵ Italy, and Portugal) use IPR retention as a criterion for the definition of independent production or independent producer. However, the IPR retention criterion is used in a broader sense than in Recital 71 of the AVMSD (Directive 2013/13/EU), since the notion of “IPR retention” refers to “primary” and “secondary” rights as well. Additionally, none of the countries under review provides for a clear definition of primary and secondary rights.

- Financial criteria of independence are not included in Recital 71 of the AVMSD (2010). Nevertheless, in 20 out of 24 countries with a definition of independence, financial criteria are used for defining independent production and/or independent producer (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and United Kingdom) the exceptions being four countries where no such criteria are provided (Hungary, Ireland, Latvia and Lithuania).

From a comparative point of view, it should be mentioned that in most countries providing for a definition of independent producer, both financial and operational criteria are used (17 out of 23, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, and United Kingdom). In contrast, in 9 out of 24 countries providing for a definition of independent production/producer (Austria, Bulgaria, Croatia, France, Italy, Netherlands, Portugal, Slovakia Spain and United Kingdom), financial and operational criteria are used cumulatively in only 3 out of the 9 countries (France, Italy and Netherlands).

As for the eight countries establishing the IPR retention criterion (Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy, and Portugal), in six of them the IPR retention criterion is combined with both financial and operational criteria of independence (Austria, Croatia, Cyprus, Estonia, France, and Portugal), the exceptions being the Irish and Italian jurisdictions. The enumeration of the above-mentioned criteria in national legislations for the definition of independent production/independent producer should be understood as cumulative.

3.1.2.2. Financial criteria of independence

The majority of the countries with a definition of independence (20 out of 24, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia Slovenia, Spain and United Kingdom) use financial criteria in order to define independent production and/or independent producer, with the exception of 4 out of 24 countries which provide a definition of independence (Hungary, Ireland, Latvia and Lithuania) where no such criteria are utilised. In a few countries (4 out of 20, namely

⁵ The ownership of the IPR is a criterion the Irish Media Commission should use to determine the independence of a producer when it prepares a scheme to support the production of European works.



Austria, France, Hungary and Slovakia) financial criteria are used for the definition of both independent production and independent producer.

Generally, in the definitions of both independent production and independent producer, the financial independence may be assessed by examining three main elements, the use of which differs in each one of the countries under review and is not cumulative:

- (a) the capital participation, which corresponds to the percentage of shares and/or voting rights in the production company held by a broadcaster;
- (b) the financial contribution, which corresponds to the percentage of the broadcaster's or the producer's contribution to the co-financing of an audiovisual work; and
- (c) the financial control, which corresponds to the degree of the producer's economic risk and control over the production process.

3.1.2.2.1. Capital participation in the production company

The first element of financial independence, used by 16 out of 20 countries as mentioned above (Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia and United Kingdom), may be divided into two factors depending on the targeted entity:

- The first factor, which targets both the producer and the AVMS provider, is used by 11 out of 16 countries (Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Luxembourg, Malta, Poland and United Kingdom). Neither the producer nor the broadcaster can hold any of each other's shares and/or voting rights at all (Bulgaria, Croatia, Czechia, France,⁶ and Poland), or neither can hold the majority of each other's shares and/or voting rights (Cyprus, Estonia and Luxembourg), or they may participate in each other's capital with a limited percentage not exceeding either 15% (Belgium and Malta), or 25% in the case of one broadcaster and 50% in the case of several AVMS broadcasters (United Kingdom). Table 3 illustrates these findings.
- The second factor, which targets only the broadcaster on the basis of the percentage of its participation in the producer's capital or turnover, is used by 8 out of 16 countries (Belgium, Croatia, Czechia, Finland, Italy, Netherlands, Portugal and Slovenia). Generally, a broadcaster cannot hold either more than 25% of the shares and/or voting rights of a production company (Slovenia) or more than 25% of the shares and/or voting rights of a production company for a single AVMS and 50% collectively (Finland, Portugal and Netherlands with reference to both percentages). Additionally, in some countries the income

⁶ With the exception of the co-financing of a project. See the sub-section below on the contribution to the co-financing of a work.



earned by the producer through sales to the same single broadcaster cannot exceed a certain percentage (Belgium, Croatia, Czechia, Italy and Netherlands). Table 4 illustrates these findings.

- In 3 out of 16 countries (Belgium, Croatia, and Czechia) the above-mentioned financial elements are used for the definition of independent production or independent producer cumulatively.

Table 3. Percentage of shares and/or voting rights

Capital participation	BE ⁷	BG	CY	CZ	EE	FR	HR	LU	MT	PL	UK
Prohibiting mutual shareholding/voting rights between broadcaster and producer		X		X		X ⁸	X			X	
Prohibiting majority shareholding/voting rights between broadcaster and producer			X		X			X			
Restricting shareholding/voting rights to 15% maximum between broadcaster and producer	X								X		
Restricting shareholding/voting rights to 25% individually or 50% collectively between broadcaster and producer											X

Source: Analysis of the responses to the EAO standardised questionnaire

Table 4. The AVMS provider's participation in the producer's capital

Capital	BE (FR) ⁹	CZ	FI	HR	IT	NL	PT	SI
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⁷ This sub-criterion is included in the member states of both the French and Flemish communities in Belgium.

⁸ VOD services are also included.

⁹ This sub-criterion is only included in the legislation of the French Community in Belgium.



participation								
Broadcaster limited to 25% shareholding in the producer								X
Broadcaster limited individually to 25% shareholding in the producer or 50% collectively			X			X	X	
Producer limited to 90% maximum turnover from sales to a single broadcaster within a three-year period	X	X		X	X	X		

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.2.2. Contribution to the co-financing of a work

The second element of financial independence is used by 5 out of 20 countries (Austria, Croatia, France, Romania and Slovakia) in the case of co-production of an audiovisual work for assessing either the independent production or the independent producer. In general, the relevant countries set thresholds or ceilings of financial contribution according to which the co-produced work (Austria, France, Slovakia) or its producer (Croatia, Romania) shall be deemed independent.

Table 5 illustrates these findings.

Table 5. Contribution to the co-financing of a work

Contribution to the co-financing	AT	FR	HR	RO	SK
Producer's financing covers at least 5% of the costs			X		
Producer's financing covers at least 51% of the costs					X
Restricting the broadcaster's financing to 25% of the costs				X	
Restricting the broadcaster's shareholding/voting rights to 25% when co-financing individually or 50% when co-financing collectively	X				
Restricting the broadcaster's shareholding to a maximum of 50% when financing at least 50% of the costs		X			

Source: Analysis of the responses to the EAO standardised questionnaire



3.1.2.2.3. The producer’s control over the company and the work

The third element of financial independence, used by 3 out of 20 countries (France, Italy, Spain), is related to the producer’s degree of control over his/her production company and the final output of the work. This element may be divided into two factors:

- the absence of any control by the broadcaster over the production company and vice versa, the absence of any control by the producer over the broadcaster; and
- the provider’s obligation to undertake the economic risk, as well as the coordination tasks of the production. Table 6 illustrates these findings.

Table 6. The producer’s control over the company and the work

Financial control	FR	ES	IT
Broadcaster/producer do not control each other’s company	X		X
The producer undertakes the economic risk and coordination tasks		X	

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.3. Operational criteria of independence

The term “operational” refers to the criteria concerning the ownership and business independence of the production company in relation to the broadcaster.

According to the findings of the countries under review, the operational independence of an audiovisual work or a producer may be assessed by examining the distinct legal status of the production company, the absence of a link between the AVMS provider and the producer and factors proving the autonomy of the latter in the creation of said work (technical and artistic autonomy).

All of the 24 countries which define independent production/producer establish operational criteria in order to define independent production and/or independent producer. In most countries (22 out of 24, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and United Kingdom) the operational criteria are related to the definition of independent producer. In two countries (France and Netherlands) the operational criteria are related only to the definition of independent production. Finally, in 4 out of 24 countries (Bulgaria, Italy, Portugal and United Kingdom) the operational criteria are used for defining both independent production and independent producer.

The operational independence of a production/producer may be assessed by examining three main elements:

- the producer’s ownership of the production company,
- the producer’s business independence from the broadcaster, and



- the producer’s responsibility over the production company or the work output.

With regard to the number of these elements referred to by the relevant countries, the majority of them, 14 out of 24 countries with a definition of independence (Belgium, Bulgaria, Croatia, Estonia, Finland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Romania Spain and United Kingdom), refer to only one element of operational independence. In 9 out of 24 countries (Austria, Cyprus, Czechia, France, Hungary, Netherlands, Poland, Slovakia and Slovenia) two of the above-mentioned elements are used in order to establish operational independence. Finally, in one jurisdiction (Portugal) all three elements are used. Whenever more than one element is referred to within the same jurisdiction, their use is cumulative.

With regard to the nature of the elements referred to by the relevant countries, two of them are used in equal numbers of countries. In fact, 16 out of 24 countries mentioned above (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Hungary, Ireland, Latvia, Luxembourg, Netherlands, Romania, Poland, Portugal, Slovakia and Slovenia) refer to the element of ownership of the production company, while another 16 out of 24 countries (Cyprus, Czechia, Estonia, Hungary, Finland, France, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia Spain and UK), refer to the element of a business link between the producer and the broadcaster. In 8 countries (Cyprus, Czechia, Hungary, Netherlands, Poland, Portugal, Slovakia and Slovenia) both elements are used. The third element related to the producer’s responsibility over the production company or the work output is used in only 3 countries (Austria, France and Portugal).

3.1.2.3.1. Ownership of the production company

The ownership element of operational independence, used by 16 out of the 24 countries with a definition of independence (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Hungary, Ireland, Latvia, Luxembourg, Netherlands, Romania, Poland, Portugal, Slovakia and Slovenia), may be divided into two factors related to:

- the absence of an ownership link between the broadcaster and the production company (Austria, Bulgaria, Croatia, Hungary, Ireland, Romania and Slovakia) and
- the producer’s distinct legal personality from the broadcaster (Belgium, Cyprus, Czechia, Latvia, Luxembourg, Netherlands, Poland, Portugal, Slovakia and Slovenia).

Only in one jurisdiction (Slovakia) are both elements used in assessing the operational independence of a producer with regard to a broadcaster. Table 7 illustrates the above findings.

Table 7. Ownership of the production company

Ownership of the company	AT	BE	BG	CY	CZ	HR	HU	IE	LU	LV	NL	RO	PL	PT	SI	SK
Producer owns the production	X		X			X	X	X				X				X



Ownership of the company	AT	BE	BG	CY	CZ	HR	HU	IE	LU	LV	NL	RO	PL	PT	SI	SK
company but has no ownership relationship to a broadcaster																
Producer is legally independent from broadcaster		X		X	X				X	X	X		X	X	X	X

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.3.2. Business link between the producer and the broadcaster

The business element of operational independence, used by 16 out of the 24 countries which define independent production/producer (Cyprus, Czechia, Estonia, Hungary, Finland, France, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom), may be divided into four factors related to the following elements:

- the amount of works allocated by the producer to a single broadcaster (Cyprus, Czechia, Estonia, Finland, Netherlands, Portugal, Slovakia, Slovenia and Spain),
- the absence of the broadcaster’s dominant influence over the producer (France and Italy),
- the absence of an employment or managerial relationship between the broadcaster and the producer (Hungary, Lithuania, Malta, Poland and United Kingdom), and
- the absence of any broadcaster’s liability towards the producer’s creditors (Netherlands).

Table 8 provides an overview of these criteria. Business link between producer and broadcaster

Table 8. Business link between producer and broadcaster

	Producer’s absence of obligation to allocate majority/total production to a single broadcaster	Producer’s obligation to allocate audiovisual work(s) to at least two media service providers during the last two years	Producer limited to 90% maximum of annual sales to a single broadcaster	Producer limited to 90% maximum of three years’ production to a single broadcaster	Absence of an employment relationship between the producer and the broadcaster	Absence of a managerial or membership relationship between the producer and the broadcaster	Absence of broadcaster’s liability to producer’s creditors	Absence of dominant influence of broadcaster
CY	X							
CZ				X				



	Producer's absence of obligation to allocate majority/total production to a single broadcaster	Producer's obligation to allocate audiovisual work(s) to at least two media service providers during the last two years	Producer limited to 90% maximum of annual sales to a single broadcaster	Producer limited to 90% maximum of three years' production to a single broadcaster	Absence of an employment relationship between the producer and the broadcaster	Absence of a managerial or membership relationship between the producer and the broadcaster	Absence of broadcaster's liability to producer's creditors	Absence of dominant influence of broadcaster
EE		X						
ES	X							
HU					X			
FI				X				
FR								X
IT								X
LT					X	X		
MT					X			
NL				X			X	
PL					X	X		
PT			X					
SI			X					
SK			X					
UK					X			

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.3.3. Responsibility for the work output

The responsibility element of operational independence, used by 3 out of 24 countries which provide a definition of independence (Austria, France and Portugal), may be divided into two factors related to:

- the producer's technical and artistic autonomy over the work and the lack of any artistic responsibility on the part of the broadcaster for the final output (France¹⁰ and Portugal), and
- the absence of any kind of control by the AVMS provider over the producer or his/her work (Austria). Table 9 illustrates the above findings.

¹⁰ In France, this criteria is relevant for VODs too.

**Table 9. Responsibility for the work output**

Responsibility for the work output	AT	FR	PT
Producer's technical and artistic autonomy		X	X
Producer's control over the work output	X		
Absence of AVMS provider's responsibility or guarantee for the work output		X ¹¹	

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.2.4. IPR ownership criterion

Recital 71 of the AVMSD (2010) refers to the “ownership of secondary rights” as a criterion for the independence of the producer with regard to the AVMS provider. However, no definition of “secondary rights” is provided. Hence, only a third of the countries under review (8 out of 24 countries which provide a definition of independence, namely Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal) contain a reference to the ownership of “secondary rights” as a criterion for the definition of independent production/independent producer.

Moreover, there is an overlap of terminology. Half of the relevant countries (4 out of 8, namely Austria, Estonia, Italy and Portugal) refer to the general term of “ownership of IPR”. In Estonia the term “ownership of rights” includes the “copyright or related rights” in audiovisual works which can be transferred to the production company either by a legal presumption or by contract. Thus, it can be deduced that in Estonia, “ownership of IPR” could be understood as “ownership of the exploitation rights in the audiovisual works produced by an independent producer”. The remaining 4 out of 8 countries (Croatia, Cyprus, France, and Italy) use the term “secondary rights” without further definition or clarification. This term is not defined in either a positive or a negative way.

Table 10 provides an overview of the countries establishing the ownership of IPR.

Table 10. Overview of rules governing ownership of IPR

Ownership of IPR	AT	CY	EE	HR	FR	IE	IT	PT
Producer's ownership of IPR	X		X			X		X
Producer's ownership of secondary rights		X		X			X	
Prohibiting AVMS provider's full ownership of IPR when it co-finances the work								X

¹¹ VOD services are included.



Absence of AVMS provider's ownership of secondary rights					X ¹²			X
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Source: Analysis of the responses to the EAO standardised questionnaire

In the majority of the countries concerned (6 out of 8, namely Austria, Croatia, Cyprus, Estonia, Ireland and Italy) the criterion of the “ownership of IPR” is related exclusively to the definition of independent producer, while in only 2 out of 8 countries is it related to the definition of independent production (France and Portugal). In one jurisdiction (Portugal) the criterion of the “ownership of IPR” is used for the assessment of independence for both the production and the producer.

Moreover, in the majority of relevant countries (5 out of 8, namely Croatia, Cyprus, Estonia, Ireland and Italy), the ownership of IPR as a criterion of independence is related to audiovisual works, while in 3 out of 8 countries (Austria, France and Portugal), it is related to both audiovisual and cinematographic works. Finally, in 7 out of 8 countries (Austria, Croatia, Cyprus, Estonia, Ireland, Italy and Portugal) the criterion of the ownership of IPR is not extended to VOD services, the exception being the French legislation.

With regard to the terminology used, in 4 out of 8 countries (Austria, Estonia, Ireland and Portugal) the independence of the production/producer with regard to the AVMS provider is established by reference to the “ownership of IPR” in a general sense. In 3 out of 8 countries (Croatia, Cyprus, and Italy) there is a more specific reference to “secondary rights”, while in one jurisdiction (FR) both terms are used. In most countries (7 out of 8, namely Austria, Croatia, Estonia, France, Ireland, Italy and Portugal) the source of the above notions is primary and secondary legislation, while in one jurisdiction (Cyprus) they are derived from audiovisual regulation. Nevertheless, none of these notions is explicitly defined by the national legislator.

Table 11 summarises all of the above findings.

Table 11. Establishment of independence through the ownership of IPR

Jurisdiction	Definition of independent producer	Definition of independent production	Terminology	Legislative source	Nature of work	Nature of AVMS provider
AT	Yes	No	IPR	Primary and fund guidelines	Audiovisual and films	TV
CY	Yes	No	Secondary rights	RTA Commission Report on the application of Directive 2010/13	Audiovisual	TV
EE	Yes	No	IPR	Primary	Audiovisual	TV

¹² Applies to both audiovisual and cinematographic works, for both broadcasters and VODs. The AVMS should not own secondary rights on a work for more than one type of exploitation.



FR	No	Yes	IPR and secondary rights	Secondary	Audiovisual and films	TV linear TV via internet VOD
HR	Yes	No	Secondary rights	Primary and secondary	Audiovisual	TV
IE	Yes	No	IPR	Secondary	Audiovisual	TV
IT	Yes	No	Secondary rights	Secondary	Audiovisual	TV
PT	Yes	Yes	IPR	Primary	Audiovisual and films	TV

Source: Analysis of the responses to the EAO standardised questionnaire

3.1.3. Conclusion

The majority of the countries under review provide common criteria for the definition of independent production/independent producer. They are mostly of a financial and operational nature, while few countries use the IPR criterion.

The criteria used by all relevant countries reflect the variety of the elements enumerated in Recital 71 of the AVMSD (2010), namely “the ownership of the production company”, “the amount of programmes supplied to the same broadcaster” both categorised under the operational criteria for this analysis - and “the ownership of secondary rights”.

However, the first two elements (ownership criteria and business link criteria) are more common among the relevant countries. Only a few countries establish a relationship between the ownership of IPR and the producer’s independence with regard to the AVMS provider (8 out of 24 countries which provide a definition of independence: Austria, Croatia, Cyprus, Estonia, France, Ireland, Italy and Portugal). The notions used in order to establish this criterion are of a remarkable variety. Generally, they reflect two distinct terms, namely “ownership of IPR” and “ownership of secondary rights”. The term “ownership of IPR” could be understood as “ownership of the exploitation rights in the audiovisual works created by an independent producer”. The term “ownership of secondary rights” is not defined in either a positive or a negative way.

3.2. Specific rules on IPR retention by an independent producer

This section examines the national rules on the retention of IPR by independent producers in their relationship with AVMS providers. To that end, the various legislative approaches should be presented according to the notions used for establishing the retention of IPR by producers.



3.2.1. Comparative overview of IPR retention rules

Recital 71 of the AVMSD (2010) enumerates “ownership of secondary rights” as an independence criterion of the producer in relation to the AVMS provider, without any definition or clarification of this notion. Therefore, it is important to present an overview of the countries of the EU member states and the UK, which include rules for the retention of IPR by the producer, as well as a definition of “secondary rights”.

Exploitation rights for the use of an audiovisual or cinematographic work are transferred to the producer usually on the basis of a legal presumption.¹³ The producer may transfer to the broadcaster the exploitation rights which are necessary for the use of an audiovisual and/or cinematographic work.¹⁴ Six countries under review (Croatia, France, Ireland, Italy, Portugal and United Kingdom) include rules on the assignment of IPR to the AVMS provider. These rules are based on primary/secondary legislation.

The frameworks established by primary/secondary legislation in Ireland and in the UK only deal with content commissioned by public service media (PSM).

The “exploitation rights” assigned to the AVMS provider should be understood as including primary and secondary rights subject to time and geographical constraints. In half of the relevant countries (Croatia, Ireland and Portugal) the assignment of IPR by AVMS providers is related only to broadcasting services, while in the other half (France, Italy and United Kingdom) it is related to broadcasting and VOD services, as well.

However, the notion of primary and secondary rights assigned to the AVMS provider is not defined in a clear and harmonised way. Only in two countries (Croatia and Italy) is such a definition provided. More specifically, “primary rights” assigned by contract to the AVMS provider, which finances the production or the co-production of an audiovisual work, should be understood as the exclusive rights to broadcast or communicate the work to the public by all means, including on-demand services, in the national territory and for a limited time period. Throughout this Note, a broad understanding of “Secondary rights” could be the exclusive rights to broadcast or communicate the work to the public on markets outside the national territory.

Table 12 summarises the countries having a regulatory framework for IPR retention.

¹³ Such a presumption exists in Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the United Kingdom. In other countries the author and the performers of an audiovisual work may transfer to the producer by contract the exploitation rights which are necessary for the commercialisation of the work. This is the case in Finland, in Latvia (see sections 11 (3) and 49 (1) of the Latvian Copyright Law 2023) and in Sweden (see Article 39 of the Swedish Act on Copyright in Literary and Artistic Works 2020). In Italy, according to Article 45 of the Italian Copyright Act 2022, the ownership of an audiovisual or cinematographic work belongs to the producer from the time of its creation.

¹⁴ The “use” depends on each contractual agreement between broadcasters and independent producers: it has a broad meaning, reflecting all possible distribution methods of a work.

**Table 12. Regulatory framework for the retention of IPR**

Jurisdiction	Existence of retention rules	Protection of independent producers (in regulatory frameworks) ¹⁵	Nature of AVMS provider	Targeted distribution channels
AT	No	No	-	-
BE (FR)	No	No	-	-
BE (VL)	No	No	-	-
BG	No	No	-	-
CY	No	No	-	-
CZ	No	No	-	-
DE	No	No	-	-
DK	No	No	-	-
EE	No	No	-	-
ES	No	No	-	-
FI	No	No	-	-
FR	Yes	Yes	Private	Broadcasters and VOD
GR	No	No	-	-
HR	Yes	Yes	Private and public	Broadcasters
HU	No	No	-	-
IE ¹⁶	Yes	Yes	Public	Broadcasters
IT	Yes	Yes	Private	Broadcasters and VOD
LT	No	No	-	-
LU	No	No	-	-

¹⁵ For IE and UK, this section deals with PSM rules only.

¹⁶ The BAI's "Code of Fair Trading Practice: Guidance for Public Service Broadcasters" offers guidance to PSBs on the format for a code of fair trading practice which will establish the principles to be applied by PSBs when agreeing terms for the commissioning of programming material from independent producers.



LV	No	No	-	-
MT	No	No	-	-
NL	No	No	-	-
PL	No	No	-	-
PT	Yes	Yes	Private	Broadcasters
RO	No	No	-	-
SE	No	No	-	-
SI	No	No	-	-
SK	No	No	-	-
UK ¹⁷	Yes	Yes	Public	Broadcasters and VOD

Source: Analysis of the responses to the EAO standardised questionnaire

3.2.2. National regulatory framework on retention of IPR for the protection of independence

The countries including rules on IPR retention present a remarkable diversity. There are differences with regard to the content of these rules, their legislative source, the nature of the works targeted and the category of AVMS providers covered by their scope.

Six countries under review (Croatia, France, Ireland, Italy, Portugal and United Kingdom) include rules on the assignment of IPR to the AVMS provider with 5 out of the 6, namely Croatia, France, Ireland, Italy and United Kingdom, including a reference to “primary” and/or “secondary rights” assigned to the AVMS provider, but, as mentioned, no clear definition of these notions is provided. In one jurisdiction (Portugal) the term “broadcasting rights” is used instead, while there is a general reference to IPR which should be retained by the producer in their contractual agreements with the AVMS providers. The content of IPR (primary or secondary) is not defined in a more explicit way.

The rules for IPR retention are applicable to all audiovisual works. In some countries (2 out of the 6, namely France and Portugal) cinematographic works are also included. The scope of the IPR retention rules covers all kind of transmission methods (free-to-air broadcasting and broadcasting via the Internet, namely live streaming, catch-up television and VOD).

¹⁷ Section 285 of the Communications Act 2003 provides that PSBs shall draw up codes of practice setting out their principles for commissioning from independent producers. These codes shall be drafted in accordance with Ofcom guidance.



Table 13 gives an overview of countries including rules on primary and secondary rights and their sources with reference to both private broadcasters and PSM. All of the following tables provide for a simpler and more user-friendly understanding of “exploitation rights” excluding possible national differences in the interpretation of the term “exploitation rights”. In that sense, the term “exploitation rights” assigned to the AVMS provider should be understood as including primary and secondary rights. In that sense, whenever a jurisdiction includes a term equal to “exploitation rights” assigned to the AVMS, it is considered that it refers to both primary and secondary rights.

Table 13. Overview of the regulatory framework on IPR retention

Jurisdiction	Source	Nature of work	Targeted distribution channels	Primary rights	Secondary rights	PSM ¹⁸
FR	Secondary	Audiovisual and films	All means and VOD	Yes	Yes	No
HR	Secondary and other (Co-regulatory Agreement) ¹⁹	Audiovisual	All means and PSM	Yes	Yes	Yes
IE	Code of Fair Trading Practice and BAI’s Guidance ²⁰	Audiovisual	All platforms ²¹	Yes	Yes	Yes
IT	Secondary and other (AGCOM Resolution) ²²	Audiovisual	All platforms as agreed by the parties	Yes	Yes	No
PT	Primary and Secondary	Audiovisual and films	TV and VOD	Yes	Yes	No
UK	Primary and other (Ofcom Guidance for PSM) ²³	Audiovisual	Free TV Catch-up TV	Yes	Yes	Yes

¹⁸ PSM rules included in this table refer to frameworks as directly provided by primary/secondary legislations.

¹⁹ Co-regulatory agreement between Croatian Radiotelevision (HRT), the Croatian Association of Independent Producers and the Agency for Electronic Media on the procedure and rules of procurement of works by independent producers.

²⁰ The Broadcasting Authority of Ireland (BAI) was dissolved on 15 March 2023 and has been replaced by Coimisiún na Meán (CnaM). All documents published by the former BAI are now CnaM’s documents.

²¹ 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.

²² AGCOM Resolution No. 30/11/CSP of 3 February 2011, Regulation concerning the criteria for the temporal limitation of use of secondary rights acquired by audiovisual media service providers.

²³ Ofcom Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers



Source: Analysis of the responses to the EAO standardised questionnaire

3.2.2.1. Retention of primary and secondary rights

The few countries including rules on the assignment of IPR to the broadcaster refer to the notions of “primary” and “secondary” rights without any definition or clarification.



In 3 out of 4 relevant countries (Croatia, France, and Portugal) primary rights assigned to the broadcaster²⁴ should be understood as broadcasting rights (of an exclusive or non-exclusive nature) licensed for the exploitation of the work by all available means in the national territory and for a limited period of time. In one jurisdiction (Italy) primary rights assigned to the AVMS provider may be unlimited in time, but they cover specific media services as agreed in the contact.

Broadcasters may also acquire by contract secondary rights, not included in the primary rights package. According to the above relevant countries (Croatia, France, Italy and Portugal), secondary rights assigned to the broadcaster should be understood as rights licensed for the exploitation of the work by all means (broadcasting, communication to the public etc.) through other distribution channels and on markets outside the national territory, unless otherwise agreed by contract.

These rules are not supplemented by a set of rules related to the possible retention of primary and/or secondary rights by the producer. Thus, the definition of primary and/or secondary rights retained by the producer may be deduced by a negative (*a contrario*) approach.

Therefore, the primary and secondary rights retained by the producer encompass the transmission or retransmission rights of the work through specific distribution channels and markets, which are excluded from the AVMS provider’s package agreement. In only one jurisdiction (Portugal) the rules on “retention rights” focus on the producer and offer significant protection. According to these provisions, “independent producers cannot transmit their rights in their entirety for at least five years from the date of the first dissemination of the work”. Consequently, all broadcasting rights which remain from the AVMS provider’s exploitation package covering the five-year period after the first dissemination of the work could be understood as IPR of a primary and secondary nature retained by the independent producer.

Table 14 illustrates the retention of primary rights in the private media sector and Table 15 illustrates the retention of secondary rights in the private media sector.

Table 14. Private media services – retention of primary rights

Jurisdiction	Primary rights	Nature of work	Targeted distribution channels	Territory	Duration of rights	Co-financing
FR	AVMS provider's exclusive/non-exclusive	Audiovisual and films	TV, Catch-up TV, VOD, Cinemas	National ■	Limited ²⁵	No

²⁴ In France, VODs are included.

²⁵ In the case of audiovisual works transmitted via VOD services, the duration of the exploitation rights stipulated in the contract does not exceed 72 months in each territory in which those rights were acquired, including 36 months when acquired on an exclusive basis. For audiovisual works transmitted via linear and non-linear broadcasting services, the duration of the rights stipulated in the contract does not exceed 36 months. In the case of films, the duration of the exploitation rights does not exceed 12 months for VOD services or 18 months for linear and non-linear broadcasting services.



	broadcasting rights					
HR	AVMS provider's exclusive broadcasting rights	Audiovisual	All available and platforms	National	Limited (not specified)	Yes
IT	AVMS provider's exclusive broadcasting rights	Audiovisual	Specific platforms	National	Unlimited (equal to the duration of copyright)	No
PT	AVMS provider's exclusive broadcasting rights assigned for maximum seven years	Audiovisual or Multimedia	TV and VOD	National	No more than seven years	Yes
PT	Producer's broadcasting (primary) rights remaining from AVMS provider's package	Audiovisual	TV and VOD	National	Five years after first dissemination	Yes

Source: Analysis of the responses to the EAO standardised questionnaire

Table 15. Private media services – retention of secondary rights

Jurisdiction	Secondary rights	Nature of work	Targeted distribution channels	Territory	Duration of rights	Co-financing
FR	AVMS provider's transmission rights (i.e. broadcasting rights (via TV channels), communication to the public rights (via VOD services) and transmission/dissemination rights (via cinema))	Films	Only by VOD and cinemas	National and abroad	Agreed by contract	No
HR	Broadcaster's exclusive broadcasting rights	Audiovisual	All available and platforms	Abroad	Not specified	Yes
IT	Broadcaster's exclusive broadcasting rights	Audiovisual	Specific platforms	Abroad	Limited (not specified)	No



Jurisdiction	Secondary rights	Nature of work	Targeted distribution channels	Territory	Duration of rights	Co-financing
	Broadcaster's broadcasting rights excluded from primary rights package	Audiovisual	Platforms excluded from primary rights package	National	Limited (not specified)	No
PT	Broadcaster's exclusive broadcasting rights for more than seven years	Audiovisual or multimedia	TV and VOD	Abroad	No time limitation	Yes
	Producer's broadcasting (secondary) rights remaining from AVMS provider's package	Audiovisual and films	TV and VOD	National	Five years after first dissemination (i.e. distribution of a work by any means)	Yes

Source: Analysis of the responses to the EAO standardised questionnaire

3.2.2.2. Protection of independence: retention of IPR when PSM²⁶ commission the content

For this section, the sources of IPR retention rules (for both primary and secondary rights) are guidelines or codes of practice applicable to PSM-commissioned content, deriving from primary legislation (Ireland and United Kingdom). The retention of IPR by the independent producer is applicable in some countries when the PSM are commissioning, and thus financing, the production or co-production of an audiovisual or cinematographic work.

When PSM commission content from independent producers, there are country examples where PSM are bound by rules - deriving from primary legislation – in order to protect independent producers. The examples show that some rights are transferred via contract to the PSM for a limited period of time.

The rules on the acquisition of primary rights are focused on the PSM, while the rules on the retention of secondary rights are focused on the producers. The presentation of the rules related to the retention of primary rights by the PSM will facilitate the perception of the rules related to the retention of secondary rights by the producer, since relevant countries do not include a definition of “secondary rights”.

In one jurisdiction (Ireland) the acquisition of primary rights by PSM is related to financial criteria and is subject to time constraints. More specifically, according to the Irish Code of Fair Trading Practice and BAI's Guidance to PSBs (public service

²⁶ Public Service Media (PSM) may commission works from independent producers. When doing so, it may be framed by rules including details on the ownership of the rights.



broadcasters), PSM may acquire all platform rights for a period of five (5) years when they finance at least 25% of the total production costs. These rights are designated as primary rights. The PSM has no more right to exploit the work once the five-year period is passed.

In the other relevant jurisdiction (United Kingdom) PSM may acquire primary rights following the commissioning of a work. The rights considered as primary according to the PSM's decision, are subject to constraints, in the sense that the PSM cannot acquire the ownership of all primary rights or acquire some of them for an unlimited time period. Their acquisition covers broadcasting services, as well as on-demand services.

Table 16 presents the regulatory framework on the retention of primary rights by PSM and the relevant parameters.

Table 16. PSM – retention of primary rights

Jurisdiction	Primary rights	Nature of work	Targeted distribution channels	Territory	Duration of rights	Financing/ Commissioning
IE	PSM acquire all platform rights for five years	Audiovisual	All platforms	National	Five years	PSM finance at least 25% of the cost
	PSM acquire all platform rights for additional time	Audiovisual	All platforms	Abroad (diaspora)	Specified by contract	PSM finance at least 25% of the cost
UK	Primary rights are designated by PSM, but cannot include all broadcasting rights for an unlimited time period	Audiovisual	Free-to-air PSM and their on-demand platforms	National	Limited Specified by contract	PSM commission the work

Source: Analysis of the responses to the EAO standardised questionnaire

The rules on the acquisition of secondary rights are focused on the producers. The term "secondary rights" is not defined, at least not in a positive sense. Generally speaking, secondary rights retained by the producer in the PSM scenario may be understood as all rights which are not included in the "primary rights package". The parameters for the exploitation of the work covered by secondary rights (distribution channels, territory, duration) are mostly arranged through contractual negotiations.

This regulatory framework offers flexibility to the parties, which may freely decide on the content and extent of primary and secondary rights. However, the producer's interests are protected by law since not all exploitation rights may be considered as primary and automatic bundling between primary and secondary rights is forbidden, unless otherwise agreed by the parties.



Table 17 presents the regulatory framework on the retention of secondary rights by the producer and the relevant parameters. Table 18 illustrates the content of secondary rights and the guidance rules on bundling.

Table 17. PSM – retention of secondary rights

Jurisdiction	Secondary rights	Nature of work	Targeted distribution channels	Territory	Duration of rights	Financing/ Commissioning
IE	The producer may retain secondary rights not included in the primary package through negotiations	Audiovisual	All except platforms included in the primary package	Not specified	Upon agreement	Financing at least 25% of the cost
UK	The producer retains all rights not explicitly transferred to the PSM	Audiovisual	Upon agreement	National	Upon agreement	Commissioning of the work

Source: Analysis of the responses to the EAO standardised questionnaire

Table 18. PSM – guidance rules for secondary rights

Jurisdiction	Content of secondary rights	Source	Targeted distribution channels	Restrictions
IE	Rights on the work not included in the primary package acquired by the PSM	Code of Fair Trading Practice and BAI's Guidance	Except for the platforms included in the primary package	Prohibiting automatic bundling of primary and secondary rights, unless otherwise agreed
UK	Rights on the work not explicitly transferred to the PSM	Ofcom's Guidance for Public Service Broadcasters	Upon agreement	Prohibiting automatic bundling of primary and secondary rights, unless otherwise agreed

Source: Analysis of the responses to the EAO standardised questionnaire



4. Country summaries

4.1. AT – Austria²⁷

4.1.1. 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 ²⁸
Specific rules related to the assignment or retention of IPR by independent producers (Relationship independent producer-AVMS)	Yes – in Fund Guidelines ²⁹

- The concept of the independent producer of audiovisual works is related to the ownership of the production company as well as of the exploitation rights over the works, the control of the production and the number of programmes delivered to one and the same media service provider.
- In contrast, a producer of audiovisual works is not considered to be independent when a single media service provider participating in the financing of the works holds (directly or indirectly) more than 25% of the production company's shares or voting rights. In the case of joint financing, this percentage should not exceed 50%.

²⁷ The summary on Austria incorporates feedback received from Stefan Rauschenberger, director of the Legal Department at Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) during the checking round with the national regulatory authorities.

²⁸ According to paragraph 38(1) UrhG (Federal Law on Copyright in Works of Literature and Arts and on Related Rights, in the current version of the Federal Gazette I No. 244/2021) unless otherwise agreed, the author of an audiovisual work is deemed to grant the producer the exclusive right to use the work, including the rights to translation and adaptation. These exclusive rights may be licensed to broadcasters. See <https://www.wipo.int/wipolex/en/text/586610> and Section 6.1.2.2 of the mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, Strasbourg 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>.

²⁹ Provided as an addition to the questionnaire shared by the national expert.



- The Austrian funding scheme rules provide for a maximum duration within which an independent producer can license his/her exploitation rights to a broadcaster.
- Broadcasters participating in financing the overall production costs of an audiovisual work may acquire exploitation rights to the work in question which are limited in terms of time, region and dissemination means.
- According to the guidelines of the Austrian Television Fund, in the case of television broadcasters the assignment of exploitation rights may cover a period of five (5) or seven (7) years for the respective broadcasting region and dissemination mode. In the case of pay-TV channels, the conditions of the assignment depend on the industry and market customs.
- According to the FISA Funding Scheme (for films), media service providers participating in financing the overall production costs of a film may acquire exploitation rights covering a maximum period of seven (7) or ten (10) years in the case of a multi-part production. After the first publication of the work, providers may acquire further exploitation rights.

4.1.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
<p>Article 27 (2) of the Federal Act on the establishment of an Austrian Communications Authority (<i>KommAustria-Gesetz</i>)³⁰</p> <p>Article 11 (2) of the Federal Act on the Austrian Broadcasting Corporation (<i>ORF-Gesetz</i>)³¹</p> <p>Federal law to strengthen and internationalise Austria as a film location (<i>Bundesgesetz zur Stärkung und Internationalisierung des Filmstandortes Österreich (Filmstandortgesetz 2023)</i>)³²</p> <p>Guidelines of the Austrian Television Fund 2023 (<i>Richtlinien über die Gewährung von Mitteln aus dem FERNSEHFONDS AUSTRIA</i>)³³</p>	<p>A producer of audiovisual works is considered to be independent when (s)he meets the following criteria:</p> <ul style="list-style-type: none"> - (s)he has ownership of the production company as well as of the exploitation rights to the work; - (s)he has control over the production; - (s)he has financial independence from the television broadcasters. <p>In contrast, a producer is not considered independent when a television broadcaster participating in the funding of the production in question holds a majority share in the production company. A majority share is presumed to exist:</p> <ul style="list-style-type: none"> - when a single media service provider holds (directly or indirectly) more than 25% of the production company's shares or voting rights; or - when two or more media service providers jointly hold more than 50% of the company's shares or voting rights. <p>One or more indirect participations in a production with a share that exceeds 25% or 50% at each level will be</p>

³⁰<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>

³¹<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>

³²<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20012140>

³³https://www.rtr.at/medien/was_wir_tun/foerderungen/fernsehfonds_austria/Richtlinien/Veroeffentlichung/en/richtlinien_2023.de.html



Article 3 (3)(1) of the Guidelines of the FISA Funding Scheme (<i>Filmstandort Austria</i>) ³⁴	considered as direct participations of more than 25% or 50%, thus as participations based on a majority share.
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4.1.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 4(2) of the Guidelines of the Austrian Television Fund (2023)</p> <p><i>(Richtlinien über die Gewährung von Mitteln aus dem FERNSEHFONDS AUSTRIA)</i>³⁵</p> <p>Article 9 (6)(4) of the FISA+ Funding Guidelines (<i>Filmstandort Austria</i>)³⁶</p>	<p>According to Article 4(2) of the Guidelines of the Austrian Television Fund, broadcasters participating in financing the overall production costs of an audiovisual work may only acquire rights which are limited:</p> <ul style="list-style-type: none"> - to a period of no more than five years and, with multi-part productions, no more than seven years; - to the intended broadcasting region of the respective television broadcaster; and - with respect to the content or subject matter <ul style="list-style-type: none"> (a) to free TV or (b) to live streaming (within the framework of integrated retransmission of the broadcaster's channel over the internet) and (c) to catch-up TV offered in the form of free video-on-demand no earlier than seven days before and no later than 90 days after the broadcast. <p>Pay-TV channels which participate in financing the total production costs may acquire pay-TV rights for corresponding areas and periods on the basis of conditions customary in both the industry and the market.</p> <p>According to Article 9 (6)(4) of the Guidelines of the FISA+ Funding Scheme, media service providers participating in the financing of the total production costs of a film may acquire exploitation rights limited to:</p> <ul style="list-style-type: none"> - a maximum of seven (7) years, or - a maximum of ten (10) years in the case of a multi-part production. <p>After the first publication of the work, providers may acquire further exploitation rights.</p>

³⁴https://api.fisaplus.com/fileadmin/user_upload/MediaLibrary_ABAFILM/Dokumente/FISA_Richtlinien_1.1.2023_final.pdf

³⁵https://www.rtr.at/medien/was_wir_tun/foerderungen/fernsehfonds_austria/Richtlinien/Veroeffentlichungen/richtlinien_2023.de.html

³⁶https://api.fisaplus.com/fileadmin/user_upload/MediaLibrary_ABAFILM/Dokumente/FISA_Richtlinien_1.1.2023_final.pdf



4.2. BE(FR) – Belgium (French Community)³⁷

4.2.1. 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 ³⁸
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 is related to its legal and financial independence from broadcasters.
- The producer (natural or legal person) has financial independence when (s)he does not hold, directly or indirectly, more than 15% of the shares in a broadcaster and no broadcaster (or its subsidiaries) holds, directly or indirectly, more than 15% of the shares in the production company. Moreover, the independent producer of audiovisual works may not derive more than 90% of its turnover during a period of three years from the sale of these works to a single broadcaster.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with audiovisual media service providers.

³⁷ The summary on Belgium (French Community) incorporates feedback received from Jonas Frojmovics, economist, and Anahi Vila, director of European Affairs, at the CSA during the checking round with the national regulatory authorities.

³⁸ Article XI.182. of the Belgian *Code de droit économique 2013/2022* states that:

Sauf stipulation contraire, les auteurs d'une oeuvre audiovisuelle ainsi que les auteurs d'un élément créatif licitement intégré ou utilisé dans une oeuvre audiovisuelle, à l'exception des auteurs de compositions musicales, cèdent aux producteurs le droit exclusif de l'exploitation audiovisuelle de l'oeuvre, y compris les droits nécessaires à cette exploitation tels que le droit d'ajouter des sous-titres ou de doubler l'oeuvre, sans préjudice des dispositions des articles XI.181 et XI.183 du présent titre.

See the text available at

[http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel%20\(#LNK0422](http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel%20(#LNK0422) and

<https://www.wipo.int/wipolex/en/text/584987>.



4.2.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 1.3-1, 36° (Title III) of the Decree of 4 February 2021 on audiovisual media services and video-sharing services (<i>Décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos</i>) ³⁹	An independent producer of audiovisual works is considered the natural or legal person established in the French-speaking region or in the bilingual region of Brussels-Capital who meets the following criteria: a) (s)he has a legal personality distinct from that of a broadcaster; b) (s)he does not hold, directly or indirectly, shares of more than 15% in a broadcaster; c) (s)he runs a production company whose shares do not belong, directly or indirectly, to a broadcaster (or its subsidiaries) in a percentage greater than 15%; d) it does not derive more than 90% of its turnover during a period of three years from the sale of audiovisual works to a single broadcaster.

4.2.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

³⁹ <http://www.ejustice.just.fgov.be/eli/decret/2021/02/04/2021020568/justel>



4.3. BE(VL)– Belgium (Flemish Community)⁴⁰

4.3.1. 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 ⁴¹
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 is related to its legal and financial independence from broadcasters.
- The producer (natural or legal person) has financial independence when (s)he does not hold, directly or indirectly, more than 15% of the shares of a Flemish broadcaster and no broadcaster holds, directly or indirectly, more than 15% of the shares in the production company.
- However, the definition of an independent producer is expected to be amended following a Draft Media Decree currently subject to processing.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

⁴⁰ The summary on Belgium (Flemish Community) incorporates the feedback received from Dirk Peereman, registrar at the Flemish Regulatory Authority for the Media (VRM) during the checking round with the national regulatory authorities.

⁴¹ Article XI.182. of the Belgian *Code de droit économique 2013/2022* states that :

Sauf stipulation contraire, les auteurs d'une oeuvre audiovisuelle ainsi que les auteurs d'un élément créatif licitement intégré ou utilisé dans une oeuvre audiovisuelle, à l'exception des auteurs de compositions musicales, cèdent aux producteurs le droit exclusif de l'exploitation audiovisuelle de l'oeuvre, y compris les droits nécessaires à cette exploitation tels que le droit d'ajouter des sous-titres ou de doubler l'oeuvre, sans préjudice des dispositions des articles XI.181 et XI.183 du présent titre.

See the text available at

[http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel%20\(#LNK0422](http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel%20(#LNK0422) and

<https://www.wipo.int/wipolex/en/text/584987>.



4.3.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Article 2, 49° of the Flemish Media Decree (<i>Decreet betreffende radio-omroep en televisie</i>)⁴²</p> <p>Article 1, 9° of the Decision of the Flemish Government of 21 March 2014 regarding the stimulation of the audiovisual sector, mentioned in Article 184/1 of the decree of 27 March 2009 on radio broadcasting and television (<i>Besluit van de Vlaamse Regering betreffende de stimuleringsregeling voor de audiovisuele sector, vermeld in artikel 184/1 van het decreet van 27 maart 2009 betreffende radio-omroep en televisie</i>)⁴³</p> <p>Article 1, 8° of the Decision of the Flemish Government of 1 February 2019 concerning the participation of private non-linear television broadcasters in the production of Flemish audiovisual works – (<i>Besluit van de Vlaamse Regering betreffende de deelname van de particuliere niet-lineaire televisieomroeporganisaties aan de productie van Vlaamse audiovisuele werken</i>)⁴⁴</p> <p>Article 3, paragraph 1, 4° of the Decree of 30 April 1999 authorising the Flemish government to accede to and cooperate with the establishment of the Vlaams Audiovisueel Fonds (<i>Vlaams Audiovisueel Fonds Decreet houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds</i>)⁴⁵</p>	<p>An independent producer of audiovisual works is considered to be the natural or legal person who meets the following criteria:</p> <ul style="list-style-type: none"> a) (s)he has a legal personality distinct from that of a broadcaster; b) (s)he does not hold, directly or indirectly, shares of more than 15% in a Flemish broadcaster; c) a Flemish broadcaster does not hold, directly or indirectly, shares in the production company in a percentage greater than 15%.

4.3.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

⁴² <https://codex.vlaanderen.be/portals/codex/documenten/1017858.html#H1044404>

⁴³ <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2014/04/03/127185.pdf>

⁴⁴ <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2019/03/18/140890.pdf>

⁴⁵ <https://codex.vlaanderen.be/Portals/Codex/documenten/1006940.html>



4.4. BG – Bulgaria⁴⁶

4.4.1. Key findings

Notions	Existence of definitions/rules
Independent production	Yes ⁴⁷
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 ⁴⁸
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 is related to its operational and financial independence from film and audiovisual media service providers.
- In general, an independent producer shall not participate in a broadcaster's capital or allow a broadcaster to hold shares in the production company.
- Additionally, in specific fields (film industry, national television) the owners of a production company, the board members and its employees shall not be related to a broadcaster.

⁴⁶ The summary on Bulgaria incorporates the feedback received from Maria Beltcheva, chief expert on international affairs at the Council for Electronic Media (CEM) during the checking round with the national regulatory authorities.

⁴⁷ With reference only to "independent productions" commissioned by Bulgarian National Television (BNT) or Bulgarian National Radio (BNR) for the creation of programmes transmitted specifically by the national providers, see the relevant regulations available at <https://p.bnt.bg/p/r/pravila-za-vklyuchvane-v-programite-na-bnt-na-predavaniya-sa-zdadeni-ot-nezavisimi-ba-lgarski-produtsenti-i-za-uchastieto-j-v-savmestni-produktsii-520.pdf> and <https://bnr.bg/aboutbnr/page/uchastie-na-bnr-v-savmestni-produkcii-ot-nezavisimi-producenti>.

⁴⁸ Article 63(1) of the Law on Copyright and Neighbouring Rights (SG No. 56/1993 as amended up to 13 December 2019) states that:

The authors under Article 62 shall conclude written contracts with the producer that, unless agreed otherwise or otherwise provided by this Act, shall be deemed to grant the producer within the country and abroad the exclusive right of reproduction of the work, communication to the public, wireless broadcasting or transmission and retransmission by cable, reproduction on video carriers and their distribution, making it or part of it available to an unlimited number of persons by wireless means or by cable in a way allowing access from a place and at a time individually chosen by each of them, as well as the right to authorise the translation, dubbing and subtitling of the text.

See the text available at <https://www.wipo.int/wipolex/en/text/586785>.



- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters. The producer may transfer by contract to the broadcaster the exploitation rights which are necessary for the intended use of the work.
- In the case of television or radio programmes commissioned from independent producers by the public service media (BNR and BNT), all broadcasting rights can be acquired by the broadcaster at a price agreed with the producer.

4.4.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Point 24 of the “Additional Provisions” of the Radio and Television Act (RTA), SG No. 138, 24 November 1998, amended in 2022 (<i>ЗАКОН ЗА РАДИОТО И ТЕЛЕВИЗИЯТА</i>)⁴⁹</p> <p>Point 39 of the “Additional Provisions” of the Film Industry Act (FIA), SG No. 105 of 2 December 2003, as amended in 2021 (<i>ЗАКОН ЗА ФИЛМОВАТА ИНДУСТРИЯ</i>)⁵⁰</p> <p>Regulations (general conditions) for the inclusion in BNT programming of programmes created by independent Bulgarian producers and for their participation in joint productions (<i>П Р А В И Л А (Общи условия) за включване в програмите на БНТ на предавания, създадени от независими български продуценти и за участието ѝ в съвместни продукции</i>)⁵¹</p> <p>Regulations for external and joint productions in BNR (<i>Правилник за външните и съвместните продукции в БНР</i>)⁵²</p>	<p>An independent producer of audiovisual works is considered the natural or legal person whose activity meets the following criteria:</p> <p>a) (s)he is registered for the production of audiovisual works under the Bulgarian Commerce Act or under the legislation of a member state;</p> <p>b) (s)he has ownership independence with regard to broadcasters in the sense that the independent producer does not own a broadcasting company or hold any shares in the assets thereof and the broadcasters do not participate in the capital of the production company or hold any shares in the assets thereof.</p> <p>Additional conditions are required in different industries or commercial fields. For instance, in the film industry the owner of a film production company or the board members may not be related to providers of any kind (for linear and non-linear services). Independent film producers have to be registered at the Registry of the National Film Centre Agency held at the Ministry of Culture.</p> <p>Moreover, according to Article 3(1) of the Regulations applied to BNT, a person related to BNT either through an employment relationship or through a family relationship (a spouse or relative in a direct line to the</p>

⁴⁹ <https://lex.bg/laws/ldoc/2134447616>

⁵⁰ <https://lex.bg/laws/ldoc/2135474936>

⁵¹ <https://p.bnt.bg/p/r/pravila-za-vklyuchvane-v-programite-na-bnt-na-predavaniya-sa-zdadeni-ot-nezavisimi-ba-lgarski-produktenti-i-za-uchastieto-j-v-sa-vmestni-produktsii-520.pdf>

⁵² <https://bnr.bg/aboutbnr/page/uchastie-na-bnr-v-savmestni-produkcii-ot-nezavisimi-producenti>



	members of the Board of Directors) cannot be deemed to be an independent producer of television programmes.
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4.4.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A



4.5. CY – Cyprus⁵³

4.5.1. 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)	No
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 is related to the operational and financial independence of the production company from broadcasters.
- In that sense, the production company shall not hold the majority of shares of a broadcaster nor the broadcaster the majority of shares of the production company. At the same time, the production company must not allocate the majority of its production to one and the same broadcaster.
- The independent producer has secondary rights over the audiovisual works produced.
- These rights are related to the transfer of copyright and related rights over a specific audiovisual work from the authors and/or the performers to the producer of such work. The law does not provide for a legal presumption for the benefit of the producer. The transfer of the above-mentioned rights shall be the subject of a contract concluded between the authors and/or the performers of an audiovisual work and the producer.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

4.5.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Section 27(2) of the Radio and Television Broadcasters Law	Section 27(2) of the Radio and Television Stations Law transposes Article 17 of the AVMSD without further details on the independence of the producer. However,

⁵³ The summary on Cyprus incorporates the feedback received from Dr Antigoni Themistokleous, Radio Television Officer at the Cyprus Radio Television Authority, during the checking round with the national regulatory authorities.



<p>7(I)/1998 as amended by Law 197(I)/2021 (Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμος του 1998 (7(I)/1998))⁵⁴</p> <p>RTA Report to the Commission on the application of Directive 2010/13 Articles 13, 16, 17 for the years 2020-2021 (Αρχή Ραδιοτηλεόρασης Κύπρου Έκθεση σχετικά με την εφαρμογή των άρθρων 13, 16 και 17 όπως Οδηγίας 2010/13/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου (προβολή και διανομή Ευρωπαϊκών Έργων και ανεξάρτητων παραγωγώνόπωςαυτή τροποποιήθηκε μεταγενέστερα)⁵⁵</p>	<p>in its report to the European Commission, the national regulatory authority (RTA) defines an independent producer as meeting the following criteria:</p> <p>a) (s)he is not a broadcaster, b) (s)he has ownership independence from broadcasters in the sense that neither the producer holds the majority of shares in a broadcaster nor the broadcaster holds the majority of shares in the production company, c) it does not allocate the majority of its production to one and the same broadcaster, d) (s)he has secondary rights over the audiovisual works produced.</p>
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4.5.3. National rules on IPR assignment/retention

Legislations	Details of the measures
	N/A.

⁵⁴ The Radio and Television Broadcasters Law is available in original language at: (http://www.cylaw.org/nomoi/enop/ind/1998_1_7/section-sc98f65558-f6ba-445d-963e-010bcd3c906b.html) and in English (unofficial version) at:

([https://crta.org.cy/en/assets/uploads/pdfs/FINAL%20CONSOLIDATED%20LAW%20up%20to%20Amendment%20197\(I\).2021.pdf](https://crta.org.cy/en/assets/uploads/pdfs/FINAL%20CONSOLIDATED%20LAW%20up%20to%20Amendment%20197(I).2021.pdf))

⁵⁵ Report available at:

[https://crta.org.cy/assets/uploads/pdfs/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%95%CE%A5%CE%A1%CE%A9%CE%A0%CE%91%CE%99%CE%9A%CE%A9%CE%9D%20%CE%95%CE%A1%CE%93%CE%A9%CE%9D%202020-2021%20\(FINAL\).pdf](https://crta.org.cy/assets/uploads/pdfs/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%95%CE%A5%CE%A1%CE%A9%CE%A0%CE%91%CE%99%CE%9A%CE%A9%CE%9D%20%CE%95%CE%A1%CE%93%CE%A9%CE%9D%202020-2021%20(FINAL).pdf)



4.6. CZ – Czechia⁵⁶

4.6.1. 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 ⁵⁷
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of an independent producer of audiovisual works is related to its operational and financial independence from broadcasters.
- A producer of audiovisual works (a natural or a legal person) shall be deemed independent when (s)he does not participate in the voting rights or share capital of a broadcaster and neither does the broadcaster in question participate in the voting rights or share capital of the production company.
- Additionally, a producer of audiovisual works shall be deemed independent when (s)he does not supply to one and the same broadcaster more than 90% of its total production within a three-year period.

⁵⁶ The summary on Czechia incorporates the feedback received from the Czech Council for Radio and TV Broadcasting (RRTV).

⁵⁷ Article 63(1) of Act No. 121/2000 Coll. of 7 April 2000 on Copyright and Related Rights and on Amendments to Certain Acts states that “[i]t shall be deemed that the author of the audiovisual work is the director of the work. This shall not prejudice the rights of authors of works used audiovisually”. Furthermore, Article 63(3) of the same act establishes a legal presumption of transfer from the author of an audiovisual work to the producer, unless otherwise agreed, of the exclusive rights which are necessary for the exploitation of the work, such as the rights to use, distribute, dub and subtitle the work in question. The right to communicate the work to the public shall be subject to a specific agreement. According to Article 63(3) of this act:

Unless otherwise agreed, in the case when the author of the audiovisual work has granted the producer of the first fixation of the audiovisual work his/her written permission to fix the first fixation of the work, it shall mean that a) (s)he has also granted such producer the exclusive and unrestricted licence, with the exception of uses pursuant to Article 13, as far as making copies for the purpose of their distribution is concerned, Articles 14 and 18 paragraph (2), to use the audiovisual work in its original version as well as in the dubbed and subtitled versions, and also to use the photographs created in connection with the making of the primary fixation, including the option of granting authorisation which is part of such licence in its entirety or in part to a third party, and that b) together with such producer (s)he has agreed on a remuneration in the amount habitual in the sense of the provision of Article 49, paragraph (2) a)”.

See Act No. 121/2000 Coll. of 7 April 2000 on Copyright and Related Rights and on Amendments to Certain Acts available at: <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cz/cz029en.pdf>



- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

4.6.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Article 43(3) of Act No. 231/2001 on the operation of radio and television broadcasting and amending other laws – consolidated 15 September 2022 (<i>Zákon č. 231/2001 o provozování rozhlasového a televizního vysílání a o změně dalších zákonů – Konsolidovaný 15. září 2022</i>) ⁵⁸	According to Article 43(3) of Act No. 231/2001 an independent producer of audiovisual works is considered to be the natural or legal person that meets the following criteria: a) (s)he is not a broadcaster, b) (s)he has ownership independence with regard to broadcasters in the sense that the producer does not participate in the voting rights or share capital of a broadcaster and neither does the broadcaster in question participate in the voting rights or share capital of the production company, c) (s)he does not contribute more than 90% to a broadcaster's total production over a period of three years.

4.6.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁵⁸ <https://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf>



4.7. DE – Germany⁵⁹

4.7.1. Key findings

Notions	Existence of definitions/rules
Independent production	No
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 ⁶⁰
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 is not defined by the German Interstate legislation.⁶¹
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

⁵⁹ The summary on Germany incorporates feedback received from Michel Winkels, European affairs adviser at the Media Authority of North Rhine-Westphalia, and Christina Brandt, European affairs adviser at the Joint Management Office of the Media Authorities (*die Medienanstalten*), during the checking round with the national regulatory authorities.

⁶⁰ According to the Act on Copyright and Related Rights (as amended up to 23 June 2021), section 89 (1) Rights in cinematographic works:

(1) In cases of doubt, anyone who undertakes to participate in the production of a film, in the event that they acquire a copyright in the cinematographic work, grants the producer of the film the exclusive right to use the cinematographic work, as well as translations and other cinematographic adaptations or transformations of the cinematographic work in all manner of uses. Section 31a (1) sentence 3 and 4, and (2) to (4) does not apply.

See the text available at <https://www.wipo.int/wipolex/en/text/586964>.

⁶¹ The Länder may define this notion if deemed relevant.

The concept of the independent producer is, for instance, defined by the State Media Act of North Rhine-Westphalia. Seen as television programmes, this definition is related to its financial independence from broadcasters. Article 3 (2) No. 3 of the State Media Act of North Rhine-Westphalia 2002/2022 (Landesmediengesetz

Nordrhein-Westfalen) [https://www.medienanstalt-](https://www.medienanstalt-nrw.de/fileadmin/user_upload/NeueWebsite_0120/Zum_Nachlesen/Rechtsgrundlagen_ab_2021/Lesefassung-LMG-NRW_13-4-2022.pdf)

[nrw.de/fileadmin/user_upload/NeueWebsite_0120/Zum_Nachlesen/Rechtsgrundlagen_ab_2021/Lesefassung-LMG-NRW_13-4-2022.pdf](https://www.medienanstalt-nrw.de/fileadmin/user_upload/NeueWebsite_0120/Zum_Nachlesen/Rechtsgrundlagen_ab_2021/Lesefassung-LMG-NRW_13-4-2022.pdf).



4.7.2. National definition of independent producer/independent production

Legislation	Summary of the measures
	N/A.

4.7.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.



4.8. DK– Denmark⁶²

4.8.1. Key findings

Notions	Existence of definitions/rules
Independent production	No
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 ⁶³
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of an independent producer of audiovisual works is generally related to its independence from broadcasters.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.
- In Denmark during the past years a market practice was established allowing independent producers to conclude an agreement with broadcasters according to a standard contract for feature films the conditions of which were discussed and agreed between the Danish public service broadcasters (DR and TV 2) and the Producers' Association (*Producentforeningen*).⁶⁴ This standard contract regulated the acquisition by broadcasters of exploitation rights in Danish feature films, including duration. That practice is no longer in place.

⁶² The summary on Denmark incorporates feedback received from Søren F. Jensen, senior legal advisor at the Danish Agency for Culture and Palaces during the checking round with the national regulatory authorities.

⁶³ See section 6.7.2.2. of the mapping report on national remedies against online piracy of sports content, entitled "Legal protection related to sports events": "*Moral and economic rights attached to the work shall initially belong to the author, as original creator. In the case of audiovisual works, the economic rights belonging to the author are usually transferred to the producer of the work, unless otherwise prescribed by contract*". (European Audiovisual Observatory, Strasbourg 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>)

⁶⁴ See <https://www.dfi.dk/branche-og-stoette/ny-standardkontrakt-spillefilm-0> and <https://pro-f.dk/projekter/dr-og-tv-2-har-et-kulturelt-og-oekonomisk-ansvar-dansk-film> (both in Danish).



4.8.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Section 13(1) No. 2 of Order No. 1159 of 18 June 2020 on programming activities on the basis of registration (<i>Bekendtgørelse om programvirksomhed på grundlag af registrering – BEK nr 1159 af 18/06/2020</i>) ⁶⁵	In section 13(1) No. 2 of the order on programming activities on the basis of registration there is a general reference to producers of European works as entities independent from broadcasters.

4.8.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁶⁵ <https://www.retsinformation.dk/eli/ta/2020/1159>



4.9. EE – Estonia⁶⁶

4.9.1. 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 ⁶⁷
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of an independent producer is defined with relation to European works.
- The producer of European works is a legal person established in a member state and which has operational and financial independence from broadcasters.
- An audiovisual works production company shall be deemed independent if it holds the majority of shares or voting rights in the company, has the ownership of copyright and related rights over the audiovisual works and has produced an audiovisual work for at least two media service providers during the last two years.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with audiovisual media service providers.

⁶⁶ The summary on Estonia incorporates the feedback received from Peeter Sookruus, advisor to the Information Society Division at the Consumer Protection and Technical Regulatory Authority during the checking round with the national regulatory authorities.

⁶⁷ According to Article 33(2) of the Estonian Copyright Act (in force from 1 January 2023, <https://www.riigiteataja.ee/en/eli/ee/527122022006/consolide/current>), unless otherwise stipulated, the authors and co-authors of an audiovisual work (the director, the script writer, the author of dialogue, the camera person and the designer), with the exception of the composers, shall be deemed to have transferred to the producer the exclusive right of exploitation of the work in question. See the Copyright Act available at: <https://www.wipo.int/wipolex/en/text/510476> and section 6.8.2.2. of the Mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, Strasbourg 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>.



4.9.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Article 12 of the Media Services Act (amended in 2022) (<i>Meediateenuste seadus</i>) ⁶⁸	The concept of an independent producer is related to the production of European works. In that sense, an independent producer is considered to be a legal entity established in a member state meeting the following criteria: a) it holds the majority of shares or the majority of voting rights in a production company established in a member state, b) it holds the copyright or related rights to the audiovisual works transferred to the production company either by a legal presumption or by contract, c) it has produced an audiovisual work for at least two media service providers during the last two years.

4.9.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

⁶⁸ <https://www.riigiteataja.ee/en/eli/ee/514062022001/consolide/current>



4.10. ES – Spain 69

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>



4.11. FI – Finland⁷³

4.11.1. 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)	No ⁷⁴
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of an independent producer of audiovisual works is related to his/her personal, operational, financial and legal independence from broadcasters.
- The producer has financial independence when his/her contribution to the financing of a television programme covers at least 51% of the total cost.
- The producer has operational independence when the total volume (in minutes) of the audiovisual works produced for a single broadcaster does not exceed 90% of the total volume (in minutes) of all audiovisual works, including cinematographic works, produced by the independent producer in question.
- All independent producers are entitled to use the designation "independent producer" or its equivalent in a foreign language together with their trade name.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

⁷³ The summary on Finland incorporates feedback received from Eliisa Reenpää, legal counsel at the Finnish Transport and Communications Agency (Traficom) (for the parts related to the Act on Electronic Communications Services) and from Aura Lehtonen, senior specialist for copyright affairs at the Ministry of Education and Culture (for the parts related to intellectual property rights) during the checking round with the national regulatory authorities.

⁷⁴ In Finland there is no legal presumption that automatically transfers rights from the author to the producer when audiovisual content is produced. Instead, the transfer of rights from the author to the producer typically occurs through contractual agreements between the parties involved.



4.11.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Section 210 of the Act on Electronic Communications Services No. 917/2014, as amended by Act No. 1207/2020 – (<i>Laki sähköisen viestinnän palveluista</i>) ⁷⁵	According to section 210 of the Act on Electronic Communications Services No. 917/2014 (2020), an independent producer of audiovisual works is considered to be the natural or legal person whose activity meets the following criteria: a) in which any one broadcaster holds no more than 25% of the shares or several broadcasters hold no more than 50% of the shares, and b) who during the past three years has produced no more than 90% of its programmes for the same broadcaster.

4.11.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁷⁵ <https://www.finlex.fi/fi/laki/ajantasa/2014/20140917> (in Finnish) and https://finlex.fi/en/laki/kaannokset/2014/en20140917_20201207.pdf (in English).



4.12. FR – France⁷⁶

4.12.1. 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 ⁷⁷
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes

- The concepts of the independent producer and independent production apply to cinematographic and audiovisual works.
- The two concepts are related to operational and financial independence from the service providers.
- However, a service provider (broadcaster) may directly or indirectly hold a producer's shares when (s)he finances at least 50% of the production costs of a specific audiovisual works project under the condition that the investment in the shares in question does not exceed half of the service provider's expenditure on the work. There is no similar provision for the producers of cinematographic works.
- Secondary rights are only regulated for independent film production and for independent audiovisual production on on-demand services. In these cases, the concept of secondary rights is to be understood as the exploitation rights that cannot be directly exploited by the audiovisual media service provider.
- With regard to territorial constraints, as far as cinematographic works are concerned, the service provider must not retain secondary rights or marketing mandates for more than one of the agreed exploitation modalities by contract (like, e.g., exploitation in

⁷⁶ The summary on France incorporates the feedback received from the French Regulatory Authority for Audiovisual and Digital Communication (Arcom), during the checking round with the national regulatory authorities.

⁷⁷ According to Article L. 132-24 of the French Intellectual Property Code 1992/2020:

The contract which binds the producer to the authors of an audiovisual work, with the exception of the composer, carries, except otherwise agreed and without prejudice to the rights recognised to the author by the provisions of Articles L. 111-3, L. 121-4, L. 121-5, L. 122-1 to L. 122-7, L. 123-7, L. 131-2 to L. 131-7, L. 132-4 and L. 132-7, assignment for the benefit of the producer of the exclusive rights to exploit the audiovisual work. The audiovisual production contract does not imply transfer to the producer of the graphic and theatrical rights to the work. This contract provides for the list of the elements having been used for the realisation of the work which are preserved as well as the methods of this conservation.

See text available at <https://www.wipo.int/wipolex/en/text/585611> (in French).



French cinemas, exploitation in French and foreign VOD services, etc.) in order for the work to be counting towards the quota of independent works. There is no similar provision in the case of audiovisual works. However, there is a prohibition on secondary rights for VOD services in independent audiovisual production.

- With regard to time constraints, both audiovisual and cinematographic works may be transferred to the service provider by contract for a limited period.
- The criteria listed above can, in some cases, be adjusted within the service provider's convention (with Arcom) by taking into account the agreements concluded between service providers and one or more professional organisations of the film or audiovisual industry.
- The retention of IP rights for the benefit of the producers of cinematographic works can also be included in professional agreements. Such an agreement validated by a ministerial decree (*chronologie des médias*) contains provisions for the protection of cinematographic works released in French cinemas according to which TV channels and VOD providers are allowed to transmit these works after a certain period of time following their first distribution in order to avoid unfair competition in relation to the producers of such works.

4.12.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Articles 21-22 of Decree No. 2021-793 of June 2021 relating to on-demand audiovisual media services (<i>Décret n° 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande (décret SMAD)</i>)⁷⁸</p> <p>Articles 13 and 21 of Decree No. 2021-1926 of 30 December 2021 on the contribution to the production of cinematographic and audiovisual works by terrestrial television services (<i>Décret n° 2021-1926 du 30 décembre 2021 relatif à la contribution à la</i></p>	<p>In French legislation the criteria for the independent producer as well as for the independent production of audiovisual works vary according to the type of work (audiovisual or cinematographic) and the means of its transmission (broadcasting, VOD or via network).</p> <p>(A) VOD services (non-linear) Independent producer</p> <p>(i) European audiovisual works (Article 22, III of Decree No. 2021-793)</p> <ul style="list-style-type: none"> - The service provider does not hold, directly or indirectly, shares or voting rights in the production company and nor does the producer hold, directly or indirectly, shares or voting rights in the service provider's company. - No shareholder or group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, the production company controls the service provider. <p>(ii) Cinematographic European works (Article 21, III of Decree No. 2021-793)</p>

⁷⁸ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043688681>



<p><i>production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne Terrestre</i>)⁷⁹</p> <p>Article 19 and 25 of Decree No. 2021-1924 of 30 December 2021 on contributions for cinematographic and audiovisual purposes by providers of television services distributed via networks not using frequencies assigned by the regulatory authority for audiovisual and digital communication (<i>Décret n° 2021-1924 du 30 décembre 2021 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision distribués par les réseaux n'utilisant pas des fréquences assignées par l'Autorité de régulation de la communication audiovisuelle et numérique</i>)⁸⁰</p>	<p>- The service provider does not hold, directly or indirectly, shares or voting rights in the production company and nor does the producer hold, directly or indirectly, shares or voting rights in the service provider's company.</p> <p>- No shareholder or group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, the production company controls the service provider.</p> <p><u>Independent production</u></p> <p>(i) Audiovisual European works (Article 22, II of Decree No. 2021-793)</p> <p>- The service provider does not directly or indirectly hold any of the producer's shares or the right to revenue relating to the work, has no financial, technical or artistic responsibility for the production of the work and does not guarantee its successful completion.</p> <p>(ii) Cinematographic European works (Article 21, II of Decree No. 2021-793)</p> <p>- The service provider has no financial, technical or artistic responsibility for the production of the work, does not guarantee its successful completion and does not hold, directly or indirectly, any of the producer's shares.</p> <p>(B) TV broadcasting services (linear)</p> <p><u>Independent producer</u></p> <p>(i) Audiovisual European works (Article 21, III of Decree No. 2021-1926)</p> <p>- The service provider (or the group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, its company) does not hold, directly or indirectly, shares or voting rights in the production company.</p> <p>(ii) Cinematographic European works (Article 13, II of Decree No. 2021-1926)</p> <p>- The service provider does not hold, directly or indirectly, shares or voting rights in the production company nor does the producer hold, directly or indirectly, shares or voting rights in the service provider's company.</p> <p>- No shareholder or group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, the production company controls the service provider.</p> <p><u>Independent production</u></p> <p>(i) Audiovisual European works (Article 21, II of Decree No. 2021-1926)</p>
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⁷⁹ https://www.legifrance.gouv.fr/loda/id/JORFTEXT000044792513?init=true&page=1&query=2021-1926&searchField=ALL&tab_selection=all

⁸⁰ https://www.legifrance.gouv.fr/loda/id/JORFTEXT000044792333?init=true&page=1&query=2021-1924&searchField=ALL&tab_selection=all



	<ul style="list-style-type: none">- The broadcaster does not directly or indirectly hold any producer's shares except when (s)he has financed at least 50% of the production costs.- The broadcaster's investment in the producer's shares does not exceed 50% of its investment in the project.- The broadcaster has no financial, technical or artistic responsibility for the production of the work and does not guarantee its successful completion. <p>(ii) Cinematographic European works (Article 32 of Decree No. 2021-1926) – provisions applicable to cinema services</p> <ul style="list-style-type: none">- Where a production company which does not meet the conditions of Article 13(III) contributes to the financing of a work, this shall not prevent the service provider's expenditure on its contribution to the development of independent productions being taken into account, provided that the company does not personally take or jointly share the initiative and financial, technical and artistic responsibility for the work or guarantee its successful completion. <p>(C) Broadcasting services via networks</p> <p><u>Independent producer</u></p> <p>(i) Audiovisual works (Article 25, III of the Decree No. 2021-1924)</p> <ul style="list-style-type: none">- The service provider (or the group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, its company) does not, directly or indirectly, hold shares or voting rights in the production company. <p>(ii) Cinematographic works (Article 19, III of Decree No. 2021-1924)</p> <ul style="list-style-type: none">- The service provider does not hold, directly or indirectly, shares or voting rights in the production company nor does the producer hold, directly or indirectly, shares or voting rights in the service provider's company.- No shareholder or group of shareholders controlling, within the meaning of Article L. 233-3 of the Commercial Code, the production company controls the service provider. <p><u>Independent production</u></p> <p>(i) Audiovisual works (Article 25, II of Decree No. 2021-1924)</p> <ul style="list-style-type: none">- The broadcaster has no financial, technical or artistic responsibility for the production of the work and does not guarantee its successful completion.- The broadcaster does not hold, directly or indirectly, any producer's shares except when (s)he has financed at least 50% of the production costs.- The broadcaster's investment in the producer's shares does not exceed 50% of its investment in the project. <p>(ii) Cinematographic European works (Article 36 of Decree No. 2021-1924) – provisions applicable to cinema services</p> <ul style="list-style-type: none">- Where a production company which does not meet the conditions of Article 19(III) contributes to the financing of a work, this shall not prevent the service provider's expenditure on its contribution to the
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	development of independent productions being taken into account, provided that the company does not personally take or jointly share the initiative and financial, technical and artistic responsibility for the work or guarantee its successful completion.
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4.12.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 21-22 of Decree No. 2021-793 of June 2021 relating to on-demand audiovisual media services (<i>Décret n° 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande (décret SMAD)</i>)⁸¹</p> <p>Article 13 of Decree No. 2021-1926 of 30 December 2021 on the contribution to the production of cinematographic and audiovisual works by terrestrial television services (<i>Décret n° 2021-1926 du 30 décembre 2021 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne Terrestre</i>)⁸²</p> <p>Article 19 and 25 of Decree No. 2021-1924 of 30 December 2021 on contributions for cinematographic and</p>	<p>(A) VOD services (non-linear) Independent production</p> <p>(i) Audiovisual European works (Article 22, II of Decree No. 2021-793)</p> <ul style="list-style-type: none"> - The duration of the exploitation rights stipulated in the contract does not exceed 72 months in each territory in which those rights were acquired, including 36 months when acquired on an exclusive basis. - The service provider does not hold, directly or indirectly, any marketing mandates or secondary rights on the work in question. <p>(ii) Cinematographic European works (Article 21, II of Decree No. 2021-793)</p> <ul style="list-style-type: none"> - When the exploitation rights are transferred to the service provider by contract on an exclusive basis, their duration does not exceed 12 months in each territory in which those rights were acquired. - The service provider may not hold, directly or indirectly, more than one mandate or secondary right in order to market the work in French territory or abroad except in certain ways agreed by contract (cinemas, television services, on-demand services other than the one it broadcasts, video recordings for private use by the public). <p>(iii) Adjustments to the conditions under which a work is deemed to be an independent production, for both audiovisual and cinematographic works (Article 26, 7° of Decree No. 2021-793)</p> <p>(B) TV broadcasting services (linear) Independent production</p> <p>(i) Audiovisual European works (Article 21, II of Decree No. 2021-1926)</p> <ul style="list-style-type: none"> - The duration of the rights stipulated in the contract for TV services does not exceed 36 months. <ul style="list-style-type: none"> • When the broadcaster has financed less than 50% of the cost of the work, these rights include broadcasting on a television service and, for a period specified by the agreement or the specifications, exploitation on a catch-up television service. • When the broadcaster has financed at least 50% of the cost of the work and his/her contribution is defined globally by application of Article 8,

⁸¹ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043688681>

⁸² https://www.legifrance.gouv.fr/loda/id/JORFTEXT000044792513?init=true&page=1&query=2021-1926&searchField=ALL&tab_selection=all



<p>audiovisual purposes by providers of television services distributed via networks not using frequencies assigned by the regulatory authority for audiovisual and digital communication (<i>Décret n° 2021-1924 du 30 décembre 2021 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision distribués par les réseaux n'utilisant pas des fréquences assignées par l'Autorité de régulation de la communication audiovisuelle et numérique</i>)⁸³</p> <p>Decision of 4 February 2022 (Media Chronology Decree) (<i>Arrêté du 4 février 2022 portant extension de l'accord pour le réaménagement de la chronologie des médias du 24 janvier 2022</i>)⁸⁴</p>	<p>these rights include broadcasting on all television services and exploitation on all on-demand audiovisual media services of the broadcaster, his/her subsidiaries and the subsidiaries of the company controlling him/her within the meaning of 2° of Article 41-3 of the aforementioned law of 30 September 1986.</p> <ul style="list-style-type: none"> - The broadcaster does not hold, directly or indirectly, marketing mandates when the producer has, directly or through one of its subsidiaries, an internal distribution capacity for the work in question or when the broadcaster has a framework agreement with a distribution company. <p>(ii) Cinematographic European works (Article 13, II of Decree No. 2021-1926)</p> <ul style="list-style-type: none"> - When the exploitation rights are transferred to the service provider by contract on an exclusive basis, their duration does not exceed 18 months. - The service provider may not hold, directly or indirectly, more than one mandate or secondary right in order to market the work in French territory or abroad except in certain ways agreed by contract (cinemas, television services other than the one it broadcasts, on-demand services, video recordings for private use by the public). <p>(iii) Adjustments to the conditions under which a work is deemed to be an independent production, for both audiovisual and cinematographic works (Article 26 and 43 of Decree No. 2021-1926)</p> <p>(C) Broadcasting services via networks</p> <p><u>Independent production</u></p> <p>(i) Audiovisual works (Article 25, II of Decree No. 2021-1924)</p> <ul style="list-style-type: none"> - The duration of the rights stipulated in the contract does not exceed 36 months. - The service provider does not hold, directly or indirectly, marketing mandates when the producer has, directly or through one of its subsidiaries, an internal distribution capacity for the work in question or when the broadcaster has a framework agreement with a distribution company. <p>(ii) Cinematographic works (Article 19, II of Decree No. 2021-1924)</p> <ul style="list-style-type: none"> - When the exploitation rights are transferred to the service provider by contract on an exclusive basis, their duration does not exceed 18 months. - The service provider may not hold, directly or indirectly, more than one mandate or secondary right in order to market the work in French territory or abroad except in certain ways agreed by contract (cinemas, television services other than the one it broadcasts, on-demand services, video recordings for private use by the public). <p>(iii) Adjustments to the conditions under which a work is deemed to be an independent production, for both audiovisual and cinematographic works (Article 30 and 47 of Decree No. 2021-1924)</p>
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⁸³ https://www.legifrance.gouv.fr/loda/id/JORFTEXT000044792333?init=true&page=1&query=2021-1924&searchField=ALL&tab_selection=all

⁸⁴ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045141748>



	<p>(D) Cinematographic works released in French cinemas</p> <p>According to a professional agreement validated by a ministerial decree (<i>chronologie des médias</i>), broadcasting services via network (for instance pay-TV cinema channels) may transmit a film released in French cinemas six months after its first distribution. VOD providers can also benefit from this position if a “premium” agreement is made with one or more professional organisations of the film industry, or 15 months in case of a “non-premium” agreement, or 17 months after its first distribution. In the case of VOD subscription providers, the transmission of a film released in French cinemas may be ceased after a period of 22 months in order to allow free-to-air TV channels to distribute the film in question.</p>
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4.13. GR – Greece⁸⁵

4.13.1. Key Findings

Notions	Existence of definitions/rules
Independent production	No
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 ⁸⁶
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The Greek legislation in force does not contain a definition of an independent producer of audiovisual works. According to Article 10 of Law No. 2328/1995, which has been abolished, an independent producer should have operational and financial independence from broadcasters. Currently, Article 17 of Law No. 4779/2021 for the implementation of Directive 2018/1808 into Greek legislation refers to the producers of “European audiovisual works” and the “producers of audiovisual works in the Greek language” without any further definition of these terms.
- Greek legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

⁸⁵ The summary on Greece incorporates the feedback received from Persa Lambropoulou, legal advisor at the National Council for Radio and Television, during the checking round with the national regulatory authorities.

⁸⁶ According to Article 34 (1) of Greek Copyright Law No. 2121/1993 (as amended by Law No. 4996/2022):

A contract dealing with the creation of an audiovisual work between a producer and an author shall specify the economic rights which are to be transferred to the producer. If the aforementioned provision is not met, the contract shall be deemed to transfer to the producer all the economic rights which are necessary for the exploitation of the audiovisual work, pursuant to the purpose of the contract. When the master from which copies for exploitation are to be made, is approved by the author, the audiovisual work shall be deemed to be accomplished. No alteration, abridgment or other modification shall be made to the definitive form of the audiovisual work, as the latter has been approved by the author, without his/her prior consent. Authors of individual contributions to an audiovisual work may exercise their moral right only in relation to the definitive form of the work, as approved by the author.

See the text available at <https://www.opi.gr/vivliothiki/2121-1993>.



4.13.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Article 10 of Law No. 2328/1995 on the functioning of private broadcasting companies (<i>Νόμος 2328/1995 Νομικό καθεστώς της ιδιωτικής τηλεόρασης και της τοπικής ραδιοφωνίας, ρύθμιση θεμάτων της ραδιοτηλεοπτικής αγοράς και άλλες διατάξεις</i>)⁸⁷</p> <p>Article 22(5) of Law No. 3166/2003 on the organisation and functioning of press offices within the Ministry of the Press and Mass Media (<i>Οργάνωση και λειτουργία των Γραφείων Τύπου και Επικοινωνίας του Υπουργείου Τύπου και Μέσων Μαζικής Ενημέρωσης και ρυθμίσεις για τον ευρύτερο τομέα των μέσων ενημέρωσης</i>)⁸⁸</p>	<p>The current Greek legislation in force does not contain any definition of independent producers or production. Such a definition could be found in Article 10 of Law No. 2328/1995 on the functioning of private broadcasting companies which has been abolished by Article 40 of Law No. 4487/2017.</p> <p>According to Article 10 of Law No. 2328/1995, as amended by Article 22 (5) of Law No. 3166/2003, independent producers are natural or legal persons registered with the local Professional Registration Board, who undertakes the production of audiovisual or cinematographic works (with the exception of advertisements or advertorial content) without holding any shares in the broadcasting companies.</p>

4.13.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁸⁷ https://www.esr.gr/wp-content/uploads/NOMOS_2328-1995.pdf

⁸⁸ <https://www.e-nomothesia.gr/enemerose-tupos-radiophono-teleorase/n-3166-2003.html>



4.14. HR – Croatia⁸⁹

4.14.1. 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 ⁹⁰
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes

- A legal entity, duly registered for the production of audiovisual works, shall be deemed independent when it has operational and financial independence from broadcasters.
- Legal entities having their headquarters in the Republic of Croatia or in another member state shall be deemed independent when they have no ownership stake from TV broadcasters/providers and do not contribute more than 90% of their total revenue to a single broadcaster/provider within a three-year period.
- Independent producers of audiovisual works have primary and secondary rights to these works. Primary and secondary rights may be transferred by contract to the broadcaster financing the production (or co-production) of an audiovisual work.

⁸⁹ The summary on Croatia incorporates feedback received from Sanja Pančić, advisor to the Director for International Cooperation and Public Relations, at the Agency for Electronic Media (AEM) during the checking round with the national regulatory authorities.

⁹⁰ According to Article 92 (1) of the Croatian Copyright and Related Rights Act No. 111/2021:

A contract on audiovisual production between the audiovisual producer and the principal and other co-authors of an audiovisual work shall regulate the rights and obligations of contracting parties in creating an audiovisual work, the content of the right of exploitation that the principal co-author and other co-authors undertake to establish for the audiovisual producer under that contract, the duration and area for which the rights of exploitation are established, the remuneration that the audiovisual producer undertakes to pay to the principal and other co-authors for the creation of the audiovisual work under the contract and for establishing the right of exploitation of that work and other terms of the contract.

Moreover, according to Article 93 (1) of the above Act:

Unless otherwise provided by the contract on audiovisual production between the audiovisual producer and the authors of contributions, it shall be considered that the audiovisual producer acquires all the economic rights of the authors of contributions to the extent necessary to fulfil the purpose of the contract.

See the Copyright and Related Rights Act No. 111/2021 available at:

<https://www.wipo.int/wipolex/en/text/584899>.



- Croatian legislation includes rules on the retention of IP rights by independent producers in their relationship with audiovisual media service providers.
- Primary rights refer to the exclusive rights granted to a broadcaster financing the production or the co-production of an audiovisual work to transmit this work to the public in the territory of the Croatian Republic by all available means for a limited period of time.
- Secondary rights refer to the exclusive rights granted to a broadcaster financing the production or the co-production of an audiovisual work to transmit this work to the public in markets outside the Croatian Republic.
- In the case of co-production, the independent producers should contribute at least 5% of their resources to the total production costs.
- Legal entities having their headquarters in a third country (outside the EU), shall be deemed independent when, apart from the abovementioned conditions, the majority of their audiovisual production in the last three years consists of European works.

4.14.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
<p>Article 49 of the Electronic Media Act 1942/2021 (<i>Zakon o elektroničkim medijima</i>, NN - 111/21, 114/22)⁹¹</p> <p>Article 2. (1) and (2) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers 78/2022 (<i>Pravilnik o kriterijima i načinu povećanja opsega udjela europskih audiovizualnih djela neovisnih proizvođača</i> NN 78/2022)⁹²</p>	<p>An independent producer of audiovisual works is considered to be a legal entity, having its headquarters in the Republic of Croatia or in another member state, which is registered for the production of such works and meets the following criteria:</p> <p>a) (s)he has no ownership stake from TV broadcasters or audiovisual media service providers, b) (s)he operates independently of the above media entities, c) i(s)he t does not contribute more than 90% of its total revenue to a TV broadcaster or an audiovisual media service provider within a three-year period, d) (s)he has secondary rights to the produced audiovisual works, and e) in the case of co-production of an audiovisual work, it invests at least 5% of the financial resources in order to cover the total costs.</p> <p>The legal entity that has its headquarters in a third country (outside the EU), is considered as an independent producer when (a) the majority of its audiovisual production in the last three years consists of European works, (b) it does not have an ownership stake from television broadcasters and/or audiovisual media service providers and (c) it operates independently of the above media entities.</p>

⁹¹ https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

⁹² https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_78_1142.html



4.14.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
<p>Article 2 (4) and (5) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers (<i>Pravilnik o kriterijima i načinu povećanja opsega udjela europskih audiovizualnih djela neovisnih proizvođača NN 78/2022</i>)</p>	<p>According to Article 2 (4) of the Ordinance on criteria and methods of increasing the scope of the European audiovisual works share by independent producers, a provider financing the production or co-production of an audiovisual work, acquires by contract the primary rights to broadcast or communicate the work to the public by all means, including via its own platforms, in the territory of the Republic of Croatia for a limited period of time.</p> <p>According to Article 2 (5) of the Ordinance, a provider financing the production or co-production of an audiovisual work may also acquire secondary rights, meaning exclusive rights to use the work in markets outside the Republic of Croatia.</p>
<p><i>Example</i> Co-regulatory agreement between Croatian Radiotelevision (HRT), the Croatian Association of Independent Producers and the Agency for Electronic Media on the procedure and rules of procurement of works by independent producers (<i>Koregulacijski sporazum o postupku i pravilima nabave djela neovisnih proizvođača</i>)⁹³</p>	<p>According to a co-regulatory agreement, Croatian Radiotelevision (HRT) and independent producers can agree that by financing the production of an audiovisual work and paying a licence fee (which amounts to at least 7% of the total production costs), HRT acquires time-limited primary rights of seven years to the work in question. During this period HRT may exclusively exploit the audiovisual work without additional charges from the producer or any other third party.</p> <p>In a period of six months from the expiration of the primary licence package, HRT has the right of first refusal to purchase an extended primary licence package for a duration of three years, the price of which is fixed at 1% of the total production cost for non-exclusive rights, or 2% of the total production cost for exclusive rights.</p> <p>In the event that the license expires or HRT does not express an interest in the extended primary licence package within the abovementioned period, the ownership of the transmitted primary rights returns to the independent producer. When the independent producer recovers the primary rights to the audiovisual work, HRT is allowed to receive a share of the compensation received for distribution in the domestic market according to the scale applied for secondary rights.</p> <p>Both the independent producer and HRT may by contract acquire a percentage of the secondary rights to the audiovisual work financed by HRT according to their percentage of the financing of the work in question.</p>

⁹³[https://arhiv-
www.hrt.hr/fileadmin/video/Koregulacijski_sporazum_o_postupku_i_pravilima_nabave_djela_neovisnih_proi
zvodaca-06_11_2017.pdf](https://arhiv-
www.hrt.hr/fileadmin/video/Koregulacijski_sporazum_o_postupku_i_pravilima_nabave_djela_neovisnih_proi
zvodaca-06_11_2017.pdf)



4.15. HU – Hungary⁹⁴

4.15.1. 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 ⁹⁵
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 is related to its financial and administrative independence from broadcasters.
- The national legislation does not include rules on the retention of IP rights by the independent producer in its relationship with broadcasters.

4.15.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Section 203 paragraph 12 of Act CLXXXV 2010 on Media Services and Mass Communication (2010. évi CLXXXV. Törvény a	An independent producer is an entity in which a broadcaster has no direct or indirect ownership interest or the staff of which have no employment relationship with a broadcaster.

⁹⁴ It was not possible to receive feedback on the country summary concerning Hungary during the checking round with the national regulatory authorities.

⁹⁵ Article 66 (1) and (2) of the Copyright Act 1999/2020 provides for a legal presumption of transfer to the producer of the exploitation rights owned by the director of an audiovisual work, with the exception of specific rights (fair remuneration for private copying, lending and rental rights, rebroadcasting rights). According to Article 66:

(1) Unless otherwise stipulated, pursuant to the contract concluded on the production of a cinematographic creation (hereinafter referred to as "agreement for adaptation for screen"), the author – with the exception of the composer of a musical work with or without text – shall assign to the producer the right of use of the cinematographic creation and of licensing its use. (2) The assignment of the right of licensing shall not extend to the economic rights provided for in Articles 20, 23 (3) and (6) and 28.

See the text available at <https://www.wipo.int/wipolex/en/text/577881>.



<i>médiaszolgáltatásokról és a tömegkommunikációról</i> ⁹⁶	
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4.15.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

⁹⁶ <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>



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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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>



4.18. LT – Lithuania¹¹⁰

4.18.1. 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 ¹¹¹
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 its legal and operational independence with regard to the AVMS providers and television/radio broadcasters.
- A producer of audiovisual works shall be deemed independent when (s)he does not participate as a manager or member of the board of an AVMS provider or a television/radio broadcaster or in any other capacity.
- Additionally, a producer of audiovisual works shall be deemed independent when (s)he does not have an employment relationship with an AVMS provider or a television/radio broadcaster and does not participate in joint activities.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

¹¹⁰ The summary on Lithuania incorporates feedback received from Nerijus Maliukevičius, market research analyst at the Radio and Television Commission of Lithuania, during the checking round with the national regulatory authorities.

¹¹¹ Article 11(2) of the Lithuanian Law on Copyright and Related Rights states that the contract for the production of an audiovisual work, with the exclusion of musical works, shall be presumed to assign to the producer all exclusive rights for the use of the audiovisual work (reproduction, dissemination, communication to the public, adaptation, etc.) including the rights to subtitle or dub, unless otherwise stipulated in the contract. See the text available at <https://www.wipo.int/wipolex/en/text/586110> (in Lithuanian).



4.18.2. National definition of independent producer/ independent production

Legislation	Details of the measures
Article 2(30) of the Law on the Provision of Information to the Public of the Republic of Lithuania, consolidated version 1 June 2023 (<i>Lietuvos Respublikos visuomenės informavimo įstatymas</i>) ¹¹²	An independent producer of audiovisual works is considered to be the natural or legal person whose activity meets the following criteria: a) (s)he does not participate as a manager or member of the board of an audiovisual media service provider or a television/radio broadcaster or in any other capacity, and b) (s)he does not have an employment relationship with an audiovisual media service provider or a television/radio broadcaster and does not participate in joint activities.

4.18.3. National rules on IPR assignment/retention

Legislation	Details of the measures
	N/A.

¹¹² <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/asr>



4.19. LU – Luxembourg¹¹³

4.19.1. 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 ¹¹⁴
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	No

- The concept of an independent producer of audiovisual works is related to the ownership of the production company and its operational independence from broadcasters.
- A producer of audiovisual works shall be deemed independent when (s)he is not a broadcaster and no broadcaster holds or controls the majority of the production company's shares.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

¹¹³ The summary on Luxembourg incorporates feedback received from the Department of Media, Telecommunications and Digital Policy (Ministry of State) and the Luxembourg Independent Media Authority (ALIA) during the checking round with the national regulatory authorities.

¹¹⁴ According to Article 21 of the Copyright Law 2001 (*Loi du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données*) the producer and the director of an audiovisual work, with the exception of the composers, as well as the performers shall be deemed to be the authors. Furthermore, according to Articles 24 and 51 (1) of the above Copyright Law, unless otherwise stipulated, the authors of an audiovisual work, with the exception of the composers, as well as the performers shall be deemed to transfer to the producer the exclusive rights of exploitation of the work in question. This presumption includes the rights to add subtitles or dub the work, but does not include the rights to adapt, modify or create a derivative work. See Copyright Law 2001, available at: <https://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/jo> and section 6.18.2.2 of the Mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, Strasbourg 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>.



4.19.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Article 27 of the Law of 27 July 1991/2022 on electronic media, (<i>Loi du 27 juillet 1991/2022 sur les médias électroniques</i>)¹¹⁵</p> <p>Article 2 (6) of the Grand-Ducal Regulation of 5 April 2001/2021 laying down the rules applicable to the promotion of European works in audiovisual media services (<i>Règlement grand-ducal du 5 avril 2001/2021 fixant les règles applicables en matière de promotion des œuvres européennes dans les services de médias audiovisuel</i>)¹¹⁶</p>	<p>An independent producer of audiovisual works is considered the natural or legal person that meets the following criteria:</p> <ul style="list-style-type: none">a)(s)he is not a broadcaster andb) his/her capital is not in majority controlled by a broadcaster.

4.19.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

¹¹⁵ <https://alia.public.lu/wp-content/uploads/2023/06/Loi-modifiee-du-27-juillet-1991-sur-les-medias-electroniques-modification-du-12-aout-2022.pdf>

¹¹⁶ <https://alia.public.lu/wp-content/uploads/2023/08/RGD-5-4-2001-promotion-oeuvres-eu-dans-les-SMA-text-coordonne-au-23-7-2021.pdf>



4.20. LV – Latvia¹¹⁷

4.20.1. 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)	No ¹¹⁸
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 is defined in a general way without any specific reference to its independence from broadcasters.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with audiovisual media service providers.
- Although, in the case of retransmission of an audiovisual work created by an independent producer, the broadcaster shall disclose to the audience the ownership of the programme in question.¹¹⁹

¹¹⁷ The summary on Latvia incorporates the feedback received from Māra Madara Lūse, head of the International Cooperation and Analytics Division at the National Electronic Mass Media Council, during the checking round with the national regulatory authorities.

¹¹⁸ According to section 11 (3) of the Latvian Copyright Law, the authors of an audiovisual work may transfer by contract to the producer the exploitation rights to the work in question. The same rules apply to the performers. According to section 49 (1) of the above Copyright Law, the performers of an audiovisual work may transfer by contract to the producer their rights to fix, reproduce and communicate their performance to the public. See Latvian Copyright Law (2000/2023) available at: <https://www.wipo.int/wipolex/en/text/587475> (in Latvian).

¹¹⁹ See section 30 (4) of the Latvian Electronic Mass Media Law (as amended up to 1 May 2023) available at: <https://www.wipo.int/wipolex/en/text/587479> (in Latvian).



4.20.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Section 1(13) and section 1(7) of the Latvian Electronic Mass Media Law (2019) (<i>Elektronisko plašsaziņas līdzekļu likums</i>) ¹²⁰	<p>According to section 1(13) of the Latvian Electronic Mass Media Law an independent producer is “a private person who is not an electronic mass medium, but who is engaged in the production of films, advertising, individual radio or television broadcasts”.</p> <p>According to section 1(7) of the same Law, electronic mass medium is defined as “a private person to whom a broadcasting permit or a retransmission permit has been issued in accordance with the procedures set out by laws and regulations or who in accordance with this law has submitted to the National Electronic Media Council a notification on the provision of on-demand electronic mass media services”.</p>

4.20.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

In Latvia, there are no rules ensuring independent producers retain their exploitation rights. However, according to section 30 (4) of the Latvian Electronic Mass Media Law, in the case of the broadcasting of a programme created by an independent producer, the electronic mass medium shall – at the beginning of the programme – inform the audience in an unambiguous manner that the content is a broadcast created by an independent producer.

¹²⁰ Latvian Electronic Mass Media Law in the original language available at: <https://likumi.lv/ta/id/214039-elektronisko-plassazinas-lidzeklu-likums> and in English at: <https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law>



4.21. MT – Malta¹²¹

4.21.1. 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 ¹²²
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 is related to its legal and financial independence from broadcasters.
- The producer has legal independence when (s)he has no employment relationship with a broadcaster.
- The producer has financial independence when (s)he does not hold more than 15% of the shares of a Maltese broadcaster and no broadcaster holds more than 15% of the shares of the production company.

¹²¹ The summary on Malta incorporates feedback received from Dr Joanna Spiteri, chief executive of the Maltese Broadcasting Authority, during the checking round with the national regulatory authorities.

¹²² Article 24 (4) of the Copyright Act 2000, as amended up to Act No. VIII 2011, states that:

Subject to the provisions of Article 52 no assignment of copyright or neighbouring rights and no licence to do an act the doing of which is controlled by copyright or by neighbouring rights shall have effect unless it is effected by an agreement in writing between the parties: Provided that when a contract is concluded between a performer and a producer of audiovisual works concerning the production of an audiovisual work the performer shall be deemed to have assigned to the producer his/her exclusive rights on the fixation of his/her performance, unless agreed otherwise, subject only to the right, which may not be waived, of the performer to an equitable remuneration payable on the conclusion of the contract by the producer to the performer or should (s)he so desire to a collecting society representing him/her, which remuneration shall, in the absence of agreement between the parties, be determined by the Board. Provided further that, when a contract is concluded between the author of an audiovisual work or the authors of the underlying works used as the basis for the audiovisual work and the producer of the audiovisual work concerning the production of that audiovisual work such authors shall be deemed to have assigned to the producer their exclusive rights on their copyright works, unless agreed otherwise, subject only to the right, which may not be waived, of the authors to an equitable remuneration payable on the conclusion of the contract by the producer to the author individually or should the author so desire, to a collecting society representing him/her, which remuneration shall, in the absence of agreement between the parties, be determined by the Board.

See the text available at <https://www.wipo.int/wipolex/en/text/355524>.



- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters. Such retention is subject to free negotiations between the contracting parties.

4.21.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Subsidiary Legislation 350.04, European Broadcasting Cooperation Regulations – Legal Notice No. 158 of 2000, as amended by Legal Notices No. 258 of 2000, No. 323 of 2010 and No. 485 of 2020 ¹²³	According to Article 2(1) of S.L.350.04, European Broadcasting Cooperation Regulations, “producers who are independent of broadcasters” means any person who: a) is not an employee (whether or not on temporary leave of absence) of a broadcaster; b) does not have a shareholding greater than 15% in a broadcaster: Provided that a company shall not be considered as an independent producer if a broadcaster has a shareholding greater than 15% in such company.

4.21.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

¹²³ <https://legislation.mt/eli/sl/350.4/eng>



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/>



<i>commerciële media-instellingen 2023</i> ¹²⁸	<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>



4.23. PL – Poland¹²⁹

4.23.1. 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 ¹³⁰
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 is related to its operational and financial independence from broadcasters.
- A producer of audiovisual works shall be deemed independent when (s)he neither holds any shares of a broadcasting company nor allows such a company to hold any shares of the production company or to participate in the same capital group.
- Additionally, a producer of audiovisual works shall be deemed independent when (s)he has no employment relationship with a broadcasting company. Similarly, the managing board of the production company shall not comprise any person having an employment relationship with a broadcasting company.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with audiovisual media services.
- Ongoing discussions in Poland mostly deal with the implementation of the Directive on copyright and related rights in the Digital Single Market (2019/790/EU) and the relationship between creators and producers.

¹²⁹ The summary on Poland incorporates feedback from Albert Woźniak, an expert from the Department of Strategy of the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji* – KRRiT) during the checking round with national regulatory authorities.

¹³⁰ According to Article 70 of the Copyright Act of 4 February 1994 (as last amended on 13 February 2020), available at: <https://lexlege.pl/ustawa-o-prawie-autorskim-i-prawach-pokrewnych/>. Based on the mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, Strasbourg, 2021, available at: <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>. See also section 6.22.2.2 “Legal protection related to sports events”:

As a default rule under the Copyright Act, the producer of an audiovisual work (Article 70) and the producer of a videogram are presumed, by virtue of an exploitation contract for the creation of the work or of an existing work, to acquire exclusive economic rights for the exploitation of these works and are entitled to claim copyright infringement and to take legal action.



4.23.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Article 4 (26) of the Polish Broadcasting Act of 29 December 1992 (<i>Ustawa o radiofonii i telewizji</i>) ¹³¹	According to Article 4 (26) of the Polish Broadcasting Act, an independent producer is considered as the entity that meets the following criteria: <ul style="list-style-type: none">- (s)he does not have the status of a broadcaster,- (s)he does not hold any shares in a broadcasting company and does not allow such a company or its subsidiary to hold any shares in the production company,- (s)he is not related to a broadcaster through an employment contract,- the management board does not comprise any person having an employment relationship with a broadcaster or its subsidiary.

4.23.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

¹³¹ <https://lexlege.pl/ustawa-o-radiofonii-i-telewizji/>



4.24. PT – Portugal¹³²

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 ¹³³
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.

¹³² 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.

¹³³ 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>)¹³⁴</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>)¹³⁵</p> <p>Regulation No. 178/2021 (<i>Regulamento n.º 178/2021</i>)¹³⁶</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>)¹³⁷</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>)¹³⁸</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">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;b) (s)he does not allocate more than 90% of annual sales to a single broadcaster; andc) (s)he has ownership of the IP rights over the produced works. <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">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;b) the independent producer has ownership of the IP rights to the work produced and defines the duration and limits of their contractual transfer;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.

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

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

¹³⁶ https://ica-ip.pt/fotos/editor2/build/regulamento_178-2021_registo_de_entidades.pdf

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

¹³⁸ <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>) ¹³⁹ 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">a) Independent producers have ownership of works co-produced with providers of any kind.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.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.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.

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



4.25. RO – Romania¹⁴⁰

4.25.1. 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 ¹⁴¹
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 is related to its financial independence from broadcasters.
- The producer has financial independence when (s)he does not hold more than 25% of the capital of the broadcasting company financing an audiovisual work and no broadcaster participates in the financing of a specific work in a proportion that exceeds 25% of the production cost.
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters. These matters are usually governed by contracts and negotiations between independent producers and broadcasters.

¹⁴⁰ The summary on Romania incorporates feedback received from Ruxandra Minea-Cristea, working at the European Relations Unit, at the National Audiovisual Council (CNA), during the checking round with the national regulatory authorities.

¹⁴¹ Article 71 (1) of the Romanian Law on Copyright and Neighbouring Rights 1996, as amended up to 2020, states that:

In the contract between the authors of an audiovisual work and the producer thereof, unless otherwise agreed, it shall be presumed that the former, with the exception of the authors of specially composed music, assign to the latter their exclusive rights with respect to the exploitation of the work as a whole, as provided in Articles 13(a), (b), (c), (f), (g), (h), (i), (j), (k) and (l), 16, 17, and 18, and also the right to authorise dubbing and subtitling, in exchange for fair remuneration.

See the text available at <https://www.wipo.int/wipolex/en/text/545969>.



4.25.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 24(3) of Law No. 504/2002 of 11 July 2002 (the Audiovisual Act), amended in July 2022 (<i>Lege nr. 504 din 11 iulie 2002 (Legea audiovizualului) Consolidată la 3 iulie 2022</i>) ¹⁴²	A producer of audiovisual works (natural or legal person) shall be deemed independent when the following criteria are met: a) (s)he is the owner of the production company, b) (s)he does not hold more than 25% of the capital of the broadcasting company financing an audiovisual work, and c) no broadcaster is participating in the financing of this specific work in a proportion that exceeds 25% of the production cost.

4.25.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

¹⁴² <https://legislatie.just.ro/Public/DetaliiDocument/37503>



4.26. SE – Sweden¹⁴³

4.26.1. Key Findings

Notions	Existence of definitions/rules
Independent production	No
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)	No ¹⁴⁴
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 not explicitly defined by the Swedish Radio and Television Act. However, it seems to be formulated in relation to European works. In section 7 (Chapter 5) of the abovementioned Act there is a reference to “programmes of European origin created by independent producers”.¹⁴⁵
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters. The producer may transfer by contract all these exploitation rights to the broadcaster or negotiate the transfer of such specific rights as are necessary for the intended exploitation.
- The Swedish Copyright Act provides for a transfer by contract of the exploitation rights from the author(s) of an audiovisual work to the producer.

¹⁴³ The summary on Sweden incorporates feedback received from Jessica Durehed from the Swedish Press and Broadcasting Authority (MPRT) – for the parts related to the Radio and Television Act – and from Patrik Sundberg (Ministry of Justice) – for the parts related to intellectual property rights, during the checking round with the national regulatory authorities.

¹⁴⁴ In the Swedish Act on Copyright in Literary and Artistic Works 1490/2020 there is no legal presumption for the transfer of the exploitation rights owned by the author of an audiovisual work to the producer. Article 39 of this Act regulates the transfer to the producer (by contract) of the rights to a (pre-existing) literary or artistic work in order to be included in a film. According to Article 39:

A transfer of the right to record a literary or artistic work in a film includes the right to make the work available to the public, through the film, in cinemas, on television or otherwise and to make, in the film, spoken parts available in textual form or to translate them into another language. This provision does not apply to musical works.

See Act on Copyright in Literary and Artistic Works 1490/2020 available at:

<https://www.wipo.int/wipolex/en/text/580485>

¹⁴⁵ Swedish Radio and Television Act (*Radio- och tv-lag*) available at:

https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/radio-och-tv-lag-2010696_sfs-2010-696/



4.26.2. National definition of independent producer/ independent production

Legislation	Summary of the measures
Radio and Television Act No. 2010:696 (as amended 2023:410) (<i>Radio- och tv-lagen</i>) ¹⁴⁶	There is no definition of the concept of “independent producer” in the Swedish Radio and Television Act.

4.26.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A.

¹⁴⁶ <https://www.mprt.se/globalassets/dokument/lagar-och-regler/the-swedish-radio-and-television-act.pdf>



4.27. SI – Slovenia¹⁴⁷

4.27.1. 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 ¹⁴⁸
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Not in legislation, example found in the PSM co-production agreement template

- The concept of the independent producer of audiovisual works (natural or legal person) is related to its operational, financial and legal independence from broadcasters.
- The producer has financial independence when no broadcaster holds more than 25% of the shares or voting rights of the production company.
- The producer has operational independence when the total volume (in minutes) of the audiovisual works commissioned by a single broadcaster does not exceed 50% of the total production (in minutes) within a calendar year.
- The national legislation does not explicitly include rules on the retention of IP rights by independent producers in their relationship with broadcasters but there are rules which apply to the public service media (RTVS) when dedicating parts of its budget to independent works. These rules are contained in the RTVS co-production agreement template.

¹⁴⁷ The summary on Slovenia incorporates feedback received from Tomaž Gorjanc, head of the Electronic Media Department at the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS) (for the parts related to the AVMS Act) and from Aleš Gorišek, Senior Adviser at the Ministry of Economic development and technology of the Republic of Slovenia (for the parts related to intellectual property rights) during the checking round with the national regulatory authorities.

¹⁴⁸ Article 107(2) of the Slovenian Copyright Act states as follows:

It shall be deemed that, by concluding a film production contract, co-authors have transferred to the film producer, exclusively and without limitations, all their economic rights and other rights of the author to an audiovisual work, its translation, its audiovisual transformations and photographs made in connection with this work, unless otherwise provided by contract.

See the Copyright and Related Rights Act (Official Gazette of the Republic of Slovenia No. 21/95 of 14 April 1995 as amended up to 26 October 2022) available at <https://www.wipo.int/wipolex/en/text/587464>.



- In practice, broadcasting rights are transferred to RTVS for a limited period of time within the territorial scope of the Republic of Slovenia. These rights are related either to an exclusive time-limited right to broadcast a film after its first publication or to a non-exclusive right to make the film available to the public via the RTVS website and platforms.

4.27.2. National definition of independent producer/independent production

Legislation	Summary of the measures
<p>Article 3 (26) and (27) of the Audiovisual Media Services Act – consolidated 15 December 2021</p> <p><i>(Zakon o avdiovizualnih medijskih storitvah (ZAvMS))¹⁴⁹</i></p>	<p>An independent producer of audiovisual works is considered the natural or legal person whose activity meets the following four criteria:</p> <ul style="list-style-type: none">a) (s)he is registered for the production of audiovisual works and has its establishment either in the Republic of Slovenia or in another member state,b) (s)he has no organizational or legal connection to a broadcaster,c) no broadcaster holds more than 25% of the shares or voting rights of the production company, andd) the total volume (in minutes) of the audiovisual works produced in the previous calendar year commissioned by a specific broadcaster does not exceed 50% of the total volume (in minutes) of all audiovisual works produced in the previous calendar year. <p>The natural or legal person having its establishment in a third country (outside the EU) is considered to be an independent producer when (a) the majority of its audiovisual production in the last three years consists of European works, (b) it does not have any organisational or legal connection to a broadcaster, and (c) no broadcaster has more than 25% of the shares or the voting rights of the production company in question.</p>

¹⁴⁹ <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6225>



4.27.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
RTVS Co-production Agreement Template ¹⁵⁰	<p>The Slovenian legislation makes no explicit reference to the protection of independent producers, but in practice there are rules contained in agreements between the Public Broadcaster of Slovenia (RTVS) and independent producers in the case of co-production of films. According to the terms of this agreement, RTVS, as co-producer, has the related rights provided for in the Slovenian Copyright Act (e.g. the right of the first fixation, the right of reproduction, the right to broadcast by all available means, etc.).</p> <p>Broadcasting rights granted to RTVS for the territory of Slovenia are:</p> <ul style="list-style-type: none">a) the exclusive right to broadcast audiovisual content after its first dissemination for a period of three years when RTVS' share in the project is less than 25% or for a period of five years when RTVS' share in the project is more than 25%; andb) the non-exclusive right to make the film available only to the Slovenian public via its own website or via mobile applications after its first publication and for a maximum period of 30 days. <p>For the territory outside the Republic of Slovenia, RTVS has the non-exclusive broadcasting right, except if the contracting parties agree otherwise in writing for all territories or for a specific territory. RTVS has the exclusive right to première the film to the public in the area of the Republic of Slovenia.</p>

¹⁵⁰ https://img.rtvlo.si/files/2021/12/30/17_388150946711994386_koprodukcijska-pogodba_rtv-slo.pdf



4.28. SK – Slovakia¹⁵¹

4.28.1. 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 ¹⁵²
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 is related to its personal, operational, ownership and legal independence from broadcasters.
- For the purposes of defining an individual “independent work” the producer has financial independence when his/her contribution to the financing of a television programme covers at least 51% of the total cost.
- The producer has operational independence when the total volume (in minutes) of the audiovisual works produced for a single broadcaster does not exceed 90% of the total volume (in minutes) of all audiovisual works, including cinematographic works, produced by the independent producer in question.
- All independent producers are entitled to use the designation “independent producer” or its equivalent in a foreign language together with their trade name. The official registry of independent producers is administered by the Slovak Audiovisual Fund. However, registration of an independent producer is voluntary.¹⁵³
- The national legislation does not include rules on the retention of IP rights by independent producers in their relationship with broadcasters.

¹⁵¹ The summary on Slovakia incorporates the feedback received from the Office of the Slovak Council for Media Services during the checking round with the national regulatory authorities.

¹⁵² Article 86(1) of the Slovakian Copyright Act No. 185/2015 as amended up to 2022, states that: *Unless otherwise agreed, the authors' economic rights to an original audiovisual work shall be exercised by the producer under the condition that he/she has obtained the authors' written consent and has agreed on the remuneration for the creation, as well as for each separate use of the audiovisual work in question.* See the text available at <https://www.wipo.int/wipolex/en/legislation/details/19393> and <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/185/20230201> (in Slovak).

¹⁵³ http://www.avf.sk/aboutus/zoznam_n_p.aspx



4.28.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 65 (1), (2), (3) and Article 67 of Act No. 264/2022 on Media Services and on Amendments to Certain Acts (<i>Zákon o mediálnych službách a o zmene a doplnení niektorých zákonov</i>) ¹⁵⁴	According to Article 8(1), (2) of Act No. 40/2015, Article 65(2), (3) and Article 67 of Act No. 264/2022 on Media Services, an independent producer of audiovisual works is considered the natural or legal person whose activity meets the following criteria: a) (s)he is not a broadcaster, b) (s)he has no personal or ownership connection to a broadcaster, c) the total volume (in minutes) of the audiovisual works produced for a single broadcaster (television broadcasting) does not exceed 90% of the total volume (in minutes) of all audiovisual works, including cinematographic works, produced by the independent producer.
Article 8 (1), a), b), c) (2), (3) of Audiovisual Law and Amendments to Certain Acts, No. 40/2015 (<i>Zákon o audiovizii a o zmene a doplnení niektorých zákonov</i>) ¹⁵⁵	The producer of audiovisual works established in a member state, or a state party to the Agreement on the European Economic Area, or a state party to the European Convention on Transfrontier Television, shall be deemed independent when (s)he has no personal or ownership connection to a broadcaster and is considered as independent according to the legislation of the state in question. Additionally, according to Article 65 (2) of Act No. 264/2022 on Media Services, for a work to be recognised as an “independent production” (e.g. for the purposes of the quotas for independent production in broadcasting services) the independent producer’s contribution in an audiovisual work produced for television broadcasting (with the exception of news programmes, live sports events, entertainment games, commercial communications and teleshopping windows) should cover at least 51% of the total cost.

4.28.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
	N/A

¹⁵⁴ <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/264/20230101>

¹⁵⁵ <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/40/20230101>



4.29. UK – United Kingdom¹⁵⁶

4.29.1. Key findings

Notions	Existence of definitions/rules
Independent production	Yes ¹⁵⁷
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 ¹⁵⁸
Specific rules related to the assignment or retention of IP rights by independent producers (Relationship independent producer-AVMS)	Yes, for PSM-commissioned content

- The concept of an independent producer of audiovisual works is related to its legal and financial independence from the broadcaster.
- In accordance with section 285 of the Communications Act 2003, public service broadcasters (PSBs) need to put in place codes of practice approved by Ofcom for commissioning from independent producers. These codes of practice should contain clear statements about the different categories of primary or secondary rights to broadcast or otherwise use or exploit commissioned productions. Section 285 also requires Ofcom to produce guidance to assist the PSBs in drawing up their codes.
- According to Ofcom's guidance, producers should retain rights to programmes unless these are explicitly sold to a PSB and/or to other parties.

¹⁵⁶ The summary on the United Kingdom incorporates the feedback received from Ofcom's staff, during the checking round with the national regulatory authorities.

¹⁵⁷ The 1991 Broadcasting (Independent Productions) Order does define the meaning of "independent productions" although this is obviously closely linked to the definition of an "independent producer".

¹⁵⁸ In UK legislation the director of a film and its producer are deemed to be the co-authors. Therefore, exploitation rights are directly vested in the film producer and principal director. According to Article 9(2)(ab) of the UK Copyright, Designs and Patents Act 1988/2021, "[i]n this Part 'author', in relation to a work, means the person who creates it. (2) That person shall be taken to be: (ab) in the case of a film, the producer and the principal director". A presumption of transfer is provided especially for the rental right. According to Article 93A(1):

Where an agreement concerning film production is concluded between an author and a film producer, the 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 author's work in the film.

See the text available at: <https://www.legislation.gov.uk/ukpga/1988/48?view=extent>



4.29.2. National definition of independent producer/independent production

Legislation	Summary of the measures
Article 3(4) of the Broadcasting (Independent Productions) Order 1991, ¹⁵⁹ as later amended in 1995 ¹⁶⁰ and in 2003 ¹⁶¹	According to Article 3(4) of the Broadcasting (Independent Productions) Order 1991, as amended, “independent producer” means a producer: <ol style="list-style-type: none"> who is not an employee (whether or not on temporary leave of absence) of a broadcaster, who does not hold shares of more than 25% in a broadcaster, and which is not a body corporate in which any one UK broadcaster holds shares of more than 25% or any two or more UK broadcasters have an aggregate shareholding of more than 50%.

4.29.3. National rules on IPR assignment/retention

Legislation	Summary of the measures
Section 285 of the Communications Act 2003 ¹⁶² Ofcom Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers (Ofcom Guidance) ¹⁶³ Ofcom’s Annex 2: Producing public service media content – Small Screen: Big Debate statement, paragraphs A1.9-A1.14 ¹⁶⁴	Section 285 of the Communications Act 2003 provides that public service broadcasters shall draw up codes of practice setting out their principles for commissioning from independent producers. These codes shall be drafted in accordance with Ofcom’s guidance. Ofcom’s guidance on the commissioning of independent productions by public service broadcasters sets out a framework in relation to the retention of IP rights by independent producers. Pursuant to the Ofcom guidance and Annex 2 of Small Screen: Big Debate, “Producing public service media content” (paragraphs A1.11-A1.14): Paragraph A1.11 of Ofcom’s guidance states that: <ol style="list-style-type: none"> qualifying independent producers should retain rights in the programmes they make unless these are explicitly sold to a public service broadcaster and/or other party; public service broadcasters should not make commissioning conditional on ultimate ownership of all rights; and that public service broadcasters should not seek to include rights in perpetuity as a matter of course.

¹⁵⁹ <https://www.legislation.gov.uk/ukxi/1991/1408/made>

¹⁶⁰ <https://www.legislation.gov.uk/ukxi/1995/1925/article/2/made>

¹⁶¹ <https://www.legislation.gov.uk/ukdsi/2003/0110458443>

¹⁶² <https://www.legislation.gov.uk/ukpga/2003/21/section/285>

¹⁶³ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/87052/statement.pdf

¹⁶⁴ https://www.smallscreenbigdebate.co.uk/_data/assets/pdf_file/0024/221955/annex-2-statement-future-of-public-service-media.pdf



<p>Ofcom Guidance, paragraph 19</p> <p>Ofcom Guidance, paragraph 27</p>	<p>A1.12 Reflecting the scope of current legislation, Ofcom’s Guidance states that PSB Codes only apply to the commissioning of content which is “intended for use on licensed public service channels” and do not include programmes “commissioned specifically for use on other services” such as on-demand services.</p> <p>A1.13 We revised our Guidance in 2007, noting the preference of all parties for any additional rights sought by public service broadcasters to be obtained through commercial negotiation, as audience viewing patterns developed.</p> <p>A1.14 Since then, the public service broadcasters and Pact have agreed changes to Terms of Trade agreements with individual broadcasters generally seeking different rights arrangements to suit their circumstances and business strategy. In recent years, these negotiations have generally seen public service broadcasters seeking to extend the length of time programmes are available on their on-demand platforms.</p> <p>Ofcom’s guidance:</p> <p>19. It is to the broadcaster to clearly state in its Code of Practice what are the primary rights it aims to acquire when commissioning an independent production.</p> <p>27. Ofcom’s Guidance states that the Codes should not allow for any automatic bundling of rights as between primary and secondary exploitation unless this is agreed by both parties.</p>
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