



## **5-Minute Overview to the Budgetary Oversight Committee**

On behalf of the membership of Irish Equity we want to thank the Budgetary Oversight Committee for the invitation to both submit our thoughts on the film tax incentive, and for this opportunity to discuss that submission in person.

Section 481 is an important source of funding for the audio-visual sector. It has played a key role in the growth of that sector, and in the creation of contract jobs for our crews, for a whole new generation of animators, and for our members, the professional performers who populate the Film and Television productions that are produced in Ireland every year.

It is vital that we remember the most important stakeholder in Section 481: the taxpayer. Section 481 is their investment, and it must be protected and the return on that investment must be optimised.

With these stakeholders in mind, it is vital that the reputational, legal, and financial risks associated with the operation of Section 481 are fully considered and effectively managed, and our full submission is chiefly concerned with these risks and how they can be managed.

For the purposes of this introduction let us consider one of those risks. In the same way that the contracted crews are protected by a range of employment legislation, all performers and creatives are protected by that same legislation and also by the Copyright and Related Rights Act 2000 and by the European Copyright Directive. However, although Productions must sign a statement to the effect that they will comply with relevant employment legislation to secure 481 investment, the Copyright and Related Acts 2000 and the EU Copyright Directive are not specifically listed in the statement. This legislation must be listed and applied in full, and the rights of the performer must not be contractually overridden

Why is this important? The real value of the film and television industry does not exist at the point of production. It is contained in the copyright and intellectual property of all the parties contributing to the final product.

All performers own property rights under the copyright legislation. These property rights have a financial value to those that own them, the performer, and those who want them, the producer. The most important of these rights is the right to proportionate remuneration for the ongoing financial exploitation of their performance, as enshrined in Article 18 of the European Copyright Directive.

In order to manage this legislative risk, adherence to copyright regulation must become an eligibility requirement for 481 applicants, if 481 is to be consistent with Irish and European legislation.

For the record, the protections provided by articles 18-22 of the European Copyright Directive state that “the protection of authors and performers is [...] the core principle which should inform the interpretation and implementation of articles 18-22, and that this principle implies the following:

Articles 18-22 have a binding nature and cannot be contractually overridden, except insofar as expressly permitted by the Directive.

Article 18 vests the performer with a right **to an appropriate and proportionate remuneration for the ongoing financial exploitation of their work.**

What this means is that a small percentage of the worldwide revenue streams created by the ongoing sale of the production will find their way back to the performer.

The ECD also states that these provisions ‘have to be interpreted in a strict manner and should not serve as ways to exclude some contracts or situations from the protective provisions to the detriment of authors and performers.’

It is an additional concern to us, and a growing legal and reputational risk to our audiovisual sector, that Irish actors are being contracted on lesser terms and conditions than their international colleagues, as well as being denied their copyright, even though both Irish and international performers are being part funded by Section 481 taxpayer investment.

To this end Section 481 must ensure:

- 1) That the Copyright and Related Rights Act and the EU Copyright Directive be implemented in full
- 2) That all agreements and contracts comply with the legislation protecting the rights of the artist.
- 3) That greater transparency exists with regard to the assignment of performers’ property rights and their value to the end user as required by the EU Directive article 20
- 4) That indigenous Irish performers are engaged on terms and conditions equal to and not less than any other performer who qualifies under Section 481.

These steps will ensure that the performer will have some protection within the negotiating process.

One of the motivations behind Section 481 is to create quality employment. Indeed, the Olsberg Report on the film industry states that

*'Economic net benefit is a more comprehensive measurement than fiscal net benefit as it recognizes that governments do not invest to benefit their treasuries, **but rather on behalf of all citizens as a means to raise standards of living.**'*

Section 481 must respect the rights of citizens protected under the copyright legislation, and it must ensure that all performers share in the success of the industry, so that their incomes are increased, and more of them enter the tax net. Section 481 must ensure that all the creatives thereby benefit from a raise in their standard of living and the creation of sustainable careers in an otherwise precarious environment.

Thank You.