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Legal and Economic Dimensions

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INTRODUCTION

Film co-production is defined as the production of a film made by two or more co-producers/production companies from different countries.

Co-production was chosen as a subject for research, rather than production from a single country, because of its peculiarities and special characteristics. First of all, for a co-production to be completed, cooperation between different countries, and therefore different cultures, is required. Unlike film production coming from a single country, co-production requires the coordination of completely different people and mentalities. In addition, filming takes place onsite in many different countries, which is also demanding in terms of coordination and completion. Furthermore, film co-production draws its financial resources from financing programs run in different countries, as opposed to single country film production, which draws its financial resources from financing programs funded with the country's own resources. Finally, film co-production has ensured distribution in advance in the countries involved in the production. In this way, it has access to a larger audience versus a single-country production. This also means that the locations used for filming "reach" a larger number of countries when the film is released. If these locations are important to the film plot and also particularly attractive and beautiful, the movies can help increase local tourism.

Apart from access to financing mechanisms and the impact on tourism, co-productions also raise specific issues as regards property rights. As already explained, for co-production to be completed it is necessary for different people of different origins and different cultures to work together. This collaboration and the film budget which is often significantly high thanks to the different financing mechanisms available allow for filming in special locations where film professionals are flocking because of the filming. This results in a number of positive externalities (such as increasing tourism) but also a number of negative externalities (such as environmental pollution), both of which will be thoroughly analyzed throughout this book. Of course, the existence of such externalities is also linked to single-country productions that may not be co-productions but are associated with the presence of a crowd onsite at the filming locations. The key issue to be

studied is how rights are distributed in the development of a film production. Considering that filming produces both positive and negative externalities, this book aims to investigate how the rights are allocated. This study, more specifically, will be looking into decision-making in connection with filming. The Coase theorem was selected as a theoretical framework; it was used as an interpretive tool to enable understanding of how decisions are made when filming at a particular location. The Coase theorem (1961) stipulates that in the event of externalities; each decision is made on the basis of a judicial ruling or a legal regulation. This means, according to the Coase theorem, that the decision is not made based on market laws because the property rights relating to film co-production are not sufficiently defined. Therefore, to interpret how a decision is made, this book aims to investigate whether this theorem is indeed applicable (i.e., if decision-making is based on the market or the applicable legal framework or any relevant government resolutions). This study will analyze specific filming case studies.

Within the theoretical framework described, the goal is to identify any positive and negative externalities, to highlight the current mode of dealing with such externalities and to judge whether they are effectively addressed in the existing legal framework governing film co-productions. To examine the positive and negative externalities, this book will investigate specific case studies of film productions at specific locations. The first step will be to analyze the positive and negative externalities in each of these locations. Next, the current legal framework for each of these locations will be described. The aim here is to investigate whether these regulations adequately define the allocation of property rights and to examine the rigor of the legal framework regulations to determine whether they are sufficient or whether the state should intervene in the form of relevant government decisions.

Chapter 2 establishes the current legal framework governing film co-productions. Firstly, the EU legal framework will be analyzed. Then, the current Greek legislation will be examined.

Chapter 3 examines the economic dimensions of film co-production. It is also the empirical part of this book. The case studies of specific films will be described in this chapter to draw conclusions about how rights are being allocated. Then, the chapter will examine the phenomenon of film tourism, with specific examples from around the world as well as an emphasis on the presence and further growth of this phenomenon in Greece.

METHODOLOGY

This book contains chapters which address the issue of co-production from various perspectives. Therefore, each chapter employs its own methodology which matches the specific approach followed for each chapter.

Chapter 1 outlines the theoretical framework adopted to contextualize and analyze the allocation of property rights in the context of film co-productions. This framework is grounded in Ronald Coase's theorem on externalities and property rights. The chapter provides an extensive overview of the evolution of 20th-century economic thought, which ultimately culminated in the formulation of the Coase Theorem. It also includes a general analysis of the theorem and examines its relevance and applicability to co-production scenarios within the film industry.

Chapter 2 investigates the legal dimensions of co-production. The author decided to analyze the existing legal framework at both EU and national levels based on the study and presentation of the relevant legal texts.

Chapter 3 focuses on the economic dimensions of the film co-production phenomenon providing several case studies for different films and different countries. The analysis focuses on the current legal frameworks as well as on the positive and negative externalities that arise each time, with an aim to examine whether it is possible to confirm the Coase theorem for each of these cases. Moreover, film tourism is a key economic dimension of this phenomenon; it is also studied in this chapter based on statistics obtained from relevant surveys and brief comprehensive references to specific examples. Finally, there is mention of the present situation and the possibilities for developing film tourism in Greece. The author chose to look into films shot in Greece and then analyze how film tourism could benefit Greece and what the obstacles may be, as well as any challenges for the future.

CHAPTER 1

THEORETICAL FRAMEWORK

This book aims to examine the phenomenon of co-production, from the decision-making to the external effects it may cause at shooting sites.

Film co-production has been treated as requiring the allocation of property rights. The two property rights regulating the relationship are the right of the production company to shoot in each location and the right of those responsible for licensing film shootings in that location. Considering that this is a case of allocating property rights, it is necessary to understand how these rights are perceived in economic theory.

It should be noted that the question of "what belongs to whom" is still a "hot" economic issue in our socio-economic system and many researchers have expressed their theories before the science of Political Economy even existed (Zouboulakis 2016). Some of the key views on property rights and the characteristics that researchers assign to them are listed in the following paragraphs.

The modern study of property rights that took place in the 1960s and 1970s, mainly by Coase (1959, 1960), Alchian (1965, 1969), Demsetz (1964, 1966, 1967), Cheung (1968, 1969, 1970), and Furubotn and Pejovich (1972, 1973, 1974), will serve as a starting point. More recent theoretical and empirical contributions to literature have been made by North (1981, 1990), Barzel (1982, 1997), Cheung (1983), Libecap (1989), Eggertsson (1990) and Alston et al. (1996), (Kim and Mahoney 2005).

The "property rights" theory, referred to in this book as originated in the 1960s and 1970s, began with the assumption that changes in the contractual framework needed to be made to develop broader scope models. It was therefore necessary to offer a new explanation as regards the role of individuals as decision-makers within the production process. People are the focus of their own interests. In addition, this book also considers that there may be different models of property rights and that the increase in profit or wealth is not a given. Finally, it is recognized that transaction costs are above zero in almost all cases of property rights of practical significance

(Furubotn and Pejovich 1972). In the years that followed the development of the "property rights" theory, the study of property rights "assigned" a variety of definitions and characteristics to the concept of these rights.

The structure of rights may vary from one community to the next, but there is still a common distribution. There are: a) property rights associated with physical objects; b) property rights associated with intangible property; and c) property rights not covered by law but resulting from informal social relations such as customer relations or friendly relations (Furubotn and Richter 1998). In addition, according to the view of Furubotn and Pejovich as expressed in 1972, there is a common feature in each property rights relationship. Property rights refer to human relationships rather than relations between persons and things. In other words, even if a right starts from relations between persons and objects, it continues to be in force thanks to the system of social relations (Furubotn and Pejovich 1972; Zouboulakis 2016).

Those same authors support that the allocation of property rights defines how to behave in relation to the actions that each person should take in their relationships with other people. For the authors, property rights are a set of economic and social interactions that define each person's position as regards the use of limited resources (Furubotn and Pejovich 1972).

Further regarding the relationship between property rights and social interactions, it has recently been pointed out that a property right is not the result of spontaneous enforcement; it is a right which has been lawfully and legally enforced (Hodgson 2015). The term "lawfully" signifies that legal ownership is paramount (Holcombe 2014). This same view was expressed in the early 1990s by North. According to North, first and foremost, a property right cannot exist and be secured without the legal enforcement of a permanent process by political decision (North 1990). As Samuels clearly states, "property rights exist thanks to the one who uses power to protect them" (Samuels 1999). It is therefore observed that the view linking ownership rights and legal enforcement is now a part of the property rights theory, considering that a multitude of authors have supported it over the years.

In 1989, Gary D. Libecap linked property rights to both customary (unofficial) rights and legal rights. He claimed that "property rights extend from formal agreements, such as constitutional provisions, laws and jurisprudence, to non-official conventions and customs" (Libecap 1989). In

addition, he stressed that a property right is defined as the right to use, to make a profit from, and to transfer or to exchange assets and resources.

Kim and Mahoney (2005) emphasize the fact that by presuming that property rights have varying dimensions, we may also presume that different people hold parts of these rights. They use a piece of land as an example. In this case, a person is likely to have the right to plant wheat on a specific piece of land, while another person may have the right of passage, a third one has the right to fly an airplane over it, and so on. In this case, different individuals hold property rights for the same piece of land. When two or more different parties can influence the allocation of property rights, as noted by Kim and Mahoney, then it is difficult to draw a line between the rights of each party (Kim and Mahoney 2005).

A different approach to property rights was adopted by Alchian (1965), who defined property rights based on the ability to choose the use of the property (without affecting the ownership of others) (Alchian 1965). According to Hodgson (2015), although this definition indicated the role of the law, customs and conventions, it was mainly based on the de facto exercise of authority and less on any legal or moral criteria (Hodgson 2015).

Hodgson also notes that Alchian (1965) undermines the role of the law as the main regulator in terms of property rights. Instead, he turns it into one of the ways of imposing possession and control (Hodgson 2015). Kreps (1990), when referring to this definition, emphasizes that it is extremely broad and highlights the legal aspect of property rights and social conventions that define behavior, such as the collective "culture" and reputation.

In 1997, Barzel seemed to have expanded this line of thought and differentiated property rights from economic property rights and legal property rights. Economic property rights refer to a person's ability to "enjoy" the use of the property, while legal property rights are those granted to individuals by the legislator. Barzel considers that economic property rights (i.e., the enjoyment of possession) are the goal, while legal property rights are the means to achieving this goal. In other words, legal rights play a supporting role (Barzel 1997).

A more recent analysis (Allen 2014) raises the issue in simpler terms by prescribing that economic property rights are the ability to freely exercise a choice. According to Hodgson's criticism (Hodgson 2015), this definition does not include the relationship with others, nor the concept of right. Allen,

according to Hodgson, ignored any concept of human relations with rights, duties or morals. His definition could apply only to robots or any kind of living entity that is not identified as a social being.

As already noted, this book treats co-production as a matter of different property rights that need to be allocated to eventually make film co-production or production possible. The key issue that this book examines as regards the allocation of property rights is filming and the application of such rights in a particular area. After all, filming is one of the key issues and steps in film co-production. In addition, however, filming includes two distinct parties that need to reach an agreement for filming to take place: the production company and those responsible for licensing filming in an area. Filming, as an activity that takes place in a given area, clearly impacts the area, both in positive and negative ways. Therefore, to understand how rights are allocated, the impact on the area should be taken into account.

Before analyzing the specific externalities arising from film co-productions in given locations, one needs to examine the externalities from the point of view of basic economic theory which has studied this matter and has proposed solutions on how to allocate property rights.

Early in the 1960s, a group of Neoclassical economists in Chicago and elsewhere tried to solve some unsolved questions about the issue of externalities and the use of shared resources. In particular, the most important theory in terms of externalities, which was chosen as the theoretical framework for this book is the theory of economist Ronald Coase on externalities (Coase 1960). His theory, as will be analyzed in the following paragraphs, has been used in this book to interpret how rights are applied to decision-making about filming. In other words, this theory was used to investigate how filming does or does not happen in a particular location.

Ronald Coase (1910-2013) was one of the greatest economists of the 20th century. His theoretical contribution gave him the “opportunity to see the establishment of the New Institutional Economics and then witness how it started gaining increasingly more recognition from the late 1970s, culminating in the three Bank of Sweden awards in memory of Alfred Nobel: Coase 1991, North 1993, Williamson 2009” (Zouboulakis 2014). In addition, it should be noted that it has led to a change in the direction of economics, from a science which was based on theories only good on the “blackboard” to a science based on real-life examples (Shirley, Wang, and Menard 2015).

Coase's first major contribution to economic thinking was the firm theory. In his article, "The nature of the firm" (Coase 1937), Coase explained that firms exist because they reduce transaction costs during production and the costs of exchange by exploiting activities that individuals alone cannot make use of (Formaini and Siems 2003). In other words, "it is more economical to have permanent firm structures with permanent facilities, stable staff, a hierarchical organization of production and, if possible, stable suppliers and customers, than looking to set up a business every time there is profit on the horizon" (Zouboulakis 2014).

As for his second contribution, which is the theoretical framework of this book, Ronald Coase initially wanted to place the concept of externality or external influence at the center of his scientific discourse. Firstly, since this thesis mentions the theory of property rights, which forms the basis of Coase's main theorem, it is necessary to refer to Coase's position on property rights and their characteristics. As regards property rights, Coase pointed out that one of the objectives of the legal system is to formulate a clear demarcation of rights allowing for their transfer and combination through the market (Coase 1959). Coase never thought that ownership in a modern market could exist without a state legal system (Hodgson 2015). In a later study, he pointed out that if rights were allocated and belonged to a large number of individuals with different interests, the establishment and administration of a private legal system would be very difficult. Those who act within these markets must depend on a state legal system (Coase 1988).

Externality, in the late 1950s, was seen as a market failure. According to Pigou, a negative externality could only be properly assessed if the party to the relationship that caused it was to assume responsibility for it (Nutter 1968). To develop his theorem, Coase used case studies with 19 real-life examples rather than mathematical models. Indeed, he chose examples stemming from legal science because, as he later stated, they concerned real-life situations rather than fictional ones, like the examples often being used by economists before then (Frischmann and Marciano 2015). For example, a factory that is polluting the environment does not include the remediation and other possible consequences of such pollution in its operating costs. On the contrary, this cost is borne by those residing in the surrounding area or by the state itself. Prior to Coase's theorem, Pigou (1924) had attempted to resolve this problem. He had proposed solutions that would have led to the remediation of the pollution caused by the factory. His solutions included taxing the company's production, giving out compensations and prohibiting nuisance. In other words, his proposals assumed that the factory was

adversely affecting public interest and that it should compensate the community for any damage caused.

As regards the taxation solution, Buchanan and Stubblebine (1962) argued that there can be no balance in the relationship except by imposing two-way taxes until all externalities are eliminated. If a tax system is introduced rather than a negotiation system, this should include two-way taxes. We should not only change the behavior of B to ensure that the externalities imposed on A are taken into account, but A's behavior needs to be altered in order to take into account the externalities imposed on B (Buchanan and Stubblebine 1962). That is, unlike Pigou, Buchanan and Stubblebine suggest that for the tax solution to be effective, it should concern both sides and not be imposed unilaterally. With his theorem, Coase developed this theory of two-way damage and argued that in order to effectively assess the social cost associated with externalities, it must be accepted that the two parties of a relationship are always involved in a relationship of externalities (Furubotn and Pejovich 1972). Thus, Coase (1960) argued that the question is often posed on the basis of damages caused by A against B; therefore, the decision that needs to be made is how to limit A. However, this is wrong. We are dealing with a two-way problem. Avoiding damages to B means that A needs to suffer damages. The real question that needs to be answered is: "Should A be allowed to harm B or should B be allowed to harm A?"

The issue is how to avoid the most serious damage. Coase explained that it may not matter who is ultimately to blame; this is because responsibility may not play a role in allocating rights because people involved in an impacting activity can negotiate to determine the price of the damage and who is going to pay for it (Marciano 2013). In other words, he demonstrated that if the two-way nature of the problem is understood, it follows that the presence of externalities does not justify the elimination of government action (Buchanan and Stubblebine 1962).

In his seminal 1960 work, Coase introduced the idea that involved parties can negotiate directly to reach a mutually beneficial solution. In the example referenced earlier, Coase does not assume that one party should necessarily compensate the other. Instead, he frames the issue as a reciprocal conflict of interest, best addressed through negotiation between the parties themselves. This approach emphasizes the efficiency of voluntary agreements over imposed solutions, provided that transaction costs are minimal.

According to Coase (1960), this solution of negotiation is given only when the negotiation between the parties is concluded without encountering any

obstacles. It is only in this case that it will overcome the relevant legal arrangements and will apply without taking such arrangements into account. That is, when the result refers to the absence of obstacles, it is because transaction costs (the concept and role of which within Coase's theorem (1960) will be clarified in the next paragraph) are null. Therefore, when transaction costs are null, the allocation of property rights is carried out through a negotiation between the parties. According to Demsetz, this simplification-i.e., not taking into account transaction costs-seems unrealistic. Demsetz (1966) points out that, in general, the approach to property rights places great emphasis on the costs involved in the definition, the exchange and the enforcement of property rights.

This reference in Coase's theorem (1960) reveals the two different steps of his theorem, which are summarized in its positive (descriptive) version. The above analysis focused on the issue of the two-way nature of the rights violation and externalities. The Coase theorem (1960), however, includes an additional step introducing the resolution of property rights conflict in the event of transaction costs. Therefore, in accordance with the two steps of the theorem, when transaction costs are null (or less than the surplus resulting from the transaction), the parties, if they negotiate, will end up in an effective allocation of rights, regardless of their initial allocation under the law. In a world of positive transaction costs, however, a comparative assessment of new ways to organize economic activities is needed (Kim and Mahoney 2005). On the same subject, North (1990) pointed out that if transaction costs are positive and not negligible, the economic process of allocating the rights through negotiation between the parties may be gradual and, in certain cases, may result in a failure to reach a contractual agreement between the parties. With his theorem, Coase removes the negotiation between parties from the picture when it comes to the regulation of rights in the event of transaction costs. Coase (1960) stipulates that when transaction costs are high enough to preclude the parties from reaching an agreement, the effective allocation of rights will depend on their initial allocation under the law.

Therefore, the first step in reaching an agreement is to promote the negotiation between the parties in the absence of any "obstacles" to concluding it. The second step introduces the concept of "transaction costs". Transaction costs are precisely the kind of obstacles that prevent the successful conclusion of negotiations between the parties. As per the Coase theorem, we also need to look at transaction costs to understand the final allocation of rights in a transaction that presents externalities. In fact, when transaction costs are high, they may even prevent the deal.

Coase identified the financial costs of transactions as the main type of transaction costs; these can be classified into research costs, negotiation costs, and implementation costs (Hatzis 2012). Research costs are the costs involved in finding an appropriate contractor, negotiation costs are the costs involved in negotiating the details of concluding a relevant agreement and implementation costs are the costs of overseeing compliance.

Undoubtedly, the Coase theorem distanced itself from the then-prevailing theory on externalities. It is known that, initially, the publishers of the *Journal of Law and Economics*, in which his 1960 article was to be published, asked Coase to withdraw or rephrase his conclusion. When he refused to do so, a meeting was held at the publisher's home for Coase to defend his position. At the end of the meeting, the attendees concluded that Coase's position was well founded (Frank 2012). As a result, Coase's article "The Problem of Social Cost" is one of the most famous financial articles of all time. Moreover, the Coase theorem was the cornerstone of the economic analysis of the law, the most successful interdisciplinary approach to the science of law. With his work, Coase also forced lawyers to realize that they cannot regulate the market (and also society) without the help of an empirical social science, such as economics, which would help them shape effective institutions (Hatzis 2012).

This thesis has opted to interpret film productions (and mainly filming) under the prism of the Coase theorem, considering that filming is an activity which involves significant externalities and transaction costs to be carried out.

The externalities of film production or co-production may be both positive and negative for the country and the local community. Negative effects mainly concern environmental pollution at the filming site. Positive effects concern job openings for local human resources, and the rise of tourism flows in the region, especially when the film is screened in multiple countries.

As already mentioned, Coase linked transaction costs to the financial costs of an agreement. These costs can be classified into three categories, each with specific content in terms of filming.

Initially, research costs include finding the party, which is a process that always involves costs. For co-production filming, that party would be the country where filming takes place. Research costs are higher if the candidate country for filming is a long way from the country of production. In

addition, transaction costs may be increased if the candidate country for filming does not readily provide the information needed to carry out and facilitate filming; for example, when the country does not readily provide information about licensing mechanisms, finding relevant staff, or even the final location where the filming will take place.

Negotiation costs in the context of a film production relate to the negotiation of finding a location for filming. This negotiation in the context of a film production relates to the financial benefits that the country where filming will take place may offer, along with the suitability of the location and the quality of other services offered. More specifically, it relates to tax incentives that the candidate country has introduced for filming. In addition, quite often the aim of these negotiations is to ensure lower costs for the crew staying onsite. Therefore, countries that offer tax incentives and lower rates in conjunction with an appropriate location have better chances of meeting the forecasted negotiation costs.

Finally, the implementation costs concern all costs associated with implementing the agreement, such as red-tape costs, notary fees and court fees. This means that as far as film production is concerned, red-tape costs constitute significant implementation costs. In a country where, for example, the licensing mechanism for film shooting involves time-consuming and costly red-tape procedures, implementation costs are often higher.

In addition to the financial costs of a transaction included in Coase's transaction costs, there are other obstacles that may affect and prevent a transaction (Hatzis 2012). There is a cost for supervision, which is higher when it is more difficult to supervise the implementation of the agreement. For example, prices for shooting may be cheaper in some countries, but the staff involved in shooting management tasks in the country where shooting takes place may not be adequately efficient and properly trained to cope with the requirements of shooting.

In addition, internalized moral norms and social norms hinder transactions which, while they have the potential to be beneficial for both parties, contravene their moral beliefs or prevailing contract ethics (Kessler 2004). For example, quite often in film co-productions it may be that the location of one of the co-production parties is selected because cooperation has already been established, when perhaps another location would have proven to be more economical.

Finally, transaction costs include legal provisions prohibiting certain transactions that would have otherwise been mutually beneficial. Here, we could mention the licensing legislation for cinematographic filming. The legislation includes specific provisions for granting licenses. If these provisions are not fulfilled, the license is not granted even though filming would have had beneficial results for both parties. Legal provisions also include rules of law that, though they do not prohibit a transaction, they do increase its cost. Such rules are those increasing the costs of real property transfers or the costs of setting up a business.

The endowment effect or status quo bias (which is irrational for some people) prevents many buying and selling transactions: a higher price is asked for the sale compared to what a buyer is willing to offer (Hatzis 2012). This also includes the wealth effect observed when a high income devalues the subjective value of the transaction surplus. This means that while a consumer may value a good at €100 and is able to buy it at a neighborhood store for €60 or from a store 900 meters away from their home for €55, they prefer the more expensive option because the difference of €5 is insignificant to them (Hatzis 2012). In other words, the cost of filming at a more distant location may prove to be cheaper than the location selected; however, since production runs a specific budget and it is possible to spend the amount of money needed for filming at the nearest location, they prefer the location that is nearer.

Asymmetric information and over-optimism lead to misperceptions about the subjective assessments of the other party as well as their negotiation strategy. For example, Party A wants to buy a good from Party B. They believe that Party B may drop the price to €250, but in fact Party B is only willing to drop the price down to €300 (reservation price) (Hatzis 2012). Negotiation in this case is linked to finding the appropriate location. The contract may terminate because of the lack of information about the tactics and the prices usually offered by the other party in similar contracts. Even if there is the necessary information, it is likely that the agreement will fail because one party is over-optimistic about the prices that the other party is willing to offer. These prices could concern tax exemptions that the party may look for and expect or the prices for the catering and accommodation of crews and staff when onsite in the country.

Another important factor is the absence of social norms that function as informal institutional mechanisms for reducing transaction costs. These include mechanisms such as trust, reputation, reciprocity, and, more

broadly, any factors that contribute to the enhancement of social capital within a society (Hatzis 2012).

Since filming is a process that leads to significant externalities and involves significant transaction costs, it is obvious that for this specific relationship it will be possible to investigate whether the application of the Coase theorem is confirmed. It was decided to examine the application of the Coase theorem to interpret how rights are allocated in this relationship. In this case, the rights allocated concern the actual filming. Therefore, the filming decision-making process will be explored to see if this theory is applicable to it.

Of course, this relationship, namely the allocation of rights for filming a movie production or co-production, presents certain special particularities that have been considered when considering the process.

The first particularity lies in the fact that filming a movie production causes positive and negative externalities on one part of the relationship: the location. In other words, the positive and negative externalities concern the same location. Apart from the fact that the subject of both positive and negative externalities is the same part of the relationship, the location, another particularity lies in the fact that the same activity produces both positive and negative effects on the location and not just a positive or a negative impact on the location.

The second key particularity is that the State itself is one part of the relationship. That is, the State does not intervene as a third party in the relationship to regulate it, but as a part of it. Film production needs to turn to the State, though as the competent authority, to license filming; therefore, the State participates in the relationship as one of the two parties. In order to examine the application of Coase theorem, it was necessary to examine how the State intervenes in each relationship. This intervention included the analysis of the applicable legal framework and the provisions concerning filming. In other words, it was investigated whether the provisions of the legal framework were sufficient in each case or whether the decision was ultimately taken in a different way.

These particularities were considered in each different case of filming licensing, but they have not prevented the confirmation or non-confirmation of the Coase theorem's application. On the contrary, the Coase theorem was chosen as an interpretative tool under these circumstances, considering that this relationship is not a typical relationship but presents particularities and

consequently significant challenges for the examination and possibility of its application.

CHAPTER 2

THE LEGAL FRAMEWORK FOR FILM CO-PRODUCTIONS

Introduction

As stated in the European Commission's 2013 Cinema Communication, in accordance with Article 2(5) of the Treaty on the Functioning of the European Union, "In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas" (Nikoltchev 2014). Furthermore, according to Article 6 of the Treaty on the Functioning of the European Union, "The Union shall have competence to take action to support, coordinate or complement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, youth, sport and vocational training; (f) civil protection; (g) administrative cooperation."

It is therefore important to note that, as cinema is considered a cultural activity, its regulation and promotion primarily fall under the responsibility of each individual state. The role of the European Union is to complement and support the cultural policies implemented by its member states.

In addition, film production (and especially film co-production) is a complex process requiring the participation of individuals and businesses from different countries. These individuals come from societies with great differences between them and, by extension, different cultures. In addition, when it comes to film productions, each country often follows its own rules. Where cooperation between people of different origins is required, it is necessary to have a single legal framework laying down the procedure and organization of co-productions in order to facilitate the deployment of co-productions. For countries that are not members of the convention or not included because they are not in Europe, there are often bilateral conventions that set the framework for the procedure. However, the single

procedure governed by the convention further facilitates co-productions as it concerns more countries that are able to adhere to its arrangements.

In order to approach the legal framework governing the co-production phenomenon, two levels should be studied: initially, that of the European Union policy, and, secondly, that of Greece, by analyzing and combining the two legal frameworks. By way of approach, the author preferred to first study the current legal framework in Europe and then the Greek law.

The Legal Framework in Europe

The legal arrangements pertaining to co-production can be divided into two different categories. Initially, the arrangements included in the European Commission's Communication of 2013 concerning co-production indirectly will be examined. These regulations do not refer to how co-production is organized but mainly to its funding and territorial requirements. The convention will then be analyzed with regards to film co-production and the rules relating to its organization. In 1992, the Council of Europe established a convention on cinematographic co-production. Until then, any cooperation between states did not follow a specific procedure for its completion, resulting in confusion as to the required documentation and to how this cooperation would be performed. This convention came at a time of tensions in the film co-production arena and the need for systematization. This convention was revised and the one now in force is the new 2017 Convention, which will be further analyzed in this chapter.

As already said, the first text to be studied is the European Commission's 2013 Cinema Communication. Professionals in the audiovisual sector in Europe were awaiting the new Communication since 2011. It was meant to change a lot in funding, financing programs and schemes of each member state as well as how these state aids are awarded. Since funding has always been the first step in organizing and completing a co-production, it is necessary to examine the state of funding as it is currently defined by the European Union but also the path leading to its present form.

The European Union and state aids

Firstly, the 2013 Cinema Communication, in accordance with Article 108 of the Treaty on the Functioning of the European Union, provides that the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by

the functioning of the internal market. Furthermore, if, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission. And, according to Article 108(3), "The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid". The Commission assesses whether the aid plans respect the general principle of legality (e.g., if those plans contain conditions contrary to more general provisions); then, after examining the compatibility with the Treaty as a whole, it examines whether state aid plans are ultimately compatible with the policy and rules on state aid set by the Commission itself.

With regard to the principle of legality, the Commission needs to verify that state aid plans as proposed by the member states respect the principle of non-discrimination on grounds of nationality and the principles relating to freedom of establishment, freedom of movement of goods and freedom to provide services (Articles 18, 34, 36, 45, 49 and 56 of the Treaty on the Functioning of the European Union).

In addition, as far as state aids are concerned, Article 107 of the Treaty on the Functioning of the European Union provides that "Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market." And also, "The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission."

Until the adoption of the 2013 Communication, the assessment of aid for cinematographic production was based on the 2001 Communication, which will be examined next.

The European Commission 2001 Cinema Communication

Criteria for the compatibility of state aids in cinema with Article 107(3) of the Treaty on European Union

First, it should be noted that Article 107(d) contains an exception for aid related to the promotion of culture. Therefore, since cinema is an area within the cultural sphere, it is necessary to examine the conditions which exist for the inclusion of such aid under the exception in paragraph (d).

In a 1998 decision on applying the French automatic aid scheme to film production, the following specific criteria were set; they are still used by the Commission in order to assess whether state aid for film and television production qualifies for the exemption under Article (107) (3) (d) of the Treaty on the Functioning of the European Union.

(1) The aid is directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).

(2) The producer must be free to spend at least 20% of the film budget in other Member States without suffering any reduction in the aid provided under the scheme. In other words, the Commission accepted as an eligibility criterion territorialization in terms of expenditure of up to 80% of the production budget of an aided film or TV work.

(3) Aid intensity must in principle be limited to 50% of the production budget. Difficult and low-budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low-budget film according to national parameters.

(4) Aid supplements for specific filmmaking activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect.

In its 2001 Communication, the European Commission provided further clarification regarding the meaning and objectives of the relevant criteria. Firstly, state aid schemes under these rules are intended to support the creation of audiovisual works rather than to promote industrial activity. Such aid should be directed toward the overall budget of a specific filmmaking project, allowing the producer the freedom to allocate portions of the budget to expenditures in other member states. Additionally, undertakings in the film and television production sector may also be eligible to receive funding from other sources.

Secondly, regarding territorialization requirements, the Commission considers that a certain degree of territorialization of the expenditure may be necessary to ensure the continued presence of the human skills and technical expertise required for cultural creation. This should be limited to the minimum degree required to promote cultural objectives. In 2008 an external study was published, requested by the Council of Europe, which concluded that it was not possible to safely conclude whether the positive consequences of territorialization requirements were more important than the negative ones. As far as the calculation of the aid size is concerned, it will be determined as a percentage of the total audiovisual production budget.

In addition, funding from European programs such as MEDIA is not considered as state aid. Thus, this aid is not counted towards the 50% of the production budget from state aid.

The state aid rules contained in the 2001 Communication were originally intended to last until June 2004. However, for several reasons, the Commission decided to extend its validity three more times, in 2004, 2007 and 2009. The 2009 extension set the expiration date of the 2001 Communication as December 31, 2012. For the purpose of adopting new assessment rules on June 20, 2011, the Commission proposed a public debate on state aid in the film sector. To this end, the Commission invited

stakeholders to send their comments by September 30, 2011. The stakeholders' responses focused mainly on the size of the aid and the territoriality requirements. Most stakeholders agreed that the total aid should not be reduced. Some professional organizations even suggested increasing this aid.

The draft of the 2012 Cinema Communication

Based on the contributions received during the first consultation, the European Commission published a draft communication on March 14, 2012 and opened a three-month consultation period ending on June 14, 2012.

The Commission also prepared a Frequently Asked Questions (FAQs) document accompanying the consultation, which aimed to clarify the major changes in the draft Communication by giving some illustrative examples and by further explaining some of the issues raised in stakeholders' responses to the first public consultation.

In order to ensure that European audiences were offered a more culturally diverse choice of audiovisual works, the draft Communication proposed amendments to the 2001 Communication that aimed to:

- extend the scope of activities covered by the Communication to include all aspects from the story concept to the delivery to the audience.
- limit the possibility to impose territorial obligations on production expenditure.
- control the competition between member states to attract inward investment from major productions by offering state aid; and
- recall other Commission initiatives aimed at improving the circulation of European films and increasing their audience for the benefit of both the European audiovisual industry and European citizens (Nikoltchev 2014).

Scope of activities covered by the 2012 Communication

One major change was the scope of activities covered by the Communication. According to the Commission, the protection and promotion of Europe's cultural diversity through audiovisual works can only be achieved if these works are seen by audiences. Therefore, the Commission considered it necessary and appropriate that support schemes go beyond film production to cover all aspects of film creation, from the story concept to the delivery of the film to the audience.

The general rules included in the 2001 Communication would still apply: any aid granted to a specific audiovisual work should contribute to its overall budget (excluding aid specifically granted for scriptwriting, development, distribution or promotion) and the producer should be free to choose the items of the budget that will be spent in other member states. The Commission believed that the earmarking of aid to specific components of the film budget could turn such aid into a national preference to the sectors providing the specific aided items, which would be incompatible with the Treaty.

Regarding co-productions, the aid intensity for cross-border productions funded by more than one member-state and involving producers from more than one member-state could be up to 60%. Difficult audiovisual works and co-productions would be excluded from these limits. In this context, a film whose sole original version is in the national language of a member state with a limited territory, population and language area would be regarded as a difficult audiovisual work.

Aid to scriptwriting or development was not limited in principle. However, the costs of scriptwriting and development were considered to be part of the production budget of a film and therefore were taken into account for calculating the maximum aid intensity for the audiovisual work.

The costs of distribution and promotion of a European audiovisual work could be supported with the same aid intensity as they were or could have been for the work's production. Regarding aid to cinemas, the Commission deemed it unnecessary to establish specific rules for operating or investment aid to cinemas.

Finally, the draft Communication excluded certain new forms of audiovisual works. So-called transmedia projects (that is, stories told across multiple platforms and formats using digital technologies, like films and games) have, among others, a film production component, which would be considered to be an audiovisual work within the scope of this draft Communication. Concerning video games, they do not necessarily qualify as audiovisual works or cultural products, and they have other characteristics regarding production, distribution, marketing and consumption. Therefore, the Commission considered it premature to integrate this sector in the present draft Communication.

Despite this, the Commission would apply the aid intensity criteria of the draft Communication by analogy if the necessity of an aid scheme targeted

at cultural and educative games could be demonstrated. The communication stated that measures would be addressed on a case-by-case basis (Nikoltchev 2014).

Territorialization as a cinema policy of the European Commission in the draft 2013 Communication

Fighting territorialization seemed to be a very important policy of the European Commission in recent times and at the same time one of the most controversial.

The 2012 Draft Communication introduced a radical modification of the rules applying to territorial conditions. In that regard, it relied on the fact that the 2008 territorialization study could not elucidate whether high territorial conditions lead to sufficient positive effects to justify maintaining the rules included in the 2001 Communication. Furthermore, the Commission recalled that new digital technologies enable the shooting and editing of films in different countries without having a detrimental effect on their technical or cultural quality, which reduced the need for linking a production to a single territory.

The draft Communication allowed member states to require that up to 100% of the aid awarded to the production of a given audiovisual work be spent in the territory offering the aid and not up to 80% of the production budget, as is the case under the 2001 Communication.

Competition between member states to attract film productions as a European Commission policy (2013)

Another controversial issue was the competition between member states created by the effort to attract investment. The draft 2013 Communication tackled this issue despite opposition expressed by some member states and different professional organizations in the audiovisual sector.

The Commission was convinced that member states were increasingly using public funding to compete with each other to attract film productions to their territories. Even though financial aid used to attract inward investment may in principle be compatible with Article 107.3(d) TFEU in that it may promote culture, the Commission believed that it was appropriate to develop different standards for aiding, on the one hand, European films and, on the other hand, other films.