Feasibility Study of a European Works Levy in Ireland

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Quarter 4 2024

Contents

Abbreviations

AVMS	Audiovisual Media Services
AVMSD	Audiovisual Media Services Directive
AVOD	Advertising-funded video on demand (services or providers)
BAI	Broadcasting Authority of Ireland
CnaM	Coimisiún na Meán (or An Coimisiún)
DIO	Direct investment obligation
EAO	European Audiovisual Observatory
EC	European Commission
EU	European Union
FAST	Free ad-supported subscription television (services or providers)
FOD	Free on demand (services or providers)
MSP	Media Service Provider
OTT	Over the top
PSM	Public service media
RTÉ	Raidió Teilifís Éireann
s481	Section 481 Film Tax Credit (or section 481 of the Taxes Consolidation Act, 1997 (as amended)
SVOD	Subscription video on demand (services or providers)
TCAGSM	Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
TG4	Teilifís na Gaeilge Ceathair
TVOD	Transaction video-on-demand (services or providers)
VOD	Video on demand (services or providers)
VSP	Video-sharing platform (services or providers)

Executive summary

On 10 December 2022, Ireland's Oireachtas enacted the Online Safety and Media Regulation (OSMR) Act 2022. Among other things, the OSMR Act transposes into Irish Law Article 13 of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14th November 2018 (the Audiovisual Media Services Directive (AVMSD)). In particular, Article 13(2) of the AVMSD allows European Union (EU) Member States the option to impose financial obligations on media service providers (MSPs) that target audiences within their borders but are based in another Member State.

If Member States choose to impose a financial obligation on broadcasters and/or VOD services, it can be direct via investment in content creation in the Member State and/or indirect via a contribution to national funds (e.g. by a levy).

Part 10, Section 159E of the OSMR Act 2022 grants Coimisiún na Meán (CnaM) the power to establish a European Works levy ('the levy') for the purpose of funding a scheme to support the production of European Works and gives CnaM the power to determine which MSPs would be subject to this levy. Section 159F enables CnaM, in consultation with Fís Éireann/ Screen Ireland, to establish a fund and to award grants using the levy proceeds. Section 159H empowers the Minister to enable Fís Éireann/Screen Ireland by order to establish a fund in consultation with CnaM and to award grants using the levy proceeds.

In response to the Government's Implementation Strategy & Action Plan, CnaM appointed Nordicity and Saffery LLP to undertake research on the feasibility of a levy and to make recommendations. The outputs of this feasibility study, including an options analysis are intended to help inform CnaM's considerations regarding the design and evolution of the potential levy and a subsequent submission to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on the establishment of such a levy.

Government also indicated that screen production stimulated by the Section 481 ("s481") tax credit should not be put at risk by the introduction of a levy nor by the level at which it is set. In addition, the levy should not unduly harm public service media and audiovisual infrastructure.

Key criteria for a levy that meets Government goals

- **Does not diminish Ireland's position as a growing destination for inbound production (which hires Irish workers, provides revenues to the Irish economy and government, and supports and develops the indigenous audiovisual supply chain and talent ecosystem)**
- **Minimises harm to public service media and audiovisual infrastructure**
- **Provides additional funds for European Works in a manner that is additive to the current ecosystem and sustainable**

Comparison with other European jurisdictions

Across the other 30 countries of the European single market, the majority (16) have not introduced AVMSD-based financial obligations and of 11 potential pre-EU accession or MEDIA programme aspirant countries that are aligning their domestic markets with the AVMSD, only one has indicated that it intends to place financial obligations.[1] The UK, also does not currently place any AVMSD-type financial obligations on its MSPs.

In the EU, just under a half (13) of member states[2] have introduced AVMSD-based financial obligations, but only 11 have placed obligations on targeting services as well as their domestic VOD services[3][4]. Of these 11, only two countries (soon to become one – Poland)[5] only impose a levy (indirect obligation). Should a levy order be enacted, Ireland would then become only one of two countries only applying a levy.

Of the 11 EU countries that place financial obligations on targeting services, only Italy just imposes a direct obligation alone.

Denmark has developed a unique approach, wherein, it imposes a mandatory levy rate but if a VOD provider does not invest 5% of its Danish turnover in Danish content' the levy rate increases from 2% to 5%. Of the remaining seven countries, they either allow a choice between direct and indirect obligations – Belgium (Flemish and French jurisdictions), Greece, Romania and Spain – or require both – Croatia, France and Portugal.

Direct financial obligations result in MSPs directly financing the creation of European Works, whereas, with levies MSPs contribute to a hypothecated fund for the creation of such works.

At March 2024, levy rates across the European single market range from as low as 0.15% of turnover (Germany) to a maximum 5.15% of turnover (France). Higher rates of financial obligation can be seen in four of the 11 countries that place financial obligations on domestic and targeting services, but only as a result of a direct investment obligation: Romania has a rate of 40% on VOD services; France has rates of 15% to 25% depending upon the type of service; Italy has a rate of 20% on VOD services; and Portugal has a rate of 8% on public service media. Therefore, if there is a desire for higher rates of financial obligation than 5.15%, the behaviour of other member states with AVMSD-based financial obligations would suggest that direct obligations would need to be used. However, Ireland has made a policy decision to eschew such direct obligations and the introduction of direct

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[1] European Audiovisual Observatory (2023a) *The application of the AVMS Directive in selected non-EU countries*. November 2023.

[2] Austria, Belgium (Flemish and French jurisdictions), Croatia, Czech republic, Denmark, France, Germany, Greece, Italy, Poland, Portugal, Romania, Slovakia and Spain place obligations on AVMS.

[3] Targeting services are AVMS providers established in a member state and targeting the audience of another member state.

[4] Czech Republic and Slovakia apply financial obligations on domestic VOD services only.

[5] Germany is introducing a direct obligation that can be used to offset a levy.

obligations would require primary legislation. For more detail, see Appendix A: European Works financial obligations in the European single market.

As a result of the FOMC and as a matter of cultural policy, the Irish Government has legislated for a levy rather than a direct investment obligation to account for the fact that Ireland is a predominantly English-speaking country. A levy and fund approach was seen as the best way to achieve the policy objectives of the AVMSD and the OSMR Act.

Irish market context

According to estimates prepared by Oliver & Ohlbaum, revenue within Ireland's audiovisual market totalled an estimated €1,234m in 2023.[6] Pay-TV subscriptions, including subscriptions to Sky, Virgin Media and *eir* accounted for €545m, or 43% of the total market; followed by over-the-top (OTT) video services (€312m) including Netflix, Disney+ and Volta; TV advertising (€227m); and the TV licence fee (€150m)[7].

Annual levy yield

Of the total gross revenue within Ireland's audiovisual market, the TV licence fee allocated to audiovisual and online services (€150m) is statutorily excluded as part of a levy turnover base. We estimate that levy exemptions for low audience and low turnover services would lower the qualifying OTT video services turnover by 5% - from €312m to €296m. In total, therefore, we estimate that €1,068m of gross turnover or approximately €1bn in gross turnover would be subject to a levy.[8]

Within the EU, levy rates range from 0.15% to 5.15% (see Appendix A), with a midpoint of 2.65%. A levy in Ireland set near this midpoint would yield €26.5m annually in gross levy proceeds. A levy rate set closer to the maximum observed rate (5.15%) would yield approximately €50m.

Domestic audiovisual sector's positions

Segments of Ireland's audiovisual sector represented by RTÉ, TG4 and the Joint Audiovisual Sector Group argue that a levy of 2% to 5% would balance the wishes of the domestic screen production sector with the burden placed on domestic MSPs such as RTÉ and TG4, which would have to pay the levy, as well as any non-domestic MSP. Although, both RTÉ and TG4 do acknowledge that they will indirectly benefit from the levy since they are anticipating exhibiting a large portion of the content supported by a European Works fund – in turn helping them gain or maintain audiences while also contributing to the achievement of their other public service media objectives.

Screen Producers Ireland (SPI) argue that Ireland should have a high levy rate, and have called for a rate "closer to 10%". Indeed, they have pointed to the high rates of AVMSD

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[6] Oliver & Ohlbaum (2023). Review of Sound & Vision 4: A report the Broadcasting Authority of Ireland. May 2023. P. 22.

[7] Out of the total TV licence fee of €193m, an estimated €150m was allocated to audiovisual and online services.

[8] It is important to note that much of the detail needed for these calculations are not in the public domain and so have had to be estimated from available data. As the relationship between MSPs and CnaM develops and as statutorily required financial data becomes available, more robust calculations will be possible.

financial obligations in France (up to 25%) and Italy (20%) as part of the rationale for a maximalist rate in Ireland.[9][10]

However, it is very important to note that those double-digit financial obligation rates are, in fact, not for levies but for direct investment obligations (which in Ireland's transposition of the AVMSD are not statutorily allowed for). The fact is that the highest levy rate in the EU is 5.15% in France, followed by Spain with 5% and a soon to be introduced levy of 5% in Denmark (however, this is reduced to 2% if the MSP invests 5% of its turnover in Danish content). The other member states with a levy, including Germany, have rates that vary between 0% and 2.5%.

Whether an AVMSD-based financial obligation is indirect (levy) or direct is an important consideration. From the standpoint of a MSP, a levy and direct investment obligation are not equivalent and the rates should not be treated as if they were comparable. The latter gives the MSP the option for control over creative decisions, the intellectual property (IP) and the monetisation of that IP. This control is of monetary value to MSPs. None of these layers of control are assured under a levy system.

For that reason, if Ireland wanted to have an AVMSD financial obligation rate above the existing upper levy rate in the EU, the current EU audiovisual market landscape would suggest that it would require amendments to the OSMR Act in order to provide for the introduction of a direct investment obligation alongside the levy (or instead of a levy).

The commercial end of Ireland's audiovisual sector is strongly opposed to the levy. Virgin Media's television service is already under tremendous market pressure and has to also meet its own PSM obligations, which it has to do without government as a financial backstop.[11]

Sky is opposed to a levy but based on its experience elsewhere in the EU – Germany in particular – argues that defrayments must feature as part of any levy calculation. In particular, Sky argues that the revenue it earns from news and sports programming should be exempt since these types of programming would not be supported by the fund; however, this is inconsistent with the scope laid out by the legislation, which specifies the content that may be eligible for fund support. However, though the legislation sets out the maximal potential scope, the design of a European Works fund could be narrower. Sky also argues that without defrayments, it would be unfairly burdened by a levy that was only assessed on its gross revenue and did not take into account its existing programming investments and more importantly, the economic benefits associated with its infrastructure

[9] Such views were aired by SPI and some of the producers present an event held by SPI with CnaM at the Irish Film Institute in Dublin on 8 February 2024 entitled *The Future of Media: What impact would the introduction of a Content Levy have on the Irish audio-visual creative sector?*
[10] Italy announced on 25th March 2024 that it will be reducing this rate to 16%. https://cineuropa.org/en/newsdetail/459078
[11] RTÉ and its recent travails over the mass non-payment of the licence fee has had the benefit of financial support from the government to ensure that RTÉ met its PSM obligations.

investment and maintenance (including the subsidising of the carriage of Irish PSM services on its infrastructure). This is something the global MSPs do not have in Ireland.

Global MSPs' positions

Global MSPs are, unsurprisingly, against levies, but since nearly half of EU countries have now implemented some type of AVMSD financial obligation (see Appendix A), global MSPs accept that financial obligations are part of the regulatory landscape in some countries. With that in mind, global MSPs strongly believe that the AVMSD financial obligations need to be as 'flexible' as possible. This means that global MSPs tend to prefer direct investment obligations over levies, and where there is a levy they would prefer there to also be a direct investment obligation as an alternative. If they do have to pay into a fund, global MSPs believe strongly that they should have fair access to the fund. This last point is consistent with the OSMR Act which anticipates any European Works scheme being open to producing screen content for audiovisual on-demand media service providers' online catalogues as well as for audiovisual broadcasters.

MSPs also prefer multi-year obligations, which would allow them to make larger single investments in production that could be applied to their obligations over several years. For example, a global MSP with a €3m annual financial obligation would prefer the flexibility of allowing a single €9m content investment to meet its 13(2) financial obligations over a longer period (e.g. three years) than three annual €3m investments. However, the preference for multi-year financial obligations is less relevant in the context of a levy, as the global MSP is not making a direct investment in content production, but simply to a fund scheme.

Global MSPs also believe that obligations should only be calculated on the turnover earned from the types of content that the obligation is meant to support. This is an extension of Sky's argument for exclusion of revenue earned from news and sports programming. These types of exclusions could, however, raise significant accounting issues related to revenue attribution and levy calculation for MSPs that exhibit a mixed portfolio of programming. Indeed, Netflix has made clear its intention to diversify into sports and live events.[12]

Economic burden of the levy

The government recognises that even if MSPs are remitting the levy to CnaM, Irish households are likely to ultimately pay for the levy themselves through higher subscription fees. However, the assumption of 100% pass-through to subscribers was not unanimously confirmed by the MSPs. The general position was that global MSPs, including subscription video on demand services (SVODs) and other VODs, take into account a variety of factors when setting their consumer rates and the levy would be one of those factors. Some MSPs suggested that instead of raising prices in Ireland, they may reduce their existing content spend in Ireland and/or commission content of lower value/quality. Some indicated that in

[12] https://s22.q4cdn.com/959853165/files/doc_financials/2024/q2/FINAL-Q2-24-Shareholder-Letter.pdf

other jurisdictions where AVMSD financial obligations were difficult to meet they had reduced content commissioning and increased content licensing.

Furthermore, the evidence from across Europe suggests that consumer rate increases have not necessarily been a direct response to just the imposition of AVMSD financial obligations. Subscription rates for SVOD services are starting to increase and SVODs have introduced advertising video on demand AVOD alternates (e.g. Amazon Prime and Netflix), which provide a lower subscription price point to the consumer; though, these may put pressure on domestic MSPs that rely on advertising. Taken together, this appears to be more a function of general rises in business-running costs, a sharper focus on profitability not just subscriptions and keener competition between MSPs, rather than just a direct response to AVMSD financial obligations. Sky Ireland is a notable exception. While they are part of a global MSP company, it is very likely that any increased costs in Ireland will come with reduced spending on content and/or a shift to more licensing content than commissioning new content in Ireland.

Levy design options

In providing options, we have been constrained by the legislation which only provides for an indirect financial obligation, therefore, the options developed do not include any options that involve a direct investment obligation as an alternative to a levy, as an addition to a levy or replacing a levy.

Do nothing / Wait and see

Following many years of lobbying by some stakeholders, the Government-initiated Future of Media Commission, the Government's response to the Commission through the Implementation Strategy & Action Plan, and the legislation that empowers CnaM to introduce a levy, it would be unusual for that momentum to be stalled or stopped, unless for some pressing reason. If there was a clear likelihood of significant economic harm to Ireland through MSPs significantly reducing inbound production and/or increasing costs to the consumer by directly passing on the cost of any European Works levy on to them, these might be reasons for a do-nothing or wait-and-see decision.

Our research indicates that neither scenario is likely, especially if accessibility to any levy fund is ensured on an equitable basis for all MSPs.[13]

Medium-rate levy

Outside of France (5.15%) and Spain (5%), most countries in the European single market with a levy have adopted a rate in the 1-3% range. So a levy in Ireland of 2% would be consistent with the rates in the minority of countries elsewhere in the European single market that have a levy.

A rate of 2% would raise approximately €20m in levy proceeds, and assuming 10% annual average[14] collection and administration costs, would yield approximately €18m for the fund to invest in production and development.

A rate of 2% of gross turnover is likely to be financially feasible for RTÉ and TG4. RTÉ would face an annual bill of €1.8m levy and TG4 €70,000. However, Virgin Media and even Sky may not be as financially tolerable of even a rate of 2% of gross turnover.

High-rate levy with defrayments

The rate proposed under the medium-rate could be pushed higher if MSPs were permitted to defray certain types of spending. For example, a single levy rate of 5% could be applied to the commercial revenues of all MSPs, but the latter could also deduct amounts spent on audiovisual content production that met the funding criteria of the fund, as defined in the OSMR Act.

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[13] See Section 2.13 and Section 4.1.

[14] The actual annual costs of levy collection and administration of the fund are likely to vary between 7% and 13% depending on the timing of periodic costs. Also, should the fund grow with time, the costs of levy collection and administration will not increase in the same proportion. Therefore, for the purposes of this report we have used an indicative 10%. Any overhead deduction should be reviewed periodically to ensure the minimum amount is diverted.

At a 5% levy rate, this model would mean that an overall €45m (out of €50m in gross levy proceeds) would flow into the production of Irish content. So total spending would be significantly higher than the medium levy rate option (€18m), but domestic media companies such as RTÉ, Virgin and Sky may be in a better position to defray than the global MSPs and thereby reduce their actual levy payments.

Maximal levy: 10% of gross turnover

A 10% levy represents the maximal ask of some of the Irish screen production community. SPI suggested a rate "closer to 10%". A rate of 10% would be nearly double any existing levy rate in Europe (Spain 5%, France 5.15%). It would also be higher than other direct investment obligations imposed on VODs, bar Italy (20%)[15] or France (up to 20%), though Italy has announced a reduction in its direct obligation rate to 16%. [16]

While such a very high rate could generate over €90m (out of €100m in gross levy proceeds) for the fund scheme (including €19.2m for Irish-language production), this would practically double the financial resources available to the domestic production industry and most certainly result in economic rents and production-cost inflation. Furthermore, unless the levy system could be designed with variable rates or significant defrayments, the financial burden on RTÉ, TG4, Virgin and Sky would be significant.

Variable-rate levy

Germany and Croatia have introduced variable rates for different types of MSPs. This represents a levy option that could be used to moderate the impact on Ireland's ad-dependent media companies, whilst raising funds from global MSPs. At the same time, a variable rate would recognise that the gross revenue earned by SVODs and global MSPs in Ireland does not internalise the cost of connection, since broadband access charges fall outside the VOD subscription. This contrasts with pay-TV subscriptions – such as Sky or Virgin – where the cost of connection is internalised in the bill and gross revenue.

One approach would be to structure the variable rate to yield approximately the same levy proceeds as the uniform medium rate of 2%. Such an approach could take the following form: ad revenue 1%; pay-TV revenue 1%; and VOD revenue 5%. As in Germany and Croatia, these variable rates do not discriminate based on nationality, so Ireland's own VOD services would still be subject to a 5% rate. This could risk stifling domestic VODs, although the statutory exemptions for low turnover or low audience MSPs should mitigate this risk somewhat.

Based on the current structure of Ireland's audiovisual sector, this variable rate levy would yield €22.5m in levy proceeds and €20.3m in fund proceeds after accounting for collection and administration costs. RTÉ would face a bill of €900k and TG4 €35,000.

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[15] Italy announced on 25th March 2024 that it will be reducing this rate to 16%. https://cineuropa.org/en/newsdetail/459078

[16] Italy announced on 25th March 2024 that it will be reducing this rate to 16%. https://cineuropa.org/en/newsdetail/459078

Non-equivalent variable-rate levy

A variation of the variable rate levy would involve relaxing the criteria for yield-equivalence or near-equivalence and applying rates consistent with mid-points observed across EU countries. Such an approach would display the following rates: ad revenue 0.5%; pay-TV revenue 0.5%; and VOD revenue 3%.

This variation of the variable rate levy is likely to yield €12.7m in levy proceeds and €11.5m in fund proceeds after accounting for collection and administration costs. RTÉ would face reduced annual bills of €450k and TG4 €17,500, respectively. VOD services would see their annual payments reduced from €14.8m to €8.9m, compared to the standard variable rate levy.

Gradual rate increase mechanism

Another option would be to introduce a variable levy rate system that is launched with lower rates, but then subject it to a market impact review (for example, after 24 months) before being increased in pre-set increments over the launch rate. For example, the gradual rate increase mechanism could start with the non-equivalent variable rates (i.e. 0.5% of ad revenue, 0.5% of pay-TV revenue and 3% of VOD revenue), and following periodic review, be increased to the standard variable rates (1% of ad revenue, 1% of pay-TV revenue and 5% of VOD revenue). These would form the 'ceiling rates' under the gradual rate increase mechanism.

This approach would give both domestic and global MSPs an opportunity to adjust to the financial burden of the levy. It would also give CnaM, Screen Ireland and the government the opportunity to effectively monitor the impact of the rate to ensure that (i) it is not significantly limiting the growth in Ireland's attractiveness as a destination for inbound production, (ii) it is not financially unduly harmful to domestic MSPs, (iii) the burden is not unnecessarily being passed along to Irish households, (iv) it does not lead to production-cost inflation and higher economic rents, and (v) it is proportionate and non-discriminatory in line with the principles of the AVMSD.

At launch, this gradual rate increase mechanism is likely to initially yield €12.7m in levy proceeds and €11.5m in fund proceeds at the launch rates. If the rates were ultimately increased to the ceiling rates, it could yield €22.5m in levy proceeds and €20.3m in fund proceeds.

Conclusions

Based on our research we conclude that a levy is indeed feasible for Ireland. Nearly half of European single market countries have already adopted some type of AVMSD financial obligation and just over one-third (11 of 31) have implemented a levy of some form. Australia and Canada also plan to introduce similar financial obligations on MSPs.

Furthermore, while Ireland's domestic screen production industry is already able to access public financing via the s481 tax credit, the type of funding offered by a European Works fund would supplement financing available from distributors and domestic broadcasters and permit Ireland's domestic producers to further pursue creative excellence while also forging more international partnerships. Both of these actions would enhance cultural diversity and help the domestic production industry to build on its recent commercial and critical successes, offering many production companies an opportunity to build a path to improved financial sustainability. A European Works fund could be designed to also be complementary to the financing already available from bodies like Screen Ireland and CnaM.

That being said, for a levy to be feasible in Ireland it must minimise financial harm to MSPs that deliver PSM obligations or audiovisual infrastructure. Ireland is a relatively small audiovisual market compared to many EU countries, and so its domestic MSPs – PSM and commercial – have less market scale to absorb the cyclical and secular shocks within the audiovisual sector. Furthermore, the levy needs to be designed to reflect one of its own underlying policy goals – both in Ireland and across the EU – which is to encourage and even ensure that global MSPs that benefit from a nation's consumer spending should also contribute directly to that nation's cultural audiovisual policy objectives in a proportionate manner.

This market and policy context implies that Ireland should prioritise the variable rate levy option. The levy rate for ad revenue and pay-TV subscription revenue should be set at a low rate of 1.0% with the rate on commercial VOD services potentially set as high as 5%. The low turnover and audience exemptions can be used to mitigate the impact on domestic VOD services, to some extent.

There is an economic rationale for the variable rate levy. As noted, pay-TV services' revenue internalises the infrastructure cost of carriage whereas VOD services – delivered primarily over households' broadband connections – do not internalise this infrastructure cost.

Given the risks and uncertainty surrounding the introduction of even a variable rate levy, CnaM and the government should combine this variable rate with a gradual mechanism to introduce the levy. Under this mechanism, the levy rate for ad revenue and pay-TV subscriptions could be launched at a rate of 0.5%, while the rate for VOD could be launched at a rate of 3% (i.e. that of the non-equivalent variable rate levy). CnaM and Screen Ireland in a complementary, non-duplicative way should monitor the impact of the levy and only increase it gradually towards a pre-determined ceiling rate if inbound production, the domestic screen production industry and Irish consumers are not negatively impacted.

A uniform rate of 2% would yield €20m in levy proceeds and €18 million in fund proceeds, after accounting for administrative expenses. However, under the recommended variable rate and gradual rate increase mechanism, the yield at launch would be €12.7m, with fund proceeds of €11.5m; however, this could be increased over a period of 4-5 years to €22.5m and €20.3m, respectively.

Recommendations

Recommendation 1: Ireland should implement a European Works levy, in accordance with the OSMR Act, at the earliest possible date.

Recommendation 2: Ireland should adopt a variable rate levy combined with a gradual rate increase mechanism. The launch rates should be set at 0.5% of gross turnover on ad revenue earned, 0.5% of pay-TV subscription revenue, and 3% of VOD revenue. These rates could be gradually increased to 1%, 1% and 5%, respectively, in accordance with the parameters of the gradual rate increase mechanism, and thereby provide levy yield equivalent to a 2% uniform rate. MSPs that earn revenue from the provision of VOD services and other services must report these revenues separately to enable calculation of their levy.

Recommendation 3: Prior to any increase in levy rate, a market impact review should be undertaken to determine if there has been any deleterious consequence from the previous rate or any exogenous impact, before any further increase.

Recommendation 4: The market impact reviews should be undertaken by CnaM and Screen Ireland in a complementary, non-duplicative way. They should cover the impact of the levy on: the levels of s481 production (both inbound and domestic); production cost inflation in the Irish production industry; and consumer subscription rates for pay-TV and VOD services. Particular attention should be paid to whether the 25% Irish language quota is operating efficiently or if it has been inflationary. Monitoring of the operation of the levy should be a prerequisite before any levy rate increase, as with the gradual rate increase mechanism, but also for ensuring that the levy is proportionate and non-discriminatory, in preparation for the 2026 legislative review of the AVMSD by the European Commission.

Recommendation 5: The sensitivity analysis conducted for this research provides an indication of the impact on levy yield by the levy base in response to changes in MSPs' eligible VOD turnover. Therefore, in due course as data is collected by CnaM through the industry levy, CnaM should revisit the modelling of the levy options, to update the estimates used in this research with actuals data gathered from the VODs, and if necessary adjust the levy design.

Recommendation 6: The low turnover and audience thresholds provided for in the OSMR Act should be set in order to allow for lawful mitigation of the effects of a European Works levy on Ireland's domestic VODs as far as is permitted under the AVMSD.

Recommendation 7: Any definition for independent producer and independent production that excludes MSPs, should nonetheless, allow MSPs to enter into co-productions with independent producers, in order to provide MSPs with access to a European Works fund. This could still have the potential to boost rights retention within Ireland and to not fall foul of the non-discriminatory principle.

1. Introduction

1.1 Background

1. On 10 December 2022, Ireland's Oireachtas enacted the Online Safety and Media Regulation (OSMR) Act 2022. Among other things, the OSMR Act amended Ireland's Broadcasting Act, establishing a new media-sector regulator, Coimisiún na Meán (An Coimisiún or CnaM), to replace the Broadcasting Authority of Ireland (BAI), as well as transposing Article 13 of the Directive (European Union) 2018/1808 of the European Parliament and of the Council of 14th November 2018. This article is from the latest revision (2018) of the **Audiovisual Media Services Directive (AVMSD)**, which provides the regulatory framework for coordination across the European Union (EU) of national legislation on all audiovisual media, both traditional TV broadcasts and video-on-demand (VOD) services.

2. In particular, Article 13(2) gives EU Member States the option to impose financial obligations on media service providers (MSPs) that target audiences within their borders, but which are based in another Member State.

3. Part 10, Section 159E of the OSMR Act 2022 grants Coimisiún na Meán (CnaM) the power to establish a European Works levy ('the levy') for the purpose of funding a scheme to support the production of European Works and gives CnaM the power to determine which MSPs would be subject to this levy. Section 159F enables CnaM, in consultation with Fís Éireann/Screen Ireland, to establish a fund and to award grants using the levy proceeds. Section 159H empowers the Minister to enable Fís Éireann/ Screen Ireland by order to establish a fund in consultation with CnaM fund and to award grants using the levy proceeds.

4. Previously, in September 2020, the Irish Government established the Future of Media Commission (FOMC), which was tasked with, among other things, "making recommendations on sustainable public funding mechanisms and other supports to ensure the media sector remains viable, independent and capable of delivering public service aims." As part of its work, the FOMC looked at establishing a levy to fund a new media content fund. FOMC did not report on any direct investment obligations. The Government accepted 49 of the 50 recommendations when the FOMC reported in July 2022. In January 2023, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (TCAGSM) set out its Implementation Strategy & Action Plan which included an action for 'Coimisiún na Meán to conduct research and make recommendations to the Minister in relation to the feasibility of the audio-visual content levy and fund'.

5. In the light of the Government's Implementation Strategy & Action Plan, CnaM appointed Nordicity and Saffery LLP to undertake research and make recommendations on the feasibility of the establishment and administration of a levy and fund. The outcomes of this feasibility study, including its recommendations, are intended to help inform CnaM's considerations regarding the potential for the development and structure of the levy and a subsequent submission to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on the practicality of such a levy and fund.

1.2 Terms of reference

6. As set out by CnaM, the following were the objectives of the feasibility study research.

   i. To provide key data, insight and commentary on the feasibility of the establishment of a levy and fund.

   ii. To provide a comprehensive report and findings that will provide a strong basis upon which a decision can be made in respect of the structure of the levy and the design of the scheme.

   iii. To identify the potential MSPs that will be included under each option for a levy; assess the potential annual yield associated with each option; and assess the potential annual value of contributions by MSPs established in other Member States that target audiences in Ireland.

   iv. To explore, and report on, the potential approaches to implementing a levy.

   v. To explore, and report on, any likely challenges to the introduction and sustainability of a levy and fund.

   vi. To promote and encourage constructive engagement in the research by stakeholders by making the process of consultation as accessible and transparent as possible.

7. The feasibility study research covers the following areas of research and analysis:

   i. Provides an overview of the implementation of similar levies and schemes in other EU Member States and an analysis of the approaches adopted in the context of potential options for Ireland.

   ii. Provides a review of the current media funding ecosystem in Ireland and any additionality the fund would offer in terms of public policy objectives (e.g. cultural, heritage or Irish language); potential Irish audience impacts; financial and economic impacts; and developmental and growth potential for MSPs, producers and creatives.

iii. Identifies any potential distinguishing and/or unique features and public policy objectives that any levy and fund could bring to Ireland's media funding ecosystem.

iv. Provides recommendations on the feasibility of the introduction of the levy and fund in the context of the particularities of the Irish State.

8. In particular, the feasibility study research identifies and explores potential levy models and analyses:

   i. Any benefits, dependencies, conditions, or any other issues that might be associated with the feasibility of each model;

   ii. The potential annual levy income for each model;

   iii. The potential incidence of the levy with respect to MSPs and Irish consumers.

   iv. The method of calculation of the levy, in particular the base and rate of the levy;

   v. The period of time in respect of which the levy should be imposed;

   vi. The times at which payment is to be made and the form of payment;

   vii. The records which MSPs must keep and make available to CnaM;

   viii. Any possible exemptions from the levy;

   ix. The conditions under which levy payments may be deferred;

   x. The conditions under which refunds of the levy may be made; and,

   xi. The methods for identifying leviable income in the context of MSPs that provide multiple audiovisual media and other services.

1.3 Research approach

9. To address the terms of reference of the feasibility research, the consultants used a combination of desk research, primary research and financial modelling.

10. The **desk research** included the review of reports supplied by CnaM, other industry stakeholders, or obtained independently by the consultants. This included reports published by CnaM, Fís Éireann / Screen Ireland, the European Audiovisual Observatory (EAO), other governments of media regulators, industry bodies, independent researchers, other consultancies and MSPs (i.e. annual reports and financial accounts). A complete list of the documents reviewed as part of the desk research can be found in the References section at the end of this report.

11. The primary research consisted primarily of a stakeholder consultation exercise. Over 40 different stakeholder organisations from inside and outside Ireland were invited to consultation interviews. This included domestic and global MSPs and representatives of the audiovisual production community in Ireland. Interviews were completed with 30 organisations. Some organisations also submitted written replies to the consultation interview questions.

12. Alongside the stakeholder consultation, the consultants conducted online and email interviews with representatives from the European Commission (EC), media regulators and screen agencies in other EU countries.

13. Based on the information and data gathered through the desk research and primary research, the consultants undertook **financial modelling** to estimate the impact of the levy and fund, in particular the annual yield of the levy and its financial impact on Irish MSPs.

1.4 Outline of study

14. The following study report has been organised into the following seven sections.

    i. **Section 1** has provided the background to the study.
    ii. **Section 2** provides an overview of the market and policy context within which to assess the feasibility of the levy and fund.
    iii. **Section 3** examines the key considerations for the levy design.
    iv. **Section 4** presents the various levy models and summarises the impacts and feasibility of each.
    v. **Section 5** summarises the key recommendations arising from this feasibility assessment.
    vi. **Appendix A:** European Works financial obligations in the European single market
    vii. **Appendix B:** Legal Instruments
    viii. **Appendix C:** List of consultees
    ix. **Appendix D:** Coimisiún na Meán
    x. **Appendix E:** Fís Éireann/Screen Ireland

2. Market and policy context

2.1 Domestic media landscape in Ireland

15. Ireland has a diverse media landscape that encompasses domestic producers (Irish and English language) of differing scale, inbound production, audiovisual production studios and location shooting, domestic broadcasters, OTT and VOD platforms, social media giants, cutting-edge software houses and games developers.

16. The two public broadcasters are RTÉ and TG4 (funded by licence fee and advertising) with Virgin One as a commercial national television channel, all of which are available on Saorview and offer streaming services. Subscription services include: Virgin Media, *eir* TV and Sky Ireland, all of which also offer channels from abroad; as well as VOD providers such as Amazon Prime Video, Apple TV+, Disney+, Hayu, Netflix, NOW and Paramount+.

17. Ireland has established itself as a world-class filming location as well as an animation hub with 2D and 3D studios working with Disney, Nickelodeon, Cartoon Network and the BBC. This is underpinned by the s481 which offers a tax credit of up to 32% of whichever is the lowest of eligible Irish expenditure; 80% of total qualifying film production costs; and €125m, for film and TV drama, animation and creative documentary production in Ireland.

18. Even more recently, Ireland has developed a burgeoning visual effects (VFX) sector that has seen 326% revenue growth in the last five years, including for the most recent set of data, growth of 100% just between 2021 and 2022. The high-tech VFX industry currently employs over 300 staff.[17]

19. An increase in the s481 project cap from €70m to €125m was announced in Ireland's Budget 2024. EC State Aid approval has now been agreed for the cap increase and for the extension of s481 to 2028. Also, discussions are expected to start soon with the EC to develop an unscripted production sector incentive.

20. In addition to the s481 tax credit, both CnaM and Fís Éireann / Screen Ireland already manage funds that support the Irish domestic audiovisual sector.

21. CnaM is a regulator working to foster and regulate a diverse, safe and thriving media landscape (see Section 2.2) and a funder that supports media development. Its Sound and Vision fund specifically focusses on supporting *"high-quality programmes on Irish culture, heritage and experience, and programmes to improve adult literacy"*.

[17] VFX Ireland, *Charting Ireland's VFX Future: The need for a dynamic and progressive hub for Irish VFX specialists*, VFX Ireland Report 2024, https://www.screenireland.ie/images/uploads/general/VFX-Ireland-Report-2024-V13-DIGITAL.pdf.

22. Fís Éireann/Screen Ireland is the national agency with a statutory remit for the development and growth of the audiovisual sector. Fís Éireann/Screen Ireland has responsibility to encourage the expression of national culture on screen through investment in development and production of the Irish film, television drama, animation, documentary, vfx, post-production and games industry. Screen Ireland is also the strategic body responsible for the attraction of foreign direct investment into Ireland in the form of international productions and has oversight of the delivery of industry skills development as part of requirements of Section 481.

23. Ireland's screen guilds comprise: Animation Ireland, Writers Guild of Ireland, Screen Producers Ireland, Screen Directors Guild of Ireland, VFX Association Ireland, Locations Guild of Ireland, Production and Accounts Guild of Ireland, and Irish Society Of Cinematographers.

24. Ireland has a €160 annual household TV licence fee that funds a broad range of public service media (PSM) content, enabling essential news and current affairs programming, as well as supporting the creation of high-quality content on culture, sport, entertainment and music amongst other things.

25. A licence fee financial shock was triggered in June 2023 when hitherto unknown payments made by RTÉ came to light. This has seen large numbers of viewers not renewing their licence fees. A parliamentary answer has revealed that TV licence fee revenues were down 29.3% between 1st July and 31st October 2023 compared to the corresponding period in 2022 (i.e. 242,118 opting to pay in 2023 compared to 342,775 in 2022), with a resultant loss of €16.1 million in TV licence fee income. More recent data suggests there may have been some recovery in licence fee revenue, however.

26. Government has had to make some short-term interventions such as €56m in funding for RTÉ after the broadcaster set out plans to reduce its workforce by 400 people by 2028. The debate on the long-term future of the licence fee was already an urgent matter, but Virgin Media has further added to the urgency with a recent letter to Minister Martin (Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media). In this letter, Virgin Media managing director, Áine Ní Chaoindealbháin, asked for a €30m slice of the licence fee revenue in order to continue providing public broadcasting services.

27. There has been some conflation between the licence fee issues and the introduction of a levy and fund, with some domestic producers considering the levy to be a quid pro quo replacement for the loss of income from the TV licence fee, though other parts of the ecosystem think it needs to add to the system. Some subscription VOD services (SVODs) fear that a levy fund could simply be treated as a back-up fund for broadcasters. Therefore, clarity will be needed to counter any misapprehensions and differing perceptions about the levy and fund's purpose.

2.2 Media regulation in Ireland

28. The media regulation landscape in Ireland is currently in a state of flux as new statutes, regulator and policies have been enacted or are under consideration. In 2023, CnaM was instituted as the regulator of broadcasting and online media in Ireland, independent of government and media stakeholders, and is the successor body to the BAI.

29. In order to discharge its regulatory functions in relation to audiovisual media services, sound broadcasting services and designated online services, CnaM is already in the process of establishing separate levies on providers of:

    i. audiovisual media services;
    ii. providers of sound broadcasting services; and
    iii. providers of designated online services.

    Therefore, for the Irish media sector a European Works levy will be in addition to these three. MSPs that operate across these segments of the media sector may be subject to multiple levies.

2.3 Audiovisual media sector

30. To help set the market context for the feasibility of a European Works levy in Ireland, we begin with a brief review of the available statistics and estimates of total turnover in Ireland's audiovisual media sector (Section 2.3) and audiovisual production spending in Ireland (Section 2.4).

31. According to estimates prepared by Oliver & Ohlbaum and Nordicity, revenue within Ireland's audiovisual media market totalled an estimated **€1,084m** in 2023.[18]

    i. Out of the total **TV licence fee** proceeds of €196m, an estimated €150m was allocated to TV and online services (related to the audiovisual media sector).

    ii. **TV advertising** accounted for €227m.

    iii. **Pay-TV subscriptions**, including subscriptions to Sky, Virgin Media and *eir* accounted for €545m.

Over-the-top (OTT) video services, including SVOD and TVOD services available in Ireland, accounted for €312m. This revenue was earned primarily by services such as Netflix, Disney+, Discovery+ AppleTV+, Paramount+ and Volta.

[18] Oliver & Ohlbaum (2023). Review of Sound & Vision 4: A report for the Broadcasting Authority of Ireland. May 2023. P. 22.

Table 1 Total revenue in Ireland's audiovisual sector

	2018	2019	2020	2021	2022E	2023E
Licence fee*	146	151	152	151	151	150
TV advertising	221	225	198	227	230	227
Pay TV subscriptions	532	515	512	522	542	545
OTT video**	113	133	180	245	282	312
Total	**866**	**873**	**890**	**994**	**1,054**	**1,084**

Source: Oliver & Ohlbaum and Nordicity/Saffery estimates and PwC
E – estimates
* Allocation to TV services only; excludes allocation to radio and RTE orchestras
** Includes SVOD and TVOD
Note: Certain totals may not sum due to rounding

2.3.1 TV licence fee

32. In 2023, RTÉ received €193.3m in proceeds from the TV licence. According to RTÉ's 2023 annual report, 60.3% of the received licence fee proceeds were allocated to its TV operations (€116.6m); 8% to its online platforms (€15.5m); 5.4% to RTE's other channels, services, governance and digital TV transition (€10.5m); and 4% transferred to TG4 (€7.7m).[19] In total, therefore, out of the €193.3m in licence fee proceed, €150.2m was allocated to television or online media services in Ireland.

Table 2 Allocation of TV licence fee, 2022

	%	€m
RTÉ TV services	**60.3%**	**116.6**
RTÉ online	8.0%	15.5
RTÉ other	5.0%	9.7
TG4	4.0%	7.7
Subtotal	**77.3%**	**150.2**
Radio	19.3%	37.3
Orchestra	3.1%	6.0
Subtotal	**22.7%**	**43.2**
Total	**100%**	**193.3**

Source: Nordicity/Saffery estimates based on RTE 2023 annual report

[19] RTÉ (2023) A Year in Review: Annual Report and Group Financial Statements. P. 35.

2.3.2 TV advertising

33. RTÉ earned €106m in advertising revenue in 2023 from both TV and radio. While RTÉ does not publish a breakdown of its ad revenue for TV and radio, Nordicity estimates that it likely earned approximately €20m from radio ads in 2023, leaving an estimated €86m for TV ad revenue.[20]

34. With RTÉ accounting for €86m and TG4 earning an estimated €3.4m in advertising (and sponsorship) revenue in 2023[21], the balance of TV ad revenue in the Irish market, an estimated €138m was accounted for by Virgin Media, Sky, Channel 4 and other commercial television services.

35. While specific published statistics are not available for Virgin Media's share of the TV ad market in Ireland, according to its 2022 public financial statements it earned €55m in total revenue from advertising and other commercial income earned in Ireland from Virgin Media One airtime, its website, Virgin Media Player, its VOD platform and the rental of studio production facilities.[22] Also note that Virgin Media accounted for 19% of total TV viewing in 2022 (19% x €227m = €43m). Assuming this viewing share was relatively stable between 2022 and 2023 would suggest that Virgin Media accounted for between €43m and €55m in ad revenue in 2023. We have adopted the lower boundary of this range, given the pressure that Virgin Media is experiencing on its ad revenue.

36. Sky's own channels accounted for 8% of total broadcaster viewing in 2022. Assuming this viewing share was relatively stable between 2022 and 2023 would suggest that it earned c.€20m in ad revenue in 2023 (i.e. 8% x €227m = €18m). However, because Sky's channel's focus on sports and high-budget drama, which typically commands higher ad rates, its ad revenue in 2023 could very well have been closer to c.€40m.

Table 3 Ad revenue estimates by broadcasting group, 2023

	€m
RTÉ	**86**
TG4	3
Virgin Media	43
Sky	40
Other	55
Total	**227**

[20] Statistics from Group M indicate that the radio advertising market in Ireland was worth €108m in 2022 and €110m in 2023. RTÉ's radio services accounted for a combined 28% share of radio listening in 2022. 28% of €110m equals €31m, however, we have discounted RTÉ's market share to €20m based on PSB nature of some its radio content.

[21] At the time of writing, TG4 had not published its 2023 financial statistics, so 2022 results have been carried forward to estimate 2023.

[22] Virgin Media Television Limited (2023) Annual report and financial statements for the year ended 31 December 2022 (Reg. 272612).P. 1.

Source: Nordicity/Saffery estimates based on data from Oliver & Ohlbaum, PwC, RTÉ, TG4, Virgin Media and Medialive

2.3.3 Subscription pay-TV

37. Based on a review of public financial statements for Sky, Virgin Media and *eir*, and statistics for the share of households adopting various pay-TV platforms, Nordicity estimates that Sky accounted for 67% of the pay-TV market in Ireland in 2023 (€363m), followed by Virgin Media with 27% (€147m); and other providers (e.g. *eir*TV, Vodafone TV) accounting for the remaining 6% (€33m).

Table 4 Pay-TV market estimated market share, 2023

	%	**€m**
Sky	67%	363
Virgin Media	27%	147
Other (e.g. *eir*TV, VodafoneTV)	6%	33
Total	**100%**	**545**

Source: Nordicity/Saffery estimates based on data from Oliver & Ohlbaum, PwC, RTÉ, TG4, Virgin Media and Medialive

38. We note that Sky reported €531m in total turnover earned from its direct-to-home, pay-TV, broadband and telephony subscriptions in Ireland in 2022.[23] So the allocation of €363m to its pay-TV services implies that it earns c. €150m from ad sales (see Section 2.1.2), broadband and telephony services.

39. We also note that the estimated overall revenue in Ireland's pay-TV market likely includes that value of revenue earned by pay-TV providers from their own OTT services and their re-sale of third party SVOD services such as Netflix or AppleTV+. In that regard, a portion of what is defined as the pay-TV market and pay-TV turnover is actually OTT or SVOD turnover.

2.3.4 Over-the-top

40. Ireland's OTT market is dominated by SVOD services. Nordicity's research suggests that out of the estimated Irish OTT market of €312m, SVOD services likely account for €249m, or 80%. TVOD revenue is estimated to account for the balance of OTT revenue, €63m (20%).

2.4 Audiovisual production in Ireland

[23] Sky Subscribers Services Ltd. (2023) Annual report and financial statements for the year ended 31 December 2022 (Reg. 02340150). P. 27.

41. Fís Éireann / Screen Ireland publishes statistics on film and TV production and reports that spending on audiovisual production in Ireland totalled €357.6m recorded in 2019, €500m in 2021, and €355.7m in 2022. Despite the global slowdown in film and TV production in 2023 on account of the Hollywood strikes, the level of spending on audiovisual production only declined by 9.5% to €322m.[24]

42. The Screen Ireland estimated production spending statistics consisted of production supported by Ireland's section 481 tax credit ("s481") – both inward and domestic production – with budgets over €2m and all Screen Ireland-supported projects. Indeed, in 2022, domestic production accounted for €79m or approximately 22% of this total spending.[25] [26]

43. RTÉ spent an estimated €186m on TV production in 2022.[27] Of this total, €45m was spent on commissioned external original content, with the balance of €141m spent on in-house production for TV and radio. In-house TV production, which would not be subject to s481, represented an estimated €114m of this total.[28]

44. TG4 – a publisher broadcaster without in-house production operations – spent €28.5m on the commissioning of external original Irish-language programming in 2022. Some of these external projects would likely have had budgets under €2m and thereby a portion of the €28.5m would have also fallen outside Screen Ireland's estimated production spending statistics.

45. The combination of Screen Ireland's estimated production spending statistics (€322m), RTÉ in-house production without access to s481 (€114m) and RTÉ's production of news and current affairs TV programming (c. €36m) points to audiovisual production in Ireland of approximately €475m. Adding audiovisual production that falls outside the scope of Screen Ireland's estimated production spending statistics, and production at Virgin Media and other domestic MSPs that would not be eligible for the s481 suggests that there was likely close to €500m in audiovisual production in Ireland in 2023.

2.5 Policy rationale for a levy in Ireland

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[24] Screen Ireland (2024). "2023 in Numbers: Steady Production Levels Despite Global Disruption, New Talent, Sustainability and More". 24 January.

[25] Screen Ireland data, https://www.screenireland.ie/industry-insights/screenireland-data.

[26] Fís Éireann / Screen Ireland, *Statistics 2022*, https://www.screenireland.ie/images/uploads/general/Statistics_2022_17.5.24.pdf.

[27] RTÉ (2024) *A Year in Review: Annual Report and Group Financial Statements 2023*. P. 213. A portion of the amount spent on commissioned programming may also fall outside of s481 if the programming was in a genre not eligible for s481. The s481 is only available to feature or short films, television dramas, animation and creative documentary. Entertainment, factual and unscripted programming is not eligible for s481 unless it qualifies as a creative documentary.

[28] Ibid. Nordicity estimates that in-house radio content production was €27m in 2023.

46. The policy rationale in Ireland has been based upon taking account of a number of distinct, divergent and in some cases competing sets of stakeholders in Ireland's audiovisual media sector. These include the domestic producers, the broadcasters, the global VODs and US studios, and the screen guilds. Even these segments can have differing interests within.

47. RTÉ and other domestic broadcasters can tap into the advertising market for revenue, however, as viewing continues to migrate to VOD and other online video or social media platforms based outside of Ireland, this revenue base is under stress. Therefore, the domestic producers have strongly argued to 'level the playing field' and that MSPs that 'take out of the Irish market' (i.e. earn revenue and profits in Ireland) should be required to 'give something back in return'. A notion that was widely accepted by the global VOD providers and major studios. In effect, the mixed revenue model that had hitherto characterised the funding of PSM in Ireland and its ability to support the domestic production industry, has been eroded by the migration of audiences and the loss of the associated advertising revenues.

48. That being said, the government also does not want to put at risk Ireland's status as a favoured destination for inbound production for global VODs and major studios and the inbound-friendly film production environment created by the s481 32% tax credit.

49. The AVMSD gave Ireland (as with other EU countries) a vehicle to implement such a contribution regime within EU law on an optional basis. The implementation of any contribution regime must adhere to the following principles:

- Necessity
- Proportionality
- Non-discrimination

50. There was no mention by government or stakeholders that the levy was a direct response to households failing to pay their RTÉ licence fee – which is partly connected to those households' migration to VOD, but also due to audiences' migration to social media platforms, video-sharing platforms (VSPs) and user-generated content for audiovisual entertainment. It appears government intends to address that issue independently through a revamped and enforceable household media licence fee that is less linked to terrestrial viewing of RTÉ. This would be similar to the evolution of the BBC licence fee in the UK in the iPlayer era.

51. Given the state of change within broadcasting and wider media consumption by the public, the Irish Government established the FOMC, which was tasked with, among other things, *'making recommendations on sustainable public funding mechanisms and other supports to ensure the media sector remains viable, independent and capable of delivering public service aims'*. As part of its work the FOMC chose to look at establishing a levy to fund a new media content fund. FOMC did not report on any

analysis of direct investment obligations. The FOMC reported in July 2022, making 50 recommendations, 49 of which the Government adopted.

52. As a result of the FOMC and as a matter of cultural policy, the Irish Government wishes to promote Irish stories and Irish language content and culture at home and abroad within the broader category of European Works and has legislated for a levy rather than a direct investment obligation. The rationale being that because Ireland is predominantly an English-speaking country, a direct investment obligation would give global MSPs too much flexibility to only invest in non-Irish content for global markets. The government's operating assumption is that global MSPs could easily fulfil the European Works criteria of a direct investment obligation by, for example, holding the intellectual property (IP) through a UK company and simply produce service-production-type content. A levy and fund approach was seen as the best way to avoid this situation.

53. Consequently, in January 2023, TCAGSM set out an Implementation Strategy & Action Plan as its response to the FOMC report, which included an action for *'Coimisiún na Meán to conduct research and make recommendations to the Minister in relation to the feasibility of the audio-visual content levy and fund'*.

2.6 Provision under EU legislation

54. In general within the EU, the *country of origin* principle applies, therefore, MSPs would typically be governed by the jurisdiction of the Member State in which they are established. However, Article 13(2) of AVMSD permits an exception to this principle, allowing Member States to impose financial obligations on MSPs established in other Member States and targeting their territory.

55. Such financial obligations are not a requisite but an option, with 13 of 27 EU countries having taken up the option.[29] Where Member States impose financial obligations on domestic services, they may also extend the obligations to targeting services (i.e. services based in another Member State but targeting audiences in their own state).

56. These financial obligations can be in the form of:

   i. Indirect investments – through levies to a national fund; or
   ii. Direct investments – as investment in the production of European Works and/or the rights acquisition of European Works.

[29] Belgium has four jurisdictions, two of which have obligations and two which do not, therefore, on a national basis it is considered here to count as one of those countries which has financial obligations.

Furthermore, a Member State can choose to opt for (i) only a levy, (ii) only a direct investment obligation, (iii) allow for both and let an MSP choose which obligation to fulfil ('alternative model'), or (iv) impose both ('cumulative model').

57. Whether a levy or a direct investment obligation, the AVMSD underlines the importance of the financial obligations being necessary, proportionate and non-discriminatory.

58. European Court of Justic (ECJ) rulings on investment obligations in France (T-193/06, Télévision française 1 SA (TF1)) and Spain (C222/07 Uteca) have ruled that they do not constitute state aids. However, some legal commentators suggest that a levy may constitute a tax, which could render a large swathe of financial obligations unlawful. This view has not been tested in court yet. However, if it does prevail, countries such as Ireland that rely exclusively on a levy may have to replace it with a direct investment obligation or other type of financial obligation that would not be determined to be a tax.

59. Constitutional courts in Member States have also adjudicated on the compatibility of financial obligations in the audiovisual sector with fundamental principles of law (e.g. the freedom to conduct business and the principle of non-discrimination).

60. As it currently stands, Ireland's own legislation clearly provides for a levy rather than a direct investment obligation. The government affirmed that this was deliberate and captures the policy objective behind the legislation. However, CnaM's position as the independent media regulator means that it should be across the implications of what the AVMSD allows for, should unforeseen consequences result from a levy or if the political objective changes.

2.7 Exemptions to coverage provided under AVMSD

61. Whilst the AVMSD covers 'programmes' in its broadest sense, the legislation has a history of making exceptions for news and sports.

62. Both Article 16 and 17, relating to broadcast times reserved for European Works, which were left unchanged by the 2018 revision, exclude from requirements *'the time allotted to news, sports events, games, advertising, teletext services and tele shopping'*.

63. Similarly, aspects of the legislation relating to TV advertising and sponsorship have relevant exceptions too. On top of this, sports considered of high interest (e.g. the Olympic Games, football World Cups) have a special listing system and their own set of rules. So again, they are treated differently in legislation.

64. Whilst current affairs is a distinct category from news, there is an understanding that the creation of current affairs programmes entails a lot of the same challenges as news (particularly at the local level).

65. Moreover, there were those who viewed Art. 13(2) as the opportunity to introduce a pure Film Fund Levy, since early adopters of such levies in a cross border context, e.g. Germany, generally stuck to film only. The scope of these levies obviously then had to be updated to include the SVODs, many of whom thrive on developing high quality drama series (more akin to traditional TV).

2.8 Extension of the AVMSD to social media platforms

66. The AVMSD does not prohibit Member States taking stricter measures, or going beyond the scope of those set in legislation, to support the production of European Works. However, any national measures that seek to extend the application of the AVMSD financial obligations to social media services still needs to conform to the overarching EU principles of necessity, proportionality and non-discrimination.

67. Placing a requirement on social media service providers, or a specific subsection of them, to invest in the production of European Works would, in the near term, require an evidence-based justification to gain the support of the EC. This is evidenced by the EC's comments on the Flemish draft Decree (see Box 1).

68. In the long term, enshrining such an extension of scope into EU law – which puts the extension on a stronger legal footing – would require the political support of key Member States and their national representatives in the European Parliament.

69. Applying a levy to social media platforms based on Article 13(2) of the AVMS Directive is ultimately untested and would need to conform to the overarching EU principles of necessity, proportionality and non-discrimination. Bolstering any approach by gaining support from the EC and EU Member States to extend the scope of Article 13(2), or its successor, to social media platforms is likely to be politically complicated over the next few years (see Section 2.9).

Box 1 Flemish Government proposal

Several countries have attempted to introduce a variety of digital taxes on online digital service providers within and beyond their jurisdiction. However, the Flemish Government in Belgium – via its decree amending the Flemish 27 March 2009 Decree on radio broadcasting and television – appears to be the first EU Government specifically seeking to make use of the AVMSD's Article 13(2) option to levy certain online digital service providers (amongst others) to fund domestic audiovisual production.

The Flemish notified the Commission of its proposal in March 2023 and plans to implement the draft Decree, which is currently progressing through its parliament, early in 2024.

Recent reporting[30] suggests this remains their firm intention. However, the Commission's comments on the proposal in June 2023[31] do point out a number of potential issues relating – amongst others – to the scope of 13(2) and overarching EU law:

- Firstly, the Decree seeks to levy 'distributors or services' (who essentially bundle channels with no editorial responsibility over content), as well as private VOD providers and VSP providers, whether established inside or outside of the EU, with varying obligations for each. The investment obligation does not, however, apply to linear broadcasters or on-demand media services operated by public service media.

  The Commission acknowledges that such differentiation can be justified on the grounds of higher levels of broadcaster investment in European Works[32], but stresses that the overarching EU principles of proportionality and non-discrimination must still be respected. The decision to exclude some types of service whilst including others therefore requires an explanation and evidence-based justification, i.e. concrete data on investments undertaken, which the Flemish have been encouraged to provide.

- Secondly, and with specific regard to the extension to social media service providers, the Commission does stress the limits of a minimum harmonisation directive and recognises that the AVMSD does not prevent Member States from including VSPs in scope. However, it once again underlines the need for compliance with overarching EU principles. In this regard, the Commission points – in respect of the option to invest directly (draft Decree Article 9) – to the link that the Flemish draft Decree itself creates between the obligation to invest in a 'Flemish production project' (one of the criteria) and the activities undertaken by the service being levied. Reading between the lines, the question appears to be is it proportionate to expect a cross-border video-sharing platform whose business model is not focused on content production to be forced to invest in the production of European, let alone Flemish-language AV content?

  On this point the Commission underscores that AVMSD Article 13(2) refers to the option to oblige investment in support of European Works, not national ones, highlighting that '*the Directive does not include any provision concerning the*

[30] "*Flanders shakes down TikTok, Instagram to fund local films and series*", Politico EU, accessed 12 February 2024 (https://www.politico.eu/article/tiktok-instagram-youtube-flanders-belgium-pay-local-media-content-benjamin-dalle/?utm_medium=social&utm_source=Twitter)

[31] EU Commission comments on the Flemish draft Decree notification can be accessed here: https://technical-regulation-information-system.ec.europa.eu/en/notification/23632

[32] As recognised by Recital 37 AVMSD and established in case-law.

earmarking of a part or all of the relevant revenues to works in the official language of a Member State or works that have been produced by producers established in a certain Member State or a certain region of a Member State'.

Whilst the Commission goes on to state that restrictions to the freedom to provide services can be justified if they pursue a legitimate public interest (e.g. protecting cultural or linguistic diversity), settled case-law stresses national measures must still be proportionate. The Commission reminds the Flemish Government here that measures leading to a high proportion of Flemish projects benefiting from the investment obligation over European Works would need to be justified and encourage '*additional reasoning*'.

It remains to be seen, at the time of writing, if the Flemish Government has responded, or intends to respond, to the Commission's comments with the additional explanation and evidence sought.

However, the fact that current Minister for Media, Benjamin Dalle, is publicly calling for other EU Member States to follow suit suggests an awareness that additional political support will be required if such measures are to eventually become part of EU law.

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2.9 Review of AVMSD

70. The EC's powers are limited in the field of culture – which is an area of national competence – but there will be a 2026 legislative review of the AVMSD and this will give EU officials extensive opportunity to assess the impact of differences in national implementations across the EU27 and to seek to address gaps or perceived harms. Article 13(2), already has its novel derogation from the country-of-origin principle, and will certainly be scrutinised as part of that review, providing an opportunity for those who support and oppose it to express their views.

71. In the meantime, the EC issued a report in January 2024, on the application of the Audiovisual Media Services Directive (AVMSD), for the period 2019-2022. Although, as the report noted, the delay in the transposition and implementation of the AVMSD did not allow for *'an exhaustive analysis of the effect on the new legal framework'*. Nonetheless, the report did describe the AVMSD as *'an essential instrument to harmonise audiovisual rules throughout the EU and govern the Union-wide coordination of national legislation for all audiovisual media'* and how the 2018 revision *'brought some significant innovations and has proven useful for addressing developments in the audiovisual market, such as the growing importance of digital services'*.[33]

72. However, the report indicates that the implementation of the rules for the promotion of European Works by linear and nonlinear service providers (i.e. related to Articles 13

[33] European Commission (2024) *Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022.* Commission Staff Working Document. 5 January 2024.

and 16 of the AVMSD) for the period 2020-2021, is to be reported separately but 'shortly'.[34]

73. The final outcome of the 2026 legislative revision will ultimately be determined by politicians and political compromise; the extent to which the EC succeeds in defending the country-of-origin principle, which it views as key to the smooth functioning of the single market; and the degree to which industry advocates, from all sides of the debate, manage to influence the outcome.

74. This fact, alongside European Parliament elections and the appointment of a new EC later in 2024 (as well as nine other parliamentary elections taking place in the EU in 2024, including in Ireland and federal elections in Belgium) makes future policy direction challenging to predict, including the likelihood of support for an expansion of the AVMSD financial obligations to certain social media service providers.

75. Add to this mix, external events in the broader area of digital services taxation (DST) – which may or may not see agreement this year on the G20/OECD Multilateral Convention proposal for an international solution to replace the current array of unilateral national DST regimes (see Box 2) – and the endpoint is uncertain. The only real point of clarity is that pressure to ensure that digital cross-border services pay their fair share will remain.

[34] European Commission (2024) *Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022*. Commission Staff Working Document. 5 January 2024.

Box 2 Digital Services Tax[35]

Global reform of international rules on corporate (business) taxation is taking place in response to the challenges presented by the increasing digitisation of economies. Since tax rules still presume a physical presence, profits from digital activities are often not taxed where the users and consumers are located.

The G20 and OECD are seeking a long-term, global solution to counter what was a proliferation of unilateral national Digital Services Taxes (DSTs)[36] seeking to tax the gross revenue of a variety of digital services.

The October 2021 statement of the OECD/G20 Inclusive Framework on Base erosion and profit shifting (BEPS) provides for a two-pillar solution:

- Pillar one consists of rules and arrangements that will enable the reallocation of taxing rights among the jurisdictions where the largest and most profitable multinational groups have their share of the market and earn profit and will require the removal of DSTs. Countries with existing DSTs have reached a compromise with the US, pending its implementation, to prevent punitive trade actions.
- Pillar two covers rules on minimum effective taxation of the largest multinational groups (i.e. turnover of at least 750 million EUR), aimed at reducing the opportunities for tax base erosion and profit shifting. It also aims to ensure that the agreed global minimum rate of corporate tax – 15% – is paid. This Pillar is the more advanced.

The Inclusive Framework plans to finalise the Multilateral Convention text imminently (previously announced as March 2024). However, there is still some uncertainty as to the outcome, as not all countries with DSTs are happy with the approach taken. Many European countries with DSTs in place have them on hold on the promise of a global agreement being reached this year. If this does not happen, tensions with the US may resume (potentially exacerbated by a Trump victory in the upcoming US presidential elections).

It is notable that, when considering its subsequently abandoned New Media Deal in 2021/22, the Danish Government concluded that the then proposed contribution of a levy of 6 per cent on gross receipts of digital streaming services in Denmark was not contrary to the OECD's Two-Pillar Agreement or the intentions it sets out in relation to the negotiations of the multilateral convention[37].

[35] Source: https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/digitalized-economy-taxation-developments-summary.pdf;

[36] *"Countries can levy DSTs differently. Austria, for example, only applies a DST to digital advertising, whereas Poland only assesses a DST on streaming services. Multinational companies can face double taxation if one government imposes DSTs on a company's revenue and then another government imposes DSTs on the same revenue."* Cited from https://pro.bloombergtax.com/brief/understanding-digital-services-taxes-the-oecd/

[37] See under Denmark: https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/digitalized-economy-taxation-developments-summary.pdf

2.10 What financial obligations are in play across Europe

76. All EU Member States have now transposed Article 13 of the AVMSD, indeed several non-EU European countries have also aligned their regulatory regimes with the directive. Ireland was part of the last tranche of EU countries to do so.

77. In respect of Article 13(1), 26 EU countries have opted for the minimum 30% quota for European Works in VOD catalogues, only France has a higher threshold (60%) and only Norway (a European Economic Area (EEA) country) has not transposed the 2018 directive. Outside the EU, Iceland, Liechtenstein, Switzerland and the UK have the 30% quota too.

78. Within the EU, but excluding Ireland, half (13 of 26) of the Member States do not impose a financial obligation on MSPs: Austria, Bulgaria, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovenia and Sweden.

79. Of those 13 EU countries that do impose a financial obligation on MSPs, only two countries do not extend this obligation from domestic to targeting services: Czech Republic and Slovakia. The 11 other EU countries place obligations on both domestic and targeting MSPs: Belgium, Croatia, Denmark, France, Germany, Greece, Italy, Poland, Portugal, Romania and Spain.

80. Of the 11 EU countries that do impose a financial obligation on both domestic and targeting VOD services, only one (i.e. Italy), imposes just a direct investment obligation and only two (i.e. Germany and Poland) impose just a levy. However, Germany is revising its regime (see Section 2.11). In Croatia and Greece, domestic VOD services are subject to a levy, whereas, targeting VOD services face some combination of a levy and direct investment obligation.

81. Denmark uniquely in the EU has a levy rate that is determined by the level of direct investment already being made by an MSP. Denmark as of 1st January 2025 is going to impose a mandatory 2% levy on both domestic and targeting VOD services but if less than 5% of the VOD service's Danish turnover is invested in Danish content, then the levy rate increases to 5% - in effect a unique variant of a cumulative direct and indirect financial obligation mechanism.

2.11 Recent developments in financial obligations in Europe

82. Looking across at that half of the EU where financial obligations are being placed, some countries are in the process of adapting or altering their financial obligations, whether long-standing, such as Germany, or more recent, such as Italy, or a new regime, such as Denmark.

    i. **Germany** is considering the introduction of a direct investment obligation alongside its existing levy system (see Box 3).

    ii. **Italy** appears to have recognised some negative consequences to its current 20% direct investment obligation,[38] and announced a reduction to 16% on 25th March 2024.[39] This has happened at a time when the film industry is in stasis due to potential reforms to the audiovisual tax credit. [40]

    iii. **Denmark** has revised its levy during its consultation phase and the new proposal has been submitted to the European Commission for an opinion moving down from a maximum 6% levy to a maximum 5% levy, with a further reduction to only 2% if MSPs meet a minimum direct investment obligation.

83. It would appear that each of these measures are seeking to reduce indirect financial obligations (levies) or provide a means of flexibility to meet financial obligations via a direct financial obligation instead of through a levy (or indirect measure).

Box 3 InvestVG proposal in Germany

The German Ministry of Culture have published a draft proposal to introduce direct investment obligations to promote the production of European Works – InvestVG.

Under the proposal, MSPs who offer German-language media services on demand in Germany will be asked to pay into the levy 20% of net sales, net advertising sales or the programming budget attributable to the media libraries achieved with the respective media service in the Federal Republic of Germany. Payment to the existing film levy can offset any liability due to InvestVG.

From the monies raised

- Of this, at least 60% to be invested in the production of new European Works.
- At least 70% to be invested in European audiovisual works in the original German language.
- At least 15% to be invested in European audiovisual works intended for public screening in film theatres.
- At least 70% to be invested in European audiovisual works created by film producers that are independent of the commissioning audiovisual MSP. This is linked to a mandatory retention of rights in favour of the independent film producers with whom contracts are concluded in the course of fulfilling the obligation.

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[38] The direct investment obligation was introduced at 17% in 2022 and increased to 18% in 2023.

[39] https://cineuropa.org/en/newsdetail/459078

[40] https://www.screendaily.com/news/italian-film-industry-unites-to-voice-concern-at-public-funding-delays/5192284.article

The definition of independent producer is independent from the commissioning MSP. This is determined by share capital. If the MSP owns more than 25% of a producer's company it is considered not independent.

There are three exemptions from the investment obligation:

- The MSP's annual net advertising turnover does not exceed €10m per annum. No turnover threshold for the British Broadcasting Corporation.
- The MSP dedicates less than 2% of its annual offering volume to making audiovisual works publicly available.
- The obligation only applies to MSPs from the beginning of the third year in which they offer on-demand services in Germany for the first time.

Payment to the existing film levy can offset any liability due to InvestVG.

2.12 Domestic audiovisual industry's position

84. The domestic audiovisual production industry's position on the role and importance of a levy is aligned with the general policy rationale of the Irish government (see above). Foreign MSPs that earn revenue and profit in Ireland should be required to contribute to the system and help fund Ireland's cultural policy goals.

85. Ireland's audiovisual production industry has been doing well in recent years. There have been notable international hits for domestic production (e.g. *An Cailín Ciúin*, *Kneecap*).[41] The levy is viewed as another tool to help stimulate the creation of more, and potentially more impactful, Irish-owned IP.

86. An intervention such as the levy is additionally important for Ireland because – similar to Austria, Canada and Belgium (French-speaking) – it is a neighbour to a much larger audiovisual market and production industry, i.e. the UK, which produces audiovisual content in its main language.

87. A levy aims to provide additional financial resources for Irish producers to make more projects of scale and to make more globally sellable European and Irish content for international markets, as well as making screen content that is difficult for PSM providers currently to produce to satisfy the diversity of audiences.

88. Ireland's domestic audiovisual production industry is also aware that nearly half of EU countries have already introduced some type of AVMSD financial obligation, including eleven countries that have introduced levies. Like their peers, therefore, Ireland's production community is keen for its government to make use of all available tools to support the creation of Irish audiovisual content.

[41] Screen Ireland reports that there have been '21 Academy Award nominations in the last 10 years' (2013-22), Fís Éireann / Screen Ireland, *Statistics 2022*, p.3, https://www.screenireland.ie/images/uploads/general/Statistics_2022_17.5.24.pdf

89. The commercial end of Ireland's audiovisual sector is strongly opposed to the levy. Virgin Media's television service is already under tremendous market pressure and has to also meet its own PSM obligations, which it has to do without government as a financial backstop.[42]

90. Sky is opposed to a levy but based on its experience elsewhere in the EU – Germany in particular – argues that defrayments must feature as part of any levy calculation. In particular, Sky argues that the revenue it earns from news and sports programming should be exempt since these types of programming would not be supported by the fund; however, this is inconsistent with the scope laid out by the legislation, which specifies the content that may be eligible for fund support. However, though the legislation sets out the maximal potential scope, the design of a European Works fund could be narrower.

91. Sky also argues that without defrayments, it would be unfairly burdened by a levy that was only assessed on its gross revenue and did not take into account its existing programming investments and more importantly, the economic benefits associated with its infrastructure investment and maintenance (including the subsidising of the carriage of Irish PSM services on its infrastructure

2.13 Global MSPs' position

92. Global MSPs are, not surprisingly, against levies, but since nearly half of EU countries have now implemented some type of AVMSD financial obligation (see Appendix A), global MSPs do accept that levies and direct investment obligations are part of the regulatory landscape in many countries. With that in mind, global MSPs strongly believe that the AVMSD obligations need to be as 'flexible' as possible. This means that global MSPs tend to prefer direct investment obligations over levies.

93. MSPs also prefer multi-year obligations, which would allow them to make larger single investments in production that could be applied to their obligations over several years. For example, a global MSP with a €3m annual financial obligation would prefer a single €9m content investment to meet its AVMSD financial obligations over a longer period (e.g. three years) than three annual €3m investments. The preference for multi-year financial obligations is less relevant in the context of a levy, however, where the global MSP is not making a direct investment in content production, but simply to a fund scheme.

94. Where countries do operate a levy payable to a fund, global MSPs believe strongly that they should have access to the fund.

[42] RTÉ and its recent travails over the mass non-payment of the licence fee has had the benefit of financial support from the government to ensure that RTÉ met its PSM obligations.

95. Global MPSs also believe that obligations should only be calculated on the turnover earned from the types of content that the obligation is meant to support. In other words, any turnover earned from news or sports programming (particularly in the case of Sky) should be exempt. This, of course, could raise significant accounting issues related to revenue attribution – something that would be necessary to calculate a turnover-based levy.

2.14 Positioning of the different parts of the Irish audiovisual ecosystem

96. Positions on the need for and design of Ireland's levy are not simply a matter of domestic vs. foreign media entities. Even within Ireland's domestic media sector there are incongruent positions, although these positions are often correlated with multinational ownership of Irish-based companies.

97. Ireland's production and creator communities are generally aligned in a belief in a levy with purely domestic disbursement from a fund. But smaller-budget producers do not necessarily have the same views as the larger-budget producers; the screen guilds do not have the same views as SPI; the global SVODs and major US studios are not all aligned or exercised in the same way about the imposition of financial obligations; in PSM services RTÉ and TG4 get licence fee money, whereas, Virgin Media does not. Indeed, Virgin Media in only recent weeks has demanded a share of the licence in order to pay for the public service provision it provides whilst it also competes with RTÉ and TG4 for a limited and diminishing pool of advertising revenue and without government standing behind it providing a financial backstop.

98. The global SVODs and major US studios are also not a homogenous bloc with a singular view on Article 13(2)-based financial obligations, which in part reflects their differing operating circumstances in Ireland and which differ quite considerably.

99. Broadcasters captured by a levy want as minimal a levy as possible, and some not at all, as advertising revenues are migrating to VODs and other media platforms. If a levy is imposed and therefore increases costs, then for some that would have to be absorbed and would likely either result in reduced spending on original Irish production or increased charges in other parts of their Irish services.

100. And those broadcasters with PSM commitments are at the same time facing increasing costs to meet those obligations. If broadcasters can access the levy fund, there is a hope for some that any extra funding can be used to increase the quality and popularity of screen content commissioned and broadcast, and thus command a higher advertising revenue or produce more content for under-served audiences.

3. Levy design

3.1 Levy rate

101. Some domestic stakeholders recognise that the levy would be applied to RTÉ, TG4 and other domestic MSPs and so the rate needs to be moderated (i.e. not be too high) so as not to pose a risk to domestic business models.

102. There appears to be some incongruency in the position of the domestic production community. SPI has recommended that a rate of 5% to 10% of turnover (but closer to 10%) would be required to address the domestic production deficit and domestic policy objectives that the levy is intended to address. In February 2024, the domestic production community, including producers and creators, publicly adopted a maximalist stance that Ireland should adopt a levy of 15% to 20% of turnover, thereby, placing Ireland among the highest in the EU. The Joint Audiovisual Group (which perhaps is more aligned with RTÉ) suggested that a rate of 3% to 3.5% would be more appropriate.

103. The levy and direct investment obligation rates vary significantly across EU countries (see Appendix A). Looking across the EU, countries with lower rates tend to also have alternative tools for supporting domestic production, such as existing contestable audiovisual funds or tax rebates. Ireland already has the various Fís Éireann / Screen Ireland funds, the CnaM-administered Sound & Vision and the s481 tax relief. So this would likely place Ireland in the camp of countries with an existing comprehensive audiovisual support regime. That being said, many other EU countries have already reformed, stabilised or future-proofed (to the extent that is possible) their household licence fees for funding public service media (PSM), whereas Ireland has not.

104. Our research suggests that a rate between 2% and 5% would be aligned with the Irish market situation and balance the interests of raising funds from global MSPs while not being a high financial burden on domestic MSPs or Irish consumers. A rate at the higher end of this band would likely have to be accompanied by a clear fund-access path for global MSPs.

3.2 Media companies subject to the levy

105. The principle of non-discrimination requires that the levy shall be applicable to both foreign and domestic MSPs. While certain EU countries have been able to exclude PSM from their financial obligations (or subjected PSM to a lower contribution rate), the fact that RTÉ and TG4 operate mixed revenue models and earn advertising revenue suggests that they will come within the purview of the levy. RTÉ, TG4 and the domestic production community recognise this. Sky and Virgin Media, which earn subscription and advertising revenue, will also be subject to the levy.

106. UK-based MSPs such as Channel 4 and ITV, which offer programming in Ireland, should also be subject to the levy, thereby, recapturing some of the income that leaks from the Irish audiovisual sector in the form of opt-out advertising sold by these UK-based MSPs in Ireland.

107. Whilst Google and Meta have not participated in the stakeholder consultation, the regulatory framework established by the EC is clear that online platforms such as video sharing platforms (VSPs) and social media services are outside the purview of AVMSD financial obligations.

3.3 Types of turnover subject to levy

108. As already noted, global MSPs also believe that AVMSD financial obligations should only be calculated on the turnover earned from the types of content that the financial obligation is meant to support. In other words, any turnover earned from news or sports programming (particularly in the case of Sky) should be exempt.

109. Several MSPs (particularly domestic MSPs) noted that a levy, in general, should be calculated based on profit rather than turnover, in order to be fair. They noted that a levy applied to turnover would fail to take into account the differing profit margins across the sector. In particular, they noted that while the global VODs have very low cost bases in Ireland, those MSPs with a physical presence have to maintain costly physical and human infrastructure within Ireland to generate revenue.

110. The global VODs and other MSPs are not necessarily more profitable than domestic MSPs, but the point is that the maintenance of physical and human infrastructure bestows an economic benefit that domestic MSPs believe should be taken into account when applying the levy (see Section 3.4 for discussion of the role of defrayments). Nevertheless, turnover is the preferred base upon which to calculate levies across the EU. Moreover, it is the least open to manipulation – MSPs cannot simply spend within their Irish operations and drive down profits to minimise their levy payment.

111. For vertically integrated media companies such as Sky and Virgin Media, there is a related question of whether the turnover generated by ‘connecting’ households and viewers to content should be treated the same as turnover generated from the provision of audiovisual works to those households and viewers. However, it is unclear how these two sources of revenue could be easily untangled (although it has been done by regulators in other jurisdictions).

112. A related consideration is the fact that domestic pay-TV services have internalised the cost of connection in their gross revenue whereas VODs, particularly global SVODs, do not internalise this connection cost. Instead, their services ride over households’ broadband connections – an external cost. If the VODs had to acquire broadband connectivity on a wholesale basis to deliver their services and then pass along this

wholesale cost to their subscribers, their subscription fees and gross revenue would be higher and more comparable to that of pay-TV services.

3.4 Defrayments and calculation of the levy

113. Domestic MSPs with a physical and human infrastructure in Ireland have argued that those economic contributions should be taken into account when applying or calculating the levy. Furthermore, there is a precedent for defrayments to AVMSD financial obligations in Germany, where the value of airtime provided to public sector organisations can be used to defray levy payments.

3.5 Annual yield of levy

114. As noted in Section 2.3, Ireland's audiovisual broadcast and VOD sector generated an estimated €1.23bn in annual gross turnover in 2023. Of this total, the TV licence fee, which accounts for €150m, would not be subject to the levy., thereby reducing the gross turnover base of €1.084m.

115. The OSMR Act also permits CnaM to exempt MSPs with low turnover or audience from the levy regime. This provision would allow CnaM to exempt Volta and other small domestic VOD services from the levy. It will also permit the exemption of new MSPs entering the Irish market. We estimate that these small MSPs, in aggregate account for approximately 5% of Ireland's OTT market (see Section 2.3.4). Removing them would reduce the eligible OTT video revenue to €296m and the overall gross audiovisual market revenue subject to the levy to €1,068m.

116. Allowing for other potential exemptions of pay-TV services or broadcasters, we estimate that approximately €1bn in gross revenue would be subject to the levy.

Table 5 Gross revenue in Ireland's audiovisual sector subject to a levy, 2023 (€m)

	Total	Subject to a levy
Pay TV subscriptions	545	545
OTT video (SVOD and TVOD)	312	296*
TV advertising	227	227
Licence fee	150	0
Total	**1,234**	**1,068**

Source: Nordicity/Saffery estimates based on data from Oliver & Ohlbaum estimates and PwC
E – estimates
* Adjusted to account for VOD providers that are likely to fall under audience or turnover thresholds for the levy.
Note: Certain totals may not sum due to rounding

117. The midpoint (2.65%) of the range of levy rates (0.15% to 5.15%) currently observed across the European single market, therefore, suggests that a levy applied to gross

revenue in Ireland would yield approximately €26.5m on an annual basis. A levy rate set closer to the upper boundary (5.15%) would point to an annual yield of €51.5m.

3.6 Economic burden of the levy

118. The government does recognise that even if MSPs are remitting the levy to CnaM, Irish households are likely to ultimately pay for the levy themselves through higher subscription fees. However, the assumption of 100% pass-through to subscribers was not unanimously confirmed by the MSPs. The general position was that global MSPs, including SVODs and other VODs, take into account a variety of factors when setting their consumer rates and the levy would be one of those factors.

119. Some MSPs suggested that instead of raising prices in Ireland, they may reduce their existing content spend in Ireland and/or commission content of lower value/quality. Some indicated that in other jurisdictions where AVMSD financial obligations were difficult to meet they had reduced content commissioning and increased content licensing.

120. Furthermore, the evidence from across Europe suggests that consumer rate increases have not necessarily been a direct response to the imposition of AVMSD financial obligations. Subscription rates for SVOD services are starting to creep up, but this appears to be more a function of general rises in business-running costs, rather than a direct response to AVMSD financial obligations.

121. With the increased pressure on global MSPs to make their SVOD services profitable, it is no longer likely that shareholders will absorb additional costs in the form of lower profits. Any increased costs associated with a levy in Ireland will have to be met through a combination of higher prices or possibly reduced content spending. However, it appears that these decisions will be made and implemented on a global basis rather than on a country-by-country basis. Sky Ireland is a notable exception. While it is part of a global MSP company, it is very likely that any increased costs in Ireland will come with reduced spending on content in Ireland.

4. Levy design options

122. Based on the research, in the following section we outline seven design options that should be considered.

123. In providing options, we have been constrained by the legislation which only provides for an indirect financial obligation, therefore, the options developed do not include any options that involve a direct investment obligation as an alternative to a levy, as an addition to a levy or replacing a levy.

124. In assessing the various levy options proposed, there were three factors that the options were considered against when trying to create a European Works fund that was additional to the support currently provided by the Government, Fís Éireann / Screen Ireland and Coimisiún na Meán:

    i. **Continued production growth**: not jeopardising recent growth in inbound production, which benefits the whole of the domestic audiovisual ecosystem.

    ii. **Minimising harm to MSPs that deliver public goods**: those MSPs that deliver PSM obligations or audiovisual infrastructure.

    iii. **Caution**: recognise that there might be unforeseen consequences and an ongoing need to monitor impact of interventions.

4.1 Do nothing / Wait and see

- The position of more than half the European Single Market, UK and all MEDIA-aspirant countries bar Kosovo
- Austria, Belgium (Bruxelles and German-speaking), Bulgaria, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovenia and Sweden all **do not** have levies or direct obligations

125. Following many years of lobbying by some stakeholders, the Government-initiated Future of Media Commission, the Government's response to the Commission through the Implementation Strategy & Action Plan, and the legislation that empowers CnaM to introduce a levy, it would be unusual for that momentum to be stalled or stopped, unless for some pressing reason.

126. If there was a clear likelihood of significant economic harm to Ireland through MSPs significantly reducing inbound production and/or increasing costs to the consumer by directly passing on the cost of any European Works levy on to them, these might be reasons for a do-nothing or wait-and-see decision.

127. Our research indicates that neither scenario is likely to be severe, if the levy rate is set at a moderate level and fund accessibility is ensured. For example, there is no evidence that the countries that have introduced levies and other financial obligations have seen significant reductions in inbound production and faster increases in monthly subscription prices. MSPs will continue to make rational production-location decisions that emphasise creative and production-cost considerations, rather than purely on the existence of a levy regime.

128. An important nuance is that most other European countries have introduced direct investment obligations rather than just levies, per se. However, if MSPs have access to Ireland's fund scheme, then the situation will approach that of quasi-direct investment obligation. Thus, as noted earlier access to the fund will be a key design element for the fund.

4.2 Medium levy: 2% of gross turnover

- A higher rate than the only other EU state that only imposes a levy (1.5%, Poland)
- In the mid-range of nine other EU jurisdictions that impose a levy alongside or instead of a direct obligation on targeting services
- Rate in line with views of the Joint Audiovisual Sector Group, RTÉ and TG4
- Administratively simple to calculate
- Does not take account of different types of MSP

129. Ireland may elect to go with a single levy rate applied to gross turnover and without any defrayments. A rate of 2% of gross turnover is likely to be financially feasible for RTÉ and TG4. However, Virgin Media and even Sky may not be as financially tolerable of even a minimal rate of 2% of gross turnover.

130. We note that outside of France (5.15%) and Spain (5%), most EU countries with a levy have adopted a rate in the 2-3% range. So a levy in Ireland of 2% would be at the lower boundary of this range and thereby be consistent with the rates elsewhere in EU. In Ireland, at least €1bn in turnover would be subject to such a levy.

131. Of the estimated **€20m in levy revenue** raised by a 2% levy, RTÉ would face an estimated annual bill of €2.25m and TG4 €88,000.

132. After taking account of the costs of levy collection and fund administration (10%[43]), a 2% levy would yield €18m available to scheme fund and investment in the production and development of audiovisual content. The fund's sub-quotas would ensure that €14.4m would be invested in independent production and just over €4.5m in Irish-language production, annually.

[43] The actual annual costs of levy collection and administration of the fund are likely to vary between 7% and 13% depending on the timing of periodic costs. Also, should the fund grow with time, the costs of levy collection and administration will not increase in the same proportion. Therefore, for the purposes of this report we have used an indicative 10%. Any overhead deduction should be reviewed periodically to ensure the minimum amount is diverted.

4.3 High-rate levy with defrayments

- Rate comparable to highest levy rates in EU (i.e. France and Spain)
- Defrayment was proposed by inbound SVODs and some domestic MSPs as a means of identifying a more reasonable base for calculating a levy
- Levy obligation can be mitigated by contributions MSPs make to Irish audiovisual sector already, whether through production or infrastructure
- Administratively more complex to calculate than the medium rate or maximal rate options

133. The rate proposed under the medium-rate could be pushed higher if MSPs were permitted to defray certain types of spending. For example, a single levy rate of 5% could be applied to a MSP's commercial revenues, if the MSP could also deduct amounts spent on audiovisual content production that met the funding criteria of the fund scheme. Alternatively, certain investments by MSPs in carriage or distribution infrastructure for audiovisual content could also be subject for defrayment if contributed to PSM policy objectives.

134. MSPs should only be permitted to defray spending on content that meets the definition in the OSMR Act of the types of European Works that may be supported by the fund (Section 159F(2a)). However, the risk here is that the financial obligation will water down the independent production and Irish-language sub-quotas. MSPs would still have to make Irish cultural content (even if it is not in the Irish language).

135. At a 5% levy rate, this model would mean that an overall €50m would be raised by the levy before defrayments, with €45m flowing from the fund into production and development of Irish content (after deducting collection and administration costs). So total spending would be higher than the 2% option, but domestic media companies such as RTÉ, Virgin Media and Sky may be in a better position to defray than the global MSPs and thereby reduce their actual levy payments. What is more, the global MSPs would want – or rather need – a multi-year defrayment window, so they could produce a single large-budget Irish project every few years to offset their obligation. Not something that is feasible under an indirect (levy) option.

136. With the definition of defrayments outlined above, the overall 'value' of funding flowing into the Irish audiovisual system that contributed to audiovisual policy goals would still be in the neighbourhood of €45m.

4.4 Maximal levy: 10% of gross turnover

- Generates large European Works fund
- Rate in line with some domestic producers objectives (i.e. SPI)
- Administratively simple to calculate
- Does not take account of the burden placed on MSPs other than SVODs
- Double the highest rate in other EU states; more than four times most
- Significant risk of flight of inbound production and rates pass-through to consumers

137. A 10% levy represents the maximal ask of some of the Irish screen production community. SPI suggested a rate 'closer to 10%'.[44] A rate of 10% would be double any existing levy rate in Europe (Spain 5%, France 5.15%). It would also be higher than any direct investment obligation imposed on VODs, bar Italy (20%) or France (up to 20%), though Italy has announced a reduction in its direct obligation rate to 16%.[45]

138. While such a high rate could generate over €90m for the fund scheme (€100m less 10% for collection and administration), including €72m for independent production and €22.5m for Irish-language production, this would practically double the financial resources available to the domestic production industry and very likely result in economic rents and production-cost inflation. Furthermore, unless the levy system could be designed with variable rates or significant defrayments, the financial burden on RTÉ, TG4, Virgin Media and Sky would be significant.

[44] Such views were aired by SPI and some of the producers present an event held by SPI with CnaM at the Irish Film Institute in Dublin on 8 February 2024 entitled *The Future of Media: What impact would the introduction of a Content Levy have on the Irish audio-visual creative sector?*
[45] Italy announced on 25th March 2024 that it will be reducing this rate to 16%. https://cineuropa.org/en/newsdetail/459078

4.5 Variable rate levy

- Fund size is designed to match that of the Medium Rate levy
- Different rates for different types of MSP
- Mitigation for MSPs with PSM obligations
- SVODs face the highest rate, which will be comparable to highest levy rates in EU (i.e. France and Spain)
- Administratively more complex to calculate than the medium rate or maximal rate options
- Some risk of flight of inbound production

139. Germany and Croatia have introduced variable rates for different types of MSPs. This represents a levy option that could be used to moderate the impact on Ireland's ad-dependent MSPs, whilst still raising funds from global MSPs. The variable rates introduced in Germany and Croatia do not discriminate based on nationality, so it follows that a similar approach in Ireland would risk stifling domestic VODs. However, many of these could fall under a low turnover/audience threshold, thereby mitigating such risks.

140. The following variable rate levy would yield a total of €22.5m in annual levy proceeds or approximately the same levy proceeds as a medium rate of 2% applied to all forms of industry revenue (€20m):

    i. Ad revenue 1.0%

    ii. Pay-TV subscription revenue (for non-VOD services) 1.0%

    iii. VOD 5%

141. **These particular rates (1% and 5%) offer a' yield equivalence' to a 2% industry-wide rate whilst creating an environment where MSPs with existing PSM obligations – which tend to rely more upon ad sales and pay-TV subscription revenue – would face a lower levy burden than other MSPs.** Furthermore, to avoid market distortions, where pay-TV MSPs offer their own branded VOD services or wholesale third party VOD services on a la carte or bundled basis, they should be liable for the 5% VOD rate. This would require an extra layer of reporting.

142. Based on the current structure of Ireland's audiovisual sector, we estimate that a variable rate levy with this structure would raise **€22.5m in annual levy** and €20.3m in fund proceeds after accounting for all collection and administration costs. This

would ensure that €16.1m would be available for independent production and €5.1m for Irish-language production.

143. The major domestic MSPs would face the following annual levy bills:

   i. RTÉ €900,000

   ii. TG4 €35,000

   iii. Virgin Media television (€400,000); Virgin Media pay-TV (€1.5m)

   iv. Sky €4.0m

4.6 Non-equivalent variable rate levy

- Relaxes the objective of achieving the same yield as a single 2% Medium levy rate
- Mitigation for MSPs with PSM obligations (i.e. lower levy rates)
- SVODs face the mid-range of nine other EU jurisdictions that impose a levy alongside or instead of a direct obligation on targeting services
- May reduce risk of inbound production flight compared to variable rate levy

144. A variation of the variable rate would involve relaxing the criteria for yield-equivalence and setting rates that approximate the midpoints observed in other EU countries for similar services. Such an approach would display the following rates:

   i. Ad revenue 0.5%

   ii. Pay-TV subscription revenue (for non-VOD services) 0.5%

   iii. VOD 3%

145. The rates of 0.5% for ad revenue and pay-TV subscriptions would be consistent with the rates of under one per cent observed for free-to-air, local broadcasters and pay-TV services in those EU countries that have implemented variable rate structures (i.e. Croatia and Germany). The VOD rate of 3% approximates the midpoint of the levy rates observed across the EU, excluding those rates applicable to broadcasters or pay-TV services. Portugal has a rate of 1% and France 5.15%, which yields a mid-point of 3.075% or approximately 3%.

146. This variable rate structure would raise **€12.7m in annual levy revenue** and €11.5m in fund proceeds after accounting for all collection and administration costs. This would ensure that €9.2m would be available for independent production and €2.9 for Irish-language production.

147. The major domestic MSPs would face the following annual levy bills – or half the burden they would experience under the standard variable rate model:

   i. RTÉ €450,000

   ii. TG4 €17,500

   iii. Virgin Media television (€200,000); Virgin Media pay-TV (€750,000)

   iv. Sky €2.0m

148. Global MSPs with VOD services in Ireland would see their annual levy payments reduced from €14.8 to €8.9m.

4.7 Gradual rate increase mechanism

- Rates start lower and are incrementally increased after periodic impact assessments
- Higher level of monitoring
- Reduced risk of unintended consequences and inbound production flight

149. Another option would be to use a mechanism that has a levy 'launch' rate which is then gradually increased over time to the target 'ceiling' rate. This would give both domestic and global MSPs an opportunity to adjust to the financial burden of the levy. It would also give CnaM, Screen Ireland and the government the opportunity to effectively monitor the impact of the rate to ensure that (i) it is not significantly limiting the growth in Ireland's attractiveness as a destination for inbound production (ii) it is not financially unduly harmful to domestic MSPs, (iii) the burden is not unnecessarily passed along to Irish households and (iii) it does not lead to production-cost inflation and economic rents.

150. This mechanism could also be used to launch a levy rate system at a particular rate and then move it to a higher rate. For instance, the medium rate of 2% but could then be gradually increased over time to the high rate of 5% - which approximates the upper boundary of levy rates in EU.

151. Similarly, this mechanism would allow Ireland to introduce a levy at the non-equivalent variable rates (0.5% ad revenue, 0.5% pay-TV, 3% VOD) outlined in Section 4.6, but then gradually increase the rates to higher rates under the variable rate option (1% ad revenue, 1% pay-TV, 5% VOD) as outlined in Section 4.5.

152. The launch point for the levy would depend on whether it was calculated based on gross turnover, based on a variable rate design, or with defrayments.

153. From the starting point, CnaM could increase the rate in periodic increments over the launch rate. Once an increased rate had been in the market for at least 24 months, CnaM would undertake a market impact review before applying a subsequent increment. If no negative market impacts were observed after each increment, then the levy rate would reach the stand variable rates after 4-5 years, though in reality the timing will be dependent upon the timetabling and decision-making of the market impact reviews (see Table 6).

Table 6 Gradual rate increase mechanism scenarios

	Launch rate	Ceiling rate
Medium levy → High rate	2.00%	5.00%
Non-equivalent variable rate levy → Variable rate levy (standard)		
Ad revenue	0.50%	1.00%
Pay-TV revenue	0.50%	1.00%
VOD revenue	3.00%	5.00%

Source: Nordicity/Saffery analysis

4.8 Summary of levy design options

154. Table 7 summarises the rates, yield and selected MSP payments for each of the levy design options.

Table 7 Summary of levy rate scenarios

Levy model	Levy rate(s)	Levy yield	Net fund proceeds	RTÉ and TG4 levy payments	Domestic commercial MPSs	Total SVOD/ TVOD payments
Do nothing / Wait and see	--	€0	€0	€0	€0	€0
Medium levy	2% of gross turnover	€20m	€18m	RTÉ €1.8m TG4 €70k	Virgin TV /Pay-TV €0.9m /€2.9m Sky €8.1m	€5.9m
High rate levy with defray-ments*	5% of gross turnover	€50m	€45m	RTÉ €4.5m TG4 €175.5k	Virgin TV /Pay-TV €2.2m /€7.4m Sky €20.2m	€14.8m
Maximal levy	10% of gross turnover	€100m	€90m	RTÉ €9m TG4 €350k	Virgin TV /Pay-TV €4.3m/ €14.7m Sky €40.3m	€29.6m

Levy model	Levy rate(s)	Levy yield	Net fund proceeds	RTÉ and TG4 levy payments	Domestic commercial MPSs	Total SVOD/ TVOD payments
Variable rate levy	1% of ad revenue 1% of pay-TV subscription revenue 5% of VOD revenue	€22.5m	€20.3m	RTÉ €900k TG4 €35k	Virgin TV /Pay-TV €400k /€1.5m Sky €4.0m	€14.8m
Non-equivalent variable rate levy	0.5% of ad revenue 0.5% of pay-TV subscription revenue 3% of VOD revenue	€12.7m	€11.5m	RTÉ €450k TG4 €17.5k	Virgin TV /Pay-TV €200k /€750k Sky €2.0m	€8.9m
Gradual rate increase mechanism	**Launch rates:** 0.5% of ad revenue 0.5% of pay-TV subscription revenue 3% of VOD revenue	€12.7m	€11.5m	RTÉ €450k TG4 €17.5k	Virgin TV /Pay-TV €200k /€750k Sky €2m	€8.9m
	Ceiling rates: 1% of ad revenue 1% of pay-TV subscription revenue 5% of VOD revenue	€22.5m	€20.3m	RTÉ €900k TG4 €35k	Virgin TV /Pay-TV €400k /€1.5m Sky €4m	€14.8m

Source: Nordicity/Saffery analysis

* Calculations before any defrayments

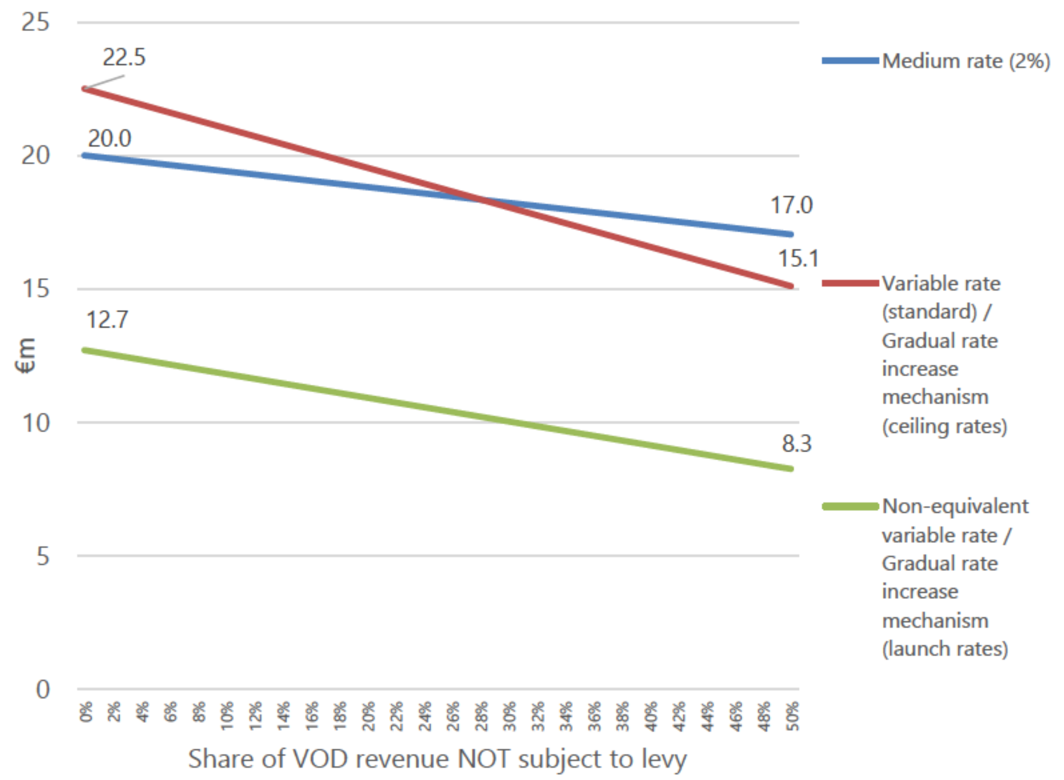
4.9 Sensitivity analysis

155. Thus far the modelling of the yield and impact of the various levy design options has assumed that 100% of the VOD revenue above any minimum audience or turnover threshold would be subject to the levy. However, it is uncertain as to what portion of MSPs' VOD revenue earned in Ireland could be attributed to digital services rather than audiovisual services and thereby potentially be exempt from the levy. The sensitivity analysis displayed in Figure 1 provides an indication of how the overall amount of levy proceeds would decrease as the share of MSPs' VOD revenue exempt from the levy increased from 0% to 50%.

156. The results of the sensitivity analysis indicate the following (Figure 1):

- Under the **medium rate levy (2%)** option, total levy proceeds would decline from €20m to €17m, if 50% of MSPs' annual VOD revenue was exempt. At 75%, levy proceeds would be €18.5m.
- Under the **variable rate levy (standard)** option (ad revenue 1%, pay-TV revenue 1%, VOD revenue 5%), levy proceeds would decline from €22.5m to €15.1m, if 50% of MSPs' annual VOD revenue was exempt. At 75%, levy proceeds would be €18.8m. These same sensitivity results would apply to the **gradual rate increase mechanism ceiling rates**.
- Under the **non-equivalent variable rate** option (ad revenue 0.5%, pay-TV revenue 0.5%, VOD revenue 3%), levy proceeds would decline from €12.7m to €8.3m, if 50% of MSPs' annual VOD revenue was exempt. At 75%, levy proceeds would be €10.5m. These same sensitivity results would apply to the **gradual rate increase mechanism launch rates**.

Figure 1 Sensitivity analysis, VOD market revenue



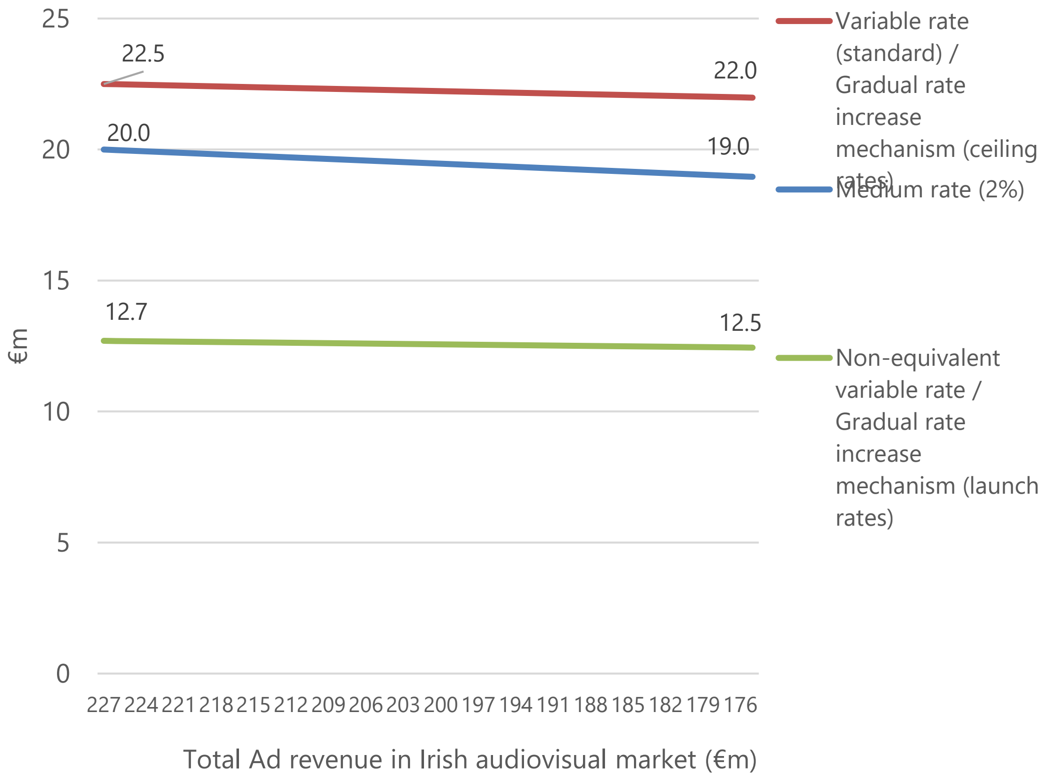
Source: Nordicity/Saffery analysis

157. Figure 2 provides a sensitivity analysis that estimates how the total levy yield would be affected if the total ad revenue in the Irish audiovisual sector were to be lower than the estimate of €227m used in the modelling in this study. The sensitivity shows how overall levy yield would be affected, as ad market revenue ranged from €227m to €175m. The sensitivity analysis shows that under the various proposed levy models there is low degree of sensitivity to the overall size of the Ireland's audiovisual ad market. This low sensitivity reflects the fact that the majority of levy revenue would be derived from the VOD and pay-TV markets.

- Under the **variable rate (standard)** levy, as ad revenue declines from €227m to €175m, total levy yield only decreases €22.5m to €22m. These same sensitivity results would apply to the **gradual rate increase mechanism ceiling rates**.
- Under the **medium rate (2%)** levy, as ad revenue declines from €227m to €175m, total levy yield only decreases €20m to €19m.

- Under the **non-equivalent variable rate**, as ad revenue declines from €227m to €175m, total levy yield only decreases €12.7m to €12.5m. These same sensitivity results would apply to the **gradual rate increase mechanism launch rates**.

Figure 2 Sensitivity analysis, advertising market revenue



Source: Nordicity/Saffery analysis

158. Data being collected by CnaM through the industry levy may provide evidence of what proportion of MSPs' VOD revenue earned in Ireland could be attributed to digital services rather than audiovisual services and thereby potentially be exempt. Therefore, in due course, CnaM may be in a position to go beyond this sensitivity analysis and make a determination of the actual impact on the levy yield.

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5. Conclusions and recommendations

5.1 Feasibility assessment

159. The research indicates that a levy rate of 2% to 5% would be most feasible for Ireland. Anything higher than 5% would put Ireland above the top of the table with the EU and European single market, even though many other high-rate countries offer access to larger audience markets and more production infrastructure (e.g. France and Spain).

160. If Ireland prefers a single rate applied across all types of MSPs and audiovisual revenue, then a levy rate at the lower end of this 2%-to-5% band should be considered.

161. If Ireland prefers to explore a rate at the higher end of this band, then there should be two key considerations to make implementation feasible. First, a variable rate approach should be adopted to take account of the financial impact to some MSPs in meeting PSM obligations and/or providing underlying infrastructure used by other MSPs. Second, with a higher rate – variable or not – there should be scope for defrayment of content spending that meets the European Works criteria of the fund scheme.

162. Recognising that there are still risks to consumer prices and inbound production, Ireland should combine a variable rate structure with a gradual implementation approach. Under such an approach, Ireland could introduce a levy rate for VOD at the lower end of the 2% to 5% band and then gradually increase it from the launch rate whilst observing how the market responds to the gradually rising levy.

163. Regardless of the rate level, fixed or variable design, any options for defrayments or a graduated approach to the introduction of a levy, the fund's definition of independent production should be flexible enough that global MSPs can readily benefit from the fund through co-productions with Irish producers. Moreover, this accessibility should be monitored closely, and even embedded into the fund's mandate in some manner. Fund access will be extremely important to politically accommodating global MSPs, given that Ireland has chosen a levy over direct investment obligations.

164. A uniform rate of 2% would yield €20m in levy proceeds and €18 million in fund proceeds, after accounting for administrative expenses. However, under the recommended variable rate and gradual rate increase mechanism, the yield at launch would be €12.7m, with fund proceeds of €11.5m; however, this could be increased over a period of 4-5 years to €22.5m and €20.3m, respectively.

5.2 Recommendations

165. **Recommendation 1:** Ireland should implement a European Works levy, in accordance with the OSMR Act, at the earliest possible date.

166. **Recommendation 2:** Ireland should adopt a variable rate levy combined with a gradual rate increase mechanism. The launch rates should be set at 0.5% of gross turnover on ad revenue earned, 0.5% of pay-TV subscription revenue, and 3% of VOD revenue. These rates could be gradually increased to 1%, 1% and 5%, respectively, in accordance with the parameters of the gradual rate increase mechanism, and thereby provide levy yield equivalent to a 2% uniform rate. MSPs that earn revenue from the provision of VOD services and other services, must report these revenues separately to enable calculation of their levy.

167. **Recommendation 3:** Prior to any increase in levy rate, a market impact review should be undertaken to determine if there has been any deleterious consequence from the previous rate or any exogenous impact, before any further increase.

168. **Recommendation 4:** The market impact reviews should be undertaken by CnaM and Screen Ireland in a complementary, non-duplicative way. They should cover the impact of the levy on: the levels of s481 production (both inbound and domestic); production cost inflation in the Irish production industry; and consumer subscription rates for pay-TV and VOD services. Particular attention should be paid to whether the 25% Irish language quota is operating efficiently or if it has been inflationary. Monitoring of the operation of the levy should be a prerequisite before any levy rate increase, as with the gradual rate increase mechanism, but also for ensuring that the levy is proportionate and non-discriminatory, in preparation for the 2026 legislative review of the AVMSD by the European Commission.

169. **Recommendation 5:** The sensitivity analysis conducted for this research provides an indication of the impact on levy yield by the levy base in response to changes in MSPs' eligible VOD turnover. Therefore, in due course as data is collected by CnaM through the industry levy, CnaM should revisit the modelling of the levy options, to update the estimates used in this research with actual data gathered from the VODs, and, if necessary, adjust the levy design.

170. **Recommendation 6:** The low turnover and audience thresholds provided for in the OSMR Act should be set in order to allow for lawful mitigation of the effects of a European Works levy on Ireland's domestic VODs as far as is permitted under the AVMSD.

171. **Recommendation 7:** Any definition for independent producer and independent production that excludes MSPs, should nonetheless, allow MSPs to enter into co-productions with independent producers, in order to provide MSPs with access to a

European Works fund. This could still have the potential to boost rights retention within Ireland and to not fall foul of the non-discriminatory principle.

References

Communications Chambers (2023) *Annual Review of Funding for Public Service Broadcasters, 2022: RTÉ Only*. Report for CnaM. January 2023.

Communications Chambers (2023) *Annual Review of Funding for Public Service Broadcasters, 2022: TG4 Only*. Report for CnaM. July 2023.

De Marco, C. (2024) The Italian government increases investment obligations for VoD platforms. *Cineuropa*. 29 March 2024.

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (TCAGSM), *Future of Media Commission Report - Implementation Strategy & Action Plan*.

European Audiovisual Observatory (2022) *Investing in European Works: the obligations on VOD providers*. September 2022.

European Audiovisual Observatory (2023) *The promotion of European Works*. AVMS Digest. November 2023.

European Audiovisual Observatory (2023a) *The application of the AVMS Directive in selected non-EU countries*. November 2023.

European Audiovisual Observatory *AVMSDatabase on the transposition of the AVMS Directive into national legislation*. European Audiovisual Observatory online service.

European Commission (2024) *Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022*. Commission Staff Working Document. 5 January 2024.

European Regulators Group for Audiovisual Media Services (undated). Consistent implementation and enforcement of the new AVMSD framework.

Fontaine, Gilles (2023) *Audiovisual services spending on original European content: a 2012-2022 analysis*. A publication of the European Audiovisual Observatory.

Indecon (2021) *Analysis to Inform Potential National Media Creative Content Fund*. Submitted to Audiovisual Sectoral Group. March 2021.

Oliver & Ohlbaum (2023). *Review of Sound & Vision 4: A report for the Broadcasting Authority of Ireland*. May 2023.

Oliver & Ohlbaum and Frontier Economics (undated) *European Works: promoting a healthy European audiovisual sector*.

Online Safety and Media Regulation Act 2022.

Pollet, M. and Haeck, P. (2024) Flanders shakes down TikTok, Instagram to fund local films and series. *Politico EU*. 12 February 2024.

RTÉ, *A new direction for RTÉ*, 14 November 2023.

Screen Ireland (2023) *Annual Report 2022*.

Telefilm Canada (2023) *Full Screen: Telefilm Canada Annual 2022-2023*.

TG4 (2023). *TG4 Annual Report 2022*.

The Future of Media Commission (2022) *Report of the Future of Media Commission*.

6. Appendix A: European Works financial obligations in the European single market

Country*	Levy	Direct investment obligation (DIO)
EU member state**		
Austria	--	--
Belgium (Bruxelles)*	--	--
Belgium (DE)*	--	TBD
Belgium (Flemish)*	2%	2%
Belgium (French)*	0% to 2.2%	0% to 2.2%
Bulgaria	--	--
Croatia	Public service media: 2% Private national broadcaster: 0.8% Local TV broadcasters (+750,000): 0.5% Targeting services: 2%	Domestic private television services: 5% VOD: 2%
Cyprus	--	--
Czech Republic	--	1% (domestic VOD only)
Denmark	2% if voluntary DIO met or 5%	(Voluntary 5%)
Estonia	--	--
Finland	--	--
France	5.15%	SVOD: 20% to 25%** Other VOD: 15% Catch-up TV: 15%, 20% or 25%
Germany	Free-to-air: 0.15% to 0.95% Pay-TV: 0.45% Public service media: 3% VOD: 1.8% to 2.5%	--
Greece	Up to 50% of financial obligation	1.5%
Hungary	--	--
Italy	--	12.5% Public service media: 17% VOD: 17% (2022), 18% (2023) 20% (2024)
Latvia	--	--
Lithuania	--	--
Luxembourg	--	--
Malta	--	--
Netherlands	--	--
Poland	1.5%	
Portugal	1%	0.75% Public service media 8%
Romania	Domestic media services: 4%	Domestic media services: 1-1.5% VOD: 40%
Slovakia	Domestic VOD only: 2%	--
Slovenia	--	--
Spain	5%	5%
Sweden	--	--

Country*	Levy	Direct investment obligation (DIO)
EEA only member state		
Iceland	--	--
Liechtenstein	--	--
Norway	--	--
EFTA only member state		
Switzerland	TBD**	4%
Other		
United Kingdom	--	--
Potential aspirants to MEDIA programme* **		
Albania	--	--
Armenia	--	--
Bosnia and Herzegovina	--	--
Georgia	--	--
Kosovo	TBD	TBD
Moldova	--	--
Montenegro	--	--
North Macedonia	--	--
Serbia	--	--
Tunisia	--	--
Ukraine	--	--

Notes
Blue represents countries **without** financial obligations, whether direct or indirect (i.e. levy).
Yellow represents countries **with** financial obligations, whether direct or indirect (i.e. levy).
* Belgium is separated into four audiovisual jurisdictions.
** Source: European Audiovisual Observatory AVMSDatabase on the transposition of the AVMS Directive into national legislation.[46]
*** Reflects the changes and developments up to September 2023.[47]

[46] European Audiovisual Observatory [AVMSDatabase on the transposition of the AVMS Directive into national legislation](). European Audiovisual Observatory online service.
[47] European Audiovisual Observatory (2023a) *The application of the AVMS Directive in selected non-EU countries*. November 2023.

7. Appendix B: Legal instruments

7.1 Online Safety and Media Regulation (OSMR) Act 2022

7.1.1 European works scheme

159F. (1) The Commission, following consultation with Fís Éireann, may prepare a scheme for funds to be granted, out of the proceeds of any levy, to provide support for the production of European works included, or to be included, in the programme schedule of an audiovisual broadcasting service, or in a catalogue of an audiovisual on-demand media service.

(2) The kinds of support for which funds may be granted under a scheme shall be support of such of the following, or such classes or descriptions of any of the following, as the scheme may specify:

(a) new audiovisual programmes relating to—

(i) Irish culture, language, history, heritage, society and sport,

(ii) the experiences of the people of the island of Ireland, including the experiences of people of Irish ancestry living abroad,

(iii) environmental sustainability, biodiversity, and climate change,

(iv) human rights, equality, diversity and inclusion,

(v) news, current affairs and international affairs,

(vi) science, or

(vii) education;

(b) new audiovisual programmes to—

(i) improve adult literacy, or

(ii) improve media literacy;

(c) incidental, supplementary or consequential measures that appear to the Commission to be necessary to support programmes referred to in paragraph (a) or (b);F

(d) any activity in the development of programmes referred to in paragraph (a) or (b) or of measures referred to in paragraph (c).

(3) A scheme may in particular:

(a) specify the kind of support for which funds may be granted by reference to the nature or subject matter of programmes within paragraph (a) or (b) of subsection (2);

(b) limit support for which funds may be granted in a particular period to support of specified kinds;

(c) impose requirements as to the time within which programmes in relation to which funds have been granted are to be made available in the schedule of an audiovisual broadcasting service or in a catalogue of an audiovisual on-demand media service;

(d) impose requirements as to such services or as to how such programmes are to be made available on them, which may include requirements to ensure that such services are, or include, services—

(i) that are so far as practicable available in the whole of the State, and

(ii) on which the programmes concerned are made available without charge to the viewer.

(4) A scheme shall allocate—

(a) not less than 25 per cent of its annual funds to programmes in the Irish language that fall within paragraph (a) or (b) of subsection (2), and

(b) not less than 80 per cent of its annual funds to programmes that fall within paragraph (a) or (b) of subsection (2), the producers of which are independent producers for the purposes of the scheme.

(5) A scheme shall include provision for determining whether the producer of a programme is an independent producer, and for the purpose of making such provision the Commission may have regard to the following matters:

(a) the ownership structure of the person that produces the programme;

(b) the amount of programmes supplied by the person who produces the programme to the same media service provider;

(c) the ownership of the rights to broadcast the programme or make it available in a catalogue of an audiovisual on-demand media service, or otherwise use the programme for a commercial purpose;

(d) such other matters as it considers appropriate.

(6) If the Minister directs it to do so, the Commission shall prepare a scheme specifying in accordance with subsection (2) any kind of support the Minister directs.

(7) A scheme may provide for:

(a) applications for a grant of funding;

(b) the terms and conditions upon which funds are granted;

(c) the records a provider which receives funding must keep and make available to the Commission.

(8) In preparing a scheme, the Commission shall have regard to the need to—

(a) ensure understanding and enjoyment of new audiovisual programmes by people with disabilities,

(b) support the development of new audiovisual programmes of interest to children, and to young people under the age of 25 years, and

(c) encourage the development of community broadcasters, including development as regards audiovisual on-demand media services provided by such broadcasters.

(9) In this section, and sections 159G and 159H, 'scheme' means a scheme prepared under subsection (1).

7.1.2 Procedure for making schemes under section 159F

159G. (1) The Commission shall submit a scheme to the Minister for approval.

(2) The Minister shall consider a scheme submitted to him or her, and may—

(a) approve the scheme,

(b) refuse to approve the scheme,

(c) direct the Commission to reconsider the scheme, or

(d) direct the Commission to resubmit the scheme with such amendments as the Commission thinks fit.

(3) Where a scheme is approved by the Minister under subsection (2)(a), the Commission shall, as soon as is practicable after the approval, make the scheme.

(4) The Commission shall administer a scheme approved by the Minister under subsection (2)(a) in accordance with its terms.

(5) The Commission may prepare amendments to a scheme approved by the Minister under subsection (2)(a), and subsections (1) to (4) and section 159J apply to amendments to such a scheme as they apply to a scheme.

(6) The Minister may, in respect of a scheme approved under subsection (2)(a), direct the Commission to—

(a) review the scheme, and prepare and submit to the Minister any amendments to the scheme the Commission thinks fit, or

(b) revoke the scheme.

(7) The Commission shall comply with a direction under paragraph (c) or (d) of subsection (2), or subsection (6).

7.1.3 Designation of Fís Éireann for the purpose of making a European works scheme

159H. (1) The Minister may, where he or she considers it appropriate to do so, by order provide that Fís Éireann may prepare a scheme under section 159F(1), subject to any restriction in the order as to the kinds of support for which funds may be granted under such a scheme.

(2) Where an order is made under subsection (1), sections 159F and 159G shall apply to the preparation and making of a scheme by Fís Éireann subject to any restriction referred to in subsection (1) and the modification—

(a) that references in those sections to the Commission shall be construed as references to Fís Éireann, and

(b) in section 159F(1), that 'following consultation with the Commission' shall be substituted for 'following consultation with Fís Éireann'.

(3) Where the Minister makes an order under subsection (1), he or she may direct the Commission to pay such monies collected out of the levy referred to in section 159E to Fís Éireann for the purposes of funding a scheme prepared by Fís Éireann as he or she considers appropriate, and the Commission shall comply with such a direction.

7.2 Broadcasting Act 2009 – Consolidated 2 March 2023

7.2.1 Art. 2(1)

‘media service provider’ means a person who provides an audiovisual media service;

'audiovisual media service' means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where—

(a) the principal purpose of the service is devoted to, or

(b) the principal purpose of a dissociable section of the service is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate;

'editorial responsibility', in relation to providing programmes, means effective control—

(a) over the selection of the programmes, and

(b) over their organisation in a programme schedule or in a catalogue;

‘audiovisual on-demand media service’ means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service;

“audiovisual commercial communication” means a commercial communication consisting of images with or without sound;

“audiovisual programme” means a set of moving images with or without sound which, in the case of an audiovisual media service, constitutes an individual item, irrespective of its length, within a programme schedule or a catalogue;.

7.2.2 Art. 2(2), 2(3)

(2) In this Act, ‘video-sharing platform service’ means, subject to subsection (3), a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where—

(a) the principal purpose of the service is devoted to,

(b) the principal purpose of a dissociable section of the service is devoted to, or

(c) an essential functionality of the service is devoted to, providing audiovisual programmes or user-generated videos, or both, by electronic communications networks, to the general public, in order to inform, entertain or educate.

(3) A service is a video-sharing platform service within subsection (2) only if the provider of the service—

(a) does not have effective control over the selection of the programmes and videos referred to in that subsection, but

(b) determines their organisation, by automatic means or algorithms (including displaying, tagging and sequencing) or otherwise.

7.2.3 Art. 139G (2) to (4)

(2) The Commission shall designate as a named service under section 139E any relevant online service that appears to the Commission to be a video-sharing platform service the provider of which is under the jurisdiction of the State.

(3) Where the Commission has reason to believe that a relevant online service may be a video-sharing platform service the provider of which is under the jurisdiction of the State, the Commission shall issue a notice under section 139F requiring the provision of any information that appears to the Commission to be relevant for the purpose of complying with subsection (2).

(4) For the purposes of subsections (2) and (3) the Commission shall have regard to any guidelines issued by the European Commission in respect of the practical application of the essential functionality criterion in the definition of a video-sharing platform service in Article 1(1)(aa) of the Directive.

7.2.4 159B (2) to (6), 159C (2), 159E (6) and 159I

159B. (2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159I.

(3) The Commission shall make rules for determining—

(a) for the purposes of subsection (1), whether an audiovisual on-demand media service has a catalogue in which the share of European works is less than 30 per cent, and
(b) for the purposes of subsection (2)(a), whether a media service provider has a low turnover or low audience.

(4) In making rules under subsection (3), the Commission shall have regard to—

(a) any guidelines issued by the European Commission in accordance with Article 13(7) of the Directive, and

(b) any relevant reports produced by the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive.

(5) In making rules under subsection (3)(b), the Commission shall have regard to any relevant characteristics of the market in which a media service provider under the jurisdiction of the State provides an audiovisual on-demand media service, including—

(a) the turnover of the provider from the service in the market, as a proportion of the total turnover of providers of audiovisual on-demand media services from those services in the market, and

(b) the number of audience members of the service in the market, as a proportion of the total number of audience members for audiovisual on-demand media services in the market.

(6) The Commission may make rules prescribing records a provider must keep and any other action a provider must take to enable compliance with the requirement in subsection (1) to be assessed.

159C. (2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159I.

159E. (6) A levy shall not apply to a media service provider—

(a) with a low audience or a low turnover, in accordance with any rules made under section 159B(3)(b), or

(b) in respect of a service exempted under any rules made under section 159I.

159I. (1) The Commission may make rules providing that the obligations in section 159B(1) or 159C(1) shall not apply to an audiovisual on-demand media service, or that a levy under section 159E shall not apply to a media service provider in respect of an audiovisual media service, where it would be impracticable or unjustified by reason of the nature of the service, or the general theme of audiovisual programmes provided by the service, to impose those obligations.

(2) In making rules under subsection (1), the Commission shall have regard to whether an audiovisual media service provides audiovisual programmes—

(a) dealing with a narrow subject matter which may not be of general interest to an audience, or

(b) which may impair the physical, mental or moral development of children, including gratuitous violence and pornography.

7.2.5 Art. 159D (1)

(1) The Commission shall report to the Minister annually on the operation of sections 159B and 159C.

(2) The Minister may specify the form and contents of a report referred to in subsection (1).

7.3 ODAS Code of Conduct for Media Service Providers

7.3.1 Art. 2. Definitions

On-Demand Services

On-demand audiovisual media service (i.e. a nonlinear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider and where the following characteristics are also present at the same time:-

- The service is under the editorial control/responsibility of a service provider;

- The service has as its principal purpose the provision of television like content to the general public in order to inform, entertain or educate;

- The service is intended for reception by and which could have a clear impact on a significant proportion of the general public, but excludes:

  - services which are primarily non-economic;
  - services which are not in competition with or akin to broadcasting services,
  - private websites or emails,
  - services consisting primarily of the hosting or distribution of content generated by third party users of the service for sharing within communities of interest, where editorial control over that content remains with such users,
  - electronic versions of newspapers and magazines,
  - services where the audiovisual content is incidental to the main purpose of the service,
  - gaming, gambling, online games, and search engines.

7.4 Audiovisual Media Services Directive (AVMSD)

7.4.1 Art. 1 (1) (a) Audiovisual media service

'audiovisual media service' means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;

(ii) audiovisual commercial communication;

7.4.2 Art. 1 (1) (aa) Video-sharing platform service

'video-sharing platform service' means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks;

7.4.3 Art. 1 (1) (d) Media service provider

'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

7.4.4 Art. 1 (1) (da) Video-sharing platform provider

'video-sharing platform provider' means the natural or legal person who provides a video-sharing platform service;

7.4.5 Art. 1 (1) (g) On-demand audiovisual media service

'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

7.4.6 Art. 1 (1) (n) European works

'European works' means the following:

(i) works originating in Member States;

(ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;

(iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.

7.4.7 Art. 13 (1)

Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and ensure prominence of these works.

7.4.8 Art. 13 (2)

Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.

7.4.9 Art. 13 (3)

In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.

7.4.10 Art. 13 (4)

Member States shall report to the Commission by 19. December 2021 and every two years thereafter on the implementation of paragraphs 1 and 2.

7.4.11 Art. 13 (6)

The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

7.5 Future of Media Commission (FOMC)

Terms of Reference

Well-functioning media systems, and in particular public service broadcasting, deliver four important public services to Irish society:

- To inform, educate and entertain the Irish public with regard to matters of Irish culture, identity, sport, language and other matters inherent to Ireland and the Irish people;
- To ensure that the public has access to high quality, impartial, independent journalism, reporting on matters of local, regional, national, European and international importance in a balanced way and which contributes to democratic discourse;
- To bring the nation and diaspora together at moments of great national importance;
- To ensure that creative Irish talent gets the opportunity to have their work reach audiences in Ireland and, where possible, further afield.

Since the foundation of the State, these aims have been, and continue to be, delivered by a wide number of media organisations including RTÉ and TG4, as the public service broadcasters, independent broadcasters, producers and print media, at local, regional and national level. More recently, online media is playing an increasingly important role. The Sound and Vision Scheme, which amounts to 7% of net TV licence revenue, has supported content with public service value by all broadcasters in conjunction with the independent production sector but is limited by statute to broadcasting sector.

The goals of the independent Commission are to:

- Identify what the Irish experience has been in delivering the above aims through public service broadcasters, other broadcasters, print and online media at a local, regional and national level and the challenges created for these media by new global platforms and changing audience preferences in relation to how content is delivered;
- Consider the extent to which the current models of delivery are the appropriate ones the next 10 years;
- Review best practice in other comparable jurisdictions, particularly across the European Economic Area in terms of providing future-proofed models for meeting the above four public services in light of changing audience expectations, in particular the preferences and behaviours of younger audiences.

Arising from that work, the Commission is tasked with:

- proposing how those public service aims should be delivered in Ireland over the next ten years;
- how this should contribute to supporting Ireland's cultural and creative sectors;
- how this work can be funded in a way that is sustainable, gives greater security of funding, ensures independent editorial oversight and delivers value for money to the public;

- making recommendations on RTÉ’s role, financing and structure within this framework;
- How this is overseen and regulated, having regard to our EU obligations including the requirements of the revised Audio-visual Media Services Directive.

7.6 AVMSD Guidelines – Commission Communication

Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover

III. DEFINITION OF LOW AUDIENCE AND LOW TURNOVER

1. Preliminary remarks

According to recital 40 of the AVMSD, providers with no significant presence on the market should not be subject to the requirements to promote European works, 'in order to ensure that obligations relating to the promotion of European works do not undermine market development and in order to allow for the entry of new players in the market'. While the above considerations are common for both Article 13(1) and Article 13(2), these provisions present some specific differences that need to be considered:

—It is for the Member State of origin to ensure that on-demand providers under its jurisdiction comply with the obligation to secure the share for European works under Article 13(1); it is for the same Member State of origin to apply the exemptions under Article 13(6) to such providers.

—The situation is different for Article 13(2). This provision recognises the possibility for any Member State to impose non-discriminatory and proportionate financial contribution obligations on providers established in another Member State and targeting audiences in its territory. In this case, it is for the 'targeted' Member State to apply both its legislation imposing such contributions and the exemptions under Article 13(6).

In view of these different legal contexts, it is appropriate to consider the specificities of these obligations when considering guidance on the exemptions set in Article 13(6). In particular, it is recalled that, as clarified by recital 36, Member States are allowed to impose financial obligations on media service providers targeting their territory, in view of 'the direct link between financial obligations and Member States' different cultural policies'.

When defining low audience and low turnover, it is thus important to find a right balance between the objectives of preserving a necessary innovation space for smaller audiovisual players and that of promoting cultural diversity through adequate financing for European works under Member States' cultural policies. Therefore, while the guidelines envisage that companies with a low turnover or a low audience as defined below are exempted from the obligations under Article 13, some additional safeguards in specific cases may be needed, particularly for the application of financial contributions in view of ensuring sustainability of audiovisual and film financing systems.

2. Distinction between exemptions established by Union and national law

Article 13(2) of the AVMSD does not harmonise the obligations to contribute financially to the promotion of European works. This provision merely recognises that Member States have the option to apply also to cross-border providers that target audiences in their territory the obligations to contribute through direct investments and levies, in compliance with the principles of non-discrimination and proportionality. It is thus the competence of the Member State that decides to avail itself of this possibility to define and apply the corresponding obligations.

In this sense, if a Member State has in place or introduces obligations for media service providers to contribute financially to the production of European works and these obligations are limited to providers established in that Member State, the present guidelines do not apply. They become relevant if that Member State also applies such requirements to providers targeting audiences in its territory but established in other Member States. In any case, the aim of the exemptions provided in Article 13(6) AVMSD is not to replace the exemptions established at the national level, which define the scope of the obligations to contribute, but to provide safeguards for cross-border providers.

Therefore, the guidance set in this section is without prejudice to the freedom of the targeted Member State to establish different thresholds at national level applicable to providers under its jurisdiction.

It is important to note that Member States applying the financial contribution obligations to providers established in other Member States need to respect the principle of non-discrimination. Therefore, if they have exemptions in place or introduce exemptions at national level applicable to providers established in their territory, these exemptions also need to be applied in a non-discriminatory manner to cross-border providers, even if the thresholds are higher than the ones indicated in these guidelines.

3. Low turnover

As regards the threshold of low turnover, which should serve as a basis for an exemption under Article 13(6), the Commission refers to the Recommendation 2003/361/EC concerning the definition of micro, small and medium sized enterprises (5).

Following an established policy-making approach, micro enterprises should a priori be excluded from the scope of the proposed legislation, unless the necessity and proportionality of them being covered is demonstrated (6). Therefore, the Commission considers that the threshold for low turnover could be identified by reference to the concept of microenterprise developed in the above-mentioned Commission Recommendation, specifically based on the turnover threshold used in the definition of micro enterprise (i.e. enterprises with a total annual turnover not exceeding EUR 2 million). The annual turnover of the enterprise should be determined in accordance with the provisions of the above-mentioned Commission Recommendation, thus taking into account also the turnover of partner and linked enterprises (7).

Due to their limited size and scarce resources, microenterprises may be particularly affected by regulatory costs. Excluding microenterprises from the application of the obligations to promote European works (Article 13(1) and Article 13(2)) avoids hampering the access of new entrants into the market. This approach is therefore consistent with the objective of incentivising the creation of new businesses and promoting market development.

At the same time, recital 40 of the AVMSD provides that 'the determination of low turnover should take into account the different sizes of audiovisual markets in Member States'. For example, in some Member States, the size of the national markets is in the order of a few million EUR. In several cases, such markets are significantly below ten million EUR. In these markets, even microenterprises may be considered to have a significant market presence.

In view of the above, the Commission considers that Member States with smaller national audiovisual markets should be able to determine lower turnover thresholds. Based on the overall market characteristics, such lower thresholds could be justified and proportionate provided they exempt enterprises that have a share of less than 1 % of the overall revenues in the national audiovisual markets concerned.

4. Low audience

4.1. *Video on demand services*

4.1.1. Methodology

According to recital 40 of the AVMSD, 'low audience can be determined, for example, on the basis of a viewing time or sales, depending on the nature of the service (...)'. In linear services, audience is traditionally measured by reference to viewing time. The concept of audience for VOD is not an established one and no standardised industry measurements are available across Member States. Thus, there is no data available on audience, verified by a third party, against which one could check if the audience of a specific VOD provider is low. While this situation might change in the future, it is nonetheless necessary at this stage to define a practical method to determine a low audience for the purposes of Article 13 of the AVMSD for VOD providers.

As explained in recital 40, the concept of audience can be associated 'for example' with the sales of the services. In the absence of established industry measurements, the Commission considers this currently to be the most appropriate method for measuring audience in the VOD sector.

While the Directive does not prohibit, in principle, Member States from using alternative criteria, the present guidelines therefore focus on a method for determining the audience of VOD providers based on the sales of the services.

In a VOD environment, the number of users/viewers of a particular service is a proxy for such sales. In particular, the audience could be determined on the basis of the number of active users of a particular service, e.g. the number of paying subscribers for Subscription Video on Demand (SVOD), the number of unique customers/unique accounts used for acquisition of works for Transactional Video on Demand (TVOD), and the number of unique visitors for Advertising Video on Demand (AVOD).

In case of TVOD services, active users could refer, for example, to users that have acquired at least one title in the catalogue over a defined time period. In case of AVOD, the audience could be determined as an average of active users for a defined time period. In case of subscribers that pay for bundled services which include also a VOD account, audience of the VOD services might not be accurately represented by the number of paying subscribers of those bundled services as a whole, as some might not be VOD users. In such cases, national authorities may apply a measurement based on users who have in fact accessed the video content of the service within a defined time-period. In all these cases, the period taken into consideration should be appropriate and meaningful (i.e. not too short), set in advance, and not burdensome in terms of implementation.

In practice, the audience should be determined in terms of the share of active users attained by a particular service: the audience of a VOD service would be the number of its users divided by the total number of users of (similar) VOD services available on the national market and multiplied by 100 to obtain a percentage.

Since audience shares constitute a good proxy for sales and reflect the market position of the service concerned in this sector, providers with a low number of active users would have no significant presence in the market, thus justifying the application of the exemption set in

Article 13(6). This method is also close to the notion of TV audience share, which refers to actual TV set holders tuned to particular channels in a given period of time compared to the total number of TV sets in the sample.

4.1.2. Threshold

The Commission considers that providers with an audience share of less than 1 % within a given Member State should be deemed to have a low audience. This threshold reflects a limited uptake of the services of such providers compared to the relevant national markets. This may be, for instance, because a provider is a new entrant on that national market. Based on the available data, the main SVOD providers in Europe ([8]) tend to have a share that goes well beyond 1 % in the national markets where they are present.

In view of the above, the Commission considers it appropriate, in principle, to exempt from the obligations under Article 13 those providers that have an audience share of less than 1 % in the Member State concerned.

With regard to Article 13(1), this means that these providers are exempted by their Member State of origin from the share obligation in those catalogues (directed to the Member State of origin or to other Member States) for which their audience share is below the above-mentioned threshold. With regard to Article 13(2), this means that these providers are exempted by the targeted Member State from the obligation to contribute financially to the production of European works.

4.2. *Linear audiovisual media services*

For linear services, audience is an established concept and audience measurement services exist in several Member States. The definition of low audience should therefore be based on indicators that are already accepted and used in the context of the AVMSD, namely the daily audience share ([9]) calculated for the reference year.

In terms of presence of non-domestic providers, the linear services market is different from the VOD market. For VOD, national markets are largely dominated by non-domestic providers; this is not the case for linear services. The top players are usually TV groups that in general attain the entire or large parts of their audience share in their domestic markets. According to a recent study, the EU audiovisual market is characterised by a limited number of TV channels that capture a large part of the audience. The vast majority of channels have low audience shares: only 5 % of TV channels have an audience share above 10 % and around 80 % of TV channels in any given country in the Union have an audience of 2 % or less ([10]).

The threshold for low audience should be determined by taking into account the presence and positioning of the channels on the market for linear audiovisual media services in terms of audience. Therefore, taking into account the characteristics of the market for linear services, cross-border channels with an individual audience share below 2 % in a given targeted Member State should be considered to have low audience in the sense of Article 13(6) of the AVMSD ([11]). Particularly in case of providers with multiple targeting channels, Member States may consider the overall position of the provider in the national market when applying the exemption ([12]).

5. Adjustments to take account of the specific nature of financial contributions

Article 13(2) of the AVMSD refers to two types of financial contribution obligations for the production of European works, namely direct investments in audiovisual content and contributions to national funds (levies). The Commission considers that, when determining the appropriate thresholds, the different impacts of these types of obligations on cross-border providers should be taken into account. The direct investment (e.g. production, co-production, acquisition of rights in works) generally implies a higher entrepreneurial effort than the payment of a levy, due to a different degree of financial involvement and the associated risks. The fulfilment of the investment obligation also depends on the availability of European works, including production projects in which a provider may invest with the available resources.

The Commission understands that in some Member States, depending in particular on the size and structure of the audiovisual market, it may be considered important to apply financial contribution obligations also to on-demand services with a turnover lower than 2 million EUR or with an audience share of less than 1 % as well as cross-border linear services with an audience share below 2 %, in particular pay TV services, as their presence on the national markets may still be deemed important. In order to cater for such situations, Member States may, decide to apply lower thresholds, in duly justified cases and in line with their cultural policy objectives, including the objective to ensure the sustainability of national audiovisual and film funding systems.

These thresholds and the financial contributions imposed should take into account the financial capacity of the service, respect the principles of non-discrimination and proportionality, should not undermine market development and should allow for the entry of new players on the market.

As regards cross-border direct investment obligations, the Commission invites Member States, in particular those with larger audiovisual markets, to consider also exempting enterprises having a total turnover above EUR 2 million ([13]), by setting a higher threshold, or at least make them subject to less onerous investment obligations taking account, in particular, of the possible difficulties to find audiovisual productions to invest in with the available resources in the Member States concerned.

8. Appendix C: List of consultees

Amazon

Animation Ireland

Apple TV+

Association of Commercial Television and Video on Demand Services in Europe (ACT)

CEPI European Audiovisual Production Association

Coimisiún na Meán

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

Disney

Element Pictures

Equity Ireland

European Commission

European Film Agency Directors association (EFAD)

Joint Audiovisual Sector Group (Ireland)

Macalla Teoranta

Motion Picture Association EMEA
NBCUniversal
Netflix
Northern Ireland Screen
Paramount
RTÉ
Screen Composers Guild
Screen Directors Guild
Screen Producers Ireland
Sky Ireland
Sony Pictures
TG4
Tyrone Productions
Virgin Media Ireland
Warner Bros. Discovery
Writers Guild of Ireland

9. Appendix D: Coimisiún na Meán

Coimisiún na Meán has been established further to the provisions of the Online Safety and Media Regulation Act 2022 ("OSMR Act 2022"). In addition to undertaking the functions of the BAI as the regulator for broadcasting in Ireland, Coimisiún na Meán is to establish a regulatory framework for online safety, update the regulation of television broadcasting and audiovisual on-demand services, and transpose the revised Audiovisual Media Services Directive into Irish law.

Coimisiún na Meán carries out a range of activities to support Ireland's media sector and help develop content for Irish audiences that reflects and shapes Irish society. The Media Development Division of Coimisiún na Meán is central to fostering a thriving media environment. It is tasked with designing funding schemes to encourage content production, support journalism, and provide training opportunities. The Sound & Vision Scheme, one of the flagship initiatives under the division, is particularly crucial to Ireland's media landscape. Funded by the TV licence fee, the scheme is instrumental in enabling the production of high-quality public service content, including programming that reflects Irish culture, language, and diverse societal needs.

The Sound & Vision Scheme is vital in ensuring that important cultural, educational, and informative content reaches Irish audiences, especially content that may not be made in absence of this funding, therefore creating additionality for Irish audiences. It supports the creation of programs that highlight Irish identity and heritage, often covering areas that commercial media might overlook, such as niche cultural productions and Irish-language content. By funding these projects, the scheme strengthens the diversity and quality of Irish media, reinforcing its role in preserving cultural values and public service broadcasting.

The total amount of funding allocated through S&V since the establishment of Coimisiún na Meán in March 2023 is almost €32m across the open funding rounds, almost €11m of which was allocated to Irish language or bilingual content. A further €1.3m was allocated in two rounds with a focus on social benefit, and €2.5m toward the commercial radio sector.

The Sound & Vision Scheme is crucial in maintaining diverse, high-quality programming across Public Service Media and in supporting the commercial and radio sectors. It contributes financially, sustains direct and indirect jobs, promotes skills and training, and fosters social and community inclusion. For audiences, the scheme enables the creation of culturally rich programs that might otherwise not be produced. It supports challenging projects, delivering high-value Irish cultural and heritage content across radio and TV, benefiting communities at local, regional, and national levels.

10. Appendix E: Fís Éireann/Screen Ireland

Fís Éireann/Screen Ireland is the national agency for the Irish film, television drama, animation, documentary, vfx, post-production and games industry. Screen Ireland is the creative partner to the sector, investing in talent, creativity and enterprise. Screen Ireland's statutory remit is the development and growth of the audiovisual sector. It has an annual budget of c. €38m (as of 2023).

Screen Ireland's seeks to:

- Assist and encourage screen activity and the development of the audiovisual industry in the State
- Encourage the expression of national culture on screen
- Promote participation in international collaborative projects

Screen Ireland's funding of Irish film, television drama, animation, documentary is core to the sector. Screen Ireland's total investment across development, production and distribution was c. €29.5m of which c. €18.5m was for film and c. €11m was for television (as of 2023) . It is a cornerstone funder of Irish films intended for cinema and a growing and significant funder of television.

Alongside the active development and production of domestic projects, Screen Ireland is also the strategic body responsible for the attraction of inward investment of film and television and for the development of screen skills. Unlike many other European countries where there may be a distinct film commissioner or skills body these activities are integrated within Screen Ireland. This allows Screen Ireland, as the strategic body for audiovisual development, to deliver a dual strategy to industry growth which has been a key factor in the industry's success to date. This involves maintaining a careful balance between international production and domestic, Irish filmmaking as well as attracting large-scale, inward projects to Ireland with Section 481 should work in partnership with Screen Ireland's funding for Irish-led stories.

Irish talent and Irish production companies have achieved outstanding international success in recent years. In 2022 the industry garnered a record number of 14 Academy Award nominations, alongside the historic first local-language film An Cailín Ciún/The Quiet Girl earning a Best International Feature Academy Award nomination. Irish animation is also a global international success story, with the sector almost quadrupling in size and spend over the past decade. Irish post-production and visual effects has become a fast-growing hub for large-scale productions.

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