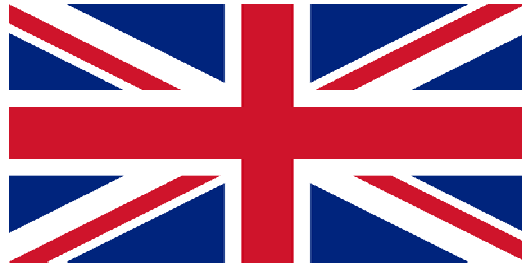


**CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS  
(Annex to Part A)**

**MEMBER STATE LEGAL REVIEW**



**UNITED KINGDOM  
SYNTHESIS SHEET**

**July 2007**

**This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on [www.eufilmstudy.eu](http://www.eufilmstudy.eu)**

## **Acknowledgements**

### **Legal Report by Germann Avocats**

Part A of the EU Film Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions was written by Dr. Christophe Germann with important contributions for the Member States Synthesis Sheets, Output Tables and Charts from:

Dr. Delia Ferri  
(main legal Consultant for the Synthesis  
Sheets)

Johanna Jaeger  
(main Consultant for the Output Tables and  
Charts)

Dr. Marwa Daoudy  
(Consultant)

Gritt Knirie Sogaard  
(Consultant)

Brigitte Vézina  
(Consultant)

Andrzej Jakubowski  
(Consultant)

John Morijn  
(Consultant)

Ljuba Kostadinova  
(Consultant)

Dr. Cristina Poncibò  
(Consultant)

The authors would like to thank the national lawyers from the 25 Member States who advised us, and everyone else who helped us in the production of this report, in particular Robert Gujski for the database.

**A Overview of the legal situation in the United Kingdom**

*1 Summary of main findings*

**Table A – Direct Territorialisation Requirements**

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law			Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	
United Kingdom	UK Film Council’s Development Fund	7,462,687 (Korda: 2001)	Nat	N/A	N/A	N/A	N/A	N/A	N/A	N
	UK Film Council’s New Cinema	7,462,687 (Korda: 2001)	Nat	N/A	N/A	N/A	N/A	N/A	N/A	

UK Film Council's Premiere	14,925,373 (Korda: 2001)	Nat	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Cornwall Film	N/A	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
EM Media	1,049,180	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Film London	2,594,000	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
North West Vision (including Merseyside Film and Television fund)	680,328 (2002)	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Northern Film & Media	2,347,849	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Northern Ireland Film and Television Commission	4,753,587	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Scottish Screen	3,211,429	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Screen East	1,183,264	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Screen Yorkshire	4,127,967	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Film Agency Wales (successor of Sgrin Cymru as of April 2006 – Not within reference period)	1,162,979	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Screen South	364,286	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Sgrin Cymru	2,619,808	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Gaelic Media Service	13,659,807	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Creative IP	7,000,000 <sup>1</sup>	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Screen West Midlands	927,869	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A
South West Screen	3,169,865 (2005)	Reg	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>1</sup> [http://www.financewales.co.uk/eng/support.php/c\\_type=content~c\\_id=103~sM\\_id=10~ssM\\_id=111](http://www.financewales.co.uk/eng/support.php/c_type=content~c_id=103~sM_id=10~ssM_id=111)

**Table B – Indirect territorialisation Requirements**

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”			Indirect territorialization requirements located under selective aid criteria and procedures			Indirect territorialization based on any other provisions in the law that forces the producer to make local spending		
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
United Kingdom	UK Film Council’s Development Fund	Projects should qualify as a British Film (See 2.2.1)	70% of the budget must be spent in the UK (see para 2.2 as well as section A 3)	N/A	See para 2.4 for full list of requirements	N/A	N/A	N/A	N/A	N/A

	UK Film Council's New Cinema (not within the reference period)	Projects should qualify as a British Film (See 3.2.1)	70% of the budget must be spent in the UK (see para 3.2 as well as section A 3)	N/A	See para 3.4 for full list of requirements	N/A	N/A	N/A	N/A	N/A
	UK Film Council's Premiere (not within the reference period)	Projects should qualify as a British Film (See 4.2.1)	70% of the budget must be spent in the UK (see para 4.4 as well as section A 3)	N/A	See para 4.4 for full list of requirements	N/A	N/A	N/A	N/A	N/A
	Cornwall Film	N/A	N/A	N/A	Successful applicants should be located in the region (see para 5.4)	N/A	N/A	N/A	N/A	N/A
	EM Media	N/A	N/A	N/A	Successful applicants must be based in the region (see para 6.4)	N/A	N/A	N/A	N/A	N/A

Film London	Projects should qualify as a British Film (See 7.4)	70% of the budget must be spent in the UK (see para 7.4 as well as section A 3)	N/A	Recipient must spend minimum proportion of budget in region; applicants must be based in region (See para 7.4)	N/A	N/A	N/A	N/A	N/A
North West Vision	N/A	N/A	N/A	See para 8.4 for requirements	N/A	N/A	N/A	N/A	N/A
Northern Film & Media	N/A	N/A	N/A	Applicants must be based in region, have projects that take place in the region, or demonstrate how project will benefit companies or individuals in region. (See para 9.4)	N/A	N/A	N/A	N/A	N/A
Northern Ireland Film and Television Commission	N/A	N/A	N/A	Successful applicants should be based in the region or have projects that take place in and benefit the region. (See para 10.4)	N/A	N/A	N/A	N/A	N/A

	Scottish Screen	Projects should qualify as a British Film (See 11.1)	70% of the budget must be spent in the UK (see para 11.1 as well as section A 3 )	N/A	Successful applicants should be based in the region (See para 11.4)	N/A	N/A	N/A	N/A	N/A
	Screen East	N/A	N/A	N/A	Successful applicants or project should be based in region, or key personnel from region should be substantially involved (See para 12.4)	N/A	N/A	N/A	N/A	N/A
	Screen Yorkshire	N/A	N/A	N/A	Successful applicants should be based in the region or be in the process of moving there (See para 13.4)	N/A	N/A	N/A	N/A	N/A



Film Agency Wales (successor of Sgrin Cymru as of April 2006 – Not within reference period)	Projects should qualify as a British Film (See para 14.4)	70% of the budget must be spent in the UK (see para 14.4 as well as section A 3 )	N/A	Applicant must demonstrate that project will benefit Welsh filmmakers and key Welsh talent / personnel must be involved (See para 14.4)	N/A	N/A	N/A	N/A	N/A
Screen South	N/A	N/A	N/A	Successful applicants should be based in the region (See para 15.4)	N/A	N/A	N/A	N/A	N/A
Sgrin Cymru	Projects should qualify as a British Film (See 16.4)	70% of the budget must be spent in the UK (see para 16.4 as well as section A 3 )	N/A	Successful applicants should be based in the region (see para 16.4)	N/A	N/A	N/A	N/A	N/A
Gaelic Media Service	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Creative IP	N/A	N/A	N/A	Projects by companies not based in Wales are required to spend a proportion of the total production budget in Wales (see para 18.4)	N/A	N/A	N/A	N/A	N/A

	Screen West Midlands	N/A	N/A	N/A	Successful applicants should be based in the region (See para 19.4)	N/A	N/A	N/A	N/A	N/A
	South West Screen	N/A	N/A	N/A	Successful applicants should be based in the region (See para 20.4)	N/A	N/A	N/A	N/A	N/A

**Table C – Budget and Territorialisation Intensity**

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law <sup>2</sup>	Degree of the territorialisation <sup>3</sup>		
				Funding Scheme Level <sup>4</sup>	Funding body level	Member State Level <sup>5</sup>
United Kingdom	UK Film Council’s Development Fund	7,462,687 (Korda: 2001)	not applicable: non of the UK replies indicate specific legal provisions for the territorialisation requirements	>1	Moderate	0 %
	UK Film Council’s New Cinema (not within the reference period)	7,462,687 (Korda: 2001)	not applicable	>1		
	UK Film Council’s Premiere (not within the reference period)	14,925,373 (Korda: 2001)	not applicable	>1		
	Cornwall Film	N/A	not applicable	<1 - >1	No data	
	EM Media	1,049,180	not applicable	<1 - >1	No data	
	Film London	2,594,000	not applicable	>1	No data	
	North West Vision (including Merseyside Film and Television fund)	680,328 (2002)	not applicable	<1 - >1	No data	
	Northern Film & Media	2,347,849	not applicable	<1 - >1	High	

<sup>2</sup> Assessment based on replies from local lawyers (see synthesis sheet)

<sup>3</sup> High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” >1  
 Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or <1  
 No territorialisation: total amount subject to territorialisation = 0

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

<sup>4</sup> Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

<sup>5</sup> “total amount subject to territorialisation”/“total budget available”

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

Northern Ireland Film and Television Commission	4,753,587	not applicable		No data
Scottish Screen	3,211,429	not applicable	>1	No data
Screen East	1,183,264	not applicable	<1 - >1	No data
Screen Yorkshire	4,127,967	not applicable	<1 - >1	High
Film Agency Wales (successor of Sgrin Cymru as of April 2006 – Not within reference period)	1,162,979	not applicable	>1	No data
Screen South	364,286	not applicable	<1 - >1	No data
Sgrin Cymru	2,619,808	not applicable	>1	No data
Gaelic Media Service	13,659,807	not applicable	0	No data
Creative IP	7,000,000 <sup>6</sup>	not applicable	<1 - >1	No data
Screen West Midlands	927,869	not applicable	<1 - >1	No data
South West Screen	3,169,865 (2005)	not applicable	<1 - >1	No data

**Table D – Co-Production Agreements**

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
United Kingdom	Australia	12 June 1990	Y
	Canada	5 July 1991	Y
	France	8 November 1994	Y
	Germany	30 January 1975	N
	New Zealand	14 April 1993	Y
	Norway	8 December 1982	N
	Italy	(ended 2 May 2006)	N
	European Convention on Cinematographic Co-Production	(1 April 1995)	(see para A4 for all)

<sup>6</sup> [http://www.financewales.co.uk/eng/support.php/c\\_type=content~c\\_id=103~sM\\_id=10~ssM\\_id=111](http://www.financewales.co.uk/eng/support.php/c_type=content~c_id=103~sM_id=10~ssM_id=111)

The United Kingdom is currently a party to the European Convention on Cinematographic Co-production (see reply A.3 for the United Kingdom)

In the United Kingdom there are three national funding schemes administered by the UK Film Council, one national funding scheme administered by the Department of Culture, Media and Sport and Her Majesty's Revenues and Customs (HMRC) and fifteen regional funding schemes (one of these, the Sgrîn Cymru (Welsh Screen) scheme is no longer operational (see reply A.3 for the United Kingdom).

## **2 Synopsis of conventions on co-production agreements**

The United Kingdom is party to seven bilateral conventions on co-production agreements, including an agreement with Italy that ended after the reference period (see reply A.3 for the United Kingdom)<sup>7</sup>. The United Kingdom is also party to the European Convention on Cinematographic Co-production (see reply A.3 for the United Kingdom). On the national level, the Department for Culture, Media and Sport (DCMS) is the authority assigned to administer and supervise co-productions between the United Kingdom and foreign producers (see reply A.3. for the United Kingdom).

Since territorialisation requirements exist under essentially all of the regional funding schemes (see the individual funding schemes respectively for greater details), conflict or inconsistency may occur between these and the co-production agreements signed by the United Kingdom. As English law is based on common law principles, the question of how an agreement should be interpreted and which agreement would take precedence is determined only when a dispute formally arises and a court ruling is issued. To date, it seems that no disputes involving the co-production agreements have been litigated and therefore it cannot be said with certainty what the outcome of such a case would be. However, by examining principles established in previous case law, an indication could be found to support the thesis that national legislation providing for territorialisation inconsistent with an international co-production agreement would be overturned. National law should be construed to be consistent with international law.

## **3 Synopsis of formal nationality certification procedures**

Indirect territorialisation requirements are located under the rules on the formal nationality certification procedures that apply to the UK funding schemes. These requirements can be summarized as follows:

---

<sup>7</sup> This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

In order to qualify as a British Film, an application should 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) or under one of the bilateral co-production treaties or the European Convention on Cinematographic Co-production. The certification procedure conducted by the DCMS has been revised and the procedure as described below applies to films that commenced principal photography before 1 April 2006 provided that they are completed before 31 December 2006 (see reply A.4 for the United Kingdom).

To be certified as a British Film, the film must fulfil the conditions of four tests: the “Maker test”, the “Production Cost test”, the “Labour Cost test” and the “Content test”.

The requirements of the “Maker test” are that the entity making the film has to be registered, centrally managed and controlled in the United Kingdom, in another state of the European Union or European Economic Area, or in a state with which the European Community has signed an Association Agreement (see reply A.4, 2.2 for the United Kingdom).

The requirements of the “Production Cost test” spell out that 70% of the production cost of the film has to be spent on film-making activity in the United Kingdom. This figure only relates to the cost of production activity actually carried out in the United Kingdom rather than production costs of goods and services supplied from the United Kingdom (see reply A.4, 2.3 for the United Kingdom)

Under the “Labour Cost test”, 70% or 75% of the film’s total labour costs must be paid to citizens or residents of Commonwealth/EU/EEA countries or a country with which the European Community has signed an Association Agreement. From this total, the cost of one (70%) or two (75%) individuals with non-commonwealth/EU/EEA nationalities engaged as actors only in the film can be deducted. Unlike the “Production Cost test” there is no apportionment between inside and outside the United Kingdom (see reply A.4, 2.4 for the United Kingdom).

Finally, the “Content test” requires that no more than 10% of the film constitutes visual images from a previously certified film or from a film by a different maker. Extensions to this figure can be granted to documentary films (see reply A.4, 2.5 for the United Kingdom).

A report verifying the salaries, wages and payments stipulated in the Certification application to the DCMS must be prepared by an independent accountant or auditor. Applications are only accepted by the DCMS upon completion of the film and when it is reasonably regarded as ready for distribution to the public. The same test applies to co-productions if the film is made under one of the

United Kingdom's bilateral treaties or under the European Convention on Cinematographic Co-production (see reply A.4, 3 for the United Kingdom).

#### **4 Synopsis of expected legal developments**

A number of new legal developments are under way in the United Kingdom. First, the bilateral treaties with Australia, Canada, France and New Zealand, respectively, are being renegotiated by the DCMS. Several bilateral treaties are being terminated where it is possible to co-produce under the European Convention on Cinematographic Co-production. The bilateral agreement with Italy was ended in May 2006 and the United Kingdom intends to terminate its agreement with Germany on 31 December 2006 and Norway on 24 May 2007. Co-production with these three countries can be made under the European Convention on Cinematographic Co-production (to which Norway is planning to become a party in the future).

Second, two new bilateral agreements, with South Africa and India, respectively, are being instituted. Agreements have been signed with both countries (although an annex to the agreement with India is currently being negotiated) which are now undergoing constitutional processes necessary for ratification. Third, new agreements with China, Jamaica and Morocco, respectively, are expected (see reply A.5 for the United Kingdom).

As at 31 December 2005, the "sale and lease back" system was operational. This system has since been substituted by the new tax incentive for film production in the United Kingdom as set out in the Finance Act 2006. This new system came into force on July 2006 pending approval from the European Commission (see reply A.6 for the United Kingdom) and will apply to all films which commenced principal photography after 1 April 2006. The approval was later granted and the system is now arguably fully operational (see press release IP/06/161 from the European Commission, Brussels, 22 November 2006).

### **B The United Kingdom funding schemes**

#### **1 Overview**

In 2005, in the United Kingdom, nineteen funding schemes had an annual budget of state aid of at least €1m (one million euros) dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audio visual works. Four funding schemes operate on the national level. Three of these (the UK Film Council's Development Fund, the UK Film Council's New Cinema Fund and the UK Film Council's Premiere Fund) are administered by the UK Film Council. The fourth one, the "Sale and Lease Back" system is administered by the Department of Culture,

Media and Sport and Her Majesty's Revenues and Customs (HMRC). Additionally, sixteen funding schemes are in place at the regional level. The nineteen schemes are operated by:

- UK Film Council's Development Fund
- UK Film Council's New Cinema Fund
- UK Film Council's Premiere Fund
- Cornwall Film
- EM Media
- Film London
- North West Vision
- Northern Film & Media
- The Northern Ireland Film and Television Commission
- Scottish Screen
- Screen East
- Screen Yorkshire
- Film Agency Wales
- Screen South
- Sgrîn Cymru
- The Gaelic Media Service
- Creative IP Fund
- Screen West Midlands
- South West Screen

In the United Kingdom, state aid is granted on the basis of selective criteria set out in the individual funding schemes (see replies B.13 in the respective funding schemes)

## **2 Analysis of UK Film Council's Development Fund**

### **2.1 Description of the funding scheme**

The UK Film Council's Development Fund funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the UK Film Council's Development Fund funding scheme).

According to the rules governing this funding scheme, 12.2% of the National Lottery's distribution fund is granted to the UK Film Council (see Art. 23(e) of the National Lottery Act 1993 as amended).

The UK Film Council assesses the application initially and primarily on its creative merits. There is no appeal open to applicants whose projects are rejected on creative grounds.



## 2.2 Synopsis of objective territorialisation requirements

### 2.2.1 Rules

The UK Film Council Development Funding scheme distributes State aid mainly for development projects which are classified wholly or substantially as British Films as defined in the Films Act 1985 as amended (please see Reply A.4 for the Supplemental Part A of United Kingdom).

### 2.2.2 Practice

There is no relevant judicial or administrative practice reported

### 2.2.3 Discussion

N/A

### 2.2.4 Conclusions

No objective territorialisation requirements apply

## 2.3 Synopsis of implicit territorialisation requirements

### 2.3.1 Practice

There is no relevant judicial or administrative practice reported

### 2.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section A3 above and Section 2.4 below.

### 2.3.3 Conclusions

See Section 2.4

## 2.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the UK Film Council funding scheme, each project is assessed on a number of qualitative criteria, based in particular on the following elements:

- the originality and creativity of the project
- the commercial and financial viability of the project

- the capability of the project to qualify as British film (as defined in the Films Act 1985 as amended)
- the capability of the project to provide a measurable advantage to the UK film industry
- the cost of development compared to its assessment of the likely production budget
- 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)

The UK Film Council Development Funding scheme distributes State aid mainly for development projects which are classified wholly or substantially as British Films as defined in the Films Act 1985 as amended (see Reply A.4 for the Supplemental Part A of United Kingdom).

A number of explicit territorialisation requirements apply under the UK Development funding scheme. For example, applicants must be registered and centrally-managed and staffed in the UK or in another state of the European Union. Generally all the applicants must be able to demonstrate that the provision of funding will provide a measurable advantage to the UK film industry.

**Indirect** territorialisation requirements exist under the UK Film Council's Development Fund funding scheme as applicants must be based in the UK.

## 2.5 Synopsis of the relation between territorialisation requirements and co-production agreements

English law is based on common law principles and the question of how an agreement should be interpreted and which agreement would take precedence is determined only when a dispute formally arises and a court ruling is issued. To date, it seems that no disputes involving the co-production agreements have been litigated and therefore it cannot be said with certainty what the outcome of such a case would be. However, by examining principles established in previous case law, an indication could be found to support the thesis that national legislation providing for territorialisation inconsistent with an international co-production agreement would be overturned. National law should be construed to be consistent with international law.

## 2.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The main aim of the UK Film Council's Development funding scheme 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.

### **3 Analysis of UK Film Council's New Cinema Fund**

#### **3.1 Description of the funding scheme**

The UK Film Council's New Cinema funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the UK Film Council's New Cinema funding scheme).

The UK Film Council's New Cinema Funding scheme distributes State aid mainly for film projects which are classified as British Films as defined in the Films Act 1985 as amended (please see Reply A.4 for the Supplemental Part A of United Kingdom).

#### **3.2 Synopsis of objective territorialisation requirements**

##### **3.2.1 Rules**

N/A

##### **3.2.2 Practice**

There is no relevant judicial and administrative practice reported

##### **3.2.3 Discussion**

N/A

##### **3.2.4 Conclusions**

No objective territorialisation requirements apply.

#### **3.3 Synopsis of indirect territorialisation requirements**

##### **3.3.1 Practice**

There is no relevant judicial and administrative practice reported.

##### **3.3.2 Discussion**

See the analysis of indirect territorialisation requirements under Section A3 above and Section 3.4 below.

##### **3.3.3 Conclusions**

See Section 3.4 below.

### 3.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the UK Film Council's New Cinema funding scheme, each project is assessed on a number of qualitative criteria, in particular:

- the originality and creativity of the film in any style or genre
- the capability of the project to be qualified as British film (as defined in the Films Act 1985 as amended)
- the presence of new cinema talent
- the use of digital technology in the making and showing of the film
- the legal consistency of the film's contracts

According to the rules governing this funding scheme, 12.2% of the National Lottery's distribution fund is granted to the UK Film Council's New Cinema (Art. 23(e) of the National Lottery Act 1993 as amended).

To obtain funding from the UK Film's New Cinema funding scheme, applicants are required to 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 who is a national or resident of the United Kingdom (or another state of the European Union/European Economic Area)

In the case of the UK Film Council's New Cinema funding scheme, the criteria for granting selective aid expressly also refer to the capability of the project to qualify as British film (see reply B.13 for the UK Film development funding scheme and reply A.4 for the Supplemental Part A of United Kingdom).

There is no judicial practice reported, however there is an administrative practice and internal guidelines which involve UK Film Council's New Cinema assessing the application initially and primarily on its creative merit and informing the applicant within eight weeks of receipt of the application (see Reply B.9 for the UK Film Council's New Cinema funding scheme). There is no appeal open to applicants whose projects are rejected on creative grounds.

The UK Film Council's New Cinema may reject the application or alternatively it may suggest changes to the project. It accepts new submissions for funding if there are significant and substantial changes to the script, or if major new elements have been added.

A number of **indirect** territorialisation requirements apply under the UK New Cinema funding scheme. Applicants must be registered and centrally-managed and staffed in the UK or in another state of the European Union. Furthermore, the requirement that the applicant must demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985 arguably indicates a preference for projects that support the UK film industry.

**Indirect** territorialisation requirements exist in the funding scheme operated by UK Film Council's New Cinema fund as applicants must be registered and centrally-managed and staffed in the UK or in another state of the European Union, and must demonstrate that the film is likely to qualify as a British film

3.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above

3.6 Synopsis of purpose and cultural clauses applying to the funding scheme

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.

## **4 Analysis of UK Film Council's Premiere Fund**

4.1 Description of the funding scheme

The UK Film Council's Premiere Fund funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the UK Film Council's Premiere Fund funding scheme).

The UK Film Council's Premiere Funding scheme distributes State aid mainly for film projects which are classified as British Films as defined in the Films Act 1985 as amended (see Reply A.4 for the Supplemental Part A of United Kingdom).

4.2 Synopsis of objective territorialisation requirements

4.2.1 Rules

N/A

#### 4.2.2 Practice

There is no relevant judicial and administrative practice reported

#### 4.2.3 Discussion

N/A

#### 4.2.4 Conclusions

No objective territorialisation requirements apply.

### 4.3 Synopsis of indirect territorialisation requirements

#### 4.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 4.3.2 Discussion

See the analysis of indirect territorialisation requirements under section A3 above and Section 4.4 below

#### 4.3.3 Conclusions

See Section 4.4.

### 4.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the UK Film Council's Premiere Fund funding scheme, each project is assessed on a number of qualitative criteria, in particular the following elements:

- the project's prospects of finding cinema audiences in the UK and around the world
- the capability of the project to qualify as British film (as defined in the Films Act 1985 as amended, please see A.4 for further details)
- the presence of intentions for theatrical exhibition and for commercial exploitation in the UK and the rest of the world
- the English language of the production unless there are relevant circumstances to the contrary
- the identifiability of the production as a commercially viable project, e.g. capable of securing worldwide distribution or representation in international markets through a reputable sales agent for the film with a

guaranteed meaningful theatrical release in the UK (in exceptional circumstances, it is enough to clearly demonstrate a commercially viable post-delivery theatrical distribution strategy)

- the capability of the production to obtain theatrical and video release certificates no more restrictive than BBFC `18` in the UK and MPAA `R` in North America

It is worth noting with respect to the last criterion that the privately regulated rating system implemented by the Hollywood majors' trade organization, Motion Picture Association of America, is likely to condition and influence the content of State-aided UK films.

According to the rules governing this funding scheme, 12.2% of the National Lottery's distribution fund is granted to the UK Film Council's Premiere (Art. 23(e) of the National Lottery Act 1993 as amended).

The UK Film's Premiere Fund funding scheme requires that 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)

Similar requirements apply for co-productions (see reply B.8 for the UK Film Council's Premiere Fund funding scheme).

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

There is no judicial practice reported. However, according to the administrative practice and internal guidelines, the UK Film Council's Premiere funding scheme shall assess the application primarily on its creative merit and inform the applicant within eight weeks of receipt of the application about the results of this evaluation (see Reply B.9 for the UK Film Council's Premiere funding scheme).

There is no appeal process open to applicants whose projects are rejected on creative grounds. The UK Film Council Premiere may reject the application or alternatively it may suggest changes to the project. It can also accept new submissions for funding if there are significant and substantial changes to the script, or if major new elements have been added.

A number of **indirect** territorialisation requirements apply under the UK Film Council's Premiere Fund funding scheme. For example, applicants must be

registered and centrally-managed and staffed in the UK or in another state of the European Union. Furthermore, the requirement that the applicant must demonstrate that the film is likely to qualify as a British film under Schedule 1 of the Films Act 1985 indicates a preference for projects that support the UK film industry.

**Indirect** territorialisation requirements exist in the funding scheme operated by UK Film Council's Premiere fund as applications must be registered and centrally-managed and staffed in the UK or in another state of the European Union and the applicant must demonstrate that the film is likely to qualify as a British film.

#### 4.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above

#### 4.6 Synopsis of cultural clauses applying to the funding scheme

The main aim of the UK Film Council's Premiere funding scheme 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.

## 5 Analysis of Cornwall Film

### 5.1 Description of the funding scheme

The Cornwall Film funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Cornwall funding scheme, and for additional information on this scheme its website <http://www.cornwallfilm.com/>).

The Cornwall funding scheme is funded, among others sources, by South West Screen, and through this, from the National Lottery Distribution Fund as well as by Objective One, European Regional Development Agency Fund (see reply B.4 for the Cornwall Film funding scheme).

Cornwall Film's internal regulations require applicants to submit an expression of interest from which Cornwall Film will advise the applicant whether it is worth submitting a formal application. Thereafter, the viability of the project is assessed based on the level of innovation and creativity of the concept for the project for



which funding is sought (see reply B.6 for the Cornwall Film funding scheme). If funding is denied, the applicant will be notified of this in writing. There is no appellate procedure available to examine a refusal.

## 5.2 Synopsis of objective territorialisation requirements

### 5.2.1 Rules

N/A

### 5.2.2 Practice

There is no relevant judicial and administrative practice reported

### 5.2.3 Discussion

N/A

### 5.2.4 Conclusions

No objective territorialisation requirements apply.

## 5.3 Synopsis of indirect territorialisation requirements

### 5.3.1 Practice

There is no relevant judicial and administrative practice reported

### 5.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 5.4 below

### 5.3.3 Conclusions

See Section 5.4

## 5.4. Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Cornwall Film funding scheme, projects are assessed on a number of selective criteria. The criteria are not given in a particular order of importance. They include:

- potential of recouping the investment if it is made by way of an equity investment or loan

- commitment to developing a sustainable business and Cornwall's media industry
- potential for generating investment into the region
- jobs created

Additionally, a number of requirements express the desire for original and creative projects that have a chance of reaching the market (see reply B. 13 for the Cornwall Film funding scheme).

The criteria included in the selection process range from original and innovative projects, to the generating of investments and creation of jobs. Furthermore, no set of guidelines is established to indicate the relative importance of the individual criteria or the hierarchy among them. Many of the criteria indicate a strong preference for projects that bring economic benefits to Cornwall and the possibility cannot be excluded that a project in which the majority of the production spending is not made in the region may not be selected.

The ambition of the Cornwall Film's funding scheme is to develop a sustainable industry in the region. It aims at generating local jobs and training opportunities in the film and television industry to ensure that there is a talented pool of experienced freelancers in the area all year round (see reply B.9 for the Cornwall Film funding scheme)

There are no conditions that applicants have to spend a minimum proportion of the production budget in Cornwall (see reply B.5 for Cornwall Film, United Kingdom). Instead, successful applicants must fulfil territorial requirements to the extent of being located in Cornwall or the Isles of Scilly, and have projects that encourage inward investment by incentivising production that will spend money in Cornwall, by creating training opportunities and by using Cornish crew (see reply B.7 for the Cornwall Film funding scheme).

Furthermore, Cornwall Film assesses each project on a number of selective criteria including; commitment to developing a sustainable business and Cornwall's media industry, potential for generating inward investment into the region, and jobs created (see reply B. 13 for the Cornwall Film funding scheme)

Cornwall Film encourages co-productions with co-producers based in Cornwall. The application for funding must be submitted by the Cornish co-producer (see reply B.7 for the Cornwall Film funding scheme)

No judicial practices as such apply. However, there is an administrative practice in place which involves Cornwall Film verifying that the information submitted by the applicant is correct with respect to eligibility (see reply B.9 for the Cornwall Film funding scheme).

A number of **indirect** territorialisation requirements apply under the Cornwall Film funding scheme. For example, it is stated that successful applicants for the

aid must be located in Cornwall or the Isles of Scilly. Furthermore, arguably, projects that support intra-regional economic development are supported through the scheme as the aim of the territorialisation requirements is to develop a sustainable industry in the region.

**Indirect** territorialisation requirements exist in the funding scheme operated by Cornwall Film. For example, successful applicants should be located in Cornwall or the Isles of Scilly to be a successful candidate.

#### 5.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

#### 5.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Cornwall Film funding scheme. It is, however, noted that projects with Cornish elements and which foreground the identity and distinctiveness of Cornwall will be given priority. Furthermore, the aim of the funding scheme is to develop a sustainable industry in the region which arguably leans more towards economic development objectives than to cultural objectives as the rationale of the funding scheme.

## 6 Analysis of EM Media

### 6.1 Description of the funding scheme

The EM Media funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the EM Media funding scheme, and for additional information on this scheme its website <http://www.em-media.org.uk/pages/home>).

EM Media receives funding from Screen England as well as 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 then advise the applicants whether it is worth submitting a formal application (see reply B.6 for the EM Media funding scheme).

EM Media invests in the following four broad areas (see reply B.4 for the EM Media funding scheme):

- Audience and Market Development
- Business Development

- Product Development and Production
- Skills Development

EM Media has three overarching aims which serve as guidance for the corporation over the next three years (see reply B.9 for the EM Media funding scheme). 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 products and encourage participation, understanding and engagement with all forms of media product, especially as tools for learning
- utilise key business functions and practices (R&D, feasibility testing, fundraising, market intelligence and communication) to better shape their businesses and enable them to inform and support film and media businesses

## 6.2 Synopsis of objective territorialisation requirements

### 6.2.1 Rules

N/A

### 6.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 6.2.3 Discussion

N/A

### 6.2.4 Conclusions

No objective territorialisation requirements apply.

## 6.3 Synopsis of indirect territorialisation requirements

### 6.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 6.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 6.4 below.

### 6.3.3 Conclusions

See Section 6.4 below.

## 6.4 Synopsis of State aid granting criteria and procedures

Under the EM Media funding scheme, applications for funding are assessed on a number of selective criteria. The criteria are not assigned a particular order of importance. They include:

- the potential for generating inward investment into the region
- proposed or existing partnerships in the application
- individual career development
- target markets of the application
- staff within an applicant's organisation

Additionally, a number of requirements arguably target the creative and economic viability of the projects applying (see reply B.13 for the EM Media funding scheme).

The criteria included in the selection process range from original and innovative projects to the potential generating of investments. Furthermore, no set of guidelines is established to indicate the importance of the individual criteria or the hierarchy among them.

Territorial requirements form part of EM Media's funding scheme. However, there are no conditions that applicants have to spend a minimum proportion of the production budget in the East Midlands (see reply B.5 for the EM Media funding scheme). Instead, the territorialisation requirements demand that successful applicants be based in the East Midlands (see reply B.5 for the EM Media funding scheme).

EM Media encourages co-productions with co-producers based in the East Midlands. The application to EM Media must be submitted by the co-producer who is based in the East Midlands (see reply B.8 for the EM Media funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves EM Media verifying that the information submitted by the applicant is correct with respect to eligibility (see reply B.9 for the EM Media funding scheme).

The EM Media funding scheme includes the **indirect** territorialisation requirement that successful applicants should be based in the region. Also, applications stemming from co-productions must be submitted by the co-producer who is based in the East Midlands. A key aim of the funding scheme includes the

“identification, growth and support of the cultural, creative and economic ambitions of the region’s dynamic talent pool and the enhancement of the region’s reputation for innovative practice and distinctive voices”.

**Indirect** territorialisation requirements exist in the funding scheme operated by EM Media as successful applicants must be based in the region.

#### 6.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

#### 6.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the EM Media funding scheme. However, among the overriding aims for the funding scheme is the incentive 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’.

### 7 Analysis of Film London

#### 7.1 Description of the funding scheme

The Film London funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Film London funding scheme, and for additional information on this scheme its website <http://www.filmlondon.org.uk/>).

Film London receives funding from Screen England as well as from other sources and uses these funds to support and invest in regional projects. Film London’s internal regulations advise the applicant to attend a Film London Road Show to discuss their idea followed by the submission of a formal application. A letter of rejection is sent to the applicants if their application is denied and options for appeal exists (see reply B.6 for the Film London funding scheme).

Film London operates the following four schemes (see reply B.2 for the Film London funding scheme):

- PULSE (low budget digital short scheme)
- Borough production funds
- Microwave
- Audience development fund

- Film London (see reply B.9 for the Film London funding scheme) aims to:
- support film and media productions, exhibitions, education, economic and industrial development across London
  - 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 technology profitably and creatively
- 7.2 Synopsis of objective territorialisation requirements
- 7.2.1 Rules
- N/A
- 7.2.2 Practice
- There is no relevant judicial and administrative practice reported
- 7.2.3 Discussion
- N/A
- 7.2.4 Conclusions
- No objective territorialisation requirements apply.
- 7.3 Synopsis of indirect territorialisation requirements
- 7.3.1 Practice
- There is no relevant judicial and administrative practice reported.
- 7.3.2 Discussion
- See the analysis of indirect territorialisation requirements under Section A3 above and Section 7.4 below
- 7.3.3 Conclusions
- See Section 7.4 below.
- 7.4 Synopsis of selective State aid granting criteria and procedures
- This funding scheme grants aid in a selective way.

Under the Film London funding scheme, applications for funding are assessed on a number of selective criteria. The criteria are not assigned a particular order of importance (see reply B. 13 for the Film London funding scheme). Alongside the aims mentioned in Section 7.1 above, the criteria include:

- to maximize investment in the region from public and private sectors
- to promote the profile of the region nationally and internationally
- to comply with a number of criteria pointing to the viability of the project, including economic viability

The criteria included in the selection process range from originality and contemporary resonance of the story and whether the project offers value for money and commercial potential, to whether it invests in high-quality delivery across the sector. Furthermore, no guidelines are established to ensure coherent and transparent use of these criteria, including the scope and importance of the individual criteria, or of the hierarchy among them.

Territorial requirements form part of Film London's funding scheme and they include an obligation that successful applicants must spend a minimum proportion of the production budget in the Greater London region to qualify for state aid or to get the maximum amount of this (see reply B.5 for the Film London funding scheme). Furthermore, 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.

Co-productions can apply for funding under the Film London scheme provided that the applicant is based in London and is responsible for the majority of the production so as to enable the film to qualify as a British Film (see reply B.8 for the Film London funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves Film London verifying that the information submitted by the applicant is correct with respect to eligibility (see reply B.9 for the Film London funding scheme).

The Film London funding scheme embraces **indirect** territorialisation requirements. Firstly, a minimum proportion of the production budget has to be spent in the region. Secondly, applicants have to be based in the London Boroughs area and ensure that the majority of the production will actively take place there. Furthermore, co-productions are eligible for funding only when the production satisfies the conditions to be deemed a British Film. A key aim of the Film London funding scheme is to support productions, education, economic and industrial development across London.

The recipient of State aid must spend a minimum proportion of the budget in the region. Furthermore, applicants must be based in the London Boroughs and ensure that the majority of the production will take place there.



7.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

7.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Film London funding scheme. However, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

## **8 Analysis of North West Vision**

8.1 Description of the funding scheme

The North West Vision funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the North West Vision funding scheme, and for additional information on this scheme its website <http://www.northwestvision.co.uk/>).

North West Vision receives funding from Screen England as well as from the European Regional Development Fund and other sources. North West Vision's internal regulations advise applicants to discuss the project with North West Vision in the first instance. The funding scheme operator will then advise the applicants whether it is worth submitting a formal application (see reply B.6 for the North West Vision funding scheme). North West Vision operates nine funding schemes (see reply B.2 for the North West Vision funding scheme for a full list).

North West Vision also administers the Merseyside Film and Television Fund. This fund is governed by Council Regulation (EC) No 1260/99 of 21 June 1999 and offers the following funding schemes (see reply B.2 and B.4 from the Merseyside Film and Television Fund):

- 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
- Feature Film Production Finance

North West Vision is committed to supporting, promoting and funding TV and film productions in the North West of England. Its mission is to champion the region's film and television industry, celebrate its talent and diversity and build on the production success of the North West of England to be the best in Europe.

## 8.2 Synopsis of objective territorialisation requirements

### 8.2.1 Rules

N/A

### 8.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 8.2.3 Discussion

N/A

### 8.2.4 Conclusions

No objective territorialisation requirements apply.

## 8.3 Synopsis of indirect territorialisation requirements

### 8.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 8.3.2 Discussion

See the analysis of indirect territorialisation requirements in Section 8.4 below.

### 8.3.3 Conclusions

See Section 8.4 below.

## 8.4 Synopsis of State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the North West Vision funding scheme, projects are assessed on a number of selective criteria. These include

- quality of team or individuals and their ability to realise the project as outlined
- status of financial and production partners
- creative content, clarity and realisation of the ideas

The criteria are not references in a particular order of importance or in such a way as to indicate a particular hierarchy among them (see reply B.13 for the North West Vision funding scheme).

Territorialisation requirements form part of North West Vision's funding scheme. However, there are no conditions that applicants have to spend a minimum proportion of the production budget in the region (see reply B.5 for the North West Vision funding scheme).

Applicants applying for six out of the nine funding schemes (see reply B.2 for the North West Vision funding scheme for a list of these as indicated with asterisks) have the option of applying to either the North West Vision's Regional Attraction Fund or the Heritage, Access Film and Audience Development Fund. Applicants must establish that they are or will be based in the Northwest.

Applicants applying for the Merseyside Film and Television Fund must be based in Merseyside or be locating to Merseyside within three months of application or developing a joint venture with a company based on Merseyside. The applicant has, furthermore, to 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 (see reply B.7 for the Merseyside Film and Television Fund).

North West Vision encourages co-productions to which funding may be granted provided that the co-producer is based on Merseyside or is moving to this region within three months of submitting the funding application (see reply B.8 for the North West Vision funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves North West Vision verifying that the information submitted by the applicant is correct with respect to eligibility (see reply B.9 for the North West Vision funding scheme).

**Indirect** territorialisation requirements are applied by the North West Vision funding scheme. However, there is no requirement that a minimum proportion of the production budget has to be spent in the region. Co-productions are eligible for funding only if they are based in the region or will be based there within three months of submitting the application.

8.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

8.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the North West Vision funding scheme. However, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

**9. Analysis of Northern Film & Media**

9.1 Description of the funding scheme

The Northern Film & Media funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Northern Film & Media funding scheme, and for additional information on this scheme its website <http://www.northernmedia.org/>).

Northern Film & Media receives funding from Screen England as well as from other sources. Northern Film & Media distributes these funds to support and invest in regional projects. Northern Film & Media's internal regulations require applicants to initially discuss their project with Northern Film & Media who will then advise the applicants whether it is worth submitting a formal application and offer guidance on the most suitable fund to apply to (see reply B.6 for the Northern Film & Media funding scheme).

Northern Film & Media operates the following three funding schemes (see reply B.4 for the Northern Film & Media funding scheme):

- Social Impact
- Economic Impact
- Accelerator Fund

9.2 Synopsis of objective territorialisation requirements

9.2.1 Rules

N/A

9.2.2 Practice

- There is no relevant judicial and administrative practice reported
- 9.2.3 Discussion
- N/A
- 9.2.4 Conclusions
- No objective territorialisation requirements apply.
- 9.3 Synopsis of indirect territorialisation requirements
- 9.3.1 Practice
- There is no relevant judicial and administrative practice reported.
- 9.3.2 Discussion
- See the analysis of indirect territorialisation requirements under Section 9.4 below.
- 9.3.3 Conclusions
- See Section 9.4 below.
- 9.4 Synopsis of selective State aid and granting criteria and procedures
- This funding scheme grants State aid in a selective way.
- Under the Northern Film & Media funding scheme, applications for funding are assessed on a number of selective criteria. The criteria are not assigned a particular order of importance. Alongside the aims mentioned in Section 6.2.3 above, the criteria require an assessment of the project's financial, sustainable and professional viability (see reply B. 13 for the Northern Film & Media funding scheme).
- The aim of the fund is arguably a strong indicator of which projects will be favourably considered in the selection process and the aim is also listed among the selection criteria. No guidelines have been established spelling out the scope and importance of the individual criteria, or the hierarchy among them.
- Territorial requirements form part of Northern Film & Media's funding scheme. However, there are no conditions that applicants have to spend a minimum proportion of the production budget in the North of England (see reply B.5 for the

Northern Film & Media funding scheme). Instead, the territorialisation requirements stipulate that, in order to be eligible for funding, applicants must be based in North East England or have projects which will take place in the North East of England, and demonstrate how the project will benefit companies and individuals based in North East England (see reply B.7 for the Northern Film & Media funding scheme).

Co-productions can apply provided that the applicant is based in the North of England or can demonstrate that the project will benefit the North East of England (see reply B.8 for the Northern Film & Media funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves Northern Film & Media verifying that the information submitted by the applicant is correct with respect to eligibility (see reply B.9 for the Northern Film & Media funding scheme).

The Northern Film & Media funding scheme embraces **indirect** territorialisation requirements according to which applicants should be based in the region, have projects that take place in the region, or demonstrate how the project will benefit companies or individuals in the region. The same territorialisation requirements apply to the co-producer.

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 (see reply B.9 for the Northern Film & Media funding scheme).

**Indirect** territorialisation requirements are employed under the funding scheme operated by Northern Film & Media as applicants must be based in the region, have projects that take place in the region, or demonstrate how the project will benefit companies or individuals in the region.

9.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above

9.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Northern Film & Media funding scheme. Instead, many of the selection criteria point to the economic potential of the project for the region.

## **10. Analysis of Northern Ireland Film and Television Commission**

### 10.1 Description of the funding scheme

The Northern Ireland Film and Television Commission (NIFTC) is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the NIFTC funding scheme, and for additional information on this scheme its website <http://www.niftc.co.uk/>).

The NIFTC operates fifteen different funding schemes (see reply B.2 for the NIFTC funding scheme).

### 10.2 Synopsis of objective territorialisation requirements

#### 10.2.1 Rules

N/A

#### 10.2.2 Practice

There is no relevant judicial and administrative practice reported.

#### 10.2.3 Discussion

N/A

#### 10.2.4 Conclusions

No objective territorialisation requirements apply.

### 10.3 Synopsis of indirect territorialisation requirements

#### 10.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 10.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 10.4 below.

#### 10.3.3 Conclusions

See Section 10.4 below.

#### *10.4 Synopsis of selective State aid granting criteria and procedures*

This funding scheme grants State aid in a selective way.

Under the NIFTC funding scheme, applications for funding are assessed on a number of selective criteria. These include how many people in Northern Ireland will benefit from the project, the cultural benefits to Northern Ireland, as well as the financial and professional viability of the project. The criteria are not assigned a particular order of importance (see reply B. 13 for the NIFTC funding scheme). No guidelines are given to determine the importance or purpose of the individual criteria or the hierarchy among them.

Territorial requirements form part of the NIFTC's funding scheme. Additionally, the application assessment includes the ascertaining of the percentage of the budget to be spent in Northern Ireland (see reply B.5 for the NIFTC funding scheme). To be eligible for funding applicants must be based in Northern Ireland (see reply B.7 for the NIFTC funding scheme).

Companies applying from elsewhere are eligible if they intend to produce a film all or partly in Northern Ireland, including its main elements of production (see reply B.7 for the NIFTC funding scheme). Furthermore, co-productions can apply provided that the applicant is based in Northern Ireland (see reply B.8 for the NIFTC funding scheme).

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place which involve the NIFTC verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project (see reply B.9 for the NIFTC funding scheme).

The NIFTC funding scheme contains **indirect** territorialisation requirements as successful applicants should be based in the region or have projects that take place in and benefit the region (see Section 7.3.2 below). Similar territorialisation requirements apply to the co-producer. 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 action. The fund applies the approach of developing the audiovisual industry as well as the potential for making a positive economic and cultural impact on Northern Ireland (see reply B.9 for the NIFTC funding scheme).

**Indirect** territorialisation requirements exist in the funding scheme operated by the NIFTC as successful applicants should be based in the region or have projects that take place in and benefit the region.



## 10.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

## 10.6 Synopsis of cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the NIFTC funding scheme. However, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

# 11 Analysis of Scottish Screen

## 11.1 Description of the funding scheme

The Scottish Screen funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Scottish Screen funding scheme, and for additional information on this scheme its website <http://www.scottishscreen.com/>)

Scottish Screen aims to:

- support the development of a sustainable screen business
- develop business and creative opportunities on new media platforms
- ensure that they provide access to screen culture, heritage, and industry for a wide range of groups and individuals in communities across Scotland
- put in place an evaluation and monitoring regime and identify performance indicators

Scottish Screen operates ten different funding schemes (see reply B.2 for the Scottish Screen funding scheme) and distributes their funds to invest and support regional projects (see reply B.6 for the Scottish Screen funding scheme).

Scottish Screen requires that a film funded by it should qualify as British Film. It assesses the applicant's project on the basis of the submitted application. If funding is refused, a rejection letter explaining this is sent to the applicants. An appellate procedure is available to examine rejections if requested.

## 11.2 Synopsis of objective territorialisation requirements

### 11.2.1 Rules

N/A

#### 11.2.2 Practice

There is no relevant judicial and administrative practice reported

#### 11.2.3 Discussion

N/A

#### 11.2.4 Conclusions

No objective territorialisation requirements apply.

### 11.3 Synopsis of indirect territorialisation requirements

#### 11.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 11.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section A3 above and Section 11.4 below

#### 11.3.3 Conclusions

See Section 11.4 below.

### 11.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Scottish Screen funding scheme, applications for funding are assessed on a number of selective criteria. These include the cultural impact of the project, the creative impact, and business development and project delivery. The different criteria are not assigned a particular order of importance (see reply B. 13 for the Scottish Screen funding scheme). No guidance is given as to the importance or purpose of the individual criteria or the hierarchy among them.

Territorial requirements form part of the Scottish Screen funding scheme. For instance, to be eligible for funding, applicants must be based in Scotland (see reply B.7 for the Scottish Screen funding scheme). Similar requirements apply to co-productions as these may apply provided the applicant is based in Scotland (and is otherwise eligible as described further below; see reply B.8 for the Scottish Screen funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves Scottish Screen verifying that the information submitted by the applicant is correct with respect to eligibility as well as assessing the proposed project (see reply B.9 for the Scottish Screen funding scheme).

The Scottish Screen funding scheme embraces **indirect** territorialisation requirement as successful applicants should be based in the region. Similar territorialisation requirements apply to the co-producer (see reply B.9 for the Scottish Screen funding scheme).

Indirect territorialisation requirements exist in the funding scheme operated by Scottish Screen as successful applicants should be based in the region.

#### 11.5 Synopsis of the relation between territorialisation requirements and co-production agreements

As with English law, Scottish law is based on common law principles and the question of how an agreement should be interpreted and which agreement would take precedence is determined only when a dispute formally arises and a court ruling is issued. To date, it seems that no disputes involving the co-production agreements have been litigated and therefore it cannot be said with certainty what the outcome of such a case would be. However, by examining principles established in previous case law, an indication could be found to support the thesis that national legislation providing for territorialisation inconsistent with an international co-production agreement would be overturned. National law should be construed to be consistent with international law.

#### 11.6 *Synopsis of purpose and cultural clauses applying to the funding scheme*

A number of references are made to culturally-themed considerations in the Scottish Screen funding scheme. For instance, the selection criteria include an assessment of the creative impact and refer to the projects that support and promote Scotland and Scottish identity. These references are listed along side criteria that arguably support economic development and growth prospects.

## **12 Analysis of Screen East**

### 12.1 Description of the funding scheme

The Screen East funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Screen East funding scheme, and for additional information on this scheme its website <http://www.screeneast.co.uk/>).

Screen East receives part of its funds from Screen England, a partnership of nine regional screen agencies. Screen East distributes these funds to support and invest in regional projects along with money provided by the European Regional Development Fund and other sources.

Screen East's remit is to facilitate talent and content development with industry potential within the East of England. It further seeks to facilitate and stimulate the development of production of films with a cultural and commercial value.

Screen East operates a funding scheme named "Screen East's Regional Investment Fund for England" (RIFE) which invests in a number of content specific areas in the East of England (see reply B.2 for the Screen East funding scheme for a specific list).

Screen East's internal regulations encourage applicants to discuss their projects with Screen East initially, who will then advise on whether it is worth submitting a formal application. If the sought funding is declined, a letter of rejection is provided to the applicant. Advice and assistance are also offered. If funding is granted, the project will be monitored and progress reports will be required. If Screen East fails to meet the published procedures while carrying out the selection process, the applicant may appeal the decision.

## 12.2 Synopsis of objective territorialisation requirements

### 12.2.1 Rules

N/A

### 12.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 12.2.3 Discussion

N/A

### 12.2.4 Conclusions

No objective territorialisation requirements apply.

## 12.3 Synopsis of indirect territorialisation requirements

### 12.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 12.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 12.4 below.

### 12.3.3 Conclusions

See Section 12.4 below.

## 12.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Screen East funding scheme, applications for funding are assessed on a number of selective aid criteria. The different criteria are not assigned a particular order of importance (see the Screen East funding scheme for a complete list).

Territorial requirements form part of Screen East's funding scheme. For instance, to be eligible for funding, applicants must be based in East England or the project will be based in East England or key personnel from East England will be substantially involved (see reply B.7 for the Screen East funding scheme). Similar requirements apply to co-productions (see reply B.8 for the Screen East funding scheme).

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place which involve Screen East verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project (see reply B.9 for the Screen East funding scheme).

The Screen East funding scheme includes **indirect** territorialisation requirements. However, the scheme does not include conditions that a minimum proportion of the budget should be spent in East England. Instead, successful applicants or the project should be based in the region, or key personnel from the region should be substantially involved (see reply B.9 for the Screen East funding scheme).

**Indirect** territorialisation requirements exist in the funding scheme operated by Screen East as successful applicants or the project should be based in the region, or key personnel from the region should be substantially involved.

## 12.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

## 12.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Some references are made to culturally-themed considerations in the Screen East funding scheme. For instance, the selection criteria include an assessment of whether the project is aimed at people from all backgrounds and will improve social inclusion and cultural diversity. Furthermore, Screen East's remit is to enable and stimulate the development or production of films with a cultural value and to encourage applications from all sections of the community.

## 13 Analysis of Screen Yorkshire

### 13.1 Description of the funding scheme

The Screen Yorkshire funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Screen Yorkshire funding scheme, and for additional information on this scheme its website <http://screenyorkshire.co.uk/>).

Screen Yorkshire receives part of its funds from Screen England, a partnership of nine regional screen agencies. Screen Yorkshire distributes these funds to support and invest in regional projects along with money provided by European funds and other sources.

Screen Yorkshire is responsible for inspiring, promoting and supporting a successful long-term film and media sector for Yorkshire. Its vision is to help grow and develop strong film, broadcast and digital media industries in Yorkshire and Humber with a highly skilled workforce.

Screen Yorkshire operates five funding schemes (see reply B.2 for the Screen Yorkshire funding scheme for a specific list).

Screen Yorkshire advises applicants to initially discuss their projects with Screen Yorkshire, who will then advise them on whether it is worth submitting a formal application. If the sought funding is not awarded, a letter of rejection is provided to the applicant. Investments are often made on an equity basis with provisions for Screen Yorkshire to recoup its investment after an agreed period of time.

Innovative partnerships are encouraged provided that the applicant is based in Yorkshire or is moving to be based in the region.

## 13.2 Synopsis of objective territorialisation requirements

### 13.2.1 Rules

N/A

### 13.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 13.2.3 Discussion

N/A

### 13.2.4 Conclusions

No objective territorialisation requirements apply.

## 13.3 Synopsis of indirect territorialisation requirements

### 13.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 13.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 13.4 below.

### 13.3.3 Conclusions

See Section 13.4 below.

## 13.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Screen Yorkshire funding scheme, applications for funding are assessed from a number of selective aid criteria that range from cultural and social objectives to economic ones. The different criteria are not assigned a particular order of importance (see reply B.13 for the Screen Yorkshire funding scheme for a complete list).

Territorial requirements form part of Screen Yorkshire's funding scheme but there is no requirement that a minimum proportion of the budget must be spent in Yorkshire. For instance, 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 three principals (director, producer, writer) must be resident in the region (see reply B.7 for the Screen Yorkshire funding scheme).

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place 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 (see reply B.9 for the Screen Yorkshire funding scheme).

The Screen Yorkshire funding scheme embraces **indirect** territorialisation requirements in that successful applicants should be based in the region or be in the process of moving there (see reply B.7 for the Screen Yorkshire funding scheme).

**Indirect** territorialisation requirements apply to the funding scheme operated by Screen Yorkshire as successful applicants must be based in the region.

13.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above

13.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Screen Yorkshire funding scheme. However, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

## **14 Analysis of Film Agency Wales**

14.1 Description of the funding scheme

The Film Agency Wales funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Film Agency Wales funding scheme, and for additional information on this scheme its website <http://www.artswales.org.uk/page.asp?id=208>).

Film Agency Wales's priorities (see reply B.9 for the Film Agency Wales funding scheme for a complete list) are to:



- identify and nurture Welsh filmmakers by supporting and encouraging the development of their work and ambitions
- promote a vibrant and dynamic film culture
- provide new opportunities to Welsh filmmakers to get their films produced
- increase the range and number of films made

To be eligible to apply for funding, applicants must demonstrate that the project will benefit Welsh filmmakers and key Welsh talent and personnel must be involved (see reply B.7 for the Film Agency Wales funding scheme). Furthermore, Film Agency Wales's internal regulations require films which are funded by the agency to be likely to qualify as British Films. There is, however, no requirement that a minimum proportion of the budget should be spent in the region (see reply B.6 for the Film Agency Wales funding scheme).

Upon receipt of an application, Film Agency Wales will decide directly whether to grant funding. If the sought funding is not awarded, a letter of rejection is provided to the applicant. An appeal procedure is available if Film Agency Wales has not adhered to the published guidelines on how the decision should be made (see reply B.6 for the Film Agency Wales funding scheme).

Film Agency Wales operates funding schemes in the areas of exhibition, education, development and production (see reply B.2 for the Film Agency Wales funding scheme).

## 14.2 Synopsis of objective territorialisation requirements

### 14.2.1 Rules

N/A

### 14.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 14.2.3 Discussion

N/A

### 14.2.4 Conclusions

No objective territorialisation requirements apply.

## 14.3 Synopsis of indirect territorialisation requirements

### 14.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 14.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section A3 above and Section 14.4 below.

#### 14.3.3 Conclusions

See Section 14.4 below.

#### 14.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Film Agency Wales funding scheme, applications for funding are assessed on a number of selective criteria. These criteria range from the quality, potential and originality of the project to the benefit for Welsh filmmakers and to the project's ability to qualify as a British Film and its market appeal. The different criteria are not assigned a particular order of importance (see reply B.13 for the Film Agency Wales funding scheme for a complete list). No guidance is given as to the importance or purpose of the individual criteria or the hierarchy among them.

Territorial requirements form part of Film Agency Wales's funding scheme as the applicant must demonstrate that the project will benefit Welsh filmmakers and key Welsh talent/personnel must be involved. Furthermore, a minimum proportion of the production budget must be spent in the region (see reply B.5 for the Film Agency Wales funding scheme as well as the follow-up reply paragraph 19). Furthermore, internal regulations demand that funded films are likely to qualify as British films interpretation (see reply B.6 for the Film Agency Wales funding scheme). Similar requirements apply to co-productions which can apply for funding provided that the applicant can satisfy the eligibility criteria (see reply B.8 for the Film Agency Wales funding scheme).

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place which involve Film Agency Wales verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project (see reply B.9 for the Film Agency Wales funding scheme).

The Film Agency Wales funding scheme contains **indirect** territorialisation requirements as the applicant must demonstrate that the project will benefit Welsh filmmakers and key Welsh talent / personnel must be involved (see reply B.9 for the Film Agency Wales funding scheme).

14.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

14.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Film Agency Wales funding scheme. However, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

**15. Analysis of Screen South**

15.1 Description of the funding scheme

The Screen South funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Screen South funding scheme, and for additional information on this scheme its website <http://www.screensouth.org/>).

Screen South receives funding from screen England, a partnership of nine regional screen agencies. Screen South distributes these funds to support and invest in regional projects along with money received from European funds and other sources.

Screen South aims to be a resource that helps creators to bring their works to fruition. It aims to preserve the screen heritage of the South of England and to find ways of presenting film to new audiences. It is committed to supporting a dynamic and sustainable film and media industry for the Screen South region (see reply B.9 for the Screen South funding scheme for a complete list).

To be eligible to apply for funding, applicants must be based in South England (see reply B.7 for the Screen South funding scheme). Similar requirements apply to co-productions (see reply B.8 for the Screen South funding scheme).

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 granted a panel interview. Once an award for funds is granted it is monitored in line with the investment agreement, and progress reports are required. 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 (see reply B.6 for the Screen South funding scheme).

Screen South operates funding schemes called “Screen South’s Regional Investment Fund for England (RIFE) Open Fund”, the “RIFE Festival and Exhibition Fund” and occasional short-film funding schemes (see reply B.2 for the Screen South funding scheme).

## 15.2 Synopsis of objective territorialisation requirements

### 15.2.1 Rules

N/A

### 15.2.2 Practice

N/A

### 15.2.3 Discussion

N/A

### 15.2.4 Conclusions

No objective territorialisation requirements apply.

## 15.3 Synopsis of indirect territorialisation requirements

### 15.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 15.3.2 Discussion

See the analysis of indirect territorialisation requirements in Section 15.4 below.

### 15.3.3 Conclusions

See Section 15.4 below.

## 15.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Screen South funding scheme, applications for funding are assessed on a number of selective criteria. These criteria range from cultural to social and

economic objectives and are not assigned a particular order of importance (see reply B.13 of the Screen South funding scheme for a complete list).

Territorial requirements form part of Screen South's funding scheme but there is no requirement that a minimum proportion of the budget must be spent in the region. To be eligible to apply for funding, applicants must be based in South England (see reply B.7 for the Screen South funding scheme).

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place which involve Screen South verifying that the information submitted by the applicant in respect of eligibility is correct as well as assessing the proposed project (see reply B.9 for the Screen South funding scheme).

The Screen South funding scheme contains **indirect** territorialisation requirements as successful applicants should be based in the region. Similar requirements apply to co-productions (see reply B.7 for the Screen South funding scheme).

**Indirect** territorialisation requirements are employed under the funding scheme operated by Screen South as successful applicants should be based in the region.

15.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

15.6 Synopsis of purpose and cultural clauses applying to the funding scheme

A number of references are made to cultural considerations in the Screen South funding scheme. Furthermore, certain of the selection criteria allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support economic development and growth prospects.

## 16 Analysis of Sgrîn Cymru

16.1 Description of the funding scheme

The Sgrîn Cymru funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Sgrîn Cymru funding scheme).

According to the rules governing this funding scheme, 5% of the National Lottery's distribution fund is granted to the Arts Council Wales, which, in turn, grants this support to Sgrîn Cymru.

## 16.2 Synopsis of objective territorialisation requirements

### 16.2.1 Rules

N/A

### 16.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 16.2.3 Discussion

N/A

### 16.2.4 Conclusions

No objective territorialisation requirements apply.

## 16.3 Synopsis of indirect territorialisation requirements

### 16.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 16.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section A3 above and Section 16.4 below.

### 16.3.3 Conclusions

See Section 16.4 below.

## 16.4. Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Sgrîn Cymru funding scheme, each project is assessed on a number of qualitative criteria, in particular the following elements:

1. The project should offer public benefit to the people of Wales and the United Kingdom e.g. by diversifying the range of cinematic material,

exposing new talent, or increasing the representation of previously under-represented communities.

2. The quality of the script and originality of the concept.
3. Sgrîn Cymru's fund should be decisive for the project; the aim is not to offer substitution funding but to bring a demonstrable benefit.
4. Accuracy and suitability of budget and schedule.
5. The likelihood of other funders committing to the project.
6. The strength of contingency plans.
7. A demonstrable demand for the project e.g. letters of interest, sales estimates.

The criteria included in the selection process range from original and innovative projects. The criteria arguably indicate preference for projects that bring “public benefit” to Wales and increase the cultural development in the region.

Territorial requirements form part of the Sgrîn Cymru funding scheme as the applicant company as well as the producer must be based in the region to be successful. Additionally, the scheme requires that films funded by the agency qualify as British Films (see reply B.7 for the Sgrîn Cymru funding scheme).

Applications from producers who are not based in Wales can be eligible for State aid, provided they demonstrate a material benefit to the Welsh economy by complying with the following conditions:

- training opportunities are made available to residents of Wales
- the film is shot in Wales
- the film project is culturally relevant to Wales
- a percentage of the budget is spent within Wales during pre-production, production and post-production

No judicial practices as such apply. However, there is an administrative practice and internal guidelines in place which involve Sgrîn Cymru verifying that the information submitted by the applicant is correct in respect of eligibility as well as assessing the proposed project.

According to the administrative practice, the Sgrîn Cymru Funding Scheme's internal regulations require that films must qualify as British works (see Reply A.4 for the Supplemental Part A of United Kingdom) to be eligible for State aid under this funding scheme. Furthermore, they require that the applicants complete an Advance Notification Form giving information on the project, key personnel, production company and partners. This form has to be submitted to Sgrîn Cymru's Production Advisory Group members, who then indicate whether the film project qualifies for the full formal application procedure. If so, the producer shall submit an application, which will be assessed against the criteria described above. If Sgrîn Cymru rejects the application, the applicant cannot re-apply during a period of nine months and unless it submits substantial amendments to the project.

A number of **indirect** territorialisation requirements apply under the Sgrîn Cymru funding scheme. For example, applications from companies not normally based in Wales can be eligible, provided they demonstrate a material benefit to the broader Welsh industry. The culturally-themed requirements are applied on an equal basis with requirements that support intra-regional economic development.

**Indirect** territorialisation requirements exist in the funding scheme operated by Sgrîn Cymru as applicants have to be based in the region.

#### 16.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

#### 16.6 Synopsis of purpose and cultural clauses applying to the funding scheme

A number of references are made to cultural considerations in the Sgrîn Cymru funding scheme. The agency is committed to enhancing the Welsh economy and culture by encouraging industrial growth, cultural development and public involvement in all its forms. It focuses on developing entrepreneurship and skills within the media industries to ensure that participants from Wales are able to confidently compete in European and international markets. These culturally-themed references are made and employed in the selection process alongside criteria which arguably support economic development and growth prospects.

### **17 Analysis of Gaelic Media Service**

#### 17.1 Description of the funding scheme

The Gaelic Media Service funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Gaelic Media Service funding scheme).

The Gaelic Media Service (“GMS”) offers State aid to television and radio projects that have a UK commissioning broadcaster or, alternatively, independent producers. The GMS funding scheme also assists broadcasters/producers who develop program ideas concerning TV and radio transmissions.

#### 17.2 Synopsis of objective territorialisation requirements

##### 17.2.1 Rules



N/A

#### 17.2.2 Practice

There is no relevant judicial and administrative practice reported.

#### 17.2.4 Conclusions

No objective explicit territorialisation requirements apply.

### 17.3 Synopsis of indirect territorialisation requirements

#### 17.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 17.3.2 Discussion

N/A

#### 17.3.3 Conclusions

N/A

### 17.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

The GMS evaluates the quality of each applicant's idea. The projects must be suitable or appeal to the Gaelic population (see reply B.13 for the GMS funding scheme).

### 17.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 11.5 above (for Scottish Screen).

### 17.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The Gaelic Media Service funding scheme's mission is to partner 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.

## **18 Analysis of Creative IP Fund**

### 18.1 Description of the funding scheme

The Creative IP funding scheme is based on the Government of Wales Act 1998. There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Creative IP funding scheme funding scheme).

### 18.2 Synopsis of objective territorialisation requirements

#### 18.2.1 Rules

N/A

#### 18.2.2 Practice

There is no relevant judicial or administrative practice reported.

#### 18.2.3 Discussion

N/A

#### 18.2.4 Conclusions

No objective territorialisation requirements apply.

### 18.3 Synopsis of indirect territorialisation requirements

#### 18.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 18.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 18.4 below.

#### 18.3.3 Conclusions

See Section 18.4 below

### 18.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

According to the rules of the Creative IP funding scheme, State aid is granted to the most creative projects. However, the selection process also includes commercial criteria similar to those applied by actors from the private sector. It is reported that applicants must have secured at least 60% of the total project funding from other investors before they apply. The money granted under this funding scheme is considered as a form of investment and not as a soft loan or a subsidy. Furthermore, this investment concerns the content of the project that is protected by intellectual property law and not the producers themselves.

The Creative IP funding scheme imposes explicit territorial conditions. Projects by companies not based in Wales are required to spend a proportion of the total production budget in Wales. Generally, to be eligible to apply for funding, each project should be able to demonstrate an economic benefit to Wales. These rules are contained in Section 32 of the Government of Wales Act 1998 that provides the Welsh Assembly may do anything it deems appropriate to support the cultural activities of Wales (see Reply B.6 for Creative IP funding scheme).

There is no judicial practice reported. However, there is an administrative practice and internal guidelines applying to Creative IP Fund's procedure of reviewing the application form and verifying the information (see Reply B.9 for Creative IP funding scheme).

The rules governing the Creative IP Funding Scheme require that the producers spend a proportion of the total production budget in Wales.

The Creative IP Funding Scheme employs **indirect** territorialisation requirements as projects by companies not based in Wales are required to spend a proportion of the total production budget in the region.

18.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

18.6 Synopsis of purpose and cultural clauses applying to the funding scheme

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 a risky business for traditional investors.

**19 Analysis of Screen West Midlands**

## 19.1 Description of the funding scheme

The Screen West Midlands funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the Screen West Midlands funding scheme, and for additional information on this scheme its website <http://www.screenwm.co.uk/>)

Screen West Midlands receives funding from Screen England as well as from the European Regional Development Fund and other sources. Screen West Midlands' internal regulations require applicants to initially discuss their project with Screen West Midlands to determine the most suitable scheme and its needs. Screen West Midlands will assess the applications with input from external industry professionals (see reply B.6 for the Screen West Midlands funding scheme).

Screen West Midlands operates the following five schemes (see reply B.4 for the Screen West Midlands funding schemes):

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

Screen West Midlands' mission is to create a thriving screen media industry in the region. It aims to support, promote and develop the screen media industry i.e. production, education, skills development and exhibition (see reply B.9 for the Screen West Midlands funding scheme).

## 19.2 Synopsis of objective territorialisation requirements

### 19.2.1 Rules

N/A

### 19.2.2 Practice

There is no relevant judicial and administrative practice reported

### 19.2.3 Discussion

N/A

### 19.2.4 Conclusions

No objective territorialisation requirements apply.

### 19.3 Synopsis of indirect territorialisation requirements

#### 19.3.1 Practice

There is no relevant judicial and administrative practice reported.

#### 19.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 19.4 below.

#### 19.3.3 Conclusions

See Section 19.4 below.

### 19.4 Synopsis of State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the Screen West Midland funding scheme, applications for funding are assessed on a number of selective criteria (see reply B.13 for the Screen West Midland funding scheme). The criteria are not assigned a particular order of importance.

A number of requirements arguably indicate the application of indirect territorialisation requirements. These requirements arguably target economic benefit of the projects applying for the region (see reply B. 13 for the Screen West Midland funding scheme).

Territorial requirements form part of Screen West Midland funding scheme. However, there are no conditions that applicants have to spend a minimum proportion of the production budget in the region (see reply B.5 for the Screen West Midlands funding scheme). Instead, the territorialisation requirements demand that successful applicants be based in the West Midlands, or if an applicant is originally based outside the region, it must be demonstrated how the project will contribute to a sustainable screen media economy in the West Midlands (see reply B.7 for the Screen West Midlands funding scheme).

Screen West Midlands encourages co-productions and will fund these provided that one of the co-producers is based in the West Midlands (see reply B.8 for the Screen West Midlands funding scheme).

No judicial practices as such apply. However, there is an administrative practice in place which involves Screen West Midlands verifying that the information

submitted by the applicant is correct with respect to eligibility (see reply B.9 for the Screen West Midlands funding scheme).

The Screen West Midlands funding scheme includes the **indirect** territorialisation requirement that successful applicants should be based in the region or demonstrate how the project will contribute to a sustainable screen media economy here. Also, co-productions are only funded if one of the co-producers is based in the West Midlands. A key aim of the Screen West Midland funding scheme is to create a thriving screen media industry in the region.

**Indirect** territorialisation requirements arguably exist in the funding scheme operated by Screen West Midland as successful applicants have to be based in the region or demonstrate how the project will contribute to a sustainable screen media economy in the region.

19.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

19.6 Synopsis of purpose and cultural clauses applying to the funding scheme

Few references are made to cultural considerations in the Screen West Midland funding scheme, however, some criteria do allow for culturally-themed considerations to form part of the process. These are listed alongside criteria which arguably support regional economic development and growth prospects.

## **20 Analysis of South West Screen**

20.1 Description of the funding scheme

The South West Screen funding scheme is based on the National Lottery Act of 1993, most recently amended in 1998 (National Lottery Act).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for the South West Screen funding scheme, and for additional information on this scheme its website <http://www.swscreen.co.uk/>).

South West Screen also distributes European Regional Development Funds and funds from other sources.

The UK Film Council distributes 12.2% of the National Lottery's distribution fund (Art. 23(e) of the National Lottery Act 1993 as amended) 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

which uses the funds to support and invest in regional projects (see Reply B.6 for South West Screen funding scheme).

## 20.2 Synopsis of objective territorialisation requirements

### 20.2.1 Rules

N/A

### 20.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 20.2.3 Discussion

N/A

### 20.2.4 Conclusions

No objective territorialisation requirements apply.

## 20.3 Synopsis of indirect territorialisation requirements

### 20.3.1 Practice

There is no relevant judicial and administrative practice reported.

### 20.3.2 Discussion

See the analysis of indirect territorialisation requirements under Section 20.4 below.

### 20.3.3 Conclusions

See Section 20.4 below.

## 20.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way.

Under the South West Screen funding scheme, each project is assessed on a number of qualitative criteria relating to:

- the objectives (development of the culture sector of the South West and particularly of the region's film industry)

- public benefit (promotion of the cultural diversity, social inclusion including equal opportunities and disability, availability of market research, potential for audience development)
- the 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)

In the context of this evaluation procedure, the South West Screen funding scheme also assesses if the project could be realised without the South West Screen funding (see Reply B.13 for the South West Screen funding scheme).

South West Screen requires that applicants operate or are based in the South West (or wish to develop activity based in the South West) in order to be eligible for State aid (see Reply B.7 for the South West Screen funding scheme).

There are no judicial practices as such. However there is an administrative practice and internal guidelines which require that South West Screen advise the applicant to contact South West Screen to discuss the project first. According to the administrative practice, if an application is submitted, South West Screen verifies that the information submitted by the applicant in respect of eligibility is correct. If the application is rejected, South West Screen provides a short explanation and tries to offer assistance. Applicants can appeal if the guidelines published regarding the decision are not adhered to.

A number of **indirect** territorialisation requirements apply under the South West Screen funding scheme. For example, to be eligible to apply for funding, applicants must be operating or residing in the South West; or must plan to develop activity based in the South West. Culturally-themed requirements are applied on an equal basis with requirements that arguably indicate a preference for projects that support intra-regional economic development.

**Indirect** territorialisation requirements exists under the South West funding scheme as applicants must be operating or residing in the South West or wish to develop activity based in the South West.

20.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

20.6 Synopsis of purpose and cultural clauses applying to the funding scheme



South West Screen's priorities are:

- to inform and influence opinion
- to shape the national and regional decisions and policies that affect screen-based media, and to raise awareness of the sector's importance to the cultural and economic life of the South West
- to awaken and nurture creativity by enabling existing South West screen practitioners and newcomers to expand their skills and horizons
- 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
- to 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

## References:

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 a 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>  
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](http://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 to be "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](http://www.hmrc.gov.uk/ria/ria-film-reform.pdf) (published March 2006)

The following internet links relate to regional bodies that 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/>

**Attachments:**

- Replies to the legal questionnaire by Hakan Kousetta, attorney at law, Howard Kennedy, United Kingdom
- Regulations for the United Kingdom