

**PART A OF THE CINEMA STUDY
REPLIES TO THE LEGAL QUESTIONNAIRE FOR IRELAND**

Member State:	IRELAND
Re:	Follow Up Reply
Date:	04 December 2006

(...)

Please see attached.

(...)

Attachment to e-mail of 04 December 2006

(...)

I refer to your e-mail of 26 November 2006 (...) in connection with the above. (...) My colleague (...) went into considerable detail in relation both to the arrangements under Section 481 of the Taxes Consolidation Act 1997 as amended (tax relief incentive for investment in film production) and the arrangements for Bord Scannan na hEireann/The Irish Film Board which was originally established under the Irish Film Board Act 1980.

It is worth mentioning that, on a historical basis, the development of a film industry in Ireland came relatively late. The Irish Government did fund the establishment of Ardmore Studios in the 1950's and funding was available through an arm of the Irish state bank called The Irish Film Finance Corporation in the late 1950's and early 1960's but this mostly went to fund UK originated B movies which were shot at Ardmore Studios.

Only with the compiling of the Huston Report (Chaired by the famous US director John Huston who is also an Irish citizen) in the late 1960's was any initiative started in relation to Irish film production. Even then the establishment of the Irish Film Board which was the main recommendation of the Huston Committee did not take place until 1980.

The 1980 Act provided specifically that the general functions of the Irish Film Board were as follows:

"In addition and without prejudice to any specific functions given to it by this Act, the Board shall assist and encourage by any means it considers appropriate the making of films in the State and the development of an industry in the State for the making of films and may engage in any other activity (including the establishment of a national film archive) which it is empowered by this act to engage in."

There have been no significant amendments to the Irish Film Board Act 1980 (apart from Acts extending the maximum level of funding allowed to the Irish Film Board please see my reply to your earlier query about the €57m incentive) since 1980 although funding for the Irish Film Board was suspended in 1987 (due to poor economic conditions in Ireland) and only restarted in 1993.

Coincidentally the original version of Section 481 of the Taxes Consolidation Act 1997 (Section 35 of the Finance Act 1987) was brought into place at the same time that funding was suspended for the Irish Film Board in 1987. However the Section 35 Tax Incentive did not have a major impact until 1993 when individual as opposed to corporate investors were allowed to avail of it. Since this extension to Section 35 in 1993 there have been numerous amendments to what was Section 35 as well as one Consolidation Act in 1997 the details of which Ruth already set out for you.

Production funding from The Irish Film Board is (...) a selective scheme. While the vast majority of projects funded by The Irish Film Board have been projects which are of Irish origin with Irish writers, Irish directors and Irish casting crew working in Ireland, The Irish Film Board has funded projects which have had other EU nationals or non-EU nationals in significant roles in the production and have involved principal photography outside Ireland and outside the EU. This would apply both to official co-productions and also to projects which were not official co-productions. From the legal point of view, in the final analysis, the only legal constraint on The Irish Film Board is that it satisfies itself that it is complying with section 5 of The Irish Film Board Act, 1980 as quoted above.

In relation to the section 481 tax incentive, the criteria applied to qualification as regards the level of tax incentive available to the production is equated with qualifying expenditure. However, before a section 481 certificate issues, the Minister for Arts Sport and Tourism must examine whether the project is of importance to the promotion, development or enhancement of creativity and the national culture including the Irish language including the medium of film. In this regard, the Department have not disclosed to practitioners in Ireland, the basis upon which decisions in the light of this examination are arrived at.

There are no regional funds in Ireland (the country is too small and government is highly centralised) but The Irish Film Board do operate an incentive for the production of film outside the metropolitan area of Dublin City and County and its immediate environs. A minimum level of expenditure in the relevant area is required to benefit from this additional funding which usually comes on top of production funding provided by The Irish Film Board in accordance with its normal criteria.

As to reports in Ireland, there were two reports which deal generally with film and television production in Ireland, the first being the Kilkenny Report published in 1999 (which focused on film and television production generally) and the second being a PWC report for The Irish Film Board in 2003 (the latter of which focused on whether the section 481 tax incentive should be continued). As neither of these reports were on territorialisation requirements on co-production agreements or on legal aspects of the promotion of film related cultural identities and cultural diversity in our jurisdiction, my colleague (...) did not include them in the answer to question A7. However, (...) I thought it would be helpful if I mentioned these reports as well.

(...)

Member State:	IRELAND
Re:	Follow Up Question
Date:	26 November 2006

(...)

Thank you for your reply of 25 October 2006.

We have a final round of follow-up requests for clarification as follows:

Please quote and summarize provisions in the relevant regulations of your jurisdiction articulating cultural (or economic) objectives and/or cultural (or economic) justification for the granting of State aid to independent film and television production (question B.12).

(...)

Member State:	IRELAND
Re:	Follow Up Question
Date:	10 November 2006

(...)

We have the follow-up questions and requests for clarifications as follows:

1) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

2) Please provide information on cultural clauses and provisions expressing cultural goals (question B.12)

(...)

Member State:	IRELAND
Re:	Follow Up Reply
Date:	31 October 2006

(...)

As I suspected there is no additional funding scheme or schemes of EUR58,100,000 in Ireland. The only possible explanation for that figure is that it represents how the funding to Bord Scannan na hEireann/The Irish Film Board ("IFB") is operated under the relevant legislation for that organisation. What happens is that at a particular historical point eg six or seven years ago the IFB was authorised to spend up to a particular total amount of say EUR70,000,000 over a period of years, the annual allocation of which is decided by the Government of the day on a year to year basis. The figure of EUR58,100,000 you have is likely to be the total spent over the years to date less receipts. When the threshold is reached it is then necessary for the Government to pass new primary legislation creating a new threshold.

There are historical reasons for this somewhat cumbersome structure and I understand that in fact it has been suggested internally by the relevant civil servants that for ease of administration the structure will be replaced by a simple annual allocation to the IFB without any overall cap.

(...)

Member State:	IRELAND
Re:	Follow Up Question
Date:	26 October 2006

(...)

We were advised that there is an additional funding schemes in your jurisdiction that is relevant for our study.

It is the

- CeDepartment of Arts, Sport and Tourism, 58 100 000 EUR

Could you please complete the replies to our legal questionnaire by covering this additional funding scheme (...)?

(...)

Member State:	IRELAND
Re:	Follow Up Reply
Date:	25 October 2006

(...)

In answer to your query, because of Ireland's dualist approach to international agreements (Article 29.5 of the Irish Constitution), the State is bound by international agreements once they have been signed by the executive (e.g. relevant government minister) unless the agreement involves a charge on public funds. Where an agreement involves more than incidental expenditure by the State, the terms of the agreement must be approved by the Dail.

In relation to the incorporation of an international agreement into domestic law, the Oireachtas can 'authorise compliance' with the international agreement (e.g. give the relevant minister power to make regulations to comply with the agreement). However, what usually happens is that the Oireachtas will enact legislation to give effect to the obligations under the Agreement.

Allied to this, there is a presumption of compatibility in relation to interpretation of such enacting legislation, which means that any conflict between the international agreement and the enacting legislation should be interpreted so that the latter is assumed to have been intended to comply with the agreement.

Therefore, in the event of any conflict as between an international co-production convention (to which Ireland is a party and has given effect to) and national law in respect of territorialisation requirements, the national legislation would be read in such a way as to comply with the International Convention.

(...)

Member State:	IRELAND
Re:	Follow Up Question
Date:	13 October 2006

(...)

With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

(...)

Member State:	IRELAND
Re:	Reply
Date:	09 October 2006

(...)

Please see attached completed Questionnaire on State Aid to Cinema and Territorialisation Requirements Applicable to Ireland, together with the relevant attachments.

(...)

Attachments to e-mail of 09 October 2006

- European Convention on Cinematographic Co-Production (Scan00158.PDF)
- Irish Film Board Act, 1980 (Scan00149.PDF)
- Guidance Note for Film Producers and Promoters - Section 481 (Scan00154.PDF)
- Co-Production Agreement between Governments of Ireland and Australia (Scan00156.PDF)
- Film Regulations 2004 (Scan00153.PDF)
- Amendment of Section 481 (Scan00152.PDF)
- Council Directive 63/607/EEC - Abolition of restrictions on freedom to provide services (Scan00151.PDF)
- CG Legal Questionnaire.DOC
- Irish Film Board - Application for Issue of an EC Certificate of Nationality (Scan00150.PDF)

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS
(Version of 15 September 2006)**

PRELIMINARY REMARK

This questionnaire is divided in two parts. Part A concerns general questions and part B specific questions related to State aid for independent film and television production, including State aid based on co-production agreements, in the context of territorialisation requirements.

Some information that could be relevant for this questionnaire is available on-line, e.g.:

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: http://korda.obs.coe.int/web/recherche_fonds.php and the information on co-production agreements by IRIS Merlin at: <http://merlin.obs.coe.int/search.php>)

- the links to regulating, control and funding bodies in the audiovisual sector (cinema and broadcasting) at:

http://ec.europa.eu/comm/avpolicy/info_centre/links/index_en.htm

- the information on co-production agreements on the Council of Europe website and, e.g. for France and the United Kingdom, on the websites of the Centre National de la Cinématographie and the UK Film Council:

http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/

<http://www.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

http://www.ukfilmcouncil.org.uk/usr/ukfcddownloads/42/Co_production.pdf

However, please consider that this information may not be exhaustive, fully accurate or up-to-date, and may therefore require to be completed for the purposes of this study.

When filling in this questionnaire, please specify in brackets your sources of information at the end of each of your answers.

Please deliver your replies in word format (font type: times new roman; font size: 12).

PART A

GENERAL QUESTIONS

Please use only one form per Member State.

OVERVIEW

- A.1 Country / region: Ireland
- A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works¹ of at least €1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):
- (1) Section 481 Tax Relief Incentive for Investment in Film Production
 - (2) Bord Scannan na hEireann/The Irish Film Board (“IFB”) Development and Production Investment Loans

Please note that excluded from consideration under this Questionnaire are the licensing arrangements for public service broadcasters who commission independent television programmes for broadcast and pay for same out of their licensing arrangements. We consider this to be a separate area of consideration.

COPRODUCTION AGREEMENTS

- A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision:
- (1) European Convention on Cinematographic Co-Production – 2000 – IFB
 - (2) Agreement on Film and Video Relations Between the Government of Canada and the Government of Ireland – 1989 – IFB
 - (3) Film Co-Production Agreement Between the Government of Ireland and the Government of Australia – 1998 – IFB

Copies of each of the above Co-Production Agreements are attached.

NATIONALITY CERTIFICATION PROCEDURES

1 “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters..

A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:²

- (A) The IFB is the authority responsible for assessing and certifying the nationality of an independent film or television production in Ireland
- (B) The IFB issue certificates of nationality by virtue of the 1963 EC First Films Directive (63/607/EC), which laid down uniform criteria for the recognition of the nationality of films from EC Member States (see www.filmboard.ie/coproduction.php).

Article 3 of the 1963 Directive laid down six conditions which must be satisfied before a film can be regarded as having the nationality of a particular Member State. Simplified, these are:

1. The production company must be a company incorporated in the Member State in question.
2. Filming must take place in studios situated in the Member State. However, up to 30% of the film may be shot on location (outdoors) in a third country where the subject of the film demands this.
3. The original version must be recorded in (one of) the language(s) of the Member State.
4. The screenplay, adaptation, dialogue and where applicable, musical score must be written or composed by persons who are Member State nationals or 'who come within its cultural domain'.
5. Similarly the director must be a Member State national or a person 'who comes within its cultural domain'.
6. The majority of the following principal players: executive producer, director of photography, sound engineer, editor, art director and wardrobe chief, must be Member State nationals or 'persons who come within its cultural domain'.

Article 4 sets out permissible derogations to cover co-productions with co-producers from third countries. However it provides that the technical and artistic contribution of the Member State/s cannot be less than 30%.

The IFB Application for an EC Certificate of Nationality essentially follows the above criteria (see attached application form).

Copies of the 1963 Directive and the IFB Application Form are attached.

² E.g. the French "Procédure d'agrément".

- (C) A Film does not need to be certified as Irish to qualify for either Section 481 Tax Relief or an IFB Production Investment Loan.

EXPECTED DEVELOPMENTS

- A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision

No new co-production agreements are expected in Ireland as of 1 January 2007. The Department of Arts, Sports and Tourism had planned to conclude bilateral co-production agreements with each of Germany and Luxembourg by the end of the first quarter of 2006. To date, however, no public statements have been made by the Department in this regard.

- A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,³ and indicate the name and address of the administration of these funding schemes:⁴

No new funding schemes containing territorialisation requirements are expected to enter into force in Ireland as of 1 January 2006.

REFERENCES TO LOCAL STUDIES

- A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

None

³ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

⁴ E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)⁵ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.⁶

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: Ireland

B. Name of the funding scheme: Section 481 Tax Relief Incentive for Investment In Film (“Section 481”)

A tax relief under Section 481 of the Irish Taxes Consolidation Act, 1997, is available on both corporate and individual investments in film production. This relief is calculated at the top rate of the respective tax payable to the extent of 80% of the investment made by way of shares in film production companies. The Section 481 investment incentive scheme provides an indirect net benefit to production undertakings related to a percentage of the film production budget. Although the immediate recipients of the aid are the taxpayers who invest in shares of production companies, the ultimate beneficiaries of the scheme are the producers of certified films. The net benefit to the producer arises because the investor benefiting from tax relief is prepared to share the tax relief with the producer. The vehicle used for transferring part of the tax relief to the latter is a private agreement between the investor and the producer providing for the particular terms of investment recoupment. The aim of the Section 481 incentive scheme is to stimulate private sector investment in film and independent television production by providing some cushion against the inherent risks of investment in film production.

B.3 Name and address of the funding scheme’s administration and supervisory authority:

(1) Office of the Revenue Commissioners, Direct Taxes: Business Incentives, Stamping Building, Dublin Castle, Dublin 2

⁵ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶ “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

- (2) Department of Arts, Sport and Tourism, Frederick Buildings, South Frederick Street, Dublin 2

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

- (1) Section 481 of the Taxes Consolidation Act 1997 (as amended)
- (2) Statutory Instrument No 869 of 2004 / Film Regulations 2004 (“Regulations”)
- (3) Guidance Note for Film Producers and Promoters on the Certification of Qualifying Films under Section 481 – Tax Relief Incentive for Investment in Film (“Guidance Notes”)

- the dates when these laws and regulations entered into force,

- (1) 1997
- (2) December 2004
- (3) December 2004

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

Section 481 was amended by Section 35 of the Finance Act 2004 and Section 18 of the Finance Act 2006 during the relevant period.

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

Attached.

TERRITORIAL CONDITIONS⁷

Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

No. No minimum amount of expenditure of the production budget in the State is imposed on projects in order to qualify for Section 481. However, spend in the State must equal the amount raised under Section 481. See answer to B.11 for further details.

⁷ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

If yes,

- B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*): N/A
- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*). N/A
- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):
- Whether official co-production status is awarded to a project is irrelevant as to whether or not a project may be entitled to raise Section 481 funding. Section 481 is administered entirely separately.
- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*): N/A

Implicit or *de facto* territorial conditions

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes - See B. 11

If yes,

- B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Since 1st January 2006, the maximum amount of funding that can be raised for a film or television programme pursuant to Section 481 is 80% (55% - 66% of the budget at 31 December 2005). However this is subject to a cap equal to the amount of “eligible spend” in the State. Eligible expenditure means spend on eligible goods, services and facilities and on eligible individuals. “Eligible goods, services and facilities” means goods, services and facilities where they are used or consumed in the State in the production of a qualifying film and they are provided within the State by a relevant person (as defined) directly or indirectly to a qualifying company. An “eligible individual” means an individual who is a citizen of Ireland or of another member state of the European communities or an individual domiciled, resident or ordinarily resident in the State or in another member state of the European communities.

A “qualifying company” is a company which:

- (a) is incorporated and resident in the State; or is carrying on a trade in the State through a branch or agency; and
- (b) exists solely for the purposes of the production and distribution of only one qualifying film; and
- (c) does not contain in its name the words “Ireland”, “Irish”, “Eireann”, “Eire” or “National”, where the company name in question is either – registered under either of both the Companies Acts, 1963 – 1999 and the Registration of Business Names Act, 1963; or registered under the law of the territory under which it is incorporated.

A “relevant person” means an allowable investor company or qualifying individual.

The aim of the scheme is to promote and encourage the indigenous film industry and the development of a film industry in the State and the promotion and expression of Irish culture.

CULTURAL CLAUSES

- B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Section 481 provides tax relief for investments in “qualifying films”. A “qualifying film” is a film for which the Revenue Commissioners have issued a Certificate under Section 481. Amendment of Section 481 of Principal Act – Finance Act 2004, Section 48 provides that a “Certificate issued by the Revenue Commissioners shall be subject to such conditions specified in the Certificate of the Revenue Commissioners may consider proper, having regard, in particular, to the examination referred to in paragraph (D) [*in considering whether to issue a Certificate the Revenue Commissioners shall, in respect of the proposed production of a film, examine all aspects of the qualifying company’s proposal*] and any conditions specified in the

authorisation given by the Minister under sub-section (2)(a) and in particular the Revenue Commissioners shall specify in the Certificate a condition – whether (i) in relation to the percentage of work on the production of the Film which shall be carried out in the State, as specified by the Minister and the authorisation; (ii) in relation to the matters specified by the Minister and the authorisation by virtue of sub-section (2)(b)(2), (iii) subject to sub-section (2)(c) that the amount percent of the total cost of production which will be met by relevant investments shall not exceed the specified percentage, as referred to in that sub-section, (iv) in relation to the minimum amount of money to be expended directly – (1) on the employment of eligible individuals and (2) on the provision of certain goods, services and facilities as set out in regulations made under sub-section (2E) on the production of the qualifying film.....”

In summary:-

Cultural Policy

In order to benefit from the scheme, a film needs to qualify for certification. As mentioned above, the Minister for Arts, Sport and Tourism examines, *inter alia*, whether the project is of importance to the promotion, development and enhancement of creativity and the national culture, including the Irish language, through the medium of film.

Territorialisation

Previously the Section 481 legislation had required that a minimum of 75% of the work on the production of the film be carried out in the State. However, this condition was not rigidly applied and derogations were routinely granted. It has now been formally removed.

The amount expended in Ireland on a given film production must at least equal the amount raised under the scheme for that production; i.e. if a producer raises 80% of the total budget of a film, the producer will have to spend this amount on the Irish territory.

This is in line with the requirement of the so-called “Cinema Communication”⁸; that the producer must be free to spend at least 20% of the film budget in other Member States.

Section 481 respects the general legality criterion in that the provisions, and more particularly the eligibility conditions do not contain clauses in breach of provisions of the Treaty other than State aid, in fields like freedom of establishment or freedom to provide services.

8. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534 final of 26.09.2001.OJ C 43 16.2.2002); prolonged by Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the follow-up of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works of 26.09.2001 (COM(2004)171 final of 16.3.2004. OJ C 123 of 30 April 2004.)

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁹ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Section 481 provided that: the Revenue Commissioners may not issue a Certificate in respect of a film unless they have received authorisation from the Minister for Arts, Sport and Tourism.

The Guidelines provide that:

the Minister, in considering whether to give the Revenue Commissioners an authorisation in relation to a film will have regard to:

- the categories of film eligible for certification; and
- the contribution a film will make either or both the development of the film industry in the State and the promotion and expression of Irish culture.

Accordingly, the Minister will:

- consider the case made by the Promoter in relation to the contribution the project will make to, for example, the promotion and expression of Irish culture;
- examine the professional capability (creative and technical) of the promoters / producers and creative collaborators;
- examine the anticipated net contributions of the Section 481 Scheme and other State aid schemes will make to the project;
- examine the contribution to be made by the project to the expression of creativity and culture in the State through the development of production capability and skills in the media of film and television;
- give special consideration to Irish language productions; and
- consider the opportunities provided by the project for quality employment and training. A minimum of 2 trainees for each EUR1.27m of Section 481 monies raised, up to a maximum of 8 trainees must be employed on the project.

The following types of film – produced on a commercial basis with a view to the realisation of profit and produced wholly or principally for exhibition to the public in cinemas or through television broadcasting – are eligible for certification:-

- feature film
- television drama
- animation (whether computer generated or otherwise, but excluding computer games)
- creative documentary, where the project:

⁹ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- is based on an original theme, preferably demonstrated by a script or treatment the design and style of which wear the undeniable stamp of creative originality and personal perspective;
- contains a certain “timeless” element so that there is no loss of interest when the event with which it may be linked has passed;
- involves production arrangements which give evidence of, in particular, a substantial period of preparation and a significant period devoted to post-production;
- contain significant original filming and does not merely report information.

The following types of film are not eligible for certification:

- films made for exhibition as advertising programme or as a commercial;
- films comprising or substantially based on:
 - public / special performances staged for filming or otherwise;
 - sporting events;
 - games / competitions;
 - current affairs / talk shows;
 - demonstration programmes for tasks, hobbies or projects;
 - review, magazine style, lifestyle programmes;
 - unscripted or reality type programmes;
 - projects produced inhouse by a broadcaster or for domestic consumption in one country.

CONTACT DETAILS

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

- (1) James Byrne, Revenue Commissioners, Office of the Revenue Commissioners, Direct Taxes: Business Incentives, Stamping Building, Dublin Castle, Dublin 2, Phone: +353 1 647 5000, E-mail: jimbyrne@revenue.ie
- (2) Sabina O’Donnell, Department of Arts, Sport and Tourism, Frederick Buildings, South Frederick Street, Dublin 2, Phone: +353 1 631 3954, E-mail: sabinaodonnell@dast.gov.ie

Name of the lawyer and law firm in charge of the data collection:

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PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)¹⁰ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.¹¹

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: Ireland

B. Name of the funding scheme: Development and Production Investment Loans

B.3 Name and address of the funding scheme's administration and supervisory authority: Bord Scannan na hEireann/The Irish Film Board ("IFB")

Development loans currently range from IEP 1,000 to IEP 25,000 and the scheme is project based. They are available for feature-length fiction films and for animation feature films or series. Development loans are intended to facilitate the research, development and feasibility exploration of a proposed film project. Development loans are repayable in full to the Board on the first day of principal photography. Loans in respect of projects which do not proceed beyond the development phase are written off by the IFB, subject to due accountability by the beneficiary.

Production loans generally in the range of 5-25% of the total production budget are offered for television documentaries and feature-length fiction films.. Higher loans in percentage terms may be considered for: documentaries of particular Irish interest and significance; for and annual series of first-tie short films by filmmakers; and for a minority of low-budget feature films of particular cultural significance. Production loans are offered on the terms of repayable loan/equity participation.

These loans are repayable and repaid to the extent that the film generates sufficient resources and the IFB also acquires an equity return where a film is particularly successful. The IFB's interest in the receipts/profits of a supported film is secured by a

¹⁰ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

¹¹ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

deed of charge on the film. In practice, as a result of the high-risk nature of film investment, some 90% of production loans are expected to be written off.

- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

Irish Film Board Act 1980.

The Minister for Arts, Culture and the Gaeltacht under the Irish Film Board Act, 1980 reconstituted the IFB in April 1993. The IFB provides support by way of interest-free development and production loans which are repayable.

- the dates when these laws and regulations entered into force, 1980

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), N/A

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only). Attached.

TERRITORIAL CONDITIONS¹²

Explicit territorial conditions

- B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

No

If yes,

- B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*): N/A

- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation*

¹² Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

requirements that were in force before this date during the period from 2001 to 2005).
N/A

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*): N/A

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*): N/A

Implicit or *de facto* territorial conditions

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Irish Film Board Production Loans are assessed by a number of criteria as follows:

- (1) creative strength of the project;
- (2) track record of the creative team;
- (3) whether the project will create Irish employment on all grades;
- (4) spend in the Irish economy;
- (5) commercial potential;
- (6) equity / profit potential.

CULTURAL CLAUSES

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Section 6(1) of the Film Board Act 1980 provides that:

“The Board may invest in, or make a loan or a grant to defray in whole or in part the cost of making of a film wholly or partly made in the State”

In respect of the IFB production loans, the special compatibility criteria for aid in the audiovisual sector fixed by the Commission in its decision of June 1998 on the French scheme of automatic aid to film production are clearly met: first, the eligibility of the aided projects is ensured by the IFB which evaluates the Irish cultural value or the significance of Irish artistic/creative input of the qualifying film productions.

Secondly, the Irish authorities undertake that the cumulation of aid under the various schemes will not exceed 50% of the production budget of a project. Thirdly, the Irish schemes do not contain special bonuses for specific filmmaking activities. Finally, the schemes respect the criteria that the producer must be free to spend at least 20% of the film budget in other Member States. The IFB does not require, as a condition of awarding, that a film be made in Ireland, or that any of the work on the production of the film be carried out in Ireland.

The IFB schemes respect the general legality criterion in that their provisions, and more particularly their eligibility conditions, do not contain clauses in breach of provisions of the Treaty other than State aid, in fields like freedom of establishment or freedom to provide services.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹³ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

As at B. 11 above.

CONTACT DETAILS

B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Simon Perry, Chief Executive, Bord Scannan na hEireann/The Irish Film Board,
Queensgate, 23 Dock Road, Galway, Ireland, Phone: +353 91 561398, E-mail:
simon@filmboard.ie

Name of the lawyer and law firm in charge of the data collection:

Ruth Hunter, Matheson Ormsby Prentice Solicitors, 30 Herbert Street, Dublin 2
Phone: +353 16199000 , Email: ruth.hunter@mop.ie

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¹³ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.