

Julie-Jeanne REGNAULT

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À: Julie-Jeanne Régnault
Cc: Nawell AMOUR EPC
Objet: def of independant producer
Pièces jointes: FAQ Indepent Producers Definition.docx

Dear Julie-Jeanne,

Please find hereafter and attached the definition of independent producer that we announced in Bruxelles.

The definition is so simple... the rule of 25%: you are consider as independent if you are not owned for more than 25% by a broadcaster – 25% each in case of two broadcasters – or, by exception rule, you can be considered as independent if you are owned 100% by a broadcaster but not making more than 25% of your turnover with that broadcaster.

Here's attached a Q&A about this definition.

I will be supper happy to explain this definition to anyone.

Our aim is to avoid ghettoization of independent producer and have strong independent company that will be able to compete in the new framework of the nosiness, where high budget are necessary to secure IP and talents.

Very best

Alexandra



FAQ on the definition of independent producer

- **Why do we need a definition today?**

Today more than ever, independent producers are facing even greater challenges than before. In a world where independent producers engage with, are funded by and access audiences through a multitude of new channels, the need for fair competition, entrepreneurship and diversity has never been greater. We need to agree on a definition for independent production companies which differentiates them from the media services companies through whom they access their audiences.

The market is evolving very fast. New players are coming asking for more contents to be produced. Producers need funds, and these developments in the market are accompanied by the integration of the players, in particular in the TV Sector, which allows independent producers to access funds to develop projects and media services companies to have access to new productions and new and diverse talent.

We need to have a new definition that responds to this fast-changing market and the evolution of the independent producer.

If we stay on the current definition, which is restrictive, we will face the risk of ghettoization of the independent producer and weakening of the independent production sector. That is why we need

to embrace a more accurate reality of the market in including producers that are maybe owned by broadcasters.

- **What is at stake?**

We can see today that the independent producer is under threat. The arrival of the streamers has changed the way Media Services Companies work with independent producers, taking all rights for a full financing, transforming the producer into a producer for hire. We need more than ever to defend the independent producer.

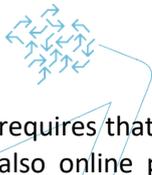
In our defence of the independent producers we will fight for quotas, for investment obligations dedicated to independent producers. We don't want to end up with a limited percentage of quotas reserved for a narrow range of producers, leaving 90% to platforms and broadcasters fully owned companies.

- **Why is this definition so inclusive?**

At the same time we need to recognise the more recent changes in the market. Complexities have developed in how independent production companies are structured and some are parts of groups of companies with media services companies within their ownership arrangements. This can occur where the independent production company does limited business with and is not in any significant way dependent on the media services companies within their ownership structure.

- **What criteria shall a production company satisfy in order to be considered independent under this definition?**

The new proposed definition continues to be based primarily on excluding companies which are owned by broadcasters and online platforms. The definition follows the current Creative Europe definition which



requires that not more than 25% of the company's shares may be owned by broadcasters and now also online platforms. This can go up to 50%, if there is more than one broadcaster or online platform.

- **But however a production company 100% owned by a broadcaster be considered as independent?**

It is only allowed for where the production company derives not more than 25% of its production turnover in each of the previous five years from any and all of the broadcasters and online platforms within its ownership structure. In effect while the production company may be owned by a broadcaster or online platform, it is not dependent on any and all of those companies for its business activities.

- **Even if the broadcaster is operating in the same country than the production company?**

This would apply even where for example the broadcaster happened to be established in the same Member State as the independent producer. And it will also apply to a production company owned by broadcasters established in other EU Member States.

For example in the current UK definition, a production company is considered as independent if the company is not owned by a broadcaster targeting UK audiences. But it can be owned by a broadcaster not targeting UK audiences and be considered as independent.

More and more broadcasters and online platforms are operating in other EU countries than the one they are established in., targeting new audiences.

We don't feel that the link to the broadcaster being established in a country is relevant anymore.

That's why we came to an exception to the ownership definition based on the reality of the business: the turnover.

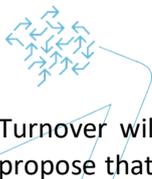
A company is now also considered independent if the production company derives not more than 25% of its production turnover in each of the previous five years from any and all of the broadcasters and online platforms within its ownership structure.

In effect while the production company may be owned by a broadcaster or online platform, it is not dependent on any and all of those companies for its business activities.

- **Are we not afraid of removing the ownership criteria to define the independence?**

The EPC is concerned to keep the focus on ownership in defining independence. But it also recognises that independence can take different forms. This can include not depending on a broadcaster or online platform for production funding and production turnover and also retaining rights as against owner broadcasters and online platforms. The underlying economic principle is limiting "vertical integration". Vertical integration is where the media services company is the production company's own best customer. For instance, broadcasters producing their own programmes inhouse.

- **How is the turnover to be evaluated? How do we avoid that this turnover includes other activities of the company i.e. reducing the share made with the broadcaster therefore falling under the 25% threshold.**



Turnover will be defined as audiovisual screen content production turnover and the EPC would propose that it would exclude commercials. A production company will be considered independent if not more than 25% of its production turnover in each of the last five years is received from any and all of its owners even where those companies own more than 25% of the shares in that independent production company. This will only be allowed however where the independent production company is committed to keeping rights ownership of the projects they produce and are transparent in their dealings with any company which owns them. If production turnover with any or all of its owners exceeds 25% in any of the last five years independence is lost.

- **How do you calculate the turnover**

We need to be careful on the scope of the turnover we are looking at and not to include non audiovisual activities in it. We need also to be keen on having a good indicator in certain countries where the costs of the production of films are not taken into account into the turnover.

- **What about a company hold 100% by a broadcaster, not working with that broadcaster, but with a sister company hold by that same broadcaster?**

The turnover criteria should apply to any companies in the group structure of the broadcasters or media service companies. That would mean in that case, that the production company is not considered as independent.

- **Why are we not taking the ownership intellectual property rights as a criterion?**

- **Can the independent producer be defined by the fact that he owns secondary rights?**

Rights ownership is a factor in this definition: any company seeking to avail of the exception must prove they are committed to rights ownership and not serviced production with any and all of their owners.

However, rights ownership alone, whether primary or secondary rights, does not secure independence if the production company is doing a large part or all of their production work for their owners.

- **How, if not with a European definition, can we make sure that the independent producer preserves its intellectual property rights ?**

The definition of an independent producer needs to be about the ownership of the company and its activities. As a second step, once the definition is established, then the rules which require that media services companies must undertake a quota of production activity with independent producers and limit the rights they seek to take from the independent producers can be established.

- **Why don't we set up a definition based on works rather than on company ?**

We preferred to go through a definition based on company rather on works because it will be easier to assess, and be less a burden for the control of the declaration.



- **What is the producer is lying ?**

We are recommending to forbid for 5 years from any support system any company which lied doing it's declaration of independence.

- **Where this definition will be applied?**

First for the Creative Europe Programme, in order to be sure that all the works supported are created by independent production companies.

A quota would need to be part of EU law and/or introduced in individual Member States. Transparency and enforcement will be in the hands of the EU Commission if the rules on rights ownership are part of, for example, a funding programme within the Creative Europe Media Programme. Rights ownership rules would need to be part of the regulations as enforced in individual Member States. An agreed definition of independent production company is intended to be part of all of those regulatory arrangements and could be a consistent and harmonised definition across Europe.

This definition can be useful as well in the framework of the AVMS Directive. But it can also be combined by national definitions that differ. We have had that case for many years in Europe, having a definition at European level and other at national without any damage.

REMINDER OF THE DEFINITION

*An independent production company is a corporate legal entity established in an EU/EEA/Council of Europe/Eurimages Member State, the main business is the development and production of audiovisual screen content and which is independent of broadcasters, VOD services and other audiovisual media service programme providers (Media Service Company/ies"). To be independent, **not more than 25% of the share capital of the company may be owned by a Media Services Company**. This 25% may increase to 50%, if it is divided between two or more separately owned Media Services Companies where any one owns not more than 25%.*

*Exceptionally, a company not complying with the above may be an independent production company, if it is part of a group of companies ("the Group") which includes a Media Services Company/ies, provided that **not more than 25% of its turnover** in each of the last five years derives from all the Media Services Company/ies in the Group and it can provide satisfactory evidence that it is genuinely independent of all the Media Services Companies in the Group. This may be done by way of full disclosure to the relevant authorities and a declaration in agreed form including the following: independent production companies are committed as to seeking as far as is reasonably possible to own the copyright and distribution rights in the audiovisual screen content created by them rather than providing services only to Media Services Companies and to establishing regulation by way of quotas and subsidies at EU/EEA and national level to achieve this and thereby promote fair competition, entrepreneurship and diversity."*

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