

Paper Apart – Substantive Base Definition

Background:

We feel that the current proposed wording regarding a “substantive base” does not adequately capture the requirement for a production company to be genuinely situated in a particular Nation or Region in order to benefit from Nations/Regions qualification.

Our feeling is that the current or proposed definitions do not prevent large London-based production companies from setting up stripped-down satellite offices in a given Nation or Region to benefit from Nations/Regions qualification, while adding very little in terms of genuine presence to the independent production sector in that Nation/Region. To benefit from Nations/Regions qualification, a “base” should have independent business leadership, productions capability and a development presence in that Nation/Region.

Our preference is that a company must show an “*operationally independent base*”, which has three key roles *domiciled* in the Nation/Region in question. We suggest that the concept of “domicile” is a more appropriate one than “usual place of employment” for determining whether a particular executive is based in a Nation/Region as it can be demonstrated empirically and is therefore less open to abuse. If there is a differential tax regime, which is currently the case in Scotland and may be the case in the other Nations/Regions in due course, that should be used to identify the locality of a given individual – otherwise resort can be had to where their main residence is.

We feel it is also important that the executives in charge of the Nations/Regions business have a degree of independent decision-making authority. This would ensure that the executives in question were of a sufficiently senior level to demonstrate a genuine business presence, rather than a simple satellite office staffed by, for example, a Production Executive and freelance production teams.

Finally, it is – in our opinion – important to emphasise that any executives or individuals who are responsible for pitching for new business from the Nation/Region be “senior creative personnel”. Again, this is to ensure that there is a genuine development presence within the Nation/Region with a degree of permanence. We would not consider it appropriate if, taking the example in the paragraph above, a Production Executive was put forward as being involved in “seeking programme commissions” which they arguably could under the proposed Ofcom definition (as they will be closely involved in budgeting and organising Production Management for prospective commissions). By requiring “creative personnel”, our proposed definition would ensure that a Nations/Regions business at least had a genuine creative development function.

Proposed Ofcom definition:

The production company must have a substantive business and production base in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment of:

- i) the executives managing the regional business; and
- ii) senior personnel involved in the production in question; and
- iii) senior personnel involved in seeking programme commissions.

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Two Rivers Media Proposed definition:

The production company must have an *operationally independent* business and production base in the Nation or Region being claimed prior to the point of commission. A base will be “operationally independent” where it can be demonstrated that the following three roles in the company are domiciled in the relevant Nation or Region:

- a) The Managing Director or other head of the Nations/Regions business with independent decision-making authority;
- b) The Head of Development or other senior creative personnel responsible for seeking programme commissions; and
- c) The Executive Producer or other senior creative personnel involved in the production in question.

An individual will be considered to be domiciled in a Nation or Region if they can show that they have their main residence in that Nation or Region or if they pay income taxes attributed to a particular Nation or Region (where differential tax regimes exist).