

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

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	09 May 2007

(...)

Further to your e-mail of 21 March 2007 we have contacted each regional agency and made a request under the Freedom of Information Act 2000 asking the agencies to provide the information that we require to verify the answers to your questionnaire.

The following regional funding bodies have confirmed in writing that they did not offer any funding schemes for film with an annual budget of 1,000,000 Euros as at December 2005:

- Cornwall Film;
- Screen South;
- EM Media;
- Film London;
- Screen West Midlands; and
- South West Screen.

The UK Film Council and Gaelic Media Service have both responded with a copy of their guidelines. The information that they have provided does not change our answers to your questionnaire in respect to those agencies. For your information, please find their responses attached.

The UK Film Council also confirmed that they were running the Development Fund and the P&A Support Fund as at December 2005 and I attach a Part B questionnaire for each of these schemes. Please note that the territorial criteria for these schemes are hardly different to the UK Film Council's Premiere and NCF schemes.

We are still waiting for the following agencies to respond to our requests:

- Creative IP Fund;
- Screen Yorkshire;
- North West Vision
- Northern Film and Media;
- Northern Ireland Film and Television Commission;
- Scottish Screen; and
- Screen East.

Attachments to e-mail of 09 May 2007

- Scan001.PDF
- Scan001.PDF
- Questionnaire - Part B - Development Fund (H3043749).DOC
- Questionnaire - Part B - P A Support Fund (H3043737).DOC

Attachments to e-mail of 09 May 2007:

Questionnaire - Part B - Development Fund (H3043749).DOC

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)¹ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year².

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

United Kingdom.

B.2 Name of funding scheme:

The UK Film Council's Development Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm).

¹ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

² “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. However, the UK Film Council will not fund films which are unlikely to be classified as British Films (please see A.4 in respect of the Schedule 1 of the Films Act 1985 requirements as at December 2005).

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The provisions referred to in B.4 state that 12.2% of the National Lottery's distribution funds should be for distribution by the UK Film Council (s.23(e) of the National Lottery Act 1993 as amended).

The UK Film Council's internal regulations require the application to be assessed initially and primarily on its creative merit and the applicant to be informed within eight weeks of receipt of the application.

Inevitably, the selection process is subjective and the decision taken by the Development Fund is final. There is no appeal process open to applicants whose projects have been rejected on creative grounds only for applicants who are wanting to appeal on the grounds of alleged errors in procedures.

If the Development Fund is interested in the project the applicant may be invited to the UK Film Council to discuss it further. The UK Film Council may reject the application at this stage or alternatively it may suggest changes to the project.

The UK Film Council will only accept resubmissions for funding if there has been significant and substantial changes to the script, or if major new elements have been attached or secured since the previous submission.

The UK Film Council will write to successful applicants to let them know if the application has been successful, the amount of funding to be offered and the basis upon which investment is offered and the conditions attached to such an offer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total*

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

To be eligible to apply for the UK Film's Development fund, applicants must be:

- a company which is registered and centrally-managed and staffed in the UK; or
- a company which is registered and centrally managed and staffed in another state of the European Union/European Economic Area; or
- an individual aged 18 years or over and a national or resident of the United Kingdom (or another state of the European Union/European Economic Area); and be able to
- demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985.

The Development Fund will consider exceptions to the eligibility criteria at its own discretion if it believes that such an exception will help achieve one of the UK Film Council's objectives.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

Co-productions can apply providing that the applicant is based in the UK. If the applicant is based in the EEA, the applicant can apply and subsequently attach a UK producer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines exist which involve the UK Film Council acknowledging the application within two weeks of receipt. The applicant will be notified as soon as possible if the application is not eligible for funding.

The UK Film Council's main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK. The aim of the Development Fund is to broaden the quality, range and ambition of UK film projects and talent being developed.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,³ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The UK Film Council will assess applications based on the following criteria:

- the project must be capable of being developed as a feature length theatrical film intended for production in the English language;
- can the project find cinema audiences in the UK and around the world across a full range of budgets;
- is the project commercial and financially viable;
- what are the cost of development compared to an assessment of the likely production budget;
- what is the applicant's track record in film production taking into account, the commercial success of the applicant's films;
- what is the creative merit of the project;
- what is the cost of developing the project in comparison to the normal industry cost of developing a project;
- is the production wholly or substantially capable of qualifying as a British film (please see A.4 for further details).

CONTACT DETAILS

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

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

³ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

020 7861 7861

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: April 2007.

Attachments to e-mail of 09 May 2007:

Questionnaire - Part B - P A Support Fund (H3043737).DOC

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁴ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁵.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

United Kingdom.

B.2 Name of funding scheme:

The UK Film Council's P&A Support Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm).

⁴ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁵ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. However, the UK Film Council did not provide funding towards the release of films in countries other than the UK or the UK and Ireland.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The provisions referred to in B.4 state that 12.2% of the National Lottery's distribution funds should be for distribution by the UK Film Council (s.23(e) of the National Lottery Act 1993 as amended).

The UK Film Council's internal regulations require the application to be assessed initially and primarily on its creative merit and the applicant to be informed within eight weeks of receipt of the application. Applicants must apply usually a minimum of 12 weeks prior to the planned release date

Inevitably, the selection process is subjective and the decision taken by the P&A Support Fund is final. Applicants who have been rejected they will be offered the opportunity for an informal feedback session which will provide details of why the application failed and offer advice on how to make future applications.

If the P&A Support Fund is interested in the project the applicant may be invited to the UK Film Council to discuss it further. The UK Film Council may reject the application at this stage or alternatively it may suggest changes to the project.

The UK Film Council will write to successful applicants to let them know if the application has been successful, the amount of funding to be offered and the basis upon which investment is offered and the conditions attached to such an offer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for the UK Film's P&A Support fund, applicants must be a company which is registered and centrally-managed and staffed in the UK.

The films that the application is connected to must be classified as British. (Please see A.4 in respect of the Schedule 1 of the Films Act 1985 for the requirements as at December 2005.)

The P&A Support Fund will consider exceptions to the eligibility criteria at its own discretion if it believes that such an exception will help achieve one of the UK Film Council's objectives.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):
Co-productions can apply providing that the applicant is based in the UK. If the applicant is based in the EEA, the applicant can apply and subsequently attach a UK producer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):
There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the UK Film Council acknowledging the application within two weeks of receipt. The applicant will be notified as soon as possible if the application is not eligible for funding.

The UK Film Council's main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005*)?
No.

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 in cases of significant changes, before this date during the period from 2001 to 2005*):

N/A.

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁶ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The UK Film Council will assess applications by considering the following:

- does the film fit into the definition of a Specialised Film. For example, is it a foreign film with subtitles, a documentary, an archive or classic film, a non genre film? Does it have a complex or challenging subject matter, an innovative or unconventional storytelling style or aesthetic. Or is it a qualifying British Film under Schedule 1 of the Films Act 1985 but if released more widely with an enhanced marketing spend would have the ability to attract and deliver to new audiences that traditionally do not choose to view diverse films?
- what are the applicant's proposals to meet the needs of cinema-goers with sensory impairments;
- whether the level of proposed marketing investment is commensurate to the film's commercial potential e.g. with evidence of film rental estimates and in the opinion of the UK Film Council;
- the number and location of cinemas proposed and whether this will attract an audience who might not otherwise have the opportunity to view the film;
- the applicant's overall publicity strategy e.g. editorial coverage, features, star and director interviews etc;
- can the applicants demonstrate that they have already committed or be planning to commit a significant P&A investment in the film relative to the type of film and its perceived market potential;
- can the applicant demonstrate that it is able to commit sums to cover the entire P&A budget i.e. both its own and the UK Film Council's contribution since the award was usually cashflowed after the release of the film once all P&A costs were paid.
- is the applicant in possession of a print for a screening and the application;
- does the application relate to the release of the film in the UK including Ireland;
- is the film a feature length film which has secured a British Board of Film Classification certificate (excluding R18);
- can the applicant demonstrate that they own or control the UK theatrical rights to the film and preferably, other UK distribution rights, such as DVD and television too.

⁶ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

CONTACT DETAILS

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

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

020 7861 7861

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: April 2007.

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	21 March 2007

(...)

Please understand that when we agreed to undertake this work we never imagined that we would face such a degree of resistance from the various financing bodies.

I will make the necessary applications under the freedom of information act so as to get the written evidence you require.

(...)

My real concern is the time it will take to get this information, but it seems implicit in your email that the "physical" evidence gathering process is of primary importance to you.

Accordingly, we will get this as soon as possible together with any corrective statements that are needed if there is any disparity in what information was provided to us orally and what we receive in writing pursuant to the application.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	21 March 2007

(...)

Thank you for your letter of 2 March 2007.

I understand that requiring the documentation based on which you replied to our legal questionnaire under the Freedom of Information Act of 2000 would need more time and “would be likely to result in substantive further cost”. (...) We relied on your information for our own analysis of the relevant legal situation in your jurisdiction. Therefore, for you to be on the safe side, you may want to procure written evidence of the oral information you received from the various funding schemes’ administrations.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	02 March 2007

(...)

Please see the letter attached.

(...)

Attachment to e-mail of 02 March 2007: Scan001.PDF

(...)

I am keen to clarify some issues that relate to your concerns about verifying certain aspects of the criteria used by some of the regional funding schemes we have supplied information on.

In your email of 26 February 2007, you requested "*precise literal quotes of the relevant territorialisation requirements and the indication of their sources*" but (...) this is not going to be available in the form you require. The root of the problem in respect of this is that the regional bodies that administer the funding schemes are quasi government bodies but are not in fact heavily regulated or run in accordance with specific legislation designed to regulate their procedures and practices.

Effectively, these regional bodies receive funds in accordance with the specific legislation that we have notified you of but how they choose to administer and apply these funds are within their own control so long as they are compliant with the remit upon which they are provided by the regional development funding and privat funding from local businesses).

These regional bodies publish criteria and descriptions of their funding schemes which are available to download from their websites. These guidelines are reviewed annually and either continue to operate or are amended depending on what funds are allocated to them for the forthcoming year or whether the schemes are achieving the stated objectives of each regional body. Each regional body is fully responsible for administering the scheme itself. As a result however, we are beholden by the information published by the regional bodies and there is no way of independently verifying the position as at 31 December 2005 or at any date before that.

Accordingly, we sought verbal confirmation from the majority of agencies that the current territorial requirements for each regional agency are, if not exactly identical, are very similar to that required as at 31 December 2005. There is a possibility however that the published selective criteria used by some agencies may have changed slightly or the information we were given was wrong.

We have requested from the various bodies, documentation regarding the funding opportunities and criteria in place as at 31 December 2005, but encountered varying degrees of unwillingness and resistance to provide those details. Although, some regional bodies informed us that it may be possible to provide us with the information, we were told that this would take an extremely long time and substantial effort on their part which would cause a delay.

It is possible, if you wish, for us to request the information under the Freedom of Information Act 2000 (which would (in effect) force them to provide the information to verify the way they operated as at 31 December 2005) but this would take at least two months to get (...).

We understand that the information provided to you on these particular schemes so far is not conducive to your requirements in order to make an independent forensic assessment of the responses given. The information provided to you so far however, is the most accurate information that we are able to furnish you with based on what is available. Other than forcing the various bodies to disclose the information via the Freedom of Information Act 2000, I sincerely believe we have exhausted all the avenues we have to obtain it.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	26 February 2007

(...)

Thank you for this clarification. Please provide the reference to the materials published by the funding schemes (name of funding scheme, title of publications, place and date, and page). Even if those rules are somehow "private" (internal regulations), they are the basis of the funding schemes' activities, and a piece of reference for the stakeholders, and therefore relevant as evidence for the statements made in our reports.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	26 February 2007

(...)

The regional agencies in the United Kingdom are mostly autonomous bodies, rather than governmental bodies run by civil servants, as you may find in Bavaria for example. Unlike your description of the continent's regional agencies, the regional agencies in the UK formulate their own internal rules to distribute the funds allocated to them. If European Regional Development Funds are involved, there would be additional eligibility requirements, for example, the Objective One criteria.

There are legislative provisions to the extent that the legislation determines where and how much money is distributed to each regional agency. For example the National Lottery Act provides for a percentage of national lottery funding to be distributed to the Film Council and Scottish Screen. Thereafter however, regional agencies in the UK do not have a code or regulation underpinning them to determine how the funds allocated to them are spent.

As a result, we are unable to provide quotes from codes, regulations or "precise literal quotes of the relevant territorialisation requirements and the indication of their sources" since they do not exist. For example, the criteria set out in the answers to B.13 and the eligibility requirements set out in the answers to B.7, are those drafted and published by each regional agency themselves. They are not based on a legislative provision. There are no hard and fast rules as to how the funds are distributed by the agencies apart from the agency's published requirements and any applicable legislative requirements such as the Objective One criteria.

I hope this e-mail helps to clarify the position (...).

As requested, I attach the Merseyside Film and Television Fund and will send you a list of regional agencies that require their projects to be classified as British Films under the old Schedule 1 of the Films Act 1985 tomorrow.

(...)

Attachment to e-mail of 26 February 2007

- Questionnaire - Part B - Merseyside Film and Television Fund (H2958707).DOC

Attachment to e-mail of 26 February 2007:

Questionnaire - Part B - Merseyside Film and Television Fund (H2958707).DOC

PART B FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁷ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁸.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Merseyside, United Kingdom.

B.2 Name of funding scheme:

The Merseyside Film and Television Fund offers funding for the following schemes which are administered by North West Vision:

- Funding for Facilities Companies;
- Television Production Finance;
- Television Company Development;
- Television Project Development;
- Feature Film Production Finance;
- Feature Film Project Development;
- Feature Film Company Development; and
- Feature Film Production Finance.

B.3 Name and address of the funding scheme's administration and supervising authority:

North West Vision, Manchester Film Office, Ground Floor, BBC New Broadcasting House, Oxford Road, Manchester, M60 1SJ.

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

- **the dates when these laws and regulations entered into force;**

⁷ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁸ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and provide a copy of the laws and regulations in the version as at 31 December 2005 (in the national language only).
- Council Regulation (EC) No 1260/99 of 21 June 1999.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

- B.5 Does this scheme impose any explicit obligation on independent film or audio visual project proposals that they must spend a minimum proportion of the production budget in the Member States/region to qualify for State aid or to receive the maximum amount of State aid available** (*consider the situation as at 31 December 2005 as only in cases of significant changes, were situated before the State 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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Please visit <http://europa.eu/scadplus/leg/en/lvb/l60014.htm> for a full copy of Council Regulation (EC) No 1260/99 of 21 June 1999 and links to related legislation, for example the European Development Fund (Regulation (EC) No 1783/1999 at <http://europa.eu/scadplus/leg/en/lvb/l60015.htm>).

The Merseyside Film and Television Fund is administered by North West Vision. Please see the individual Part B questionnaire for North West Vision for further information in respect of the Merseyside Film and Television Fund's internal regulations and procedure.

- 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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply to the Merseyside Film and Television Fund, applicants must:

- be based in Merseyside or be locating to Merseyside within 3 months of application or developing a joint venture with a company based on Merseyside;
- demonstrate a business proposition that will benefit the Merseyside economy in terms of jobs and/or turnover;
- show commitment to the development of the film/television/digital media industries in Merseyside; and

- meet the small to medium enterprises criteria i.e. the applicant has less than 250 employees, an annual turnover of less than 40 million Euros and an annual balance sheet not exceeding 27 million Euros.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):
Co-productions may apply for funding from the Merseyside Film and Television Fund providing that one of the co-producers are based in Merseyside.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):

There are no judicial practices as such however there is an administrative practice which involves, North West Vision (the Merseyside Film and Television Fund's administrator) verifying that the information submitted by the applicant is correct.

The Merseyside Film and Television Fund offers funding to projects from companies based in or relocating to Merseyside that can show benefits for Merseyside. For further information with respect to North West Vision's objectives, please see the individual Part B questionnaire for North West Vision.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State 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 in cases of significant changes, before this date during the period from 2001 to 2005*):
As a result of the funding being provided from the European Development Fund, the selection criteria implies that applicants applying to the fund will have to show a benefit to the Merseyside region in terms of jobs or spend that would contribute to the long-term development of the Merseyside film industry.

CULTURAL CAUSES

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

Please see A.7 and refer to the legislation referred to in B.6 above.

SELECTIVE SCHEMES

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

Please see B.13 of the individual Part B questionnaire for North West Vision who are responsible for administering the Merseyside Film and Television Fund schemes.

CONTACT DETAILS

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

Chris Moll, Head of Funds, (chrism@northwestvision.co.uk)

North West Vision, Manchester Film Office, Ground Floor, BBC New Broadcasting House, Oxford Road, Manchester M60 1SJ

Tel: 0161 244 3750

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

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

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	26 February 2007

(...)

further to our conversation of today, please provide us the information as follows:

1) the list of regional funding scheme for which the British nationality test (70% according to reply A.4) applies in addition to the fund specific conditions (...)

2) the question on the Merseyside Film and TV fund (...);

3) the precise literal quotes of the relevant territorialisation requirements and the indication of their sources, e.g. "art. 12 of the BadenWurtemberg Film Fund guidelines, located under the section on selective aid criteria" (as requested under question B.6 of our legal questionnaire) for each funding scheme (...).

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	23 February 2007

(...)

regarding the North West Vision funding scheme. Under Point B.7 you mention the Merseyside Film and TV fund without providing us any further explanation on this fund. Please inform us about this fund and its relationship to the North West Vision funding scheme.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	15 February 2007

(...)

please find attached the answers (...), which covers the Scottish law question (see item number 26). I also attach the West Midlands completed questionnaire.

(...)

Attachments to e-mail of 15 February 2007
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- Answers to Questions Raised on 6 and 8 December 2006 (H2899136-2).DOC
- Questionnaire - Part B - Screen West Midlands (H2902711).DOC

Attachment to e-mail of 15 February 2007:

Answers to Questions Raised on 6 and 8 December 2006 (H2899136-2).DOC

**ANSWERS TO QUESTIONS RAISED BY GERMANN-AVOCATS
ON 6 AND 8 DECEMBER 2006**

GENERAL

1. *“(...) she believes Sgrin Cymru to be the Arts Council Wales funding scheme (or since April 2006, its replacement, Film Agency Wales). Can you confirm this information?”*

Yes, that is correct.

2. *“Could you inform us whether the “Seirbheis nam Meadhanan Gaidhlig” and the Screen West Midlands funding schemes are relevant for our study (State aid funding schemes having an annual budget of at least Euro one million during the reference period between 2001 and 2005)?”*

Yes they are. The report for Seirbheis nam Meadhanan Gaidhlig has already been sent to you (please see attached). The Screen West Midlands report will follow shortly.

3. *At A5: “Which bilateral agreements are being examined and will possibly be terminated?”*

The UK/Germany co-production treaty was terminated on 31 December 2006. The UK/Norway co-production treaty will be terminated on 24 May 2007.

CORNWALL FILM

4. *At B.2: “Are the six funding schemes listed in your reply distinct areas under which funding can be sought or are they in fact six different schemes run under the same conditions by Cornwall Film? – If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them – please note that this would also apply to similar cases for the other funding schemes you covered so far.”*

The 6 listed funding schemes have the same territorial eligibility requirements.

Please note that Cornwall Film was established in 2001 to concentrate on development and short films. Between 2002 and 2004, Cornwall Film spent almost £500,000. Cornwall Film was anticipated to have a value of over £1.8 million in 2005-2006 however this included private match funding from private businesses.

5. At B.4: “Please quote the regulations governing this funding scheme”.

Council Regulation (EC) No 1260/99 of 21 June 1999. Cornwall is a qualifying region under the European Union’s Objective One.

National Lottery Act 1993 as amended by the National Lottery Act 1998 and the National Lottery Act 2006.

6. At B.12: “Please quote and summarize rules of law governing this funding scheme that articulate cultural objectives and/or justifications”.

Cornwall Film’s cultural objectives are governed by its internal regulations. Cornwall Film aims to develop a sustainable industry to create training opportunities and jobs for freelance crew and core creative teams which are based in Cornwall but currently have to travel away from the area to find work. Cornwall Film also aims to encourage indirect spend from productions in Cornwall that are developed in partnership with a Cornwall resident partner and attracts investment from elsewhere. Co-productions are encouraged provided that one co-producer is based in Cornwall or the Isles of Scilly.

7. At B.13: “In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?”

Sometimes applications will be returned to the applicant for further information or for further specified work before a decision will be made. The decision will be put in writing. There is no appeals procedure but the applicant may apply for funding for another project.

EM MEDIA

8. At B.9: “Do the objectives you list govern EM Media as a corporation or the funding scheme it runs?”

The objectives listed in B.9 are those that govern EM Media as a corporation but also underpin the funding schemes it runs.

9. At B.13: “In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?”

EM Media will acknowledge each application, following which, the application will be formally assessed by EM Media staff. If appropriate, the application will also be sent out for additional assessment by external independent professional advisers. Within 8 weeks of receiving the application, EM Media aims to write to the applicant with notification of the outcome of the application. During the assessment, EM Media may ask for further information which may mean the procedure will take longer than 8 weeks.

Decisions are expressly stated to be made at the discretion of the EM Media's board in accordance with EM Media's published assessment criteria. If an applicant has a complaint or would like to appeal against the outcome of its application on any of those grounds, there is a published Complaints and Appeals Procedure. There is no appeal procedure however, for decisions taken on creative grounds.

FILM LONDON

10. **At B.2: “Do the funding schemes listed collectively offer an equivalent of one million Euros per year?”**

Between 2000 and 2006, the amount available for funding fluctuated. Collectively however, the amount offered each year is believed to have been approximately the equivalent to one million Euros per year.

11. **At B.2: “Is our understanding correct that they [the schemes listed] are part of a unit under the Film London funding scheme that are governed by the same rules that are relevant for our analysis? - If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them”.**

The funding schemes listed have the same territorial eligibility requirements.

12. **At B.5: “Please quote and describe the exact requirements regarding a minimum proportion of the production budget that must be spent in the region?”**

Film London may require a funding project to be capable of qualifying as a “British Film”. In that case, a proportion of the budget will have to be spent in the UK as described in the Part B Questionnaires describing the new tax credit and sale and leaseback system.

13. **At B.5: “Do these explicit territorialisation requirements need to be met in order to be eligible for support or to obtain the maximum amount of State aid that is available under this funding scheme?”**

No, it is possible to obtain the maximum amount of state aid that is available under this funding scheme through other means and not necessarily by spending a proportion of the budget in the UK.

NORTH WEST VISION

14. **At B.7: “Please clarify whether only those applicants who are marked with an asterisk have to be based in the Northwest?”**

Applicants to schemes marked with an asterisk must be based in Merseyside or be locating to Merseyside within 3 months or be developing a joint venture with a company based in Merseyside. Merseyside is the area surrounding Liverpool which is in the North West of England.

15. ***At B.7: “Please cover the Merseyside Film and TV Fund (this funding scheme is not mentioned in the list of schemes operated by North West Vision yet the eligibility requirements are linked to it). We need to receive the relevant information on this fund to complete our report on the North West Vision funding scheme.”***

Applicants to the Merseyside Film and TV Fund must demonstrate a business proposition that will benefit the Merseyside economy in terms of jobs and/or turnover, it must show commitment to the development of the media industry in Merseyside and it must meet the small to medium enterprise criteria.

16. ***At B.6: “In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?”***

If an application is unsuccessful, North West Vision will explain the reasons why. There is no procedure to appeal against the decision itself but if the applicant has any concerns about any aspect of the application process, North West Vision have a detailed Complaints and Appeals procedure.

17. ***At B.7: “Do the same territorialisation requirements apply to the applicants for the funding schemes that are not marked with asterisks?”***

All applicants have to be based in the North West, schemes marked with asterisks require applicants to be based in Merseyside which is a specific area of the North West.

SCREEN YORKSHIRE

18. ***At B.7: “Please clarify the meaning of “one of the principals”.”***

We understand “one of the principals” to mean, either, the director, producer, or writer.

FILM AGENCY WALES

19. ***At B.5 – B.9: “Please indicate the minimum proportion of the budget to be locally spent and provide a short description of the way this requirement works if it is not self-explanatory.”***

Feature films funded by Film Agency Wales should be capable of qualifying as a British Film. This will require a proportion of the budget to be spent in the UK as

described in the Part B Questionnaires describing the new tax credit and sale and leaseback system.

Film Agency Wales encourages maximising Welsh spend through the employment of Welsh cast and crew and the use of Welsh facilities wherever practical. However, this is not essential. Film Agency Wales' primary concern in allocating funds will be the use of key creative Welsh talent i.e. writer/director/producer.

CREATIVE IP FUND

- 20.** *At B.5 – B.9: “Please indicate the minimum proportion of the budget to be locally spent and provide a short description of the way this requirement works if it is not self-explanatory”.*

The Creative IP Fund does not stipulate what the minimum proportion of the budget to be spent locally would be, only that a portion of the final production budget is spent in Wales in order for the project to bring an economic benefit to the area.

UK FILM COUNCIL’S NEW CINEMA AND PREMIERE FUNDS

- 21.** *“Is our understanding correct that these two funding schemes were not in force during the reference period between 2001 and 2005 (please consider the transitional rules, if any, that apply to these funding schemes)?”.*

No, both the Premiere and New Cinema Funds existed during the period between 2001 and 2005.

ALL FUNDING SCHEMES

- 22.** *At A.4: “Is our understanding correct that the same formal nationality certification rules and procedures apply to all UK funding schemes?”.*

No. The nationality certification rules and procedures only apply if a funding scheme requires a film to be classified as a “British Film” e.g. in order for the film to have access to the tax credit or finance under the erstwhile sale and leaseback scheme.

- 23.** *At B.2: “Is our understanding correct that funding schemes running different funding programmes apply the same rules that are relevant for our study to each of the programmes. If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them (see our question above to Cornwall Film and Film London funding schemes). In other words, please confirm that you have exhaustively covered all relevant the funding scheme in your jurisdiction”.*

Yes. The funding schemes which offer different funding programmes apply the same territorial eligibility criteria to each programme.

- 24. At B.5 - B.9: “Where the rules governing the funding schemes provide that the granted support must be locally spent, please specify the percentage of this local expenditure requirement for each applicable scheme, and the related limitations (e.g. 150% of the aid granted must be spent locally, provided that the producer remain free to spend 20% of the production budget in another Member State)”.**

The funding schemes do not specify minimum or maximum level of funds that must be spent locally, providing that the area from which the funding scheme is based will benefit from the funding of the film. Funding schemes will very rarely fund 100% of projects. Projects which are funded 100% e.g. by way of a grant, are usually of low value e.g. grants of £300. Most schemes will fund a maximum of 50% of a project with match spending required from another source as well as their money back or a return on their investment.

- 25. “Is our understanding correct that the same regime applies under Scottish law for the Scottish funds? If not, please address this question separately”.**

Yes, Scottish Screen requires films funded by the organisation to be classified as a “British Film”.

- 26. “Please also clarify whether there is any law other than English and Scottish law that is applicable to the funding schemes of your jurisdiction. If so, please specify the relevant legal consequences on the funding schemes concerned.”**

Apart from English and Scottish law, we are not aware of any other law applicable to the funding schemes.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)¹⁰ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year¹¹.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

West Midlands, United Kingdom.

B.2 Name of funding scheme:

Screen West Midlands operate the following funding schemes:

- Access Fund;
- Digital Extreme;
- Film and Media Production Fund;
- Digital Shorts; and
- Advantage Development Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

Screen West Midlands, 9 Regent Place, Birmingham B1 3NJ

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by

¹⁰ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in 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 audio visual works produced and distributed by entities that are legally independent from broadcasters.

the National Lottery Act 1998 (http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>) . Council Regulation (EC) No 1260/99 of 21 June 1999.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

B.5 Does this scheme impose any explicit obligation on independent film or audio visual project proposals that they must spend a minimum proportion of the production budget in the Member States/region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as at 31 December 2005 as only in cases of significant changes, were situated before the State 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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of Screen West Midlands' funds, are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. Screen West Midlands distributes these funds to support and invest in regional projects along with European Regional Development Funds.

Screen West Midlands' internal regulations include, first advising applicants to discuss the project with Screen West Midlands in the first instance. This will enable the applicant to apply to the scheme most suited to its needs and will give the applicant an opportunity to ask any questions it may have regarding the application.

On receipt of the application, Screen West Midlands will assess the application with input from approved external industry professionals. A committee comprising members from Screen West Midlands' board of directors and/or senior management team will make recommendations for awards based on the feedback received during the assessment process. Applicants are informed that the total assessment process can take up to 8 weeks. Applicants are notified in writing of receipt of their application and whether or not their application has been successful. During the assessment process, a decision will be made based on the viability of the project or application depending on how innovative and creative the concept for the project is as outlined in B.13. If the application is unsuccessful, Screen West Midlands can offer feedback on the application if requested to do so.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).

To be eligible for Screen West Midlands funding, applicants must:

- be based in the West Midlands;
- if an applicant is originally based outside the West Midlands, the applicant will be expected to demonstrate that the project will be able to contribute to a sustainable screen media economy in the West Midlands.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*
Co-productions are encouraged. Screen West Midlands will fund co-producers providing that one of the co-producers is based in the West Midlands.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*
There are no judicial practices as such however there is an administrative practice which involves, Screen West Midlands verifying that the information submitted by the applicant is correct.

Screen West Midlands' mission is to create a thriving screen media industry in the region. Screen West Midlands' aim is to support, promote and develop the screen media industry e.g. production, education, skills development and exhibition.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State 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 in cases of significant changes, before this date during the period from 2001 to 2005):*

The selection criteria implies that if an applicant is not originally based in the region, proposals are more likely to be selected for funding if the project will create employment in the area or make use of local facilities.

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹² please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Screen West Midlands assesses each project on a number of criteria, which include:

- whether the project has the potential to attract an audience appropriate to its scale and target markets;
- whether the project is commercially viable;
- the quality of the proposal e.g. whether the applicant demonstrates a thorough understanding of the project;
- whether the plans for the project are realistic within the budget and time frame; and
- the project's potential to attract investment into the region e.g. by creating employment in the area or making use of local facilities; and
- whether the project would make use of local emerging talent.

CONTACT DETAILS

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

Roy Jenks, Chief Operating Officer (info@screenwm.co.uk)
Screen West Midlands, 9 Regent Place, Birmingham B1 3NJ
Tel: 0121 265 7120

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

¹² Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	29 January 2007

(...)

Thank you for your reply of 19 January below.

Please send us your last report on Screen West Midlands, that you announced in your mentioned email, as soon as possible, but no later than by the end of this week.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	19 January 2007

(...)

I attach answers to the questions set out in your e-mails of 6 and 8 December 2006.

Amended reports to reflect the changes made to the new tax credit system and sale and leaseback system will be sent to you shortly. These changes were requested by the European Commission before granting formal approval of the new tax credit system.

(...)

Attachments to e-mail of 19 January 2007

- Answers to Questions Raised on 6 and 8 December 2006 (H2899136-2).DOC
- Questionnaire - Part B - Gaelic Media Service (H2839236).DOC

Attachment to e-mail of 19 January 2007:

Answers to Questions Raised on 6 and 8 December 2006 (H2899136-2).DOC

**ANSWERS TO QUESTIONS RAISED BY GERMANN-AVOCATS
ON 6 AND 8 DECEMBER 2006**

GENERAL

1. *“(...) she believes Sgrin Cymru to be the Arts Council Wales funding scheme (or since April 2006, its replacement, Film Agency Wales). Can you confirm this information?”*

Yes, that is correct.

2. *“Could you inform us whether the “Seirbheis nam Meadhanan Gaidhlig” and the Screen West Midlands funding schemes are relevant for our study (State aid funding schemes having an annual budget of at least Euro one million during the reference period between 2001 and 2005)?”*

Yes they are. The report for Seirbheis nam Meadhanan Gaidhlig has already been sent to you (please see attached). The Screen West Midlands report will follow shortly.

3. *At A5: “Which bilateral agreements are being examined and will possibly be terminated?”*

The UK/Germany co-production treaty was terminated on 31 December 2006. The UK/Norway co-production treaty will be terminated on 24 May 2007.

CORNWALL FILM

4. *At B.2: “Are the six funding schemes listed in your reply distinct areas under which funding can be sought or are they in fact six different schemes run under the same conditions by Cornwall Film? – If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them – please note that this would also apply to similar cases for the other funding schemes you covered so far.”*

The 6 listed funding schemes have the same territorial eligibility requirements.

Please note that Cornwall Film was established in 2001 to concentrate on development and short films. Between 2002 and 2004, Cornwall Film spent almost £500,000. Cornwall Film was anticipated to have a value of over £1.8 million in 2005-2006 however this included private match funding from private businesses.

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Council Regulation (EC) No 1260/99 of 21 June 1999. Cornwall is a qualifying region under the European Union’s Objective One.

National Lottery Act 1993 as amended by the National Lottery Act 1998 and the National Lottery Act 2006.

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Sometimes applications will be returned to the applicant for further information or for further specified work before a decision will be made. The decision will be put in writing. There is no appeals procedure but the applicant may apply for funding for another project.

EM MEDIA

8. At B.9: “Do the objectives you list govern EM Media as a corporation or the funding scheme it runs?”

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FILM LONDON

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13. ***At B.5: "Do these explicit territorialisation requirements need to be met in order to be eligible for support or to obtain the maximum amount of State aid that is available under this funding scheme?"***

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NORTH WEST VISION

14. ***At B.7: "Please clarify whether only those applicants who are marked with an asterisk have to be based in the Northwest?"***

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Applicants to the Merseyside Film and TV Fund must demonstrate a business proposition that will benefit the Merseyside economy in terms of jobs and/or turnover, it must show commitment to the development of the media industry in Merseyside and it must meet the small to medium enterprise criteria.

16. ***At B.6: “In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?”***

If an application is unsuccessful, North West Vision will explain the reasons why. There is no procedure to appeal against the decision itself but if the applicant has any concerns about any aspect of the application process, North West Vision have a detailed Complaints and Appeals procedure.

17. ***At B.7: “Do the same territorialisation requirements apply to the applicants for the funding schemes that are not marked with asterisks?”***

All applicants have to be based in the North West, schemes marked with asterisks require applicants to be based in Merseyside which is a specific area of the North West.

SCREEN YORKSHIRE

18. ***At B.7: “Please clarify the meaning of “one of the principals”.”***

We understand “one of the principals” to mean, either, the director, producer, or writer.

FILM AGENCY WALES

19. ***At B.5 – B.9: “Please indicate the minimum proportion of the budget to be locally spent and provide a short description of the way this requirement works if it is not self-explanatory.”***

Feature films funded by Film Agency Wales should be capable of qualifying as a British Film. This will require a proportion of the budget to be spent in the UK as

described in the Part B Questionnaires describing the new tax credit and sale and leaseback system.

Film Agency Wales encourages maximising Welsh spend through the employment of Welsh cast and crew and the use of Welsh facilities wherever practical. However, this is not essential. Film Agency Wales' primary concern in allocating funds will be the use of key creative Welsh talent i.e. writer/director/producer.

CREATIVE IP FUND

- 20.** *At B.5 – B.9: “Please indicate the minimum proportion of the budget to be locally spent and provide a short description of the way this requirement works if it is not self-explanatory”.*

The Creative IP Fund does not stipulate what the minimum proportion of the budget to be spent locally would be, only that a portion of the final production budget is spent in Wales in order for the project to bring an economic benefit to the area.

UK FILM COUNCIL’S NEW CINEMA AND PREMIERE FUNDS

- 21.** *“Is our understanding correct that these two funding schemes were not in force during the reference period between 2001 and 2005 (please consider the transitional rules, if any, that apply to these funding schemes)?”.*

No, both the Premiere and New Cinema Funds existed during the period between 2001 and 2005.

ALL FUNDING SCHEMES

- 22.** *At A.4: “Is our understanding correct that the same formal nationality certification rules and procedures apply to all UK funding schemes?”.*

No. The nationality certification rules and procedures only apply if a funding scheme requires a film to be classified as a “British Film” e.g. in order for the film to have access to the tax credit or finance under the erstwhile sale and leaseback scheme.

- 23.** *At B.2: “Is our understanding correct that funding schemes running different funding programmes apply the same rules that are relevant for our study to each of the programmes. If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them (see our question above to Cornwall Film and Film London funding schemes). In other words, please confirm that you have exhaustively covered all relevant the funding scheme in your jurisdiction”.*

Yes. The funding schemes which offer different funding programmes apply the same territorial eligibility criteria to each programme.

- 24. At B.5 - B.9: “Where the rules governing the funding schemes provide that the granted support must be locally spent, please specify the percentage of this local expenditure requirement for each applicable scheme, and the related limitations (e.g. 150% of the aid granted must be spent locally, provided that the producer remain free to spend 20% of the production budget in another Member State)”.**

The funding schemes do not specify minimum or maximum level of funds that must be spent locally, providing that the area from which the funding scheme is based will benefit from the funding of the film. Funding schemes will very rarely fund 100% of projects. Projects which are funded 100% e.g. by way of a grant, are usually of low value e.g. grants of £300. Most schemes will fund a maximum of 50% of a project with match spending required from another source as well as their money back or a return on their investment.

- 25. “Is our understanding correct that the same regime applies under Scottish law for the Scottish funds? If not, please address this question separately”.**

Yes, Scottish Screen requires films funded by the organisation to be classified as a “British Film”.

- 26. “Please also clarify whether there is any law other than English and Scottish law that is applicable to the funding schemes of your jurisdiction. If so, please specify the relevant legal consequences on the funding schemes concerned.”**

Apart from English and Scottish law, we are not aware of any other law applicable to the funding schemes.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)¹³ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year¹⁴.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Scotland, United Kingdom.

B.2 Name of funding scheme:

The Gaelic Media Service (“GMS”) offers grant aid funding to:

- television and radio projects that have a UK commissioning broadcaster on board or an independent producer which is an in-house production arm of a broadcaster, that match GMS’ funding criteria; and
- assist independent producers to develop programme ideas that will help induce a commissioning broadcaster to accept the project for broadcast. Up to £3,000 is on offer for non-drama projects.

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

Gaelic Media Service, Seaforth House, Seaforth Road, Stornoway, Isle of Lewis HS1 2SD.

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

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

¹³ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

¹⁴ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

Broadcasting Act 1990 s.183(1)

(http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm) as amended by the Communications Act 2003, s.360(3), Schedule 15 paragraph 62(1) and (2) (<http://www.opsi.gov.uk/acts/acts2003/20030021.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. The main criteria for funding is that the producer is willing to commission and broadcast the project and that it is in the Gaelic language.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

There are no explicit territorialisation provisions contained in the rules listed under B.4.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, the applicant must be willing to have the project broadcast and commissioned and it must be in the Gaelic language.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):

Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the GMS conducting a bidding process for grants as follows:

- establishing a programme menu based on research and discussion;
- accepting submissions of ideas for programmes/series-strands by broadcast/producer;
- the GMS evaluating ideas;
- the GMS discussing, the feasibility of the commissioning and transmission with broadcasters of programmes selected by GMS on the understanding that GMS may fund the production;
- the broadcaster signing a letter of intent to commission and transmit programmes issued to GMS or a letter of intent to transmit;
- the GMS sending a letter to the broadcaster confirming the programme's status and proposed delivery date;
- programme grant agreement between GMS and producer signed; and
- payments made by GMS to a production trust account on the basis of an agreed schedule and cash flow verified by regular reports.

GMS' mission statement is to work in partnership with broadcasters and producers, to strive to ensure that high quality Gaelic television programmes are available to viewers throughout Scotland at appropriate viewing times, and that the range and quality of Gaelic sound programmes are enhanced.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation expressed in cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate, explicit or implicit

total realisation requirements mentioned in the answers B.6, B.7 and B.11 that are currently in force:

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹⁵ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The GMS will evaluate the quality of each applicant's idea and whether it is suitable or would appeal to the Gaelic population.

CONTACT DETAILS

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

Margaret Cameron (Margaret@gms.org.uk)

Gaelic Media Service, Seaforth House, Seaforth Road, Stornoway, Isle of Lewis HS1 2SD.

01851 705550

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: October 2006.

¹⁵ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Member State:	UNITED KINGDOM
Re:	Additional Information
Date:	22 December 2006

'Caspian' to qualify as U.K. movie

London companies to be given much of the effects work

By ADAM DAWTREY

LONDON — "Chronicles of Narnia: Prince Caspian," the second movie in Disney and Walden Media's "Narnia" franchise, will qualify as a British film under the U.K.'s new cultural test, despite the fact that the majority of filming will take place in the Czech Republic.

That means Disney and Walden will be able to access tax credits worth 20% of their U.K. expenditure. They are planning to do most of the post-production and special effects work in the U.K., making up a large proportion of the movie's budget.

Execs at the U.K. Film Council regard this as positive example of how Blighty's new system of tax credits will benefit the British film industry by attracting production expenditure — in this case f/x work — to the U.K.

The first Narnia movie, "The Lion, the Witch and the Wardrobe," which shot largely in New Zealand, could not qualify as a British film under the old tax rules, abolished last April.

As a result, the producers did not have any incentive to use British crews or to spend money in the U.K., even though the franchise is based on a series of classic British children's books.

"We are pleased to confirm that 'Prince Caspian' is expected to qualify as a British film under the government's new cultural points test," Disney said in a statement. "While the majority of filming will take place outside the U.K., the majority of the post production and visual effects, which constitute a significant part of the overall production budget, will take place in the U.K."

Under the new system, "Prince Caspian," albeit directed by New Zealander Andrew Adamson, will qualify as British largely because it is based on a British book, with British leading characters (played by British actors) and a British setting. The rules make allowance for the fact that Narnia is an imaginary place, but one infused with a British sensibility.

None of these factors counted under the old tax system, where qualification was based purely on expenditure, and where relevant on the terms of co-production treaties. "The Lion, the Witch and the Wardrobe," which shot in New Zealand and the Czech Republic, and used f/x houses in Los Angeles and New Zealand, did not spend anywhere near enough in the U.K. to qualify, and did not fit into the U.K./N.Z. treaty. U.K. Film Council insiders suggest that the decision by Disney and Walden to use British f/x for "Prince Caspian" was partly encouraged by the tax credit, but also reflects the giant strides that the U.K. post houses have taken in creative quality thanks to their experience working on such pics as the Harry Potter franchise.

Read the full article at:

<http://www.variety.com/article/VR1117955660.html>

<http://www.variety.com/article/VR1117955660.html?categoryId=1043&cs=1&nid=3078>



Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	08 December 2006

(...)

Further to my previous email below, I have an additional follow up question regarding your reply to question B.8:

By email of 3 November, you advised us under English law. Is our understanding correct that the same regime applies under Scottish law for the Scottish funds? If not, please address this question separately.

Please also clarify whether there is any other law than English and Scottish law that is applicable to the funding schemes of your jurisdiction. If so, please specify the relevant legal consequences on the funding schemes concerned.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	06 December 2006

(...)

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

1) Anwen informed us by email of 13 November that she believes Sgrin Cymru to be the Arts Council Wales funding scheme (or since April 2006, its replacement, Film Agency Wales). Can you confirm this information? Furthermore, could you inform us whether the “Seirbheis nam Meadhanan Gaidhlig” and the Screen West Midlands funding schemes are relevant for our study (State aid funding schemes having an annual budget of at least Euro one million during the reference period between 2001 and 2005)? – If so, please cover them in your country report.

2) At the Cornwall Film funding scheme:

- Reply A.5: Which bilateral agreements are being examined and will possibly be terminated?

- Reply B.2: Are the six funding schemes listed in your reply distinct areas under which funding can be sought or are they in fact six different schemes run under the same conditions by Cornwall Film? – If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them – please note that this would also apply to similar cases for the other funding schemes you covered so far.

- Reply B.4: Please quote the regulations governing this funding scheme.

- Reply B.12: Please quote and summarize rules of law governing this funding scheme that articulate cultural objectives and/or justifications.

- Reply B.13: In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?

3) At the EM Media funding scheme:

- Reply B.9: Do the objectives you list govern EM Media as a cooperation or the funding scheme it runs?

- Reply B.13: In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?

4) At Film London funding scheme:

- Reply B.2: Do the funding schemes listed collectively offer an equivalent of one million Euros per year? – Furthermore, is our understanding correct that they are part of a unit under the Film London funding scheme that are governed by the same rules

that are relevant for our analysis? - If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them.

- Reply B.5: Please quote and describe the exact requirements regarding a minimum proportion of the production budget that must be spent in the region? In particular, do these explicit territorialisation requirement need to be meet in order to be eligible for support or to obtain the maximum amount of State aid that is available under this funding scheme?

5) At the North West Vision funding scheme:

- Reply B.7: Please clarify whether only those applicants who are marked with asterisk have to be based in the Northwest?

- Reply B.7: Please cover the Merseyside Film and TV Fund (this funding scheme is not mentioned in the list of schemes operated by North West Vision yet the eligibility requirements are linked to it). We need to receive the relevant information on this fund to complete our report on the North West Vision funding scheme.

- Reply B.6: In case of a refusal, is the decision reasoned/motivated in written form, and can it be appealed?

- Reply B.7: Do the same territorialisation requirements apply to the applicants for the funding schemes that are not marked with asterisks?

6) At the Screen Yorkshire funding scheme:

- Reply B.7: Please clarify the meaning of “one of the three principals”.

7) At the Film Agency Wales funding scheme:

- Replies B.5 – B.9: Please indicate the minimum proportion of the budget to be locally spent and provide us a short description of the way this requirement works if it is not self-explanatory.

8) At the Creative IP Fund:

- Replies B.5 – B.9: Please indicate the minimum proportion of the budget to be locally spent and provide us a short description of the way this requirement works if it is not self-explanatory.

9) At UK Film Council's New Cinema Fund and UK Film Council's Premiere:

- Is our understanding correct that these two funding scheme were not in force during the reference period between 2001 and 2005 (please consider the transitional rules, if any, that apply to these funding schemes)?

10) Questions addressing all funding schemes:

- Reply A.4: Is our understanding correct that the same formal nationality certification rules and procedures apply to all UK funding schemes?

- Reply B.2: Is our understanding correct that funding schemes running different funding programmes apply the same rules that are relevant for our study to each of the programmes. If they are different schemes, i.e. obeying to different rules with respect to the relevant points of our questionnaire, we would need separate replies to the part B of our questionnaire for each of them (see our question above to Cornwall Film and Film London funding schemes). In other words, please confirm that you have exhaustively covered all relevant the funding scheme in your jurisdiction.

- Replies B.5 to B.9: Where the rules governing the funding schemes provide that the granted support must be locally spent, please specify the percentage of this local expenditure requirement for each applicable scheme, and the related limitations (e.g. 150% of the aid granted must be spent locally, provided that the producer remain free to spend 20% of the production budget in another Member State).

(...)

Member State:	UNITED KINGDOM
Re:	Additional Information
Date:	22 November 2006

IP/06/1611

Brussels, 22nd November 2006

State aid: Commission approves revised UK film tax incentive scheme

The European Commission has approved the United Kingdom's film tax incentive scheme on the basis of EC Treaty state aid rules. The scheme aims to use tax-based incentives to encourage filmmakers to produce cultural British films. The scheme has been approved until 31 March 2012 on the basis of the revised UK Cultural Test. The Commission's assessment of the scheme was based on the criteria outlined in its 2001 Communication on cinema and audiovisual production. The UK authorities have undertaken to modify the film tax incentive scheme, if necessary, in accordance with any changes to the state aid rules in the audiovisual sector.

Competition Commissioner Neelie Kroes commented: "The Commission is satisfied that the revised UK film tax incentive scheme complies with the conditions set out in its Audiovisual Communication. As with other film support schemes which meet these conditions, we have been able to apply the cultural derogation to the general ban on State aid in the Treaty. We welcome the guidance published by the UK authorities which confirms that European co-productions can benefit from the scheme."

The total annual budget for the UK film tax incentive amounts to £120 million (€177 million). To be eligible for support under the scheme, films other than European coproductions will have to pass the revised UK Cultural Test. To pass this points-based test, a film must obtain at least 16 of the available maximum of 31 points for different criteria. There are four categories of criteria, including Cultural Content and Cultural Contribution for which up to 20 points are available, ensuring that the aid is directed towards a cultural product. The UK authorities will bring forward legislation to apply the revised Cultural Test and make the scheme operational.

The aid takes the form of an '*enhanced tax deduction*' and a '*payable film tax credit*'. The '*enhanced tax deduction*' allows a film production company to benefit from a higher deduction for certain production costs than the normal UK tax rules would allow. The '*payable film tax credit*' allows the film production company to receive a cash payment of up to 25% of any tax loss (after applying the enhanced tax deduction). The pre-production, principal photography and post-production expenditure borne by the beneficiary on goods or services that are used or consumed in the UK can be considered under this aid scheme.

The Commission approved this scheme based on the criteria to assess aid to assist film and television production laid down in the 2001 Audiovisual Communication (see [IP/01/1326](#)). However, as this Communication is currently due to expire on 30 June 2007, the UK authorities have committed to make any changes required by any new EU rules.

As with other European film support schemes, the UK film tax incentive scheme includes territorial conditions. Territorial conditions are those which require that a proportion of the film production expenditure is incurred in the territory providing the aid. Territorial conditions are allowed under the criteria laid down in the Audiovisual Communication, provided that they do not exceed 80% of the film production budget. In preparation for its review of the Audiovisual Communication, the Commission has launched a study to examine the economic and

cultural effects of such territorial conditions. The results of the study should be available in late 2007.

Background

The Commission's policy towards state aid for film and audiovisual works is governed by its 2001 Communication on cinema and audiovisual production in Europe, which sets out the criteria under which the cultural derogation in Article 87.3(d) of the EC Treaty can be applied to such schemes (see [IP/01/1326](#)). In 2004, this Communication was extended until 30 June 2007 (see [IP/04/343](#)).

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	13 November 2006

(...)

I believe that the only Arts Council Wales funding scheme for cinema was Sgrin Cymru, (or since April 2006, its replacement, Film Agency Wales). I have found however, that the Welsh Assembly, (a different government body) has a fund called the Creative IP Fund which acts as a gap financier.

I attach Part B Questionnaires for the Gaelic Media Service and the Welsh Assembly's Creative IP Fund.

(...)

Attachments to e-mail of 13 November 2006
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- Questionnaire - Part B - IP Fund Wales (H2839706).DOC
- Questionnaire - Part B - Gaelic Media Service (H2839236).DOC

Attachment to e-mail of 13 November 2006:

Questionnaire - Part B - IP Fund Wales (H2839706).DOC

PART B FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)¹⁶ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year¹⁷.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Wales, United Kingdom.

B.2 Name of funding scheme:

Creative IP Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

Creative IP Fund, Finance Wales, Oakleigh House, Cardiff CF10 3DQ.

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

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

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

Government of Wales Act 1998

(<http://www.opsi.gov.uk/acts/acts1998/19980038.htm>).

TERRITORIAL CONDITIONS

¹⁶ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

¹⁷ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

Explicit Territorial Conditions

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

Yes, projects by companies not based in Wales are required to spend a proportion of the total production budget in Wales.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Section 32 of the Government of Wales Act 1998 provides that the Welsh Assembly may do anything they deems appropriate to support the cultural activities of Wales.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, each project should be able to demonstrate an economic benefit to Wales and if they are not based in Wales, projects produced by companies based in Wales are required to spend a proportion of the total production budget in Wales.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):

Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the Creative IP Fund reviewing the application form and verifying the information. A fund manager will then contact the applicant for a more in-depth discussion.

The Creative IP Fund's purpose is to stimulate growth in the creative industries in Wales by attracting more productions to Wales, and to help Welsh companies in the creative industries to compete more effectively in their markets through greater access to investment finance for content development. The fund intends to improve the ability to create and retain intellectual assets, in what has been considered to be risky business for traditional investors.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹⁸ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

- Each applicant must have secured at least 60% of the total project funding from other investors before they apply.

¹⁸ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- Each investment is made on a commercial basis and on similar terms to other private sector investors or partners in the project.
- The fund is not a form of soft loan or grant subsidy.
- The fund will only invest in the IP content of the project and not via an equity investment in the companies themselves.
- The project must demonstrate an economic benefit to Wales or be projects by companies which are not based in Wales but will spend a proportion of the total production in Wales.
- The project cannot be at an early or development stage.

CONTACT DETAILS

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

Bethan Cousins (creativefund@financewales.co.uk)

Creative IP Fund, Finance Wales, Oakleigh House, Cardiff CF10 3DW

0800 587 4140

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: October 2006.

Attachment to e-mail of 13 November 2006:

Questionnaire - Part B - Gaelic Media Service (H2839236).DOC

PART B FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)¹⁹ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year²⁰.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Scotland, United Kingdom.

B.2 Name of funding scheme:

The Gaelic Media Service (“GMS”) offers grant aid funding to:

- television and radio projects that have a UK commissioning broadcaster on board or an independent producer which is an in-house production arm of a broadcaster, that match GMS’ funding criteria; and
- assist independent producers to develop programme ideas that will help induce a commissioning broadcaster to accept the project for broadcast. Up to £3,000 is on offer for non-drama projects.

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

Gaelic Media Service, Seaforth House, Seaforth Road, Stornoway, Isle of Lewis HS1 2SD.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

¹⁹ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

²⁰ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

Broadcasting Act 1990 s.183(1)

(http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm) as amended by the Communications Act 2003, s.360(3), Schedule 15 paragraph 62(1) and (2) (<http://www.opsi.gov.uk/acts/acts2003/20030021.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. The main criteria for funding is that the producer is willing to commission and broadcast the project and that it is in the Gaelic language.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

There are no explicit territorialisation provisions contained in the rules listed under B.4.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, the applicant must be willing to have the project broadcast and commissioned and it must be in the Gaelic language.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):

Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the GMS conducting a bidding process for grants as follows:

- establishing a programme menu based on research and discussion;
- accepting submissions of ideas for programmes/series-strands by broadcast/producer;
- the GMS evaluating ideas;
- the GMS discussing, the feasibility of the commissioning and transmission with broadcasters of programmes selected by GMS on the understanding that GMS may fund the production;
- the broadcaster signing a letter of intent to commission and transmit programmes issued to GMS or a letter of intent to transmit;
- the GMS sending a letter to the broadcaster confirming the programme's status and proposed delivery date;
- programme grant agreement between GMS and producer signed; and
- payments made by GMS to a production trust account on the basis of an agreed schedule and cash flow verified by regular reports.

GMS' mission statement is to work in partnership with broadcasters and producers, to strive to ensure that high quality Gaelic television programmes are available to viewers throughout Scotland at appropriate viewing times, and that the range and quality of Gaelic sound programmes are enhanced.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation expressed in cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate, explicit or implicit

total realisation requirements mentioned in the answers B.6, B.7 and B.11 that are currently in force:

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,²¹ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The GMS will evaluate the quality of each applicant's idea and whether it is suitable or would appeal to the Gaelic population.

CONTACT DETAILS

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

Margaret Cameron (Margaret@gms.org.uk)

Gaelic Media Service, Seaforth House, Seaforth Road, Stornoway, Isle of Lewis HS1 2SD.

01851 705550

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: October 2006.

²¹ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Member State:	UNITED KINGDOM
Re:	Follow Up Reply
Date:	03 November 2006

(...)

Please note, we are looking into the two other schemes (...) but believe the Arts Council scheme commenced after 31st December 2005. (...)

With respect to your question relating to B.8, English law is construed under the English common law system. This means that questions such as which law should be applied or take precedence over another, or how a piece of legislation should be interpreted are only answered when a dispute arises and litigation leads to a court hearing. After the hearing, the judiciary construes the relevant legislation based on their view of the evidence and taking into account previous rulings by other judges in similar cases.

At the present time, we are not aware of any litigation having taken place which has involved adjudication of a conflict between national law and the terms of a co-production treaty, and as a result, it is difficult to say with certainty what the legal position would be. If such a case should arise however, the following principles (derived from previous case law relating to conflicts between international and national law) would be expected to apply:

- national law should conform to international law;
- If a conflict or an inconsistency arises between, for example, the rules on territorialisation contained in national legislation on film related state aid, and the rules contained in conventions on co-production agreements to which the UK is party, national law should be construed to be consistent with international law;
- However, if a piece of legislation has clear meaning, then it must be construed in accordance with that meaning, even if it is contrary to another national law or international law.
- In particular, if there is an international law that prevents the UK from protecting its revenue laws from abuse by non-nationals, that international law cannot be invoked.

International laws however have to be ratified, and a co-production treaty, for example, is not likely to be ratified by the UK government unless the treaty accords with national law. Obviously, European legislation which has direct effect is a different matter, since those pieces of legislation will automatically prevail over national law.

(...)

Member State:	UNITED KINGDOM
Re:	Follow Up Question
Date:	26 October 2006

(...)

According to our information, there are still two more funding schemes within your jurisdiction that fall in the scope of our study.

These are, as follows, the

- Arts Council of Wales, 1 162 979 EUR
- Seirbheis nam Meadhanan Gaidhlig, 13 659 807 EUR

Could you please complete the questionnaire with these two funding schemes

(...)

Member State:	UNITED KINGDOM
Re:	Reply
Date:	25 October 2006

(...)

Further to your e-mail of 16 October 2006, please find attached the following documents:

1. supplemental Part A General Questionnaire;
2. supplemental Part B regarding the old sale and leaseback system; and
3. supplemental Part B relating to Sgrin Cymru (a scheme which closed in March 2006);

(...)

Attachments to e-mail of 25 October 2006

- Questionnaire - Part A - Old System (H2818584).DOC
- Questionnaire - Part B - Sgrin Cymru (H2819324).DOC
- Section B - Sale and Leaseback (H2816105).DOC

**SUPPLEMENTAL PART A
GENERAL QUESTIONS**

Please use only one form per Member State

OVERVIEW

A.1 Country/Region:

United Kingdom

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 audio visual works²² of at least €1M 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);

The legislative provisions relating to fiscal aid for film production in the United Kingdom were completely substituted in June 2006 with a new system operational from 1st April 2006. However, in order for you to have the information relating to the funding system as at 31 December 2005, we have completed a Supplemental Part B Fund Specific Question form in respect of the system in place at that time i.e. the “sale and leaseback” legislation.

CO PRODUCTION AGREEMENTS

A.3 List the conventions and 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 the administration and supervision:

²² “independent” means that the cinematographic and audio visual works are produced and distributed by entities that are legally independent from broadcasters.

Please see section A.3 of Part A.

NATIONALITY CERTIFICATE PROCEDURES

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:²³

1. Introduction

As at 31 December 2005, in order to qualify as a British Film, an application would be made to the Secretary of State of the Department of Culture, Media and Sport (the “DCMS”) for the film to be certified under Schedule 1 of the Films Act 1985 (as amended in 1999) (the “Schedule”) or under one of the bilateral co-production treaties or the European Convention on Cinematographic Co-Production. (Please note that Schedule 1 of the Films Act 1985 was reviewed in 2006. The revised version, particularised in section A.4 of Part A will be applied to films which started principal photography after 1 April 2006.) The Schedule is described in this section and is applied to films that commenced principal photography before 1 April 2006 providing that they are completed before 31 December 2006.

2. Eligibility Criteria

2.1 For a film to be certified as a British film by DCMS, the film must fulfil the conditions specified in the Schedule, as follows:

2.2 Maker Test

the entity making the film (i.e. the entity undertaking the necessary arrangements to make the film) has to be registered, centrally managed and controlled in the UK, in another state of the European Union or European Economic Area or in a country with which the European Community has signed an Association Agreement.

2.3 Production Cost Test

²³ e.g. the French “procedure de agrement”.

2.3.1 70% of the production cost of the film has to be spent on film making activity in the UK. This figure only relates to the cost of production *activity* actually carried out in the UK rather than the production cost of *goods and services* supplied from the UK.

2.3.2 The following costs can be classified as production cost:

- a) fees for acquiring copyright specifically for use in the film;
- b) associated labour costs, for example, fees for writing or composing which have not take place during the production activity period;
- c) executive producer fee;
- d) net completion bond fee;
- e) net premium for some forms of insurance, for instance, key man insurance;
- f) contributions to the Skills Investment Fund (i.e. a joint film industry and government initiative to fund training and skills in the UK film industry); and
- g) the cost of labour attributable to UK activity (after the deduction of any eligible individuals as described in paragraph 2.4.1 below);
- h) UK living expenses;
- i) UK travel costs including return journeys from abroad to the UK;
- j) production overhead fee for UK activity; and
- k) where there are deferred payments or participation agreements, the DCMS will require a valuation of the sums considered ultimately payable. Any conditional payments, guaranteed or conditional deferrals and participations with evidence that there is a reasonable probability that the deferral will be paid, will be classified as production cost.

2.4 Labour Cost Test

2.4.1 70% of the total cost of the film's labour (minus, if desired, the cost of one individual whose nationality is of a non-Commonwealth/EU/EEA country, and who is an actor engaged in acting in the film and in no other capacity); or 75% of the total labour cost, (minus, if desired, the cost of two individuals whose nationalities are of a non-Commonwealth/EU/EEA country and one of whom is an actor engaged in making the film and in no other capacity) must be paid to citizens or ordinary residents of the Commonwealth, EU, EEA or a

country with which the European Community has signed an Association Agreement;

2.4.2 the following costs are excluded:

- a) living expenses spent because a person is not residing at his usual residence as a result of it not being practicable for that person to do so while making the film; and
- b) travel costs apart from minor travel costs that might be paid from a subsistence allowance which would be classified as a qualifying living expense (i.e. the person was not residing at his usual residence even though it was practicable for that person to do so while he was making the film).

2.4.3 deferrals/contingent payments and participations with no reasonable probability that they will be paid are considered part of the Labour costs.

2.4.4 Unlike the Production Test, there is no apportionment between UK and non-UK activity.

2.5 Content Test

no more than 10% of the film constitutes visual images from a previously certified film or from a film by a different maker. This limit can be extended for documentary films, if an acceptable case is made.

2.6 Excluded Costs

The following costs are excluded from being classified as production or labour costs:

- 2.6.1 expenditure on the acquisition or licensing of copyright, trademarks or other similar rights except for copyright works created for the purpose of their use in the film;
- 2.6.2 interest on any money borrowed to finance the film production;
- 2.6.3 business overheads not attributable to the production activity of the film;
- 2.6.4 the cost of creating and producing any additional material produced for promoting or marketing the film;
- 2.6.5 if an insurance payout is made relating to costs incurred e.g. the re-shooting of lost footage, the original cost cannot be included; and
- 2.6.6 the labour costs of one or two individuals as described in paragraph 2.4.1.

3. **Scope of Certification Procedure**

3.1 The application procedure includes the maker sending an application to DCMS.

- 3.2 In accordance with the Films (Certification) Regulations 1985 (as amended), a report verifying the particulars of the salaries, wages and payments stipulated in the application has to be prepared by either:
- (a) an accountant who is a member of:-
 - The Institute of Chartered Accountants in England and Wales;
 - The Institute of Chartered Accountant in Scotland;
 - The Association of Chartered Certified Accountants;
 - The Institute of Chartered Accountants in Ireland; or
 - (b) a person recognised under Section 34 of the Companies Act 1985 to be appointed as auditor of the maker.
- 3.3 The person preparing the report must not be and must not have at any time while the film was being made, be in a partnership with or be employed by the maker of the film. Neither can the person making the report be an officer or servant of the maker or any other companies in the maker's group.
- 3.4 The report must verify the following:-
- (a) that the accountant has examined the books of the maker and all other information and documents necessary to enable him to ascertain the amount of the production expenditure and labour costs;
 - (b) that in the accountant's opinion, the relevant amounts spent from the film's budget on production expenditure and labour costs pass the tests set out in Schedule as described above in section 2.
 - (b) if the film forms part of a series, the accountant must confirm that each part is treated as an individual film and each part meets the tests described in section 2.
- 3.5 In addition, the application requires the maker to swear a statutory declaration as to the truth of the particulars given in the application form which is required by s.2(4) of the Schedule and Regulation 5(a) of the Films (Certification) Regulations 1985.
- 3.6 The DCMS cannot issue any "advance clearance" of applications and applications can only be accepted after completion of the film i.e. the film is in a form which it is reasonably to be regarded as being ready for copies of the film to be distributed to the general public.
- 3.7 The same test can be applied to co-productions who want their film to be classified as British. This applies if the film is made under one of the UK's bilateral treaties or under the European Convention on Cinematographic Co-Production.

EXPECTED DEVELOPMENTS

A.5 Indicate whether new “production agreements” are to be expected in your jurisdiction as of 1 January 2006, indicate the contemplated date of the entry into force of each of convention, and indicate the name and address of the authority in charge of the administration and supervision.

Please see section A.5 of Part A.

A.6 Indicate where the 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 2006,²⁴ and indicate the name and address of the administration of these funding schemes:²⁵

1. The sale and leaseback system was operational as at 31 December 2005. Please see the relevant Supplemental Part B Funds Specific Questions for a full explanation of how this system operates.
2. The sale and leaseback system however, has been substituted following the introduction of legislation relating to the new tax incentive for film production in the UK set out in the Finance Act 2006. This system came into force in July 2006 pending approval from the European Commission and will apply to all films which commenced principal photography after 1 April 2006. (Please see the relevant Part B for full details of how the system is expected to operate).

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):

²⁴ 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 audio visual work to be eligible for State aid or affecting the amount of State aid available to the audio visual work.

²⁵ e.g. in Germany, there will be a new funding scheme on the Federal level containing territorialisation clause as from 2007.

Please see B.4 of the relevant Supplemental Part B Funds Specific Questions for legislation and A.7 of Part A for further information regarding the government's policy on sale and leaseback. Other relevant documents include the following:

- Schedule 1 to the Films Act 1985:
<http://www.culture.gov.uk/NR/ronlyres/FB21731E-285A-4AE3-97DA-0226E5D57EC3/0/Schedule1fimact.pdf>
- The following document sets out how the test is to be applied and the application process for films made solely in the UK (published February 2002):
<http://www.culture.gov.uk/NR/ronlyres/673D3767-DAE2-4318-9503-8576B878C9AB/0/Schedule1filmsact.pdf>
- The following document offers a synopsis of the eligibility criteria:
<http://www.culture.gov.uk/NR/ronlyres/A161270F-363E-4E78-ACF3-B7442AC628DD/0/qualifyingbritishfims.pdf>
- The UK Film Council Sale and Leaseback Fact Sheet available to download at:
<http://www.ukfilmcouncil.org.uk/information/downloads/?subject=16>

**SUPPLEMENTAL PART B
FUND SPECIFIC QUESTIONS**

Introductory Note

The legislative provisions in place at 31 December 2005 have been substituted by a new system operational from 1 April 2006. (Please see the relevant Part B for details of the new “Tax Credit” system.)

As at 31 December 2005, producers were able to fund their films by taking advantage of the legislative provisions referred to below, using a “sale and leaseback” structure. However, the benefit offered by the system which was in place at 31 December 2005 was not directly available to producers and required the use of a middle man to facilitate the benefit into the financing of a film as described below.

The system which was in place as at 31 December 2005, is still being applied to films which commenced principal photography before 1 April 2006.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

United Kingdom

B. Name of the funding scheme:

There is no official name for the fiscal policy, however it is commonly referred to as “Sale and Leaseback”.

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

This is a fiscal policy introduced by Government and administered by both, The Department of Media, Culture and Sport (DCMS) and Her Majesty’s Revenues and Customs (HMRC). Please see B.14 for addresses.

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

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

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

The relevant legislation includes section 42 of the Finance (No.2) Act 1992 (http://www.opsi.gov.uk/ACTS/acts1992/Ukpga_19920048_en_5.htm#mdiv42) and section 48 of the Finance Act (No.2) 1997 (<http://www.opsi.gov.uk/acts/acts1997/97058--c.htm#48>).

Section 42 made provision for a qualifying film's production costs to be written off over three years, in equal instalments, beginning in the year which the film was completed. Pre-production costs could be written off in the year in which they were incurred providing they were limited to 20% of the total budget costs and any excess was dealt with as production cost.

Section 48 provides that where production expenditure is incurred after 1 July 1997 on a qualifying film completed before 2 July 2005, the expenditure can be deducted in full in the year in which the film is completed (i.e. s.42 relief would not be required). Expenditure incurred outside the time window of the scheme and cost outside production expenditure e.g. finance and interest costs, are relieved under the Finance (No.2) Act 1992.

A qualifying film is:

- certified as British by the DCMS in accordance with Schedule 1 of the Films Act 1985: <http://www.culture.gov.uk/NR/rdonlyres/FB21731E-285A-4AE3-97DA-0226E5D57EC3/0/Schedule1fimact.pdf>; or
- certified under the European Convention for Cinematographic Co-Productions: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=147&CM=8&DF=&CL=ENG>; or
- certified as a qualifying co-production under one of the bilateral co-production treaties listed in section A.3 of Part A (available to download at: http://www.culture.gov.uk/what_we_do/Creative_industries/film/british_film_certificates.htm). As at 31 December 2005, the UK/Italy bilateral treaty was also available (before it ended on 2 May 2006).

The aforementioned, sections 42 and 48 came into force in 1992 and 1997 respectively.

During 2001 and 2005, the legislation was effected by the following:

- Peakviewing (Interactive) Ltd and others v Secretary of State for Culture, Media and Sport [2002] STC 1226, Lawrence Collins J held that if the Secretary of State was reasonably concerned that the information provided on the DCMS application form relating to production expenditure incurred was materially inaccurate and her concerns were not allayed, then the Secretary of State was entitled to take the view that the applicant had not shown that it had incurred the requisite proportion of expenditure since there was no valid base

figure to calculate the percentage. In those circumstances, she was entitled to conclude that she was not satisfied that the film was British and entitled to refuse to grant a certificate.

- section 99 of the Finance Act 2002 (<http://www.opsi.gov.uk/acts/acts2002/20023--e.htm#99>) which restricted the tax relief to films genuinely intended for theatrical release:
- section 101 of the Finance Act 2002 (<http://www.opsi.gov.uk/acts/acts2002/20023--e.htm#101>) restricted the relief for successive acquisitions of the same film; and
- sections 119-123 of the Finance Act 2004 (<http://www.opsi.gov.uk/acts/acts2004/40012--l.htm#119>) restricted the potential for anti-avoidance by individuals where there was a film related loss.

TERRITORIAL CONDITIONS²⁶

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*)?

Yes / No

Yes

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*):

1. Territorialisation

Section 43 of the Finance (No.2) Act 1992 provides that the tax relief available through section 42 and section 48 of the Finance (No.2) Act 1997 is only available in respect of "qualifying films" as described in B.4 above and paragraph 2 of section A.4 in the Supplemental Part A General Questions.

2. The Structure

Since filmmakers are unable to access the tax relief directly, they normally use the aforementioned legislative provisions by adopting the following structure:

- (a) The filmmaker sells the negative to a purchaser (often a partnership of high net worth individuals who want to absorb their profit into the tax reliefs available).
- (b) After purchasing the film's master negative, the purchaser immediately leases the negative back to the filmmaker. The rental payments are usually secured by a standing letter of credit or bank guarantee. In order to do this, the bank invariably requires the filmmaker to deposit a significant proportion of the sale price into an escrow account which, with interest, is sufficient to cover the bank's liability.
- (c) Using the legislative provisions referred to above, the purchaser receives 100% tax relief over 1 or 3 years. The purchaser is taxed on the lease income, however this is over the term of the lease, typically around 10-15 years, producing an accelerated cash flow.
- (d) The lease payments paid by the filmmaker are set at amounts discounted over the period of the lease. The difference between the sale price and the total lease payments represent the "net benefit" to the filmmaker, which usually constitute 9% to 11% of the film's budget.

2. Conditions

The main conditions that a sale and leaseback transaction must satisfy to enable the purchaser to claim the 100% tax relief, are for the film:

- (a) to be completed on or after 2 July 1997 and no later than the end of the financial year in which the film is acquired;
- (b) to have a production expenditure budget of £15 million or less;
- (c) is bought by a purchaser who carries on a trade or business which consists of or includes the exploitation of the films;
- (d) is certified as a British Film by the DCMS; and
- (e) is intended for theatrical release.

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*).

Please see paragraphs 2.2.1 to 2.2.3 of answer A4 in the Supplemental Part A General Questions.

- 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*):

For co-productions, DCMS apply an approval process in accordance with the relevant bi-lateral treaty. Once a co-production is certified as “British”, the purchaser of the film can receive the tax relief and the filmmaker can receive a portion of the film’s budget to finance the film. This applies if the film is made under one of the UK’s bilateral treaties or under the European Convention on Cinematographic Co-Production.

- 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*):

Please see section A4 of the Supplemental Part 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/No

No.

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*):

N/A.

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:

Please see the links set out in the response to B4 above and section A.7 of Part A.

SELECTIVE SCHEMES

- B.13** If this scheme distributes aid selectively,²⁷ 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:

N/A.

CONTACT DETAILS

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

There is no specified contact for the scheme as it is administered by the following government departments:

Department for Culture Media & Sport
2-4 Cockspur Street
London
SW1Y 5DH
(Paul Candler, Head of Film Branch)

HM Revenue and Customs
Room 3C-15
100 Parliament Street
LONDON
SW1A 2BQ
(Mr Hasmukh Haria)

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

Hakan Kousetta of Howard Kennedy, 19 Cavendish Square London W1A 2AW

Date of the data collection and processing:

September/October 2006.

²⁷ 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.

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)²⁸ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year²⁹.

Please use for each funding scheme a separate form.

Introduction

Please note that this organisation has since closed and is no longer operational.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Wales, United Kingdom.

B.2 Name of funding scheme:

Sgrin Cymru distributed funding mainly for feature film development and feature film production.

B.3 Name and address of the funding scheme's administration and supervising authority:

Sgrin Cymru, 10 Mount Stuart Square, Cardiff Bay CF10 5EE.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

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

²⁹ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

National Lottery Act 1993
(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by
the National Lottery Act 1998 and
(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

Yes.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Sgrin Cymru's internal regulations required films funded by the agency to be able to qualify as British Films as described in section A.4 of the Supplemental Part A.

The legislation referred to in B.4 merely states that 5% of the National Lottery's distribution fund should be for distribution by the Arts Council Wales who in turn distributes the funds to Sgrin Cymru.

Sgrin Cymru also have other territorialisation requirements which do not involve applicants being required to spend a minimum proportion of the budget in Wales described in B.7 below.

Sgrin Cymru's internal regulations require applicants to complete an Advance Notification Form giving brief details of the project, key personnel, production company and partners. This form had to be submitted to Sgrin Cymru's Production Advisory Group members who would indicate whether they were interested in the project proceeding to the full application stage. If advised, the producer would submit a formal application for assessment. Eligible applications would be assessed on their merits against the criteria set out in B.13 below. Sgrin Cymru would either reject the application or offer an award. Applicants who had their application rejected would not be able to re-apply until 9 months had passed and substantial developments or changes had been made to the project.

- 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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total*

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

Sgrin Cymru expected both the applicant company and the filmmakers assisted through the scheme to be based in Wales. Applications from companies not normally based in Wales could be eligible but had to demonstrate a material benefit to the broader Welsh industry i.e:

- key Welsh personnel were involved;
- the project would contribute to the development of an indigenous Welsh film industry;
- training opportunities would be made available to the people of Wales;
- the production would be shot in Wales;
- the project was culturally relevant to Wales; and
- a percentage of the budget would be spent within Wales during pre-production, production and post-production.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

Co-productions could apply providing that the applicant could satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There were no judicial practices as such however there was an administrative practice and internal guidelines which involved Sgrin Cymru verifying that the information submitted by the applicant in respect of eligibility was correct as well as assessing the proposed project.

Sgrin Cymru was committed to enhancing the Welsh economy and Welsh culture by encouraging industrial growth, cultural development and public involvement in all its forms. The agency focused on developing entrepreneurship and skills within the media industries to ensure that participants from Wales were able to confidently compete in European and international markets. Sgrin Cymru aimed to support public access and provide foundations for enhanced employment opportunities.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):
N/A.

CULTURAL CAUSES

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

Please see section A.7 under Part A.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,³⁰ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:**

Sgrîn Cymru would assess each application against the following criteria:

- the public benefit the project offered to the people of Wales and the UK e.g. by diversifying the range of cinematic material, exposing new talent, or increasing the representation of previously under-represented communities;
- quality of the script and originality of the concept;
- whether the project would be made if Sgrîn Cymru chose not to fund the project, (since the aim of Sgrîn Cymru's fund was not to offer substitution funding but to bring a demonstrable benefit to the project);
- accuracy and suitability of budget and schedule;
- the likelihood of other funders committing to the project;
- the strength of contingency plans;
- whether match funding was in place;
- whether there was a demonstrable demand for the project e.g. letters of interest, sales estimates, etc; and
- a likelihood that the applicant and their proposed team would deliver the project as intended within budget and schedule.

CONTACT DETAILS

³⁰ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

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

Rolant Tomos (sgrin@sgrin.co.uk)

Sgrîn Cymru, 10 Mount Stuart Square, Cardiff Bay CF10 5EE.

02920 333300

(Please note however that this organisation is no longer operational).

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

Member State:	UNITED KINGDOM
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:	UNITED KINGDOM
Re:	Reply
Date:	09 October 2006

(...)

As requested, please find attached the following :

(a) A completed Part A Questionnaire

Please note, the legislative provisions relating to fiscal aid for film production in the United Kingdom was completely substituted with a new system commencing 1st April 2006. Accordingly, whilst the legislation under the old system was in place as at 31 December 2005 (the old sale and leaseback section 42/section 48 arrangements), we have not included it here so as to ensure that the study does in fact have information on what the current applicable government funding system is in the United Kingdom.

We have, however, completed a Part B Fund Specific Questionnaire form for the replacement scheme though it should be noted that the new system, whilst enacted in legislation, is not fully operational as the British Government has made an application to the European Commission for approval of what is, effectively, a form of state aid.

If however you require a Part B Fund Specific Questionnaire form for the old sale and leaseback system we can supply this to you but given it is now completely defunct I wanted clarification from you whether, in the circumstances, you would require this information.

(b) Completed Part B Fund Specific Questionnaires for each fund and scheme currently available in the UK which falls within your requested criteria

(c) The Films Act 1985

All other references to local legislation are made by internet-link however, this particular, Act is not available via the internet so a hard copy is attached.

(...)

Attachments to e-mail of 09 October 2006

- Scan001.PDF
- Questionnaire on State Funding - Part A - General (H2802812-2).DOC
- Questionnaire - Part B - Premiere Fund (H2813824).DOC
- Questionnaire - Part B - Development Fund (H2813289).DOC
- Questionnaire - Part B - South West Screen (H2813176).DOC
- Questionnaire - Part B - Scottish Screen (H2812896).DOC
- Questionnaire - Part B - Film Agency Wales (H2813035).DOC
- Questionnaire - Part B - Northern Ireland (H2812848).DOC
- Questionnaire - Part B - Film London (H2812645).DOC
- Questionnaire - Part B - Screen Yorkshire (H2812647).DOC

- Questionnaire - Part B - Screen South (H2812643).DOC
- Questionnaire – Part B - Northern Media (H2812637).DOC
- Questionnaire - Part B - Screen East (H2812639).DOC
- Questionnaire - Part B - EM Media (H2812633).DOC
- Questionnaire - Part B - North West Vision (H2812634).DOC
- Questionnaire - Part B - Cornwall Film (H2812630).DOC
- Questionnaire – Part B - NCF (H2813825).DOC
- Tax Credit - Section B Answers (H2813003).DOC

**PART A
GENERAL QUESTIONS**

Please use only one form per Member State

OVERVIEW

A.1 Country/Region:

United Kingdom

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 audio visual works³¹ of at least €1M 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);

The following are such funding schemes (which are also partly funded by the Objective One, European Regional Development Fund or European Social Fund)*:

- a) Cornwall Film
- b) EM Media
- c) Film London
- d) North West Vision
- e) Northern Film and Media
- f) Northern Ireland Film & Television
- g) Scottish Screen
- h) Screen East
- i) Screen South
- j) Screen West Midlands
- k) Screen Yorkshire
- l) Film Agency Wales
- m) South West Screen
- n) UK Film Council

*Please note that the Isle of Man does offer a funding scheme but has an independent legal system and will not be further referenced in this study.

The previous legislative provisions relating to fiscal aid for film production in the United Kingdom was completely substituted with a new system commencing 1st April 2006. Accordingly, whilst the legislation under the old system was in place as at 31 December 2005, we have not included it here so as to ensure that the study does in fact have information on what the current applicable funding system is in the United Kingdom. We have, however, completed a Part B Fund Specific Question form for the replacement scheme though it should be noted that the new system, whilst enacted in legislation, is not fully operational as the British Government has made an application to the European Commission for approval of what is, effectively, a form of state aid.

³¹ "independent" means that the cinematographic and audio visual works are produced and distributed by entities that are legally independent from broadcasters.

CO PRODUCTION AGREEMENTS

- A.3 List the conventions and 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 the administration and supervision:

Co-Production Agreements

UK/Australia	12 June 1990
UK/Canada	5 July 1991
UK/France	8 November 1994
UK/Germany	30 January 1975
UK/New Zealand	14 April 1993
UK/Norway	8 December 1982
UK/Italy (ended 2 May 2006)	

European Convention on Cinematographic Co-Production ratified on 1 April 1995

Address of Authority: Department for Culture, Sport and Media (DCMS)
2-4 Cockspur Street, London SW1Y 5DH

NATIONALITY CERTIFICATE PROCEDURES

- 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:³²

Introduction

As at 31 December 2005, in order to qualify as a British Film, an application would have to be made to DCMS for the film to be certified under Schedule 1 of the Films Act 1985 or under one of the bilateral co-production treaties or the European Convention on Cinematographic Co-Production. However, this position has now changed:

1. Criteria of Eligibility

- 1.1 In order to be certified as a British film, DCMS must now be satisfied that the film passes the cultural test. The cultural test is a revision of Schedule 1 of the Films Act 1985. Published on 14 April 2006, the revised Schedule 1 will apply to all films which commence principal photography on or after 1 April 2006 and replaces the old production expenditure and labour cost test.
- 1.2 Under these new regulations only a Film Production Company (“FPC”) can apply to the DCMS for certification of a film as a British film.
- 1.3 For the purposes of the new regulations enforced in the United Kingdom, a FPC is the company responsible for the pre-production, principal photography and post-production of the film and for delivery of the completed film. In addition, the FPC must be actively engaged in production funding and decision making during the pre-production, principal photography and post production stages of the film and directly

³² e.g. the French “procedure de agrement”.

- negotiate, contract and pay for rights goods and services relating to the film. The FPC needs to be within the UK Corporation Tax Net. These requirements are set out in Section 32 of the Finance Act 2006.
- 1.4 In relation to qualifying co-productions, that is, a film that is treated as a British Film by virtue of being produced pursuant to an official co-production Treaty or the European Convention, the FPC is a co-producer that makes an effective creative and technical and artistic contribution to the film but this means that finance only co-producers will not be able to claim tax relief.
 - 1.5 A film will pass as a cultural test if it is awarded 16 out of the possible 32 points. There are three categories of points:-
 - (A) Cultural Content - 4 points
 - (B) Cultural Hubs - 15 points
 - (C) Cultural Practitioners - 13 points
 - 1.6 Cultural Content measures the British subject matter of the film. Cultural Hubs measures the use of the UK's film making facilities. Cultural Practitioners measures the use of personnel with creative input. You may wish to know that points are awarded in the Cultural Practitioners category for both citizens and residents of both Britain and Member States of the European Community and each of Bulgaria and Romania (as countries that have relevant Association Agreements with the EU).
 - 1.7 The regulations set out how much work has to be carried out under each category to obtain the points available under it. It also sets out how the points are graded when more than one is available.
 - 1.8 In respect of the Cultural Hubs, 75% of the activity needs to be carried out within the UK to get maximum points or, if only one point is available, that single point.
 - 1.9 When a number of points are available one can be obtained if 10% of the activity is carried out within the UK except the performing and recording of the music score which requires 50% of the work activity to be carried out within the UK.
 - 1.10 The amount of activity carried out in the UK or elsewhere is to be determined as follows:-
 - (a) For the purposes of principal photography, by the number of days spent on the actual activity; and
 - (b) for all other purposes, with reference to amount of expenditure on the activity.
 - 1.11 It should be noted that the DCMS does have a discretion to disallow points if, in its view, the amount of activity actually carried out within the UK under the Cultural Hub section is insignificant in relation to the total amount of work to be carried out in the making of the film.
 - 1.12 Films which satisfy the requirements of the co-production treaties will continue to be treated as British Films although such films may also have to satisfy the cultural test if they wish to take advantage of the new tax credits.
 - 1.13 In any event, in order to access the tax credit relief, a co-production must also meet the minimum UK spend requirement of 25% of (see part B of Fund Specific Questions). DCMS are still awaiting formal response from the European Commission on the state aid application for the new tax relief to see whether or not a co-production film will need to pass the cultural test. It is anticipated that Films made under the European Convention will not need to pass the cultural test in addition to the terms of the Convention itself. However, the Commission may require films made under the bilateral co-production treaties to pass the cultural test and if this is the case, new conditions equivalent to the cultural test will have to be inserted into the relevant bilateral treaties. The DCMS are in the process of re-negotiating all existing bilateral treaties and are seeking to ensure that they contain new conditions equivalent to the cultural test wherever necessary.

2. Scope of Certification Procedure

- 2.1 There currently exists interim certification procedure pending implementation of the legislation and regulations pending a response from the European Commission on the state aid application. Set out below however is the intended certification procedure under the new system.
- 2.2 An application form must be submitted to the DCMS in accordance with The Films (Certification) Regulations 1985 and must be prepared by:
- (a) an accountant who is a member of:-
 - The Institute of Chartered Accountants in England and Wales
 - The Institute of Chartered Accountant in Scotland
 - The Association of Chartered Certified Accountants
 - The Institute of Chartered Accountants in Ireland
 - (b) a person recognised under Sections 34 of the aforementioned Act to be appointed as auditor of a company.
- 2.3 The person preparing a report must not be and must not have at any time while the film was being made partnership with or employed by the FPC.
- 2.4 The report must verify the following:-
- (a) the nationality and ordinary residents of all the person in relation to whom the applicant is seeking points to be awarded under the Cultural Practitioners section of the Cultural Test.
 - (b) the total expenditure on all the work carried out in the making of the film.
 - (c) the total expenditure on any element of the Cultural Hub section of the Cultural Test in relation to which the applicant is seeking points to be awarded and the expenditure on that element carried out in the UK.
- 2.5 The report must also state whether, in the opinion of the person making the report, any points should be awarded under the Cultural Hub section of the Cultural Test.
- 2.6 DCMS expects applicants to provide auditors with copies of passports and/or other evidence of nationality and/or evidence of country of ordinary residence.
- 2.7 In addition, it is a requirement that the applicant make a statutory declaration as to the truth of the particulars given in the application form.

EXPECTED DEVELOPMENTS

A.5 Indicate whether new “production agreements” are to be expected in your jurisdiction as of 1 January 2006, indicate the contemplated date of the entry into force of each of convention, and indicate the name and address of the authority in charge of the administration and supervision.

1. The bilateral treaties of each of Australia, Canada, France and New Zealand are being renegotiated by the DCMS. A number of bilateral treaties are being terminated where it is possible to co-produce under the European Convention on Cinematographic CO-Production. The bilateral treaty with Italy has been terminated. The UK intends to terminate its co-production treaty with Germany on 31 December 2006 and Norway on 24 May 2007. All future UK/Italy, UK/Norway and UK/Germany co-productions can use the European convention. Although it should be noted that Norway is not currently signed up to the European Convention but plans to become a signatory in the future.
2. There are two new bilateral treaties in the process of being instituted. Firstly, a new bilateral treaty with South Africa. This was signed in London on 24 May 2006. It now needs to complete a constitutional process before it can be ratified.

3. The second is the treaty with India. This was signed in December 2005 and the second part (annex) is currently being negotiated. The treaty cannot come into force until both parts are agreed and the subsequent constitutional process follows before it can be ratified.
4. You may wish to note that the government is working on new treaties with each of China, Jamaica and Morocco.

A.6 Indicate where the 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 2006,³³ and indicate the name and address of the administration of these funding schemes:³⁴

1. The Finance Bill 2006 set out the draft legislation for the new tax incentive for film production in the UK which replaced the pre-existing tax based incentives that expired in April 2006.
2. The new regime is produced as a new form of tax relief system as a form of aid to film production within the UK. The new tax relief is for films which commence principal photography on or after 1 April 2006 and for films which commenced before that date but which are not completed by 1 January 2007. The new tax relief whilst incorporated into UK legislation are still subject to European state aid clearance before they can be applied.
3. The new tax incentive replace the Section 42 and Section 48 film tax relief previously accessed by the sale and leaseback mechanism.
4. Please see part B Funds Specific Questions for a full explanation of how this new system operates.

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):

Please see Section B for legislation. Relevant Consultation Papers are as follows:

- HM Treasury issued a consultation paper entitled: Reform of film tax incentives: Promoting the sustainable production of culturally British films (July 2005, HM Treasury): <http://www.hm-treasury.gov.uk/media/624/CA/filmcondocv1.pdf>
- The DCMS issued consultation paper on a cultural test for British films in July 2005: <http://www.culture.gov.uk/NR/rdonlyres/DB8972DB-3DCF-4D32-AD69-D6D2E3370271/0/Culturaltestforfilm.pdf>
- Response from Equity to consultation paper: <http://www.equity.org.uk/content/1003.htm> (dated October 2005)
Note - Equity is the trade union for actors in the film industry
- Response from BECTU to HM Treasury consultation (October 2005)
<http://www.bectu.org.uk/policy/pol093.html>

³³ 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 audio visual work to be eligible for State aid or affecting the amount of State aid available to the audio visual work.

³⁴ e.g. in Germany, there will be a new funding scheme on the Federal level containing territorialisation clause as from 2007.

Note - BECTU is the trade union for technical, craft and creative workers, other than actors, in the film industry.

- BECTU's response to DCMS Consultation (October 2005)
<http://www.bectu.org.uk/policy/pol092.html>
- Equity response to DCMS Consultation (October 2005)
<http://www.equity.org.uk/content/1059.htm>
- Response from British Screen Advisory Council (BSAC) to HM Treasury and DCMS consultation (October 2005)
www.bsac.uk.com/bsacpactresponsetohmtreasury.pdf
Note – the BSAC is an organisation representing senior executives in the audio visual industry
- Regulatory Impact Assessments (RIAs) are produced by the government bodies involved in changes to legislation and regulation and are stated as being "effectively a cost/benefit framework for developing a change ensuring all possible impacts of that change are identified and where possible, any fresh burdens are minimised" (HMRC). Partial RIAs are published with draft regulatory proposals and formal consultations to assist public debate, and final RIAs are published when new legislation is laid. The relevant RIA for the change in film tax relief can be found at www.hmrc.gov.uk/ria/ria-film-reform.pdf (published March 2006)

The following internet links relate to regional bodies who offer regional and European state funding:

- Film Agency Wales <http://www.artswales.org.uk/page.asp?id=208>
- Cornwall Film <http://www.cornwallfilm.com/>
- EM Media <http://www.em-media.org.uk/pages/home>
- Film London <http://www.filmlondon.org.uk/>
- Isle of Man Film <http://www.isleofmanfilm.com/>
- North West Vision <http://www.northwestvision.co.uk/>
- Northern Film & Media <http://www.northernmedia.org/>
- Northern Ireland Film <http://www.niftc.co.uk/>
- Scottish Screen <http://www.scottishscreen.com/>
- Screen East <http://www.screeneast.co.uk/>
- Screen South <http://www.screensouth.org/>
- Screen West Midlands <http://www.screenwm.co.uk/>
- Screen Yorkshire <http://screenyorkshire.co.uk/>
- South West Screen <http://www.swscreen.co.uk/>

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)³⁵ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year³⁶.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Cornwall, United Kingdom.

B.2 Name of funding scheme:

Cornwall Film operates the following funding schemes:

- Digital Markets;
- The Innovation Fund;
- Target Talent;
- Production Fund;
- Company and Development Fund; and
- Bursaries for the Celtic Film and Television Festival.

B.3 Name and address of the funding scheme's administration and supervising authority:

Cornwall Film, 73 Lemon Street, Truro TR1 2PN.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

³⁵ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

³⁶ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

Cornwall Film's funding is provided by South West Screen from the National Lottery Distribution Fund (National Lottery Act 1993 as amended by the National Lottery Acts 1998 and 2006) and from the Objective One, European Regional Development Agency fund.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. The schemes referred to in B.2 do have territorialisation requirements however these do not include a requirement that applicants have to spend a minimum proportion of the budget in Cornwall.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of Cornwall Film's funds are provided for by South West Screen, one of the screen agencies who receive funds from Screen England, a partnership of nine regional screen agencies. Screen England receives funds from the UK Film Council who is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended by the National Lottery Act 1998 and National Lottery Act 2006) to be distributed to various organisations. Cornwall Film distributes these funds to regional projects along with money received from the European Regional Development Fund and other sources.

Cornwall Film's internal regulations require applicants to submit an expression of interest to Cornwall Film who will advise the applicant whether or not it is worth making a formal application. Applications are submitted on a roll on basis or by a certain date depending on which scheme the applicant is applying to.

On receipt of the application, Cornwall Film will endeavour to make a decision within 6-8 weeks after assessing the viability of the project assessed based on how innovative and creative the concept for the project is. Applications for less than £5,000 are processed faster than applications for more money.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total*

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

Successful applicants must:

- be located in Cornwall or the Isles of Scilly;
- and have projects which will:
 - create opportunities to share knowledge and support working opportunities to stem talent in Cornwall;
 - show a demonstrable commitment to developing a sustainable media industry in Cornwall;
 - encourage inward investment by incentivising production that will spend money in Cornwall;
 - create training opportunities; and
 - use Cornish crew.

The following projects will be prioritised:

- projects which can be made in Cornwall;
- projects with Cornish elements and which foreground the identity and distinctiveness of Cornwall.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

Co-productions with a co-producer who is based in Cornwall are encouraged. The application to Cornwall Film must be submitted by the Cornish co-producer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice which involves Cornwall Film verifying that the information submitted by the applicant in respect of eligibility is correct.

The aim of Cornwall Film's territorialisation requirements is to develop a sustainable industry in the region. Cornwall Film's ambition is to generate local jobs and training opportunities in the film and television industry to ensure there is a talent pool of experienced freelancers in the area all year round.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,³⁷ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Cornwall Film assesses each project on a number of criteria including:

- potential of recouping the investment if it is made by way of an equity investment or loan;
- original and innovative projects;
- creative content, clarity and realisation of the idea;
- distinctiveness of concept creatively and/or technically;
- quality of team/individual and their ability to realise the project as outlined;
- a strong project with a real chance of reaching the market place;
- an effective development, production and marketing plan;
- commitment or expressions of interest from potential investors;
- skills and creativity of the development team demonstrated where possible in previous work;
- have a good chance of reaching the market;
- encourage collaboration between new technology distribution platforms;
- commitment to developing a sustainable business and Cornwall's media industry;
- potential for generating inward investment into region; and
- jobs created.

CONTACT DETAILS

³⁷ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

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

Pippa Best, Director

Cornwall Film, 73 Lemon Street, Truro TR1 2PN.

01872 240 900

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)³⁸ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year³⁹.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

United Kingdom.

B.2 Name of funding scheme:

The UK Film Council's Development Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by

the National Lottery Act 1998

³⁸ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

³⁹ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. However, the UK Film Council will not fund films which are unlikely to be classified as British Films (please see A.4). To classify as a British Film, the applicant would have to ensure that the film scored 16 out of 32 points in order to obtain a British film certificate from DCMS. 9 of the available points can be scored from using production and post production services in the UK however a film can still gain enough points to be classified as British without being based in Britain providing that enough points are awarded under the “cultural hubs” and “personnel” sections of the test.

The UK Film Council also have territorial requirements but which do not involve spending a minimum amount of the budget in the UK.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The provisions referred to in B.4 merely state that 12.2% of the National Lottery’s distribution funds should be for distribution by the UK Film Council (s.23(e) of the National Lottery Act 1993 as amended).

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for the UK Film’s Development Fund, applicants must be:

- a company which is registered and centrally-managed and staffed in the UK; or
- a company which is registered and centrally managed and staffed in another state of the European Union/European Economic Area; or
- an individual aged 18 years or over and a national or resident of the United Kingdom (or another state of the European Union/European Economic Area).

The Development Fund will only fund development projects which if produced will be wholly or substantially capable of qualifying as British films (as defined in the Films Act 1985 as amended).

In order to determine whether a development project may be wholly or substantially capable of qualifying as a “British” film, the UK Film Council will look at the following main elements:

- Nationality or residency of writer.
- Nationality or residency of director.
- Location of story.
- Nationality of key characters.

All applicants must also be able to demonstrate that the provision of such funding will provide a measurable advantage to the UK film industry.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):
Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):
There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the UK Film Council acknowledging the application within two weeks of receipt. The applicant will be notified as soon as possible if the application is not eligible for funding.

The application will be assessed initially and primarily on its creative merit and the applicant will be informed within eight weeks of receipt of the application.

Inevitably, the selection process is subjective and the decision taken by the Development Fund is final. There is no appeal process open to applicants whose projects have been rejected on creative grounds.

The UK Film Council’s stated main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁴⁰ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The UK Film Council may take into account the following criteria using its knowledge and understanding of the film market in continuing to assess applications:

- how original and creative the project is;
- the commercial and financial viability of the project;
- whether the project is substantially capable of qualifying as British films (as defined in the Films Act 1985 as amended);
- whether funding the project will provide a measurable advantage to the UK film industry;
- the cost of development compared to its assessment of the likely production budget; and
- the cost of development compared to industry norms and market rates and the applicant's track record in film production including applicant's conversion rate and the commercial and critical success of applicant's previous films (if any).

CONTACT DETAILS

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

Head of Development (development@ukfilmcouncil.org.uk)

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

⁴⁰ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

020 7861 7861

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁴¹ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁴².

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

East Midlands, United Kingdom.

B.2 Name of funding scheme:

EM Media invests in four broad areas:

- Audience and Market Development.
- Business Development.
- Product Development and Production.
- Skills Development.

B.3 Name and address of the funding scheme's administration and supervising authority:

EM Media, 35-37 St Mary's Gate, Nottingham NG1 1PU.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

⁴¹ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁴² “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. EM Media do have territorialisation requirements however these do not include applicants having to spend a minimum proportion of the budget in the East Midlands.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of EM Media's funds are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. EM Media distributes these funds to support and invest in regional projects along with money received from the European Regional Development Fund and other sources.

EM Media's internal regulations require applicants to initially discuss their project with EM Media who will advise the applicant whether or not it is worth making a formal application. Applications are submitted on a roll on basis or by a certain date depending on which scheme the applicant is applying to.

On receipt of the application, EM Media will endeavour to make a decision within 8 weeks.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

Successful applicants must be based in the East Midlands.

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 total realisation requirements as of 31 December 2005 and, only in cases of*

significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

Co-productions with a co-producer who is based in the East Midlands are encouraged. The application to EM Media must be submitted by the co-producer who is based in the East Midlands.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice which involves EM Media verifying that the information submitted by the applicant in respect of eligibility is correct.

EM Media has three key, overriding aims that will drive the business in the coming three years. They are to:

- identify, grow and support the cultural, creative and economic ambitions of the region's dynamic talent pool and enhance the region's reputation for innovative practice and distinctive voices;
- develop the range of markets, audiences and opportunities for consumption of digital product and encourage participation, understanding and engagement with all forms of media product, especially as tools for learning; and
- utilise key business functions and practices (R&D, feasibility testing, fundraising, market intelligence and communication) to better shape our business to be able to inform and support film and media businesses.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A.

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁴³ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

EM Media will assess each application for the following:

- proposed or existing partnerships in the application;
- individual career development;
- target markets of the application;
- staff within an applicant's organisation;
- diversity within the scope of geographic, ethnic, gender and social impacts;
- risks associated with the project;
- are the applicant's targets realistic;
- the applicant's previous experience;
- any external risks? If so, how do they affect the project;
- whether EM Media invested in this applicant before and if so, what were the outcomes detailed in the evaluation;
- how solid is the financial package;
- analyse the total project and the requested amount both in terms of cost/benefit and value for money;
- check proposed suppliers to verify their existence and relevance.
- check the stated match funding with stated partner;
- check the basis of the predicted audience income – checking both method and amount;
- original and innovative projects;
- distinctiveness of concept creatively and/or technically;
- potential for generating inward investment into region.

⁴³ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

CONTACT DETAILS

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

Debbie Williams, Chief Executive

EM Media, 35-37 St Mary's Gate, Nottingham NG1 1PU

0115 934 9090

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁴⁴ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁴⁵.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Wales, United Kingdom.

B.2 Name of funding scheme:

Film Agency Wales run funding schemes for the following areas:

- exhibition;
- education;
- development; and
- production.

B.3 Name and address of the funding scheme's administration and supervising authority:

Film Agency Wales, Suite 7, 33-35 West Bute Street, Cardiff CF10 5LH.

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

⁴⁴ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁴⁵ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

Yes.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Film Agency Wales' internal regulations require films which are funded by the agency to be likely to qualify as British Films as described in A.4.

The provisions quoted in B.4 merely state that 5% of the National Lottery's distribution fund should be for distribution by the Arts Council Wales who in turn distributes the funds to Film Agency Wales.

Film Agency Wales also have other territorialisation requirements which do not involve applicants being required to spend a minimum proportion of the budget in Wales described in B.7 below.

Film Agency Wales' internal regulations require the applicant to submit its application to Film Agency Wales who decide whether or not to fund the project. A letter of rejection with a brief explanation or an offer letter will be sent to the applicant. The offer will remain open for a certain period of time until it is accepted and the funds drawn down or the offer will be revoked. Applicants can appeal if the guidelines published regarding how the decision will be made are not adhered to.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, applicants must be able to demonstrate that the project will benefit Welsh filmmakers and key Welsh talent/personnel must be involved.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):
Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Film Agency Wales verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Film Agency Wales's priorities are to:

- identify and nurture Welsh filmmakers, particularly writers, producers and directors, by supporting and encouraging the development of their work and ambitions;
- promote a vibrant and dynamic film culture, through increasing access to and broadening the range of films available to all audiences across Wales; and
- provide new opportunities to Welsh filmmakers to get their films produced, increasing the range and number of films made.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁴⁶ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Film Agency Wales will assess each application against the following criteria:

- quality, potential and originality of the project;
- benefit to Welsh filmmakers and level of participation of key Welsh talent;
- viability of the project in terms of budget and partnership funding and the capability of the key creative personnel;
- the project's ability to qualify as a British Film under the test set out in Schedule 1 of the Films Act 1985; and
- the project's market appeal e.g. is an identifiable and reachable core audience appropriate to the budget.

CONTACT DETAILS

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

Pauline Burt, Chief Executive

Film Agency Wales, Suite 7, 33-35 West Bute Street, Cardiff CF10 5LH.

02920 467480

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

⁴⁶ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁴⁷ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁴⁸.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Greater London, United Kingdom.

B.2 Name of funding scheme:

Film London runs the following schemes (neither of which offer the equivalent of least €1M per year):

- PULSE – low budget digital shorts scheme;
- Borough production funds;
- Microwave; and
- Audience development fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

Film London, Suite 6.10, The Tea Building, 56 Shoreditch High Street, London E1 6JJ.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

⁴⁷ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁴⁸ ""independent"" means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

Yes.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Film London do not fund films which are unlikely to be classified as British Films (please see A.4). In addition, Film London's internal guidelines require applicants to use production and post-production facilities based in London.

The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England, a partnership of nine regional screen agencies. Screen England distributes these funds to Film London who use the funds to support and invest in regional projects along with money received from other sources.

Film London's internal guidelines, advises the applicant to attend a Film London Roadshow to discuss their idea followed by submitting a formal application. Film London will assess the application and decide whether or not to fund the project. A letter of rejection with a brief explanation or an offer letter will be sent to the applicant. The offer will remain open for a certain period of time until it is accepted and the funds drawn down or the offer will be revoked. Applicants can appeal if the guidelines published regarding how the decision will be made are not adhered to.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total*

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

To be eligible to apply for funding, applicants must be:

- based in one of the 33 London Boroughs; and
- ensure that the majority of the production activity will take place in London.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

Co-productions can apply providing that the applicant is based in Film London and is responsible for the majority of the production to enable the film to qualify as a British Film.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Film London verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Film London's aim is to:

- support film and media production, exhibition, education, economic and industrial development across London;
- enhance London's status as a world class film location; and
- enable London's film and media culture to develop so that it reflects the diversity of the city and creates access and opportunities for people from all communities to engage with moving image technologies profitably and creatively.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):**
N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁴⁹ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:**

Film London assesses all applications against the following:

- is the project viable and fulfils Film London's aims;
 - support film and media production, exhibition, education, economic and industrial development across the capital;
 - enhance London's status as a world class film location;
 - enable London's film and media culture to develop so that it reflects the diversity of the city and creates access and opportunities for people from all communities to engage with moving image technologies profitably and creatively;
 - increase access and opportunity to film and media culture across London;
 - maximise investment in the region from both public and private sectors;
 - promote the profile of the region nationally and internationally, making Film London friendly and promoting tourism through film and media initiatives;
 - increase economic sustainability and artistic quality within film and media organisations across the cultural and industrial sector;
 - encourage local partnerships and networks within and across London Boroughs that enhance rather than duplicate existing activity;
 - invest in high quality delivery across the sector;
 - work with and develop existing hubs and clusters of activity; or
 - develop talent and provide training opportunities for new entrants to the sector and continuing professional development for those already working in the sector.
- is the story original with a strong contemporary resonance;
- does the project offer value for money, commercial potential;
- will the project be made if not for Film London's funding;

⁴⁹ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- how will Film London's support be used to secure complimentary support;
- the ability of the organisation to deliver the project within budget, including planning, preparation, management systems and track record;
- quality of the proposed activities, including plans to involve diverse content, practitioners and partners;
- financial viability of the project in relation to the script, schedule and budget;
- the future impact on the applicant;
- the public benefit offered by the project including access, plans for marketing and public impact.

CONTACT DETAILS

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

Tom Kirk, Production Administrator (tom.kirk@filmlondon.org.uk)

Film London, Suite 6.10, The Tea Building, 56 Shoreditch High Street, London E1 6JJ.

020 7613 7693

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁵⁰ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁵¹.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

United Kingdom.

B.2 Name of funding scheme:

The UK Film Council's New Cinema Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

⁵⁰ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁵¹ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. However, the UK Film Council will not fund films which are unlikely to be classified as British Films (please see A.4). For example, to classify as a British Film under Schedule 1 of the Films Act 1985, the applicant would have to ensure that the film scored 16 out of 32 points in order to obtain a British film certificate from DCMS. 9 of the available points can be scored from using production and post production services in the United Kingdom however a film can still gain enough points to be classified as British without being based in Britain providing that enough points are awarded under the “cultural hubs” and “personnel” sections of the test.

The UK Film Council also have territorial requirements but which do not involve spending a minimum amount of the budget in the UK.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The provisions referred to in B.4 state that 12.2% of the National Lottery’s distribution funds should be for distribution by the UK Film Council (s.23(e) of the National Lottery Act 1993 as amended).

The internal regulations of the UK Film Council provide that the application will be assessed initially and primarily on its creative merit and the applicant will be informed within eight weeks of receipt of the application.

Inevitably, the selection process is subjective and the decision taken by the New Cinema Fund is final. There is no appeal process open to applicants whose projects have been rejected on creative grounds.

If the New Cinema Fund is interested in the project the applicant may be invited to the UK Film Council to discuss it further. The UK Film Council may reject the application at this stage or alternatively it may suggest changes to the project.

The UK Film Council will only accept resubmissions for funding if there has been significant and substantial changes to the script, or if major new elements have been attached or secured since the previous submission.

The UK Film Council will write to successful applicants to let them know if the application has been successful, the amount of funding to be offered and the basis upon which investment is offered and the conditions attached to such an offer. The offer will be conditional upon the applicant entering into a Production Finance Agreement.

If both the producer and director on a project do not have previous feature film production experience, the UK Film Council reserves the right to ensure that the film is realised under the guidance of an experienced executive producer or production company with the associated costs to be included in the production budget.

The UK Film Council's main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for the UK Film's New Cinema fund, applicants must be:

- a company which is registered and centrally-managed and staffed in the UK; or
- a company which is registered and centrally managed and staffed in another state of the European Union/European Economic Area; or
- an individual aged 18 years or over and a national or resident of the United Kingdom (or another state of the European Union/European Economic Area); and be able to
- demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in the UK. If the applicant is based in the EEA, the applicant can apply and subsequently attach a UK producer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the UK Film Council verifying the information for

eligibility and notifying the applicant as soon as possible if the application is not eligible for funding.

The UK Film Council's main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁵² please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The UK Film Council will assess applications based on the following criteria:

- is the film fresh original and dynamic in any style or genre;
- does the application constitute diverse innovative and cutting-edge filmmaking talent;
- does the film utilise the benefits offered by digital technology in the making and showing of films;
- does the film have secured or in the advanced stages of securing the services of a director and principal cast; and

⁵² Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- does the film have contractually secured or in the UK Film Council's opinion, have the potential to secure a UK theatrical release or a high profile digital release with a distributor, or with a web broadcaster acceptable to the New Cinema Fund; and
- can the applicant demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985

CONTACT DETAILS

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

Head of the New Cinema Fund (newcinemafund@ukfilmcouncil.org.uk)
The UK Film Council, 10 Little Portland Street, London W1W 7JG.

020 7861 7861

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁵³ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁵⁴.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

North West England, United Kingdom.

B.2 Name of funding scheme:

North West Vision operates the following funding schemes:

- Digital Shorts*
- Feature Film Script Development*
- Television Project Development*
- Television Company Development*
- Television Production Finance*
- Audience Development*
- Feature Film Company Development
- Feature Film Project Development
- Feature Film Production Finance

B.3 Name and address of the funding scheme's administration and supervising authority:

North West Vision, Manchester Film Office, Ground Floor, BBC Broadcasting House, Oxford Road, Manchester, M60 1SJ.

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

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

⁵³ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁵⁴ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and provide a copy of the laws and regulations in the version as at 31 December 2005 (in the national language only).**
- National Lottery Act 1993
http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998
http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>) .

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. The schemes referred to in B.2 do have territorialisation requirements however these do not include applicants having to spend a minimum proportion of the budget in the North West of England.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005):**

Part of North West Vision's funds are provided by Screen England, a partnership of nine regional screen agencies. UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. North West Vision distributes these funds to support and invest in regional projects along with money received from the European Regional Development Fund and other sources.

North West Vision's internal regulations include advising applicants to discuss the project with North West Vision in the first instance. North West Vision will advise the applicant whether or not it is worth making a formal application. Applications are submitted on a roll on basis or by a certain date depending on which scheme the applicant is applying to.

On receipt of the application, North West Vision endeavour to make a decision within 30 to 40 working days after the viability of the project or application is assessed based on how innovative and creative the concept for the project is as outlined in B.13.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

Applicants who are applying to schemes marked with an asterisk in B.2 have the option of applying to North West Vision's Regional Attraction Fund, (funded by North West Vision and also the Northwest Regional Development Fund) or the Heritage, Access Film and Audience Development Fund must establish that they are based or will be based in the Northwest.

To be eligible for North West Vision investment from the Merseyside Film and TV fund, applicants must:

- be based in Merseyside or be locating to Merseyside within 3 months of submitting the application or developing a joint venture with a company based on Merseyside;
- demonstrate a business proposition that will benefit the Merseyside economy in terms of jobs and/or turnover; and
- show commitment to the development of the film/television/digital media industries in Merseyside.

Applicants must also be able to show:

- that they will focus on activity that can generate economic benefit to Merseyside's economy in terms of jobs created;
- a commitment to the development of film, television and digital media industries in Merseyside; and
- an ability to generate sustainable growth in the Merseyside screen industries.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions are encouraged. North West Vision will fund co-producers providing that their project's co-producer is based on Merseyside or is moving to Merseyside within 3 months of submitting the application.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice which involves, North West Vision verifying that the information submitted by the applicant is correct.

North West Vision is committed to supporting, promoting and funding TV and film production in the North West of England. Their mission is to champion their film and television industry, celebrate their talent and diversity, and build on the production success of the North West of England to be the best in Europe.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁵⁵ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

North West Vision assesses each project on a number of criteria including:

- potential of recouping the investment if it is made by way of an equity investment;
- original and innovative projects;
- creative content, clarity and realisation of the idea;
- distinctiveness of concept creatively and/or technically;
- quality of team/individual and their ability to realise the project as outlined;

⁵⁵ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- impact on viability of the applicant whether through direct financial return, penetration into new market or enhanced reputation/profile;
- generation of inward investment into region;
- jobs created;
- status of financial and production partners; and
- fit of project concept, cost and intended audience, and overall commercial viability of the activity.

CONTACT DETAILS

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

Chris Moll, Head of Funds (chrism@northwestvision.co.uk)
North West Vision, BBC Broadcasting House, Oxford Road,
Manchester, M60 1SJ
0161 244 3750

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁵⁶ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁵⁷.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Northern Ireland, United Kingdom.

B.2 Name of funding scheme:

The Northern Ireland Film and Television Commission (the “NIFTC”) run the following schemes:

- Animation;
- Company Development Fund;
- Completion Fund;
- Digital Media;
- Distribution and Promotion Support;
- Factual;
- Feature Film and Drama;
- Individual and Company Development;
- Lower budget production support;
- Markets, Festivals and Conferences;
- NI Film Production Fund;
- Product Development Fund;
- Project Development;
- Skills Development Bursary Fund; and
- Television Drama.

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

Northern Ireland Film and Television Commission, Alfred House 21 Alfred Street
Belfast BT2 8ED Northern Ireland.

⁵⁶ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁵⁷ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

Yes.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005):

The provisions quoted in B.4 merely state that 2.8% of the National Lottery's distribution funds should be for distribution by the Arts Council of Northern Ireland. However, part of the NIFTC assessment will include ascertaining the percentage of the budget to be spent in Northern Ireland, please see B.13 below.

In brief, the applicant submits its application and NIFTC decide whether or not to fund the project. A letter of rejection with a brief explanation or an offer letter will be sent to the applicant. The offer will remain open for a certain period of time until it is accepted and the funds drawn down or the offer will be revoked. Applicants can appeal if the guidelines published regarding how the decision will be made are not adhered to.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for funding, applicants must be:

- based in Northern Ireland; or
- if companies are applying from elsewhere, the companies are intending to produce a film all or partly in Northern Ireland e.g. the project's main elements i.e. producer, writer, director, location, story are substantially Northern Ireland based.

Applications are also assessed in relation to:

- how many people in Northern Ireland will benefit;
- cultural relevance to Northern Ireland; and
- the percentage of the budget to be spent in Northern Ireland.
- percentage of the project to take place in Northern Ireland;
- percentage of cast and crew from Northern Ireland;
- evidence of attempts to secure labour and trainees from Northern Ireland.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in Northern Ireland.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves NIFTC verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

The NIFTC's mission is to accelerate the development of a dynamic and sustainable film and television industry in Northern Ireland by integrating industrial, educational and cultural policies and actions. The NIFTC has eight primary areas of activity, all of which are integrated in a unified approach to the development of the audiovisual industry with the potential to make a positive economic and cultural impact on Northern Ireland:

- Film development and production funding; production logistics support;
- Marketing to promote Northern Ireland as a base for production;
- Company development support initiatives for local production companies;
- Skills development/training for the industry;

- Information services for producers and others;
- Moving image education policy development;
- Developing access to the audiovisual heritage of Northern Ireland; and
- Specialised film exhibition development.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁵⁸ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Northern Ireland Film and Television Commission assess all applications against the following:

- how many people in Northern Ireland will benefit;
- cultural relevance to Northern Ireland;
- public good versus commercial gain;
- plans to afford equality of opportunity;
- regional, national and international significance;
- the quality of the application e.g. the team, script and finance;
- originality of the concept;

⁵⁸ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- potential of the project for theatrical release or broadcast;
- evidence that the applicant has:
 - identified its target audience;
 - carried out market research e.g. comparable projects;
 - sales estimates;
 - approaches or planned approaches to UK and international distributors to date;
 - plans for promotion in Northern Ireland;
 - plans for marketing and promoting the project;
- clear and comprehensive plans for the management of the project and budget;
- appropriateness of the team e.g. track record;
- personnel and key Heads of Department;
- finance plan indicating proposed sources of funding;
- detailed pre-production, production and post-production schedule;
- full budget;
- unit list, cast list, facilities, trainees, locations list;
- amount and sources of partnership funding;
- contingency plans if the proposed partnership funding changes;
- and
- whether the project would happen if not for NIFTC.

CONTACT DETAILS

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

Elsie Brown, Funding Programmes Manager
 Northern Ireland Film and Television Commission, Alfred House 21 Alfred Street
 Belfast BT2 8ED Northern Ireland.
 028 9023 2444

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

Hakan Kousetta of Howard Kennedy
 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁵⁹ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁶⁰.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

North East England, United Kingdom.

B.2 Name of funding scheme:

Northern Film & Media run the following funding schemes:

- Social Impact;
- Economic Impact; and
- The Accelerator Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

Northern Film & Media, Central Square, Forth Street, Newcastle Upon Tyne NE1 3PJ

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

⁵⁹ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶⁰ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. Northern Film & Media do have territorialisation requirements however these do not include applicants being required to spend a minimum proportion of the budget in the North of England.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of Northern Film and Media's funds are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. Northern Film and Media distributes these funds to support and invest in regional projects along with money received from other sources.

Northern Film & Media's internal regulations require applicants to initially discuss their project with a Northern Film & Media fund manager who will advise the applicant whether or not it is worth making a formal application and offer guidance on the most suitable fund to apply to. Applications are submitted on a roll on basis or by a certain date depending on which scheme the applicant is applying to.

On receipt of the application, Northern Film & Media aim to make a decision within 10 weeks for sums over £3,000 and within 5 weeks for sums less than £3,000. Applicants applying for less than £300 can expect to receive a decision within a shorter period of time.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, applicants must:

- be based in North East England; or

- have projects which will either take place in the North East of England and demonstrate how the project will benefit companies or individuals based in North East England.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):
Co-productions can apply providing that the applicant is based in the North of England or can demonstrate that the project will benefit North East England.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005*):
There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Northern Film & Media verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

The aim of the territorialisation requirements is to develop a sustainable industry in the region. Northern Film & Media's mission statement is to lead the building of a commercial and expert regional media sector with an international reputation which thrives on creativity, competition and success, attracting investment and talent to North East England.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005*)?
No.

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 in cases of significant changes, before this date during the period from 2001 to 2005*):
N/A

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁶¹ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Northern Film & Media will assess each application for the following:

- does the project have aim that match those of the fund;
- will the project benefit North East England;
- does the project have suitable level of expertise and experience within the partners and collaborators to reach the next stage;
- does the project stand out when compared to its competitors;
- is the project powerfully and professionally presented;
- does the project have significant potential to find a commercial market or buyer;
- does the project result in a North East England company or individual being better equipped for the modern market place or to deliver future projects;
- where applicable does the project clearly identify robust potential revenue streams;
- is there a good project plan;
- does the project represent progress for the company or individual;
- does the project result in a wider set of collaborators or contacts for the company or individual;
- does the project represent value for money;
- is the budget level appropriate;
- is the schedule reasonable;
- are there useful and manageable milestones in place; and
- have risks been identified properly.

CONTACT DETAILS

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

Tom Harvey, Chief Executive (tom@northernmedia.org)

⁶¹ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Northern Film & Media, Central Square, Forth Street, Newcastle Upon Tyne NE1 3PJ
0191 269 9200

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

Hakan Kousetta at Howard Kennedy, 19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁶² or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁶³.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

United Kingdom.

B.2 Name of funding scheme:

The UK Film Council's Premiere Fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by

the National Lottery Act 1998

⁶² Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶³ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. However, the UK Film Council will not fund films which are unlikely to be classified as British Films (please see A.4). For example, to classify as a British Film under Schedule 1 of the Films Act 1985, the applicant must ensure that the film scores 16 out of 32 points in order to obtain a British film certificate from DCMS. 9 of the available points can be scored from using production and post production services in the United Kingdom however a film can still gain enough points to be classified as British without being based in Britain providing that enough points are awarded under the “cultural hubs” and “personnel” sections of the test.

The UK Film Council also have territorial requirements that do not involve spending a minimum amount of the budget in the UK.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The provisions referred to in B.4 state that 12.2% of the National Lottery’s distribution funds should be for distribution by the UK Film Council (s.23(e) of the National Lottery Act 1993 as amended).

The UK Film Council’s internal regulations require the application to be assessed initially and primarily on its creative merit and the applicant to be informed within eight weeks of receipt of the application.

Inevitably, the selection process is subjective and the decision taken by the Premiere Fund is final. There is no appeal process open to applicants whose projects have been rejected on creative grounds.

If the Premiere Fund is interested in the project the applicant may be invited to the UK Film Council to discuss it further. The UK Film Council may reject the application at this stage or alternatively it may suggest changes to the project.

The UK Film Council will only accept resubmissions for funding if there has been significant and substantial changes to the script, or if major new elements have been attached or secured since the previous submission.

The UK Film Council will write to successful applicants to let them know if the application has been successful, the amount of funding to be offered and the basis upon which investment is offered and the conditions attached to such an offer. The offer will be conditional upon the applicant entering into a Production Finance Agreement.

If both the producer and director on a project do not have previous feature film production experience, the UK Film Council reserves the right to ensure that the film is realised under the guidance of an experienced executive producer or production company with the associated costs to be included in the production budget.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for the UK Film's Premiere fund, applicants must be:

- a company which is registered and centrally-managed and staffed in the UK; or
- a company which is registered and centrally managed and staffed in another state of the European Union/European Economic Area; or
- an individual aged 18 years or over and a national or resident of the United Kingdom (or another state of the European Union/European Economic Area); and be able to
- demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985.

The Premiere Fund will consider exceptions to the eligibility criteria at its own discretion if it believes that such an exception will help achieve one of the UK Film Council's objectives.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in the UK. If the applicant is based in the EEA, the applicant can apply and subsequently attach a UK producer.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant*

changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves the UK Film Council acknowledging the application within two weeks of receipt. The applicant will be notified as soon as possible if the application is not eligible for funding.

The UK Film Council's main aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁶⁴ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

The UK Film Council will assess applications based on the following criteria:

- can the project find cinema audiences in the UK and around the world across a full range of budgets;

⁶⁴ Selective funding schemes grant State aid based on an evaluation of each project following the 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 the production a feature film intended for exhibition theatrically and for commercial exploitation in the UK and the rest of the world; and
- will the production be in the English language unless there are relevant circumstances to the contrary; and
- is the production identifiable as a commercially viable project, e.g. capable of securing worldwide distribution or representation at international markets through a reputable sales agent for the film with a guaranteed meaningful theatrical release in the UK or, in exceptional circumstances, clearly demonstrate a commercially viable post delivery theatrical distribution strategy (unless you are making an application for an early commitment of investment); and
- is the production capable of obtaining theatrical and video release certificates no more restrictive than BBFC `18' in the UK and MPAA `R' in North America;
- is the production wholly or substantially capable of qualifying as a British film (please see A.4 for further details).

CONTACT DETAILS

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

Head of the Premiere Fund (premierfund@ukfilmcouncil.org.uk)

The UK Film Council, 10 Little Portland Street, London W1W 7JG.

020 7861 7861

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**ART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁶⁵ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁶⁶.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Scotland, United Kingdom.

B.2 Name of funding scheme:

Scottish Screen operate the following schemes:

- Content production;
- Content development;
- Short film production;
- Animation development;
- Animation production;
- Documentary development;
- Documentary production;
- Audience development;
- Markets and festivals; and
- New talent development initiative.

B.3 Name and address of the funding scheme's administration and supervising authority:

Scottish Screen, 249 West George Street, Glasgow G2 4QE.

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

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

⁶⁵ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶⁶ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and provide a copy of the laws and regulations in the version as at 31 December 2005 (in the national language only).
- National Lottery Act 1993
http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998
http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

Yes.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Scottish Screen require films which are funded by them to be likely to qualify as British Films as described in A.4. The provisions quoted in B.4 state that 1.16% of the National Lottery's distribution funds should be for distribution by Scottish Screen (s.23(f) of the National Lottery Act 1993 as amended) who will in turn distribute the funds to invest and support regional projects.

However, to be eligible to apply for funding, Scottish Screen's internal regulations require the applicant to score a number of points based on the:

- number of people involved in the project who are residents in Scotland;
- whether the film is shot in Scotland;
- whether the story is based in Scotland; and
- percentage of the budget which is spent in Scotland.

In brief, the applicant submits its application and Scottish Screen decide whether or not to fund the project. A letter of rejection with a brief explanation or an offer letter will be sent to the applicant. The offer will remain open for a certain period of time until it is accepted and the funds drawn down or the offer will be revoked. Applicants can appeal if the guidelines published regarding how the decision will be made are not adhered to.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for funding, applicants must be:

- based in Scotland; and
- score the minimum number of eligibility points required as described in B.6 above.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in Scotland and can qualify as being eligible.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Scottish Screen verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Scottish Screen's aims are to:

- support the development of sustainable screen businesses;
- develop business and creative opportunities on new media platforms;
- ensure that we provide access to screen culture, heritage and industry for a wide range of groups and individuals in communities across Scotland; and
- put in place an evaluation and monitoring regime and identify performance indicators.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?*

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁶⁷ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Scottish Screen will assess each application against the following criteria:

- cultural impact – how Scottish Screen’s investment would benefit and impact screen culture in Scotland e.g. audiences within Scotland or the promotion or development of Scottish content, talent or companies in Scotland;
- creative impact – whether the project would allow Scottish talent to develop, create work recognised as creatively excellent; original and innovative and promotes Scotland, Scottish identity and Scottish talent to a national or international audience;
- business development and project delivery:
 - what the applicant currently does and how it is seeking to develop and how Scottish Screen’s investment fits in to that;
 - how the project will be managed and delivered;
 - timescales for implementation and who will be responsible for each stage with the track record of those individuals;
 - costs and cashflow of the project;
 - how will the project be financially managed;
 - what evaluation and monitoring arrangements are there;
 - what will be the impact of the project on audiences, markets, skills development, business and partnerships;
- Project and market readiness i.e. priority will be given to applicants who can clearly demonstrate that there is an audience or clear route to market for their project/activity.

CONTACT DETAILS

⁶⁷ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

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

Ken Hay, Chief Executive

Scottish Screen, 249 West George Street, Glasgow G2 4QE.

028 9023 2444

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁶⁸ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁶⁹.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

East England, United Kingdom.

B.2 Name of funding scheme:

Screen East run a scheme called the Screen East's Regional Investment Fund for England (RIFE) which invests in the following areas in the East of England:

- Talent and Content Development;
- Enterprise and Skills Development; and
- Audience Development.

B.3 Name and address of the funding scheme's administration and supervising authority:

Screen East, 2 Millennium Plain, Norwich NR2 1TF

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

⁶⁸ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶⁹ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. Screen East does have territorialisation requirements however these do not include applicants being required to spend a minimum proportion of the budget in the East of England.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of Screen East's funds are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, which include Screen England. Screen East distributes these funds to support and invest in regional projects along with money received from the European Regional Development Fund and other sources.

Screen East's internal regulations encourage applicants to initially discuss their project with an officer of Screen East who will discuss the project with the applicant first and advise whether or not it is worth making a formal application. Applications are submitted on a roll on basis.

On receipt of the application, Screen East will check whether or not the applicant is eligible and aim to acknowledge receipt of the application within 3 working days.

Screen East will explain why an application has failed and will try and offer advice and assistance to the unsuccessful applicant. Successful applicants are sent an offer letter and investment agreement.

Once an award is made, it is monitored in line with the investment agreement and Screen East will require progress reports. The completed project will be appraised to measure how far the applicant's aims have been achieved to help measure the project's success and how the applicant can improve it.

Screen East's decision is final and there is no general appeal process unless Screen East has failed to follow the procedures publishes when assessing the application. Any appeal in this regard or general complaint will be acknowledge by the Chief Executive within ten days of receipt and the complaint presented to an appeals committee.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for funding, applicants must:

- be based in the East of England; or
- the project will be based in East England or/and key personnel from East England will be substantially involved.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in East England or the project has key personnel from East England substantially involved.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Screen East verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Screen East's remit is to facilitate talent and content development with industry potential within the East of England and to enable and stimulate the development of production of films with a cultural and commercial value. Screen East is committed to assisting distinctive, creative talent and to encourage applications from all sections of the community.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?*

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):
N/A

CULTURAL CAUSES

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

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁷⁰ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Screen East assess all applications against the following:

- whether the project benefits the general public in the East of England;
- is the project of the highest creative and commercial quality, fostering the development of a sustainable film and moving image industry in the East of England;
- is the project aimed at people from all background and will improve social inclusion, cultural diversity and access to film and moving image;
- is the project financially viable, represents value for money and will lever the minimum level of match funding; and
- is the applicant able to manage the project effectively.

CONTACT DETAILS

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

Annabel Grundy: Funding and Performance Officer (funding@sceneeast.co.uk)
Screen East, 2 Millennium Plain, Norwich NR2 1TF
01603 776923

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

⁷⁰ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

PART B FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁷¹ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁷².

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

South England, United Kingdom.

B.2 Name of funding scheme:

Screen South runs a scheme called the Screen South's Regional Investment Fund for England (RIFE) Open Fund, the RIFE Festival & Exhibition Fund and occasional short film funding schemes.

B.3 Name and address of the funding scheme's administration and supervising authority:

Screen South, The Wedge, 75-81 Tontine Street, Folkestone, Kent CT20 1JR

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

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

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

⁷¹ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁷² “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

No. Screen South does have territorialisation requirements, however these do not include applicants being required to spend a minimum proportion of the budget in the South of England.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005):*

Part of Screen South's funds are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. Screen South distributes these funds to support and invest in regional projects along with money received from European funds and other sources.

Screen South's internal regulations encourage applicants to attend a Screen South "information day" to initially discuss their project at an early stage. Applicants who have not attended an information day will not automatically be guaranteed a panel interview.

Applications for small awards i.e. less than £500 can take up to 6 weeks before a decision is made, while awards for more than £500 can take up to 10 weeks. Individuals can apply for a maximum of £5,000 while companies and organisations can apply for up to £10,000.

Applications are submitted by specific deadlines which are at regular intervals during the year.

On receipt of the application, Screen South will check whether or not the applicant is eligible and will acknowledge receipt of the application within 10 working days or advise why the applicant is not eligible. Incomplete applications will be contacted within 3 working days for further information.

Screen South will assess the project based on the criteria set out in B.16. Screen South send an official offer letter and must receive a reply within 30 days. Once accepted the offer will remain open for 6 months and reviewed bi-monthly. A point of repayment is established for each project e.g. development funding will be expected to be repaid on the first day of principal photography.

Once an award is made, it is monitored in line with the investment agreement and Screen South will require progress reports. The completed project will be appraised to

measure how far the applicant's aims have been achieved to help measure the project's success and how the applicant can improve it.

Complaints or appeals should be addressed to the Chief Executive Officer of Screen South. Complaints should be submitted within one month of the incident giving rise to the complaint.

- 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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005).*

To be eligible to apply for funding, applicants must be based in South England i.e. the postcode of the applicant is based in South England.

- 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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Co-productions can apply providing that the applicant is based in South England.

- 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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves Screen South verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Screen South aims to be a resource that helps people get their ideas off the ground, whether they want to make a documentary, learn how to write successful scripts, set up a film festival or shoot a major movie here. Screen South want to preserve Screen South's film heritage and find ways of presenting exciting film to new audiences. Screen South is committed to supporting dynamic and sustainable film and media industry for the Screen South region.

Explicit or *de facto* total territorial conditions

- B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁷³ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Screen East assess all applications against the following:

- whether the project contributes to at least one of Screen South's priorities i.e.:
 - develops the talent, skills and innovation of South England's existing workforce;
 - promotes the South of England as the ideal location for film and television production and attracts inward investment by marketing the locations, facilities, skills and expertise available in the region;
 - creates opportunities for audiences in the South of England to enjoy and experience moving image culture and heritage;
 - celebrates the diversity of the people who live and work in the region in order to break down the barriers to working in the media industries;
 - informs and acts as an advocate for the sector's growing significance to the regional and national economy.
- the project is of the highest creative and artistic quality;
- the project will benefit the general public in the South of England by contributing to social inclusion, cultural diversity, and access to film and moving image activity;
- show that the project is financially viable, represents value for money and will lever a suitable level of partnership funding which is likely to form an important element in evaluating the regional benefit attached to a project;
- the applicant able to manage the project effectively.

⁷³ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

CONTACT DETAILS

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

Jo Nolan, Chief Executive (jo.nolan@screensouth.org)

Screen South, The Wedge, 75-81 Tontine Street, Folkestone, Kent CT20 1JR 01303 259777

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

Hakan Kousetta of Howard Kennedy

19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁷⁴ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁷⁵.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

Yorkshire, United Kingdom.

B.2 Name of funding scheme:

Screen Yorkshire run the following schemes:

- production fund;
- feature film fund;
- short film fund;
- business development scheme; and
- melt (research and development grants).

B.3 Name and address of the funding scheme's administration and supervising authority:

Screen Yorkshire, Studio 22, 46 The Calls, Leeds LS2 7EY.

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

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

⁷⁴ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁷⁵ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

National Lottery Act 1993 (http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998 (http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No.

Screen Yorkshire do have territorialisation requirements, however these do not include applicants being required to spend a minimum proportion of the budget in Yorkshire.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

Part of Screen Yorkshire's funds are provided by Screen England, a partnership of nine regional screen agencies. The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England. Screen Yorkshire distributes these funds to support and invest in regional projects along with money received from European funds and other sources.

Screen Yorkshire advises applicants to contact them in the first instance to discuss their application. Screen Yorkshire will advise applicants whether it is worth them making an application and to which fund. Once the application is received, it is acknowledged and a response is provided within a set number of weeks. Reasons are given to the applicant if the application fails whereby an offer letter is sent to successful applicants. Investment is often made on an equity basis with provisions for Screen Yorkshire to recoup its investment after an agreed amount of time.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before this date during the period from 2001 to 2005*).

To be eligible to apply for funding, applicants must be based in Yorkshire or in the process of moving to be based in Yorkshire and one of the principals is resident in the region.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

Applicants can apply to work on their own or with a creative or technical co-producer. Screen Yorkshire encourages innovative partnerships providing that the applicant is based in the Yorkshire or is moving to be based in the region.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):*

There are no judicial practices as such however there is an administrative practice and internal guidelines which involve Screen Yorkshire verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project.

Screen Yorkshire is responsible for inspiring, promoting and supporting a successful long term film and media sector for Yorkshire. Their vision is to help grow and develop strong film, broadcast and digital media industries in Yorkshire and Humber with a highly skilled workforce.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?*

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):*

N/A

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁷⁶ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

Screen Yorkshire assesses all applications against the following:

- the project's potential to develop and support distinctive media production;
- build a long term and creative production sector in Yorkshire which is culturally inclusive;
- the project's strategy for reaching an audience;
- vision that push creative, technological or commercial boundaries;
- the viability of the project by assessing:
 - creative content, clarity and distinctiveness creatively or technically;
 - level of investment measured against the potential for returns;
 - how the concept fits with intended cost and audience;
 - quality of the team and ability to deliver the project as outlines;
 - status of the financial and production partners;
 - the impact the project will have on the success of the production company through direct financial return, penetration into new market or enhanced reputation or profile;
 - inward investment the project will bring to Yorkshire;
 - number of jobs the project will create;
 - potential benefit to the Yorkshire production sector in terms of profile, new markets and partnerships and direct economic impacts.
- the applicant must also show that without the investment, the applicant would not be able to achieve what would not otherwise have been possible.

CONTACT DETAILS

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

Sally Joynson, Acting Chief Executive and Head of Industry Development

(sally@screenyorkshire.co.uk)

Screen Yorkshire, Studio 22, 46 The Calls, Leeds LS2 7EY.

0113 236 8231

⁷⁶ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

**PART B
FUND SPECIFIC QUESTIONS**

Please only cover funding schemes, including tax incentive schemes, that are operated at the national, regional (excluding EU schemes, e.g. the media programme)⁷⁷ or local level in your country during the reference period of 1 January 2001 to 31 December 2005, and that disposed of an annual budget to State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works of at least €1M per year⁷⁸.

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region

South West England, United Kingdom.

B.2 Name of funding scheme:

South West Screen operate the following funding schemes:

- Regional strengths fund;
- Film festivals fund;
- Audience development fund; and
- Talent development fund.

B.3 Name and address of the funding scheme's administration and supervising authority:

South West Screen, St Bartholomews Court, Lewins Mead, Bristol BS1 5BT

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

- **the dates when these laws and regulations entered into force;**
- **whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their entry into force), and**

⁷⁷ Regional schemes mean both schemes operated within your country and schemes to which your country is a party in other countries, e.g. the Nordic Film – and TV fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁷⁸ “independent” means that the cinematographic and audio visual works produced and distributed by entities that are legally independent from broadcasters.

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

National Lottery Act 1993

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) as amended by the National Lottery Act 1998

(http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm) and National Lottery Act 2006 (<http://www.opsi.gov.uk/acts/acts2006/20060023.htm>).

South West Screen also distribute European Regional Development Funds and funds from other sources.

TERRITORIAL CONDITIONS

Explicit Territorial Conditions

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

No. South West Screen do have territorialisation requirements, however, these do not include having to spend a proportion of the production budget in Wales.

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 cases of significant changes, of former versions of total realisation clauses that were in force before the State during the period from 2001 to 2005*):

The UK Film Council is given 12.2% of the National Lottery's distribution fund (s.23(e) of the National Lottery Act 1993 as amended) to be distributed to various projects and organisations, including Screen England, a partnership of nine regional screen agencies. Screen England distributes part of these funds to South West Screen who use the funds to support and invest in regional projects along with money received from other sources.

South West Screen require applicants to submit an application by the scheme funding deadlines which are at regular intervals during the year. The application is acknowledged and South West Screen endeavour to make a decision within 8-10 weeks. If the application is rejected, South West Screen will provide a short explanation and try to offer assistance. Successful applicants are sent an offer letter outlining the terms of the offer which remains open for a period of time. Applicants can appeal if the guidelines published regarding how the decision will be made are not adhered to.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total*

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

To be eligible to apply for funding from South West Screen, applicants must be operating or residing in the South West; or who wish to develop activity based in the South West.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):
Co-productions can apply providing that the applicant can satisfy the eligibility criteria outlined above in B.7.

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 total realisation requirements as of 31 December 2005 and, only in cases of significant changes, with respect to former versions of total realisation requirements that were in force before the State during the period from 2001 to 2005):

There are no judicial practices as such however there is an administrative practice and internal guidelines which involves South West Screen advising the applicant to contact South West Screen to discuss the project first. South West Screen will advise whether or not it is worth the applicant submitting a formal application. If an application is submitted, South West Screen will verify that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project and deciding whether or not to fund the project.

South West Screen's priorities are to:

- informing and influence opinion - to shape the national and regional decisions and policies which impact on screen-based media, and to raise awareness of the sector's importance to the cultural and economic life of the South West;
- awaken and nurture creativity - by enabling existing South West screen practitioners and newcomers to expand their skills and horizons;
- give grants - to build capacity, support talent, encourage best practice and innovation, and to develop new ideas in the South West;
- provide information, advice and assistance - both for those already engaged in the sector, and for those seeking more information about it;
- take action to expand access and diversity - for instance, by enabling effective training, networking, skills and knowledge-sharing and through work alongside communities in the South West where there is not a tradition of engagement with the media and/or with people who feel their voices are not heard.

Explicit or *de facto* total territorial conditions

B.10 Does this 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 at 31 December 2005 and, only in cases of significant changes, the situation that prevailed before the State during the period from 2001 to 2005)?

No.

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 in cases of significant changes, before this date during the period from 2001 to 2005):

N/A

CULTURAL CAUSES

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

Please see A.7.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁷⁹ please list the qualitative criteria that were applied as at 31 December 2005 and, only in cases of significant changes, before this date during the period 2001 to 2005:

South West Screen will score each application against the following criteria:

- contribution to objectives:
 - does the project fit with regional strategies;
 - how will it enhance the culture of the South West;
 - does it fit with UK-wide sector objectives;
 - does the project contribute to the objectives of the South West Regional Development Agency;
 - does the project have potential for collaboration between regions.
- public benefit:
 - potential promotion of cultural diversity through delivery of the project;
 - potential promotion of social inclusion including equal opportunities and disability issues through delivery of the project;
 - number of people benefiting from the project;
 - market research carried out which informs the shape and the need for the project;
 - potential for audience development and age range of participants/audiences;
 - relevance of the proposed project to the applicant organisation;

⁷⁹ Selective funding schemes grant State aid based on an evaluation of each project following the following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- relevance of the project to the potential audiences.
- ability of the applicant to deliver the project:
 - clear project planning and preparation and track record;
 - management systems and clear staff roles set up for delivery;
 - plans for financial control and commitment of the board;
 - plans for risk management and key partner support;
- financial viability:
 - viability of the budget and targets for earned income;
 - level and commitment of the partnership funding;
 - insurance and contingency plans;
- value for money:
 - gearing; and whether the project would still happen without the South West Screen funding.

CONTACT DETAILS

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

Caroline Norbury, Chief Executive (caroline.norbury@swwscreen.co.uk)

South West Screen, St Bartholomews Court, Lewins Mead, Bristol BS1 5BT

0117 952 9977

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

Hakan Kousetta of Howard Kennedy
19 Cavendish Square, London, W1A 2AW.

Date of the data collection and processing: September/October 2006.

PART B

FUND SPECIFIC QUESTIONS

Introductory Note

The previous legislative provisions relating to fiscal aid for film production in the United Kingdom was completely substituted with a new system commencing 1st April 2006. Accordingly, whilst the legislation under the old system was in place as at 31 December 2005, we have not included it here so as to ensure that the study does in fact have information on what the current applicable funding system is in the United Kingdom.

The new system, whilst enacted in legislation, is not fully operational as the British Government has made an application to the European Commission for approval of what is, effectively, a form of state aid.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

United Kingdom

B. Name of the funding scheme:

There is no official name for the fiscal policy of tax relief for film production though it is commonly referred to as the "Tax Credit System".

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

This is a fiscal policy introduced by Government and administered by both The Department of Media, Culture and Sport (DCMS) and Her Majesty's Revenues and Customs (HMRC). See response to B.14 for addresses.

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

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

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

Please note that these are current applicable laws and regulations (but each of which came into force after 31 December 2005 (as referenced in the Introductory Note above)):

The relevant legislation is now contained in The Finance Act 2006 Chapter 3 (Films and Sound Recordings) and Schedule 4 (Taxation of Activities of Film Production Company) and Schedule 5, parts 1 to 4 (Film Tax Relief Further Provisions).
<http://www.opsi.gov.uk/ACTS/acts2006/20060025.htm>

The final framework for the cultural test of British films are contained in the following publication (published November 2005) :

<http://www.culture.gov.uk/NR/rdonlyres/6D9D9EA2-220E-4ED2-B46A-D39B4FC3476B/0/CulturalTestFilm.pdf>

The following document sets out how the test is to be applied and the application process for films made in the UK only (published June 2006)

http://www.culture.gov.uk/NR/rdonlyres/FC99A7A4-B59E-4E88-A0F0-29D239458105/0/CulturalTestSchedule1Guidance_jun06.pdf

The following document sets out how the test is to be applied and the application process for films seeking co-production status (published June 2006)

<http://www.culture.gov.uk/NR/rdonlyres/6F289722-89AD-4EB7-99F8-A8EA539A17E8/0/GuidelinesFilmCoproductions.pdf>

The following document contains draft guidance issued by HMRC on the rules in Chapter 3 of Part 3, and Schedules 4 and 5 of Finance Act 2006. It was issued for comment only and is not in its final form. Chapter 1 contains an overview of how the new rules operate, together with guidance on the meaning of the definitions used in Chapter 3 generally. This guidance was published in August 2006.

<http://www.hmrc.gov.uk/films/draft-guidance/overview.pdf>

<http://www.hmrc.gov.uk/films/draft-guidance/taxation.htm>

<http://www.hmrc.gov.uk/films/draft-guidance/ptr.htm>

<http://www.hmrc.gov.uk/films/draft-guidance/co-production.htm>

<http://www.hmrc.gov.uk/films/draft-guidance/claim.htm>

<http://www.hmrc.gov.uk/films/draft-guidance/loss.htm>

<http://www.hmrc.gov.uk/films/draft-guidance/commence.htm>

TERRITORIAL CONDITIONS⁸⁰

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*)?

Yes / No

YES

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*):

Pursuant to Sections 39 to 41 of the Finance Act 2006, the tax relief is only available to :

(a) FPCs within the charge to UK corporation tax

See paragraphs 1.2 and 1.3 of answer A4 (Part A General Questions) of this questionnaire.

(b) Films intended for theatrical release

Theatrical release means exhibition to the paying public at the commercial cinema and the film will only be regarded as intended for theatrical release if it is intended that a significant proportion of the earnings of the film should be obtained by such exhibition (Section 39(2)(b)).

(c) Films certified as British under Schedule 1 to the Films Act 1985 or as an official co-production (Section 40 Finance Act 2006).

See introductory paragraph and paragraph 1.1 of answer A4 (Part A General Questions) of this questionnaire.

(d) Films that incur the minimum UK expenditure requirement.

Pursuant to Sections 41 to the Finance Act 2006 not less than 25% of the films core expenditure must be UK expenditure incurred:-

- (i) in the case of a British film other than a qualifying co-production, by the film production company;
- (ii) in the case of a qualifying co-production, by the co-producers.

Pursuant to Section 34 of the Finance Act 2006 “*core expenditure*” means production expenditure on pre-production, principal photography and post-production. The legislation does not provide definitions of development and pre-production as the government believes that these are familiar terms understood within the film industry.

Pursuant to Section 35 of the Finance Act 2006 “*UK expenditure*” means expenditure on services performed in the United Kingdom or goods used or consumed in the United Kingdom. For example all costs paid to actors, directors and crew form part of UK expenditure where they relate to film making in the United Kingdom but do not form part of UK expenditure where they relate to film making overseas. The nationality or residence of the actors, directors or crew is irrelevant for the purposes of determining UK expenditure.

The tax relief can only be claimed on that part of the FPC’s core expenditure that is UK expenditure up to a maximum of 80% of the core expenditure.

- 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*).

See paragraphs 1.5 to 1.11 of answer A4 (Part A General Questions) of this questionnaire.

- 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*):

For co-productions DCMS apply an approval process as set out ‘Guidelines on Film Co-Production’ (published June 2006). Please see the document in full at: <http://www.culture.gov.uk/NR/rdoonlyres/6F289722-89AD-4EB7-99F8-A8EA539A17E8/0/GuidelinesFilmCoproductions.pdf>

Once a co-production has qualified as “British” the UK film production company can access the Film Tax Relief on the same basis as any other film. This applies if the film is made under one of the UK’s bilateral treaties or under the European Convention on Cinematographic Co-Production (“Convention”).

Accordingly, a UK FPC can claim relief on its core expenditure on a co-production provided that

- (a) the film is intended for theatrical release
- (b) It is certified as a British Film

Subject to the response of the European Commission on the state aid application :

- (i) the Cultural Test will almost certainly apply to co-productions but the DCMS acknowledge that all existing bilateral treaties will need to be re-negotiated to ensure that they contain conditions equivalent to the cultural test where necessary. DCMS state that they are in the process of doing this.
 - (ii) the Cultural Test will probably not apply to co-productions made under the European Convention on Cinematographic Co-Production. DCMS anticipate that the Commission will not require films made under the Convention to pass both the cultural test and the terms of the Convention itself.
- (c) 25% or more of the core expenditure on the film is UK expenditure;

The 25% UK expenditure threshold applies to the core expenditure on the film as a whole, and not just to the core expenditure incurred by the UK film production company. This means that any core expenditure incurred by an overseas co-producer which is also UK expenditure is taken into account when applying the 25% minimum.

- (d) principal photography commenced after 1 April 2006.

The level of film tax relief is determined by the amount of core expenditure incurred by the UK FPC. Any expenditure incurred by the non-UK co-producer is disregarded when calculating the entitlement to tax relief. Film tax relief is provided on the basis the amount of core expenditure which is also UK expenditure incurred by the UK FPC up to a maximum of 80% of the FPC’s core expenditure.

Accordingly, the maximum amount of core expenditure which will qualify for relief is 80% of the total core expenditure incurred by the UK FPC.

In a co-production if the FPC is the UK co-producer and all of its core expenditure is also UK expenditure the credit may only be claimed on 80% of such UK expenditure. In such circumstances, in the expectation that the FPC spend is less than 80% of the

total core expenditure on the film, a co-production is at a disadvantage as opposed to a film with equivalent spend qualifying as British film under schedule 1.

It should also be noted that the draft HMRC guidelines (published August 2006) state that the requirements which a company must usually meet to be categorised as a FPC are to be relaxed for co-productions. The UK Producer is not required to meet all the conditions in section 32(3) of the Finance Act, but is, instead, only required to make an effective creative, technical and artistic contribution to the film. This reflects the fact that the activities specified in section 32(3) are usually shared between the co-producers on co-productions.

- 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*):

See responses to section A4 of Part A General Questions.

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/No

NO

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*):

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:

Please see links set out in response B4 above.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁸¹ 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:

NOT APPLICABLE

CONTACT DETAILS

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

There is no specified contact for the scheme as it is administered by the following government departments

Department for Culture Media & Sport
2-4 Cockspur Street
London
SW1Y 5DH
(Paul Candler, Head of Film Branch)

HM Revenue and Customs
Room 3C-15
100 Parliament Street
LONDON
SW1A 2BQ
(Mr Hasmukh Haria)

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

Hakan Kousetta of Howard Kennedy,
19 Cavendish Square London W1A 2AW

Date of the data collection and processing:
September/October 2006.

⁸¹ 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.