

**A POLITICAL ECONOMY OF TAX EXPENDITURES FOR  
THE AUDIOVISUAL INDUSTRIES IN IRELAND: A  
CULTURAL POLICY RESEARCH PERSPECTIVE ON  
SECTION 481**

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## Declaration

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## LIST OF ABBREVIATIONS, ACRONYMS & INITIALISMS

2001 Communication – Cinema Communication 2001, European Commission

2013 Communication – Cinema Communication 2013, European Commission

AAP2018 – Audiovisual Action Plan, Department of Culture, Heritage & the Gaeltacht, Ireland, 2018

AVMSD - Audiovisual Media Services Directive, European Union Revised 2018

BAI - Broadcasting Authority of Ireland

BSÉ/IFB – Bord Scannán na hÉireann/Irish Film Board

CBA – Cost Benefit Analysis

CCI – Cultural and Creative Industries

CCS – Cultural and Creative Spillovers

Commission – European Commission

CT – Corporation Tax

DCHG – Department of Culture, Heritage, and the Gaeltacht (Ireland)

DCMS – Department of Culture, Media, and Sport (UK)

DoF – Department of Finance (Ireland)

EC – European Community. The precursor to the EU and the term used

ECHR – European Convention on Human Rights 1950

ECtHR – European Court of Human Rights

EEC – European Economic Community created by the Treaty of Rome, 1957.

Incorporated into the EU in 1993 as the EC and absorbed into the EU wider framework in 2009.

EFAD – European Film Agency Directors

EU – European Union, formed in 1993 and now incorporates the EC/EEC

EuFCN – EU Film Commission Network, a non-profit association which supports and promotes the European film industry

FÉ/SI – Fís Éireann/Screen Ireland (in their former iteration as Bord Scannán na hÉireann/Irish Film Board (BSÉ/IFB))

GBER – General block exemption Regulation

GCEN – Global Cultural Economy Network, informal group of policy experts (see O'Connor, J. (2016) *After the Creative Industries: Cultural policy in crisis*).

GDP – Gross Domestic Product

GNP – Gross National Product

KEA – KEA European Affairs. An international policy design research centre specialising in culture and creative industries. Based in Brussels

IFTN – Irish Film and Television Network

IMDB – Internet Movie Database

ICTU – Irish Congress of Trade Unions

KPI – Key performance Indicators

NACE – European industrial activity classification

OSN – Olsberg SPI with Nordicity (creative industries consultants)

OECD – Organisation for Economic Cooperation and Development

PwC– PriceWaterhouseCoopers

RQ – research question

RTÉ – Raidió Teilifís Éireann

S35 – Section 35 of the Finance Act, 1987. The first iteration of the tax expenditure now known as S481

S481 – Section 481 Taxes Consolidation Act (TCA) 1997 (as amended)

SDP – Skills Development Plan under S481, 2019 Finance Act revisions

SIPTU – Services Industrial Professional and Technical Union

SPI – Screen Producers Ireland

SWD – Staff Working Document - a guide document under EU Commission

TA – thematic analysis. Method of qualitative document analysis from Braun & Clark 2006, 2019

TCA – Taxes Consolidation Act (as amended) 1997, Ireland

TFEU – Consolidated Treaty of the Functioning of the European Union 2012

TIGA – The Independent Game Developers' Association

TNC/MNC – Transnational corporations/multinational corporations

TWF – Television without Frontiers Directive

UDHR –United Nations Declaration of Human Rights 1948

UKFC – United Kingdom Film Council

UNCTAD – United Nations Conference on Trade and Development

UNESCO – United Nations Educational, Scientific and Cultural Organization is a specialised agency of the United Nations

USA – United States of America

VGTR– Video Games Tax Relief (reference to United Kingdom tax relief for videogames introduced in 2014)

WPR – What's the Problem Represented to be? (Carol Bacchi 2009 policy research approach)

# **A POLITICAL ECONOMY OF TAX EXPENDITURES FOR THE AUDIOVISUAL INDUSTRIES IN IRELAND: A CULTURAL POLICY RESEARCH PERSPECTIVE ON SECTION 481**

MARIA O'BRIEN

This thesis interrogates the notion of a national cinema/national industry in contemporary times. It explores the concept of cultural/industrial policy towards the audiovisual industries in Ireland. It specifically focuses on Section 481, a measure that incentivises audiovisual production through the provision of a tax expenditure. This expenditure is a cornerstone of the audiovisual production industries, granting a generous 32 per cent tax relief on eligible spend. Consequently, it is now a significant part of the funding structures for various forms of audiovisual production, including national and international film and TV productions. Through a policy research approach, this thesis examines the complexity of funding national cultural production in an environment that is increasingly global/transnational, interrogating the notion of the commodification of the nation-space within the context of the supranational framework of the European Union (EU).

Given Ireland's EU membership, the design and operation of the expenditure are subject to State aid rules, which take into account both the cultural and industrial role of audiovisual production. This thesis takes a political economy approach to analyse the aims and objectives of Section 481, using the concept of spatialization (i.e. the commodification of space) from the political economy of communication theories of Vincent Mosco, developed from the writings of Henri Lefebvre. This approach enables critical analysis of the role of culture and by extension, cultural policy in both an Irish and an EU context. It is concluded that, problematically, Section 481 is usually explicitly framed (and evaluated) as an instrumentalised economic policy, in keeping with the shift to a creative industries discourse (from Nicholas Garnham) prevalent in Ireland. In addition, this thesis identifies underlying tensions, between cultural and economic/industrial rationales underpinning policy developments at both national and EU level, with the recognition that such tensions can be symbiotic and productive. It is contended that Section 481 should be framed and consequently evaluated, as both a cultural policy and an industrial policy.

# 1 INTRODUCTION

In the field of government, it is the misfortune of culture (notoriously elusive and difficult to define) to be high in complexity and low in political priority (Cooke & McCall, 2015, p.4).

## 1.1 Overview and introduction<sup>123</sup>

Autumn 2018 saw the release of Lance Daly's *Black '47* (2018), the Irish 'famine-revenge epic' (N. Murphy, 2018). Set during the Great Hunger, featuring the barren landscapes of Connemara, the film tells the story of the Irish Ranger Feeney (James Frecheville) who has deserted from the British army and returned to scenes of horror and hunger and thus sets out on a revenge mission to avenge his family's suffering. The project originated in an Irish language short *An Ranger* (2008) directed by P.J. Dillon, one of the scriptwriters on *Black '47*. The feature film tells the important story of this significant time in Irish history when the population was decimated through famine and emigration and marks a pivotal time in Irish UK relations. On this evidence, the film looks like an Irish film, but there is an identifiable transnational or glocal dimension. The production was spearheaded by Irish based Fastnet Films and received support and funding from both Irish and international sources, including *Fís Éireann*/Screen Ireland (FÉ/SI)(in their former iteration as *Bord Scannán na hÉireann*/Irish Film Board (BSÉ/IFB), the Broadcasting Authority of Ireland

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<sup>1</sup> A version of Chapter Seven has been published in *Cultural Trends*. The author thanks the editors of the journal for the opportunity to publish and for allowing the use of that material in this thesis.

<sup>2</sup> Part of the work contained in Chapters Three, Six and Seven are based on a co-authored chapter "*Brooklyn and The Other Side of The Ocean: The International and Transnational in Irish Cinema*"(O'Brien & Canning, 2020). Permission to cite the work in this thesis has been explicitly granted by the co-author (and co-editor) Dr Laura Canning for which this author is extremely grateful.

<sup>3</sup> Part of the materials contained in Chapter Three has been published in a book review in *Cultural Trends*. O'Brien, M. (2019) What matters? Talking value in Australian culture, *Cultural Trends*, 28:4, 334-335, DOI: [10.1080/09548963.2019.1644799](https://doi.org/10.1080/09548963.2019.1644799).

(BAI), and Irish company Wildcard Distribution, with further funding (of unspecified amounts) from various national and European public and private funding sources including Luxembourg Film Fund, Luxembourg based Samsa Films, Eurimages, Umedia, Altitude, and Beverly Hills-based Primemidian Entertainment (gleaned from IFTN and film credits). Frecheville is Australian, even though his command of the Irish language suggests otherwise. The Internet Movie Database lists the film as originating from Ireland/Luxembourg.<sup>1</sup> The more precise *Sight & Sound* lists it as an Ireland/Luxembourg/USA production (D. O'Connor, 2018).

The film also benefited from Ireland's tax expenditure relief, known prosaically as Section 481 (hereinafter "S481") after the relevant section in the Taxes Consolidation Act, 1997. The explicit use of the term 'tax expenditure' as preferred by the OECD (Organisation for Economic Cooperation and Development, OECD 2010) instead of the more usual 'tax relief' or 'tax incentive' is a conscious decision to reflect the true nature of such subsidies, as expenditures on the public purse rather than an erroneous perception of them as 'costless' (Collins & Walsh, 2010, p. 15). In an ideal world, tax expenditures work to counteract market failure, but in the real world, 'tax expenditure is also used extensively to attract mobile investment, necessarily from places where it might otherwise locate' (ibid, p.3). Tax expenditures are imperfect as they are fundamentally inequitable. They are not available to all, and they offer more significant benefit to those with higher incomes. Efficiency and effectiveness are difficult to measure. Other tax rates must be increased to cover the loss of tax intake due to the policy decision to use tax expenditures this way. Therefore, any policy-making process that involves the extension of a tax expenditure must be undertaken carefully, analysing the benefits to broader society arising out of the revision of the policy.

Such expenditures play a 'crucial role' in the global production landscape, operating as a 'key tool' and a 'cornerstone' of the industry, with ninety-seven incentives relevant for inward investment projects identified as operational in 2019 by creative industries

consultants Olsberg SPI (2019, p.143). The evolving structure of such expenditures reflects a complex range of policy goals, goals that may be mutually incompatible at times given the dual role of audiovisual industries as cultural and industrial (Hesmondhalgh, 2019; Throsby, 2010).

The funding arrangements underpinning *Black '47* do not make the film any less Irish or undermine its significance within the Irish cultural canon, and the above synopsis of the structure is not meant to indicate otherwise. Instead, the availability of funding from international sources enabled the project to be completed and thus brought a significant Irish story to Irish and international screens. This form of transnational production arrangement is not uncommon in today's audiovisual industry terrain. Of course, the value of the production of the film to the Irish economy can be quantified in terms of jobs, in training, even in hotel nights. However, the support provided by the state, including through the provision of favourable tax expenditures, may surpass the potential quantifiable economic "value". Instead, the value of the telling of the story of *Black '47* to and about the people of Ireland can be seen as a form of "cultural dividend" that is, for the most part, unquantifiable. The term 'cultural dividend' was recently used (without being defined) in a Department of Finance (DoF) Cost-Benefit Analysis (CBA) to justify the cost of the provision of tax expenditures to the audiovisual industries and can be taken to encompass all forms of social and cultural values that cannot be easily quantified (2018). This aspect of recent policy developments is explored in more detail in Chapter Nine. For the moment, the use of the term by the DoF is significant in its acknowledgement of the 'unquantifiable' benefits of investment in culture via state funds.

However, the term 'dividend' implies a linear causality (with a financial return) that is problematic in the context of thinking around issues of cultural value. The term cultural value is 'used to refer to the effects that culture has on those who experience it and the difference it makes to individuals and society' (Crossick & Kaszynska, 2014, p.124).

Kaszynska argues that theories of cultural value 'ought to be ground in and shaped by first-

order experiential data' (2015, p.263) with the implication for public policy that a change in the character of evidence drawn upon may affect the ways culture is funded and may decentre the political discourse around cultural value. This thesis contends that attempts to 'measure' cultural value inevitably fall short, given the subjectivity of the concept and the complexity of values contained therein.

An analysis of cultural goods, of course, invokes the notion of culture. Culture is both contested and contingent. The term is understood within cultural policy discourse to refer to both culture in the anthropological sense and culture in the sense of creativity. For Williams;

We use the word culture in these two senses: to mean the whole way of life – the common meanings; to mean the arts and learning – the special processes of discovery and creative effort. Some writers reserve the word for one or other of these senses; I insist on both, and on the significance of their conjecture. The questions I ask about culture are questions about deep personal meanings. Culture is ordinary, in every society and in every mind. (1976/2014, p.93)

This thesis uses the term culture to refer to the arts broadly and takes for granted that the audiovisual industries are, for the most part, deemed cultural. However, an understanding of the broader definition of culture, i.e., its anthropological meaning, is useful in understanding academic/policy discourse on cultural policy. The definition of what is cultural stands at the heart of the area of study for this thesis — it questions who gets to decide what is cultural, and who has the power and influence to decide what is understood as cultural. It is taken for granted here that the funding structures for cultural production shape, at least in some way, the cultural products produced with the benefit of those supports.

Audiovisual media are both cultural and economic goods. Given their importance as both commodities and as representational goods, interventions in the market for audiovisual production are of interest to audiovisual industries/cultural policy scholars.

This thesis takes as its focus the issue of tax expenditures for the audiovisual industries; that is the specific legal structure in place to regulate granting State aid to audiovisual producers for productions within the territory of the Republic of Ireland. The emergence of a film industry in Ireland has been shaped, in part at least, by a series of policy decisions, which in the past has generally served to divide the industry into low-budget indigenous films and big-budget inward (runaway) productions. What were the decisions that brought this about, and what vision of an audiovisual industry/cultural policy informs these decisions? To answer these questions, this thesis interrogates the relationship between culture and economics at play in state intervention in the audiovisual industries, through a focus on the provision of tax expenditures for such industries under S481. The specific conditions under which the state can intervene in the market for audiovisual production are subject to policy interventions of the European Commission (“Commission”) as guardian of the treaties of the European Union (EU). Thus, this analysis is carried out in the context of Ireland’s membership of the EU which brings into play EU regulatory policy towards State aids for the audiovisual industries, primarily driven by the Commission as the executive branch of the EU.

## 1.2 Ireland’s outward-looking tax expenditure regime

It is useful at the outset to offer a brief introduction to S481 to provide context for the approach to the research questions. S481 TCA 1997 operates as a tax expenditure. It provides relief in the form of a corporation tax credit related to the cost of production of certain films. The credit is granted at a rate of 32% (up to 37% for rural uplift) of the lowest of:

1. eligible expenditure
2. 80% of the total cost of production of the film
3. €70,000,000.

The expenditure can be claimed against the producer company's corporation tax liabilities. If the amount of expenditure claimed is greater than any tax due by the producer company, then the Revenue Commissioners make a payment of the excess. While this thesis does not explicitly interrogate the nature of what constitutes eligible expenditure under S481, it is pertinent that a project must comply with specific requirements on minimum spend, requirements which exclude small/low-budget projects from relief. The minimum amount that must be spent on the production is €250,000, and the minimum eligible expenditure amount to qualify is €125,000, levels that exclude certain low-budget productions.

The geographic and physical space of Ireland is both literally and figuratively of significance in any examination of audiovisual production. The film industry in Ireland, as a small English-speaking nation on the edge of Europe, has, since the advent of film as an entertainment form and as an industry, formed part of a complex maze of global and transnational flows for both production and consumption. The intervention of the state in the free market, by way of provision of a favourable production environment through the structuring of S481 taxation expenditure regime, illustrates how the state, through an explicit policy regime, utilises the space (both literally and figuratively) of the nation to promote audiovisual production. The state attempts, in the structuring of the tax expenditure regime, to expand the notion of the nation/state in its formulation of the regime to allow a wide notion of what constitutes a qualifying project for claiming the tax relief.

This thesis takes as a starting point that understanding what qualifies for tax expenditure relief is worthy of analysis as forming part of the Irish film production industry, with the acknowledgement that this, of course, does not mean a tax-supported film is necessarily Irish. However, the bounded nature of a legal/taxation system, which of its very nature works within the specific jurisdiction of the boundaries of a nation-state, is an interesting way to frame the concept of a national film industry. The specific conditions

of S481, in particular, complicate the notion of the frame of a national audiovisual industry, of course, and it is contended that the parameters of the tax expenditure (subject to provisions of EU regulation) are structured by a dominant market ethic operating within a globalised industry. Therefore, any understanding of what may constitute both a national cinema and a national film industry is shaped, in passing, by implicit and explicit policy decisions on the part of the state.

### 1.3 A policy research methodology

This thesis attempts to identify and interrogate the values underpinning audiovisual policy decisions, with a specific focus on tax expenditure policy for such industries in Ireland (i.e., S481), placing this analysis within an EU context. Audiovisual tax expenditure policies sit at the intersection of industrial and cultural policy. This thesis examines who gets access to state-led taxation subsidies for producing audiovisual content in Ireland and how such measures are evaluated, whether as industrial or cultural policy or both.

As explored in more detail in Chapter Four, this thesis uses a policy research/qualitative document analysis/thematic analysis approach in a way that explicitly foregrounds the significance of the theoretical framework underpinning the research (Braun & Clark, 2006; 2019; Herzog, Handke & Hitters, 2017; Ramsey, Baker & Porter, 2019). Thus, the role of the literature review is significant in relation to the data collection and analysis in that it both drives the selection of material and assists in the analysis. As outlined in Chapter Two, this thesis studies the political economy of the policies under question. This approach interrogates the political and economic implications of audiovisual industries policy, at national and EU level. Political economy as a theoretical approach encompasses issues of power, the study of the allocation of resources and the role of the

state within media industries. Within the broad area of political economy of communications, this chapter focuses on literature around the political economy of culture and the audiovisual industries with a focus on the concept of the instrumentalism of culture and on the concept of cultural value.

A political economy framework addresses the role of audiovisual industries in public life in the context of the function of the market and state in relation to audiovisual industries. Mosco offers an ‘ambitious definition’ of political economy of communications as ‘the study of control and survival in social life’ (2009, p.3). Garnham describes the social context within which cultural rights are exercised. For him;

A delimited social group, pursuing economic or political ends, determines which meanings circulate and which do not, which stories are told about what, which arguments are given prominence and what cultural resources are made available and to whom. The analysis of this process is vital to an understanding of the power relations involved in culture and their relationship to wider structures of domination (2005, p.65).

However, while these definitions identify aspects of the significant issues arising within an interrogation of cultural policy, it is contended that the legal and regulatory dimensions of policy interventions that affect audiovisual production within an Irish and EU context are underexamined within a political economy context. Therefore, this thesis explicitly engages with policy measures in a way that unpacks the significance of legal frameworks within a cultural policy environment.

Ireland’s audiovisual industries are subject to conscious policy decisions that affect the nature and meaning-making role of such industries. Access to both the means of making and consuming audiovisual products are established as a human right; however, the right to exercise this right is conditioned by the market and may be subject to interference, control and regulation at the hands of the state as set out above. This thesis examines the intertwined nature and extent of the role of the state and the market in the audiovisual

industries through a policy research analysis of the provision of a favourable tax expenditure regime. This policy research study aims to place the Irish national cultural policy within a supranational context, bearing in mind the at times conflicted nature of audiovisual industries policy as serving both economic and cultural goals. This thesis examines the perceived role of audiovisual culture in meaning-making and contends that culture is used both in the formation and representation of the nation-state, in an increasingly transnationalised, globalised and glocalised environment. By exploring and explaining the political economy of State aids for audiovisual industries, this study intends to improve our understanding of how and why national governments support cultural production, and analyse the role of European Union (EU) policy therein. It is a particular finding of this thesis that the role of EU State aid policy is underexplored in the discourse around audiovisual industries support mechanisms. In addition, State aid policy is instrumentalised to achieve particular policy goals in the hands of the Commission.

## 1.4 Research questions

The research questions addressed in this thesis are:

What do the design, operation, and evaluation of the S481 tax expenditure reveal about the role of cultural objectives and economic objectives in Irish audiovisual policy?

To what extent do cultural and economic rationales underpin State aid regimes towards the audiovisual industries from an Irish perspective?

The research question is carefully designed to avoid implying a binary oppositional tension between cultural and economic objectives. Rather, the approach herein acknowledges the complexity of the nature of audiovisual goods, which exhibit both cultural and industrial

[elements] in a relationship that can be symbiotic rather than inherently conflictual (following Herold, 2008).

This thesis addresses the following sub-questions to answer the main research question:

1. How has State aid policy for audiovisual industries developed within the EU, and how does Commission policy serve to shape national audiovisual policy measures?
2. How has tax expenditure policy for the audiovisual industries developed in Ireland from its introduction in 1987 to date?
3. To what extent does tax expenditure policy for the audiovisual industries operate as both an economic and a cultural policy?
4. How do we conceive of a national industrial and cultural policy in an increasingly globalised and transnationalised environment?
5. 'What matters' in evaluating cultural policy? Why is the attempt to measure value in monetary terms of significance?

This research is situated in the literature on the political economy of audiovisual industries, which are understood for the purposes of this thesis as part of broader communicative, cultural, and creative industries. It presents a theoretical framework for understanding national policy towards audiovisual production within a context that can variously be described as globalised, transnationalised, glocalised and supranational. It highlights the role of the state in promoting audiovisual production within its jurisdiction and interrogates how the state uses the space of the nation to promote national culture and industry to varying degrees. Against this background, this thesis examines the development of EU policy (through the development and implementation of State aid policy by the Commission) and the development of Irish policy for tax expenditures for audiovisual industries. It concludes that there is, problematically, an increasing marketisation of cultural policy (i.e., one that evaluates the value and impact of cultural policies purely in economically quantifiable terms) in an Irish context.

This thesis finds evidence of a similar tendency in an EU context. It is posited that EU audiovisual/cultural policy discourse suppresses any significant consideration of the broader concept of cultural value, and instead illustrates an increasingly marketised approach towards audiovisual industries, albeit within a discourse of protection of the internal market of the EU, thus within a context that is considered subject to multiple instrumentalities. However, there is some indication in recent policy developments in an Irish context of a more nuanced approach to the justification for a tax expenditure regime with the introduction of what is termed a “cultural dividend” in a justification for the tax foregone through the operation of S481 scheme, as will be explored in more detail in Chapter Seven.

The grey literature (i.e., the broad policy literature including government and industry reports) around S481 shows that there is some recognition of the intrinsic benefits (i.e., art for art’s sake) and instrumental benefits (i.e., ancillary benefits to society attached to a policy (Gray, 2007)) that arise from the provision of public support for the audiovisual industries. The industry support provided by the granting of a tax expenditure for audiovisual production is usually seen as crucial to job creation within the industry and central to other ancillary benefits such as increased tourism. However, while policy may be instrumentalised in this fashion, in that the justification for the policy is couched in terms of job creation and other quantifiable benefits, the aims of cultural policy are generally more complex than can be expressed in quantifiable terms. Instead, an interrogation of the fundamental role of culture in society allows for an analysis of the aims and objectives of policy that helps to support this role. However, it is contended that Ireland has had, until recently, little explicit policy towards the cultural industries. As Cooke and McCall point out, the ‘turbulent nomenclature’ of the current Department of Culture, Heritage and the Gaeltacht (DCHG) identifies uncertainty about how to identify and organise a valid cultural policy (as they point out ‘the following terms, shuffled and changed in 1996, 2002, 2010 and 2011, have been used in the five versions the department’s title has taken to-date:

*arts, culture, heritage, Gaeltacht, islands, sport and tourism*', (2015, p.3)). For them the cultural institutions are 'shakily grounded in legislation' (e.g., as they point out, the Arts Acts do not specifically reference the artist, and Aosdána (the state-funded Irish elected association of artists) has no statutory basis of its own (ibid). S481 is similarly vague on cultural or artistic rationales, instead, it focuses on the economic machinery of how the expenditure works, with a purposefully vague/broad cultural test as a deliberate policy move, to allow broad interpretation of what might constitute culture.

## 1.5 Why does the state fund culture?

S481 operates as both an economic and a cultural policy. It supports the creation of cultural goods while simultaneously supporting the development of an audiovisual industry. These goals are not mutually exclusive. Film is both an art form and an industry. As an art form, it can present an interpretation of life. It is thus both representational and productive of meaning. The arts can make manifest a vision of society. Given the diversity of society, the broadly liberal position suggests that it is socially and politically important to ensure that a multiplicity of viewpoints can find expression through the arts. This thesis interrogates how this cultural role of the audiovisual industries can be facilitated by policy and asks whether the state has an obligation to support art. Given the merit of audiovisual goods as informational, educational, and cultural goods, the support of the state via the provision of favourable tax conditions such as S481 is legitimated.

The audiovisual industries address at least some of our informational (political, social, and civil) needs as citizens, but also, by serving basic entertainment needs, addresses us as consumers. Policy decisions made by the state are one element in a complex world of production, distribution, and consumption of audiovisual products. Any policy relating to culture may try to achieve several potentially contradictory – not to say mutually exclusive – goals. For example, cultural policy may look to enable access to culture to all citizens,

regardless of their social or economic status. It may have an educational or informational aim to ensure that the citizenry can make informed decisions. Cultural policy may also operate through an industrial prism identifying economic development, industrial capacity, or employment creation as critical priorities. The promotion or support of the cultural industries for industrial reasons may be at odds with more cultural goals. However, cultural goals and economic goals may not always be mutually exclusive but can be harmonious or symbiotic. Governments worldwide have recognised the increasing importance of audiovisual industries to national economies.

When the free market is considered incapable of providing for communication needs, i.e., in cases of “market failure,” the state generally intervenes. This intervention of the state in communications industries can be justified to protect the rights of a person to receive and impart information and ideas. Public measures to support audiovisual industries aim to encourage the exercise of human rights in the audiovisual industries by providing conditions within which creativity and consumption can co-exist. Access to audiovisual industries is understood to be a fundamental human right.<sup>2</sup> Thus, the powers exercised by a state through policy decisions affecting the audiovisual industries affect these rights. It is, therefore, necessary to analyse the nature and extent of policy decisions in order to ensure that a person’s right to both disseminate and receive information and ideas are properly exercised.

Ireland’s audiovisual production industry is supported by specific policy initiatives that shape the cultural products that, in turn, help shape the image of Ireland both internally and externally. Historically, the policy framework within which audiovisual production takes place has been structured primarily on industrial rationales. While there may have been some consideration of the broader social and cultural values emanating from such cultural representation, there has been little meaningful discourse around specific policy measures that might actively encourage diverse production. There has been extensive research on this complex relationship in the context of EU audiovisual media

policy (R. Collins, 1994; De Vinck, 2014; Sarikakis, 2012); it is relatively under-researched in an Irish context. Besides, there has been little discourse around the intrinsic value of audiovisual culture, with policy justifications and evaluations focusing mainly on the metricised and instrumentalised value of production (as seen, in a film industry context, in the various reports on S35/S481 during its existence from 1987 to date as explored in detail in Chapters Six and Seven). State support for audiovisual industries is justified on both cultural and economic rationales. While there has been significant research at policy level of the *economic* effects of the provision of favourable tax expenditure regime for audiovisual industrial production within the Irish tax code (as shown by the proliferation of grey literature on the subject), it is contended that the *cultural and social value* of such support measures has been under-researched in Irish academic discourse.

However, we must be careful not to fall into the trap of establishing an artificial binary between cultural production and industrial production. Cultural goods by their nature are also economic, and commercially produced goods can both inform and entertain while partaking of the economy. The relationship between what Throsby calls ‘these two unlikely bedfellows, economics and culture’ (2001, p.xiii) can alternatively be seen as a symbiotic (Herold, 2008) or a paradoxical relationship (Neuwirth, 2008). Instead, this thesis posits that taking a solely economic analysis perspective to justify the intervention by the state in the free market for audiovisual production is problematic. To support this perspective, the thesis takes a policy research approach to the development of and operation of S481 within a supranational framework to tease out the policy values underpinning state support of audiovisual industries. The problem identified in this thesis is in the nature of the justifications for and evaluation of the intervention by the Irish government in the audiovisual industries through the provision of a favourable tax expenditure for certain forms of audiovisual production within its territory. This approach can be described as a ‘corporate welfare system’ or ‘corporate welfare model’ (Newsinger & Presence, 2018, pp.458-9). It is contended that the justifications for the expenditure are, in

an Irish context, based on overly narrow economised considerations of the value of the cultural industries. In an EU context, the Commission's approach to regulation of State aid regimes is driven by attempts to protect the internal market, albeit within the broader context of increased marketisation (i.e., towards full market exploitation, (Hesmondhalgh, 2019)).

Both S481 and the Commission's State aid regime are concerned with audiovisual industries as (relatively) broadly defined, to include the film industry, certain elements of the TV industries, and, in some EU Member States, digital games.<sup>3</sup> In Ireland, S481 has been extended to cover film and TV drama. While the approach taken in this thesis recognises the complexity of the categorisation of audiovisual industries, and the extension of tax expenditure policy to TV is of interest particularly in an Irish context, it is acknowledged that much of the academic discourse around meaning-making is from a film studies perspective, and thus much of the literature and discussion in this thesis focuses on the role of S481 within the film industries perspective.

A brief examination of the role of State aids, from the introduction of S35 Finance Act 1987 to the most recent formulations of the tax expenditure in the form of revised aid introduced in January 2014 and revised in 2019 illustrates an increasing economisation of the role of the film industry, possibly to the detriment of the cultural value of such industries. Analysis of the history of S35/481 is expanded upon in Chapter Seven. Initially, S35 required seventy-five per cent of production to take place in Ireland, to qualify for the relief. However, this was often waived as a requirement and is now entirely omitted from the current manifestations of the State aid regime. The 2014 revisions (Murphy & O'Brien, 2015) extended the notion of eligible expenditure from spend on European Economic Area cast and crew to worldwide crew. The tax expenditure is thus explicitly made more attractive to inward investment productions, such as *Star Wars: The Last Jedi*, which was filmed in 2017. More recent amendments (in 2019) have expanded the

conditions under which the expenditure is granted by way of the introduction of training requirements.

## 1.6 Why does the state fund audiovisual production?

The involvement of the state in the relationship between the free market economy and the audiovisual industries can be analysed through a political economy lens to unpack the issues underpinning state support of the industries in question. The role of the state in a Western market economy can be understood as a balancing act between the requirements of the market and a more paternalistic role. In one way, this can be (reductively) summarised as a balancing act between the opposing weights of culture and economics. Throsby has described a ‘confrontation’ between the economic and cultural concerns of society, which have been exacerbated by ‘the emergence of powerful forces in the global marketplace’ (2001, p.xii). However, this relationship is more complicated than this binary implies, and positioning cultural rationales and economic rationales for state funding of audiovisual production as oppositional is reductive and does not reflect the complex realities of the multiple rationales for such policy interventions. The rationalisations for policy interventions by the state in audiovisual industry production may be categorised as emanating from multiple origins, for economic goals, for cultural goals, and social goals. These goals can co-exist productively or can be oppositional. It is the nature of the complexity of audiovisual products that they fulfil both cultural and economic needs. Murchetz, Teichmann & Karmasin hold ‘State aid for film is an “unruly” research field’ (2018, p.7) given its cross-disciplinary nature between law, economy, film, and media studies. To this list, we can add policy research, political economy, cultural policy, and

research on cultural value. Thus, there are many strands of inquiry brought together in this thesis to understand the operation of the S481 tax regime.

## 1.7 The (economic) value of the audiovisual industries

The audiovisual production market is significant in monetary terms. According to recent research, 8,204 films were produced worldwide in 2018 (excluding those in the US with a budget under \$1m USD) with 1,847 in the EU (Kanzler & Simone, 2019, pp.13-14). Film production is, generally, funded from several different sources including public funds, financial incentives, regulatory obligations on industry stakeholders and guaranteeing facilities (Talavera Milla & Chochon, 2019, p.17). Therefore, the policies that shape such forms of support have a significant impact on cultural production.

Within an Irish context, the recent economic analysis of the audiovisual industries undertaken by creative industries consultants Olsberg SPI with Nordicity (“OSN2017”) calculated that the audiovisual industries in Ireland (widely defined to include radio, advertising) have a Gross Value Added of €1,049.9m, providing 16,930 jobs. The Irish film, TV and animation industries are worth €692m with 11,960 jobs by way of direct, indirect, and induced employment, with direct production job figures at 7,070. These figures are based on analysis of 2016 figures (2017, p. 5 & pp.28-30). Within this context, S481 spend (i.e., tax foregone) is calculated by the Department of Finance as €91m for 2016 (2018, p.226 and see SI statistics in Appendix 5). Overall, the DoF CBA from 2018 held that:

The annual net economic impact of the S481 tax expenditure factors in both the costs and the benefits of the scheme, including shadow prices and grant deadweight, to estimate the cost or benefit to society of S481. This analysis finds the net annual economic impact of the scheme to be -€40 million and -€72.4

million in 2015 and 2016 respectively, factoring a shadow cost of labour set at 80 per cent and the grant deadweight of the scheme at 35 per cent (2018, p.230).

To offer further context, direct public funding from the state by way of capital funding to the state development agency for the film, TV and animation industries, Fís Éireann/Screen Ireland (FÉ/SI, formerly Bord Scannán na hÉireann/the Irish Film Board, “SI”) grew from €10m in 2004 to €20m in 2008, dropping to a low of €11.202m in 2014 and 2016, with intentions announced in the cross-Government 2018 plan for the audiovisual industries (AAP2018) to increase funding to €20m per annum (the AAP2018 is analysed in detail in Chapter Seven) .

These figures illustrate the significant position that S481 plays in the wider film and television funding landscape within Ireland, with the amount of S481 claimed in 2016 roughly equating to eight times the funding provided via the Irish Film Board (now Screen Ireland). Other funding sources are available in Ireland, including Arts Council and the BAI administered Sound & Vision 3 funding, and of course crowdfunding and personal funding. Across the EU, fiscal incentives were worth €144.1m in 2016 per the 2018/2019 European Audiovisual Observatory yearbook representing a 10 per cent share of all financing sources (Blázquez, Capello, Chocon, Ene, Fontaine, Grece, Pumares, Kanzler, Rabie, Schneeberger, Siomone, Talavera Milla, Valais, 2019, p.13). It is evident from the limited analysis of the Irish film funding figures in this paragraph that tax expenditures represent much more than 10 per cent of all funding, given that Sound & Vision 3 funding is a limited pot. Sound & Vision 3 (2015-2019) is financed from the Broadcast Fund which comprises 7 per cent of annual net receipts from the television licence fee, under Part 10 of the Broadcasting Act 2009. Sound & Vision 3 granted €11.3m across TV and radio in 2017, with €10.2m for television projects, which includes film. For example, in 2017 *A Date for Mad Mary* and *Song of Granite* were given funding under this scheme.<sup>4</sup> Therefore while the funds allocated to the audiovisual industries via both Screen Ireland and Sound and Vision 3 are welcome, they are overshadowed by the allocation of funds via S481.

This thesis looks back at the history of policy interventions affecting the audiovisual industries in an Irish context, with the historical development of audiovisual policies explored in Chapter Six. Part of broader cultural and economic policy towards the film and TV industries, S481 (or S35 as it was initially called) was conceived of as a way of incentivising a fledgeling industry that would then be able to flourish without such state support. However, the reasons underpinning the continuing support of S481 have shifted over time. An analysis of the policy documents surrounding S481 illustrates the issues at play in the decision-making process around such continued support. Given the changes in the format of the tax expenditure from an investor-led tax relief to a corporation tax relief in 2015, this thesis relies on production data primarily from 2015 to 2017 (or 2018 where available). While this is a relatively limited timescale upon which to focus, it is sufficient, it is contended, to obtain an overview of the operation of the expenditure.

## **1.8 Why does the Irish state support the audiovisual industries?**

The dual objectives of support for the film industry in Ireland – to encourage indigenous production, and simultaneously support inward investment productions – are recognised in the legislation (The Irish Film Board Act, 1980) establishing the Irish Film Board: to ‘assist and encourage...the making of films in the State and the development of an industry in the State for the making of films’ (Section 4(1) 1980 Act). However, it was no coincidence that the suspension of the IFB occurred in conjunction with the introduction of the first manifestation of film tax expenditure in the form of S35 of the Finance Act, 1987 (as explored in more detail in Chapter Six). The suspension was a clear policy move that illustrates the neoliberal tendencies of the Irish state. The introduction of S35 attempted to establish an institutional framework that would work to support the operation of the free market for audiovisual production. While the relief could be seen as supportive of the development of a film industry in Ireland, the simultaneous suspension of the IFB (which

was reinstated in 1993) could be seen as sending a clear message to the industry of what form of support the industry deserved. In his analysis of the development of the film industry in Ireland, McLoone says ‘ironically, at the same time that it suspended the Film Board, the government also introduced corporate and individual tax incentives designed to encourage international film activity in Ireland’ (2000, p.114). However, rather than ironic, this move can be interpreted as a deliberate shift to reliance on the free market rather than direct state intervention through a grant-giving process.

Similarly, the relaunch of the IFB in 1993 is described by McLoone as ‘an important turning point’ for the Irish film industry, simultaneously establishing a more secure and professional environment for film production while effectively ‘killing off’ the more political film-making characterised by the products of the first wave (2015, p.xi). Offering S481 to overseas production companies is predicated on the creation of employment within the cultural and creative sectors and is central to the operation of the tax relief. Overseas productions take advantage of flexible labour and cost-effective production because they obtain a significant tax incentive/relief. The use of Ireland as a location for overseas film and TV productions is facilitated by the operation of the tax incentives.

The scope of policy interventions from both an Irish and EU perspective is explored via a wider timescale. Chapter Five analyses the development of the Commission’s State aid policy towards the audiovisual industries, identifying clear shifts in emphasis in seeing State aid regimes as a form of cultural policy to a more industrialised policy. It further analyses the development of the Commission’s soft law policy revisions to the 2001 Communication, leading to the 2013 Communication. It examines the rationalisations underpinning the change in Commission policy in this area and interrogating the effect of the changes, finding multiple instrumentalities shaping the development of Commission soft law policy, Chapters Six and Seven analyse Irish policy developments, with Chapter Six offering a historical analysis of the development of S481 and Chapter Seven addressing the recent introduction of what is termed Ireland’s first

national cultural policy contained in the *Creative Ireland* framework, with a specific focus on proposals that affect the audiovisual industries.

There is an increasing tendency for governments to see cultural policy as conflated with industrial policy (Hesmondhalgh, 2013, 2019; Hesmondhalgh & Pratt, 2005; Pratt, 2005). For State aids for the audiovisual industries within the EU, this tendency is shaped by the requirements of the Maastricht Treaty which require State aids to be driven by a cultural rationale under Article 107(3)(d) TFEU. However, this thesis adopts the position that both Commission's interpretation of policy, and the process of implementation of the State aid regime in certain EU Member States (including Ireland), take a 'broad' view of this cultural rationale as explored in Chapter Three which reviews the relevant literature and Chapter Five which contains an analysis of the development of Commission policy.

This thesis uses political economy as a framework to interrogate the role of audiovisual cultural policy in an Irish context relying on the literature introduced in Chapter Three. A nation's audiovisual industry not only operates within national borders but also is part of a changing global environment. For Pratt, cultural policy needs a new form of governance that acknowledges the existence of the market and engages actively with shaping that market (2005). This thesis looks at S481 through the lens of spatialization to establish the role of the state within this market from a temporal, spatial, and power perspective. Each of the concepts set out in this theoretical framework is put in conversation with each other to analyse further the nature and function of cultural policy at a national and EU level.

## 1.9 Towards a marketised policy discourse

The shift to marketisation identified as significant in the audiovisual industries policy discourse in both an Irish and EU context can be understood within the context of

neoliberal theory. Thus, the literature on cultural industries is used in this thesis alongside certain aspects of neoliberalism in order to draw out certain aspects of the political economy of audiovisual industries that are, this thesis understands, shaped by a neoliberal policy discourse (Browne, 2015; Curran & Seaton, 2009; Davies, 2014; Garnham & Inglis, 1990; Hesmondhalgh, 2013, 2019; McGuigan, 2005; Newsinger, 2015). While this thesis does not engage with the theories around neoliberalism in significant detail, it is accepted as a foundational, significant force shaping all industries, not only the cultural industries, in the Western world. For Hardy, for example, neoliberalism has been the dominant ideological force in media policy and has used marketisation as a potent tool (2014a, pp.178-9). Newsinger highlights the centrality of the state to the processes of neoliberalism wherein the arts and culture are increasingly incorporated into the market economy (2015). Buch-Hansen & Wigger explore what they see as increasing and embedded neoliberalism within Commission competition policy (2011). Thus, an understanding of the broad principles of neoliberalism in the context of marketisation is useful to understand the development of policy towards the audiovisual industries.

It is accepted in this thesis that neoliberalism is a complex, inconstant term and one that exhibits plasticity (Browne, 2015). Browne describes it as simultaneously an ‘economic policy, a modality of governance, and an order of reason’ and thus at once ‘a global phenomenon, yet inconstant, differentiated, unsystematic, impure’ (ibid, p.20). Freedman defines it as a political/ideological project in which the state can play a significant role in creating and preserving an institutional framework appropriate to the purpose of capital redistribution (2008, pp.39-40). Building on these interpretations of the concept, in this thesis, neoliberalism is framed as a policy norm that functions as an ideology that is unproblematically (for the most part) accepted as justifying policy intervention in audiovisual industries. For these purposes, it is sufficient to accept it as pervasive.

## 1.10 The processes of commodification and spatialization

This thesis examines the commodification of audiovisual culture through the evolution of S481 policy towards tax expenditures for audiovisual production in Ireland. For Mosco, spatialization, a term that ‘denotes the process of overcoming the constraints of space and time in social life’ (2009, p.157), is of particular significance to the political economy of global communications industries, in that capital transforms the spatial relations among people, goods and messages (citing Harvey, 2006). Mosco highlights the ‘legal, regulatory and policy direction’ of the state in actively bringing about changes to corporate and industry structures that allow for such transformation (2009, p.175). The concept of spatialization is associated with French theorist Henri Lefebvre. Putting Lefebvre into a context of capitalism and the nation, Fuchs holds that Lefebvre allows us to see that ‘the nation-state and capitalist space are capitalist forms of dominated space, spaces dominated by state power and the power of capital’ (2018, p.8). Government policies towards the audiovisual industries actively engage with the state space, through policies that regulate and shape production within the state, and thus implicitly and explicitly intervene in the production of cultural products that, at least in some way, represent the nation-state. Lefebvre foregrounded the significance of the spatial dimension by asking ‘is not the secret of the state, hidden because it is so obvious, to be found in space?’ (2009, p.228) with capitalism attenuating its internal contradictions and surviving ‘*by occupying space, by producing space*’ (1976, p.21, his emphasis). A spatial dimension underpins S481; a production must comply with specific conditions relating to production within the territory of the Republic of Ireland, the tax expenditure is granted on eligible expenditure within the state, and, more broadly, the production must qualify for a cultural/industrial certificate to be eligible for the relief. Thus, there is a commodification (in the form of spatialization) of both the space of national production and of culture. An analysis of the conditions under which S481 operates (taking into account both Irish regulation and EU policy) can be undertaken

through the use of Mosco's approach to spatialization in conjunction with Lefebvre's theories which focus on how capitalism works to shape the spatial, territorial and scalar configuration of state power.

While the approach taken in this thesis emphasizes the continued significance of the nation-state in shaping the audiovisual production industries, it is important to acknowledge that the boundaries defining cinematic cultures and industries do not necessarily work along national borders but are shaped by transnational and global forces. Further, cinema production has always tended to be part of a supranational or post-national industry. However, film production and reception may be shaped by ideas of national belonging (Hjort, 2005). A state may put in place policies that actively represent an ideal it wishes to project. The state, a legal concept, is not necessarily coterminous with a nation or a national culture. A state may use culture as a way of establishing nationhood (Anderson, 1983). Audiovisual industries cannot be understood without close attention being paid to the capitalist economic systems of which they form part (Cunningham & Craig, 2016; Hesmondhalgh, 2019). While it is a truism to state that film has always been globalised, and the historically global nature of the film industry in Ireland must be acknowledged, the relationship between the cultural and economic goals of audiovisual policy is complicated by the forces of increased globalisation, which have meant national media industries are increasingly subject to pressures beyond their borders.

### **1.11 The Irish audiovisual industries: an overview**

Having set up certain of the theoretical concepts underpinning this analysis, it is important to outline the context of state support for audiovisual industries in Ireland. Broadly, state policy towards film in Ireland historically has been one of relative lack of support for an indigenous industry for various economic, social, and political reasons. Initially, cinema was

seen as a foreign concept at odds with the nationalist thrust of the recently established Irish nation (Rockett & Hill, 2004). The fledgeling Irish state had what it saw as other more pressing calls on the public purse. Further, the Catholic Church had a strong influence on politics and society and was traditionally broadly (with some notable exceptions) opposed to the licentious nature of the film industry (Rockett, 2013). The geopolitical situation in the early twentieth century affected the cinema industries across Europe, allowing for the rise in dominance of Hollywood. Recognition, during the latter part of the twentieth century, of the possible economic benefits of a film industry in Ireland, led to a shift in policy on the part of the Irish government. The introduction of a tax expenditure in the form of S35 of the Finance Act 1987 (the precursor to S481) marked a turning point in state support for the film industry, as it was contemporaneous with the suspension of the first Irish Film Board (IFB) and thus can be seen as a shift from direct support to reliance on the free market.

This thesis addresses the complexity of audiovisual production in the context of a global industry. An industry that is, in Barton's analysis of the continued significance of the national in Irish film 'uninterested in local and national affiliations' (2019, p.3), but simultaneously obliged to take cognisance of the cultural rationale for funding of audiovisual production, given the requirements of the EU's State aid regime which needs a cultural rationale to justify allocation of resources (under the terms of the State aid regime). Such a cultural rationale tends to work along regional or national grounds but is complicated by the globalised nature of audiovisual production.

In particular, the Irish government has recognised the instrumental benefits of a robust audiovisual industry and has supported the audiovisual industries, in particular through the provision of a generous tax expenditure code. However, the justification for the provision of such a tax expenditure has primarily and thus problematically been measured in economic terms, with less of a focus on the cultural or social goals of such a policy. Such an approach belies the social and cultural impact of audiovisual industries.

This thesis analyses the commodification of space of the state through simultaneously offering of attractive tax expenditures, to encourage production within the state, and by the reduction of cultural value in audiovisual industries to economised metrics of jobs, numbers of films, spend and other numbers. This thesis contends that S481 is formulated and assessed primarily in economic terms with little meaningful engagement with the cultural significance of the audiovisual industries.

Irish cinema has a significant role in the conceptualisation of the notion of the nation of Ireland, with production taking place within an ecology of transnationalised flows of production, distribution, and consumption. It is usually accepted while the national is still a driving force in film analysis; theories of and issues around the national are shifting towards more multifaceted models. Barton, writing on Irish cinema in 2004, holds that film analysis should move beyond seeing all films through the lens of the nation. She holds that it 'behoves those responding to Irish cinematic texts that they bear in mind that they do not necessarily have to be interpreted via considerations of the national' (2004, p.9). Thus, for Barton, the siting of cinema within the transnational mode of circulation can offer a way out of national identity policies.

While narrative analysis of film texts can and should move away from insisting on analysis through a national lens, how does this work for analysis of the film *industry*? Tax expenditures for audiovisual production continue to be structured around a national framework, given the territorial nature of tax law (i.e., EU Member States formulate tax legislation within their own territories). However, such expenditures operate within an industrialised production economy that actively exploits the affordances of state-granted incentives.

A useful way of thinking around the concept of nation-space and the role of culture is through the concept of "nationing" that is 'the objective of developing a national culture through the deployment of culture' (Rowe, Turner, & Waterton, 2018a, p.1). Rowe et al.'s analysis of cultural policy developments in an Australian context has identified a policy

realignment, brought about, in part at least, by the commercialisation of culture and the increasing influence of the transnational that are evident in many countries, including, this thesis contends, Ireland and the EU generally. For Rowe et al. ‘making culture, within a context of increased globalization and commercialisation, seems increasingly likely to become a by-product of economic policy rather than an end in itself’ (ibid, p.2). Thus, there are two competing influences identifiable at audiovisual policy level, namely support of a distinct national identity and support of market-oriented imperatives driven by the desire to engage with transnational production flows. The increased commercialisation of audiovisual industry policy sees nationing as losing its connection to nation formation and instead becomes a marketing strategy, a mode of political and commercial performance (ibid, p.4), an approach that is readily identifiable in policy discourse around S481.

Thus, tax expenditure policy for audiovisual production operates to both create a national imaginary (following Anderson’s conceptualisation of the imagined community) and to join in the transnational economic flows of audiovisual production. These policy objectives are usefully understood in terms of how the nation-state (through deliberate policy decisions) uses the space of the nation, both the physical space but also the abstract space, i.e., within the medium of exchange. As Lefebvre says, ‘the commodity is a *thing* it is *in space*, and occupies a location’ (1991, p.341 emphasis in original). For Fuchs, ‘capitalism has a tendency to globalize the economy in order to make use of strategic spatial advantages’ (2019, p.11), while simultaneously fragmenting space through the creation of specialized instrumental spaces.

While there may be a multiplicity of ways that a cinema is renegotiated and reframed through the lens of the national, the question arises as to how this reconstruction operates through the framework of a national industry. The supranational framework of the EU within which Ireland’s audiovisual industries operate further complicates the issue of the national. Amongst other questions, this thesis explores the role of S481 in simultaneously establishing a national film industry and a film industry located in Ireland,

and whether these goals are mutually constitutive or not. This thesis contends that S481 has, historically, been evaluated primarily as an economic policy in a way that fails to take cognizance of the significance of such a tax expenditure policy as a cultural policy. It uses the theories of Klammer and others on cultural value to explore how tax expenditure policies can operate to serve cultural goals (Klammer, 2017).

## 1.12 The European policy dimension: an overview

The power to regulate media (in all different ways, including ownership, production, and distribution) has in part shifted from the nation-state to supranational and international bodies. In the case of Europe, this process may be traced to the foundation of the European Economic Community (the EEC) in 1957, which aimed to establish economic stability across Europe, under the assumption that economic stability would lead to political stability. Later expanding to form the EU, the organization has a complex approach to audiovisual industries, seeing them as both cultural and industrial.

This thesis contends that the conceptualisation of culture within EU discourse has changed over time. To oversimplify, tracing culture as a discourse within EU policy can be seen as moving from one of early separation - with culture seen as 'outside' the remit of the EU, to one that is socially instrumentalised - seen as useful for the purposes of the common EU identity - to a current conceptualisation as culture as commodified and marketised, albeit with some recognition both of the plurality of functions of culture and of the desire to protect the internal market of the EU. Initially, the EEC and the European Commission had no direct powers in the cultural arena. The 1992 Maastricht Treaty gave direct cultural objectives to the EU (Collins, 1994). Article 167 of the consolidated Treaty of the Functioning of the European Union (TFEU) set as an objective the contribution to the flowering of cultures of the Member States while respecting their national and regional

diversity (EU, 2012). Simultaneously, the EU has the objective of bringing Europe's common cultural heritage to the fore. The EU has a mandate to take into account cultural issues in all policies. The term culture remains undefined at European level. However, the Commission has taken on the power to decide who and what gets to avail of public tax incentives to the extent that the conditions under which State aids for the audiovisual industries are granted are regulated by the Commission, primarily in the Competition Directorate-General.

In theory, at least, the EU treats media products as cultural goods, rather than commodities. However, in keeping with the broad shift to neoliberalism evident in national cultural policies in Ireland and the United Kingdom – there is some evidence of a similar shift in some EU audiovisual policies, including some State aid policies (Schlesinger, 2017). This shift has served to shape recent interventions by the Commission in State aid policy towards audiovisual industries as is evident from analysis of trends in Commission approval decisions of State aid regimes over time.

Ireland's membership of the EU means it must abide by the competition law rules and procedures of the Union. Article 107 (1) of the TFEU states that aid granted by a Member State or through state resources in any form, which distorts or threaten to distort competition between the Member States is incompatible with the internal market (EU, 2012). However, Article 107(3) TFEU allows an exemption for any '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'. EU State aid law has been described as the 'poor relative' of competition policy (M. Hansen, Van Ysendyck, & Zuhlke, 2004, p.182), a 'Cinderella' (Bishop 1995, p.331) or 'ugly duckling' (Ahlborn & Berg 2004) (all cited in Kassim & Lyons, 2013, p.2). Competition law, which relates to the actions of private enterprises, enjoys an established legal tradition which gives it authority and from which precedent can be drawn.

In contrast, State aid law and policy relate to the actions of the state towards sectors or regional industries. The control of state actions does not enjoy the same legitimacy through lineage as other sectors of competition law. In addition, State aid law is inherently political as it attempts to affect the actions of Member States and thus interferes with sovereignty. As Cini holds State aid policy ‘has long had three distinctive features: a centrality to the single European market objective; an absence of formal legislation; and an often-acute political sensitivity’ (Cini, 2001, p.196). Thus, political economy is a useful tool with which to interrogate how the State regime facilitates audiovisual production.

In taking a political economy approach to an analysis of State aid law, this thesis adopts Piernas López’ approach to State aid law in which he encourages a study of State aid that is ‘from a dynamic perspective’ (2015, p.9). Piernas López’ holistic approach to State aid law and policy uses not only legal sources, and reliance on the case-law of the EU, but also takes in to account historical and political-science literature. In the same way, this thesis analyses both the legal concept of State aid through the prism of policy considerations and the policy considerations of State aid through the prism of legal concepts. EU competition law and policy affect the actions of Member States in that Member States must incorporate the relevant policies into national law. The provisions of State aid law go a step further in directly affecting the actions of the Member State towards indigenous industries. The Member State can no longer selectively and directly support its own industries as to do so will contravene EU competition regulations within the single market. However, all Member States do so to some degree, relying on the ‘cultural importance’ loophole.

State supports for audiovisual industries (including but not limited to production) across the EU are a significant part of the support structure for the industries, with the audiovisual sectors in Europe relying on private investment and public support. Fiscal incentives such as tax expenditures are one of the ‘three pillars’ of public support, alongside public funding and industry obligations to invest (Talavera Milla, Fontaine, & Kanzler,

2016, p.14). It is difficult to ascertain the overall economic impact of the various forms of incentives across the EU (Talavera Milla et al., 2016; Olsberg & Barnes, 2014, p.6) as there is a lack of comparable, extensive data for markets. Once again, the complexity of the various incentives in different Member States, and the different methods of data collection mean that commensurability of supports is difficult. Broadly, it is sufficient to illustrate that the incentives operate as life-support for audiovisual production within the EU. The number of fiscal incentives schemes operational in Europe more than doubled between 2008 and 2014, from 12 to 26 (Talavera Milla et al., 2016, p.70 summarising key data from Olsberg & Barnes, 2014).

Tax expenditures for a national or regional industry in the EU are, under the terms of the Maastricht Treaty, ostensibly justified under a cultural rationale. Where an audiovisual tax expenditure is offered within a region or state, it generally attempts to encourage the development of a regional/national industry. However, the boundaries surrounding cinematic cultures and industries do not necessarily work along national borders but are shaped by transnational and global forces. While national film industries may play a significant role in the political economy of a nation-state, audiovisual production has tended to occur within part of a broader supranational or post-national industry. However, as a state's attempts to support or construct a representation of the nation through support of national audiovisual industries can be held as a justification for state support, therefore, the significance of the nation as a concept continues to shape, at least in part, the operation of subsidies such as S481.

Thus far, this chapter has set up the context for the research question, that is, what do the design, operation, and evaluation of the S481 tax expenditure reveal about the role of cultural objectives versus market/economic objectives in Irish audiovisual policy? It then introduced the problem space the research question addresses, including cultural and industrial rationales, and the complexity of the attempts to balance the relationship between these at times incompatible goals. Policies are ambiguous, given the multiple

rationales underpinning the development of policy, encapsulated in Gray's conceptualisation of the policy ambiguity arising out of the 'polysemous' nature of culture (2015, p.66). Thus, the policy norms underpinning developments in policy are similarly ambiguous. This thesis aims to uncover certain of the norms driving the development of audiovisual policy within an Irish context to understand further and contextualise the production environment.

### 1.13 Pivotal policy measures

The research question suggests several lines of enquiry including why the state funds culture, why audiovisual industries are funded, the nature of the shift from cultural industries to creative industries and the effect of EU membership on national policy. To explore these issues, a number of policies are analysed. These are as follows:

1. The adoption of the European Commission's "soft law" policy document, the 2013 Cinema Communication (the "2013 Communication"), which sets out policy towards State aid for audiovisual industries (European Commission, 2013);
2. The development of S481 policy in Ireland;
3. The recent adoption of Ireland's "first" national cultural policy through the *Creative Ireland* Framework (Government of Ireland, 2016) as it pertains to the audiovisual industries, and the Audiovisual Action Plan (AAP2018).

The analysis of these pivotal policy measures at both an Irish and EU level has identified what is considered as an overarching theme as the (d)evaluation of the concept of cultural value of the audiovisual industries, consequent upon the augmentation of the (perceived) economic value of such industries. It also identifies and contextualises multiple policy silences from multiple perspectives. It is not only that the discourse around S481 silences any meaningful consideration of values outside the economic, but that there is a lack of consideration of diversity and inclusion. It finds that cultural policy (and, it is reiterated that

S481 is examined as a cultural policy here) is commodified and instrumentalised for multiple purposes, primarily economic, but also for social and political rationales including the marketisation of the space of the nation-state to attract inward investment.

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<sup>1</sup> <https://www.imdb.com/title/tt3208026/> accessed 25 November 2018

<sup>2</sup> Article 19 of the 1948 United Nations Declaration of Human Rights (UDHR) which protects the exercise of these fundamental human rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>2</sup>

Article 10 of the 1950 Council of Europe Convention on Human Rights also protects freedom of expression including a specific reference to ‘cinema enterprises’ (ECHR, Para 1). This right has been extended by the European Court of Human Rights to refer to protection of ‘artistic expression’ as ‘Article 10...includes freedom of artistic expression...which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds’. The UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions formally recognises the dual nature of contemporary cultural expressions as both cultural and economic, thus enshrining cultural expression as a fundamental aspect of human freedom (UNESCO, 2005).

<sup>3</sup> The deliberate decision has been made in this thesis to use, for the most part, the more inclusive term ‘digital games’ instead of video games or videogames. While the videogames/video games terminology is used in policy discourse around State aids for video games within the European Commission, it is considered that digital games encompasses such areas as artificial reality and other non screen-based media that are not video based. See Kerr, 2006 and thanks to @DanjoKaz00ie (Daniel James Joseph) for clarifying thinking in this area. However, where reference is made to policy submissions, the relevant terminology is retained (games, videogames, video games).

<sup>4</sup> Attempting to ascertain the number of productions supported with S481 is not an easy task. Screen Ireland figures are set out in Appendix 5, but Revenue figures as provided to DoF are relied upon. There isn’t a significant discrepancy, and the discrepancy may be explained by the fact that Revenue is on films certified, or claiming, while SI are on their own information gathered. The SI figures are of interest in their breakdown between film local and incoming, TV local and incoming, so they are used in certain parts of the PhD to

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illustrate trends. SI is a certifying body for eligible expenditure, but not the only one as BAI certifies too and it's possible to raise S481 without the certification. This may explain the discrepancy between their figure of €210m ( $€36.4+82.6+91.6$ ) and the Revenue's €242m.

# 2 LITERATURE REVIEW OF THE POLITICAL ECONOMY OF AUDIOVISUAL INDUSTRIES

## 2.1 Introduction

Media political economy ‘is a large mansion with many rooms’ (Hardy 2014a, p.xi.) To this end, it is useful to engage with some foundational concepts underpinning political economy theory. This chapter sets out certain concepts underpinning a theory of political economy, acknowledging that there are multiple political economies from varying perspectives. It is taken as foundational in this chapter that the different ways of financing and regulating cultural production have traceable consequences in that ‘conditions influence production practices’ (ibid, p.11) without axiomatically assuming that there is a directly causal influence between funding and content.

This chapter approaches the research topic with the understanding that both the political and the economic have mutual influence on the audiovisual industries and thus have a relationship to the social and symbolic spheres of activity. The approach herein ‘takes seriously the active role of government’ (Mosco 2009, p.19) in regulating the market while simultaneously addressing the economic interests shaping the production of meaning. The approach herein acknowledges that neither the state nor the policy process is monolithic but is actively shaped by a multiplicity of interests, subject to ever changing power relations. This chapter explores the relational aspect of certain of the key concepts of political economy, to allow for interrogation of the consideration of S481 as both an economic and a cultural policy.

## 2.2 The theory of multiple political economies

Early political economy, as theorised by Adam Smith, was concerned with ‘how mankind arranges to allocate scarce resources with a view towards satisfying certain needs and not others’ (Smith, 1937, p.14). Initially concerned with social issues, gradually economics branched away from political economy (Golding & Murdock, 1996; Mosco, 2009). In the Western world, political economy focuses on capitalism as the system of social production, recognising the uneven distribution of wealth, power, and resources within industry. It provides an analytical framework that theorises the cultural industries in a way that is cognisant of the institutional and social processes that both sustain and challenge the power relations endemic thereto.

There are multiple political economies, with a range of ‘contending approaches’ (Hardy 2014a, p.5). For our purposes, it is sufficient here to address two contrasting approaches, positive political economy/public choice theory, which utilises neoclassical economic tenets to achieve a supposedly value-neutral approach, and the contrasting Marxist influenced critical political economy which places emphasis on the unequal

distribution of power (see Hardy, 2014a; Mosco, 2009 for an overview of the multiple perspectives). To oversimplify, public choice theory ‘marks a return to the classical tradition that viewed economics as the study of “how markets work”’ (Mosco, 2009, p.29).

Buchanan provides a nuance in terming public choice theory a pragmatic approach that does not work on the assumption that economics drives everything, but does operate on the presumption that maximisation of production or profits is ‘relatively important’ (2003, p.9). What is particularly illuminating about Mosco’s nuanced analysis of the relational aspects of public choice theory and political economy of communications is his interrogation of what each approach can learn from the other. Fundamentally, political economy starts from social processes and rejects the presumed rationality of the market, which is foundational to public choice theory. For Mosco, public choice theory tends to overemphasise the function of the formal legal-regulatory system for addressing policy issues (2009, p. 219) – an approach that is of particular interest in this thesis given its focus on taxation policy as cultural policy. Instead of criticising public choice theory for its perceived focus on the formal legal-regulatory system, instead, we can see how a critical political economy perspective can fruitfully interrogate such systems through analysis of the social processes underpinning such systems, and retaining the interrogation of power central to a critical perspective. Political economy starts with the centrality of power, something that public choice theorists see as more or less accessible to all interests within the political arena. Thus, both approaches can learn something from each other.

However, the public choice theory approach to media holds an inherent presumption that a predomination of commercial media will lead to a diversity of media firms and thus, by implication, to a diversity of product and representation. However, the very existence of state aids for media production belies this presumption, and instead, as Hardy points out, a growing multiplicity of outlets can and do co-exist with the lack of diversity (2014a). While the tracing of selective media mergers across the world illustrates evidence of global consolidation, the rise of Netflix as producer of content, the increasing

take-up of national tax expenditures by global media conglomerates illustrates the continued and inexhaustible search for new markets by capital as theorised by the writings of Marx and Engels.

One particular school of thought within critical political economy goes some way towards engaging with the at times neglected analysis of legal-regulatory systems but from a perspective that emphasises the importance of social processes. The Regulation School (as theorised by Aglietta, 1979; Lipietz, 1998; Boyer, 2000) is a programme of research that allows us to understand better the complexity and contingency of policy interventions towards the audiovisual industries, as it studies the transitions affecting capitalism, particularly the transition from monopolistic to a flexible form of regulation (i.e. from Fordist to post-Fordist). For Boyer, the specific contribution of regulation theory is ‘its recognition that accumulation, even capitalist accumulation largely dominated by finance, is embedded in a network of social and political relations’ (2000, p.276). For adherents to the Regulation School, capitalist development is embedded in social institutions, with interdependence between a set of institutions and economic development. The Regulation School approach provides a theoretical background for examination of the development of cultural value under modern capitalism(s). What is key is that social processes, such as capitalism, spatialization and structuration (identified as key by Mosco 2009) are shaping new and varied modes of regulation.

Capitalism experiences ‘a succession of *patterns of development*’ (Lipietz 1998, p.462, his emphasis) which can be theorised from three distinct approaches. These are, according to Lipietz, as a model of industrialisation, as a regime of accumulation and as a mode of regulation. The Regulation School is marked by the relational aspect between these approaches, with Lipietz succinctly holding that ‘the regime of accumulation therefore appears as the macroeconomic *result* of the workings of the mode of regulation, *based* on the model of industrialization’ (p.462, his emphasis). Thus, the mode of regulation is made up of the institutional and normative apparatus that secures accommodation to the

dominant regime. The regime of accumulation refers to the organisation of production and distribution of value and surplus value, the mode of regulation refers to the institutions, norms and practices accompanying the regime and providing conditions for long-term reproducibility, with the state but one institution in this definition). The Regulation School allows us to theorise the combination of regimes of accumulation with the understanding that accumulation is 'embedded in a network of social and political relations' (Boyer 2000, p. 276). What is particularly significant about the Regulation School approach is that it is cognisant of the relationships that structure society in contrast to an economic approach that attempts to find universal principles. For Boyer 'any analysis has to start from a given society at a precise period of its history' (2000, p.306) thus it is not possible to propose a general theory of regulation theory, echoing Aglietta who holds that theory is 'always in the process of development' (1979, p.15). He holds that 'the study of capitalist regulation ... cannot be the investigation of abstract economic laws. It is the study of the transformation of social relations as it creates new forms that are both economic and non-economic, that are organised in structures and themselves reproduce a determinant structure, the mode of production' (ibid, p.16). The shift from Fordist mode of production to post-Fordist can be theorised as a shift in regime of accumulation and a rejigging of the mode of regulation in the conceptual terminology of the Regulation School political economy. This theory brings in social process, not only economic organisation. As Boyer holds 'convergence towards a market-led form of capitalism is not an inevitability but the expression of political choices, explicit or implicit' (2000, p319). This thesis interrogates the social and cultural dynamics, from both an Irish and an EU perspective, that can be taken to influence the explicit and implicit policy choices shaping audiovisual cultural policy, specifically the tax expenditure regime that is of increasing value to the industries.

## 2.3 Critical political economy of the communications

This thesis takes a critical political economy of communications (CPE)/media approach to interrogate government policy and support mechanisms towards the audiovisual industries. Political economy of communications is defined broadly as *'the study of the social relations, particularly power relations, that mutually constitute the production, consumption and distribution of resources'* (Mosco, 2009, p.24 his emphasis). It is, for Mosco, an 'approach' (p.69) which situates theory around mass-mediated activity within the wider framework of political economic theory, particularly Marxian. For Hardy, the CPE approach 'is a critically realist approach that investigates problems connected with the political and economic organization of communication resources' (2014b, p.3) and is particularly salient as it recognises that goods produced by the media industries are at once economic and cultural). As Hardy holds 'critical political economy ...rests on a central claim: different ways of organizing and financing communications have implications for the range and nature of media content, and how these are consumed and used'(2010, p.106). This approach seeks to situate the various industries in their relevant social and historical context and, rather than understanding media solely as a business, is also interested in how we might 'resist the problems presented by the capitalist control of media and communication' (Nichols & Martinez, 2019, p.1).

'Critical political economy describes a tradition of analysis that is concerned with how communication arrangements relate to goals of social justice and emancipation' (Hardy, 2014a, p.3) with critical emphasising the 'manner in which power relations are sustained and challenged' (p.4). This thesis interrogates policy towards what can be teemed the cultural audiovisual industries, in a blunt categorisation to distinguish them from what can be deemed informational audiovisual industries. It is considered that the boundary between the cultural and informational is porous; nevertheless, the explicit area of inquiry here is those industries within the purview of S481 tax relief. This includes feature film,

animation and certain TV drama and excludes documentary and other informational forms of media. For our purposes, the representational and constitutive nature of audiovisual cultural products (including film and what is known as high-end television, that is, drama that is of a certain quality measured by production spend) is usefully analysed through a political economy of communications lens. In a time of media convergence between platforms, the borders between communication, entertainment and information are ever more porous.

Wasko & Meehan take umbrage with accusations that critical political economy has neglected entertainment and cultural media – pointing to the work of Dyer Witheford, Guback, and Wasko and Meehan’s own works, to name a few (Wasko & Meehan, 2013, p.152). A distinguishing feature of the political economy approaches towards ‘popular’ communications is that they take the role of culture in society seriously, as both representational and constitutive. Wasko’s work has illustrated that the Hollywood *raison d’être* may be profits, but movies play many different roles. As Meehan’s discussion of Wasko’s work points out, Wasko highlighted how entertainment commodities ‘have cultural and ideological significance as well as a significant role to play in national and global economies’ (Meehan, 2019, p.13). Wasko’s work provides insights into the analysis of the Hollywood studio film industry’s exploitation of the policies and practices that support their development as ‘transindustrial media conglomerates’ with Wasko’s work interrogating how ‘conglomerates like Time Warner or Disney coordinate internal operations across multiple media industries to secure every last penny of profit that can be wrung from any particular film or any other media product’ (ibid, p.15) trends that have also been identified by Hardy’s work on critical political economy (2014a).

Audiovisual industries are generally understood as part of the cultural industries, which allows for consideration of their dual role as symbolic cultural goods and as part of an industrialised economy. There are various understandings of the cultural and social role of the audiovisual industries that set them apart from industrial concerns. While the

production and consumption of cultural goods have been placed in ‘an industrial framework’ and thus commodified (Throsby, 2001, p.11); the manifestation of audiovisual products as something ‘above’ the market justifies state intervention to support such industries. One approach is to reflect on the non-private benefit of such products. Non-private benefits entail the production of benefits for those who consume directly and those who do not so consume. Cultural markets suffer from ‘market failure’ in that, given the existence of non-private benefits, a freely operating market will not sufficiently provide for the production of socially necessary goods (O’Hagan, 1998; Galloway & Dunlop, 2007). In the context of audiovisual cultural products, the non-private benefits are symbolic and are difficult to identify and thus quantify.

Cultural products have also been positioned as (part) public goods, or semi-public goods; that is, goods not destroyed by consumption and thus are available for all (Hesmondhalgh, 2013, p.115). For Hartley, Potts, Flew, Cunningham, Keane & Banks the debate around the public good nature of cultural goods is problematic in its conflation of the public good nature of the goods and their aesthetic value (2012), thus valorising a narrow form of cultural goods. Recognition of the symbolic role of cultural goods implies the need for state intervention to support the cultural industries. CPE calls attention to ‘the interplay between the symbolic and economic dimensions of the production of meaning (Murdock & Golding 2005, p.60).

To this end, a political economy of communications approach allows us to see the mass media as a commercial organisation for production and distribution of media as commodities, under the economic system of capitalism (Golding & Murdock, 1996; Mosco, 2009). However, the informational, cultural, and societal nature of audiovisual products has led to the recognition that it is not appropriate that production is left entirely to the vagaries of the free market. Thus, some form of state intervention is justified, whether in the form of licencing requirements, direct grants, of regulatory support in the

form of copyright laws or in the form of preventing corporate dominance through competition law enforcement, for example.

While many of the characteristics of commodified mass media echo a commodified film industry, in that capitalism tends towards maximisation of profit through the commodification process, it is necessary to distinguish the discourse around the informational nature of PSM and the cultural nature of other audiovisual industries. This is not to say that many of the debates within PSM (particularly around the complexities of state/market power, of increased marketisation, and commodification) have not informed this thesis, rather there is recognition that while the audiovisual or information industries are intertwined in many ways, the focus of this thesis is on those that are deemed cultural goods for the purposes of a tax expenditure regime. The audiovisual industries form part of a broad field of communications, with the caveat that they are 'different' in various ways from other fields such as Public Service Media (PSM) and other forms of communication. However, having argued above that PEC has, for the most part, taken sufficient cognisance of the entertainment and cultural role of media products, it is contended that the communicative/representational role of film (and other audiovisual goods such as TV and digital games) is insufficiently considered from a *policy maker's* perspective. Instead, culture is considered to have an extraneous, unimportant role in society. While it might be considered representational in theory, it is not protected, funded, historicised, or considered as part of national culture in the way that cultural heritage is. This thesis contends that questions of cultural value are crucial to an analysis of cultural policy as they are, in an era of economic-based justification for policy, pivotal to how we allocate and justify support for culture. To this end, this thesis argues that the examination of processes is manifestly suitable to further understanding of the complex and developing interactions between the economy and politics.

It is worth repeating Mosco's broad definition of political economy of communications (*the study of the social relations, particularly power relations, that mutually constitute*

*the production, consumption and distribution of resources'* (2009, p.24) at this juncture to see how it invokes a Marxian dynamic to the field of study through reference to social relations, which emphasises the interrelationships between state, market, society that are crucial to all aspects of communications. Mosco uses a theoretical framework of three 'entry points' of the processes of commodification, spatialization and structuration. He defines commodification as 'the process of transforming things valued for their use into marketable products that are valued for what they can bring into exchange' (ibid, p.127). Spatialization is, for Mosco, defined as 'the process by which mass media and communication technology overcome the constraints of geographical space' (ibid, p.128). Structuration is defined as 'the process of creating social relations, mainly those organized around social class, gender, and race' (ibid). What Mosco's (admittedly succinct) definitions illustrate is the significance to his approach of what he terms 'the ideas of social change, social process and social relations' (ibid, p.129) over and above what he sees as a more traditional emphasis on institutions and structures within political economy discourse.

## 2.4 The social processes underpinning political economy

Having set out the salient elements of political economy as a theory, and identified the rationale for establishing political economy of communications as an approach, this section unpacks the processes of commodification and spatialization, following Mosco, to emphasise the significance of societal processes underpinning the analysis carried out in this thesis. As Lipietz held 'if a regime of accumulation is to be realized and to reproduce itself for any length of time, there must also be institutional forms, procedures and habits which either coerce or persuade private agents to conform to its schemas' (1998, p.33). The examination of social processes does not ignore the significant role of institutions in media

production, but rather foregrounds the contingent and developing forces shaping such production.

### 2.4.1 The process of commodification of culture

A commodity is understood in the context of this thesis as something that is ‘an object outside us, a thing that by its properties satisfies human wants of some sort or another’(from Marx, *Capital*, cited in Appadurai, 1986, p.7). Audiovisual products have both a material use value, which may be informational, communicative, or meet desires. They also have, as commodities, exchange value in the marketplace. The process of commodification sees the ‘transformation of use-values of a commodity into exchange-values’ (Mosco, 2009, p.129). While cultural commodities may be perceived to have a ‘special’ character that sets them aside from ‘ordinary commodities’ and justifies an analytical separation, (Harvey, 2002, p.93) they are increasingly part of the capitalist system. Commodification is explored here in its significance to cultural products; tempered by the understanding that the cultural industries are subject to complexity, ambivalence, and contradiction as features of capitalist cultural production (Hesmondhalgh, 2019; Miège, 1987). The process of commodification is not necessarily negative; and is ambivalent, simultaneously ‘enabling and constraining, simultaneously productive and destructive’ (Hesmondhalgh, 2019, p.255, and see Harvey, 1989). For Marx, ‘exchange value is the only form in which the value of commodities can manifest itself or be expressed’ (Marx, 1887, p.28). Therefore, the exchange value of a cultural product is presented as the only value of note, in that it is the only one readily identifiable.

For Marx, exchange-value is ‘a relation hidden behind a material veil’ in what Prodnik describes as an ‘enduring mystification’ (2012, p.276). If the assessment of value ignores all values concealed within the commodity, then there is a lack of understanding of the social processes shaping the product commodified, which, given their meaning-making role, leads to a lack of understanding of the processes underpinning such very meaning –

i.e., the very essence of a cultural product. It must be acknowledged that Marx's work focused primarily on issues of labour in commodification - an approach that Lefebvre described as having a lacuna towards space (1991, pp.323-5). Appadurai identified a similar gap, holding that the concept of the commodity shifts away from what he considers Marx's assumption of the supremacy/significance of production, instead, defining the commodity as '*any thing intended for exchange*' (1986, p.9, his emphasis) thus moving away from exclusive preoccupation with product. This thesis does not focus primarily on labour issues within the audiovisual industries but does acknowledge their centrality to a political economy of cultural production. Instead, it focuses on the commodification of concepts of space, of culture and cultural value.

The relationship between the various values concealed within a commodity is ambivalent rather than clear-cut. To oversimplify, we can understand the use value of cultural goods to be equated with symbolic value, and the exchange value with the economic value. However, rather than equivalence, it is better to think of the relational (or 'co-constituted' Clark & Jones, 2011, p.294) nature of the concepts. Unpacking the relationship between cultural value and use value, between economic value and exchange value allows for interrogation of the social relations contained within a commodity (thus echoing Mosco's definition of political economy of communications and Lefebvre's understanding of spatialization as concerning the social relations between spatial dimensions). Thus, rather than oppositional, this thesis contends that both the exchange and use value of an audiovisual cultural product are co-dependent. State support for the cultural industries is justified by way of identification of both economic and cultural value. Therefore, any elision of cultural value is simultaneously problematic and deeply symptomatic of an uneasy marketisation of the substance that underpins exchange value.

A shift from an interrogation of use value to focus primarily on exchange value highlights the way policy measures contribute to the commodified forms of exchange relations and social values. The relationship between commodification and the changing

perception of exchange value and use value within cultural industries leads to a redefinition of how cultural products are understood concerning their role within society. For Gray, who conceptualises the commodification of cultural policy through the favouring of exchange value over use value in the creation, implementation and evaluation of policies in what he terms an ‘ideological re-orientation’ (2007, p.208) of the commodification thesis leads to ‘inexorable’ instrumentalism (ibid, p.204). His commodification thesis encapsulates an ideological shift, in a policy context, from concern with use values to over-reliance on exchange values, thus externalising the evaluation of policy in an instrumentalised fashion.

For Mosco, the concept of commodification underpins spatialization (Mosco, 2009). This thesis examines the commodification of culture within the S481 regime through an examination of the policy interventions in the State aid domain. An interrogation of the commodification of both national culture and national space (both are relevant to understand S481 fully) changes perceptions of what culture is for and what the state’s role is in relation to support thereof. This thesis brings into contact theories of commodification of culture (from Garnham, 2005 and Hesmondhalgh, 2019) with theories of commodification of space (Butler, 2012; Brenner, 2008; Elden, 2004; Lefebvre, 1991; Mosco, 2009), identifying the emergence of a hypercommodified/hyperspatialized cultural policy within the structure of S481 (Hadley & Gray, 2017).

## 2.4.2 The process of spatialization

This thesis uses spatialization to interrogate audiovisual industries policy in an Irish context. This thesis extends Mosco’s analysis of spatialization using Lefebvre’s work in order to critique what it identifies as the commodification of space (both the real space of production and the virtual space of representation) underpinning the operation of tax expenditure regimes for audiovisual industries. Spatialization can be used to interrogate the significance of geographic space as a constraint on the exploitation of capital, and in this context, through analysis of the operation of the availability of tax expenditures within an

Irish/EU context. Its use allows for thinking about the commodification of the nation-space through policy developments at national level, within a supranational policy framework.

For Mosco, political economy of communications has taken up spatialization 'chiefly in terms of the institutional extension of corporate power in the communication industry' (2009, p.158). Thus, much of the focus has been on interventions of multinational conglomerates via vertical and horizontal integration and their 'flexible and cost-effective' use of labour and capital enable transnational media firms to 'use the genuine multinational dimensions of their product, marketing, labor and financing to transcend the legal, regulatory, cultural and financial constraints of their home base' (ibid, p.161). Similarly, state subsidies to audiovisual industries allow for cultural producers to avail of the flexibility of international capital flows by actively facilitating production through grants, aids, and other benefits. Thus, we can extend the concept of spatialization to interrogate how tax expenditures can operate as a *draw* to transnational/international productions. It is not only that firms wish to escape the constraints of their 'home base', but also, they actively seek out favourable tax terms in other areas (for the audiovisual industries, such productions are variously known as runaway or footloose productions). Harvey also explores (via Marx and Lefebvre) how capitalism has overcome spatial (and temporal) barriers through his concept of time-space compression (Harvey, 1989), meaning that those who command spaces (i.e., those in power) can alter them in such a way as to make them more desirable for highly mobile capital, given the increased sensitivity of capital to changes in spatial issues. Harvey's detailed analysis of the space-time compression brought about by postmodernity is rooted in Marx's articulation of the annihilation of time and space and addresses the connection between space, time and money which express the social context in which they are embedded.

A cultural/creative industries discourse places emphasis on the categorisation of goods as more or less cultural, finding it problematic that the culture is 'hollowed out' and

emphasis is placed on the economic value thereof. This thesis argues that what is significant is *how* such industries are valued. Relying on economic values only to justify and shape policy interventions around the audiovisual industries is, it is contended, insufficient to take cognisance of the cultural value of such industries. Such cultural value is the very essence that makes them worthwhile of state funds, the non-private benefits, the positional stuff; howsoever it is defined, is, it is argued here, not taken sufficiently seriously.

This thesis addresses the commodification of not only the audiovisual product (ground well covered by many theorists) but also engages with the commodification of the audiovisual production *space*. S481 allows for a form of commodification of the audiovisual production space, commodified to attract the highest exchange value, whether in jobs, spend in Ireland or other economic benefits. While part of exchange value could be seen as use value, intrinsic values, instrumental values, the commodified approach is seen in the instrumentalisation of the production matters. This commodification of space is usefully theorised through Lefebvre who unpacks the constructed nature of space (1991). It allows us to open up the commodified product, to reveal the secret of production that has been concealed, and thus allows for interrogation of the social relations underpinning current audiovisual production practices – in this case, the commodification of culture for economic rationales.

This chapter addresses certain of the contemporary debates on the role of culture in an era of globalisation, through examination of the processes of commodification and spatialization. Critical political economy explores the problems of power in communications, that goes beyond the benign accounts of cultural exchange and the malignant nature of cultural imperialism. Rather, it allows for an understanding of the potential inequalities that shape content creation and exchange. The emergence of a neoliberal world order has led to the introduction of fiscal policies that actively encourage international production, such as S481. Miller's revisiting of the conceptualisation of the international division of cultural labour illustrates how the dominant cultural industries

(primarily the Hollywood production industry – but also applicable to the digital games industry) can take advantage of lower studio production costs in alternative locations (for example Eastern Europe), can avail of tax incentives across various EU jurisdictions (such as Ireland) and actively weaken organised labour and thus boost capital accumulation (Miller, 2016).

## 2.5 Key dimensions for analysis

Having emphasised the significance of social processes and relations to a political economy of communications approach, this chapter now turns to an examination of core concepts or dimensions from political economy theory that help develop an understanding of the economic and political aspects shaping cultural and media policy. These concepts are seen as circular, overlapping, and interrelated, a view which is in keeping with a Regulation School/political economy of communications approach which emphasises the historical development of social and political processes which lead to the emergence of institutions of capitalism. The first concept explored in this section, that of the shift to a creative industries discourse (and beyond) highlights the changing conceptualisation of culture in the eyes of the state and is seen as foundational to a discussion of the perception of the changing role of culture with policy discourse. The second concept is the complexity of interrogating a national culture in an era of globalisation. Having established the uncertain and loaded terminology within national (and EU) policy approaches towards cultural and creative industries that are subject to global flows, this chapter explores the (inevitable) trend towards marketisation (that is, the ideology of the superior efficiency of the market) of the cultural and creative industries, which is, it is contended, a distinctive feature of the contemporary period of globalisation. The chapter then drills down into the concept of instrumentalism of culture and explores why and how culture has been marked with an

increasing reliance on exchange values, i.e. how has culture been instrumentalised and marketised in an era of global flows.

## 2.6 A telling shift in nomenclature: from cultural industry to CCI:

Historically, the relationship between political economy of communications and cultural studies has been subject to ‘a mythical divide’ (Fenton, 2007). However, the artificial dichotomy approach fails to use the perceived theoretical differences productively to further a useful interdisciplinary approach. Political economy of communications is fundamentally concerned with social processes. An engagement with cultural studies theory can assist in understanding those processes. The concept of culture is contested, and the industries of which they form part are similarly ‘complex, ambivalent and contested’ (Hesmondhalgh 2019, p.8 relying on Miège, 1987). Tracing the broad categorisations of how the industries that produce meaning-making texts have been defined over time illustrates the shifts in understanding of culture within society. It is taken as a given that the audiovisual industries, as media products, are cultural, within common definitions of those terms. Therefore while the debate around what constitutes the cultural industries is significant in that it indicates, within policy and industry circles at least, where priorities lie, there is, an assumption that film and (certain) television programmes are within the cultural industries (with the acknowledgement that TV has had to fight for that position at times).

The shift of nomenclature from cultural industry, then cultural industries and on to creative industries/cultural and creative industries (CCI) (and onwards) is prevalent in policy discourse around the audiovisual industries. The singular ‘cultural industry’ concept is primarily associated with the Frankfurt School of Critical Theory and addressed the loss of critical meaning of art under capitalist democracy (Adorno & Horkheimer, [1944] 2006). Imbued with political meaning, given their position as exiles from Nazi Germany, they

pointed to what they saw as a culture in thrall to commercialisation, thus problematically assuming a coherent ideologically driven symbolic production system. The significance of a shift to the plural form of cultural industries is a rejection of the assumption by Adorno & Horkheimer of a unified ideology driving the cultural industry. Instead, cultural industries theorists such as Miège viewed the commodification of culture as a much more ambivalent process that positions cultural industries as contested and part of a realm of continuing struggle (Miège & Garnham, 1979). Of particular significance is the emancipatory potential seen by Miège and others in the shift from high art to a more common conceptualisation of culture (Garnham, 1977; Miège, 1987). Building on Adorno and Horkheimer's notion of the industrialisation of culture, Hardy holds that CPE rests on a larger claim, that we must understand production to understand audiences and content, invoking Murdock and Golding's concept of the traceable consequences of different ways of financing and organising cultural production (Murdock & Golding 2005 in Hardy, 2014a, p.10).

The examination of creative industries discourse (Garnham, 2005; Hesmondhalgh, 2019) is key to understanding the justification and evaluation of cultural and creative industries policies and in particular, the values (exchange value/use values & economic/cultural values) that both implicitly and explicitly underpin the shaping of the policy design implementation and evaluation. The descriptive term 'creative industries' was first used in an Australian policy document in 1994, *Creative Nation* and adopted by the UK Department of Culture Music and Sport (DCMS) in 1997 and extended and refined in UK policy discourse (Garnham, 2005; Nisbett, 2013).

The UK DCMS defined the creative industries as 'those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property' (DCMS, 2001, p.5). The apparent link between creativity, wealth, job creation and exploitation of intellectual property is problematic as it subsumes instrumentalisation into cultural policy,

unproblematically taking wealth creation for granted as the means to an end. At the time, the DCMS was a new government department looking for validation and wanted to demonstrate how significant an economic force cultural production had become. The creative industries concept extended to creative services such as design, architecture, and advertising and IT. This shift spoke to prevailing political agendas that were in line with neoliberal policies aligned with vested commercial interests. The unquestioning equation of cultural practice with the exploitation of intellectual property ignores the broader role of culture in society. Garnham describes the shift in terminology as a way for the sector to share ‘the unquestioned prestige that now attaches to the information society and to any policy that supposedly favours its development’ (2005, p.20). This shift reflects a policy change from issues around what art should be funded, and related questions of diversity to a more economic approach, viewing arts as a source of economic value rather than aesthetic value with a focus on the creation of intellectual property.

The academic discourse around the shift from cultural to creative industries focuses on the role of culture in a globalised economy, addressing issues of production, labour, representation, diversity and the role of the state (Durrer, Miller & O’Brien., 2017, p.22). For Hesmondhalgh, the cultural industries have ‘moved closer’ (2013, p.1) to the centre of economic activity while remaining ‘complex, ambivalent and contested’ (ibid, p.5). The origin of the term creative industries has political links (Garnham, 2005; Schlesinger, 2007) in a pragmatic fashion formed in the ‘white heat’ of political survival (Redhead, 2015, p.166). Many academics highlight the neoliberal aspect of creative industries discourse (McGuigan, 2004; 2005, Newsinger, 2015; O’Connor, J., 2010). Despite the academic misgivings, the creative industries approach appears to have been adopted in Ireland and UK by cultural policymakers as evidenced by what seems to be, at times, an uncritical focus on the economic impact of cultural policies, with a token nod to the non-economic impact, as will be explored in more detail in subsequent chapters.

Simultaneously and contradictorily, creative industries discourse has a lack of focus on cultural value but a concentration on 'excellence', which refocuses on the high/low art distinction that had been problematised by Adorno & Horkheimer. A consequence of the shift is the instrumentalisation of culture, seeing public subsidy for arts justified for investment into commercial economy and, to some extent, for social welfare needs. A lack of concern with cultural value 'leads to a focus on the kinds of cultural production most amenable to economic rather than cultural returns' (Banks & O'Connor, 2009, p.368). The knowledge-based economy concept of creative industries has no specific cultural content and subsumes the cultural sector and cultural objectives within an economic agenda to which it is ill-suited (Galloway & Dunlop, 2007). The foregrounding of economic drivers is alluded to by both Bell and Oakley (2014) and by Hesmondhalgh and Pratt who hold cultural and creative production was deemed 'economically relevant in an era when policy was judged primarily in terms of its fiscal rewards' (2005, p.5). Thus, academic discourse around the creative industries identifies economic benefit as a driver of policy at the expense of more indeterminate societal and cultural values.

## 2.7 The national cultural-space in a globalised era

A political economy of audiovisual industries and of cultural policy necessarily engages with matters beyond the borders of the nation. Cultural production and consumption occur in a context that is increasingly affected by intensified internationalised flows. Various terms are used to capture this phenomenon, brought about by economic, technological and political shifts, from globalization, through Lefebvre's mondialisation, to the term preferred by Hesmondhalgh in his analysis of cultural industries: internationalisation (Hesmondhalgh, 2019; Lefebvre, 1991). Some theorists propose that the role and power of nation-states towards the audiovisual industries have been reduced in the face of transnational, global,

supranational, and international forces (Castells, 2004; Giddens, 1990; Hardt & Negri, 2001). However, while there may be some merit in arguing that the role of the nation-state has changed in light of increased global and transnational flows, this thesis argues for recognition of the continued importance of the nation-state in many ways, albeit in ways that may have changed in light of political and social changes.

In the context of the audiovisual industries, there is a continued evident dominance of a Hollywood presence and in some respects, a relative decline in domestic film industries, a situation that has led to a repositioning of indigenous industries as simultaneously protective of national culture but also engaging in pursuit of transnational opportunities for creative and commercial collaboration. Globalisation issues lead to challenges for audiovisual policies at national and EU level, primarily around the continued dominance of Hollywood. Cultural imperialist arguments hold that concentration of ownership and distribution leads to lack of diversity (Guback, 1969; Schiller, 1976); however, counterarguments point to the complex relationship between Hollywood and other cinemas of the world and note the European origin of many of its influential directors. The concept of 'glocalisation' (Robertson, 2012) counters these negative tendencies, aiming to make explicit the heterogenising (as opposed to homogenising) aspects of globalisation, in which the relationship between the local and the global, rather than being one of polarity, with the local as resistance to the global, is imbricated within the global. Hesmondhalgh frames these societal shifts as an intensification of internationalisation, a term he prefers to decipher the various changes that are shaped by, and shape, the cultural industries (2019, pp.374-382). Whatever the terminology used; it is evident that borders are increasingly porous.

This thesis particularly emphasises the continued significance of the spatial dimension within this discourse. This dimension has been acknowledged by various commentators, including Castells, 2004; Giddens, 1990; Hardt & Negri, 2001; Harvey, 1989. These various theorists, while they may disagree in detail 'have all identified the

control of space and time as the defining abstract principle behind globalization' (Sinclair, 2004, p.67). For Sinclair, the nation-state remains 'the effective unit of economic, political, and sociocultural authority in the world' (ibid, p.79). Thus, while economic, technological, and political shifts have brought about changes in the global audiovisual industries, the social, political, and commercial tendencies have not necessarily led to a flattening of differences.

The complexity of national incentives for audiovisual production in an 'international' era has been addressed by some. For Curtin, transnational flows of media imagery facilitated by marketisation tendencies have led many national governments to put in place policies to stimulate local production in what he terms 'transnational media capitals' in the context of creative industries (2016). Garnham takes issue with what he conceptualises as the cultural imperialism theses of Guback and Schiller, holding that such a thesis 'no longer holds' and instead 'the evidence is that as countries get richer they want and can afford to support more indigenous national or regional production' concluding that 'while global diversity overall may decline, at the same time, owing to the operations of economies of scale and scope, national diversity may rise' (2014, p.46). However, Garnham conflates increased production with increased cultural diversity (albeit acknowledging his pragmatic use of 'may' rather than 'will' rise), a presumption challenged by various theorists, including Hardy (2014a) as outlined previously. We can question Garnham's assumption as to the axiomatic nature of diversity. Instead, production (and, in an era of Netflix – distribution) is increasingly dominated by multinational conglomerates who are acutely enabled to take advantage of tax incentive policies such as S481.

Cultural globalisation can thus be conceived of as having contradictory consequences, with the simultaneous displacement and reinforcement of the national. This is evident through the opening up of jurisdictions for production and consumption to avail of transnational flows of capital and labour, and a simultaneous knowing use of the nation-state to claim a cultural uniqueness. Iwabuchi describes a form of 'inter-national

administration of cultural diversity' with the hyphenated 'inter-national' underscoring the reworking of the national in tandem with the intensification of globalization in media culture (2018, p.3). However, while the national has been reworked, it behoves the question as to what form of the national, and under what conditions, is it still operating.

The globalisation or internationalisation of the audiovisual industries has added a layer of complexity to justifications for public support of a national industry. The state intervention in audiovisual policies in an Irish context must be contextualized in light of what Puppis terms the 'structural peculiarities' (2009, p.4) of a small media system within a small state context, further complicated by the shared language with both the UK and the USA. For Puppis, 'the desire to have domestically and internationally competitive media might undermine the protection and promotion of diversity' (ibid, p.15). The relationship between the nation-state and the supranational institutions can be seen as one of continuous negotiation rather than necessarily one of struggle.

Cinema has been an inherently transnational medium from birth (as acknowledged by Higson (2010)) and, through its form and representative possibilities, is engaging with and allowing for a multiplicity of forms of representation. While there may be concerns that the industry is dominated by a ubiquitous Hollywood industry, through both exhibition and through domination of form the multiplicity of forms of outputs, the strong industries in many nations and regions (for example the Nollywood and Indian industries) and the glocalisation of genre are all evidence of a cacophony of voices. While the earlier interventions of various writers in identifying a shift to a transnational cinema are of interest, their approach minimised the complex nature of the relationship between cinema and the nation-state in the oft-taken assumption that the transnational worked to negate or replace the national. More recent work has acknowledged a more detailed understanding of the multiplicity of relationships between the global and local, the national and transnational in a way that moves away from a binary conceptualisation in a recognition that the relationship is not always formulated as a static dominant versus a minor other.

Schlesinger's intervention in the debate on the construction of the nation and the possibility of a national cinema focuses primarily on issues around consumption of film, illustrating how the consumption of Hollywood fare outside the USA complicates what we perceive of as the notion of a national cinema (2000). Schlesinger took issue with Benedict Anderson's internalist view of mass communication within the nation-state. For Schlesinger, the central concerns of nation theorists towards communications and their role in the national imaginary was echoed in much writing on film studies and the nation expressed as a concern with 'how – if at all – production, circulation and consumption of the moving image is constitutive of the national collectivity' (ibid, p.24).

Harvey's conceptualisation of the spatial fix offers a way of understanding the role of space within globalisation (2001). The production, reproduction and reconfiguration of space are central to Harvey's understanding of the political economy of globalisation. According to Harvey, 'the contemporary form of globalization is nothing more than yet another round in the capitalist production and reconstruction of space' (ibid, p.24) thus invoking Marx' law of the annihilation of space through time to theorise innovations in technology. The term 'spatial fix' describes what he terms 'capitalism's insatiable drive to resolve its inner crisis tendencies by geographical expansion and geographical restructuring' (ibid, p.24). Applying this to an understanding of tax expenditures allows for an understanding of the production of space under capitalist social relations. Ireland's active encouragement of global expansion of film production, by structuring of S481 reliefs, can thus be theorised as part of globalised capitalism.

So far, we have interrogated the role of the state in formulating audiovisual policy in a context that is supra/national, globalised and transnationalised through increasing flows of spatialised commodification. This thesis examines, amongst other questions, how nation-states use cultural policy for non-economic objectives, and, in particular, how audiovisual culture is used in forming and representing a nation. The concept of culture is

also used to justify and frame national achievements. Culture is used both implicitly and explicitly as a form of soft power to define, shape and represent the nation.

Volkerling's development of a theoretical framework to describe the shift from an arts-based model to a creative industries model associates this new approach with a rhetoric of policy as a 'territorial or spatial concept' (2001, p.440). This shift is marked by reliance on data on employment to establish a legitimacy for creative industries policy, which is complemented by what Volkerling describes as 'a weighty type of symbolism' (ibid, p.445) that lauds national identity through creative industries. The adoption of the brand "Cool Britannia" in mid-1990s UK a prime example of such symbolism. The appropriation of cultural activities to establish a particular manifestation of the nation-state and national identity is used to justify the granting of a generous tax expenditure to the audiovisual industries in Ireland. The use of a nationalist framework for the justification of cultural policy is made more complex by an over-emphasis on economic rationales. Such an approach needs to be put in the context of both Ireland's EU membership and also the context of the operation of audiovisual production industries within a globalised context.

For Hesmondhalgh and Pratt, the cultural industries were a way of reinvigorating post-industrial national economics, taken up by an Australian Labor Government, Canada, New Zealand, and the UK (2005, citing Volkerling, 2001). While the UK used the cultural/creative industries to exploit intellectual property (Garnham, 2005), other countries including Canada, Australia and New Zealand developed more coherent approaches that recognised economic value of the cultural industries but also recognised the importance of the construction and defence of a national culture.

This thesis interrogates the fluctuating role of the national as a driver of audiovisual industry policy within a context that is transnational, global (while not conflating these terms) and supranational. While it is acknowledged that there have been changes to the position of the nation-state in an era of globalisation, this thesis contends that the complexities of globalisation and transnationalism give rise to contradictory forces that, like

the operation of capital, are sufficiently flexible to allow for simultaneous transgression of national borders and reification of the nation-state. The problematic taking-for-granted of the concept of the nation-state is acknowledged here (following Beck's concept of the 'container model' of the nation-state (2006)) an approach which assumes the supremacy of the organisational approach of the nation-state.

From an audiovisual production policy point of view, a nation-state approach is effectively unavoidable, given the national nature of the tax expenditure legislation under analysis. Nevertheless, the *privileging* of the nation-state is put into question by the analysis of the nation-state policy in the context of a supranational dimension. In a context of evaluation and justification of cultural policy, the very role of a national policy is complicated by Ireland's membership of the EU. As Crusafon holds, the European audiovisual space is the product of two factors, contained 'by the external border set by the common regulatory framework' and 'the sum of the constituent national audiovisual spaces' (2015, p.82) thus illustrating how analysis is required from two perspectives, the European and the national dimension. As Bergfelder's intersection in the debates on European cinema holds, European cinema is marked by a 'fluidity of identities' rather than 'narratives and discourses of containment' (2005, p.329).

The concept of "nationing" encompasses an interrogation of the changing role of culture in constructing a nation (Rowe et al., 2018a). Defined as the objective of developing a national culture through the deployment of policy, they identify an increase in emphasis on the economic impact of culture when measured against the foundational Australian *Creative Nation* (1994) policy document. They hold that making culture is increasingly likely to be a by-product of economic policy rather than an end in itself (thus, in policy parlance from Gray and others, instrumentalised). For them, recent developments have led to a situation where 'nationing loses the connection to its earlier purpose of nation formation. Rather, it is a marketing strategy, a mode of political and ... commercial performance' (ibid, p.4). They explore the tensions between overlapping and often competing influences,

which they describe as national culture and cultural identity versus market-oriented imperatives fuelled by economic integration in an age of increasingly globalised flows of capital, people, and cultural texts. For the authors, the concern is that discourses of nationing are losing their connection to the project of building an imagined community and have been replaced by the prioritization of economic development, which culture of secondary importance.

## 2.8 The concept of marketisation of culture

So far, this chapter has considered the significance of the broad shift from cultural to creative industries within policy and academic discourse to highlight how the processes of commodification and spatialization can help us understand the conceptualisation of the audiovisual industries from a national and global perspective. This chapter now considers the concept of marketisation within this context. In theory, the concept of the free market means that the operation of the market *in an ideal state* is the most efficient and suitable method of distribution of resources and answering human needs. However, no such ideal state exists and thus even de-regulated economies, such as the USA, require a significant amount of regulatory input to support the practical operation of a free market.

Hesmondhalgh prefers the term marketisation to ‘de-regulation’ or Murdock’s proposed ‘reregulation’, defining marketisation as referring to ‘the process by which market exchange increasingly came to permeate the cultural industries and related sectors’ (2019, p.142).

While examined by him primarily in the context of broadcasting and communications policy, he identifies a cultural marketisation that consciously brings about changes that favour larger cultural corporations operating within the cultural industries. The marketisation of PSM and other communications sectors has been analysed by various theorists (Hardy, 2010; 2014a; 2014b; Iosifidis, 2010; Murdock & Golding, 1999; Throsby,

2010) who identify a foregrounding of the primacy of economic goals within the communications sector, at the expense of social goals. The positioning of cultural goods as commodities under the capitalist system means they are ‘necessarily put into an exchange relation with other commodities’ (Prodnik, 2012, p.280). The dominant tendency since the 1980s has been the worldwide pursuit of marketisation via deliberate and explicit public policies (see McChesney 2003; Hardy 2014a). Hardy points to the contradiction highlighted by CPE scholars; between the neoliberal path espoused for others and what he terms the ‘massive state support and subsidies’ for successful cultural industries such as the US film industry (2014a, p. 179).

The process of marketisation is stimulated by several factors, including the liberalisation of markets, the privatisation of media companies, deregulation of the sector and a trend towards commercialisation (Murdock, 2003). The consequences of marketisation within the EU are seen in the increased orientation of audiovisual policies towards both economic and industrial objectives (Collins, 1994; Sarikakis, 2007b, 2012; Schlesinger, 2017). There has been disquiet expressed within academic circles around the increased marketisation of cultural goods with an identifiable ‘wave of critical reflection’ around the overly economic approaches to evaluation of creative industries (Belfiore, 2018, p.2). The elision of less quantifiable goals such as cultural and social goals arises as a consequence of the marketisation of culture and underpins policy developments towards the audiovisual industries at national and EU level.

This shift to marketisation occurs within a broad shift towards neoliberalism. For Davies, the role of the state in a neoliberal environment is expressed as a form of ‘sovereign-economic ambivalence’ (preface, 2014, unpaginated) that was identifiable in response to the financial crisis in 2008. Davies broadly defines neoliberalism, pointing out that it is not a unified doctrine, as ‘an attempt to replace political judgement with economic evaluation, including, but not exclusively, the evaluations offered by the market’ (ibid, 2014) further stating that ‘neoliberalism is the *pursuit of the disenchantment of politics by economics*

(ibid, author's emphasis). The application of Davies' approach to neoliberalism to cultural policy discourse by Oakley and O'Connor highlights the significance of marketisation within such discourse (2015). They hold, citing Davies, that neoliberalism 'in its absolutely utilitarian positivity it can admit of no ground, other than "efficiency", on which to decide what is legitimate, what is of common value'(ibid, p.9) thus viewing the creative industries as nihilistic.

It is evident that both national and EU audiovisual policies over the last thirty years (or so) have increasingly sought evidence of public value/cultural value in purely economic terms, a move that can be understood within the concept of marketisation (Hesmondhalgh, 2019; Howarth & Teichmann, 2018, p.273) and is linked to the increased prevalence of neoliberalism in many jurisdictions (including Ireland and the UK). While the EU has in the past approved of State aids under a cultural rationale, a neoliberal perspective has meant a shift to a more marketised rationale for cultural supports. This shift has been identified by various commentators including in Murchetz et al.'s interrogation of State aids for film. They hold that evidencing the economic impact of film subsidies has become 'a first-order rationale' (2018, p.15) for state intervention. Hesmondhalgh points to the increasing significance of international policymaking institutions (including the EU) within what he terms the 4<sup>th</sup> wave of marketisation within the cultural industries. He identifies a wave of 'deregulation, re-regulation and cultural marketisation' (2013, p.126) within the cultural industries. This understanding echoes that of Yúdice 'culture as a resource' concept where he argues that the role of culture 'has been expanded in an unprecedented way into the political and economic at the same time that conventional notions of culture largely have been emptied out' (2003, p.9) meaning that culture 'is no longer experienced, valued, or understood as transcendent' (ibid, p.12). This thesis focuses on the role of the state in the de and re-regulation and support of the audiovisual industries through the provision of a favourable taxation regime for a specific manifestation of production.

## 2.9 The instrumentalisation of cultural value

Following the discussion of marketisation of culture set out above, it is useful to consider the concept of instrumentalism. An increasing reliance on exchange values in the cultural context has led, according to Gray to an instrumentalisation of culture (2000; 2007).

Instrumentalism is defined as the tendency 'to use cultural venues and investments as a means or instrument to attain goals in other areas' (Vestheim, 1994, p.65). Gray describes the 'attachment' of the interests of other non-cultural policy areas to cultural policy, such as employment and health (2002, p.80). Debates around instrumentalism within the cultural and creative industries have shifted from a focus on the causes of instrumentalism to examination of how it plays out in policy circles, in an attempt to move to a more productive understanding (Belfiore, 2003, 2018; Gray, 2007; Volkerling, 2001). For Gray, the shift to what he terms a commodification thesis has inexorably led to an instrumentalisation of cultural policies with 'consequences for both their design and for the intentions that underlie them' (2007, p.203). He considers that there has been an ideological reorientation leading to a shift in the conception of value of the cultural industries from use-value to exchange-value that can be theorised under the process of commodification.

The conceptual problem within instrumentalism is that it sets up an artificial divide between intrinsic and instrumental cultural value. Given that most cultural policies have some form of instrumental goals (Hesmondhalgh, 2019, p.190, and see Gibson, 2008; Throsby 2010); the outright rejection of instrumentalism can be reductive. A certain level of pragmatic instrumentalisation is necessary for the audiovisual industries, given the significant costs in production. Those within cultural institutions do not reject instrumentalism with Nisbett calling for a rethinking of instrumentalism to credit the sector with power and agency (2013). This pragmatic approach is cognisant of the needs of policymakers to justify the allocation of scarce resources. However, this thesis contends

that it is problematic when instrumentalism is accepted as a policy norm within policy formation and evaluation in a way that lacks critical analysis of the values underpinning such policies.

The recognition of the various powers (state, market, societal) shaping policies affecting the cultural industries is evident in the discourse around instrumentalism. For example, Belfiore's work on instrumentalism focuses on the prevalence of justifications for public subsidy of arts and the cultural sector which rely on rhetoric around alleged transformative power of arts and consequent positive social impacts (2009) and contends that cultural value is 'shaped by the power relations predominant at any one time, and is a site for struggles over meaning, representation and recognition'(2018, p.2). Despite the increasing acceptance of such instrumentalist-based approaches at policy level, discourse within academic circles has questioned the reliability of the methodology of assessment of instrumental social benefits (Belfiore, 2003; Gray, 2007).

Hadley and Gray extend the logic of instrumentalism to interrogate cultural policy developments in a Northern Irish context, asking whether the emphasis on instrumental efficacy of cultural value has led to a position where 'considerations of cultural value are effectively irrelevant' (2017, p.96). While instrumentalism sees cultural policy as a means to non-cultural end, they propose the concept of hyperinstrumentalism that is *only* concerned with ends. While their analysis of cultural policy in Northern Ireland is within a particular political context, it is a useful approach to apply to an Irish context. Similarly, McGuigan criticises the relationship between neoliberalism and cultural policy calling for a 'critical and reflexive cultural policy analysis' (2004, p.22) that questions the instrumental thought at play in cultural policy approaches that over-rely on economic rationalisations for justifications. For McGuigan, problematically, 'cultural policy has been rethought in such a way that it no longer requires a specifically cultural rationale' (ibid, p.14) (thinking that has been extended to its utmost by Hadley and Gray's concept of hyperinstrumentalism).

## 2.10 The concept of causality and value

A certain hollowness permeates much the discussion of the processes of commodification and spatialization and the concepts of marketisation, globalisation and instrumentalism. It is understood that policy is instrumentalised, attached, marketised, commodified, and spatialised, to highlight economic value over cultural value, but there is in that understanding, it is contended in this thesis, a flawed assumption. It is unquestioningly assumed that culture has a value of some sort. This assumption tends to infer a direct causality to ensure there is an exchange status between culture and value. It is contended by this thesis that the concept of causality, that is, the existence of an attributable cause and effect, is implicit in the discourse on instrumentalist views of culture. The issue of causality (i.e., where a chain of events can reliably be led to lead from cause to effect) is rarely addressed in the policy discourse on the value of the audiovisual industries. The effectiveness of policy in achieving instrumental goals is in doubt, according to Gray, given the key difficulties confronting such utilisation of culture, including problems of causality and attribution. He holds that while at best it may be possible to identify certain contributory factors that allow for identification of the context within which policy actors make choices, this does not demonstrate the existence of an 'unambiguously cultural causality to choice' (2009, p.577). This thesis contends that attempting to ascertain any forms of value in cultural industries is suffused with difficulty, given the lack of causality, subjectivity, and unquantifiable nature of cultural value.

A discussion of the instrumentalism of culture opens up thinking around the values underpinning culture. As we have seen, the commodity is the central element of capitalist society in all aspects. It is necessary, therefore, to unravel the values expressed within the commodity-form. As Harvey holds:

Money lubricates exchange but above all it becomes the means by which we typically compare and assess, both before and after the fact of exchange, the value

of all commodities. Plainly, since the way we put value on things is important, an analysis of the money form and the consequences that flow from its use are of paramount interest (1989, p.100).

This section picks up Harvey's point about 'the way we put value on things' to explore the perceptions of value in cultural industries. The use value and exchange value contained within cultural goods can be perceived of as relational rather than oppositional.

This thesis approaches the Irish S481 tax expenditure with the supposition that it is, akin to other elements of the cultural industries, subject to forces of marketisation, commodified, and instrumentalised, subject to the caveat that cultural industries policy is, like capitalism itself, complex and ambivalent. It is accepted that cultural value and economic value are not oppositional, but dialectical in that they inform and derive value from each other. The supposition that an economic logic addresses only costs and income and a cultural logic only addresses meaning-making is overly simplistic, and thus this thesis engages with the understanding of the contested nature of value within the cultural industries.

It is accepted that quantifying cultural value is a difficult, if not impossible objective. Stevenson describes it as 'a fool's errand' and calls for a shift away from attempts to capture 'an absolute and transcendent value unique to the arts and culture' (D. Stevenson, 2017, p.181). O'Brien acknowledges the complexity of measuring cultural value in his report for the UK DCMS pointing to the 'conundrum' of proving value in a way that can be understood by policymakers (D. O'Brien, 2010, p.4). Other approaches include Dekker's 'valuation approach' which acknowledges the special position of cultural goods as symbolic goods (2015). Hutter and Throsby refuse to treat quality as an exogenous variable, or as a product characteristic decided upon by the producer as traditional economic models but highlight the importance of the subjectivity of taste (2008).

It is contended by this thesis that there is an identifiable evolution of the binary between culture and economic value within the audiovisual industries in alignment with a

broad shift to neoliberalism. Hylland & Bjurström consider the interaction between aesthetic value and ‘political, societal and economic value within cultural policy’ (2018, p.191) framing the debate around the concept of incommensurability (meaning that tension arises between the comparison of different concepts, which cannot be judged by the same standards) which may explain many of ‘the dichotomies, paradoxes and dilemmas that are revealed’ (ibid, p.201) within cultural policy, given that it is attempting to capture industrial and cultural values within one policy.

A critical political economy approach allows for unpacking of the social processes shaping the economic and cultural role of audiovisual cultural products in our society – as both representational and industrial. Given that cultural products have a dual function, as both tradable economic commodities and as products with a cultural function, a focus on economic rationales may obscure cultures ‘other vital roles’ to society (Bell & Oakley, 2014, p.5). There are questions about the instrumental legitimisation of state funding of culture that is increasingly found in the creative industries discourse (T. B. Hansen, 1995; Peacock, 1993). The various approaches to evaluating culture acknowledge (for the most part) the lack of fixity in ascertaining the cultural value of cultural industries.

It is possible to identify some tendencies in the varied approaches to ascertaining and evaluating the value of the cultural industries. For the most part, they identify the problem in attempting to capture cultural value (identified by Angelini & Castellani, 2019; T.B Hansen, 1995; Holden, 2006) and critique an overly economic approach. However, it is problematic that some accept that *economic value* can, for the most part, be clearly ascertained (Angelini & Castellini, 2019). Instead, this thesis approaches the concept of value within cultural industries as something difficult to evaluate, *both* from an economic *and* a cultural value perspective.

Economic analyses vary both as to what is included in the evaluation and as to methodology. For Hansen, economic analyses tend to justify investment by government in arts because of the *economic* return, an approach that does not take account of the ‘*purpose*’ of

the activity (1995, p.309, emphasis in original). This approach implies a risk of focusing on cultural events with the most significant direct economic impacts. Also, difficulties arise in translating coherent values into ‘precise policy objectives’ (Peacock, 1993, p.1) something that echoes the complexity of causality identified as crucial by this thesis - how can we ascertain that a policy has met objectives if we cannot trace causation?

Under the umbrella of the DEMOS group (Holden, 2006) suggests a triad of values, namely intrinsic, institutional, and instrumental. While this is formulated through what he acknowledges as an overly narrow conception of culture (including arts, museums, libraries, and forms of heritage that receive public funding), the approach has merit in moving away from the intrinsic – instrumental binary. For Holden, intrinsic values have the capacity and potential to affect us (2006, p.15). However, we must keep in mind Flew’s misgivings around intrinsic value, which he holds to be an artificial construct that is ‘itself an artefact of cultural and historical forces’ rather than ‘a moral absolute that is somehow subverted by the preponderance of market relations’(2012, p.8). Institutional value is, for Holden, ‘rooted in the ethos of public service’ (2006, p.17) and emanates from organisations’ engagement with their public. This is Holden’s point of departure, in that other measures of cultural value rarely propose a separation from institutional and instrumental. From one perspective, institutional value as a goal is relatively limited in scope in its application within the audiovisual industries (given the wider range of institutions and stakeholders within an interest in such industries) and can imply an elitist or narrow evaluation of culture for arts organisations.

On the other hand, it is fruitful to consider extending the recognition of institutional value within culture, using Holden’s approach, to the promotion and recognition of a nation-state or region, through a form of self-representation or soft power. Thus, it is possible to theorise the state’s promotion of audiovisual arts as supporting a form of institutional (self) value. This approach was unquestioningly adopted by cultural policy consultants Olsberg SPI to evaluate cultural value in Australia, so is of particular

interest from a policy perspective (2016). The extension of considerations of institutional value in an analysis of the ‘worth’ of S481 and similar tax expenditures within an EU context is significant and is explored in further detail in subsequent chapters.

Thus, this thesis identifies a significant shortcoming in current evaluations of cultural policy, that of requiring and ascertaining causality. Holden’s approach acknowledges the ‘potential’ in culture’s instrumental value (2006, p.17), an approach that acknowledges the uncertainty of a ‘return’ on a policy investment. It has echoes in Klammer’s economic, social, and cultural conceptualisation (2017), where cultural value is accepted to be subjective and personal. The nature of policy discourse is that policies require justification, often linked to perceptions of being value for money. However, the contested nature of cultural value means that it is difficult, if not impossible, to fix on standardised ways of measuring cultural value, and then difficult to impute causality to a policy measure. The complexity of measuring cultural value is affected by the destination of the measurement – if it is for the cultural sector or policymakers (see Ejgod, 2019). As O’Brien holds ‘it is only by fully articulating all forms of the benefits of culture, using the language of public policy and cultural value, that funding decisions can be made that are acceptable to both central government and the cultural sector’ (D. O’Brien, 2010, p.5).

A promising approach is taken by Klammer’s ‘value-based approach’ (2017). Klammer’s approach is self avowedly polemic, provocative, and critical of the neoliberal perspective which ‘breathes instrumental reasoning’ (ibid, p.ix), albeit his work in this area is, according to him, as yet incomplete. He intends to offer ‘a substantive, a quality-oriented approach that is so obviously needed in the realms not only of the arts, the sciences and religion...’ (ibid, p.xi). He foregrounds the message that ‘culture matters,’ i.e., that culture (in all its manifestations, including anthropological and cultural industries) is central to considerations of value (ibid, p.12). Klammer acknowledges that the value-based approach faces a difficulty in the context of ‘the prevalence of the instrumentalist way of looking at the world’ (ibid, p.192). While offering an in-depth critique of traditional approaches,

Klamer does not offer specific solutions to the conundrum of how to value culture. For Klamer, instrumentalism is too prevalent, and thus we need to pay more attention to what he describes as social logic, i.e., what values underpin life. There are echoes of Bacchi's WPR approach here.

Another useful recent intervention in the debate on cultural value is that from an Australian perspective as set out by Meyrick, Phiddian and Barnett (2018a). Arising out of a *Value of Culture* project in Adelaide (Laboratory Adelaide), the researchers initially set out to find a better way of communicating the actual value of arts and culture. However, their aim shifted (reflecting the complexity of the research) to instead '*change the conversation around the evaluation of culture*' (ibid, p.xxvii, emphasis in original). Also echoing Bacchi, for Meyrick et al. asking what value culture has is in itself a meaning-making act (pp.4-5). They shift focus from measurement methods to how culture 'is talked about and how it talks about itself' (p.20). Their approach may not have answers (akin to Klamer's approach), but it flags that asking the correct questions can bring clarity to policy aims and objectives. For them, the answer to the question of the value of culture depends on the narrative underpinning the policy.

They take a critical stance to the increasing tendency towards metrification of evaluations of arts and culture. The authors address the question of not only why culture is significant, but also how the methods of evaluation of culture are worthy of consideration and are, of themselves, non-neutral. The use of metrics such as Cost-Benefit Analyses (CBA) and Key Performance Indicators (KPI) to quantify the value of culture may ostensibly be understood as neutral and thus easier indicators of cultural value for policymakers, however, they are of themselves political. Data is not neutral, not comprehensive, not benevolent, and not consistent (the four 'lies' underpinning the rhetoric of data as outlined in Meyrick and Barnett's follow up '*After What Matters*', 2018). Their approach interrogates what we can learn about the current necessity of proving that

culture is valuable, that culture is measurable, and that culture needs to prove its worthiness.

Meyrick et al. show their realisation of the complexity of the notion of getting to the heart of how we justify public spend on the arts. Rather than a new approach, this approach complements a return to the ‘old’ economic discourse of Aristotle, Adam Smith, John Maynard Keynes, and others. This approach moves away from a narrow instrumentalised conceptualisation of value for money and instead proposes a value-based approach that focuses on the meaning behind the realisation of value (Klamer, 2017). Of particular interest is the pragmatic approach of the authors to the complex issue of why and how we value culture. For them, a quantitative approach is ‘fraught with problems’ (Meyrick et al., 2018, p.121) and thus they propose a third avenue that recognises the necessity of both qualitative and quantitative approaches to value. However, their approach does not set up one solution to the complex notion of how we value culture. Instead, it emphasises the importance of an understanding of information to help us talk meaningfully about the value of arts and culture. They propose a narrative approach which allows for an understanding of what numbers mean. ‘Proving’ causality of cultural policy measures is challenging, as seen in both Galloway's work and the European Research Partnership on Cultural and Creative Spillovers (Galloway, 2009; Vickery, 2017). The problem is not only the identification of effects that can be conceivably linked to investment in culture (whether through direct state support, or the provision of a favourable environment through fiscal incentives such as tax expenditures for film production) but the thorny issue of proving such causality in a way that justifies the diversion of public funds. We should acknowledge, as do Galloway, Vickery, and the authors of *What Matters*, that proving causality in cultural policy is a complicated matter.

Instead of dogmatic solutions, *What Matters* offers ‘thinking points’ encapsulated in the phrase attributed to William Bruce Cameron, that ‘not everything that counts can be counted’ (ibid, p.126, and see Cameron, 1963, p.13). We must recognise that the question

of the problem of value has not been solved, but that we must ‘stick’ with it (ibid, p.135) to think of the possibility of a difference Klammer et al. aim ‘to wake us to problems of value’ rather than find a singular solution (ibid, p.136). The research questions raised in this thesis leads us to question why we interrogate the perceived value of culture, from both an economic, social, and cultural perspective. The literature on evaluation of culture is used to analyse the operation and effectiveness of State aid policies, and S481, from a cultural perspective, rather than simply an economic one. The identification of multiple potential “values” within an instrumentalist discourse around the audiovisual industries in both an EU and Irish context highlights the existence of various forces that shape both industry and policy discourse and the policy measures under which they operate.

## 2.11 Conclusion

This research has outlined the theory of a political economy of cultural value of the audiovisual industries. This thesis uses political economy theories to interrogate the role of the tax expenditure regime as part of Ireland’s audiovisual industries policy. It engages with the role of the cultural industries as providing a form of public service and thus justifying state intervention on this basis. It interrogates the notion of commodification, unpacking the understanding of both exchange and use value contained therein. It addresses the literature around a political economy of cultural value within the audiovisual industries, identifying that in many ways, cultural value offers a point of distinction, particularly within a globalised economy where it may offer a marker of uniqueness.

As audiovisual products are both cultural and economic, the justifications for intervention by the state via the provision of a favourable tax regime are underpinned by both cultural and economic rationales. The concept of commodification underpins the instrumentalisation of culture debates. The issues around the distinction between culture

and economics within cultural commodities are also identifiable in much of the discourse on the nature of cultural policy, at national and European level. For the purposes of this thesis, the examination of State aids for audiovisual industries in an EU context raises issues around the marketisation of cultural goods. Such State aids are (under EU policy) justified by EU Member States under a cultural rationale. However, neoliberal policies have led to an increasing reliance on exchange use values, and thus an increased marketisation or hypermarketisation or hyperinstrumentalism brought about by the commodification of culture thus eliding the very foundation upon which aids have been justified.

While governments make policy, it is not made in a vacuum and is subject to influence from external bodies. For Freedman, questioning the power structures underpinning state policies in the area of media and communications, ‘what is all too often seen as a rather bureaucratic processes are in fact systems of thought and action that ... mobilise market-oriented values and marginalise non-commercial objectives’ (2014, p.182) In the same way, debates around the role of and evaluation mechanisms for audiovisual policies invoke broader objectives and are, both implicitly and explicitly, value-laden.

This chapter has relied primarily on Mosco’s conceptualisation of a political economy of communication approach to open up interrogation of the notion of commodification through spatialization to unpack the complexity of national policy within a supranational and globalised environment, in conjunction with theories of the Regulation School to interrogate the state’s role in shaping the industrial environment for production. The process of spatialization enables us to look at the function of State aids such as S481 as a national ‘tool’ in a supranational environment and as a tool in the development of EU/Commission policy. As Miège and Garnham held, ‘thus in capitalist societies we are witnessing, on the one hand, the promotion of culture by commerce and on the other the promotion of commerce by culture’ (1979, p.310).

This chapter has analysed political economy theories in the context of a particular sector of media, as broadly thought of, that are manifestly cultural – here termed the

cultural audiovisual industries. Through this, it has identified certain processes within a theoretical area of critical political economy and cultural policy analysis. It is contended that political economy of communication and the audiovisual tends towards interdisciplinarity and opens up conversations with other related disciplines such as cultural studies, economics, policy studies and, it is believed, law, to allow for deeper engagement with and understanding of the object of study.

# 3 LITERATURE REVIEW OF AUDIOVISUAL CULTURAL POLICY

‘...culture, like history, is not a linear, monologic process of containment, but an unstable terrain that is always contended over by the dominant and non-dominant socio-economic forces at play in specific national formations.’ (Vitali & Willemsen, 2006, p.7)

‘Culture is thus something of a joker in the pack, whose value is not pre-determined’ (Craufurd Smith, 2004, p.11) referencing Article 167 TFEU.

## 3.1 Introduction: political economy of audiovisual industries

The previous chapter has established the broad debates in the political economy of audiovisual cultural and creative industries, engaged with the social processes of

commodification, marketisation and spatialization, and outlined the key concepts around the broad neoliberal shift to a creative industries discourse within both the EU and the Irish national policy space. Building upon this work, this chapter offers an analysis of the literature on audiovisual cultural policy through a political economy lens. It is evident that this is a broad church. Cultural policy studies is a relatively new area of research with connections to the complex interaction of 'political, economic, and socio-cultural dynamics at all levels of society' in a global context (Durrer et al., 2017, p.1). It foregrounds an understanding of the *why* within policy research. Cultural policy studies analyses not only how policy operates, but questions whom and what has shaped the form and implementation of the policy. This thesis takes as its object of interrogation the nature of cultural policy within a national space with cognisance of a wider context, which can variously be described as global, transnational, supranational and international, with a particular focus on the policy space of the EU. While these are not interchangeable terms, and each carries discursive baggage, it is sufficient for now to advert to the significance of flows beyond the nation-state that go to shape audiovisual industries. A national cinema can rarely exist in a vacuum, and thus inter/trans-national interactions shape a national culture/national industry in some fashion. Also, within the EU, any account of film policy at national level within a supranational context needs to be cognizant of the objectives of both national policy and EU film policy (which may not coincide).

This chapter interrogates the fluctuations in policies that shape the audiovisual industries through two conceptually different but intertwined themes. These themes are summarised here as:

- 1) the changing role of national audiovisual policy in a supranational era;
- 2) the shifting balance between cultural and economic rationales driving policy discourse within the audiovisual industries.

These concepts are analysed in particular to identify how they are interconnected. The shifting balance of the consideration of culture and economic values within cultural policy

discourse is directly affected by the changing concept of the national as a force. The national has opened up to the transnational/global. This shift is analysed, particularly in the context of the role of State aid policy within the EU – bringing in a supranational dimension. The analysis of policy developments in later chapters illustrates the shifting balance between these issues, identifying themes in the policy discourse around the multiple instrumentalities to which cultural policy is subject, the commodification of culture and the national space, and an ever-shifting balance between culture and economic values in audiovisual policy discourse. These concepts change over time, shaped in part due to societal, cultural, technological, and political developments. This chapter offers both an examination of the academic literature and the historical policy developments, in order to contextualise the Irish and EU policy developments examined in later chapters.

It is explicitly posited that these seemingly conceptually distinct terms, the cultural and the economic, are, within the context of cultural policy, loaded terms and are in a varying symbiotic/parasitic relationship, and are both co-constituted and relational. To expand, it is contended that the cultural and the economic should be considered as more than oppositional and separate, but they are in fact intermittently interchangeable and replaceable. Cultural policy goals are framed through an economic lens, and economic goals are framed (or glossed) as cultural goals. The two concepts are inseparable at times.

This thesis analyses the regulation of the State aid regime (thus encompassing understandings of economic policy, competition law, the role of State aid policy in the wider context of the ‘European project’); as an audiovisual policy (thus leading to an interrogation of the role of the EU in an audiovisual industry discourse), and as a cultural policy – thus invoking issues around the role of culture within the EU. They may be conceived of as oppositional (i.e., State aid policy as economic in tension with EU cultural policy/EU integration policy in tension with Member States’ national policies) however (in keeping with the consideration of the intersection of culture & economy/national and

beyond the national) this thesis contends that it is more fruitful to think of them as interwoven and mutually beneficial.

This chapter outlines certain key concepts in academic discourse around audiovisual and cultural policies that allow for examination of the research question, which concerns the role of State aids for audiovisual production. It sets out main arguments that have attempted to contextualise and understand the changes in policies affecting the audiovisual industries, the wider context within which those changes take place, and the various societal, industrial, political, technological forces which affect audiovisual cultural production and the policies surrounding them. It deliberately takes a broad approach to the analysis of audiovisual culture, interrogating both policy and academic discourse on cultural, audiovisual, media and State aid policies in order to identify broad trends shaping policies in this area.

State aid policy is usually considered within the purview of competition policy and thus concerned with the issues around the internal market of the EU. This thesis contends that State aid policy is, as a 'living instrument' which is actively deployed in accordance with the main policy priorities of the Commission (Piernas López, 2015, p.259) more correctly thought of as a cultural policy as well as competition policy, given the significance of the EU State aid regime in the shaping of national cultural/industrial audiovisual policies such as S481. This thesis analyses the spatial dimension to policy development from multiple perspectives, including the relationship with the space of the nation-state (thus bringing into play both the 'value' of the nation-state, of the EU as a concept and raises issues around legitimacy). It also interrogates the cultural space that is brought into being through representation via media products produced within the EU - how are these shaped by policies at the EU level, particularly State aid policies? In this context, spatialization refers to the manner in which states reconstruct the national space to include within the boundaries of the national territory, actors and activities which may, in fact, originate from outside.

## 3.2 Framework 1: The national within and beyond the supranational

This thesis undertakes a critical analysis of EU and Irish policies in a broad political economic context. This approach interrogates the relationship between the national, the transnational/global, and the supranational, to open up questions about the status of a national cinema within the context of a developing EU cultural and economic policy. This chapter firstly addresses the EU policy approach, then considers Irish policy.

### 3.2.1 The intersection of EU and national policy

In general, the significance of the influence of EU policy and regulation on national policies is underexplored within Irish academic discourse on the audiovisual industries (with the notable exception of Kerr, 2013; 2017 and Flynn, 2018). This gap may be due to the tendency to position media industries research within a national policy context. For example, Bell and Oakley hold that ‘the EU has become a significant policy player in culture, even if much of what it does in the cultural field is of a promotional rather than regulatory policy form’ (2014, p.159). However, this thesis contends that this conceptualisation of the EU as ‘promotional’ rather than ‘regulatory’ underestimates the significance of EU audiovisual policy and its effect on national policies of Member States of the EU. Competition laws, labour laws, and other EU interventions in the area of audiovisual and copyright regulation have had a significant effect on cultural policy, and thus it is crucial to examine the role of both the EU and national policy in any analysis of national audiovisual policy within the EU. However, policies that affect cultural matters often focus more on the domestic. As Stevenson holds ‘it is the nation which remains the

primary organizing and structuring device of mediated cultural identities' (N. Stevenson, 2013, p.331). Therefore, the development of audiovisual policies at EU and Member State level must engage with questions of national sovereignty and the role of the nation-state within Europe. Sarikakis points out that audiovisual production remains domestic in origin and consumption (2007a, p.18), a fact borne out by current circulation figures produced by the European Audiovisual Observatories. While various positive policies encourage the development of a common European consciousness, these are relatively ineffective. For Sarikakis;

It seems that the potential of media and cultural expression in constructing and reflecting an imagined community, bound perhaps at the very least by its common ground of difference, sense of transcendence and transition, is affected by the politics of particularism of culture(s), as well as of the structural economic conditions of production. (ibid, p.18)

It is useful to explore how the term culture is understood or may be deployed in an EU context. The majority of writings on the meaning of culture broadly acknowledge two different but complementary meanings (Throsby, 2001). Firstly, there is an all-encompassing anthropological meaning referring to the practices of everyday life. The second meaning refers to the 'works and practices of intellectual and especially artistic activity' (Williams, [1976] 2014, p.52). EU audiovisual cultural policies tend to use the second meaning but acknowledge the fundamental importance of such policies to broader cultures within the first, or anthropological meaning. This thesis primarily uses the second meaning but acknowledges that EU policy uses both. Indeed, the fact that the institutions of the EU deploy the term "culture" in sometimes-ambiguous ways complicates the task of discerning the meaning of cultural policies. However, this ambiguous definition facilitates a certain strategic flexibility in the EU's development and application of cultural policies. As will be explored, the shift to the CCI (cultural and creative industries) in EU parlance

illustrates what is understood broadly as a shift to the knowledge economy/creativity framework.

Reviewing the literature on EU policy is demanding because of the wide range of potential material from different national and supranational perspectives. Media and cultural policies are not contained within one policy but spread across various policies and soft law instruments (including State aid regulations). For Psychogiopoulou, the ‘dispersal of legal foundations and policy initiatives has substantially complicated the integration of cultural diversity considerations in the action taken, leading to asymmetrical results’ (2015, p.193). Romainville addresses the ‘multidimensionality’ of EU cultural policies (2015). The literature may take a political economy approach, as per Guback, Wasko, Miller et al. and look at the macro influences on EU policy in a globalised context (Guback, 1969; Miller, 2005; Miller & Yúdice, 2002; Wasko, 2004). The literature may analyse EU audiovisual policies towards film and/or Public Service Media (PSM) (De Vinck, 2014; Pauwels, 2014; Sarikakis, 2012) or it may give primacy to the consideration of national policy within the context of the EU (Higson, 2015). Material from the European Audiovisual Observatory (“EAO”) is an informative source. Other “grey literature” material, such as the reports commissioned from industry consultants such as Olsberg/SPI or Nordicity, tends to consider the audiovisual sector purely as a national industry and is thus largely limited to reviewing industry strength.

### **3.2.2 Irish policy - the national and supranational**

Having established certain of the issues arising from the development of EU cultural and audiovisual policy, this chapter now turns to examine the development of an audiovisual cultural policy within an Irish context. By way of background analysis, this section sets out a history of the dominant frameworks used to categorise what constitutes an Irish cinema,

to allow for interrogation the relationship between the funding mechanisms supporting the audiovisual industries in Ireland (primarily S481) and the contested concept of a national cinema. As an art form, cinema is shaped by global commercial imperatives, while simultaneously forming part of a national culture. Thus, a political economy of audiovisual production industries gives context to the environment of cultural production. This chapter aims to explore the spatial dimension to a national cinema (in this case, Ireland) within a context that can be described as both transnational and global and, in particular, within the context of EU State aid policy as outlined in this chapter. S481 policy “stretches” the concept of the nation, thinking about how the state approaches the concept of the state-space/nation-space in using cultural policy to construct some notion of what constitutes a nation (usefully termed “nationing” Rowe et al., 2018a; 2018b).

The concept of a national cinema has been problematised by a number of writers (notably Higson, 1989) and is the subject of much discussion in academic approaches to what for the most part is taken to constitute an Irish cinema (Barton, 2004, 2019; Flynn & Tracy, 2019; Gibbons, Hill, & Rockett, 1988; Gillespie, 2008; McLoone, 2000, 2008; Pettitt, 2000). While a national cinema may have, in the past, been axiomatically taken to reflect national concerns, more recent discourse in this area has acknowledged that the transnational and globalised flows (of funding structures, distribution mechanisms and consumption) underpinning the majority of full-length feature films produced in Ireland today has problematised this assumption, leading to productive understandings of what may constitute an Irish cinema. Barton’s recent intervention in the debates on the place of the national within Irish filmmaking illustrates how shifts in funding mechanisms (such as the rise of international co-productions) have complicated the model of ascribing a national identity to a film through funding structures (2019). While Barton explicitly states her intention was ‘to argue for the place of the national within Irish filmmaking’ she does not approach this task by creating taxonomies of Irishness, a task she calls ‘a waste of energy’ in an inherently global medium such as film. Instead, she illustrates an understanding of

Irish film production as ‘inherently transnational’ (ibid, p.224); an approach that is taken on board in this thesis.

There has been useful theorisation of the social and cultural structures shaping Irish cinema, with many exemplary academic writers including Rockett, McLoone, Pettitt and Barton outlining the thematic and contextual issues pertaining to an understanding of the texts and contexts of Irish cinema (Barton, 2004, 2019; McLoone, 2008; Pettitt, 2000; Rockett & Hill, 2004). While a number of these writers have also addressed the broader policy regime shaping the audiovisual (particularly film) industries (particular note of Barton, 2004, 2019; and Barton and Murphy’s forthcoming *Creative Ireland* funded project, Flynn, 2007, 2018; Murphy, 2017; Rockett & Hill, 2004); writers on Irish film have tended in the past to focus on individual texts rather than on the political economy issues; i.e., on film as culture rather than film as a cultural industry.

Echoing wider debates around the very concept of a national cinema, Irish academic discourse in this area, in general, acknowledges the existence of a national cinema that belies narrow classification. Attempts to classify Irish cinema illustrate a continued consideration about the nation’s relative position in relationship with other nations, regions, and national/regional cinemas. While there is a clear acknowledgement that there are multiple ways to envisage an Irish film industry and thus an Irish cinema, establishment of these multiple ways is usually framed around some discourse of the nation and what it might mean. Gibbons astutely states that a vigorous national cinema should not be judged on its economic performance or in terms of establishing a native national cinema, but rather on ‘its capacity to engage with the multiple national narratives preoccupying a society, and its specific ways of telling its own stories’ (1996, p.22).

Given Ireland’s position as a post-colonial nation, anxieties around the representation of Ireland in cinematic forms are shaped by articulations of what a national cinema should and should not contain, often centred around (potentially artificial and unhelpful) binaries such as the national/transnational, the local/global, the Irish/the other.

Such binaries fail to acknowledge the complex industrial backdrop to the film industry. The use of theories derived from political economy allows for a deeper understanding of the multiplicity of elements that work to shape a national film industry, and thus, the audiovisual products that in some way shape a national cinema.

The arguments around what a national cinema may or may not comprise have been well-rehearsed; with recognition that a monolithic meaning should not be imposed upon the concept of a national cinema. The terms nation and nationalism are understood to be inherently unstable, and thus the notion of what constitutes a national cinema is also not fixed. Vitali and Willemsen posit that consideration of the question of a national cinema requires one to distinguish between two understandings of cinema ‘both as an industry and as a discursive practice’ (2006, p.7). A further potential duality is to identify national cinema in the context of a self/other models, usually taken to be oppositional to a dominant Hollywood industry. Instead, it is more productive to see the Irish film industry as operating in relationship to a dominant Hollywood – in a form that can be conceived of as symbiotic or parasitic (or both simultaneously).

Since its inception, cinema has played a significant role in the creation of an Irish imaginary. For some, the relative lack of an indigenous cinema in Ireland was attributed in part to the commercial imperatives of the structures of the funding regimes. McLoone held that there is ‘an inherent danger that in targeting films at the international commercial market – in defining cinema merely in economic terms at the expense of the cultural – a similar form of ‘sanitised’ cinema is the result’ (2008, p.66). Similarly, Rockett cautioned against the implications of a commercial cinema holding that ‘the state’s often limited policy in perceiving of film as an industry in the manner of any manufacturing plant ignored the critical difference between the sets of images Irish people would produce and those made by international film interests’ (1988, p. 142).

Historically, Irish cinema has operated within a post-colonial past and needed to claim a form of distinctiveness - aesthetically, thematically, and culturally - through use of

tropes considered uniquely Irish. The young cinema that came to fore in the 1970s (with films including Bob Quinn's *Caoineadh Airt Uí Laoire* (1975) and Joe Comerford's *Reefer and the Model*) is known as the first wave or New Wave (H. O'Brien, 2006). It matured in the 1980s (aka the Second Wave) and grappled with complex social and political issue, broadly centred on themes of family, the Catholic church, and the Troubles. In contrast, what is sometimes known as the Third Wave (Brodie, 2016) that commenced around 2002 is characterised by films that explicitly engage with a form of Irishness that is repackaged for an audience outside Ireland. This categorisation of Irish cinema into "waves" (following the format of the influential Taiwan New Wave) is an uneasy, overly neat approach, which attempts to contain a myriad of styles, genres, and forms of filmic output into containers. It does not account for the complex range of films produced in Ireland.

Nevertheless, it is a useful approach to discern wider trends in Irish film production that are, in part at least, shaped by the wider political economic structures in place. If the Third Wave is, at times, characterised by a self-conscious commercialised Ireland, it is perhaps possible to identify a later wave that wears its Irishness more nonchalantly, not using it in the way some earlier films did. It is possible to identify a Fourth Wave that can be termed a spatial wave, broadly commencing from the revisions in S481 from 2014 and consolidated, or further spatialised, by the 2019 revisions as analysed in Chapters Six and Seven of this thesis (and see Murphy & O'Brien (2015) for analysis of the 'new' S481 introduced in 2014). This Fourth Wave is explicitly underpinned by a hyperinstrumentalised (from Hadley & Gray, 2017) approach to audiovisual production that manifests itself primarily in the framing of S481 as a policy geared at increasing audiovisual industrial production with scant consideration of the cultural rationale of such a policy.

### 3.2.3 A national cinema: or a national film industry? Or both?

Where this thesis diverges from the majority of conceptualisations of an Irish national cinema in a global context is to focus *specifically* on how an understanding of the

political economy of a national film industry may operate to shape the very notion of what may constitute a national cinema. It does not conflate the idea of a national cinema and a national film industry but does posit that they are deeply intertwined. It examines the notion of a transnational Irish cinema specifically in the context of state intervention in what is ostensibly a neoliberal free-market economy through the provision of a favourable production environment by way of the S481 tax expenditure regime that actively encourages audiovisual production. As O'Brien & Canning hold:

As a diaspora nation at the very Western margin of Europe which retains strong links to the UK and USA, Ireland's status as an Anglophone – but crucially not Anglophile, given its status as a former British colony – nation means that its mainstream cultural and entertainment traditions have arguably been drawn from British and American influences, and its generic and narrative models for film largely from the Hollywood mode, rather European film culture. (2020)

Anxieties in the discourse around what an Irish national cinema should and could encompass are linked to Ireland's postcolonial position and continued close relationship with the UK, exacerbated by our position as a small English-speaking nation and thus readily and willingly participating in a Hollywood dominated globalised consumption and production industry. Building upon discourse around the complexity of understanding the role of the nation/national as an organising trope in both the cinema of a nation and the film industry of a nation, it can be taken that there is no unified understanding of what an Irish cinema is or even what it should be. Leaving aside the questions of whether many of these themes are uniquely Irish, it is evident, from examination of production trends, that much post-twenty-first-century Irish cinema has whether explicitly or not, shifted away from attempts to grapple with what might be seen as Irish themes (Flynn & Tracy, 2016; 2018).

### 3.2.4 A national cinema beyond the national

This chapter, rather than considering the ‘Irishness’ of representations and production contexts, looks to examine how Irishness intersects with, inflects, and engages in dialogue beyond the national. Ireland’s tax expenditure regime is structured as both an industrial and as a cultural incentive (as formulated under EU regulation of State aids, an issue explored in detail in Chapter Five). While this may imply an oppositional binary; instead, the regime operates to support both an industry and a culture in an intertwined relationship. The Irish film industry is in a complex, continually negotiated relationship with the globalised film industry, supported by co-production agreements with other jurisdictions and via the EU co-production agreement, operating as both a production/manufacturing industry and as a cultural industry. The relationship between Ireland and cinema is marked by contradictions and paradoxes, between the global and the local, the national and the transnational. However, this incorrectly implies oppositional binaries, when instead the film industry ecology is better conceived of as a continuum, whereby we can interrogate the local *within* the global, the national *within* the transnational (and vice versa). Instead, there is a more complex dynamic at play between the national and transnational, between the local and global, in both films produced within and about Ireland, and in the policy measures that support such production.

The nature and extent of recent Irish audiovisual production reflect the complexity of the global film and television industries. Rather than a simple binary of indigenous (mainly small budget films) and inward investment films (primarily but not always (e.g., the Bollywood blockbuster *Ek Tha Tiger*) Hollywood productions), instead the productions availing of S481 can be conceived of as working along a continuum, ranging from large scale TV productions primarily shot in Ireland but with no discernible Irish connection save for location (e.g. *Penny Dreadful*), to individual episodes of series such as *Quantico*, to films with a passing interest in Ireland (such as *Star Wars: The Last Jedi*), co-productions

partly shot in Ireland (*The Lobster/Black '47*) and partly based or shot elsewhere, driven in part, at least, from funding structures. There is not necessarily a correlation between subject matter and funding structure (e.g. *Black '47* and *Brooklyn*). Analysing S481 allows for an examination of the complexity of the funding structures supporting film production.

Rather than seeing national and transnational as oppositional, it proposes that the national be studied within and in relation to the transnational and, similarly, the local within and in relation to the global. In this way, it highlights the significance of the national space within the political economy of the Irish audiovisual production landscape.

### 3.3 Framework Two: economic and cultural rationales

#### 3.3.1 EU policy – the economic aspects

Having established the complex nature of the consideration of the role of both the EU in shaping audiovisual policy across its territory, and the role of a national audiovisual industry within a supranational environment, this thesis considers the increasingly commodified nature of audiovisual cultural policy, a trend that is identifiable at both a national and an EU level. This section addresses EU policy specifically, focusing on an interrogation of the developing policy towards the audiovisual industries within what has been identified as a 'paradigmatic shift' (Littoz-Monnet, 2015, p.25) within the EU around issues of cultural policy. The subsequent section addresses Irish policy.

While it is evident that there has been increased marketisation of culture within national policies in various jurisdictions within the EU, this is also identifiable within EU wide policies (Schlesinger, 2015b). There has been a shift towards 'an industrial policy for Europe's cultural and creative sectors, rather than a cultural policy for the EU' (Craufurd Smith, 2015, p.22), with Ferri's research highlighting the politicised nature of State aid control of the audiovisual industries (2018). Tracing policy developments in the role of

culture within the EU shifts from its earliest perception as ‘outside’ the purview of the EU (or EEC) and solely the domain of the individual Member States, to an instrumentalist view of culture as operating within a political context to assist in establishing and underpin a common European culture (as seen in the 1985 Adonnino reports cited in Littoz-Monnet, 2015 p.27), and encapsulated in the EU motto ‘United in Diversity’; to the current iteration of culture as having both economic and social potential, albeit within a knowledge or creativity framework that is increasingly subject to market forces. For Schlesinger (2015b), the Commission has been ‘won over’ to the usefulness of the creative economy cause, which is dominated by the economic dimension of the creative industries (as illustrated by European Agenda for Culture, part of the framework for Lisbon strategy, and the Creative Europe 2014-2020 framework). For Schlesinger, ‘cultural policy has been harnessed to economic purposes but also to variously building identity, citizenship and community. ... This has required a shift from supporting a cultural exception to embracing the cultural diversity of expression’ (ibid, p.10). Similarly, Psychogiopoulou acknowledges the dual role of culture, holding that ‘the fact that the EU cultural policy is simultaneously a cultural and an economic, social and political project remains the case nowadays, although admittedly the economic dimension has gained much weight’ (2015, p.238). Pauwels identifies three justifying rationales across EU audiovisual policy, namely the utopian political rhetoric, the narrow formalistic and the pragmatic (Pauwels, 2014). The early political-rhetoric discourse phase included calls to expand the EU dimension from economics to include a political, social, and cultural dimension. The formalistic discourse broadly rejected any Community competence in culture, a discourse which has been set aside with the granting of cultural competence via the Maastricht Treaty. Pauwels astutely summarises the pragmatic discourse as starting not so much from the rhetorical question of what Europe can do for culture but ‘what culture can do for the economy’ (p.118) thus illustrating the marketised dimension to cultural policy within a European context. However, the underlying

pragmatic rationale in the cultural arena operates as an instrumentalised middle ground instead of exhibiting an ‘overarching cultural ambition’ (ibid, p.117).

While not addressing audiovisual policy directly, but the area of EU competition policy, the work of Buch-Hansen & Wigger is of interest (2011). They take a critical political economy approach to European competition policy which, in their words, ‘seeks to overcome the shortcomings’ they identify in ‘other theoretically informed political science studies of competition regulation in the EU’ (2011, p.4); approaches which, for them, ‘neglect the importance of social foundations of political power’(ibid.p.5) and are not located in the context of the dynamic nature of capitalism. However, while their longitudinal approach to competition regulation within the EU is nuanced, it must be noted that there is a wide strain of academic research that is located within the critique of power relations and does address some of the competition regulation issues. The wide body of critical political economy research outlined in this chapter and the preceding chapter (such as Psychogiopoulou, 2014, Donders et al., 2014, Ferri, 2018 and Schlesinger, 2017 on EU audiovisual industries policy) are situated within discourse on capitalism, addressing the enmeshed relationship between media/communications and capitalism, and particularly addressing the process of globalisation. Thus, they are deeply situated within considerations of power.

### 3.3.2 Early EU policy: the ‘fringe benefits’

Early policy measures around the formation of the EEC illustrate the search for balance between economic rationales and retention of political freedom at the heart of the EU. The Spaak Report from 1956 focused on the establishment of a common market space leading to the Treaties of Rome,<sup>1</sup>eliminating customs duties, with consequent indirect impact on social and cultural policies. The Treaties of Rome (EEC and EURATOM) (enacted 1 January 1958, signed 25 March 1957) established the European Economic Community (the EEC) and the European Atomic Energy Community (EURATOM). The

Treaty of Rome (EEC) established the fundamental freedoms at the heart of the European project by abolishing obstacles to the free movement of persons, services, and capital across European borders.

Article 2 in the Treaty of Rome focuses on harmonising economic policies while acknowledging ‘fringe benefits’;

The Community shall have as its task, by establishing a common market and progressively approximating the *economic policies* of Member States, to promote throughout the Community a harmonious development of *economic activities*, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

(Article 2, Treaty of Rome, my emphasis)

The clear aim was a harmonised common market, informed by the thinking that the European “civil wars” of the early 20<sup>th</sup> century were in part a result of economic instability and the lack of integration of European economies. The creation of the EEC would simultaneously promote economic growth but also integrate Member State economies, leading to political stability. Thus, while the establishment of the (now) EU can be seen as constructing a conceived space, that is a space of economic capital, it is also a political project, shaped by structures that aid in the construction of the perceived space of the EU. Although such integration may have implied closer cultural as well as economic ties, the Treaty of Rome (EEC) made no overt reference to cultural competence. The 1956 Spaak Report identified State aid control as one of the key policies for the creation of a single market. All the other policies in the Treaty of Rome (EEC) relating to the free movement of goods, workers and services were of little use without some harmonization of Member States’ economic policies, including aspects of national tax regimes.

### 3.3.3 The Maastricht Treaty: towards an explicit cultural policy

Initially, the EEC (as the EU then was) had no direct competence in the cultural arena and thus no legitimate means to directly initiate policies in media and cultural fields. For Craufurd Smith, the founding treaty of the EEC in 1957 was deliberately focused on a small number of economic areas where cooperation was likely to boost production at a time of post-war austerity, and thus ‘a specific cultural mandate would have been an unnecessary and distracting complication’ (2011, p.870). The elaboration of free movement, competition, and customs union establishment provisions enabled substantive intervention into the cultural domain. Certain policy measures at EU level, while not devised primarily as cultural instruments have a significant cultural and social dimension; such as the 1989 *Television without Frontiers Directive* (now updated to the *Audiovisual Media Services Directive*), which was primarily driven by internal market concepts. The Maastricht Treaty (signed in 1992, enacted in 1993) gave direct cultural competence to the European Community by inserting Article 167(1) into the Treaty of the European Union. The article holds that ‘the Community shall contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore’ (EU, 1992). Article 167(4) states that ‘the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures’. This means that culture has a transversal nature (i.e., it must be taken into consideration) across all European policy areas. For Herold, the Maastricht Treaty attempts to strike a balance between cultural values and economic integration. She held that ‘the deliberately ambiguous formulation of Article 151’ (2010, p.13) had not resolved the problems posed by the inherent tension in the audiovisual sector, namely the attempt to balance cultural values when they appear to collide with economic growth or market integration.

However, while the Maastricht Treaty *stricto sensu* brought culture within EU competence, broad cultural values of culture were already within the purview of the EU – such as human rights, and freedom of expression including cultural expression. Also, the same Treaty formally enshrined ‘subsidiarity’ as a core tenet of the EU (Article 5.3 of the TEU). Subsidiarity refers to the principle that decision-making within the EU should occur at the lowest (i.e., most local) level appropriate to that decision, whether that means the level of the Member State or within the Member States by a regional authority. Thus, where possible, decision-making power should devolve downwards, a policy shift that came about in part as a response to the perceived “democratic deficit” within EU policy-formation processes. Culture is, in theory, primarily regarded as the province of Member States at national level with any interference by any European institutions potentially contravening the principle of subsidiarity. Cultural policy decisions are made at the lowest level possible, whether at national level or regional level, with culture traditionally the purview of individual Member States rather than of the EU.

The issue of subsidiarity is key to understanding the roles of both the Member States and European institutions in audiovisual policy and seems to correspond with Herold’s characterisation of the relationship between the Member States and the EU as symbiotic rather than inherently subjected to tension. The justification for allowing derogation from State aid rules for audiovisual tax incentives is, under Article 151 of the Maastricht Treaty, overtly cultural. Therefore, the aid must be directed at works of a cultural nature. The definition of cultural works is to be left, under the principle of subsidiarity, to Member States at national level. The concept of subsidiarity is traditionally not relevant to competition law within the EU, as it does not apply to something that is a core competence of the Commission (Piernas López, 2015). However, the Maastricht Treaty brought subsidiarity into play in the State aid regime through the concept of the cultural test contained in Article 107(3)(d). In general, the cultural test is seen as a clash between the control by the Commission and the Member States’ competencies in

establishing cultural policy. Orzan & Ianus hold that the Commission's approach is 'quite interesting' in that it has 'limited the Commission's power over the choices made by the Member States' (2016, p.306). The Commission has stated that its power is over the existence of mechanisms in place in Member States to ascertain whether support measures go to cultural activities and products, not a qualitative assessment of those mechanisms. After some controversial decisions (most notably the 2005 UK decision), the Commission confirmed in the 2013 Communication that the nature of the cultural test was up to the individual Member States, <sup>2</sup>a policy move that is broadly in lines with the more neoliberally inclined and pragmatic Commission.

### 3.3.4 The shift to a CCI discourse: the rhetoric around the economic dimension

A shift in the understanding of culture, broadly understandable through a creative industries discourse, is identifiable within an EU context with a dualism at play in both the meaning of the concept and the role it plays in EU policy discourse. This shift is understood through a cultural and creative industries discourse ("CCI") broadly linked with the Lisbon Treaty (2007). The Lisbon Treaty of 2007 marked a shift towards a knowledge economy and emphasized the economic dimension to the EU. The EU's media-related action 'continues to draw largely on the TFEU economic provisions' (Psychogiopoulou, 2014, p.192). The rhetoric around the economic contribution of CCI is generally identified with a KEA report from 2006 commissioned by the Commission, which emphasised the economic aspect of culture to the EU. KEA's report highlighted the role of culture in the knowledge-based economy of the EU and stressed the significance of quantifiable socio-economic impacts of the cultural and creative sector, taking an instrumentalised view of culture as 'driving economic and social development, as well as innovation and cohesion'

and in promoting European integration and spreading democratic and social values (2006, p.1).

However, the use of the term CCI within EU discourse, instead the term ‘creative industries’, which is prevalent in the UK’s (and other jurisdictions’) discourse illustrates the recognition of a distinction between more traditional cultural industries such as film, and creative industries including design, advertising and related industries (Chapain & Stryjakiewicz, 2017, p.2). The distinction acknowledges the social or non-economic role of culture within the EU, given the significance of culture in promoting both diversity within the EU and social cohesion across the Member States of the EU. In one way, this shift to CCI discourse is a way of offering legitimacy to the Directorate General of Culture, which had struggled with purpose, given the general lack of competence of culture within the EU (Gordon, 2010). Overall, the EU approach to audiovisual cultural policy is subject to multiple instrumentalities that tend to an increasingly neoliberal approach.

### 3.3.5 Irish cultural policy: an increasing commodification of culture

Having established the increasingly economised/neoliberal EU policy approach towards the cultural and audiovisual industries, this chapter addresses the developments in cultural policy in an Irish context. Given the position of Ireland as a small nation, the audiovisual industries have of necessity tended to have been outward-looking and only sustainable by way of transnational co-production. The history of audiovisual production, exhibition and consumption has, in an Irish context, showing signs of the complex relationship between the national and transnational. Ireland has never realistically been able to sustain an indigenous film production industry. Pragmatic government policies recognise that sustaining a national film culture requires the support for a national film industry. This thesis contends that the national is a continued force shaping the audiovisual industries, and foregrounds the particular role of national policies, such as national state aids and

other financial inducements for production, in their promotion and support of a national audiovisual industry.

What might be understood as an Irish cinema may mean films made in Ireland, by people who for the most part live and work here, drawing on issues pertaining to the lived experience in Ireland, addressing predominantly but not exclusively audiences who share the Irish social and cultural space. This simple attempt at categorisation fails to encompass such films as Abrahamson's *Room* filmed outside of Ireland with no discernible Irish element to its narrative but considered part of the Irish canon given the director's nationality, the Irish/Canadian origins of the source material, and the backing of Irish production company *The Element* (see also Flynn & Tracy, 2019). Therefore, any attempt at categorising an Irish cinema must be subject to significant qualifications and exemptions, showing that attempts to territorialise and explain the concept of a national culture serve to highlight its limitations. If this thesis takes as its point of interrogation the spatial dynamics in culture, then it must consider how that culture is understood. It is contended that film culture is understood through and as a manifestation of national culture, but is shaped by various forces, conceptualised within a political economy discourse as globalised, marketised and shaped by local and global production flows. The policy objectives of S481 include the aim of placing Ireland within a globalised audiovisual industries dynamic through the provision of a tax expenditure that explicitly operates to attract inward investment. However, the structure and nature of the relief do not necessarily fully achieve those objectives (in particular, the retention of the cap on maximum expenditure at €70m is relatively minor in the context of international blockbuster productions which tend to have a much higher budget).

### 3.3.6 A national cultural policy in a globalised era?

Giddens defines globalisation as ‘the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa’ (1990, p.64). Thus, it has clear resonance for the audiovisual industries both as a creator of symbolic meaning and as an industry. However, we should not uncritically assume that Ireland’s audiovisual production industry has been negatively dominated by globalisation. Such an approach pejoratively fails to take account of the active engagement with cinemas of other nations and regions by Ireland’s first and second wave of filmmakers. While there have been concerns that more recent Irish films have presented a universalised version of Irish issues for a global audience (for example Barton’s analysis of Alan Parker’s *Angela’s Ashes*, (2011, 2019)) other approaches consider that the engagement with genre cinema is an expansion of what an Irish cinema might be, rather than prescriptively setting up what an Irish cinema should be. Rather than an insular view of what a national cinema might be, an outward-looking approach allows for a move beyond the binary of national/transnational, inward/indigenous, and allows for a reconceptualisation of a national cinema in an era subject to globalised production and consumption flows.

## 3.4 The identification of multiple instrumentalities of cultural policies

Thus far, this chapter has reviewed the literature on the development of audiovisual cultural policy from an EU and an Irish perspective from two ostensibly distinct but intertwined frameworks; that is 1) a national policy within a supranational environment, and 2) the shifting balance between cultural and economic rationales within audiovisual

industries policy. As is evident from the analysis thus far, these concepts are not easily separated. Thus, this chapter now analyses the intersections between both frameworks. Both Irish and EU policy are driven by multiple rationales – political, social, cultural, and economic. As outlined in Chapter Two on political economy of audiovisual industries, such industries are subject to instrumentalist goals for various rationales. Given that multiple policy arenas shape audiovisual production the instrumentalist goals shaping such policies from an Irish and EU perspective are driven by goals that may radically differ. Given the diverging nature of such goals, policy development towards the audiovisual industries can exhibit confusion.

### 3.4.1 EU policy is shaped by multiple instrumentalities

Kolokytha & Sarikakis describe how the governance of publicly funded film within the EU is ‘based on anxieties’, that is between European culture and Hollywood culture and cultural needs versus market needs (2018, p.68), in a policy context that has failed, according to them, to move forward, but has developed in a cyclical logic that continues to be restricted to historical tensions. They frame these tensions around the continued focus on a single market made up of multiple European cultures, and on the problem of Hollywood domination. For them, the EU promotes a commercialised view of culture and does not appear to be taking into consideration the role of policy as ‘an active stakeholder’ (ibid, p.78) in the film sector, an argument that is echoed in Piernas López’ view of State aid as a policy tool. In a similar fashion, this thesis argues that State aid policy is an actor within the development of cultural audiovisual policies and thus should be understood and analysed within such a discourse.

The multiple instrumentalist rationales shaping cultural policy within the EU illustrate the complexity of policy discourses underpinning EU audiovisual/media/cultural policies. The EU is founded on the myth of a united Europe, problematically based in part

on the myth of a common culture (Shore, 1993; 2000). The question of a European identity has been central to academic discourse on the EU, and the role of culture in forming this identity has been much debated (Obuljen, 2004; Ferri, 2015, 2018; Psychogiopoulou, 2015). Shore's 1993 work examined, from an anthropological perspective, the concept of European identity as constructed in official discourse in the development of cultural policy with the aim of promoting an 'ever-closer union among the peoples of Europe' (1993). Shore asked 'whether constructing a salient European identity is possible without a corresponding erosion of old centred nationalisms' (ibid, p.779). His later research held that the EU, lacking a vernacular and unifying mass-communications technology, looked to the information and audiovisual sectors, to 'fill this communications gap' (2013, p.35) thus illustrating the instrumentalism of culture within EU policy as fostering a common culture.

More recent work in this area acknowledges the complexity of the increasingly problematic area of cultural identity (Castañeira, 2017), alluding to the use of the 'highly controversial' term 'cultural integration' to refer to the use of culture as a tool of integration within the EU, akin to economics, politics and law (p.198). Romainville addresses the multiple objectives emanating from the 'multidimensionality of cultural policies' (2015, p.31) within the EU, including integrationist goals, which may not be compatible with the protection of cultural diversity. According to her, the multidimensional aspects of culture and cultural policies are 'underestimated by the builders of European law' (ibid, p.27). This has led to an increasing focus on the economic aspect of the cultural and creative industries.

The instrumentalist use of culture for integration policy rationales may be oppositional to the need to protect cultural diversity. For Pauwels, the Maastricht Treaty heralded a strong change in emphasis, pointing in particular to the 'delicate exercising of balance' (2014, p.390) arising out of the central role of subsidiarity. For her, firstly, the discourse has shifted from one of cultural unity to emphasis of cultural diversity. Secondly, Maastricht has not brought about stronger centralisation but has devolved responsibility

through its emphasis on subsidiarity. Thus, EU intervention in the media arena is described as a pragmatic discourse by Pauwels.

More recent discourse identifies protection of cultural diversity as important to the EU. Having cultural diversity as an aim justifies the protection and promotion of individual Member States' audiovisual industrial infrastructure. Ferri, emphasising the human rights dimension to cultural policy, holds that 'the rationale of public funding is that a *laissez-faire* economy does not guarantee the protection of cultural and linguistic identities and is not suitable to promote the multiplicity of artistic expressions' (2015, p.119). The rhetoric at play around the dualism of unity and cultural diversity in the making of European cultural identity is analysed by Lähdesmäki (2012) and Barr (2014). Lähdesmäki uses a discursive approach to analyse the dual role of EU cultural policy in its emphasis on diversity while simultaneously seeking common elements across the EU Member States. Collins examines the discourse around the slogan 'Unity in Diversity', as enabling a convenient rhetorical mediation between integration and pluralism (1994), with Sassatelli considering the phrase as a 'reflexive narrative' that keeps alive the competing narratives, of unity and diversity (2015, p.28). P. Dewey holds that Article 151 in the TEU 'reflected a growing awareness that the EU needed to employ the power of culture in broadening and deepening a legitimate community of Europe's peoples' (2010, p.114), thus illustrating a political aspect to the cultural sphere.

The Commission's position on State aid for audiovisual industries has shifted from being protective of the internal market to a more liberal/marketised approach. Several writers on EU audiovisual policy acknowledge the increasing economic turn of policy, a turn that is theorized here through the concepts of through instrumentalism and spatialization. Some writers approach this by emphasising politics (Collins, 1994; Psychogiopoulou, 2015). Others emphasise the 'industrial turn' identifiable in European cultural policy (Craufurd Smith, 2015). For her, one explanation is that 'a focus on the economic contribution of culture was always going to be more palatable for those member

states wary of the cultural implications of a European *cultural* policy' (author's emphasis, *ibid*, p.19). Within the lens of the shifting conceptualisation of cultural and economic goals within EU policy discourse, there has been an identifiable 'paradigmatic shift' (Littoz-Monnet, 2015, p.25) towards increased instrumentalisation and marketisation within the EU around issues of cultural policy.

This shift has been variously described as occurring within a 'creativity frame' which focuses on the potential of culture to promote European competitiveness (Littoz-Monnet, 2015, p.27), or within a 'rhetoric of creativity' (Kandyla, 2015, p.49) which provides a discursive link between culture, innovation and wider EU economic concerns such as growth, competitiveness and social cohesion, and as increasingly neoliberal/economistic (Schlesinger, 2017). The academic discourse on the Creative Europe 2014-2020 scheme illustrates the shift, described by Craufurd Smith as 'an industrial policy for Europe's cultural and creative sectors, rather than a cultural policy for the EU' (2015, p.22).

As established earlier in this chapter, the EU perceives cultural and creative industries as crucial to driving economic development in a global knowledge-based economy. The EU may not exert direct, active cultural policy influence on the Member States (given the principle of subsidiarity enshrined in the Maastricht Treaty). However, it can exert power through policymaking and in institutionalised European influence on nation-states' cultural policies. For Craufurd Smith 'as the power to influence the cultural life of the country shifts away from the state, *so the power of the market and the individual as joint drivers of cultural change is enhanced*' (author's emphasis, Craufurd Smith, 2015, p.10). Thus, using State aid as a policy tool to further the objectives of the EU has developed. For De Vinck, examining the MEDIA policy regime (the precursor to the Creative Europe 2014-2020 regime), cultural concerns have for the most part become integrated 'into a more economic- industrial set of arguments focused on the economic weaknesses of the European sector' (2014, p.33) an argument that can also be used to interrogate the policy

aims of the State aid regime. The industrial turn within the EU is, per Craufurd Smith, more palatable politically to those Member States wary of overreaching cultural implications of EU cultural policy (2015, p.19), a consideration that is responsible in part for the low budget allocated for the Creative Europe funding scheme. It is also more palatable economically for justifying investment in the arts. For her – it seems ‘inevitable’ (ibid, p.21) that riskier less commercially viable productions will be lost.

Having explored the multiple cultural/social instrumentalist aims at play in EU policy discourse, it is necessary to explore what has been identified as an increasing economic instrumentalism at play in EU policy. The conceptualisation of the dual nature of culture as having both an economic and a symbolic dimension has been identified by Littoz-Monnet, who holds that

EU intervention in the field of culture has always oscillated between the application of general free-trade principles to the cultural sector and promoting a cultural policy in its own name, justified by the need to make European citizens aware of the existence of a common identity. (2007, p.509)

For Littoz-Monnet, there is an evident new agenda within the EU (for her spearheaded by DG Culture) in which culture is increasingly integrated into a policy agenda dealing with innovation policy, fostering of growth and economic competitiveness at EU level. Cultural policy has been utilised as a means of achieving integration policy goals within the EU throughout its history.

To summarise the significance of the extensive literature on the development and role of EU audiovisual industries, this chapter has established the multiple (and at times, conflicting) instrumentalist goals of audiovisual industry policy within the EU. The literature on the development of the audiovisual and cultural policies within the EU illustrates the complexity of policy discourse in these areas, arising in part out of the under-determined nature of the concept of culture. The instrumentalisation of culture at EU level has taken multiple forms, including promotion of the legitimacy of the European project

and the promotion of cultural diversity and thus can be categorised as a form of social instrumentalisation. We can also identify economic instrumentalism at play. The tensions between economic and cultural rationales may be productive; or as Herold holds, ‘may be symbiotic rather than...inherently conflictual’, suggesting that competition policy can be seen as an ally to cultural diversity rather than a threat (2010, p.96). The literature on EU audiovisual and cultural policies is put into conversation with the literature on political economy in order to analyse the development of State aid policy within the EU.

### 3.4.2 Multiple instrumentalities -the Irish perspective

Multiple instrumentalities are identifiable in Irish policy discourse, as in EU policy discourse in this field. This section highlights significant policy and legislative developments affecting the audiovisual industries, placing these within a broader socio-historical context, in order to understand the perceived role of the film industry within broader national cultural policy. Ireland’s film industry policy has, throughout its history, been characterised by a pragmatic recognition of its position as an English-speaking island nation. Transnational from the outset, the film industry has been marked by the knowledge that an individual country such as Ireland is unlikely to be able to construct and support an indigenous industry. Thus, the consequent market failure is used as a justification of state support, through public funds, of the film industry. The allocation of public funds to the film industry is justified on a number of grounds, both industrial and cultural. It is contended that an increasing instrumentalisation of culture within an Irish policy context has led to an over-reliance on purely economic grounds to justify state support of film production. However, an examination of the history of state support of

the film industry in Ireland illustrates that the rationalisation of such support has always been on instrumentalised terms, on economic/industrial and cultural grounds.

The Irish state's intervention in the audiovisual production industries by way of provision of favourable tax terms tends to be justified on both merit good rationale and economic rationale. However, it is evident from an examination of the history of intervention in the production industry in particular that the support of the industry as provider of "merit goods" has been disjointed to say the least, and positively neglectful at times, instead focusing primarily on the industrial/economic benefits of a manufacturing industry. Thus, this research interrogates the nature and extent of the consideration of a film industry in Ireland/an Irish film industry, as both a provider of such merit goods and as a form of industry.

However, it is acknowledged that these policy objectives, of merit good support and industrial support, are not necessarily oppositional. One can support a cultural industry and simultaneously benefit from the increased benefit from an economic point of view – support of a cultural industry may (inevitably one could say) give rise to useful benefits such as increase in jobs, increased tax take, tourism money, and other quantifiables. Thus, the objectives tend to work on a scalar level, with relative benefits promoted. The issue with Irish policy is, it is contended (and as will be explored in detail in Chapters Six and Seven) that the economic benefits outbalance the other more immeasurable benefits that can be deemed part of cultural value.

A brief history of film production landscape in Ireland illustrates the significance of Ireland's relative position within the wider transnational film industries, from both a production and consumption perspective. For a number of reasons, Ireland had no indigenous film industry of note (save for some notable exceptions) until the later part of the twentieth century. While there were films produced in Ireland, they were, for the most part, the product of foreign finance and expertise. The presence of US producer Kalem Films, from 1910 to 1912 led to a number of well-regarded silent

films made primarily with the Irish diaspora in the US in mind. The Film Company of Ireland was set up in 1916 and, per Rockett meant that ‘the 1910s was the most productive decade for indigenous Irish film production until the 1970s’ (2012). However, many different factors, including a small box office return in Ireland, the fragility of the post-independence economy, and the conservative attitude of the Irish government towards the medium of cinema meant that an indigenous cinema was not established in Ireland (Condon, 2008; Holohan, 2009; Rockett & Hill, 2004). Ireland was represented on cinema between 1920 and 1970 primarily by productions made by overseas directors. While some of the films made in this time were highly influential on the representation of Ireland, it is telling that the stories of Ireland were mediated through outside eyes. John Ford’s *The Quiet Man* and Robert Flaherty’s *Man Of Aran* are both problematic in their own ways in their depiction of Irish life.

The establishment of Ardmore Studios in Bray in 1958 attracted more inward investment production to Ireland. The Irish Film Finance Corporation, incorporated in 1960, advanced money for films made in Ireland in order to enable full use of the Ardmore Studios facilities, but was mostly taken up by foreign companies. As Ireland continued to attract both Hollywood and British productions, there were moves to attempt, once again, to establish an indigenous film industry. Chaired by the well-known film director John Huston, what came to be known colloquially as the Huston Report was an attempt to explicitly introduce policy to reach this objective (Huston, 1968). The authors of the Huston Report astutely recognised the benefits of inward investment production to the broader economy from feature film production in Ireland post late 1940s, which provided employment, and spend in the country, but pointed out that such production offered little in the way of training. Starkly, the authors stated that these various activities ‘did not result in the establishment of an Irish film industry’ (ibid, p.9). Instead, the authors recognised the dual needs of state support for the industry, to both foster indigenous industry and to attract productions to take place in Ireland. Recognising that the film

industry should not be treated purely as a branch of a manufacturing industry, it was proposed that US backed feature film projects in Ireland, on Irish subjects, up to a certain budget, should be promoted 'if it was clear that they would develop Irish talent' (ibid p.17). Thus, they recommended a dual approach, the support of "big" budget films by a producer with international repute who could make films with a significant Irish 'creative, artistic and technical content'(ibid, p.40) and the support of small budget Irish based (indigenous) films.

It was with the establishment of the IFB in 1982 that indigenous production flourished. The establishment of the first IFB arose at least in part out of the success of the "first wave" of films, proving that Ireland could support an indigenous industry in some form. The abolition of the first IFB, and the introduction of S35 were a blow for smaller budget indigenous filmmaking, which relied instead on direct grants rather than a tax expenditure. Its re-establishment in 1993, led by the then Minister of Culture, Michael D. Higgins, led to significant increase in indigenous production during the nineties. The reinstatement the IFB in 1993 was a sign of support for indigenous film industry and can be seen as an attempt to integrate the requirements of both commercial industry and the indigenous industry. Between 1994 and 2007, according to Barton the film sector became increasingly reliant on indigenous production, funded primarily through S481 and through IFB subsidies, and co-production funding, with the funding through the IFB increasing significantly during this period to a high of €17m in 2007 (2011; 2019). During this period foreign or inward investment productions had reduced in number. Barton points out that in 2007 there were no foreign feature film productions, but there were foreign or inward television productions (2011). This situation arose in part because Ireland, unusually, offered a tax rebate for TV production, which was not the case in the UK, a neighbouring competitor. As will be seen in Chapter Six, the figure of inward investment feature films and co-productions has risen since the low of 2007, driven primarily, it is contended, by the favourable conditions of S481.

It can be seen as problematic that there is an assumption by Rockett that post-1987 (i.e., following the introduction of the precursor to S481, S35) an industrial model for film production took precedence over a ‘culturally engaged, critical cinema’ (1994, p.127). This assumption takes it as a given that an industrial model will not produce a critically engaged cinema and, conversely, that a less-industrial model would axiomatically be reflective of society. Instead, we have seen the emergence of a more complex form of cinema, where films ostensibly Irish themed (e.g. *Brooklyn* and *Black ’47*) stem from a hyper-industrialised globalised film industrial approach with multiple layers of public and private funding. The film sector in the twenty first century is marked by a more nuanced relationship between indigenous and international commercial sector. There is a recognition of a form of transnational Irish cinema (Flynn & Tracy, 2018) that can be seen to be both indigenous and simultaneously commercial.

While Schlesinger alludes to how Hollywood has been ‘imported’ into the national space (2000) (through consumption practices), in fact the opening up of the national space for overseas *production* is not captured by the use of the term imported – instead it is an active and calculated welcoming, with international guests invited in partake of the largesse of generous tax breaks, and not just in the context of the consumption of a completed product. This approach allows for a view of tax expenditure policies such as S481 as more than simply an economic policy, but as both cultural and economic and allows for interrogation of the role of such policy as a form of nation construction or nation building. Schlesinger’s critical analysis of the transnational orientation of the UKFC (now defunct UK Film Council) asked ‘how we might think *beyond* ‘the national’ *through* the national, *through* the prism of state film policy and its ideological legitimations’ (his emphasis, 2015a, p.10). Similarly, tax policies like S481 are correctly perceived of as *both* an economic policy and a cultural policy.

### 3.4.3 Multiple instrumentalities in State aid policy

Having established the multiple rationales set out in the academic literature on cultural and audiovisual policies, it is useful to consider how such multiple rationality permeates State aid policy specifically, as a particular branch of EU policy. The State aid regime is usually conceptualized of as economic. However, certain theorists recognise the transversal nature of competition law/State aid policy (e.g. Donders & Raats., 2015). In a similar fashion to audiovisual industries and cultural industries, it is contended by this thesis that the State aid regime within the audiovisual industries field is marketised and commodified and subject to multiple instrumentalist rationales. While State aid is fundamentally operationalised to support the common market across the EU, it also has other social, political, and cultural goals. In practice, State aid regimes are themselves increasingly marketised, instrumentalised, datafied, and reframed to attract footloose productions which *may* (note the caveat) offer cultural benefits to national and regional industries, but may instead operate to avail of offered tax reliefs without providing significant benefits to local industries and economy. The provision of State aids within the EU is an increasingly significant support for the cultural industries, playing a crucial role in the global production landscape, and acting as a pivotal tool to attract international projects while simultaneously supporting indigenous industries through strengthening the local production environment (see Olsberg SPI Global Incentive Index, 2019).

As a supranational institution, the EU is a developing concept.<sup>3</sup> Thus, policy development within the EU can take a number of approaches, including directives that have direct effect, and more “soft law” approaches such as the 2001 and 2013 Communications. EU policy towards State aid, that is, towards the granting by Member States of benefits towards industries within individual jurisdictions (and thus causing imbalance in free trade within the EU) is a form of negative policy or negative integration, in that it constrains the potential for Member States to introduce regimes that may distort

competition, rather than actively harmonising national economic policies. Increasingly the Commission attempts to put in place regimes with better-targeted aid and focuses on what it perceives to be “good” aid as opposed to “bad” aid, through such policies as the State aid modernisation programme. This is in contrast to positive (i.e., interventionist) forms of policy such as Creative Europe 2014-2020 that encourage networking across the audiovisual industries within individual Member States.

The function of State aid regulation is to control the operation of State aid regimes across Member States of the EU. Under Article 107, TFEU selective State aid - where an individual Member State favours its own regional/national industry - contravenes EU law. However, the EU (specifically the Commission) recognises that certain industries may be justified in receiving State aid. Article 107 TFEU sets out certain parameters for justification of approval of State aid. One such justification is on the grounds of culture. Article 107 TFEU (introduced by way of the cultural derogation in the Maastricht Treaty) allows for approval of State aid measures on cultural grounds. Article 107(3)(d) states that the Commission may consider aid which promotes culture and heritage conservation compatible with the internal market, provided it does not ‘affect trading conditions and competition in the Union to an extent that is contrary to the common interest’ thus emphasising the economic role of the State aid regime.

In theory, at least, the rationale of EU State aid policy is to remove distortions of competition between Member States and thus facilitate the operation of the free market across the EU. Subsidisation of domestic industries within Member States may limit cross-border movement, by championing domestic industries (for an overview of State aid law and policy see Bacon, 2017; Quigley, 2015). Initially, State aid rules were designed to prevent Member States engaging in self-defeating subsidy wars in a bid to prop up domestic industries. As will be shown in Chapter Five, this understanding was central to the discussions around the revisions to the 2013 Communication. In more recent years, there is an identifiable shift towards, as Righini holds, the use of State aid as a tool of

economic coordination (cited in Bellucci, 2010) in that the Commission actively uses State aid policy in all areas (not only audiovisual industries) to achieve specific policy objectives (with the recent *Apple* decision by the Commission a significant example). Thus, the Commission de facto uses State aid law as a tool for economic policy (an argument reflected in Piernas López's work on State aid law (2015)). Certain legal academics take what can be termed a political economic approach to State aid policy with both Piernas López and Merola, for example, looking beyond the legal interpretation of State aid law and seeing State aid as a policy instrument in the hands of the Commission (Merola, 2016; Piernas López, 2015).

Piernas López describes how EU State aid policy has evolved over time under the influence of political, economic and constitutional events within the EU (2015, pp.44-64), arguing that the legal concept of aid has evolved in accordance with the policy priorities of the Commission. In the 1960s and 1970s, it was primarily informed by the 'internal market conception'. The key initial objective was to prevent Member States from introducing state-funded supports for their domestic industries on the grounds that such interference undermined the operation of a single European market (because market conditions for individual enterprises in particular Member States differed from those prevailing elsewhere in the EU). This policy was superseded by what Piernas López terms a competition-based approach in the 1980s and 1990s. Here, the target is less the regulation of intra-Member State economic relations and more a desire to create broad frameworks encouraging individual Member States to adopt a common outward-facing policy when it came to their relationships with enterprises from beyond the EU (albeit such homogenising impulses were limited by Member States' retention of sovereignty over their internal tax policy). In other words, as applied to State aids for film, the EU preference would be for pan-European (i.e., within Member States) adherence to rules on how supports operated even if in practice this was hard to impose. Finally, Piernas López points to the 'the current comprehensive conception' of State aid policies which have prevailed since the turn of the

21<sup>st</sup> century, an approach that attempts to strike a balance between the needs of the market and other values. This can be understood or illustrated by reference to the manner in which the EU overtly supported State aid to banks within Member States in the wake of the 2008 economic crash.

In contrast to relatively small-scale sectors such as the audiovisual industry, the systemic importance of the banking sector meant that State aid to failing banks de facto constituted a significant intervention into economic policy writ large. In effect then, State aid policy has become a living instrument, actively deployed to shape economic policy within the EU (See also Davies, 2014). It can also be understood with reference to the Commission decisions relating to rulings in Ireland, the Netherlands, Luxembourg (and elsewhere) concerning income tax arrangements with multinationals (including, for example, *Apple*, *Starbucks*, *Fiat Chrysler* and *Amazon*) which indicate the Commission's desire to combat tax evasion.

Like Piernas López (2015), Biondi and Righini see State aid law as a tool of the Commission (2014). They 'humanise' the story of State aid law by telling its life story as one of resilience and adaptation (ibid, p.137). State aid has had to stretch to encompass new EU Member States and a growing public sector and market, has had to adapt to the variable size and functions of this public sector, and had to deal with the impact of a serious financial crisis. This last, 'comprehensive' approach to State aid law echoes Herold's 'symbiotic relationship' approach to the relationship between culture and economics in audiovisual policies. While one view holds that the aim of the State aid regime is not to shape cultural policy, with Psychogiopoulou holding that the aim of State aid control is to 'maintain a level playing field for undertakings active in the internal market' and not to shape cultural policy (2015, p.129 citing Quigley, 2009), it is contended in this thesis that State aid policy is instrumental in shaping national policies on culture comprehensively and actively. While it may not be considered direct cultural policy, it is a logical consequence of developments in other fields.

Thus, policies that regulate State aid in the cultural field are, in their own way, subject to instrumentalised policy norms. State aid may not be directly a cultural policy *per se*, and may, at least in theory; function as a taxation/competition policy (given that it is under the purview of DG Competition rather than DG Culture). However, given the significance of State aids for audiovisual industries in the shaping of international audiovisual production, it is inevitable that aids that come under the State aid regime have a significant effect on the cultural field. Historically, intervention by the Commission in what is considered an area of national sovereignty (i.e., culture) has been a site of tension. Scharf and Orsich state that, in the past, State aid for the film industry was mainly given to promote a national cultural film industry, and this is the basis upon which the 2001 Communication was drafted (2006). However, they point out the growing tendency to offer tax incentives to attract foreign productions (also known as footloose productions), holding that ‘this support appears to be less about protecting/promoting an indigenous European or national film culture and more about supporting ancillary technical industries... the economy in general or just tourism in that Member State’ (ibid, p.521). This is the very development the Commission attempted to resist in the negotiations around the 2013 Communication (as explored in Chapter Five).

Craufurd Smyth explores the complex area of tension between protection of national cultural policies and the avoidance of discriminatory measures holding that ‘the decoupling of culture from nationality undoubtedly weakens the ‘ownership’ that certain states may wish to assert over particular cultural practices or products, but it also enables those practices and products to be interpreted by those outside the culture itself’ (2011, p.876). For her, Member States have, in practice, been afforded ‘considerable latitude’ in determining their own cultural policy objectives (ibid, p.878), giving the example of the UK’s scheme for film finance in which the cultural criteria employed ‘appear designed to ensure the films funded are produced in the UK and involve UK nationals’ (ibid).

Psychogiopoulou is one of the few directly addressing the role of the cultural test in State aid regimes for audiovisual industries (2010) (the date of publication is notable as it predates the 2013 Communication). She holds that EU competition policy is enriched with a substantive cultural dimension but was, in its earlier format, overly constricting on requiring audiovisual works that are deemed cultural to be the subject of State aid support under 107(3)(d). For her, 'requirements to designate 'verifiable' cultural content criteria have exerted a strong influence on the elaboration of state audio-visual support instruments, modifying domestic cultural policy priorities and preferences' (ibid, p.290) and, as she points out, ironically in the name of culture and cultural diversity, which she describes as a 'narrow reading' by the Commission (ibid, p.290) of both Articles 179 and 107(3)(d) and contrasts with the ECJ's broader understanding of how culture should be construed and treated under EU law. Psychogiopoulou alludes to the significance of the Commission's intervention/interference in the UK's national cultural test holding that the Commission has increased control of the assessment of Member States cultural criteria to comply with the requirement in the 2001 Communication that State aid is directed to audio-visual productions with cultural content (ibid, p.276). For her, this shift has problematically induced Member States to prefer audiovisual works that favour high culture, which goes against the Commission stated aim of not setting cultural policy or making aesthetic judgments, holding that a wide definition of culture under Article 107(3)(d) might be better 'so as to favour unhindered access of a variety of audio-visual works to state financing, in support of cultural diversity' (ibid, p.289). Psychogiopoulou's assessment of the Commission's approach predates the revisions to the 2001 Communication. However, decisions post the introduction of the 2013 Communication can be interpreted as softening this approach somewhat, with the Commission explicitly limiting itself to ascertaining that Member States have verifiable criteria in place. This is a useful perspective to bear in mind when assessing Ireland's open State aid regime, seeing it

as encouraging a wide interpretation of culture rather than simply as an industrial policy to attract inward investment.

Psychogiopoulou states that the Treaty of Maastricht marked ‘a turning point in the *perception* of State aid control’ (my emphasis, 2015, p.298), as it gives Member States a space in which to pursue their cultural strategies. For her, ‘the cultural State aid derogation...seeks to strike a balance between the fundamentals of the common market and national cultural prerogatives’ (ibid, p.298). She points out that the Commission has openly held that the State aid provisions are not aiming to shape a cultural policy and do not constitute an instrument for cultural promotion purposes, despite the fact that cultural benefits may be gained by their implementation (ibid, p.299).

For some, the function of the cultural derogation to State aid in Article 107(3)(d) may set up oppositional policy paradigms. The State aid regime attempts to fulfil multiple goals, including protection of the internal market and promotion of EU, national (and regional) audiovisual industries. It may not be possible to achieve goals that may have different requirements simultaneously. For Orzan & Ianus, ‘the cultural derogation may be regarded as an attempt to strike a balance between different goals which are unlikely to be compatible’ (2016, p.301), that is cultural goals, competition goals and industrial goals. For Pauwels, De Vinck & Van Rompuy, a balance between the various goals of the State aid regime has not been achieved, stating that the Commission’s attempts at changes in State aid policy for audiovisual industries, particularly vis-à-vis territorialisation rules after 2001, cannot be ‘evaluated in a positive way’ (2007, p.28). For De Vinck and Pauwels (2018), the State aid policy of the Commission has not achieved clear-cut results. For them, the Commission may be ‘stuck in the middle of two seemingly opposing policy paradigms’ (2018, p.176), i.e., the economic-industrial and the cultural policy paradigms.

The complex interplay between national policies and the supranational institutions of the EU can give rise to tensions within policy developments. For Sarikakis, ‘not only have media and cultural industries become increasingly central in the economies of

European countries, they have also become the terrain of contestation and consensus regarding self-governance and cultural identity' (2007b, p.14) thus highlighting the importance of these industries for both cultural and economic rationales. Sarikakis points out that audiovisual production remains, for the most part, domestic in its origin and consumption. Thus, the potential of media and cultural expression in constructing or reflecting a European imagined community which gives itself legitimacy through a shared culture is affected by what she terms 'the politics of particularism of culture(s)' (ibid, p.18).

### 3.5 Conclusion

The consideration of the varied discourses in national and EU audiovisual policy brings together multiple rationales around culture and economics, and around the complementary /competing discourses between individual Member States and the EU. From an EU policy perspective, culture is political, and the European project is cultural. Thus, the functioning of the internal market largely drives EU policy, albeit complemented by cultural expression and diversity, which can, in turn, be facilitated by the proper functioning of the internal market. In one way, competition policy and State aid policy can be seen as an *ally* to cultural diversity rather than as a danger. Cultural policy faces a degree of complexity, given the tendency to impute both intrinsic and instrumental goals to such policies. Within an EU context, such tendencies are further complicated as the instrumental public policy goals of the EU differ to those that tend to be associated with a nation-state/regional entity, for example, culture is transversal, but also subject to subsidiarity. This review of literature on the development of cultural policies of the EU shows that there is has been a shift in focus from a political instrumentalist use of culture as part of the legitimisation of a united Europe to a more economic focus.

In the current marketised approach, the broader functions of a cultural policy are not ignored, but they are not accorded as high a priority as neoliberal economic policies. Such a shift is also seen in the State aid regime. However, in the State aid regime, cultural policies are given a more overt role through the cultural clauses as inserted by the Maastricht Treaty. The examination of the State aid policies for audiovisual industries that follows this chapter concentrates on exactly how those cultural policies are deployed. Overall, culture has been used in an instrumentalised fashion by the European institutions in attempts to achieve EU goals; of integration; of economic consequence and political issues. The State aid regime for audiovisual industries has been described as existing in the centre of two tension fields (Pauwels et al., 2007) namely the attempts on one hand to balance cultural diversity and economic objectives, and on the other, nation-states' aims to protect national sovereignty and the issue of increasing cultural marketisation at both nation-state and EU policy level. It is the continuous negotiation of the delicate balance between these tension fields that shapes audiovisual policy within the EU and consequently shapes national policies such as S481.

It is also possible to identify multiple instrumentalities in Irish policy towards the national audiovisual industries. This chapter offers an understanding of the changing understandings of the role of a national cinema and works to set up an understanding of the role of State aid policy in this area, as explored in the following chapters. This thesis explicitly posits that analysis of the funding structure context, and specifically the state's intervention by way of a specific tax expenditure in the form of S481, offers a way of understanding the issues shaping the parameters/categorisation of Irish cinema in the twenty-first century. This chapter analyses the Irish audiovisual industries in the context of national and transnational dynamics. It acknowledges the complexities around the understanding of a national cinema in an era marked by globalised flows of production funds, trans/international distribution mechanisms and consumption models that traverse national boundaries. It is explicitly contended here that national boundaries do matter,

given the significance of national and supranational regulatory/policy regimes affecting the audiovisual industries, and in particular the relevance of state-based tax expenditure regimes. As Vitali and Willemsen hold ‘cinema can be thought of as pertaining to a national configuration because films...are clusters of historically specific cultural forms the semantic modulations of which are orchestrated and contented over by each of the forces at play in a given geographical territory’ (2006, p.7).

The Irish tax expenditure regime is not limited to national productions only (and could not be, given EU policy restrictions which disallows discrimination on national grounds), but are available to all productions, allowing for tax deduction on eligible spend in Ireland. There appears to be an assumption at policy making/evaluation level that a form of “trickle-down effect” will benefit a national cinema through support of infrastructure, on the job training and a spillover effect through increased tax take. McLoone suggests that Irish cinema must ‘live with’ a dominant Hollywood industry (2000). It is the nature of these living arrangements that is of most interest.

. A national culture, howsoever devised, is generally used to foster/reflect a feeling of construction of a nation. This chapter looks at how this concept is explored in cultural production, particularly through thematic and narrative analysis of films produced within (and about) Ireland, and how it is utilised as a policy device by the polity within Ireland - increasingly, it is contended, as both an industrial policy and as cultural policy, with a continuum of rationalisations between industrial and cultural, but broadly evidenced through S481 as more industrial than cultural. In particular, this chapter has aimed to interrogate the development of both a national cinema and a national film industry through a conscious engagement with the policies commodifying the literal and figurative space of the nation. It has pointed to the complexities underpinning the manifestation of a national cinema as both an industry and as a symbolic cultural arena. In particular, it examines the role of the state therein. The state’s role as policymaker is instrumental at least in some form in shaping the cultural and industrial audiovisual output of the nation. This review of

the literature has inspired a hypothesis around the multiple instrumentalities to which both EU and Irish policy are subject.

This chapter has set out the literature on audiovisual cultural policy to interrogate further the role of State aid as a cultural policy. It highlights the paradoxes underpinning policy in this area, driven by the dual nature of audiovisual goods as both cultural and industrial. In addition, it identifies a further tension at play, namely the complex relationship between the concept of national sovereignty and the operation of the EU as a supranational body. The Commission's approach to the regulation of State aid is, in theory at least, driven by the need for protection of the EU's internal market. Thus, the review of the literature has highlighted the complex nature of audiovisual policy, illustrating the developing nature of EU policy interventions towards audiovisual industries over time, highlighting how culture has been instrumentalised in various fashions for multiple policy goals; social, economic, integrationist.

With a specific focus on State aid, it is contended that the cultural instrumentalist goals of "negative" cultural policies such as State aids for audiovisual industries are underexplored in the literature. As Romainville holds (2015, p.28), the negative cultural policies of the EU arguably trump the positive cultural policies (such as the Creative Europe 2014-2020 programme). That both negative and cultural policies originate from economic policies ensures that associated rationales such as competition policy tends have more influence than a purely cultural logic which might otherwise primarily inform the development of audiovisual policies. As forms of *cultural* policy, competition policy demands further and more in-depth analysis to ascertain its effect. This chapter has identified an increased cultural marketisation of policy at play that in turn goes to shape the role of State aid law. This idea is taken forward to interrogate development of the 2013 Communication and particularly the Commission's position regarding the spatialization of culture, of nation-state, and of internal market by way of a marketised position. This

analysis will be put to use in interrogating the role of S481 as a taxation and a cultural policy in subsequent chapters.

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<sup>1</sup> An abridged version of the report is available in an English translation from the Archive of European Integration, University of Pittsburgh (<http://aei.pitt.edu/995/>).

<sup>2</sup> This may be at odds with other applications of subsidiarity, with the Edinburgh Guidelines on subsidiarity suggesting there is a need for EU action if it is necessary to protect the EU (European Council, 1992). There are some diverging views on the interpretation of these Edinburgh Guidelines. Öberg suggests that while the logic of the protection of internal market argument is theoretically useful, it has no real boundaries and could lead to any aspect of life being harmonised suggesting that harmonisation efforts should be built on objective economic criteria (2016). Thus, while the Commission accede that the application of subsidiary prevents it from interrogating the nature and extent of the cultural tests used by Member States to identify productions qualifying for aid under State aid schemes, it is not inconceivable, taking Öberg's approach, that the Commission could, in future, argue that the wider interests of the EU allow for examination of such national regimes. However, such a policy move on the part of the Commission would not be in keeping with the neoliberalised and pragmatic approach which broadly marks audiovisual industries policy.

<sup>3</sup> The EU (at least in areas of audiovisual/cultural policy) is generally regarded as a supranational institution (as Büthe holds 'political authority is supranational if consequential decisions are made by legislative, executive, or adjudicative bodies of several countries jointly, or by a single body above the level of the nation-state' 2016, p.2).

# 4 METHODOLOGY

As Couldry holds ‘theory is useful only if through its relative generality it enables us to engage better with the particular, that is, for better tools with which to practise our suspicion towards totalising claims’ (2008, p.161 in Karppinen, 2010, p.30).

## 4.1 Introduction to media policy research

Media and communication are at the heart of contemporary society, and thus the interrogation of policies that shape the governance and regulation of the field is important. The methods chosen to carry out analysis of media and communication policies should ideally reflect the ‘peculiarities’ (Puppis & Van den Bulck, 2018, p.8) of the field – including the dual nature of media products as economic and cultural and the political and meaning-making role of media. Carrying out analysis of media policy requires knowledge of the societal, political, cultural, technological, and economic issues shaping media to provide a theoretical basis for research.

The approach taken in this thesis is broadly a desk-based qualitative document analysis, using the method of thematic analysis to carry out a policy research investigation of the chosen audiovisual industries policies. Briefly, thematic analysis (a method as

opposed to a methodology) (Braun & Clark, 2006) allows for the identification of themes across data sets informed by theory relevant to the research question. A policy research approach allows for identification and analysis of the values underpinning policy decisions. The methods and methodologies chosen to approach the research question are explicitly embedded in theories around the political economy of audiovisual industries. Thus, the data is approached (and, indeed, selected for analysis) with the tools of theory to hand. It is not that answers are preconceived or that there is bias, rather the analysis is informed and situated within the extant literature.

This thesis uses a political economy framework, which is grounded in specific epistemological and ontological principles. Epistemology describes the study of the nature of knowledge. Following Mosco, this thesis takes an epistemological stance which can be described as realist, inclusive, constitutive, and critical (Mosco, 2009). It is realist in the sense that it recognises reality in concepts and social practices, inclusive in its rejection of essentialism, constitutive in its recognition of the limits of linear causal determination and critical in the sense that it compares knowledge to other disciplines including neoclassical economics, cultural studies and more. While, for Mosco, traditionally political economy emphasises structures, his approach, which is adopted in this thesis, emphasises the issues social processes and social relations within communications (Mosco, 2009, pp.128-9).

It is important to recognise the significance of the subjectivity of the researcher from a number of different perspectives. Firstly, this thesis emphasises the conceptual links between political economy and legal research, arising out of the researcher's background as a lawyer and political economist. Paquette & Redaelli consider that 'most of the ways in which researchers talk about cultural policies, and most of the theoretical language and mediation with the object(s) of study, involve problematizing cultural policy as the fruit of interactions between ideas, institutions, and interests' (2015, p.12). The interrogation of the interactions between these concepts can be usefully approached from both a legal perspective, which emphasizes the importance of the legal concepts underpinning cultural

policy, and a critical political economy approach which problematises these concepts. Secondly, the recognition of the inherent subjectivity of the researcher acknowledges assumptions in shaping an approach to a research topic. The acknowledgement of the researcher's assumptions around the importance of culture (including audiovisual culture) to society is an important starting position that stems from a lifelong engagement with cinema and film.

## 4.2 The identification of policy silences

This thesis is informed by Bacchi's 'What's the Problem Represented to Be?' (commonly shortened to WPR) theoretical approach to policy research (2009; 2012; Bacchi & Goodwin, 2016) as it allows for identification of assumptions and gaps within discourse around policy. Her critical approach is firmly post-positivist in nature. Bacchi's approach focuses both on the meaning-making of policy formulation and the underpinning conceptual logics that convey validity upon those meanings. Her aim is 'to understand policy better than policymakers by probing the unexamined assumptions and deep-seated conceptual logics within implicit problem representations' (2012, p.22).

Bacchi proposes a set of six questions that interrogate how problems are represented in policies.

- Q1 What is the problem represented to be?
- Q2. What assumptions and preconceptions underpin this representation?
- Q3 How did this representation of the problem come to gain support?
- Q4 What is left unproblematic in this problem representation? Where are the silences?  
Can the problem be thought about differently?
- Q5 What effects are produced by this representation of the problem?
- Q6 How/where has this representation of the problem been produced, disseminated, and defended? How could it be questioned, disrupted, and replaced? (2009, p.xii).

Bacchi's approach is in direct contrast to forms of evidence-based positivist policy analysis that approach policy as being a form of problem-solving. Bacchi's WPR approach is complementary to a value-neutral thematic analysis policy research approach to analysis. Bacchi argues that such paradigm denies the shaping that goes on in the process of problematisation. Stevenson, Balling & Kann-Rasmussen hold that Bacchi's method 'focuses on both the meaning-making of policy formulation and the 'conceptual logics' that lend those meanings validity' (2015, p.91). Stevenson's analysis of the problematisation of cultural participation in Creative Scotland policy has identified silences 'which are too often ignored for the sake of pragmatic necessity' (D. Stevenson, 2013, p.83). Using Bacchi's approach in a policy research context does not assess policy on its own stated grounds of success, but interrogates the implicit norms underpinning the development and assessment of the policy. Bacchi's approach questions 'the premises that underpin particular problem representations' and enables analysts to 'think deeply about the assumptions and presuppositions that lie behind and shape selected policies' (2009, p.xiv) and, as such, questions ideologies underpinning the policy-making process.

### **4.3 Policy Documents are not neutral: qualitative document analysis**

Policy documents are communicative acts in themselves. The thesis uses primary policy documents and grey literature to provide data for analysis of audiovisual policy at both Irish and EU level. Policy documents are, for Karppinen & Moe 'socially produced' and present one form of reality (2018, p.252). The self-reflective process of selecting the documents for analysis is not an isolated step in the research process but is a subjective process that guides the process of interpretation of the documents (ibid., 2018). Khan observes that cultural policies are not static and abstract documents but instead 'dynamic

formations that emerge from a lifeworld of professional, personal and institutional interests' requiring reflexivity in the research process' (2019, p.536). The choice of documents the subject of analysis is the product of a reflexive analytical process. As Mason holds 'documents...are constructed in particular contexts, by particular people, with particular purposes, and with consequences - intended or unintended' (Mason, 2002, p.110). The inspection of the contents of the chosen documents is, of itself, of importance, but should also incorporate an understanding of how the documents are produced, circulated, and used (Atkinson Coffey, 2004, p.57). Policy documents are constructed in a specific way so we should approach them for what they are and what they intend to accomplish. They do not stand in isolation but in relation to other contemporary and historical documents. Thus, it is necessary to interrogate what reality is being constructed by the documents under analysis. Documents are not value-neutral, and research that relies on analysing documents must identify those latent values. This research process must also be cognisant of the nature of the social and political context within which documents are prepared - a critical political economy perspective emphasises this.

As Karppinen & Moe point out, relying on the official documentation of a policy to enable framing of a research project is a pitfall in document policy research analysis approach, in that it can neglect the 'less visible arenas and modes of decision-making and power' (2018, p.253 citing Freedman, 2010). The within analysis is acutely cognisant of this potential pitfall and uses the work of Carol Bacchi to address what she terms policy silences explicitly.

This thesis uses two broad categories of research material: primary materials including legislation/regulation; and commissioned empirical studies/reports. A number of the documents analysed in this thesis can be termed 'grey literature' which is defined as manifold document types produced on all levels of government, academics, business and industry...of sufficient quality to be collected and preserved by library holdings or institutional repositories, but not controlled by commercial publishers,

i.e., where publishing is not the primary activity of the producing body. (The “Prague Definition” Schöpfel, 2010, p.2 of 24)

It is accepted that the grey literature relied on in this thesis is subjective, generated to achieve a particular aim, not peer-reviewed, and thus not objectively reliable. The data is approached with this in mind. The documents the subject matter of the within analysis are selected within the context of a careful analysis of the relevant academic theories around a political economy of national and EU audiovisual/cultural policies. They are examined to identify the main premises, implications, and understandings therein. This involves interrogation of how the policy documents frame the aims and objectives of tax expenditure policies, and how it establishes the values of these policies. It aims to make identify commonalities and differences between normative assumptions identifiable in the documents.

Interviews often accompany document analysis in policy research. However, this thesis deliberately chose to interrogate the written record solely as this reflects the *official* record of intentions of policymakers of the Commission and Ireland. For Altheide, document analysis is ‘a method, procedure, and technique for identifying, retrieving, and analyzing documents for their relevance, significance and meaning’ (Altheide, 1996, p.2). Karppinen refers to this approach as interrogating ‘closed-door activities’ (Karppinen, 2010, p.33) and holds that solely relying on the written record can help ‘assess the credibility of documents and reflect on the intentions of their authors’ (ibid).

### 4.3.1 Irish policy documents

In an Irish context, the relevant documents comprise of the relevant primary and secondary legislation underpinning the tax expenditure policy (S481 TCA as amended). Since its introduction in 1987 as S35 Finance Act, the tax expenditure has been modified and amended in significant ways. These legal documents are triangulated with reports by

government bodies and interested parties, and official data from the Revenue Commissioners and from SI/IFB (see Table 1).

**Table 1: Irish corpus of documents**

#### Irish State aid policy resources

- **Primary legislation**
  - **Taxes Consolidation Act, 1987 (as amended)**
- **Secondary legislation**
  - **Regulations**
  - **Guidelines issued by Revenue Commissioners**

#### Irish audiovisual and cultural policy resources

- **Reports (n = 44) identified, sourced and analysed (see Appendix D)**
- **Minutes of meetings of various steering groups / submissions on consultations**
- **Analysis supplemented with Dáil committee reports, Dáil debates and Parliamentary questions ([oireachtas.ie/en/debates/questions/](https://oireachtas.ie/en/debates/questions/)), Screen Ireland published figures (See Appendix E)**

However, the data available on the uptake of the tax expenditure is relatively limited (for reasons of confidentiality around taxation) and thus, various grey material documents are used to trace the history of the expenditure. This thesis contends that the lack of comprehensive data is a significant failing in the tax expenditure regime. Given that the expenditure comes from public money, it should be easier to obtain clear and coherent data on the take-up of the expenditure. The limitations of the financial data are acknowledged here where appropriate. This thesis takes issue with the framing of S481 primarily as an economic policy and contends that it should be framed and evaluated as a cultural policy; that is, the aims and objectives of the measure should take into account the unquantifiable nature of cultural value, in addition to measurements of economic value.

### 4.3.2 EU policy documents

From an EU perspective, the main document chosen for analysis is the European Commission's soft law policy document, the 2013 Cinema Communication ("2013 Communication") which is put in context of Commission policy developed towards tax expenditure regimes for audiovisual industries since 1988 (and before) through analysis of Commission decisions (see Table 2).

**Table 2: EU corpus of documents**

<b>Commission decisions on State aid regimes</b>
<ul style="list-style-type: none"><li>• 180 decisions from 1988 to 2019 (see Appendix A for analysis)</li></ul>
<b>Process leading to 2013 Communication (See Appendices B &amp; C)</b>
<ul style="list-style-type: none"><li>• 3 x draft Communication (See Appendix C)<ul style="list-style-type: none"><li>Issues Paper</li><li>Draft 1</li><li>Revised Draft</li></ul></li><li>• Submissions during consultation process (See Appendix B)<ul style="list-style-type: none"><li>• Issues Paper (n = 95)</li><li>• Draft 1 (n = 97)</li><li>• Revised Draft (n = 84)</li></ul></li><li>• Minutes of meetings obtained under FOI</li></ul>
<b>Supplementary materials</b>
<ul style="list-style-type: none"><li>• EU Treaties</li><li>• 2001 Communication</li><li>• Extensions to 2001 Communication</li><li>• Press Releases from Commission regarding extension of Communication</li></ul>

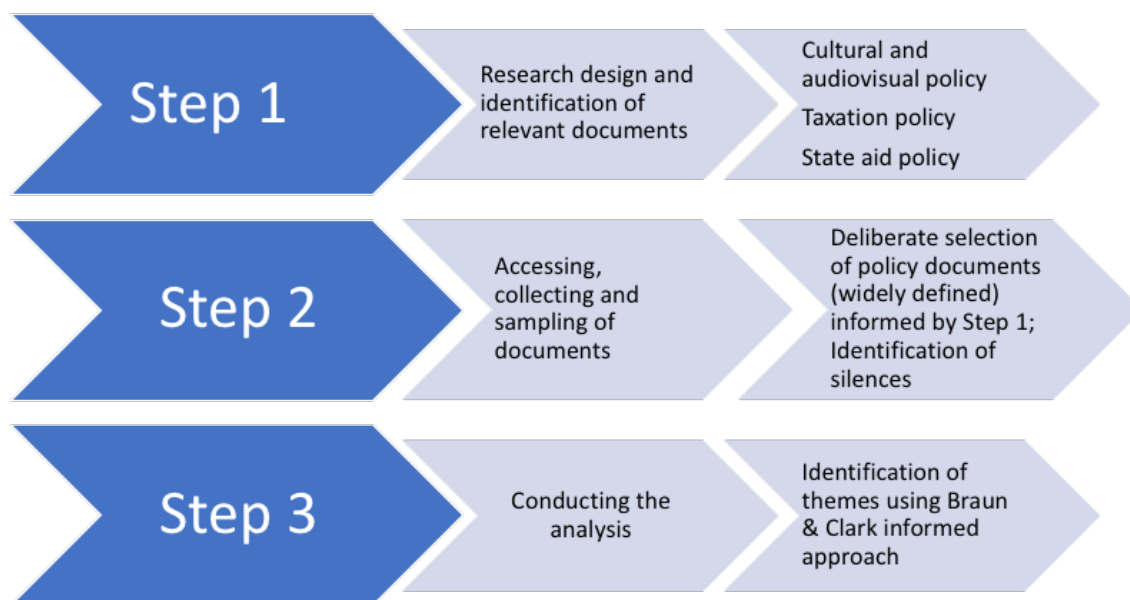
When carrying out media industries policy research in the digital age, the perceived availability and ease of access to diverse documentary sources can cause methodological challenges (see Karppinen & Moe, 2018). The reconstruction of the policy process through the identification of relevant legislative changes and policy discourse implies the existence of a coherent singular narrative thread. However, policymaking is messy and chaotic. The corpus of policy documents chosen by the researcher to undertake policy analysis can tell us much about the policymaking process, but not all. Karppinen & Moe point out that using policy and industry documents to reconstruct the policy process retrospectively

‘involves the danger of overestimating the rationality and linearity of the policy-making process’ thus we should undertake ‘source criticism’ (2018, p.252). This thesis undertakes such source criticism through the use of critical political economy theory to examine the wider social context within which policy development takes place. Karppinen & Moe cite Freedman’s work (2010) on media industries research in emphasising that we need to interrogate what has not been recognised to take account of policy silences (ibid). (This approach has obvious echoes of Bacchi’s WPR work).

#### 4.4 Policy research: the research design

Policy documents are, in fact, ‘a reconstruction of reality’ (Puppis & Van den Bulck, 2018, p.33). As they correctly point out, communications studies methodology texts tend not to address qualitative document analysis as a methodology. Based on Karppinen & Moe’s approach (2018) and supplemented through the use of Altheide & Schneider (2013) the following research design steps were undertaken as represented in Table 3.

**Table 3: Research design steps**



Source: Adapted from Karppinen & Moe, 2018 and Altheide & Schneider, 2013

### Step 1. Research design and identification of relevant documents

The research design informs the strategy used to choose, collate, and analyse materials. The use of a longitudinal critical political economy perspective allows for focus on the assumptions underpinning policy development. In practice, 'the research process is often recursive' as the emergence of new information can force us to revisit the initial research design (Karppinen & Moe, 2018, p.256). Several significant policy changes occurred within the timeframe of this research project, including Commission decisions on state aid policy and, in particular, significant changes to Section 481, and the introduction of a new cultural policy framework. The researcher's subjective knowledge of the tax and production landscape in Ireland meant that the formulation of research questions was preceded by knowledge of academic and political debates in this area. Documents served as empirical data and were analysed to see how a key concept (an understanding of value within audiovisual industries policy discourse) has been framed and understood within an Irish and EU context. The selection of documents (widely defined to include formal and informal policy documents) deemed 'relevant' to the development of the research questions was informed by the deep interrogation of the literature on the political economy of culture and communications.

### Step 2. Accessing, collecting, and sampling of documents

The process of selection of the documents to be analysed is deliberate; informed by the researcher's understanding of the key concepts developed through the Step 1 process. In the context of this research, the development of understanding of the significance of EU policy on State aid in the shaping of Irish policy led to analysis of EU policy developments; in particular Commission decisions on national State aid regimes and soft law policy documents. The subjective positioning of the researcher as a lawyer meant that tax legislation was central to the research process, which was supplemented by grey literature in

order to broaden understanding of the issues shaping policy developments. The consideration of silences has been key throughout the document collection process.

### Step 3. Conducting the analysis

The Irish and EU policies the subject of the within analysis are evidenced through qualitative document analysis. It is crucial to understand from this process that, as Karppinen & Moe point out, ‘causal relations are not readily reconstructed from policy and industry documents only’ (2018, p.260)– thus this project does not attempt to identify causal but points out to complex nature of imputing causality. The analysis is informed by the theoretical framework developed from engagement with the core literature.

## 4.5 A thematic analysis method

A thematic analysis approach to media industries policy is used to carry out a qualitative document analysis (Braun & Clark, 2006, 2019; Herzog et al, 2017; Ramsey & Herzog, 2018; Ramsey et al, 2019) in conjunction with a qualitative document analysis approach informed by Atkinson & Coffey 2004 in a way that allows for explicit incorporation of the salient issues underpinning such analysis (Herzog et al, 2017; Ramsey et al, 2019). Thematic analysis (TA), following Braun and Clark, allows for identification of broad themes of analysis from the data analysed. The development of themes is explicitly informed by knowledge of the pertinent matters affecting audiovisual production and thus foregrounds the significance of the norms and values shaping the policy documents under analysis. The method has certain similarities to grounded theory methodology in the development of codes, but it is not a strict grounded theory as it differs in terms of procedure and underlying philosophy (Braun & Clark, 2019). Braun and Clark set out a 6-step approach but reiterate that the steps are not necessarily sequential but instead are iterative, moving back and forth between steps (2006). The six steps are as follows:

1. Become familiar with data
2. Generate initial codes
3. Search for themes
4. Review themes
5. Define themes
6. Write-up.

In theory, at least, TA is a straightforward method of deducing patterns of meaning (i.e., themes) from qualitative data. The generation (rather than identification) of themes arises out of informed analysis of the chosen data to construct codes, themes, and patterns. The significance of TA is that it is a theoretically flexible as a generic method rather than a methodology with specific epistemological assumptions, and thus can be used within a wide range of theoretical frameworks. TA has similarities to content analysis but differs in that it is not necessary to TA to code each line in data set, but the discretion of the researcher is used (Braun & Clark, 2006). However, it is TA's perceived simplicity can give rise to problems. Since it is straightforward, it is rare to see an explicit explanation/step by step setting out of the steps taken within a thematic analysis of qualitative data. This chapter thus makes explicit the significance of the position of the researcher - in choosing the data, in situating the data within various research fields, and in developing the themes out of the coding of the documents. Herzog et al. raise the issue of 'pre-existing repertoire of theoretical concepts and associations between them' (2017, p.5) which may or may not inform the researcher. For them, while this may form a challenge, it 'should not be exaggerated' (ibid) as issues of individual judgment are inevitable in any research project. This thesis foregrounds the role of the engaged and informed researcher - as is possible with the use of a TA approach in the context of a political economy framework.

This approach, given its theoretical and epistemological assumptions of an active researcher, makes explicit the thinking behind the approach to the data. The documents are not read in a vacuum but informed by literature on political economy, on Irish film industry/EU audiovisual/cultural/State aid/integration issues. This approach is termed a theoretical or deductive approach and is in contrast to an inductive approach (or bottom-up) approach. Thus, the data was not coded line-by-line, but each relevant section was coded, a process that actively requires the ‘continual bending back on oneself’ (Braun & Clark, 2019, p.594) questioning and querying assumptions in interpreting the data, and most significantly a process that is ‘creative, reflexive and subjective’ and understands ‘researcher subjectivity’ as ‘a resource’ (ibid, p.591) rather than a potential threat to knowledge production. The analysis was done by hand, rather than using a data analytics tool. Initial themes were formulated, then refined based on codes and rereading of the literature.

While the thematic analysis method is complementary to many methodologies, including the qualitative document analysis/policy research one undertaken here, this thesis identifies a potential gap in the outlined methodologies. The approaches taken herein are informed by the extant theory in the chosen field, and thus decisions have to be made by the researcher to identify the relevant theoretical concepts at play. While some may already be familiar with the relevant literature in the field, this is by no means always the case, so an explicit recognition of the need to develop that knowledge in order to approach the data in an informed manner is crucial. The entire point of TA is the engaged, informed researcher who brings knowledge (even biases or part formed hypotheses) to play in selection and coding of data set.

The choice of texts to analyse invokes an informed, engaged researcher, and the documents are not neutral but reflect conditions of production and release. A useful concept in this context is that of the hermeneutic circle as described by Scott and applied by Mason in her work on qualitative analysis. For Scott, TA moves iteratively in and out of the researcher’s ‘frames of reference’ and those of the text under analysis. This dialogic

approach moves within ‘the ‘hermeneutic circle’ in which we comprehend a text by understanding that frame of reference from which it was produced, and appreciate that frame of reference by understanding the text’ (Mason, 2002, p.110 citing Scott 1990, p.32). Therefore, the method recognises the messiness of decoding texts, actively encouraging an approach whereby texts and contexts inform each other.

It is reductive to have a binary view of TA as either inductive (i.e., informed by theory) or deductive. Instead, it is more helpfully conceived of as along a continuum, with the theory informing the analysis, and the analysis informing the sourcing and understanding of the theory. While Braun and Clark acknowledge that this is an iterative process in their 2006 article, a more explicit acknowledgement of the significance of theoretical research to an understanding of the role of TA would be useful. Thus, this thesis makes it clear that the ‘virtuous cycle’ of theory and data iteratively inform each other. Braun and Clark’s later refinement of their method offers a more nuanced approach to TA. They propose what they term ‘a reflexive TA’ holding that

qualitative research is about meaning and meaning-making, and viewing these as always context-bound, positioned and situated, and qualitative data analysis is about telling ‘stories’, about interpreting, and creating, not discovering and finding the ‘truth’ that is either ‘out there’ and findable from, or buried deep within, the data. For us, the final analysis is the product of deep and prolonged data immersion, thoughtfulness and reflection, something that is active and generative (2019, p.591).

With this reflexive approach in mind, this research applies political economy of communication theories as a foundation for concepts within audiovisual industrial policy including spatialization theories from Lefebvre (2003) and methods of evaluation of culture from Klammer and other theorists (Hesmondhalgh, 2013; 2019; Hutter & Throsby, 2008; Klammer, 2017). The use of spatialization as a foundational theory was inspired by Mosco’s

work on political economy of communications (Mosco, 2009) and acknowledges the work by Kerr; Kerr & Cawley and Nieborg & de Kloet in the field of a political economy of digital games (Kerr, 2013; Kerr & Cawley, 2012; Nieborg, 2011; Nieborg & de Kloet, 2016). Building upon their work in this area, this thesis interrogates the complex interplay between economic values and cultural values used to structure and evaluate audiovisual industries policies (Hesmondhalgh, 2013; 2019). Stemming from this analysis, the related concept of cultural value is used to interrogate the rationale for state funding of culture, primarily focused on the work of Klammer on cultural value (2017).

The development of themes under a reflexive TA approach, using Braun and Clark, uses an understanding of themes as a central organising concept (2013; 2019) to emphasise a uniting idea, in contrast to what they term ‘domain summary themes - which are organised around a shared topic but not shared meaning’ (2019, p.583). However, it is not that themes are hiding waiting to be discovered. Themes ‘are not ‘in’ the data, waiting to be identified and retrieved by the researcher. Themes are creative and interpretive stories about the data, produced at the intersection of the researcher’s theoretical assumptions, their analytic resources and skill, and the data themselves’ (ibid, p.594). This method has been used in this thesis to establish broad overarching uniting ideas around the role of culture in society across different policy discourses in Irish and EU policy and in audiovisual, cultural, EU and taxation policy, highlighting the multiple instrumentalities to which culture is subjected, and interrogating how both cultural products and the space of production are commodified in multiple ways.

A more detailed step-by-step explanation of the 6-step thematic analysis undertaken is contained in Appendices F-G. From the initial coding of the selected documents, a number of themes were developed around the cultural, social, and economic instrumentalism of audiovisual production and the commodification of both national culture and the space of production. An overall unifying idea centred on the problematic of the commodification of the nation-space and national culture, in an increasingly globalised

context, and the consequent (d)evaluation of cultural value of the audiovisual industries through a spatialised lens has been developed from the themes ‘produced’ from analysis of the data in the specific epistemological context arising from the theoretical framework chosen to answer the research questions. Following Braun & Clarke (2016) and Herzog et al. (2017) the themes are ‘actively crafted’ (Braun & Clarke, 2016, p.740) to reflect the interpretive choices made by the researcher. Thus, the final themes can be represented as follows, with an overall arching theme of the (d)evaluation of the concept of cultural value of the audiovisual industries consequent upon the augmentation of the (perceived) economic value of such industries, together with multiple policy silences.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse
- The significance of policy silences.

It is reiterated that the coding process and development of themes was non-linear but iterative. Informed by Herzog et al., this thesis critically reflects on the choices made about methods of data collection and analysis (Herzog et al., 2017). As they hold, a TA should ‘clearly outline the underlying assumptions, the options available and explain why researchers set priorities’ (ibid, p.7). However, this thesis also identifies some gaps in the policy discourse, primarily around the concept of cultural value. The use of Carol Bacchi’s policy approach is of interest here as she foregrounds issues of silence and what remains unquestioned in policy framing (Bacchi, 2009). The identification of this lacuna underpins the importance of an informed deductive approach that can identify some ‘silences’ in the discourse.

## 4.6 Positivist and post-positivist approaches to policy

This thesis identifies specific documents to analyse informed by the relevant theory, through a policy research approach that is post-positivist in nature. In contrast to a positivist approach (i.e., one that foregrounds a value-neutral empirical approach as was prevalent in policy analysis circles in 1970s-80s and beyond) a post-positivist, or post-empiricist approach is more context-oriented. It is considered a return to the democratic orientation championed by initial advocates of study of policy sciences, such as Harold Lasswell (see deLeon and Vogenbeck's useful overview of changes in policy sciences, 2007). In the context of public policy analysis, post-positivism is associated particularly with an emphasis on the argumentative and discursive character of policymaking and the use of interpretative and qualitative methods (Fischer, 2003; Karppinen, 2010, pp. 28–9). It must be noted that a positivist approach has considerable support in the policy studies discipline, with ongoing tensions between positivism and post-positivism; summarised as the tension between the quantitative and the qualitative (Yang, 2007).

This thesis makes a distinction between “traditional” policy analysis and policy research in its adoption of a policy research approach to its analysis. For Majchrzak, policy research is distinct from policy analysis in that it ‘explicitly incorporates values’ (1984, p.18). Policy analysis has traditionally emphasized ‘rigorous quantitative analysis, the objective separation of facts and values, and the search for generalisable findings whose validity would be independent of the particular social context from which they were drawn’ (Fischer, 2007, p.223). A policy analysis approach to policy studies often ignores the ideological questions underpinning or shaping the policy approach (Karppinen, 2010). In an Irish context, there has been a discernible shift in recent years towards evidence-based policymaking (Ferris, 2015; Ruane, 2012). This is evident in the plethora of cost-benefit analyses, expenditure reviews and in the terms of reference of various reports both in arts and culture and in the wider Irish economy. As Ferris points out, ‘evidence must be treated

with a certain amount of caution' (2015, p.97); in that it takes time to collate, it might be misused, and the quality of evidence can vary considerably. These concerns also underpin Meyrick, Phiddian & Barnett's analysis of Australian cultural policy (2018) in which they question the overreliance on ostensibly neutral data in evaluating culture.

Fischer has questioned this positivist approach within policy analysis in an approach termed the argumentative turn (2007). For Fischer, instead, deliberative policy analysis is geared toward a more interpretive mode that allows for the identification of and interrogation of policy norms and values underpinning the development of policy. This approach involves the integration of empirical and normative analysis and recognises that values are not neutral. Fischer's 'argumentative turn' in policy analysis is useful to understand the misgivings associated with a traditional policy analysis. For him, the argumentative turn attempts to deal with 'the epistemological limitations of "neopositivist" or empiricist policy analysis and the technocratic decision-making practices to which it gave rise' (ibid, p.223). For Fischer, the neopositivist/empiricist methods of policy analysis 'seek to translate political and social issues into technically defined ends to be pursued through administrative ends' (ibid, p.224). The postpositivist argumentative turn recognises that its role has been more to stimulate policy deliberation rather than provide solutions to public problems. The argumentative turn 'starts from a recognition that multiple perspectives are involved in the interpretation and understanding of social and political reality and the competing definitions of policy problems to which they give rise' (ibid) and disarms the one-dimensionality objectivity of conventional policy analysis which is often advanced as value-neutral. It complements the theory-driven thematic analysis to the documents developed above, as it challenges the 'misbegotten idea' that policy analysis can and should be value-free (Fischer and Gottweis, 2013, p.426). Thus, it is useful to complement an understanding of policy research as informed by theory and multi-dimensional.

Karppinen's approach to an interrogation of media pluralism is, according to him, theoretical and conceptual rather than empirical, postpositivist in nature, and a departure

from the behaviourist or institutionalist approach of policy analysis which uses a more conservative or traditional approach. He explicitly departs from the mainstream understanding of policy analysis and focuses particularly on ‘the contestation of concepts and definitional power involved’ in that process (2012, p.16). This raises questions about the use of different concepts to legitimise and justify policy decisions. For Fischer, the field of policy analysis has not taken on board the ambitious multidisciplinary methodological perspective developed by Harold Lasswell in a critically informed policy orientation that was democratic in nature and mapped the policy process in relation to the larger social process (Lasswell, 1951; Torgerson, 2007). Instead, it has problematically used a more limited framework ‘derived from the neopositivist/empiricist that dominated the social sciences of the day’ (Fischer, Miller, & Sidney, 2007, p.xix). This narrow approach emphasised a rigorous quantitative analysis that ostensibly separates facts and values.

Instead, a policy research approach as championed by Fischer and others allows for establishing the interconnections among the empirical data, normative assumptions that structure our understanding of the social world, the interpretive judgments involved in the data collection process, the particular circumstances of a situational context (to which the findings or prescriptions applied) and the specific conclusions (Fischer & Gottweis, 2013, p.430).

In the same fashion, this thesis takes as significant the subjectivity underpinning an interrogation of policy. For Majchrzak, policy research engages in ‘an iterative process where information and model building are constantly interchanged’ (1984, p.19) thus echoing the dynamic non-linear model proposed for thematic analysis, in which the six-step analysis is also non-linear but iterative. For Majchrzak and Markus, policy research helps people ‘take socially responsible action to improve our world by bringing together *evidence*, that is, facts established through careful procedures and *analysis*, and meaning, that is, values, opinions, and beliefs about what is important’(2013, p.137, emphasis in original), thus acknowledging the significant role of subjective values underpinning policy decisions.

This thesis approaches the fundamental social problem of the complex relationship between culture and economics as forces driving the shaping of audiovisual policy. This research explores potential conflicts within audiovisual industry policy and relates the tension to the development of the tax expenditure regime in Ireland for audiovisual products. It examines Irish policy measures within an EU State aid regulatory policy context.

The documents chosen as the object of analysis comprise of theoretical writings, policy documents including legislation and (at EU level) soft policy documents, and grey literature in the form of reports and submissions on policy. These documents are used to develop ideas around policy norms or values that underpin, whether implicitly or explicitly, the policy discourse around audiovisual industries. This approach recognises the political rationalities of policy and allows for the development of an understanding of values underpinning policy decisions. This approach understands that the framing of policy problems is politically consequential in ways beyond the overt institutional understanding. For political expediency, policymakers may not choose the best solution to a policy question, but rather those that are going to assist at election time. As Barr holds ‘policy analysis that focuses on measuring and quantifying policy outcomes does not fully account for the fundamentally political and social processes that help develop policies’ (Barr, 2014, p.118). Thus, policy goals are never self-evident but are dependent upon theoretical tools to define them and the political and economic context in which they are formulated.

The complex nature of the policy development process is acknowledged (see Ferris, 2015 for an Irish context). As Ferris holds ‘making public policy is a complex business that involves many participants with different roles, responsibilities, interests, concerns and resources. The task is made more difficult in an increasingly complex, uncertain and unpredictable world’ (Ferris, 2015, p.87). As an indication of a political culture that emphasises a ‘pragmatic, incremental and [a] short-term-fix approach’ (Cooke & McCall, 2015, p.3), Durrer & McCall point out how the relevant department of culture in Ireland

has gone through what they describe as ‘dizzying name changes’ variously featuring the terms arts, culture, heritage, Gaeltacht, islands, sport, rural, regional affairs and tourism in the title (2017). They describe this as a ‘slippery state nomenclature’ that avoids long term, strategic thinking, and planning (ibid). The use of short-term evaluation strategies in various analyses of S481 over multiple years is indicative of the lack of long-term planning. This approach is, in part at least, linked to the finite nature of S481 which has suffered from the threat of a Sword of Damocles in the form of a threat of extinction at various times during its history. Usually, the expenditure is put in place subject to a ‘sunset clause’. For example, the most recent legislative revisions in 2019 have extended approval of S481 to December 2024.<sup>1</sup> This approach, while understandable from a policy point of view, in that it allows for evaluation of effectiveness (albeit in a form that is, it is contended, overly narrow) and is problematic from an industry point of view in that the industry operates under uncertainty.

This thesis interrogates how policymaking interacts with the process of governing, the realities of the complexity of cultural value, and the various tensions therein. This thesis is cognisant of the complexity of policymaking at both Irish and EU level. Analysis of policy documents and reports raises the question of whose voice is heard (Bacchi, 2009; Bacchi & Goodwin, 2016) and of policy silences. The interpretive policy analysis approach /argumentative turn in policy analysis (IPA) (Colebatch, 2014; Fischer & Forester, 1993; Fischer & Gottweis, 2013; Yanov, 2007) attempts to address the significance of communication and interpretation in policy. It is echoed in both Bacchi’s problem-solving policy research approach (What’s the Problem Represented to be? “WPR”) and the policy research approach from Karppinen that highlights the significance of the concept of policy norms (Bacchi, 2009; Karppinen, 2010). It attempts to understand the links between empirical and normative claims within policy development, thus understanding how policymaking is embedded in a cultural context. For Colebatch ‘participants are not simply consumers of interpretation: they are involved in shaping it’ (2014, p.351) through the

development of strategies, calls for support and other methods – thus highlighting the significance of the role of lobby groups and consultation processes in shaping policy. Therefore, policy research is better served by the recognition of the wider political process within which policy is developed. Fischer & Gottweis (following J. Dewey, 1927) describe the ‘enlightenment task of the policy analyst’ who analyses ‘competing definitions, questionable explanations, contestable claims and contentious research findings’ (2013, p.431) in order to examine the assumptions that undergird policy deliberation and thus shape decision choices. For Yanow, interpretive approaches to analysis of public policy and policy-making processes allow for an alternative to approaches which have positivist ontological and epistemological presuppositions such as the benefit of cost-benefit analyses (2007, p.110). Her approach highlights the meanings of elements of the policy process, but also the role of the researcher as an actor in the meaning-making process. In this context, the hermeneutic circle concept allows for understanding of how the same data-source or text may be framed in different ways by various interpretive communities. This concept is useful in the context of this thesis to understand the framing of the role of culture within the context of audiovisual policy from the perception of policymakers, from citizens and those within the industry. Colebatch highlights a significant discord in the differing approaches of policy-makers and academics, taking issue with how many academic writers on policy ‘share the normative assumptions of the instrumental model’ (2014, p.354) in a way that masks the provisional nature of policymaking which is an act of negotiating, highlighting Bacchi’s approach which highlights the multiple ways in which interpretation of a policy issue can be constructed.

The IPA or argumentative turn in policy research/analysis ‘confronts the fact that mainstream policy analysis was widely judged by practitioners to be of little use to policymakers’ (Fisher & Gottweis, 2013, p.426). This points to a significant gap between the role of the academic who researches policy and the policymaker. The theoretical mismatch has been astutely captured by Ejgod’s recent research work on the European

Capital of Culture project, Aarhus 2017. Ejgod's 'provocation' sets out the following four clashes that can arise when policy and research meet:

1. Researchers can only produce long reports and policymakers can only read a maximum of two pages.
2. Policymakers need results ahead of the planning process, and researchers can only present them afterwards.
3. Research findings come with reservations and exceptions, whereas policymakers look for a simple model for 'best practice'.
4. Policymakers want positive results and researchers can only conduct critical analysis. (2019).

As Ejgod says, policymakers tend to look for best practice and evaluation tends to be part of a process legitimising the spending of public money. However, academic research comes with reservations and can tend to focus on the negative aspects of a project. Given that 'policymakers want positive results and researchers can only conduct critical analysis' (ibid) a critical analysis of policy needs to be cognisant of this theoretical mismatch. The policy research approach undertaken in this thesis, which interrogates the development of policy towards the audiovisual industries and specifically towards tax expenditures for such industries, highlights the multiple and competing norms shaping the decision choices made within this context.

## 4.7 Norms in audiovisual policy discourse

In this thesis, a number of concepts are used as guides to inform the coding of themes across various document sets. Certain of the concepts which are broadly derived from the literature on political economy of cultural industries (to include commodification, marketisation, spatialization, neoliberalism, cultural value, and cultural industries) are

expanded upon in the following chapters on the literature. The use of theories from political economy to interrogate the role of tax expenditure policies for the audiovisual industries allows for the identification of values or norms underpinning such policy. The use of a policy research approach as part of the conceptual framework allows for both identification and interrogation of these policy norms. Rather than one specific norm (such as cultural diversity as a norm identified and analysed by Barr in her PhD on EU audiovisual policy, or media diversity as identified by Karppinen in his PhD (Barr, 2014; Karppinen, 2010), this thesis identifies norms at Irish and EU level around the issue of supporting culture from public funds by way of tax expenditure policy. The norms are contained within the broad concept of creative industries discourse, and more specifically the interrogation of economic and cultural value within this discourse, and stem from the spatialization/commodification of both the nation-space and the audiovisual industries within Ireland. This thesis interrogates the role of both economic and cultural value as significant forces in shaping audiovisual incentives however understood, at these different levels, drawing both parallels and identifying differences between the role of economic and cultural value within audiovisual industries discourse at national and EU level. The policy norms are reflective of an endemic instrumentalisation of culture that underpins much cultural policy in an Irish context. Thus, the policy norm that is questioned in this thesis can be summarised as the commodification of culture through spatialization. As outlined in Chapter One, while this thesis engages with the concept of neoliberalism it is not analysed in significant detail, but accepted as complex, diffuse and all-encompassing in a Western capitalist context.

## 4.8 Conclusion: towards an iterative approach

This thesis takes a qualitative document analysis methodological approach, incorporating a policy research approach within a thematic analysis, to interrogate the norms underpinning audiovisual policy in Ireland. It explicitly uses theory from political economy to identify themes and patterns across several different policy documents and legislation at both Irish and EU level. The discourses of political economy, audiovisual policy, cultural industries, cultural policy, and EU State aid law all inform the choice of data and the approach to interpreting the relevant documents. This is not a linear process but is an interactive, iterative, informed approach that moves between each methodology. The chosen policy research approach explicitly considers the values underpinning policy decisions that serve to shape cultural policy in both a national and EU context. It approaches the question of the role of tax expenditure regimes as a form of cultural policy within Irish and EU policy discourse, taking into account norms at national and supranational level to understand the values underpinning both the development of policy but also the forms of evaluation of such policy that persist.

What is particularly important about the approach herein is the significance of the dissonance between the position of policymakers and academic researchers. This thesis accepts that the policy-making process is complex, contingent, and open to interpretation and negotiation. It is shaped by multiple variables, structural, societal, and cultural. This thesis takes as its point of inquiry an interrogation of the various forces that shape State aid policy at a national and EU level, coupled with the understanding that such forces are subject to interpretation, given that governance of policy in this area is not necessarily coherent. The discourses around value of the audiovisual industries and the rationale for the support thereof emanates from multiple, often diverging, viewpoints. Thus, the qualitative policy research approach chosen to approach the research question in this thesis

allows for interrogation of the multiple policy norms identifiable in discourse around the audiovisual industries

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<sup>1</sup> Statutory Instrument S.I. No. 357 of 2019 FINANCE ACT 2018 (SECTION 26) (COMMENCEMENT) (NO. 2) ORDER 2019. 17 July 2019.

# 5 THE DEVELOPMENT OF EU POLICY: MULTIPLE PERSPECTIVES

## 5.1 Overview and Introduction

Having established the conceptual framework within which this research is situated, namely the critical analysis of policy interventions towards the audiovisual industries using a critical political economy approach, this thesis now moves to an analysis of specific policy developments in Ireland and the EU. This chapter interrogates the development of policy towards tax expenditures within the EU. Chapters Six and Seven analyse the development of policy within an Irish context. Chapters Two and Three found that audiovisual policies are driven by a complex maze of instrumentalised aims, including social, economic, integrationist, in an increasingly marketised creativity framework (Hesmondhalgh, 2019; Schlesinger, 2017; Psychogiopoulou, 2015 and others).

Given the significance of the EU State aid policy regime in shaping the Irish tax expenditure system, this chapter analyses the development of the State aid regime in the EU, focusing primarily on developments at Commission level, given the Commission's role

as guardian of the Treaties. It interrogates the development of State aid policy within the EU through analysis of Commission approvals of Member States' proposed State aid regimes and analysis of the Commission's 'soft law' policy developments in this area, the 2001 Communication and its successor, the 2013 Communication. Soft law, in this context, refers to EU non-binding measures in contrast to those of a binding nature such as regulations, directives and decisions (Article 288, TFEU). Soft law is used in such areas where the EU does not have jurisdiction to enact a hard law measure (see Cini, 2001).

While some considerations of soft law may see it as informal or even toothless; it is contended here that when used for explicit policy formation like in the development of audiovisual State aid policy by way of the adoption of the Cinema Communications in 2001 and 2013 it is significant both economically and politically (Stefan et al., 2018). The formation of policy by way of soft law measurements allows the Commission to problematically evade 'the burden of proof' required by a more traditional legislative framework (Andone & Greco, 2018), instead allowing agenda setting policymaking influenced by stakeholders. This raises questions around the policy *silences* and around whose voice is *not* heard in the development of policy (Bacchi, 2009; 2012) and is, in its own way, telling.

This chapter contends that while there is evidence of marketisation in the development of Commission policy (from analysis of Commission State aid decisions and the development of policy instruments towards State aid), Commission policy is driven by multiple rationales including what can be framed as a political need to protect the internal market of the EU. Thus, the wave of cultural marketisation towards the audiovisual industries is subject to other social and political desires. It is acknowledged that the desire to preserve the internal market may, itself, be part of a wider neoliberal project in that a strong EU (from a trading perspective) supports a broadly neoliberal project. The desires of the Commission towards preservation of the internal market may not necessarily be at odds with the economic rationales of the audiovisual industries but may be complementary.

The shift of the Commission towards a broadly neoliberal perspective has been analysed in the individual and joint writing of Buch-Hansen & Wigger (2011). They outline phases of competition policy from the era of embedded liberalism (from Ruggie, 1982) which marked early European competition to the consolidation and expansion of a neoliberal era which currently marks the competition regime. Their longitudinal perspective shows what they term is a 'a profound transformation' of 'the content, form and scope of competition regulation since mid-1980s', a transformation that is 'premised on the transnationalization of capitalism and the ensuing change in the balance of power between social forces' (2011, p.136). Their identification of an (albeit non-linear) increasingly consolidated and embedded neoliberalism in competition policy contextualised using a Jessop inspired critical political economy approach (1998).

The within analysis of cultural audiovisual State aid policy broadly aligns with their identification of an increasing neoliberal approach to competition policy. However, given the unique nature of audiovisual goods as simultaneously industrial and cultural, it is possible to identify a more nuanced, albeit pragmatic, perspective towards state aids for audiovisual industries. While State aid may have been increasingly regulated in the 2000s as part of the neoliberal consolidation of competition, with the Commission acquiring what Buch-Hansen & Wigger 'an enhanced grip on the course of the member states' national industrial policies' (2011, p.80) However, while other forms of State aid (towards TNC/MNC) might be increasingly regulated, the broad thrust of State aid for audiovisual industries is to allow expanded forms of aid for cultural rationales. Thus, we have reached the odd position of states insisting on ever elaborate forms of State aid regimes for national production on cultural grounds (that is, production within their national boundaries) to come within Article107(3)(d) within an capitalist neoliberal environment that is increasingly subject to globalised production flows.

The multiple instrumentalities to which State aid policies are subject may arise from a recognition that media production should not take place solely within neoliberal free-

market environment, as it is considered that such an environment is not conducive to the production of media that meets wider societal objectives. Given that for Buch-Hansen & Wigger ‘at EC level, neoliberal ideas became hegemonic in the course of the 1990s, giving rise to a wide-ranging array of concrete policies which, in essence, promoted the superiority of free market forces and competition-driven mechanisms above a state-regulated social and economic organisation’ (2011, p.92) how can we reconcile the conclusion that wider policy goals are evident, at least in part, in Commission policy? It is, it is contended, a question of degree. While there may be evidence of broader social and cultural goals in the development of Commission policy, such goals may, in and of themselves, be driven by neoliberalised objectives. The shifting balance between cultural and economic goals of any State aid policy for audiovisual production is difficult, if not impossible, to delineate with precision. Cultural goals have economic benefits, economic and industrial goals have cultural benefits. They are mutually constitutive and, at times, indivisible. In the era of consolidation of neoliberal discourse, there has been a particular emphasis on economic efficiency and consumer welfare, with the use of neoclassical economic principles in EU competition regulation, theorised by some as the influence of the Chicago School on EU competition (Buch-Hansen & Wigger, 2011). The within analysis of State aid policy considers it as *both* a cultural policy and as a taxation policy, the rationales of which may differ radically.

## 5.2 The State aid regime as a cultural policy

Under Treaty rules, the EU has exclusive competence to establish competition rules necessary for the functioning of the internal market (under Article 3(b) TFEU). It is up to the Commission to assess whether notified aid schemes (under Article 108(3) TFEU) respect the ‘general legality’ principle. That is whether the aid scheme as drafted contravenes the broad Treaty principles. In its assessment of individual cases on Member

States' aid schemes, the Commission must verify that various principles have been respected, including the prohibition of discrimination on the grounds of nationality, the freedom of establishment, free movement of goods and provision of services (Articles 18, 34, 36, 45, 49, 54 and 56 TFEU).

This chapter interrogates the development of Commission policy from the inception of the EU (then EEC) to the current situation in 2019 to identify the norms underpinning State aid policy for audiovisual industries. State aid control towards such industries attempts to strike a balance between disparate areas, of culture, of industry and of competition policies, areas in which the Commission has varying competencies. It concludes that Commission policy has developed in a manner that reflects both the complexity of support and regulation of audiovisual policies in a supranational environment and the complexity of developing and implementing competition policy operating within an environment subject to global marketised flows. Cultural objectives are taken into consideration, as the Communication 'sanctions the plain acceptance of the double nature (economic and cultural) of audiovisual works, of their role in shaping European identities and the subsequent need for a preferential treatment' (Ferri 2018, p.221), with the concept of culture ever-widened to encompass a more and more instrumentalist rationale of culture, in keeping with the shift to the creativity framework. However, it is contended in this thesis that the Commission's approach can be conceived of as simultaneously concerned with the consideration of the effect of such regimes on the internal EU market, albeit in a way that is increasingly subject to a creativity framework within a neoliberal regulatory environment. Rather than solely interrogating Commission policy as competition policy; this thesis views State aid policy as effectively a form of cultural policy. While the Commission capitulated on various issues in the 2013 policy consultation process leading to the 2013 Communication (as will be explored in this chapter) its negotiating position was not solely within a creativity framework but within an

‘integrationist framework’, that is, primarily concerned with the concerns of the internal market of the EU.

### 5.2.1 The identification of waves in Commission decisions

This chapter examines the development of Commission State aid decisions over time building on earlier scholarship (Bellucci, 2010; Ferri, 2015; 2018; Psychogiopoulou, 2010). Approximately 181 cases have been identified, of which approximately 90 have relied on the 2013 Communication.<sup>1</sup> A list of the cases is contained in Appendix A, with an analysis of the development of Commission decisions in Appendix B. This analysis allows for identification of four broad ‘waves’ in the development of policy gleaned from analysis of the Communications and the relevant cases decided by the Commission. These waves are characterised as follows, broadly conceived of as trends rather than discrete categories. The timeframe of State aid decisions is broadly within a time of increasing and embedded neoliberalism in Commission policy; thus, at times the shifting policy is a matter of degrees. Overall, the analysis puts competition policy in conversation with audiovisual and cultural policy, showing complexity of multiple instrumentalities of policy and culture.

- |                  |   |
|------------------|---|
| The first wave:  | 1988 to 1998: primarily concerned with restriction of intra-community trade;  |
| The second wave: | 1998 to 2001: four decisions showing precedence of cultural rationales but acknowledging industrial elements (applying N 3/98);   |
| The third wave:  | 2001 to 2013: from the introduction of the 2001 Communication identified by a shift to a primarily interventionist approach in the cultural nature of reliefs to the introduction of a more pragmatic approach in the 2013 Communication; |
| Fourth wave:     | 2013 to date: (post the introduction of the revised soft law policy in 2013) where the Commission’s less interventionist stance is driven   |

by the requirements of the creativity framework and can be considered a neoliberal pragmatic approach.

These are explicitly considered as ‘waves’ rather than phases because the Commission’s policy decisions tend to rely on multiple rationales, from protection of the internal market (the primary policy objective), to integrationist goals in promoting a common European cultural identity, to simultaneous promotion of cultural diversity (goals that are not necessarily at odds, it is contended here), to industrial/economic goals. The artificial distinction between cultural and industrial goals that marked the second wave from 2001 to 2013 was reductive, it is contended, as such a distinction is ‘factious’ (Bellucci, 2010, p.211), divisive and untenable. Instead of developing policies under such an artificial distinction, it is useful to see cultural and industrial goals as mutually constitutive. In a similar fashion to Pauwels’ analysis of the rationales underpinning audiovisual policy (2014), this thesis argues that State aid policy can be conceived of along a similar continuum, with a pragmatic discourse evident in both the 2013 Communication and in various cases decided thereunder.

## 5.2.2 The identification of themes across Commission decisions

As outlined in Chapter Four, the approach used in this chapter involves a policy research approach (Barr, 2014; Karppinen, 2010; Karppinen & Moe, 2019) using document analysis and thematic analysis (Braun & Clark, 2006; 2019) to identify themes iteratively with the literature on political economy, and cultural policy as set out in Chapters Two and Three. An outline of the thematic analysis is set out in Appendix F. To summarise, the initial themes identified by way of qualitative document analysis using a critical political economy framework include the spatialization of European audiovisual production in a globalised EU, the development of a creativity framework marked by increased marketisation of culture, a shift to a pragmatic discourse towards culture, and the concept

of State aid as a 'living instrument'. The final themes are expressed as follows; with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences

### 5.3 The evolution of culture in Commission policy

Direct references to cultural policy do not feature prominently in the early *acquis Communautaire* (cumulative body of legislation and case law) of the EU. European Court of Justice (ECJ) case law saw a gradual emergence of some limited competence in this area. In the *Italian Art Treasures Case*, the ECJ emphatically applied the terms of the Treaty to cultural goods (European Court of Justice, 1968). It held that an export tax on artworks came within its remit. This case legitimated the EU in making some regulations affecting cultural matters across Member States and worked to establish the dominance of the EU space over the national space.

However, it was as recently as 1993, with the Maastricht Treaty, that the EU institutions were granted limited direct competence in the cultural arena. As explored in Chapter Three, the Maastricht Treaty (signed in 1992, enacted in 1993) represents a pivotal moment in the history of EU audiovisual and cultural policy even if 'it is far from full recognition of a strong EU competence over cultural matters' (Herold, 2010, p.33). The significance of the Maastricht Treaty in the field of culture illustrates attempts to widen the

spatial dimension of the EU to both construct the cultural space of the EU and intervene in some fashion in national cultural space. Maastricht introduced two key innovations relating to culture. Firstly, it amended the TEU to add a new title on “Culture”, with Title XII (ex Title IX) commencing with the aspirational language of Article 167 (ex151/128).<sup>2</sup> Article 167 (1) states that ‘The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore’. It thus supports the promotion of national/regional cultures while suggesting that there is, simultaneously, a shared European identity which can somehow suture such local identities together. Potential tension between support for local cultures and an overarching supranational identity is not acknowledged in the text. Perhaps because of the need to retain a space in which this tension can be negotiated the Maastricht Treaty, subsequent EU treaties and Commission policy documents have been reluctant to offer clear definitions of what is meant by “culture”. For Craufurd Smith ‘the absence of a definition is not surprising, in that culture, as an essentially contested concept, is inherently open to divergent and evolving conceptions’ (2011, p.872). The continued contestation of foundational concepts such as culture within Commission policy discourse marks Commission policy towards the consideration of the cultural aspect of audiovisual products. This approach can be seen as flexible (and pragmatic) and allows for multiple interpretations of key policy concepts. Such a pragmatic approach can be analysed within the broader framing of discourse of the shift from cultural industry to creative industries and on to CCI discourse in its acceptance of multiple instrumentalities for culture.

The second key innovation of Maastricht regarding culture appears in Article 107(3)(d) of the TFEU (ex. Article 87(3)(d)/92 (3)(d)). Under existing Article 87(3)(c) TFEU, which permitted State aid to facilitate ‘certain [unspecified] economic activities’ where it did not ‘adversely affect trading conditions to an extent contrary to the common interests’, the Commission had already approved a range of aid mechanisms for culture

including aid to the audiovisual sector (including the Greek scheme in 1988 analysed below). This occurred on a relatively ad hoc basis, and while it illustrated a commitment to some form of cultural support, was under the lack of specific cultural competence across the EU. Article 107(3)(d) introduced a general cultural derogation to the general incompatibility of State aid with EU competition law. It provides that ‘aid to promote culture and heritage conservation’ may be considered compatible with the internal market ‘where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest’. While it does allow for the approval of State aids in limited circumstances (promotion of culture and heritage), it is explicitly framed to emphasise the primary objective of protection of the EU internal market.

Given the hitherto strong prohibitions on State aid, this was a crucial addition because it acknowledged a further set of tensions: those between the desire to allow the free market to facilitate the provision of and access to cultural productions and the recognition that such provision/access may require state intervention, ipso facto interfering with the untrammelled operations of the “laws” of supply and demand.

The EU acknowledged the “double nature” of audiovisual works in the 2001 Communication: ‘They are economic goods, offering important opportunities for the creation of wealth and employment...They are also cultural goods which at the same time mirror and shape our societies. This is the reason why the development of this sector has never been left solely to market forces.’ Article 107(3)(d) allowed Member States scope to retain some sovereignty over their national cultural policies even if this meant relaxing the EU’s normal strictures governing State aid.

## 5.4 Analysis of Commission policy on audiovisual State aid regimes

### 5.4.1 The ‘first wave’ of State aid decisions

The Commission had made many decisions regarding individual Member State aid regimes for the film industries, which for Bellucci, cumulatively represent the first of two distinct phases in Commission decisions on State aid for film (2010). This first phase (or first wave in the terms adopted in this thesis) commenced with a decision on the existing selective Greek Film Aid Scheme in 1988 (Commission, 1988). This case assessed compliance with general provisions within the Treaty prohibiting discrimination against citizens from other EU Member States on nationality grounds. The Commission considered the scheme compatible with Article 107(3)(c), acknowledged that aid to the film industry should be exempt given its ‘combined economic and cultural function’, and that aids are ‘essential’ to maintain and develop the film industry in Member States which produce a smaller number of films. It nonetheless found that the proposed aid scheme did not comply with Articles 7, 48, 52 and 59 of the Treaty, i.e., those relating to free movement of people and freedom to provide services and insisted that it be altered accordingly. The Commission held that its inquiry was ‘aimed at ensuring that nationals of other Member States can benefit fully from the free movement of persons and freedom to provide services’ (IV) and found it problematic that the proposed scheme ‘needlessly’ restricts the possibility of persons of other nationalities from working in the Greek film industry. This decision illustrates the Commission’s overriding concern with protecting the perceived space of the internal market within the EU – and the significance of the free movement rationales, which overrode the individual Member States concern with promoting national cultural production.

The subsequent decisions by the Commission on schemes introduced by a number of different Member States (including Ireland) were predicated on an artificial and unsustainable distinction between industrial and cultural rationales for the basis of decisions. The Commission foregrounded the necessity of retaining the concept of the internal market. While there was some recognition in the decisions of the necessity of industrial objectives for national policy regimes, such objectives were secondary to the need to retain free movement between Member States. The Commission reiterates (e.g. in the Netherlands case) that the role of audiovisual aids is to support the creation of national culture, and not for industrial development, a distinction that is, per Bellucci ‘factious’ (2010, p.211) as the only way to support film as culture is by fostering the underlying industry. However, it is apt to question what particular manifestation of an industry is supported by a particular aid measure. As was reiterated in discussing the methodology of policy analysis, the causal effect of an industrial support mechanism is by no means clear-cut. The provision of industrial supports in the form of State aids does not axiomatically mean that a wide diverse representative culture is supported.

#### 5.4.2 The ‘second wave’ of State aid decisions

A significant 1998 Commission investigation regarding the revisions to the audiovisual State aid regime in France represents a pivotal point in Commission policy towards the audiovisual industries (N 3/98 obtained from Commission on 22 January 2018 under FOI request (Commission, 1998a)). Again, per Bellucci, N 3/98 can be seen as the commencement of the second phase (2010). In N 3/98, the Commission objected to certain revisions to the French aid scheme (previously approved in N 7/92). The revisions linked aid to the use of French technical cast and crew. Once again, as in the 1988 Greek case, the Commission objected to nationality-based restrictions. Significantly, the Commission took the opportunity in N 3/98 to delineate a general set of compatibility

criteria clarifying how the cultural derogation under Article 107(3)(d) should be applied in practice. The four criteria were:

1. Aid should be directed to support the creation of cultural products with responsibility for devising criteria to ensure that the supported production qualified as “cultural” left to the individual Member State.
2. Producers were permitted to spend up to 20 per cent of the supported film budget outside the Member State offering aid. In other words, under the “territorialisation” criterion, the Commission permitted a Member State to insist that 80 per cent of the budget for a supported project be spent within the borders of that Member State.
3. Aid “intensity” (i.e., the amount of the supported project budget which could be funded by state aid) was limited to 50 per cent. This limit was intended to retain some scope for ‘stimulating normal commercial initiatives inherent in a market economy’ (para. 2.3(b) 2001 Communication).
4. Aid could not be directed at specific elements of the filmmaking process (e.g. post-production) to ensure that aid schemes did not have the effect of stimulating such activity (to the detriment of parallel activities in other Member States) by attracting productions that specifically seek to exploit such supports.

In contrast to the Greek case where the Commission was simply concerned with possible breaches of the principle of non-discrimination and free movement rules, N 3/98 is the first case where the Commission actively invoked Article 107(3)(d) to give consideration to the broader cultural implications of State aid regimes. The case is significant not merely in its recognition that cinema is *both* industrial and cultural but that the industrial and the cultural are mutually constitutive. Decision N 3/98 explicitly outlines that State aid may

serve to sustain an industry in that the existence of a minimum audiovisual production infrastructure is a prerequisite for the creation of cinematic *cultural* products.

In N 3/98 the Commission held that:

As regards the industrial aspect, it can be seen that, through these aids for a product (the film), the audiovisual sector will receive support comparable to operational aid, which is nevertheless necessary to bring to bear a cultural objective, namely audiovisual creation. For these aids to industry, it can be argued that a minimum operational structure must exist in the countries themselves to enable cultural creation. Therefore, if these operational aids are subject to the obligation for their beneficiary to spend the budget in the territory of the Member State, they are compatible with the common market only insofar as that obligation is required to create and *to maintain the minimum industrial fabric necessary for the minimum audiovisual production* in the Member State, without which any production of the desired cultural products is possible. (Commission, 1998a, p.10, my emphasis)

N 3/98 is significant in its recognition that the spatial practices of the Commission in protecting the internal market against threats to intra-community trade are subject to the pragmatic recognition that individual Member States wish to support their indigenous audiovisual industrial space for multiple reasons including industrial, social and cultural, i.e., (in Lefebvrian terms evoking the process of spatialization) constructing the perceived space of policy, the conceived space of commodified production and the lived space of cultural representation. The Commission recognises the necessity of providing an ‘industrial fabric’ to support audiovisual production. N 3/98 permits a *degree* of territorialisation (i.e., national concentration of State aid spend) to the extent that it is necessary to sustain an infrastructure for cultural production. Territorialisation clauses are justified in terms of shoring up national industries to create a ‘strong’ national cinema that, in turn, protects the European film industry.

### 5.4.3 Analysis of four schemes investigated between N 3/98 and the 2001

#### Communication

Between N 3/98 and the introduction of the 2001 Communication, the Commission approved four State aid regimes: the Netherlands, Germany, Ireland, and Sweden. Copies of approval decisions were obtained from the Commission on 30 and 31 August 2018 under FOI request. (Commission, 1998b (Netherlands); 1999a (Ireland); 1999b (Germany); 2000 (Sweden)). Across the four decisions, the Commission acknowledges that film production necessarily has an industrial element but insists that only minimum industrial support is allowed. The Commission's rationale is based primarily on protection of the internal market that is the internal space of the EU. The decisions illustrate a challenge to the different understandings of the spatial dynamics between national policies and EU policies. In the Netherlands and German decisions, the Commission emphasised the function of State aids to support expression of national culture primarily, while pragmatically acknowledging the industrial role of such aids. In this way, the Commission is attempting to regulate (and minimise) the amount of State aid granted under national regimes, while simultaneously minimising the intra-community aspects. The increasingly controversial nature of territorial clauses was raised in the Swedish decision, with the Commission holding them compatible only insofar as was 'strictly necessary' for a 'minimum' of audiovisual production. (para.51). A Council Resolution of 2001 requested that the Commission clarify the principles underpinning the evaluation of aid schemes under State aid rules, pointing out the structural weaknesses of the sector across the EU, the cultural and industrial benefits accruing from the granting of supports to national industries and the particular role of national aids in ensuring cultural diversity (see also Psychogiopoulou, 2010).

#### 5.4.4 A soft law approach: The 2001 Communication

The Commission attempted to provide some guidance on its approach to decisions on notifications of State aid regimes. It did so by way of introduction of a soft law policy document in 2001, the 2001 Communication. The 2001 Communication set out the Commission's policy orientation following N 3/98 but varied its approach in a number of ways. As outlined above, the Commission held in N 3/98 that the Commission must verify that schemes are not contrary to other provisions of EC treaties, including those restricting the free movement of goods, services, workers, and discrimination on grounds of nationality. The 2001 Communication acknowledged the dual nature of audiovisual works acknowledging that they are economic and cultural goods and therefore 'development of this sector has never been left solely to market forces' (Commission, 2001, para.1). The 2001 Communication illustrated the tensions between shaping of a common European identity and the recognition of cultural diversity (i.e., the perceived and lived spaces of the EU).

However, in contrast to the more balanced N 3/98 principles, the 2001 Communication prioritised the non-economic goals of cultural policy, considering 'the *primary* purpose of regulation in the audiovisual sector is to safeguard certain public interest objectives such as pluralism, cultural and linguistic diversity and the protection of minors' (my emphasis, para 1, *ibid.*). The 2001 Communication rationalised State aids as cultural rather than industrial as

Aid schemes...are deemed to support the creation of an audiovisual product and *not to assist the development of an industrial activity*. Consequently, this aid is to be assessed under the culture derogation of Article 87(3)(d) EC rather than the industrial derogation of Article 87(3)(c). (*Ibid*, Para 2.3(b)4, my emphasis)

While the financial practicalities of individual Member States' film industries were recognised (e.g., the Commission acknowledged that it is difficult to obtain upfront commercial backing for projects), the Commission held that State aid is key in ensuring that 'indigenous culture and creative capacity can be expressed' in individual Member States (ibid, para.2) i.e., on a *cultural* rather than an *industrial* rationale.

Thus, the Commission changed emphasis from N 3/98, which gave more comparable priority to both cultural and economic rationales in State aid regimes, to favouring cultural over industrial rationales in the 2001 Communication. For Pauwels et al. the Commission's distancing itself from its earlier decisions regarding the close relations between culture and industry represents a 'deplorable' change (Pauwels et al., 2007, p.28) in the Commission's approach to State aid audiovisual industries. Their criticism of the Commission's shift towards an insistence that aid schemes require cultural goals is based upon consideration that such a shift in policy perspective may not provide the flexibility required by the audiovisual industries. However, from a political economy perspective, the audiovisual industries operate within an environment that is increasingly subject to marketised conditions. It is not axiomatic that the operation of the free market will allow for protection and fulfilment of less quantifiable social and cultural goals. Therefore, the Commission's shift in perspective is, on the one hand, justified through consideration of the need to protect the development of an audiovisual industry across the EU that supports multiple forms of production. However, on the other hand, the Commission's over-emphasis on cultural goals under the 2001 Communication indicates a problematic preference for a narrow conceptualisation of culture production which is at odds with the goal of supporting cultural diversity.

#### 5.4.5 The third wave of State aid decisions 2001-2013

Following the introduction of the 2001 Communication, the Commission now had a (self-imposed) set of guidelines to follow when making decisions on approval of aid regimes. The analysis of the third wave of State aid decisions (2001-2013) (as set out in Appendix A) illustrates the complex negotiations of multiple forces shaping policy development in this area, from cultural and industrial rationales to the protection of the internal market. It illustrates the development of the Commission's position from the 2001 Communication, in which it prioritises a cultural rationale for aid schemes (albeit focused on the internal market, this thesis contends), to an approach that recognises the economic and cultural rationale for such aid schemes. Territorialisation clauses are contained in several aid schemes in different formats, linking the level of and/or the availability of aid to a level of spend in the granting Member State (Cambridge Econometrics, 2008). Technically, the very existence of a territorial clause in an aid regime contravenes the general legality principles of the Treaties of the EU, in that it restricts free movement of goods and services within the EU. Territorial clauses ensure the existence/maintenance of sufficient infrastructure to support a national film industry. Territorialisation clauses operate to link production spend to a national territory, in a way that contravenes the desire of the Commission to reinforce the internal market of the EU. The debate around territorial clauses illustrates the significance of the spatial dimension within the State aid regime – with Member States asserting dominance over national/regional production by requiring spend within their territory, with the evident objective of shoring up their own industry, and the Commission attempting to protect the internal market by ensuring that there are no barriers to spend across the EU.

In the 2004 extension of the 2001 Communication, the Commission expressed doubts regarding territorialisation clauses while acknowledging their justification to ensure 'continued presence of human skills and technical expertise' (Commission, 2004, para. 6).

The 2001 Communication extension was extended until 2007, with the caveat that the Commission intended to carry out an extensive study on territorialisation requirements. The commissioned report assessed whether territorialisation requirements were an obstacle to European co-productions, and was, significantly, inconclusive as to the effect of territorialisation clauses on European production (Cambridge Econometrics, 2008).

Another point of tension is the issue of a cultural test in State aid regimes. The cultural test is, ostensibly, a brake on the unfettered exploitation of the State aid regime for industrial development that has little or no cultural basis. The Commission's developing policy around the role of the cultural test within State aid regimes can be seen through a lens of spatialization as an attempt to resist the domination by the conceived space of capitalist audiovisual production over the perceived/lived space of culture. Some have found the Commission's intervention in the cultural tests applied by Member States under the 2001 Communication problematic as it implies support of a selective 'high' form of culture, as it induced Member States to devise schemes in line with the Commission's interpretation (Psychogiopoulou, 2010, p.284). For her, its approach is in contrast with the objective of supporting cultural diversity as it takes a narrow view of what may be considered culture. However, it is contended in this thesis that the change in Commission policy to a more 'hands-off' approach to Member States' cultural tests has enabled the introduction in more neoliberal-inclined Member States (including Ireland and the UK) of a cultural test that is more focused on encouragement of industrial production, which may, in its own way, not provide for an environment that is supportive of multiple and diverse forms of production.

Linked to the soft law discussion above, it is contended that the Commission overstepped its remit in intervention in national sovereignty in the 2005 UK decision (Commission, 2006c.). The modifications to the UK scheme were introduced in 2005 because of a decrease in inward investment and foreign capital consequent to changes in tax regulation in UK, which were less favourable to the audiovisual industries.<sup>3</sup> Verheul

holds, apropos of the “original” cultural test in the UK, that ‘the strong emphasis on the transformation of the British audiovisual sector into a “cultural hub”, particularly hospitable to inward investment from Hollywood, reflected the cultural test’s focus on the training and maintenance of Britain’s high-skilled production personnel and facilities’ (2016, p. 30) (echoing Garnham, 2005). The original points-based test allowed for a score out of 32 points, with a pass mark of 16. However, a film could be considered culturally British based on location issues and the ubiquity of the English language. A project could score sufficient points without picking up any points in the Cultural content section of the test (Commission, 2006c, para.40). Consequently, it was not clear that the original UK test would ensure that the aid would be directed towards a cultural product (ibid, para.43), and amendments were required. While the revised cultural test contained an amended points-based system, it still operated on a wide definition of what constitutes culture to avail of the aid, leading Baltruschat to describe the State aid regimes in the UK as ‘promotional vehicles to attract foreign investment’ (2010, p. 41).

## 5.5 Yet more soft policy: The 2013 Communication

Having established these points of tension, the eventual adoption of the revised Communication in 2013 illustrates the complexity of policy in this area. The development of Commission policy towards audiovisual state aid regimes is seen in the long drawn out consultation process leading to the 2013 Communication. Analysis of the various extensions, submissions by interested parties and press releases, alongside the text of the 2013 Communication itself, illustrates the complex interplay between competition policy, cultural policy, and industrial policy around audiovisual policy. Appendix B to this thesis sets out the consultation process, the various draft documents, and submissions by interested parties, all of which have been analysed to inform the development of themes to

address the research question (obtained from the Commission's website). The trends identified in the various decisions before 2013 illustrate that the Commission's position towards State aids for the audiovisual industries was initially primarily concerned with the protection of the internal market. (For example, the interrogation of nationality conditions in early schemes such as the 1988 Greek case illustrates the Commission's early approach to State aid.) The Commission's approach later moved to question the cultural conditions attached to aid (albeit still driven, it is contended, by the Commission's perception of the requirements of the internal market and by a narrow view of what particular form of culture should be supported). This interest is illustrated through an in-depth concern with the detail of cultural tests, for example, where the Commission has increasingly accepted an industrialised, marketised, and instrumentalised form of justification for State aid regimes... We are reminded that the use of soft law policy by the Commission allows it to set the agenda for its own decisions on Member States' State aid regimes, thus embedding political goals into the policy process. (echoing the concept of State aid as a 'living instrument' as expressed by Piernas López, 2015).

The 2013 Communication holds;

Audiovisual works, particularly films, play an important role in shaping European identities. They reflect the cultural diversity of the different traditions and histories of the EU Member States and regions. Audiovisual works are both economic goods, offering important opportunities for the creation of wealth and employment, and cultural goods which mirror and shape our societies.

(Commission 2013a, para 1)

The 2013 Communication accepts the premise of market failure across the EU, holding that 'it is generally accepted that aid is important to sustain European audiovisual production' (ibid, para 4). The 2013 Communication aims to encourage audiovisual creation while simultaneously preserving cultural diversity in the EU and ensuring

continued viability and competitiveness of this sector. There is recognition that audiovisual goods are both cultural and economic and while aid is to be directed at a cultural product, this can only be achieved through the generation of a ‘critical mass of activity that is required to create the dynamic for the development and consolidation of the industry through the creation of soundly based production undertakings and the development of a permanent pool of human skills and experience’ (para 6). Under the 2013 Communication, the Commission approves State aids on *both* cultural grounds (following Maastricht) and industrial grounds; a shift from the 2001 Communication approach where cultural reasons were explicitly prioritised.

During the extensions to the 2001 Communication (set to expire on June 2004, extended in 2004, 2007 and 2009), the Commission expressed unease at the development of State aid policy. Concerns included the potential of competition between Member States to attract inward investment from large-scale (mainly US) film production companies (the so-called ‘subsidy race’ per Blázquez, 2012, p.11), and territorialisation clauses, which may act as a barrier to free movement across EU, and thus fragment the internal market. The revision process was protracted and contentious (Blázquez & Lépinard, 2014). The Commission’s capitulation on a number of issues is significant in that it highlights the tensions inherent in policy interventions in the media industries field.

### 5.5.1 The consultation process leading to the 2013 Communication

The Commission launched the public consultation process in 2011 with an Issues paper (‘Issues Paper’). A 2012 draft followed (‘Draft 1’) and, due to the complexity of the issues raised, by a further revised draft in 2013 (‘Revised Draft’) (for clarity, the drafts will be referred to as Issues Paper, Draft 1 and Revised Draft). Most documentation relating to the consultation process is available on the Commission website.<sup>4</sup> The revision process involved three rounds of public consultation, three multilateral meetings with Member States and various meetings with interested parties (Commission 2013b). Minutes from

these meetings (where available) have been obtained under FOI request dated 21 November 2017 to the Commission. Various documents were also obtained under FOI of meetings referred to in the Staff Working Document on the 2013 Communication.<sup>5</sup> [See methods and methodology in Chapter Four, and Appendix B].

The Issues Paper was wide-ranging in the issues raised by the Commission for discussion. The Commission set out a series of questions for stakeholders including questions on the control of the subsidy race, the scope of the Communication towards other audiovisual products, the justification of territorial conditions, activities other than production, switch to digital production, maximum aid intensity and the effect of the digital revolution on State aid rules.

## **5.6 Areas of tension in the adoption of the 2013 Communication**

It is emphasised here that policies at EU level can be interpreted in multiple ways by individual Member States; thus policies can be variously considered simultaneously as enabling a marketisation of culture as identified by Hesmondhalgh and as a way of supporting cultural diversity and supporting national or regional film industries (2019). This chapter analyses the revision process with a specific focus on three main areas of discussion, the subsidy race/cultural test, territorial clauses, and the scope of audiovisual products to come under the Communication. Each of these illustrates the significance of the processes of commodification and spatialization in the following manner.

Underpinning this analysis is consideration of the broad themes identified in the wider policy discourse and documents. These themes include the concept of multiple instrumentalities of cultural policy, the related commodification of culture and the nation-space and an increasingly neoliberalised shaping of the changing balance between cultural and economic policy objectives. Overall, there is an evident silencing of certain policy norms and voices in the wider discourse.

Subsidy race:	Analysis of this area interrogates how culture is used to construct the lived space of national and EU culture in conversation with the marketisation of culture increasingly pervasive in neoliberal environments such as Ireland
Territorialisation:	The insistence by Member States on the retention of territorialisation clauses operates as both a commodification of space to encourage production and as a way of enabling cultural diversity, i.e., highlighting the relational and co-constitutive nature of the conceived space and the lived space of culture.
Scope	This area focuses on what is considered cultural within the scope of State aid policy. The assumption that film is inherently cultural, but video games are ‘less’ cultural within this discourse aligns with the debates on commodification of culture.

The cultural test ‘justifies’ aid schemes given the cultural thrust of Article 107(3)(d). However, it is, in its way, a form of MacGuffin in that film is considered inherently cultural. Territorialisation is important from a spatial point of view, as it allows for a Member State to attach local spend conditions to the grant of aid, and represents an imbalance between the requirements of Member States to support indigenous industries and the desires of the Commission to minimise intra-community competition and to protect internal trade. The issue of whether videogames should qualify for relief under the Communication is significant in interrogating the Commission’s approach to what constitutes a cultural product. The analysis of the consultation process is supported by analysis of the various submissions to the Commission during the extensive procedure (referenced in this chapter by use of the submitter name and version upon which the submission was made), and analysis of various multilateral meetings obtained under FOI.

### 5.6.1 A subsidy race (but not a war)

The global production incentive landscape is of increasing significance to worldwide audiovisual production, with incentives acting as a ‘cornerstone’ of a production finance plan and a ‘key tool’ to attract international projects and support the local sector (Olsberg SPI, 2019, p.143). The Commission expressed its anxiety over a potential subsidy race; holding that the 2001 Communication was tailored to European film schemes which primarily focused on national and European culture:

It is therefore fundamental that national subsidies comply with the cultural conditions established in the Cinema Communication and do not lead to subsidy wars to attract foreign movies unrelated to national and European culture(s), as this could be highly detrimental to the entire European film sector. In fact, the only winners of such wars would be the US majors, and the greatest losers the national film industries across Europe. (Commission, 2009a, Press Release)

Initially framed as a ‘subsidy war’, the Steering Group requested that it be neutrally reframed as a ‘subsidy race’ (Commission Minutes, 2011a) a phrase that the Steering Group believed had a less pejorative meaning. The Commission was clearly unhappy with the use of subsidies as a pull for international production holding that the use of public subsidies to fund such productions is detrimental to both the audiovisual sector and European taxpayers (Issues Paper, para 34) and ‘avoiding subsidy races is precisely one of the objectives of the State aid provisions of the Treaty’ (European Commission 2009, p.6). Most submissions during the consultation exercise pointed to the lack of evidence for such a subsidy race. However, the Netherlands points out that there should be a level playing field across the EU, thus implicitly supporting the Commission’s proposition that there is a subsidy race (Netherlands Issues). In addition, the Norwegian authorities expressed scepticism of strictly financial support schemes such as tax incentive schemes, believing

they have led to a subsidy race across the EU (Norway Issues). In contrast, others denied the issue of a subsidy race, with the European Producers Club stating that ‘this “war” does not exist’ (EPC Draft 1). For CEDC (European Coalition for Cultural Diversity) ‘while the Commission refer to the double nature of the audiovisual sector as economic and cultural, and address cultural diversity, the draft communication fails in part to implement these principles’ (CEDC Draft 1 submission). This points to an interesting complexity – the battle between protection of the internal market and the support of cultural diversity.

Broadly those Member States that attract significant inward investment to support their industries are in favour of retaining incentive structures that attract footloose productions (including Ireland, the UK, Malta, Hungary). Germany supported schemes that encourage footloose productions, pointing out that attracting inward investment has an ‘indirectly positive effect on the entire European production economy’ (Germany Issues). The European network of regional film funds Cine-Regio ‘acknowledged that European territories greatly benefit from inward investments’ (Cine-Regio Draft 1, p.2). EUFCN regarded the concern that Member States will use public funds to ‘compete for foreign film productions’ as ‘unfounded’ (EUFCN Draft 1, p.4).

Other Member States, such as France and Italy, supported a differentiation between EU and non-EU with limits to aid intensity. A number of Member States expressed concern about potential competition, with Finland holding that there should be a common European approach to prevent fierce competition, Latvia welcoming restrictions, and Slovakia suggesting stricter rules to distinguish between culture and economy on the basis that otherwise, it could affect long-term sustainability of film sectors in smaller Member States. Ireland bluntly asserted that ‘small states need international films’. Malta, as one of the EU Member States that has an open approach to inward investment, held that a ‘strong cultural test’ is sufficient to regulate (Commission Minutes, 2011e). In the 2<sup>nd</sup> multilateral meeting (Commission Minutes, 2012b): on the proposed regressive scale both Hungary and the UK expressed concerns with the proposal and emphasized the positive

impact and necessity of inward investment for infrastructure. The Finnish submission was an outlier in calling for a more stringent cultural test, holding that incentive schemes have caused competition within the EU and a situation where Finland has lost productions to other jurisdictions thus negatively effecting the employment and infrastructure of the Finnish system (Finland Issues). This situation was echoed by the Netherlands, as a small producer, who considered that State aid can in some cases lead to a subsidy race unwanted and unfair competition between Member States, and they called for a level playing field across the EU (Netherlands Issues).

The cultural test acts as an attempt to address this subsidy race issue, but under the subsidiarity principle, the Commission cannot assess the national definitions of what constitutes culture, relying on Member States to have verifiable national criteria. From the Commission perspective, the axiomatic assumption is that film is inherently cultural, with cultural tests generally restricting aid to a certain manifestation of culture, dependent on the objective of the aid within individual Member States. Thus, the Irish/UK tests are broadly expressed given their explicit framing of schemes to encourage inward investment. However, during the consultation process, the French authorities, in keeping with their *dirigiste* position, wanted the cultural test strengthened along the lines of the European film test used by the MEDIA support programme (France Issues). Nevertheless, in a pragmatic position of recognition of the increasingly globalised nature of audiovisual production, the French authorities acknowledged that non-European projects contribute indirectly to cultural diversity through consolidation of activities and transfer of competencies, and instead suggested harmonisation or a financial cap in terms of aid for outside European projects.

The final 2013 Communication is clear in the delineation of responsibility for the cultural test, with the Commission accepting that this is a matter for Member States to decide. For example, the Commission's post-2013 Communication decision on the extension of the Estonian film support scheme (Commission, 2014b) provided that the

Commission's task was, in line with the subsidiarity principle 'limited to verifying if a Member State has a relevant, effective verification mechanism in place' (ibid., para.51). This approach is in clear contrast to earlier decisions on aid regimes where the Commission interrogated the details of cultural tests to assess their viability.

Given that the maximum aid intensity is 50 per cent of the overall production budget, the Commission held that supporting such footloose productions allows permitted aid of very high amounts, most of which is retained outside the EU and thus does not necessarily contribute to the long-term sustainability of the sector. It points out that such US major productions should not have the problem of access to finance and thus, there is no need to give aid (Issues Paper, para 34). To counteract this problem, the Commission proposed a two-tier system (generally proposed in the Issues and expanded upon in Draft 1) whereby 'European' films (as defined therein) are allowed more aid by way of a regressive scale (such a system was already in place in certain Member States including France, Italy and Germany). However, while the two-tier system proposal was supported by France (France Issues), the proposed change was set aside in the face of opposition from those (such as Spain, the UK, Directors UK and EFAD) who challenged the Commission's unproven assertion of the existence of such a subsidy race, and the assumption that big-ticket inward investment productions/runaway productions were axiomatically damaging to the European audiovisual industry. The coalescence of opinions on what the industry requires is of particular interest. Member States, interested national groups, and European wide groups were mostly of one voice on this matter. For example, the BFI (British Film Institute) disagreed with the Commission's assumption 'that large-budget non-European films are less likely to promote national culture' (BFI Draft 1, p.7). The French position is of interest in that it called for the Commission to 'assess, for each Member State, the importance of aid directed at attracting non-European shooting against national aid to European productions' (France Issues). The two-tier proposal was opposed by a number of industry bodies with audiovisual industry consultants Olswang holding that

the two-tier proposal will have the unintended effect of preventing EU Member States from competing with other jurisdictions outside the EU for vital inward investment (Olswang Draft 1, p.3). Creative Skillset, the UK industry body, stated that ‘the regressive scale will disincentivise films from shooting in Europe’ (Creative Skillset Draft 1, p.2), which would have a detrimental impact on film culture. However, its submission conflates film culture with film industry, holding that inward investment productions provide jobs, which will then lead to domestic production, an argument also used by policymakers to justify tax expenditures in Ireland and UK.

A number of cross-European representative bodies were also critical of the Commission’s proposals. The Cannes Declaration by EFAD (EFAD Draft 1) was particularly critical of the proposed two-tier system, as it ‘would have a negative impact of (stet) Europe as a production hub and thereby seriously threaten the international competitiveness of Europe’ (p.2) and have adverse effects on infrastructure. EUFCN (EU Film Commissions network non-Profit Organisation representing 80 European film commissions from 24 EU countries) emphasised that ‘the partial employment by non-European productions is the only key to achieve the required degree of capacity utilization and funding’ (EUFCN Issues). The lack of support from such bodies, which represent EU interests, is telling in its rejection of the Commission’s proposals and indicates that the Commission’s suggestions were not based on support of the EU industry, but broadly more concerned with ensuring a lack of competition between Member States. Similarly, the joint submission from a number of bodies representing EU and international film producers/production and distribution consider that subsidies might be one aspect driving decisions regarding choice of location of production (CEPI/FIAPF/IVF Issues). They deny the existence of a subsidy race (as many do) holding that

like some non-European countries such as Canada, a limited number of Member States have been implementing a range of solutions for non-national audiovisual producers to attract physical production and post-production using their national

resources, infrastructure, and skills. Many different criteria enter into the choice exercised by the producer, including the search for cost-effective production solutions, but this is not the only one. (CEPI/FIAFP/IVF Issues p.4)

Effectively, the Commission backed down on its position on the subsidy race, with a caveat in the 2013 Communication that it would keep a close eye on this matter. In a meeting with the Cine-Regio State aid subgroup during the negotiations on the revised communication the Commission accepted that ‘the cultural test has been a weak lever to achieve’ limitations on a subsidy race, pointing out pragmatically that ‘it’s difficult to claim that, for example, American films are not cultural while European films are’ (Commission Minutes, 2011c). According to the EAO ‘the Commission is closely monitoring the so-called subsidy race, but for the moment has seen no need to intervene’ (EAO, 2018, p.17).

On the one hand, the Commission’s historical overly narrow view of the role of tax expenditures as focusing solely on benefiting production emanating within the EU fails to fully consider the potential benefits such footloose or inward investment productions might bring, including expertise and training. On the other hand, there is no in-depth causal analysis of the actual benefit to national industries of such inward investment/footloose productions. The Commission appeared to artificially divide cultural and creative goals, which is an impossible task in audiovisual industries analysis. The Irish Film Board (IFB) submission presciently suggested that the subsidy race is not intra-European but global and that investment into Europe should be encouraged (IFB Issues) thus exposing a flaw in the Commission’s attempts to protect the EU internal market in a globalised audiovisual environment (a flaw that echoes Pauwels’ description of EU audiovisual policy as circular, 2014). It is an explicit finding of this thesis that the lack of in-depth analysis of the “value” of footloose productions to the EU audiovisual industry production environment is problematic from both a State aid perspective and the perspective of a political economy analysis of such industries. In this context, the term

value is used to encompass all forms of value to include cultural, social, and economic value and any potential spillovers that can be identified and defined. The lack of analysis stems in part from the fragmented audiovisual production market across the EU, with a consequential imprecise data capture of the potential values flowing from inward investment productions. The Commission's attempts to protect the internal market from the external dimension (primarily, the Hollywood industries) has concentrated on the exhibition market but has, since the 2013 Communication negotiations, paid little attention to the audiovisual *production* market.

### 5.6.2 The thorny issue of territorialisation

The issue of territorialisation has been described as 'surely the most controversial of all topics debated during the public consultation process' (Blázquez & Lépinard, 2014, p.19). The Commission repeatedly attempted to impose requirements that would minimise the effect of territorialisation clauses in State aid regimes, as they interfere with the balance of trade between Member States. The debate illustrates the importance to Member States of State aid regimes, who wish to tie spend to their own jurisdiction. The Commission accepted that Member States might require a certain part of the film production budget to be spent on their territory as an eligibility criterion for aid, to ensure the continued presence of the human skills and technical expertise required for cultural creation. The 2001 Communication's territorialisation clauses were, according to the Commission, out of date in the age of digital production (Issues Paper, para.50) and may have contributed to the deep fragmentation of the European film industry (Issues Paper, para. 51) in that they restricted intra-community production. The 2001 Communication's territorialisation conditions allowed for a Member State to insist that up to 80 per cent of the production budget of a subsidised film production be spent in the granting Member State. The Commission believed this was at odds with the fundamental principles of the internal

market and proposed radical changes. The controversial territorialisation clauses illustrate the fundamental dichotomy between national supports in a global audiovisual production environment. As the BFI submission claimed, ‘territorial conditions are required to maintain a critical mass of infrastructure, given the global nature of the film industry and ‘the portability’ of the various stages along the value chain’ (BFI Revised Draft).

In Draft 1 the Commission proposed a radical modification of the rules, proposing that Member States be allowed require up to 100 per cent of aid awarded to a production to be spent in the territory offering the aid. This differed from the 2001 Communication rules that allowed up to 80 per cent of overall production budget and was criticised by many for being unworkable and uncertain (including Spain, France, UK, and Germany). For example, Germany, one of the EU Member States that supports schemes that encourage inward investment, while acknowledging the possible abuse of territorial schemes, stated that the revisions to territorial rules would put into question many of the national support mechanisms given the ‘political dimension of the promotion of film from public budgets’ (Germany Draft 1) which it claims the Commission ignores. Czechia outlines the significance of such conditions to national infrastructures, stating that it considers territorialisation as ‘as a tool to build and keep the film infrastructure, development and employment-related services in the Czech Republic’ thus foregrounding the economic importance of the industry (Czechia Draft 1, p.1).

Cine-Regio saw territorialisation clauses as helping to preserve cultural identity and a guarantee of retention of skills and infrastructure (Cine-Regio Draft 1). Criticism of the Commission’s approach was echoed by various non-state interested parties. The European Producers Club considered that adding limitations to territorialisation jeopardises the whole structure of production (European Producers Club Draft 1, p.4). Olswang points out that the Commission’s proposals directly undermine its acknowledgement that territorial conditions are necessary to support the need to maintain a critical mass of infrastructure (Olswang Draft 1).

In the Revised draft, the Commission proposed complex and controversial territorialisation clauses. Their ‘radical modification of the rules’ (Blázquez, 2012, p.21), allowed Member States to require that up to 100 per cent of the aid awarded to the production be spent in the territory. However, these revised territorial conditions included a prohibition on Member States using criteria based on the origin of goods, services, or workers in the internal market. This meant that expenditure on goods, services or workers from *any EEA country* would have been eligible for support and would have counted towards the territorial spend within a Member State. The proposal, at this late state, caused consternation. Member States and producers wanted to defend a high level of territorialisation and argued against the full application of internal market freedoms in this area. The main stakeholders were concerned that without local benefit, it would be difficult to persuade governments to give the tax incentive/expenditure, and that there is some need for territorial clauses in order to preserve local knowhow. Member States taxation policy is still, even in a globalised environment, firmly linked to national policies. If a subsidy policy is not politically attractive and does not offer some form of return, it will not continue. The submission from the IFB starkly points out that the proposals ‘advocate an internal market without reference to cultural diversity’, ‘exclude proportionality altogether’ and would ‘dramatically...undermine the existence of the creative and economic support ‘ within each Member State (IFB Revised Draft, p.2 of 6). The IFB submission outlines with clarity the pragmatic realities of the need to justify S481 within policy circles, linking the support for runaway/inward production, and offering favourable tax expenditures to such productions, to the value they provide for the indigenous industry.

If Section 481...did not require that goods and services be obtained from suppliers in Ireland, in order to qualify as eligible expenditure, many goods and services would be obtained from outside of Ireland particularly from the well-served United Kingdom including Northern Ireland. The potential result would be that the

creative and economic infrastructure for film production in Ireland would be hollowed out and Ireland would at best become a location for inward production with limited benefits to the local creative economy. If this were to happen, the justification both culturally and economically for a tax incentive for film production (at least in the eyes of the Irish government) would diminish to a point where the incentive could be withdrawn. (IFB Revised Draft, p.3 of 6)

The IFB submission illustrates acute awareness of the need to justify the existence of S481 to policymakers in cultural and economic terms.

The consequence particularly if tax credits continued to be available in the United Kingdom including Northern Ireland would be that production activity in Ireland would diminish substantially and even some level of indigenous film production would locate its production in the United Kingdom including Northern Ireland to avail of the tax incentive there. (IFB Revised Draft, pp.3-4 of 6)

The final territorialisation clauses in the 2013 Communication represented a significant volte-face in light of extensive lobbying and opposition. It modified the territorial spending condition by reducing from 80 per cent to 50 per cent the maximum amount of the production budget that can be required to be spent in the Member State granting the aid, thus allowing Member States to impose territorial spending conditions on productions availing of relief within their jurisdiction. It is of interest that the majority of the submissions on the communication revision process stem from within the EU and very few from jurisdictions such as the USA which are significantly affected by potential changes in the EU State aid system which affects the tax expenditures that can be claimed on inward investment productions from these jurisdictions outside the EU. One submission from the USA on the Issues Paper by the American Assembly (Columbia Public Policy Institute Issues) refers to formal and de facto territorialisation which leads to what the author terms the 'curse of Harry Potter' where EU Member States fight amongst themselves for US (and other jurisdictions, of course) investment (with the 'curse of Harry

Potter' referring to the amendments to UK tax law to stop Harry Potter production relocating to the Czech Republic). The American Assembly held that 'territorialization is a blunt instrument for achieving these [subsidization of small market or niche market products] goals, but diversity... is an appropriate goal for audiovisual policy in a profoundly multicultural polity' (American Assembly Issues, p.15). However, the lack of submissions from other global groups who would have been significantly affected by Commission proposals is of interest. This lack of overt lobbying may stem from various reasons; an unwillingness to be seen to meddle in EU affairs, the recognition that most EU representative groups interests, in fact, align with international producers, or lack of knowledge of the process, despite the potential impact of amendments to EU State aid rules on worldwide audiovisual production.

The debate illustrates the Commission's overriding interest in the internal market, that is, the perceived space of the EU, and the attempts to balance the support of the European project (that is, the unity of the EU) with the pragmatic requirements of a globalised audiovisual economy, a manifestation of the conceived space. The Commission's proposed revisions to the territorialisation conditions in operation prior to the revision process were simultaneously a clumsy attempt to protect the internal market within the EU by preventing intra-Member State competition, and an example of an embedded neoliberal policy approach as theorised by Buch-Hansen & Wigger (2011) in the reliance on a globalised free market economy. However, problematically the proposals set out by the Commission would have potentially rendered the specificity of national tax expenditure regimes effectively meaningless by allowing producers claim tax relief in one jurisdiction while sourcing goods and services from another within the EU. The (nearly) universal reaction of Member States and other interested bodies to the Commission's proposals indicates that, even in this era of globalised production, audiovisual production is still a very national and spatialised event. The political will to continue to support audiovisual tax expenditures is directly linked to the economic benefits stemming from such policies.

### 5.6.3 The problematic exclusion of digital games

The exclusion of digital games from the 2013 Communication illustrates how the film and video game industries are treated differently within Commission State aid policy discourse. Film and high-end television are accepted as cultural artefacts and benefit from various valuable cultural policy incentives. However, digital games must fight for qualification under these cultural requirements. There is a privileging of film (and to a certain extent, television) in Commission State aid policy, and an approach towards digital games that could be deemed discriminatory, or at least lacking in innovation. Akin to the film industry, the digital games industry produces goods of a dual nature: both economic and cultural. However, contrary to other policy interventions (e.g. Creative Europe 2014-2020) and UNESCO heritage policy), digital games are seen as *less* cultural than other forms of audiovisual industries, and thus have to fight harder to prove their justification for State aid on cultural basis. Other audiovisual industries such as the film industry are considered with regard to their role in constructing the notion of a nation, but digital games are not unless a specific narrow cultural type.

The Issues Paper raised the possibility of extending the remit of the Communication to other media forms, to include video games (Issues Paper). However, the first draft (and the final draft) Communication stated that games would not be covered by the Communication. The final Communication held that:

...although games may represent one of the fastest-growing forms of mass media in the coming years, not all games necessarily qualify as audiovisual works or cultural products. They have other characteristics regarding production, distribution, marketing, and consumption than films. Therefore, the rules designed

for film production cannot apply automatically to games. Furthermore, contrary to the film and television sector, the Commission does not have a critical mass of decisions on State aid to games. Consequently, this Communication does not cover aid granted to games. (2013, para.24)

Digital games were 'left aside' for a number of reasons. Firstly, 'not all games necessarily qualify as audiovisual works or cultural products' and secondly 'they have other characteristics regarding production, distribution, marketing, and consumption than films'. However, there is a more prosaic reason for the omission of digital games from the 2013 Communication. The Commission decided, quite simply, that it did not have a 'critical mass of decisions on State aid to games' (2013) thus allowing for the possibility of inclusion of digital games (and other forms of media) in any revision to the 2013 Communication. In the meantime, specific aid schemes for digital games are dealt with by the Commission 'by analogy' that is, by application of the conditions in the 2013 Communication.

To return to the discussion within the consultation on the 2013 Communication, the Staff Working Document (SWD) identifies the private sector as favouring extension the scope of the Communication (Commission, 2013b) held that 'parts of the private sector are in favour of extending the scope of products falling under the future Communication, most notably games developers. They maintain that games are also cultural products' (ibid, clause 2.4.5). Analysis of the submissions and the minutes of the meetings obtained under FOI shows that many Member States also supported the extension of the scope to digital games (including Denmark, France, Ireland, and Norway for example). The Norway Issues submission favoured a broad definition of an audiovisual product, which would cover cross-media and games (Norway Issues), a position echoed by the IFB submissions on both the Issues paper and Draft 1 (IFB Issues, Draft 1). The IFB considered the revisions of the Communication as a 'wonderful opportunity to widen the scope of audiovisual works to meet the challenges of a multi-platform environment' including games (IFB

Issues), expressing regret in its submission on the Revised draft that games were not included (IFB Revised Draft).

Evidence is cited in the SWD that the games sector is enjoying growth, which would imply it does not need protection. It held that ‘the games sector itself underlines that the video games sector has enjoyed a two-digit growth per year since two decades; it would be the most dynamic digital content industry in Europe, and European SME would compete globally (Commission, 2013b, s.5). However, as is shown in the submissions on the UK video games tax relief in 2014, the European video games industry was *not* growing at a strong level but was stalling due to forces from international competitors including Canada, USA, and Taiwan.

In the first multilateral meeting, the digital games issue was not discussed in full, with ‘no consensus as to whether video games should be covered’ (e.g., France in favour, Germany) (Commission, 2013b, p.6). Greece, Estonia (limited), Finland, France, Denmark were all in favour of including video games (ibid, p.7) with Germany not in favour as games are ‘not culture’ (ibid). In the second multilateral meeting, several Member States expressed the view that games should be included, including France and the UK (Commission Minutes, 2012b).

Analysis of the submissions on the various draft Communications shows little overt concern around the possible extension of the Communication to videogames, with most submissions failing to address the issue directly. A number of significant supportive submissions are identified, including the French, Irish and UK submissions. The submissions by and on behalf of the UK acknowledge that they would like videogames to be included but are not so overtly bullish about it as France. However, the UK’s own Draft 1 response says that it appreciates the rationale for not including videogames, and explicitly mentions its intentions to notify a VGTR to the Commission in the future (UK Draft 1). Creative Scotland believed videogames should be included (Creative Scotland Draft 1, p.2) as ‘the issue of generating and retaining the critical mass of activity and pool of human

skills and experience necessary for a sustainable video games industry' (ibid, p.3) is just as critical as it is for the film industry and that 'the current scale of the global video game sector and the already significant role of games as cultural and educated products justifies inclusion' (p.2). However, the Commission, as outlined above, considered (erroneously, it is contended) that the sector did not need financial support in the form of tax expenditures.

The EFAD Cannes Declaration was a pivotal submission on behalf of the European Film Agency Directors, criticising the Commission for excluding videogames from the scope of the Communication, stating that 'this omission reflects a limited understanding of what constitutes audiovisual culture' (EFAD Draft 1, p.1). EFAD expressed concern that the first draft Communication excluded 'critical audio-visual elements such as VoD platforms, video games, and cinema exhibition' holding that this omission reflects 'a limited understanding of what constitutes audio-visual culture'. The European Game Developers Federation's (EGDF) response states that 'it is important to remember that the game industry is an audiovisual industry of its own right and not a cross-media industry. The idea that video games are only cross-media works is not reflecting the reality of the market, where video games are already a bigger consumer market than music industry' (EGDF Draft 1). EGDF point out that 'there is no reason why films and games should be treated differently when it comes to public support for them. Both are cultural products of their own right and a crucial medium of cultural expression in Europe' (EGDF Draft 1). However, these arguments did not sway the Commission's decision.

TIGA, the influential UK based videogames industry body, made a submission on the third consultation (but not on any of the prior rounds of consultation). Their submission addressed whether videogames are cultural products. While their twenty-seven-page submission is comprehensive on how videogames can be defined as cultural, there is no significant provision of empirical evidence on the nature of the industry across Europe

(TIGA Revised Draft). This can be contrasted with the industry research provided to the Commission by TIGA on the UK application in 2014.

The Commission's approval of the French videogames aid scheme in 2007 illustrates the complexity of industrial/cultural rationales for approval of such schemes. The Commission took a narrow view of the cultural nature of video games in the first decision on State aid for videogames in 2007 (Commission, 2007c). This decision is at odds with development of policy towards the audiovisual industries that recognises the complexity of the symbiotic relationship between culture and industry. In this decision (applying the 2001 Communication by analogy), the Commission analysed the proposed points-based cultural test in detail. The points allocated for heritage, originality/creativity, cultural content (which requires a scenario and a story and thus excludes pure simulation games), high artistic expenditure, expression of political, social or cultural issues of relevance to European citizens were regarded as cultural content. However, the Commission (applying its UK 2006 decision on the cultural test (Commission, 2006c)) deemed that criteria linked to location of expenditure and nationality of creative collaborators, while they may have an indirect effect on the European cultural nature of the product 'have no direct link to the cultural content of eligible video games given the characteristics peculiar to the video game sector' (Commission, 2007c, para.79). The Commission considered that editorial and technological innovation criteria were not relevant when assessing cultural content, problematically justifying this by holding that these criteria were 'more directly concerned with the software components of video games' (ibid, para.80) thus eliding the innovative and cultural nature of game design. The Commission preferred games with a narrative element, as 'preference can thus be given here to video games which are closer to films and the cultural content of which thus seems more evident' (ibid, para.71) (a preference echoed in the Creative Europe 2014-2020 funding scheme). However, as 14 out of 22 points can be obtained without resource to

non-cultural rationales, the Commission considered that the cultural test was sufficient to allow the aid to be directed at a cultural product.

The 2012 prolongation of the decision on the French aid to videogames referred to the selective nature of the aid scheme and continued to offer a distinction between cultural and entertainment games (Commission, 2012a). The 2014 modification of the scheme allows for inclusion of additional expenses for administrative work in the categories of eligible expenses for tax relief illustrates that the Commission is increasingly accepting of the industrial aspect of a cultural relief. The 2017 modification and prolongation allowed France to extend the tax credit rate from 20 to 30 per cent, increased the amount of European subcontracting expenses taken into account from €1-2m and increased the tax credit ceiling per company per year from €3-6m (Commission, 2017a). The Commission accepted all these amendments on the basis that they would increase European creative exchanges and better reflect production budgets. Thus, the Commission did not concern itself particularly with details of cultural test, having assessed this in detail in earlier application, but rather assessed the details of interference with the internal market – which it concluded the aid in revised format would not do.

## 5.7 Commission decisions under the 2013 Communication

The 2013 Communication soft law policy document encapsulates much of what can be considered an increasingly consolidated neoliberal perspective (following Buch-Hansen & Wigger, 2011) in its pragmatic acceptance of the significance of globalised production flows, particularly in the capitulation of the issues on the subsidy race (war), the application of territorialisation and the scope of aid schemes. However, there are, it is contended, multiple instrumentalities at play, including the protection of the internal

market (in itself aligned with neoliberal goals). Certain decisions under the 2013 Communication illustrate a shift to what is deemed a creativity framework (following Schlesinger, 2015a) while simultaneously emphasising the importance to the Commission of the internal market dimension. Many of the decisions post introduction of the 2013 Communication are approvals of extensions of existing reliefs (e.g. UK and Ireland). In such cases, the Commission is less likely to interrogate the conditions around the relief but checks for broad compliance with the terms of the 2013 Communication. For the most part, the Commission shows a pragmatic recognition of the increasingly globalised nature of the audiovisual industries (e.g. the Belgian Francophone decision in 2014 and the 2014 Croatian aid decision). Of particular interest are several decisions on aid for digital games, where the Commission applied the 2013 Communication by analogy. The UK submission in 2014 was extensively interrogated, but finally approved, by the Commission, which considered the proposed expenditure lacking in cultural rationale. The Bavarian aid scheme related to high-quality digital games, problematically illustrating a narrow viewpoint towards the cultural nature of the sector.

There is a complex interplay between creative contribution/territorial requirements and the cultural dimension of such aid schemes, i.e., between the perceived and conceived spaces of production and the lived space of cultural experience. The Commission's 2017 decision on modifications to the Italian aid scheme considered the legitimacy of location-based eligibility criteria, which required shooting to take place in Italy and the use of studios in Italy in order to qualify for aid (Commission, 2017d). The Commission did not consider such conditions problematic, given required points could be achieved without scoring points on the territorial components. While such clauses may be considered as interfering with the internal market, the Commission has accepted them in such specific instances as supportive of institutional infrastructure, thus illustrating the multiple instrumentalities approach.

## 5.8 State aid as a tool in the hands of the Commission

Developments in wider State aid policy underpin the pragmatic approach of the Commission to State aid matters. The policy changes illustrate a shift to consideration of State aid as a tool in the hands of the Commission, one utilised to achieve specific policy aims. The 2005 State Aid Action Plan (“SAAP”(Commission, 2005c)) was launched as a comprehensive reform of State aid rules and procedures, with an emphasis on competitiveness for EU industry, and with the aim to rationalise and streamline procedures, illustrating the shift to competition for competition's sake. In May 2012 the Commission launched an ‘ambitious and extensive’ (Merola, 2017, p.50) State Aid Modernisation (SAM) programme with three main objectives, fostering growth, focusing on enforcement on cases with largest impact on internal market, and streamlining procedures. As part of this modernisation programme, the General Block Exemption Regulation (GBER) was extended to encompass cultural and audiovisual aids, amongst others (Regulation 2015/1588 replacing Regulation 994/98). The GBER builds on the Commission powers to block-exempt certain aid categories which now includes aids in the cultural, heritage and audiovisual policy areas. Currently close to 90 per cent of notifiable state aid measures rely on GBER (measures that do not have an upper cap cannot avail of GBER).<sup>6</sup> Audiovisual aid schemes of €50m per scheme per year are exempt from notification procedures, under the 2014 regulation on aid (Commission 2014h). The shift from early Commission cases where the Commission was assessing and approving aid schemes to individual film producers (for example the various 2006 decisions on aid to individual producers in Slovakia)(Commission, 2006a) to the reliance on a block exemption illustrates the development of policy around State aid, shifting responsibility from the Commission to the individual Member State. Further, these changes to broader State aid policy illustrate an increasing focus on economic goals, with emphasis on encouragement

of “good aid” which ‘stimulates economic growth, job creation and other objectives of common interest’ (Commission 2014h).

## 5.9 Conclusion: a pragmatic approach

This chapter has interrogated the development of policy towards State aid regimes for audiovisual industries in individual Member States. This policy analysis has identified multiple (and confused) instrumentalities on the part of Commission policy. The analysis of Commission decisions taken on the notification of Member States’ aid schemes under Article 107(3)(d) of the TFEU towards aid regimes for film/television (and more recently, videogames) industries as proposed by Member States, from the 1988 Greek decision, through the initial French decision N 3/98 to the most recent cases decided by the Commission, has been put into a wider political and social context, using a critical political economy perspective. This case analysis has been supplemented with analysis of policy developments (most notably the “soft” law development of the introduction of the 2013 Communication). This analysis has illustrated the shifting role of culture within the Commission which is, it is contended in this thesis, instrumentalised along a continuum of policy objectives, encompassing social, integrationist, economic and political roles. Ultimately, State aid is a living instrument in the hands of the Commission.

The analysis of Commission State aid policy towards the audiovisual industries shows that the Commission’s approach has changed over time, from a protectionist one to a more neoliberalised (albeit pragmatic) one. The question arises as to whether the Commission’s more “hands-off” approach is, in fact, protective of the concept of cultural diversity. While there has been an evident shift away from the ‘high-culture’ approach identified by some (Psychogiopoulou, 2010) in decisions between November 2006 (i.e., the

UK decision, Commission, 2006c) and the recognition of the importance of the concept of subsidiarity as set out in the 2013 Communication, this approach may not, in times of a creative industries discourse, meet the objectives of a cultural policy. In its laxity, it allows for an increasingly liberalised creative industries discourse to rise in, for example, Ireland and the UK. While this approach may, in its way, provide for diversity through the operation of the market, it is an increasingly risky project.

What is identified from the analysis of the submissions is the accepted lack of causality in ascertaining the value of both culture and cultural industries. The policy rationales underpinning the Commission's approach to State aid reflect a shift to what has been termed a creativity framework or marketised dimension. However, this shift is not necessarily in alignment with the Commission's perception of the needs of the internal market, leading to confused and disjointed policies. The Commission leans towards a creativity framework while simultaneously concerned with the protection of the internal market and ensuring that proposed aids do not distort competition between Member States. Interrogation of Commission developments through a spatial trialectic allows for understanding of commodification of national space within an EU context, of EU space within international dimension, and the commodification of culture within this context. This approach highlights the tensions or paradoxes underpinning policy in this area, driven by the dual nature of audiovisual goods as both cultural and industrial. It interrogates the operation of State aid policy as a cultural policy that establishes the various spatial dimensions within the nation and the EU. Culture is instrumentalised to construct the structural perceived space of a unified EU, it is commodified to operate as an industry, brought into the conceived space, and both of these conceptualisations shape the lived spatial dimension of culture.

This chapter sets up the forthcoming discussion of S481 as a policy that explicitly and actively encourages inward investment as a deliberate and pragmatic policy intervention in the audiovisual industry policy field in Ireland. Such policy developments

can be positioned within a conscious creative industries discourse that consciously spatialises and commodifies the notion of a national culture. The broad shift to a creativity framework shift, identified across EU audiovisual policy, is also identified in S481 policy and is taken to its (il)logical extreme where the cultural element of the cultural tax expenditure is mostly passed over for economic and industrial benefits (echoing Hadley and Gray's concept of hyperinstrumentalism, 2017). The commodification of the national culture and the national space (usefully theorised through Lefebvre's concept of spatialization) that can be identified through analysis of the discourse around audiovisual policy and S481 operates within the confines of State aid policy, albeit such policy is primarily driven by pragmatic, marketised rationales.

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<sup>1</sup> The initial search carried out was evidently incomplete on first examination, thus additional cases have been identified through the academic literature, through references in later cases, and through examination of Commission annual Competition reports. Sufficient cases have been analysed to identify broad trends in Commission decisions on State aid for audiovisual industries. It is possible that there are more/less than the 180 identified; a very small number (under 5) refer to State aid for industries other than audiovisual industries. However, this number is as complete as possible. No data set is entirely reliable. Appendix 1 contains a list of cases decided by the Commission. The Commission's search function on its website does not list cases prior to 2000.

<sup>2</sup> Article 167 was initially (in 1992) introduced as Article 128 of the Maastricht Treaty. It was subsequently retitled Article 151 of the Treaty of the European Community (TEC) and is now Article 167 Treaty of the Functioning of the European Union (TFEU) in the wake of The Lisbon Treaty in 2007.

<sup>3</sup> As gleaned from documents obtained under FOI from the Commission regarding the negotiations around the revisions to the cultural test for UK film tax incentive approved under State Aid case N 461/2005.

<sup>4</sup> [http://ec.europa.eu/competition/consultations/2013\\_state\\_aid\\_films/index\\_en.html](http://ec.europa.eu/competition/consultations/2013_state_aid_films/index_en.html) last accessed 20 May 2018.

<sup>5</sup> A FOI request was made on 21 November 2017 to the Commission, Competition DG, to obtain documents set out in Annex 1: Chronology of meetings from 24 March 2011 to 14 May 2013 set

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out in the Commission’s Staff Working Document on the 2013 Communication. In particular, the meeting with game developers on 29.5. 2012 is not included in list and thus has not been received by FOI. Email correspondence with Ansgar Held of the Commission states that while ‘game developers consider their products “cultural”’ the Commission found no market failure to justify aid (email from Ansgar Held, Commission, 23 April 2018).

<sup>6</sup> EU fact sheet [http://europa.eu/rapid/press-release\\_MEMO-17-1342\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-1342_en.htm) dated 17 May 2017.

# 6 THE DEVELOPMENT OF IRISH POLICY: EVALUATION OF POLICY SILENCES

At the same time that the role of the state in redistribution is challenged with the removal of the highest bands of taxation and the move away from expenditure on social services, the role of the state in promoting, financing and subsidizing capitalist growth increases. We can see this in the giving of subsidies to the privatized industries ... Rather than the state being the container, the place where the market operates; the state is now one of the key players. (Elden, 2004, p.225)

## 6.1 Introduction

This chapter is structured in a way that foregrounds the intersection between legislative changes and grey literature. It interrogates the relationship between the various reports commissioned concerning S481 and the audiovisual industries in Ireland and attempts to identify the relationship between the grey literature and the evolution of S481 in different formats. However, this approach is taken with cognisance of the complexity of the nature of policy development (and, thus, policy discourse) and the lack of causality inherent in policy changes. It is contended that policy development is multivalent and the reasons for the introduction of policies and amendments thereto are similarly multiple. Thus, examination of policy developments is aided by the grey literature, but the analysis

considers the wider political, economic, social, and cultural context within which policy is developed. This thesis uses Bacchi's WPR (2009) policy research approach to consider policy silences, not only silences in the discourse (around the complexity of culture and cultural value) but also silent voices (who is not part of the wider policy evolution).

As has been shown in Chapter Three, application of academic discourse on concepts of the trans/national and global to a discussion of Irish film and the Irish film industry acknowledges the multiplicity of voices and tropes therein. The Irish audiovisual production environment is complex, comprising Irish inflected co-productions, inward investment features that have no discernible Irish connection from a narrative point of view, and Irish stories made with international funding (e.g., Luxembourg-funded *Black 47*). It is contended by this thesis that, despite the complexity of the audiovisual production landscape in Ireland, S481 fails to operate fully as an inclusive cultural policy and instead (to overgeneralise) supports a specific instrumentalised manifestation of culture that is predicated on a marketised perception of the audiovisual industries. As the previous chapter has shown, audiovisual production takes place within a complex, spatialised, commodified environment that is simultaneously local/global and national/transnational. The exploration of the instrumentalised role of national cinema through policy interventions that support a particular manifestation of a national audiovisual *industry* allows for an understanding of the social relations concealed within audiovisual production policy.

Global incentives such as S481 play an increasingly 'crucial role in the global production landscape' (Olsberg SPI, 2019, p.143). In an Irish context, the recent Economic Analysis by OSN calculated the public investment via S481 at €93.2m in 2016, thereby constituting a significant percentage of the overall production support landscape represented by the allocation of public funds for audiovisual production (excluding radio) of €233.4m for 2016(OSN2017, pp.26-27). The Irish tax expenditure was introduced in Section 35 (S35) of the Finance Act 1987. It was 'renamed' S481 with the introduction of the Taxes Consolidation Act (TCA), 1997. In outlining the history of the expenditure, this

chapter focuses on certain events which have been identified as significant in allowing for deeper understanding of the spatial dimension to S481; the threat to the policy in 2002/2003 and eventual reprieve, the reconfiguration of the expenditure in 2014 to operate as a tax credit system rather than the prior investor-led form of the regime which had led to “leakage” (i.e., part of the tax foregone is diverted to the administration of the relief rather than to the cultural production) to the private sector; and the changes brought about in Budget 2019 to the terms of the expenditure. Each of these pivotal policy events is analysed through a critical political economy lens that allows for recognition of an increasingly marketised environment, that is in the context of a ‘shift in governing values that privileges and promotes freedom of action for private businesses and market mechanisms over state regulation and public provision’ (Hardy, 2014a, 179).

This chapter takes a critical political economy approach to the role of State aid as a form of cultural and industrial policy, using a policy research approach within this framework to look at how S481 operates to support audiovisual production in Ireland. It does so with cognisance of the impact of EU regulation in shaping the form of the State aid, as explored in preceding chapters, given that Ireland must work within specific soft law parameters as set down by the Commission. However, there is a relatively significant amount of leeway for individual Member States to shape their policies in this area, given the principle of subsidiarity under which the EU operates. Using this theoretical framework, this chapter uses a thematic analysis method to identify some reflexive themes across the data on Irish audiovisual policy including the spatialization of the virtual and real space of the state, increased marketisation of culture, a shift to a pragmatic discourse towards culture, the recognition of State aid as a ‘living instrument’, the mismatch of goals between policymakers and researchers, and the recognition of a cultural dividend within S481 discourse. The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries and the identification of

multiple policy silences. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences.

This chapter examines how the space of the state has been constructed through policy interventions over time. To this end, this interrogation of the spatialised dimension is refined through an examination of how perceptions of value permeate discourse around S481 over time. As is consistent with the wider shift to a marketised creative industries discourse identified within the literature on political economy of audiovisual industries; a similar approach is identifiable in Irish policy discourse. It is contended that S481 has been primarily framed from an economic perspective, which is problematic in eliding the concept of cultural value. The value of culture can be considered within its market economic value and can be bought, sold, and valued in market terms (in the context of audiovisual industries, this includes film sales, production spend, and rights). Another aspect of the value of culture has no tangible market value, (the ‘non-marketable value’) and can be defined in terms of value for citizens (an approach which can, it is argued, be extended to institutional value to include state and EU value (e.g., see Holden, 2006)).

The instrumentalism of S481 is understood within the wider discourse of commodification of culture. S481 tends to be less analysed as a cultural policy despite its significance in shaping cultural production in an Irish context. In general, analysis of the impact of S481 illustrates the significance of statistics, performance and impacts in evaluating of the ‘worth’ of S481 and is an example of cultural marketisation at play

(Hesmondhalgh, 2019) and of how culture is contained within a Lefebvrian conceived (or datafied) space. Employment figures are an intrinsic part of the reported economic impact of audiovisual industries and are used as a justification for the provision of grants and tax incentives (such as S481) to such industries in Ireland and across Europe. The transfer of knowledge is treated as fundamental to the operation of S481, in that it is a condition for receipt of the exemption that trainees are taken onto a project (a condition that was enhanced in the March/April 2019 regulatory changes). Broadly, a creative workforce that can shift innovation to other industries through the concept of knowledge transfer is termed a 'network externality' and is thus seen as worthy of subsidy (Throsby, 2010, p.95). The market is not necessarily anathema to the cultural and creative industries, and the provision of employment through the audiovisual industries is something to be celebrated. However, the question of how the cultural industries are organised is crucial for what kinds of cultural products are disseminated. If employment, of any type, is the main aim of a cultural policy (bearing in mind certain jobs in the cultural sector are low paid, and difficult to access for some strata of society), then it is necessary to interrogate the nature of the structures supporting that employment, and the form the employment takes. Besides, overreliance on quantifiable metrics of cultural value is systemically problematic in itself. Data is not neutral, not comprehensive, not benevolent, and not consistent (the four 'lies' underpinning the rhetoric of data as outlined in Meyrick and Barnett's follow-up '*After What Matters*', 2018).

## 6.2 A Critical Political Economy approach

This chapter identifies relevant documents (including primary and secondary legislation, grey material policy documents, and production data from various sources), analysis of

which allows for refinement of the research question (posed simply for this chapter as ‘how does S481 operate as a cultural policy?’). It uses the theoretical framework of spatialization (i.e., the production of and commodification of the nation-space) to elaborate on the understandings of the research question. Further, it explores the commercialisation of the production of national culture in a transnational era, and the concept of “nationing” (that is, ‘the objective of developing a national culture through the deployment of policy’ (Rowe et al., 2018a, p.1). Through this process, conclusions are proposed to the research question around the operation and meaning of S481. Certain policy norms/values are identified, primarily around the role of cultural policy as a form of economic policy. Following Bacchi’s WPR approach and expanding on the concept of a value perspective, this approach questions ‘the premises that underpin particular problem representations’ and enables analysts to ‘think deeply about the assumptions and presuppositions that lie behind and shape selected policies’ (Bacchi, 2009, p.xiv). The use of Bacchi’s WPR approach allows for the identification of multiple policy silences, around the elision of cultural value and the (relative) lack of emphasis on diverse voices; a silence that has arisen out of the overemphasis on large scale inward investment projects as a sign of success of S481 policy.

Theorising Ireland’s changes to S481 through a critical political economy lens shows gaps in discourse around access to means of production. This chapter looks at how S481 policy constructs a specific formation of the notion of space within which audiovisual production can take place. It looks at how the policy interventions and grey literature around S481 construct and shape a specific form of cultural value. This approach is explicitly cognisant of the complexity of policymaking and policy evaluation in a political domain. If policy is seen as a form of problem-solving, then a problem-solving framework comes up with solutions to meet a specific problem - an approach that has an apotheosis in evidence-based policymaking, leading to economic evaluations of S481 to show that it ‘works’. Interrogation of policy is complex because the grey literature is produced by and for policymakers with the intention of influencing policy, whereas the academic discourse

is produced on the basis of critically analysing policy (as per Ejjod's 'provocation' on cultural policy, 2019).

### 6.2.1 An overreliance on economic value

This chapter interrogates how S481 is framed primarily as an economic policy in a way that represents the 'problem' of audiovisual production as one that is fixed by focusing on economic values, on economic production, in a way that fails to fully engage with the complexity of cultural production in all its manifestations. This analysis uses Bacchi's WPR approach to ask what the problem is that the policy is addressing? It appears to be one of fixing the level of production only, and is thus answerable only by increased production, by evaluating the policy as one that can be numerically addressed. It makes visible the complexity of space within this policy, space that is constructed through policy interventions. Bacchi & Goodwin, using a Foucauldian governmentality approach hold that 'spatial elements of policy are largely taken for granted or treated as self-evident' (2016, p.96). For them, the habit of treating place as a context for policy instead of 'produced, reproduced and transformed *by* policies' (p.96) stems from seeing policy as activities of state institutions.

This policy research approach interrogates the norms driving both development of, and evaluation of, S481 policy. It focuses on the developments in the legislation within the context of EU membership, the perceived "value" of the existence of the expenditure as outlined in various reports and the most recent adoption of S481 as central to recent audiovisual policy developments. As a linchpin in Ireland's audiovisual policy, S481 operates within a framework of potentially divergent values, both economic and cultural. However, it is more productive to consider the values underpinning the policy framework for S481 as exhibiting a continuum of objectives; that may be symbiotic, parasitic (Herold, 2008) or paradoxical (Neuwirth, 2008). The values underpinning the economic goals may coincide with cultural goals, or they may be oppositional. Therefore, this chapter

interrogates the reasons for a tax expenditure for audiovisual industries, positing that the policy has multiple rationales, both cultural and economic, but the reasons for justification and evaluation of the policy tend to be couched in economic language that fails to take account of “unquantifiable” broader cultural values.

Arising out of an analysis of the discourse around S481, it is contended by this thesis that S481 is assessed primarily on its quantifiable, instrumentalised value, with a focus on the economic impact, through the creation of employment, through ancillary tax intake and its perceived role in the tourism industry. Vestheim defined instrumentalism as the tendency ‘to use cultural venues and investments as a means or instrument to attain goals in other areas’ (1994, p.65). While this is not problematic in itself, it can be problematic when a policy is, in Hadley and Gray’s recent refinement of the concept, ‘hyperinstrumentalised’ to such a degree that ‘considerations of cultural value are effectively irrelevant’ (2017, p.2). While S481 does appear to have some cultural function, it is arguable that if it is solely formulated to attract inward investment, then it is in danger of being perceived of as hyperinstrumentalised, and therefore devoid of any cultural value. It is contended here that the policy does have a cultural benefit, but analysis of this cultural benefit has been problematically ignored in the past in favour of an overly economic approach justifying the very existence of the expenditure.

The interventions of the state in the audiovisual industries through policies that are primarily focused on economic rationales focus on the conceived spaces established by the marketisation of culture, in a way that is aligned with the broad shift to creative industries discourse. Such an approach can be, according to Brenner, be ‘conceived spatially as attempts to organise, instrumentalise and regulate social space’ (1997, p.146). The state, through the provision of a favourable tax expenditure, provides the means by which capitalism can operate with the sphere of the audiovisual industries. The Regulation School approach (Aglietta, 1979, Lipietz, 1998; Boyer, 2000) focuses on the role of public authorities in regulating ‘regimes of accumulation’ - that is, the ‘to the economic, social and

political framework that allows capitalism to extract a surplus and stave off a crisis of instability' (Hardy, 2014a, p,186). Thus, the state has an explicit role, through the regulation of the regime within which tax expenditures are conferred, in actively shaping the audiovisual production environment<sup>1</sup>.

### 6.2.2 Towards a cultural dividend concept?

While at times, the role of the state in supporting the audiovisual industries by way of the provision of a tax expenditure in the form of S35/S481 may have been primarily geared towards attracting inward investment productions, and primarily evaluated for its economic benefit, interrogation of recent developments in the structure of the policy and tentative shifts in evaluation approaches illustrate an early but welcome recognition of broader cultural values. The Department of Finance (DoF) Cost Benefit Analysis (CBA) of S481 set out the 'cost' to the Exchequer as -€40 million and -€72.4 million in 2015 and 2016 respectively (DoF CBA, 2018, p.222). The DoF CBA did acknowledge that this cost does not take into account what it termed a 'cultural dividend' (p.220), that is the unquantified benefits from investment in culture. However, there is no evidence of a robust policy to back up this reference, and thus it is difficult to formulate it as an explicit policy intervention. It is, however, a possible move towards recognition of the wider value of the audiovisual industries, a paradigm shift that is explored in detail in Chapter Seven.

## 6.3 A national cinema in a global space

Discourse around national cinemas tends to be concerned with the trope of the nation and the relationship with the transnational/global. This is particularly true in Irish cinema given the colonial past, its position within the global flows of Hollywood, Ireland's small nation status, and the primacy of the English language. This chapter examines the role of S481 in

constructing and maintaining an Irish audiovisual industry and the related (although not coterminous) role of supporting an Irish audiovisual culture. Through an examination of how the expenditure operates in the context of a transnational industry, subject to increased global flows of content, finance, and forms of production, this chapter attempts to unpack the role of the state in supporting the means of producing a national culture.

The impact of EU membership on Ireland's tax expenditure policy has, it is contended, been under-examined at Irish level. It affects the understanding of the concept of nation, that is, how the state uses national culture (howsoever defined) to establish in some way the idea of a nation (howsoever defined). This chapter explores how state intervention in the audiovisual market allows for more in-depth understanding of the role of the concept of a national cinema in a globalised era, operating within a supranational regime.

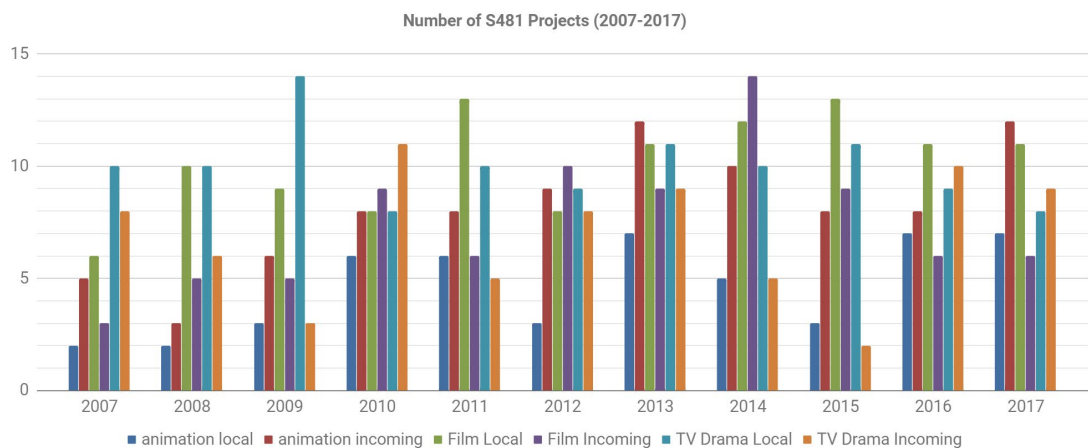
## 6.4 Audiovisual production trends in Ireland 2007-2018

This section contextualises production trends in light of the operation of S481 and in particular the 2014 policy changes. However, given the relatively recent introduction of these amendments, and the lack of relevant data, it is too early to identify any significant changes. Instead, the data is used to illustrate matters of interest in early production trends. This section relies on data from Screen Ireland, the Revenue Commissioners, the Department of Finance 2018 CBA, and the figures from the EAO by Olsberg SPI. The numbers do not dovetail as the DoF CBA has figures for production under S481, but the Screen Ireland figures are for productions released during a yearly period.

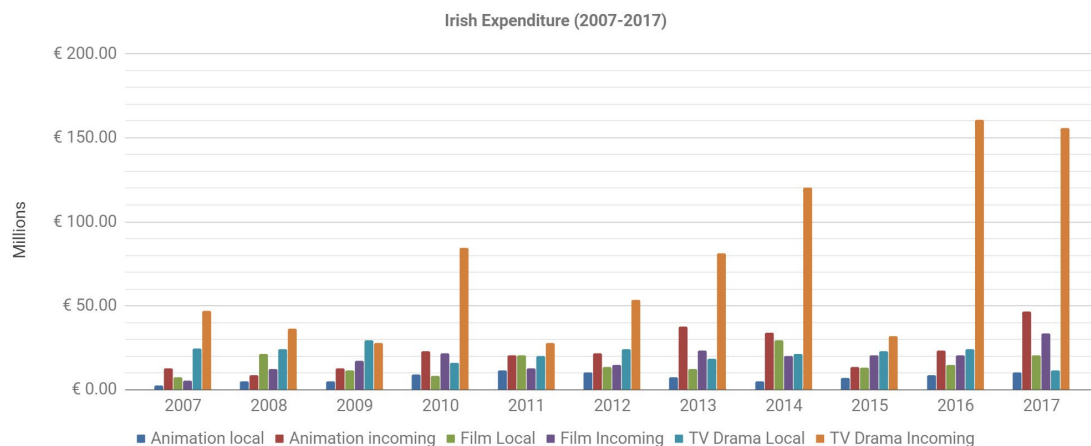
It is not simple to clearly ascertain what production has taken place with the benefit of the tax expenditure. While the Commission's requirement for transparency has led to the release of figures of uptake of S481 by the Revenue Commissioners, in practice the

application of banding (for confidential reasons) means the figures are useful to ascertain broad trends but insufficient to trace precise industry developments (exhibiting a silence around policy that can be theorised through Bacchi’s concept of policy silences in her research). Data on uptake of the expenditure and production trends can illustrate trends in audiovisual production in Ireland. More detailed data is available from the figures published by Screen Ireland with data on S481 from 2007 to 2017 (Screen Ireland/IFB, n.d. see Appendix E). However, these figures do not distinguish between co-production, inward investment, and indigenous productions., but rather simply give figures for local and incoming productions. The European Audiovisual Observatory (EAO) figures are used to obtain some breakdown of inward, indigenous and co-productions (2017, 2018). Figure 1 (below) shows the number of projects availing of S481, while Figure 2 (below) represents the Irish expenditure arising out of audiovisual production.

**Figure 1: Number of S481 Projects 2007-2017 (Screen Ireland figures)**



**Figure 2: Irish Expenditure 2007-2017 (from Screen Ireland figures)**



The data used to generate the above figures is extracted from the data released by SI [Breakdown of Projects Availing of Section 481] a complete copy of which is contained in Appendix E. The data extracted as represented above illustrates audiovisual production from 2007 to 2017. From this, as represented in Figure 1 above, we can see that the number of productions has grown in certain sectors. Local film production has increased from 6 features in 2007 to 13 in 2015 and 11 in 2016. Incoming film production has increased from a low of 3 in 2007 to 14 in 2014 and 9 in 2015 (a relative drop explained in part because of the delay in implementation of changes to S481). Local TV drama had remained reasonably static from 10 productions in 2007 to 11 in 2015. Incoming TV drama has changed from 8 productions in 2007, rising to a high of 11 in 2010 and dropping to 5 and 2 in 2014/2014 but rising again to 10 and 9 in 2016 and 2017. The animation industry is hailed as an Irish success story, and the production numbers from Screen Ireland figures show an increase from 2 local productions in 2007 to 7 in 2017, and an increase in incoming animation production from 5 in 2007 to 12 in 2017.

It is telling that there is a lack of definite information about what exactly is happening in production trends, in part at least because of complexity of production landscape. These figures do not distinguish between incoming investments, indigenous productions, majority, and minority co-productions, but only incoming and indigenous.

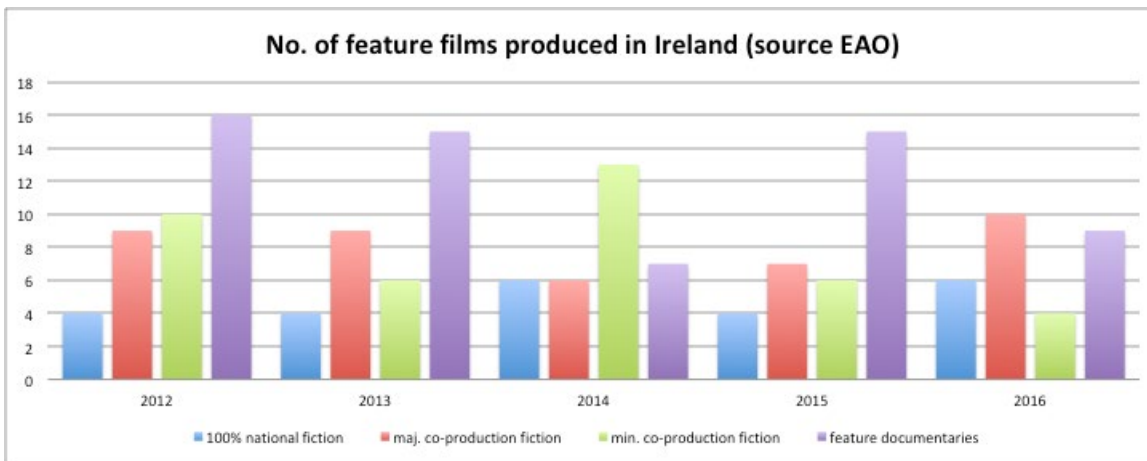
Instead, incoming is defined as ‘where the project is originated elsewhere’ and indigenous as ‘where the project is initiated by the Irish Producer and Team’ (per email exchange with Teresa McGrane, Deputy Chief Executive of *Screen Ireland*, 8 November 2018). TV incoming and TV local are of interest in that they are also reasonably static year by year in the number of projects. The availability of S481 has increased the number of incoming investment films, and particularly incoming TV drama production.

However, when this data is comparatively analysed in conjunction with the changes in the same timeframe in the spend that is considered eligible expenditure under S481 that we notice significant changes; bearing in mind that this figure will also be affected by the expansion of what might constitute eligible expenditure under the revisions to the 2013 Communication. (Note that Ireland’s public service broadcaster, RTÉ do not qualify for S481 relief, so these figures do not include production of indigenous material by RTÉ.).

The SI figures provide for separate data for Section 481 raised and for Irish expenditure. As can be seen in an examination of the full table of figures in Appendix E, these figures are very similar. Most Irish expenditure is eligible for S481 relief, but there are some minor discrepancies which represent Irish expenditure which is not eligible (e.g., certain travel not originating in Ireland may not be eligible). As can be seen from Figure 2 containing the changes in Irish expenditure between 2007 and 2017, Irish expenditure on incoming TV projects and incoming animation has grown exponentially. For example, in 2017, Irish expenditure on local TV drama was €11,625m, and on incoming TV drama was €155,791m. While this represents a benefit to the Irish economy in certain ways (such as employment and the assumption that this will generate an income tax take and other spillover spend, training, and other spend on hotels and services), it illustrates a worrying lack of investment in local TV drama.

To further tease out production trends, Figure 3 shows the European Audiovisual Observatory figures have been broken down to majority and minority co-productions (2018).

**Figure 3: EAO figures for features produced in Ireland 2012-2016**



Thus, we can see a small growth in 100 per cent national fiction and growth in majority co-production fiction.

The data illustrates an overreliance on incoming TV production to shore up the industry, with little support for indigenous production. Applying spatialization and instrumentalist theories here, we see a commodification of national culture and national space in order to promote the Irish film industry, where success in industrial terms is simply conflated with production. Instead, a more democratic approach to culture would provide an environment within which all forms of production might take place, especially indigenous production. The axiomatic assumption that benefits will spillover from production is, as yet, untested.

## 6.5 Policy analysis of the Irish State aid regime: the early years

This research has identified a number of relevant reports that act both as a reflection of policy concerns and, of course, as a means of informing and influencing policy developments (see Appendix 4 for a list of reports). The deliberate selection of reports that help contextualise the developments in policy is informed by the understanding of wider

political, social and cultural context within which such developments have taken place (including both EU and Irish developments) (Karppinen & Moe, 2019). In particular, the economic conditions prevailing in Ireland in the post-Celtic Tiger years. In addition, academic discourse in this area as analysed in Chapter Three (including but not limited to Barton, 2004, 2019; Flynn, 2018; Flynn & Tracy, 2019; McLoone, 2000; Rockett & Hill, 2004) has assisted in developing an understanding of the history of state intervention in audiovisual policy.

### 6.5.1 The early policy reports

The earliest report on film industry policy in Ireland is generally accepted to be the 1942 *Report of the Inter-departmental Committee on the Film Industry* (RICFI). Flynn described it as the ‘first substantial attempt to draw up a coherent policy covering all aspects of cinema in Ireland’ (Flynn, 2007b, p. 30). With the involvement of representatives of the DoF (albeit initially reluctantly), the Department of Industry and Commerce, and the Department of Education, the report concluded that ‘that cinema was too important to be left to commercial interests ... but should be controlled and directed so as to serve the national interest’ (ibid, p.34). As Flynn concluded, the most significant impact of the report was the lateral thinking by Lemass as to how to establish a film industry in Ireland, i.e., one based on inward investment (primarily from the US and UK), an approach that underpinned the establishment and part-funding of Ardmore Studios, and we can argue, more recent policy developments. The significant role of policy interventions in constructing the space for cultural production is already evident in these early days.

As Flynn states, it was not until the *Report of the Film Industry Committee of 1968* that support for an *indigenous* film industry was proposed. Known as the *Huston Report*, this report offered a nuanced view of the role and relevance of a film industry to a small state:

We recognised that it would be a mistake to treat the film industry as if it were purely a branch of manufacturing industry. While film is the raw material for the film industry it is many things besides. In considering therefore whether a native film industry should be established, we took into account not only the factors applicable to industry in general, but also that, in the absence of a native film industry, we lack a potent means of presenting Ireland, its heritage and its people to the world and of keeping the Irish people in touch with their distinctive environment. (1968, p.19)

The authors recognised the importance of employment within the film industry but held it to be insufficient as an overt/sole policy objective. For them;

The present policy of welcoming foreign film makers to Ireland should be continued and even extended, but the agency will have failed if its efforts lead merely to the establishment here of branches of international film companies, producing films that have not a significant Irish creative, artistic and technical content. (1968, p.41)

The Huston Report emphasised the role of policymakers in constructing the perceived space of Irish audiovisual production in order to support a particular manifestation of the lived space of Irish culture. This recognition of the broader role of film as a manifestation of the cultural life of Irish society is less evident in later reports as the following analysis will show.

### **6.5.2 S481: early policy development**

The introduction of S35 (in Finance Act 1987) coincided with the suspension of the IFB, both practically and symbolically indicating a shift from state support to reliance on the

free market. It provides an example of an instrumentalised, marketized intervention in the audiovisual production industries by the state by way of an explicit policy measure, that is; the increased intervention by the state in the capitalist market. While intervention in audiovisual production by way of specific policy measures can be justified under various rationales, a deep examination of the role of S481 within audiovisual policy shows that the expenditure is *primarily* framed within a narrow hyperindustrialised conceptualisation of culture as industry. The use of a policy measure such as S35/S481 to construct a particular manifestation of a film industry illustrates the anomaly of using a neoliberal form of subsidy, a tax break or tax expenditure, to shape the market. As Hardy points out ‘neoliberals have espoused the dismantling of public subsidies and market interventions, such as public service media’ instead supporting the ‘substitution of market mechanisms for statist interventions’ (Hardy, 2014a, p.178). The instrumentalist discourse that underpins policy developments around S481 is increasingly marketised in its reliance on private businesses and the intervention of the market to drive cultural production.

Since introduction, the expenditure has become an integral and increasingly important part of the Irish audiovisual funding landscape. Initially, S35 was formulated to support a film industry in Ireland as a commercial enterprise, with little consideration of the wider cultural role of film. As expressed in the Dáil Debates during the introduction of S35, the early manifestation of the expenditure was envisaged as ‘a suitable framework for substantial investment by the private sector to help Irish film production become a genuine business activity and thereby facilitate a continuing process of production of a wide range of film projects’ (Haughey, 1987), illustrating the explicit thrust of S35 to support a film *industry*. Upon introduction, it was explicitly framed as a replacement for funding via the BSÉ/IFB, which was wound up, to much criticism. In the course of the same debate, the effective abolition of the IFB was described as ‘an act of philistinism, damaging to the film industry’ by Michael D. Higgins who pointed out the lack of development support arising out of the abolition of IFB (Higgins, 1987).

The history of S35/481 is marked by multiple attempts at reaching a methodology for evaluation of the economic benefits of S35/481 and dominance of economic discourse at, it is contended, the expense of cultural value. A trio of reports from 1992 place particular emphasis on the economic value of the film industry, highlighting the job creation potential. The third of the triad (the Special Working Group Report “SWG”) specifically alluded to the recommendations in the two earlier reports in establishing the SWG ToR ‘to identify individual measures that should now be implemented by Government, in particular, to create more jobs in film in this country’ (SWG, 1992, p.16). The reference to the earlier two reports is to the Coopers & Lybrand 1992 Report and the 1992 Film Makers Ireland Report (Coopers & Lybrand, 1992; Film Makers Ireland Report, 1992). Coopers & Lybrand 1992 was commissioned by the Irish Film Centre (now Irish Film Institute) at the request of Temple Bar Properties with ToR to specifically address how the indigenous Irish film production industry could be developed, with particular emphasis on job creation in the industry as a whole and, specifically, in Temple Bar. The second report referred to in SWG is Film Makers Ireland 1992 (i.e., *The Indigenous Audiovisual Production Industry*, which evaluated the importance of the audiovisual sector primarily in terms of job creation and contribution to GDP/GNP. The Film Makers Ireland Report 1992 highlighted the estimated value of the audiovisual services industry and the overall value of the independent television production sector – with an obvious focus on direct and indirect employment. Thus, the circumstances under which the ToR were set for the SWG already focused primarily on job creation and employment figures. The context for what is contended to be a narrow instrumentalised focus is the sword of Damocles hanging over the IFB, only just reactivated by Michael D. Higgins as Minister for Arts, Culture and the Gaeltacht, subject to a swathe of recommendations in the SWG Report that the annual subvention to the industry be on terms of strict supervision terms including what they call a ‘second tier for the vetting of projects’ (p.49) to ensure both a creative and economic assessment of projects and transparency of process (note that the

SWG considered assigning the annual subvention to either the Arts Council or the IFB, but recommended a new agency instead – an option that was not implemented).

It is of particular interest, in light of the recent DoF acknowledgement of the ‘cultural dividend’ (DoF CBA, 2018, p. 220) of S481 to consider the reservations expressed by representatives to the SWG from both the DoF and the Department of Industry and Commerce (as cited in the SWG Report). In 1992 the DoF was cited as stating that any tax concessions must be ‘fully costed’ and quantify any benefits thereof. Also, the DoF baldly state that the ‘particular characteristics of the film industry’ do not operate as a disadvantage compared with other industries (ibid, p.22). Therefore, the film industry should not be given special concessions by way of generous State aids on the basis of ‘ill-defined cultural or artistic characteristics’ (ibid). Instead of attempting to placate the DoF by establishing the economic worth of the film industry, it may have been a more fruitful task to attempt to actually define ‘cultural or artistic characteristics’ in a way that serve to justify the granting of state expenditure via a State aid.

The SWG report acknowledged the significance of what can be termed a ‘nationing’ policy (Rowe et al., 2018a) where the authors of the report recognised that ‘the success of a country’s film industry can have a profound positive effect on international opinion towards that country, with unquantifiable but real benefits accruing to it’ (SWG, 1992, p.29). The establishment of such form of value can be considered an institutional value with Holden’s value typology (2006). Further, there is some (albeit limited) recognition of cultural value where the SWG acknowledges the ‘unique nature’ of the film industry pointing to the need for a ‘strong *creative* assessment of projects’ (p.30). This acknowledgement may be read in the context of the need for oversight of the reformed IFB bearing in mind the controversies around funding during the term of the first IFB.

### 6.5.3 An increasing economic approach in the grey literature

In keeping with the increasingly neoliberal and marketised discourse building up around S481, a broad trend of the grey literature is an (over)emphasis on the economic worth of the relief. The value of an analysis of the grey literature is that it allows for insights into the policy concerns of the commissioning bodies, manifesting in narrow Terms of Reference that primarily are concerned with the economic value (or costs) of S35/S481 rather than any consideration of social or cultural values. For example, Indecon carried out an independent economic assessment of S35 for the government under ToR that were ‘to provide a clear and concise analysis; of the contribution of S35 ‘to the Irish economy generally and in particular to employment’ (Indecon, 1995, p.193, “Indecon 1995”). While Indecon 1995’s ToR did acknowledge the cultural role of film as ‘an instrument of economic and social policy’ (ibid) and its positive effect on tourism, it did not specifically raise the interrogation of this (albeit still instrumentalised) cultural role. Indecon 1995 acknowledged that most of the public arguments justifying S35 are on an economic basis and that ‘it would be hard to suggest that many of the large projects receiving the incentives have any cultural significance for Ireland’ except for training (p.40). Indecon bleakly concludes that on best estimates ‘the cost of the incentives exceeded the quantified benefits’ and thus ‘on economic criteria it would be hard to justify continuing the incentives in their present form’ (p.56). Indecon 1995 did not recommend abolition of S35 but suggested modifications instead. Flynn & Tracy describe Indecon 1995’s conclusions as holding that S35 was ‘heretically’ costing money (Flynn and Tracy, 2019, p.294) in contrast to interpretations of other bodies such as IBEC. For example, a report from the Audiovisual Federation to IFTN (The Irish Film & Television Network) in 1997 concluded that the benefits to the exchequer were estimated at IR£31.15 million, using the multiplier effect (IFTN 1997).

The Department of Arts, Heritage, Gaeltacht, and Islands commissioned Indecon's 1998 review of the Irish film industry (Indecon, 1998, "Indecon 1998"). It concluded that S481 had assisted in a rapid expansion of the film production sector, and best estimates 'suggest that the cost of the incentives for the sector exceeded the direct tax contribution of the sector....and capital duties by a sum of the order of IR£11.1 million in 1997' (ibid, p.28). Interestingly however, Indecon 1998 cautioned against taking a purely economic impact approach to government subsidies, proposing that consideration should be given to the impact of externalities, citing research by Dr Joe Durkan that cautioned against approaches that attempt to justify subsidies for the arts through a cost-benefit analysis (Indecon 1998, p. 21) in a way that echoes the concept of cultural and creative spillover benefits (TFCC, 2015). While Indecon's research is significant in its recognition that measurement of the economic impact of S481 is an insufficient reflection of its value, the threat to S481 in 2002-2003 in the wider context of political scrutiny has meant that the broad thrust of later research took a quantifiable route and problematically focused on what was deemed measurable and confirmed as direct impact at the expense of unquantifiable benefit. Durkan's 1994 short report for the Arts Council (Durkan, 1994) addresses certain of the positive externalities to art but fails to engage critically with the relevant issues. He cites intergenerational benefits, including benefit to the economy, and education, while acknowledging that people may not fully benefit from such positive externalities and addresses the public good benefits to the arts. However, Durkan's framing of the lack of access to the arts as one of lack of education problematically champions an elitist, narrow view of what the arts should be.

Another example of narrow Terms of Reference is those driving the 1999 *Report of the Film Industry Strategic Review Group* ("Kilkenny Report" which was made up of various industry and government representatives) addressed (per the ToR) the effectiveness of S481, recommending extension of the relief both in terms of years and scope. It concluded that 'there was a net gain to the Exchequer in 1997 of £5.4m' while acknowledging

‘differences of opinion among economists on whether to include further multiplier benefits and savings on social welfare’ (p.76) The Kilkenny Report did address the unquantifiable benefits of an indigenous industry for conceptions of a national culture, holding that ‘a fundamental policy of every national community in the world is to master and secure a distinctive presence and to express their own cultural identities through film and television. The policy ramifications are wider than the direct economic impact’ (pp. 11 -12) and that S481 secures ‘a proper balance’ between financing film production and the attraction of domestic and international investment’ (p.14) and that growth must concentrate on development of stronger indigenous film companies.

However, the wider context within which the Kilkenny Report was published points to a wider issue in play. The report was undertaken under a cloud of imminent expiration of S481, due at the end of the tax year (5 April 1999). Given the general acceptance within the industry of the necessity of S481 for the survival of the film industry in Ireland, stringent efforts were made to justify the existence of the relief on the grounds that can be considered causal, understandable, efficient and recognisable. Attempting to justify S481 on non-quantifiable rationales was and remains difficult from a political point of view. The narrowness of the TOR that shaped the policy discourse, together with the threat to S481 and the industry response points to a privileging of the economic possibilities linked with the existence of the expenditure and consequent silences around the wider concept of cultural value.

The specific amendments to the qualifying conditions S481 illustrate a clear shift to an increasing neoliberalism. The marketization of S481 through conditions of use is predicated on an instrumentalised conceptualisation of the measure to attempt to shape a specific form of industry, one that actively encourages inward investment production. A number of amendments to S481 over time illustrates the policy intentions of the legislature. In 1994 the territorial requirements to qualify for the relief were relaxed. On the introduction of the expenditure in 1987, the definition of a qualifying film meant a film ‘in

respect of which not less than 75 per cent of the work on the production of the film is carried out in the State' (S35 (2) Finance Act, 1987). This rule was relaxed in 1994 (by way of Section 48 of the Finance Act, 1993), an indication of the intention for the expenditure to explicitly attract and support inward investment. This change can be interpreted as making the incentive more attractive for inward investment productions but also as an attempt to protect the production infrastructure in Ireland.

The policy revisions in 1999-2000 illustrate increasing attempts to ensure the effectiveness of S481 from an industrial point of view and maximising the benefit to the state of the tax expenditure. The Irish authorities notified amendments to the tax expenditure regime to the Commission as part of a wider investigation by the Commission into the expenditure. The 1999-2000 revisions to the form of the relief amended the certification process to determine the level of investment a film project may raise under the scheme. The amendments therein allowed for consideration of the financial standing of the producers/promoters, the professional capacity and the contribution to Irish creativity and culture through the development of production capability and skills in the media. This accords to Para 2.9.1 of the Commission's decision under the Irish 1999 State aid cases SA NN49/97 & N357/99, one of the early cases decided by the Commission on audiovisual State aids prior to the introduction of the 2001 Communication. An analysis of the approval of the revisions by the Commission under these State aid documents sheds light on both the (ostensibly at least) thrust of the expenditure policy in an Irish context in 1999 and on the Commission's then approach to tax expenditure regimes, which, as we saw in Chapter Five, is predicated on multiple instrumentalised objectives including both the protection of the EU internal market and wider neoliberalised conceptualisations of the role of the audiovisual industries. According to Commission documents, applications were assessed on a points-based system, described by the Commission as 'cultural criteria' (Commission, 1999b, p. 5). A sliding scale of points was granted for employment of an Irish or other EU citizen in various creative and technical areas, together with points for

Irish language production or a co-production, and accredited trainees. A project must have scored twenty-two points to qualify for the maximum number of investments; below that, there was a pro-rata reduction (para 3.11, Commission 1999).

The Commission explicitly stated in the State aid decision approving the Irish regime in 1999-2000 that ‘aid towards specific cost items of the budget of a film project is to be deemed to support in principle the creation of an audiovisual product and not to assist the development of an industrial activity’ (3.10), an approach that is impossible to achieve in practice, as accepted by the Commission in 2013 Communication negotiations (as analysed in Chapter Five). In theory, at least, the criteria applied for approval (based at this time on French case N3 /98) attempted to ‘strike a balance’ (ibid) between the aims of cultural creation and the development of audiovisual industries. The Commission was happy that the requirement for cultural content was fulfilled because of the ‘artistic appraisal’ by the Department of Arts, Culture and the Gaeltacht who will examine, inter alia, the professional capacity and the contribution to be made by the project to Irish creativity and culture (3.11). The Commission’s position was that aid schemes were justified given the market dominance within Europe by audiovisual products from outside the EU (i.e., Hollywood). It held that European film production tends to require ‘substantial State support’ to ensure expression of ‘Europe’s own culture and creative capacity’ (3.16).

Further, according to the Commission, the Irish ‘scheme favours lower budget films, which are normally produced by small new companies and first-time producers with a higher level of allowed investment in percentage terms and also encourages off-season production (to optimise the use of infrastructure) by means of an uplift. Co-production and training are also favoured by additional scoring points’ (3.17). This conceptualisation of the relief is in keeping with Commission approaches at the time, which highlighted the significance of the EU internal market dimension and, under the significant French aid case N3/98,

recognised the need for both industrial and cultural rationales. This early manifestation of the scheme as 'European' can be theorised through an out of date cultural imperialist argument, that pits a 'diverse' European film industry against the hegemonic Hollywood monolith. Rather than considering American imperialism, it is more productive to analyse the conditions driving a transnational corporate cultural domination where the driving force is profit and sales and consider the role of S481 within this process.

## 6.6 The 2003 threat to the relief ... and a reprieve

The threat of extinction to S481 in the 2002-03 period was a catalyst in what is framed in this thesis as a problematic increasingly economic/neoliberalised view of the role of S481 and the audiovisual industries more broadly. The various reports carried out by stakeholders in response to the threat of withdrawal point to a concerted and successful effort on the part of the wider industry. Minister for Finance, Charlie McCreevy, scheduled S481 for extinction in 2002. His Budget Statement (4 December 2002) announced the termination of S481 relief alongside a number of other tax incentive schemes to end on 31 December 2004, holding that 'given the current and prospective budgetary position, the existing demand for property investment and the desire to improve equity in the tax system, there is no justification for a continuation of these reliefs beyond 2004' (McCreevy, 2002). The proposed abolition should be considered in the wider context of increased scrutiny on various tax expenditures. This scrutiny focused on the effectiveness of such reliefs from an economic point of view, while acknowledging the inequitable nature of tax expenditures which disproportionately favoured a narrow group of high earners. For example, of the 12 reliefs scheduled for withdrawal from 31 December 2004, the other 11 related to property reliefs (Joint Committee, 2003, p.3).

Significantly, the Economic and Social Research Institute's (ESRI) mid-term evaluation of the National Development Plan from October 2003 called for the tax expenditure to be phased out, holding that the film industry had received substantial support in the past. ESRI considered that 'having provided incentives for the "infant industry" total public provision should be much less generous from now on' (ESRI, 2003, p. 158). The campaign to retain S481 was spearheaded by Screen Producers Ireland (SPI). The 2003 SPI Report in favour of retention of S481 in conjunction with RTÉ, Irish Actors' Equity, IBEC, Audiovisual Federation and SIPTU (SPI, 2003), primarily focused on the economic role of S481 and comparing the inward investment sector of the audiovisual industries to other sectors that received government support including the pharmaceutical, software, and biotech industries. SPI calculated a 3:1 return on investment in the audiovisual sector for 1999-2001. This figure calculated the difference between the net exchequer outlay on S481 (€10.2m) and an estimate of incremental wages from direct and indirect jobs (€30.6m). This wages estimate was calculated on incremental labour costs, and added value from direct and indirect employment corrected for deadweight and displacement (SPI, 2003, pp. 37-39, and see supplemental report for SPI by O'Malley). [Deadweight – the amount of production that would have happened without the expenditure. Displacement – the degree to which employment in the sector can be replaced by employment in other industries]. This calculation was based on the employment benefits emanating from S481 and excluded while mentioning, 'additional unquantified benefits of incremental tourism activity, regional development and impact on related sectors such as digital media' (ibid, p.37). Further, the SPI 2003 Report cited the importance of a film industry for influencing world opinion, influencing tourism spend and promoting cultural diversity. While SPI's 3:1 calculation may be generous in approach, it still, it is contended in this thesis, originates from an overly narrow concept of value and excludes the possibility of wider unquantifiable cultural benefits.

The SPI 2003 Report paid attention to the role of S481 in both attracting inward investment and its supporting role in establishing a robust indigenous industry, with recognition of the economic, social, and cultural benefits of the industry. There is recognition of film as ‘a conduit for expressing national identity and other strategically important perspectives’ (ibid, p.18) highlighting the soft power of film as representative of a country and tourism influence and highlighting how a vibrant film industry promotes cultural diversity. This instrumentalised discourse around S481 can be theorized through the concept of ‘nationing’ (Rowe et al., 2018a) that takes issues with commodification of a national industry for commercial rationale. Acknowledgement by SPI (citing the PwC 2003 report) that the commercial viability of the indigenous sector was only possible due to the spillover benefits of international productions was a telling comment on the lack of direct state support., and points to the silences around the value of the sector.

PricewaterhouseCoopers, on behalf of IFB and Department of Arts, Sports and Tourism, carried out a report outlining the economic benefit to the Exchequer of S481 (PwC, 2003, “PwC 2003”). PwC carried out a CBA for 1999-2001, suggesting a net benefit of €6.6m over the three years (PwC 2003, p.37) (correspondence shows that the DoF did not agree with the ‘assumptions and particular approaches’ used by the consultants, Tom Considine to Derek Dignam 19 May 2004). PwC 2003 held that the maximum cap on S481 spend (introduced in 1996) was undermining Ireland’s potential to attract large-scale investments and recommending it be increased to €50m (ibid, p.4) (instead, it was increased to €15 million in 2003). The ToR stated that ‘consideration of non-economic or cultural benefits are not within the scope of these Terms of Reference’ (PwC 2003, p.5). However, there was some acknowledgement that the existence of a vibrant indigenous film production sector confers a range of benefits of a strategic, social, and cultural nature. There is an assumption of benefit in terms of training and experience on big-budget US productions. However, there are no attempts to quantify this in any way or to propose any method for quantification or measurement.

The Joint Committee on Finance and Public Service (JCFPS) undertook a review of S481 in the context of the proposed withdrawal of the relief. Following hearings with select organisations on 5 November 2003, it produced a report in which the Committee recommended retention of the relief, that is an extension to end 2007 (JCFPS, 2003, p.6, “JCFPS 2003”). JCFPS 2003 acknowledged the dual role of film as both economic and cultural, holding that ‘for strong economic and cultural reasons the Government should continue to promote and foster film as a high value, high knowledge, highly skilled industry’ (ibid, p.3). Practically, there was recognition of the role of S481 as a tool to attract international projects. The Committee held hearings with selected organisations representative of industry interests and government – namely SPI, Ardmore Studios, Irish Congress of Trade Unions (ICTU), IFB, Department of Finance, Revenue Commissioners, Department of Arts, Sport and Tourism; with most in support of the scheme, but with two notable and significant detractors, the Department of Finance and the Revenue Commissioners (JCFPS 2003) due to costs and perceived misuses in the past. Overall, most of the supportive submissions alluded to the economic benefit of the incentive and the benefit to the indigenous industry.

During the debate, Andrew Lowe alluded to the economic argument for the retention of S481 in the SPI 2003 report (termed by him the Sheridan Report). However, Lowe tellingly states that the real point of the debate ‘is that the value of the film industry extends beyond its economic benefit’ and ‘crucially, the film industry marks Ireland culturally’ (JCFPS 2003). In contrast, the DoF considered that the aim of the expenditure was to ‘kick-start’ the film sector rather than operate on an ongoing basis, and it was not ‘conceived as an annual operating subsidy’ (ibid). The Revenue found there were abuses of the scheme (ibid). Taking a different perspective, the Department of Arts, Sport and Tourism called for retention on economic grounds, pointing to a positive return to the exchequer (based on the PWC 2003 report commissioned by the Department of Arts which had not been seen by the Joint Committee, much to its annoyance (ibid). The JCFPS

committee did acknowledge the significance of S481 on cultural grounds, recommending that any future proposal to discontinue S481 be supported 'by a thorough analysis of the costs and benefits to the overall economy and to the cultural life of the State' (p.6), a recommendation that has not been followed, at least in the interrogation of the value of S481 to the cultural life of Ireland.

Following this robust and concerted campaign by interested parties, S481 was given a reprieve. However, much of the supportive output focused on the economic benefit of the expenditure, an approach that may have worked to save S481 on a short-term basis but has been, it is contended, to the long-term detriment of the audiovisual industries. The shift to a focus on economic value, to the detriment of cultural value, is problematic. As journalist Hugh Linehan said at the time in the *Irish Times*, referring to a 2003 short publication called *Irish Film/Irish Culture* in which Professor Desmond Bell castigated the shift to economic arguments:

The pity is that the argument is being conducted almost exclusively on the economic grounds to which Bell refers. Far better, perhaps, to have brought the argument for the cultural benefits of Irish film-making to the fore from the start...In a society flooded by globalised, homogenised mass media, the value to this society of hearing Irish voices on our screens should not be underestimated. (Linehan, 2003)

The IFB publication *Irish Film/Irish Culture* offered a way of understanding the importance of Irish film culture. Commissioned in July 2003 (i.e., during the campaign to save S481), Rod Stoneman's foreword acknowledged the economic and strategic grounds for a thriving film industry but highlighted the cultural and artistic dimensions of a film industry. For him, it is essential to consider the importance of other motives for support, ones that 'are less utilitarian, less susceptible to cost-benefit analysis and key performance indicators' (Stoneman, 2003, p. 1). Lelia Doolan castigates the Irish government for its threat to

withdraw S481 holding that ‘I thought, when we had failed in trying to present film as an Irish art form, and went the pragmatic road, setting up the argument in economic terms, that the Irish government and Irish filmmakers had, at last, entered into a stable relationship, in health and in sickness’ (2003, p. 26). Desmond Bell’s entry stridently criticises attempts to justify Irish film subsidies through terms of economic strategy, arguing that engagement of the film community in such economic spin points to an active collusion ‘in reducing our notion of the public interest at stake in government support for film to a plethora of pseudo-economic arguments’ (2003, p. 35). Instead, he calls for justification of public expenditure in terms of public good.

## 6.7 The embedding of an increasingly neoliberalised policy

While S481 was retained despite the threat of extinction in 2003, the reliance (primarily and problematically) on economic rationales as justification for the retention thereof has continued to shape much of the policy discourse around the measure. The expenditure continued to be under scrutiny. The Committee for Public Accounts held that such incentives must be ‘subject to regular review to ensure they are having the intended effect at an acceptable price and, if not, that they are amended in some way or even abolished’ (CPA, 2005 p.43). This begs the question – what is the intended effect of such a relief, and at what price? For a useful comparison, with the benefit of hindsight, various property-based reliefs interrogated by CPA disproportionately favoured the rich, led to over-supply of property and eventually to the property crash (multi-story car parks, holiday homes, urban renewal). In the 2005 interim report, such property-based reliefs are considered in tandem with ‘film relief’ with no interrogation of the cultural nature of S481. This lack of recognition of the cultural significance of the audiovisual industries is a problematic

hypercommodification of such industries and negates the very thing that makes them unique and worthy of support.

### 6.7.1 Policy silences on cultural value

As reiterated throughout this chapter, various reports have focused on the economic benefit of S481 with little if any consideration of wider intrinsic cultural value. However, the economic evaluations of S481 over time have failed to reach consensus on an appropriate methodology to use. The third Indecon report from 2007 identified a small net benefit to S481 (Indecon, 2007, “Indecon 2007”). However, the 2012 Hynes & O’Connor CBA criticised the methodology used by Indecon in the Indecon 2007 and instead found a net welfare loss to the exchequer under S481 (Hynes & O’Connor, 2012). Significantly, the 2017 Olsberg SPI with Nordicity Economic Analysis found a positive benefit, with a return of (a minuscule) €1.02 to each €1.00 of tax foregone on S481 (Olsberg SPI, 2017, “OSN 2017”). Finally, the more recent Economic Analysis by the DoF has found a significant net cost to the exchequer, based on DoF CBA tax expenditure guidelines (DoF CBA, 2018). This thesis does not interrogate the approach to economic analysis (and nor could it, given that the economic analyses are outside the area of expertise), but instead interrogates the narrowness of the approach to evaluating S481. The assumption in policy circles that S481 has to be at least cost-neutral, if not returning positively undermines the role of S481 as a cultural policy, failing to take cognizance of other benefits, whether intrinsic, instrumental or institutional (to use Holden’s approach, 2006). This assumption arises out of a datafied, marketised approach to cultural policy that relies on identification of causal benefits from the foregoing of the tax take out of S481. The inconsistency across economic evaluations questions the underlying premises shaping the measure. Much of the economic evaluation relies on employment figures. Miller et al.’s interrogation of the corporate efforts to weaken labour rights in order to exploit the global division of labour (2005) points to the

importance of the role of the state in regulating the market for global Hollywood. It is undeniable that much of the thrust of S481 is predicated upon the value of an insecure labour market. The reliance upon positive balance sheet on a numbers basis only fails to address the multiple insecurities underpinning such figures.

The 2007 Indecon Report carried out for the DoF recommended the retention of the relief despite the ‘very small net economic benefit of the scheme’ to allow the sector ‘breathing space’ (ibid, p.65) to address the long-term sustainability of the sector. Indecon 2007 included estimates on wider benefits arising from the sector ‘to include the cultural benefits of certain indigenous film production activities, the development and retention of skilled creative talents, and also the potential tourism benefits arising through increased awareness of Ireland through film and other productions distributed internationally’ (p.60). They placed a value of 25 per cent on these wider benefits while adding the caveat that ‘there is considerable uncertainty surrounding the magnitude of these impacts and the actual size of wider impacts may be lower than projected’ (ibid, p.60). While any acknowledgement of wider benefits to S481 beyond a narrow economic focus is welcome, the lack of in-depth (or even, any) interrogation of potential cultural value illustrates a fundamental flaw in the conceptualisation of cultural value of the audiovisual industries. This is not purely a criticism of Indecon 2007, given that its ToR was to evaluate the scheme in ‘broad socio-economic and fiscal terms’ (executive summary, p.i) rather it is a criticism of the policy norms underpinning the scheme that assume that the relief should primarily be assessed in economic terms.

Indecon 2007’s method of evaluation was criticised by an Economic Impact Assessment carried out by Brendan O’Connor and Terence Hynes of the Department of Finance (“Hynes & O’Connor 2012”). The Hynes & O’Connor Report analysed the ‘the efficiency, effectiveness and equity of the scheme’ (p.2) and starkly estimated a substantial net welfare loss to society from the scheme’ (ibid, p.4). It concluded that in 2011, the estimated tax cost was €46.5 million with an estimate of €65.7 million in 2010 primarily

because of production of *Camelot* (ibid, p.21). Hynes & O'Connor 2012 took issue with the Indecon use of an 'induced' multiplier effect because previous official Department of Finance guidance cautioned against the inclusion of induced effects in CBA studies (ibid, p.57). It held that there is no methodology available that would enable a monetary value to be applied to these benefits and thus 'it would not be consistent with official guidance to include a benefit of this type' in a CBA (ibid, p.66). Crucially, it identified specific weaknesses and, in particular, "leakage" of 13 per cent of S481 funds raised (ibid, p.4). Therefore, according to Hynes & O'Connor:

The scheme as currently operated fails a cost-benefit analysis, has a high level of inefficiency in terms of leakage and is inequitable due to its reliance on high income individuals which itself is inconsistent with Government commitments to cap or abolish tax shelters which benefit very high income earners. (ibid, p.5)

Tellingly, the audiovisual industries were characterised as a 'strategic cultural industry supporting domestic jobs and the tourism sector in Ireland' (ibid, p.6).

The consultation by the DoF leading to the Hynes & O'Connor report was initiated by a May 2012 document that sought to evaluate the scheme in primarily economic terms, asking 'what are the economic arguments for restricting or terminating the scheme?' (amongst other questions around the efficiency of the scheme) (DoF, 2012, p.2) Furthermore, outlining that the usual approach to assessing economic impact is to conduct a CBA. Responding to this consultation call, the submissions from industry were overwhelmingly in favour of the retention of S481. The IFB submission stated that the IFB believe S481 is 'highly effective' (p.5) and 'vital' (p.20) to the success of the industry. Animation Ireland held that there were no economic arguments for restricting or terminating the scheme (p.14), and SDGI held it to have both direct and indirect economic effects (p.3), but also highlighting the important role of film in 'contributing to the promotion, development and enhancement of culture in Ireland (p.4). Note that SDGI, Animation Ireland, and IFB suggest extending S481 to games, and SDGI say that the relief

should be extended to beyond 2020. The Irish Playwrights' and Screenwriters' Guild pointed out that the discussion is not only economic, but there are other intangible benefits such as tourism and 'reputational wealth' (unpaginated submission).

The Hynes & O'Connor report led to a re-structuring of the expenditure (in 2014) from an inefficient investor-led approach to the current tax expenditure/tax credit approach, which reduces the leakage of benefit to the private investor. Therefore, the expenditure is now, at least, more efficient (in purely economic terms). However, the lack of focus on cultural value of the relief has been a consistent problem. In an indication of the policy approach of the relevant government department, the 2012 Department of Arts, Heritage and the Gaeltacht's *Statement of Strategy* acknowledged the context of the financial crisis holding that 'in times of difficulty, it is easy to underestimate the importance of our cultural heritage when competing priorities dominate the headlines' (DAHG, 2012, p. 3). The strategy emphasised the role of the arts in Ireland's economic recovery, citing the potential for the arts to create 'growth and jobs' and holding that a key objective for the Department was to 'maximise the economic and employment creation potential of the arts' (ibid, p.3).

In keeping with the marketised discourse surrounding S481, policy interventions affecting the wider audiovisual environment have been similarly reduced to a balance sheet exercise. For example, the travails of the IFB continued with the recommendation by *An Bord Snip Nua* in 2009 that 'that the film development functions of the Irish Film Board should be transferred to a restructured Enterprise Ireland with over-arching responsibility for indigenous job-creation expenditure' (Vol 1, pp. 33-34, "McCarthy Report 2009") (note that chair Colm McCarthy was also chair of *An Bord Snip* in 1987 which had also recommended abolition of IFB). *An Bord Snip Nua* also proposed that 'consideration should be given to the discontinuation' of the Department of Arts Sport & Tourism as a department in its own right (p.33) given the 'lower priority' of various department

expenditure programmes. In addition, it recommended a reduction of allocation to the Arts Council, discontinuation of allocation for Cultural Projects and Culture Ireland, all bleak suggestions for the cultural and creative industries in Ireland. The McCarthy Report 2009 held that ‘given the scale of tax expenditure (€418m since 1993 and €33m in 2008) via the tax incentive scheme for this sector, and given the level of international competition in this market space, there is no objective economic case for subventing the Irish Film Industry’ (McCarthy 2009, p.18) equating film development to other enterprise development activities such as manufacturing, services and tourism. The IFB responded with a statement on 27 July 2009 that the proposal could have ‘substantial and unanticipated negative economic consequences’ highlighting the direct and indirect employment benefits of the industry together with the benefits to the wider smart economy (IFB, 2009). There is reference by the IFB to indigenous creation, but only in its significance to how Ireland establishes and sustains cultural identity abroad (thus invoking an instrumentalised nationing discourse as theorised Rowe et al. 2018a). What is missing from the IFB response is the multiple and intangible cultural value of expression – and given the abolition of the IFB in the past and the reduced funding, it is frustrating to see the IFB having to rely solely on economic and instrumentalised arguments to justify its existence. The alignment of the discourse of those that might be considered cultural custodians (such as the IFB) with the more marketised policymakers around the framing of the ‘worth’ of the audiovisual industries primarily in economic terms is understandable when contextualised within previous policy developments. Given the uncertainty surrounding the very retention of S481 in 2003, it is no surprise that *all* stakeholders play the economic game. The silences around cultural value are telling, but not surprising.

The next budget saw a small reduction in the allocation to the IFB by 5 per cent to €19.3m (welcome in the prevailing context) with James Morris (then Chair of IFB) stating that this allocation, in the context of *An Bord Snip Nua* recommendation to abolish the IFB was ‘a strong endorsement of the economic value of the film and television production

sector to the emerging digital economy'. However, as an illustration of the instrumentalised approach to audiovisual culture, Morris continued to say that this financial allocation 'is also an acknowledgement of the cultural value of Irish artistic and creative work in building Ireland's international profile that emerged as a major conclusion of the Global Irish Economic Forum in Farmleigh earlier this year' (Film Ireland, 2009). Thus, Morris emphasises the cultural value of Irish work in the context of a pragmatic and external validation of Irish value, instrumentalising the worth of audiovisual production to achieve 'nationing' goals.

### 6.7.2 Towards a creative industries discourse

The Hynes & O'Connor 2012 report was undertaken by the DoF in the context of a crucial report from 2011 that had recommended an extension of the relief to 2020 (Audiovisual Strategic Review Steering Group, 2011, "*Creative Capital*"). *Creative Capital* was a clear indicator of a shift in discourse around Irish audiovisual policy, given its overt use of language explicitly referencing creative industries discourse, not least through the use of inspirational quotes from controversial creative economy theorist Richard Florida throughout (see Florida, 2002, and his later *mea culpa*, Florida, 2017). *Creative Capital* recognised the importance of a commodified manifestation of cultural value, influenced by the shift to creative industries discourse that frames policy utility within an instrumentalist discourse. There is some recognition of the cultural role of audiovisual production in Ireland in that 'the creation of content in Ireland must continue to contain a cultural uniqueness which helps to define what it means to be Irish, to depict cultural diversity and carry that message internationally' (ibid, p.23). However, the lack of implementation, for the most part, of its recommendations indicates a clear lack of holistic thinking on the part of policymakers.

In theory, at least, the authors proposed aspirational and forward-thinking measures aimed at strengthening the Irish audiovisual industry. *Creative Capital* proposed

objectives which it claimed could double the value of Irish audiovisual industry to over €1 billion, the increase of direct employment to 10,000 and an increase in Irish exports through ‘policies that are achievable, cost neutral and that maximize the employment potential of the audiovisual content production industry’ (ibid, p.v). Significantly, the suggestion to extend S481 to 2020, to open an industry-wide industrial relations consultation and to introduce an annual TV co-production fund together with recommendations on the development of industry skills to support a robust domestic industry were informed policy proposals. *Creative Capital* recommended that other tax expenditures be extended to the audiovisual industries, including a Research and Development tax credit to include content development and the extension of the employment and investment incentive (“EII,” formerly the business expansion scheme) to include audiovisual content production companies. While an Inter-departmental Steering Group was established to assess and oversee the implementation, and the actions were included in the Government Action Plan for Jobs 2012, there was little immediate actual effective implementation of the reports’ suggestions, pointing to a lack of in-depth long term thinking on the part of policymakers.

The Inter-departmental Committee met on five occasions (between 2011 and 2013) to address the issues raised in *Creative Capital* (minutes of meetings obtained under FOI, received 2 November 2018). The issues discussed included training, labour issues, the possibility of creating a single content funding agency by merging IFB and BAI Sound and Vision fund under IFB aegis (which BAI naturally resisted); and, on S481 there was a discussion of extension of the expenditure to 2020 and discussion of issues around compliance with the scheme. In keeping with the broad thrust towards focusing on the economic value of tax expenditures identified in this thesis, the committee called for a ‘Cost-Benefit and Competitiveness Analysis’ on S481 (first meeting). The second meeting suggested taking a test case to the Revenue Commissioners to see if content development

qualifies for Research & Development aid (R&D). Suggestions that the IFB develop a multi-project approach to funding film production was hampered by ‘ongoing reducing levels’ of capital funding (fifth meeting).

The Inter-departmental Committee issued a recommendations and implementation plan on 23 January 2012. As per this plan, one of the most significant developments arising out of the report was the inclusion of a reference to *Creative Capital* in the Action Plan for Jobs (Government of Ireland, 2014) and the call that a ‘whole of Government approach to the audiovisual sector is required’ (2014, p.1 of 9), an aspiration that eventually comes to fruition in the Audiovisual Action Plan (AAP2018 – as analysed in the next chapter). However, overall, the recommendations of the report were not implemented for the most part. For Crowe Horwath, implementation of the recommendations in *Creative Capital* ‘was not consistent or comprehensive’ (Crowe Horwath, 2017, p.12), concluding that despite *Creative Capital* being intended as a key policy document it did not live up to that promise. The lack of commitment by policymakers to implement policy based on commissioned reports is both a clear indication of the opacity of policymaking and a disregard for the holistic potential of the audiovisual sector.

While the recommendations of *Creative Capital* may not have been implemented, for the most part, there has been a recent identifiable shift to a wider understanding of the multiplicity of values of the audiovisual industries, albeit, broadly, one that can be contextualised within an embedded neoliberal framework. From a policymakers’ perspective, the audiovisual industries continued to be understood within an instrumentalised discourse, illustrated by the continued focus on the economic value of the sector. The publication from merrionstreet.ie (Irish government news service) on 25 November 2013 ‘Spotlight’ highlighted the estimated worth of ‘dynamic and growing’ audiovisual sector at €550m and on what it termed ‘added value’ to the tourist industry (using the hashtag #allaboutjobs), highlighting the role of the IFB, but also the significance

of the use of Ireland as a filming location (citing, for example, the spend in Galway during the shooting of *The Guard*).

## 6.8 The 2014 policy changes: increasingly commodified.

The 2014 policy developments are significant on multiple levels. The changes indicate a clear and explicit shift to a form of the expenditure that is actively and knowingly predicated on attracting inward investment, with a commodification of culture and of the nation-space. Prior to 2014, S35/481 operated as an investor-led scheme, generally perceived to be inequitable and (relatively) inefficient (see Hynes & O'Connor 2012). The 2014 policy changes to S481 attempted to make the expenditure more equitable (in relative terms at least) by removing the individual investor from the scheme by changing S481 into corporation tax model. The scheme was also extended to 2020 (and again to 2024 under the 2018 changes) giving more certainty to the sector. In keeping with an embedded neoliberal thrust broadly, the nature of the expenditure was made more valuable for footloose or inward investment productions via an extension to the definition of eligible expenditure.

The Minister for Arts, Heritage and the Gaeltacht, Heather Humphreys emphasised that the aim of the revised S481 was to develop Ireland as a 'superb film location' for international productions, which hire local talent and crew thus contributing to the local economy. She wants 'to make Ireland a first-choice destination for international filmmakers and improving the tax breaks available under S481 will be essential to achieve this' (DAHG, 2015), a rhetoric that illustrates an explicit commodification of the nation space. While individual reports consider the role of audiovisual cultural policy for reasons outside economic rationales, there is never, it is contended in this thesis, any attempt to evaluate cultural or social value in any meaningful way.

The expansion in 2014 of the definition of eligible expenditure to include the cost of all cast and crew working in Ireland, regardless of nationality removed the previous limitation to cast and crew from the European Extended Economic Area (EEA). This expansion had been called for in 2006 by IFB in their submission to Indecon in the context of Indecon's review for the Department of Finance (O'Malley, 2007, p.30). O'Malley held that the removal of the limitation would enable Ireland to compete on a more equal footing for productions, in particular with the UK who introduced a similar expansion in 2006 which allowed spend on non-EU personnel as eligible expenditure. We can see the lure of tax incentives as encouraging content creators that are of sufficient size and magnitude to be able to avail of such reliefs, to be able to cross borders as necessary and to encourage transnational productions.

The amendments to S481 came about following an extensive and lengthy consultation process, begun in 2011 if not before. Previous reports had consistently emphasised the economic importance of the existence of S481 in attracting inward investment. It is not intended here to question the figures placed on these values. Instead, there are significant questions about the emphasis on the economic importance of the film/television industries in Ireland to the detriment of an analysis of the cultural importance of these industries. Cultural value cannot be quantifiably compared to the economic value attributed to the film/television industries and thus has been underexplored (really, systematically not explored at all) in the grey literature in this area.

Regarding the 2014 changes to S481, Murphy and O'Brien held;

2014 saw the winding down of one of the most popular tax write-offs for Irish individuals, as the S481 state film subsidy transitioned from an investor-led to a so-called producer-led structure....In reality, the incentive might be more appropriately classified as exchequer-led, as State largesse continues to underpin the scheme. (2015, para.1)

The Commission decision approving the Irish 2014 modifications is of interest in its acceptance that the certification by the appropriate Minister satisfies ‘certain verifiable, national, cultural criteria’ (Commission, 2014f, p. 8). While it is understood that the Commission pragmatically accepts the broadness of a cultural objective as encompassing both cultural and industrial rationales, it can be argued that Ireland’s cultural/industrial test expressly contains criteria that have little cultural rationales but are instead explicitly formulated to allow S481 to operate as an industrial support.

The concept of ‘eligible expenditure’ and the expansion of this concept to encompass worldwide cast was tellingly dubbed the ‘Tom Cruise Clause’ by an Irish journalist (Sheehan, 2013). The expenditure has been recalibrated to operate to serve the needs of an inward investment audiovisual industry, rather than an indigenous industry. In particular, the expansion of the scope of the expenditure can be understood as a form of intervention by the state into the space of the nation, in that it takes advantage of a form of spatialization of the notion of the nation to serve the needs of a specific category of inward investment productions and co-productions that are increasingly prevalent in a globalised/glocalised era.

While the 2014 revisions to S481 at least in some way served the film industry in Ireland, in particular by way of the extension of the nature of eligible expenditure, various members of the industry considered that the structure of S481 as it was operated then was insufficient to meet fully the needs of a forward-facing film industry. The SPI Policy group, which was organised by IFB and included representatives of Screen Producers Ireland, Animation Ireland, VFX Ireland, Ardmore Studios, and a number of professional advisers who are regular advisers to industry entities, met six times in 2015. By way of a 2015 report, the SPI Policy group made various recommendations on S481, including the removal of the broadcast exclusion, but most pertinently recommended the removal cap of €50m per project, which limits the attractiveness of S481 for larger budget feature films and high

scale TV (SPI, 2015, p.7, “SPI 2015”). SPI 2015 made some attempt to capture the multiple forms of value within the audiovisual industries, referring to both market and non-market values: ‘Section 481 provides high end production jobs, it helps to promote Ireland’s rich culture around the world, contributes to Ireland’s reputation as a global hub for high-tech digital and creative content and contributes to Ireland’s profile as a tourist destination’ (ibid, p.2). SPI 2015 also called for restoration of ‘adequate funding’ to the IFB to support indigenous production.

The Irish government continued to focus solely on the instrumentalised and economic value of the audiovisual industries. For example, the 2016 Action Plan for Jobs (Government of Ireland, 2016) emphasises the potential of the audiovisual sector for job creation, focusing on establishing the ‘economic value of the industry’ including skills development and the fostering of indigenous talent. It highlights the potential of Ireland as an attractive location for international production companies (p.102). To this end, it addresses the intention to carry out an economic analysis of the current value of the audiovisual industry in Ireland - leading to the eventual publication of the Olsberg SPI 2017 Economic Analysis (“OSN 2017”). While these goals (of increased production, job creation, skills, talent) are understandable and pragmatic, there is little if any recognition of the narrowness of the focus on such a marketised, instrumentalised approach to culture.

The various changes to S481 over time must be analysed in conjunction with the state support offered to the IFB. We will recall that the “first” IFB was disbanded at the time of the introduction of S35. The fortunes of the second Irish Film Board (renamed Screen Ireland/Fís Éireann in 2018) in the post-recession austerity years have varied under governmental spending retrenchments. From a high point of €20 million (itself not significant relative to overall production spend across Ireland), the state film funding budget was cut year-on-year from 2008, and only recently returned to pre-recession levels as part of wider proposals extending the remit of Screen Ireland, and recognising its increasingly important role in the area of animation, television and (potentially)

videogames. The lack of funding for the IFB was flagged in various reports (see SPI 2015 above). The IFB's CEO, James Hickey, highlighted the 'limitations on funding' and need for resources in the IFB's 5-Year Strategy (IFB, 2016, p.5). The strategy document explicitly criticised the lack of overall policy strategy for the audiovisual industries, holding that 'at present there is no clear overarching government vision or strategy for the audiovisual industry' (p.9). The policy interventions analysed in Chapter Seven are meant to offer such an overall vision. However that vision has not been entirely realised.

## 6.9 The 2019 policy developments

In the most recent developments on S481 policy, we see a further embedding of neoliberal discourse with an instrumentalist understanding of culture, albeit with some attention to the wider cultural context. Two recent grey literature documents illustrate the complexity of evaluating cultural matters and are worth briefly alluding to here. These recent documents and other documents forming part of a 'new' cultural policy framework are analysed in depth in Chapter Seven. They are mentioned here briefly in the context of specific amendments to S481. While S481 was extended in 2015, broadly the audiovisual industries in Ireland suffered from a lack of overarching government policy. The 2017 Olsberg SPI Nordicity economic analysis of the audiovisual industries (Olsberg SPI, 2017, "OSN 2017") commissioned by the Irish Government concluded that there was a net fiscal benefit in 2016. It held that

Every euro of S481 outlays returned €1.02 in tax revenue to the Irish government. This result was arrived at before taking into account the tax revenues generated by screen tourism and other spillover effects, and therefore, should be viewed as a conservative estimate. (ibid, p.6)

According to OSN2017, *economic net benefit* is a more comprehensive measurement than *fiscal net benefit* because it recognises that governments do not invest to benefit their treasuries,

but rather on behalf of all citizens as a means to raise standards of living. The economic net benefit was calculated to give an average return of €2.82 for every euro (p.28). It is defined by OSN as a ‘productivity metric that measures the contribution of the audiovisual sector to the Irish economy’ (p.5) and accounts for direct, indirect and induced values within the industry (direct – employment, labour compensation, indirect – employment and labour compensation within the supply chain, induced – indirect economic activity from re-spend of earnings by workers, p.17).

As alluded to earlier in this chapter, the 2018 CBA by the DoF took a conservative approach to its estimate of the benefit of S481 (DoF CBA, 2018) but has, through the recognition of ‘a cultural dividend’, opened up a line of thinking that has been systemically ignored in official literature to date. Using figures from 2015 and 2016, the DoF concluded that there is a significant net cost to the state. Using DoF 2014 guidelines, the DoF concluded in its 2018 CBA that ‘the economic impact of the scheme is estimated at -€40 million and -€72.4 million in 2015 and 2016 respectively’ (ibid, p.220). The DoF acknowledged that the scheme aims to provide support to maintain high quality domestic audiovisual infrastructure that can thereby support Irish culture. It held that ‘number of significant benefits cannot be quantified and hence cannot be incorporated into the CBA. The most significant unquantifiable benefit of the scheme, and indeed the purpose of the scheme, is the cultural dividend that it provides the State’ (ibid, p.220). According to the DoF CBA, the cultural dividend ‘reflects the benefits to the State of having a successful and dynamic audio-visual industry which is supported by the S481 scheme’ (ibid, p.228). The importance of this real shift in perspective of the DoF cannot be overstated. The recognition by the DoF that audiovisual tax expenditure does not necessarily need to be cost-neutral is hugely significant. However, the use of the ‘cultural dividend’ term is problematic in itself, given the economic etymology of the term. The use of language borrowed from that of standard economics and balance sheets, such as ‘cultural dividend’ implies a direct, causal return, which is, it is contended, insufficient to fully take into

account the variety of non-economic values of the audiovisual industries. The juxtaposition of the DoF's acerbic statement in the SWG Report from 1992 that the film industry does not deserve any special concessions based on 'ill-defined' cultural characteristics with the recognition in 2018 of the potential of a 'cultural dividend' illustrates a more nuanced view of the 'worth' of the film industry, pointing to future potential to evaluate the audiovisual industries in more comprehensive ways.

The 2018 Finance Act introduced amendments to S481 including training requirements, shifting the operation of the expenditure to a self-certification basis and a proposal for a rural uplift which would see an increased film corporation tax credit (37 per cent to 31 December 2020, dropping incrementally to 32 per cent after 31 December 2022) (Section 26 (1) of the 2018 Finance Act), amending S481 TCA) and extension of the expenditure to short films. A number of different documents were published in March/April 2019 to implement the proposed amendments. These include Film Regulations, an Application form for a certificate from the relevant Minister, and a Guidance Note for this application.<sup>2</sup> The Application form provides for revisions to the training/skills development requirements (referred to as 'the Industry development test') and for a role of Screen Skills Ireland ("SSI", the training branch of SI) in relation to the certification requirements. These revised documents were implemented amidst growing pressure from the industry for clarification. The new guidelines were met with a mixed response, with cautious optimism from certain parties but frustration and concern from industry insiders at the increase of red tape and the potential problems with a move to a self-assessment regime (with industry expert John Gleeson quoted as saying the new regime was causing 'consternation' among producers (quoted in *Sunday Independent*, McCaughren, 2019)). The lack of guidelines around the revised form of S481 has raised concerns in some circles regarding the operation of the new rules (Horgan-Jones, 2019).

On the face of it, the explicit introduction of an Industry development test is a demi-hyperinstrumentalist extension of creative industries discourse to the logical

conclusion – that is, the acknowledgement of the role of S481 in industry development with no discernible cultural element. It is an explicit finding of this thesis that this approach, while pragmatic, is in danger of overstepping the Commission’s (admittedly fluid and pragmatic) boundaries around the notion of cultural policy and falling foul of the cultural rationale within Article 107(3)(d) TFEU. However, the Industry development test contains a ‘cultural’ element, as outlined above. It would, of course, be particularly interesting to see the reasons given by productions for ‘passing’ the Industry development test. However, this information will, based on prior history, not be released on taxpayer confidentiality rationales, (pointing to a difficulty in carrying out media industries analysis based on incomplete information, and illustrating another policy silence). Therefore, the ordinary citizen will have to rely on the decision-makers to implement the guidelines set out in the policy. It will be interesting to see if the Commission continues to accept, at face value, the cultural rationale for the State aid.

The requirement for a Skills Development Plan (“SDP”) was introduced in the context of controversy around training issues within the audiovisual industries in Ireland which had been flagged by Olsberg 2017 Economic Analysis, the Crowe Horwath Report, and the report on working conditions in the film industry by the Oireachtas Joint Committee (Olsberg SPI, 2017; Crowe Horwath, 2017; JCCHG, 2018). Under new guidelines, an applicant is requested to provide an SDP that has been agreed in advance with and endorsed by SI. It requires details of learning objectives, and significantly ‘confirmation as to whether or not the Participant will progress to another role or grade on completion of the activity’ (DAHG, 2019, p.8). There have been concerns that qualified personnel were being retained as trainees to comply with S481 requirements<sup>3</sup>. There is a *de minimis* requirement, where productions under €2m budget may provide an SDP direct to DCHG with a minimum of 2 trainees. A skills development participant must be engaged for each €177,500 of corporation tax claimed up to maximum of 8 trainees. The introduction of the SDP is, it is hoped, a welcome development in allowing for quality

training and improvement of the overall labour issues within the audiovisual production industries. However, it may prove to be yet another bureaucratic burden on small productions without serving that purpose.

Further, the inclusion of short films within the expenditure is a welcome indication of support for the development of the nascent/indigenous sector. While the expenditure is not limited to indigenous shorts, it is assumed that extension of S481 to this format will support early works by developing teams. The April 2019 Guidance Note provides that S481 is available for 'short film of feature quality' (DAHG, 2019, p.5) (which will, it is assumed, be given its ordinary meaning per correspondence with Revenue 7 August 2019). However, problematically, the minimum spend requirements still apply which is an attempt to focus the expenditure for feature quality productions (projects are excluded from the incentive if their 'eligible expenditure' is less than €125,000, or the total cost of production is less than €250,000). Given the tendency for short films to operate with small budgets, it is difficult to see how this will prove useful for the majority of filmmakers operating in this area.

## 6.10 Analysis of the operation of S481

To revisit the fundamental concepts of S481 as set out in Chapter One, the relevant legislation is contained in S481 of the Taxes Consolidation Act 1997 (as amended) and has been extended to December 2024 (under Budget 2018). It provides relief in the form of a corporation tax credit related to the cost of production of certain audiovisual products, including film, television, and animation. The credit is granted at a rate of 32 per cent of the lowest of:

- . eligible expenditure;
- . 80% of the total cost of production;

. €70,000,000.

A regional development phased uplift (Regional Film Development Uplift) in Finance Act 2018 to 37 per cent has been implemented with Commission approval as of 17 July 2019 (SA. 53399, Commission, 2019) which also extended the expenditure to 31 December 2024, providing certainty to the industry).

Currently, the minimum amount that must be spent on the production is €250,000 and the minimum eligible expenditure amount to qualify is €125,000, thus excluding a certain proportion of indigenous production from its remit as it comes below these thresholds. Eligible expenditure refers to expenditure in Ireland subject to certain territorial rules, and ‘eligible individual’ means an individual employed by a qualifying company for the purposes of the production of a qualifying film. Thus, significantly, there is no territorial requirement for the payment to the relevant individual to qualify for the expenditure. The withdrawal of the territorial requirement that an eligible individual is from Ireland or the EU is, it is contended, an indication of the re-conceptualisation of the role of the relief as explicitly to be more attractive for footloose or inward investment productions (i.e., to attract big-budget productions that originate from outside the EU, usually but not always from Hollywood, and operate in a jurisdiction without a local producer). This view is supported by the current maximum budget of €70m, a budget that is not in any way relevant for the vast majority of indigenous productions but is still below the proposed €100m cap on eligible expenditure suggested by Olsberg SPI in the economic analysis (OSN2017, p.7); a suggestion that was not implemented in Budget 2019 indicating that the Oireachtas are willing to set aside explicit policy recommendations from commissioned parties.

As outlined in previous chapters, Ireland’s EU membership means there are specific requirements for the mode of tax expenditure regime to ensure it complies with Commission State aid requirements. To that end, a producer company must apply to Revenue for a certificate confirming that the production meets the conditions set out for

the scheme. The Minister for Culture, Heritage and the Gaeltacht has a responsibility to consider the issue of a Certificate for a film, having regard to:

- the categories of film eligible for certification and;
- the contribution a film will make to either or both the development of the film industry in the State and the promotion and expression of Irish culture.

Under EU policy for State aids for audiovisual industries, the expenditure must be aimed at a cultural product. To comply with this requirement, the Film Regulations 2019 (DCGH, 2019) require application to the Minister for Culture, Heritage, and the Gaeltacht for certification under S481(1A) TCA 1997 (as amended by the Finance Act 2018). The legislation provides that the certificate shall not be issued unless the film (i.e., audiovisual product to include certain TV series and shorts) ‘will either or both’ be of importance to the national culture (i.e., ‘the Culture test’) and act as an effective stimulus to film making (i.e., ‘the Industry development test’). The deployment of explicit language providing for either/both a culture test and/or an industrial test is significant in its acknowledgement of the industrial role of S481 and practically removes the cultural veneer. Prior to the 2019 amendments, the previous 2015 regulations had used the terminology ‘cultural test’ only, albeit while using the same format of the test to qualify for certification.

A project must apply for certification from the relevant Minister under a test that is arguably structured to be less reliant on more traditional understandings of culture. The test, which requires a project to comply with three out of eight conditions, is effectively a cultural test only in name, given it has little, if any, cultural requirements. Thus, S481 can operate as a State aid that solely operates as an effective stimulus to film making in Ireland (via the provision of employment and training) rather than as a purely cultural aid.

Regulation 3 of the Film Regulations 2019 provides that the Minister shall not issue a certificate unless the film passes either a Culture test and/or an Industry Development test.

The Culture test (reproduced in the table below) contains eight criteria, and a minimum of three must be met. The eight criteria are broadly the same as the criteria in the Film Regulations 2015(S.I. No. 4, 2015). It is worth setting these out in full to realise the deliberate breadth of the cultural test underpinning S481, which allows for support for a film industry in Ireland, rather than necessarily supporting a film culture or Irish film industry.

**Table 4: S481 Culture test**

**Culture Test (from Application Form for Certificate under S481 TCA 1997 as amended)**

1. The film is an effective stimulus to film making in Ireland and is of importance to the promotion, development and enhancement of creativity and the national culture through the medium of film, including, where applicable, the dialogue/narration is wholly or partly in the Irish language or the production of a full Irish-language version of the film is included as part of the total budget for the film.
2. The screenplay (or, in the case of a documentary film, the textual basis, from which the film is derived is mainly set in Ireland or elsewhere in the EEA.
3. At least one of the principal characters (or documentary subjects) is connected with Irish or European culture.
4. The storyline or underlying material of the film is a part of, or derived from, Irish or European culture and/or heritage; or, in the case of an animation film, the storyline clearly connects with the sensibilities of children in Ireland or elsewhere in the EEA.
5. The screenplay (or textual basis) from which the film is derived is an adaptation of an original Irish or European literary work.
6. The storyline or underlying material of the film concerns Irish or European art and/or Irish or European artist/artists.
7. The storyline or underlying material of the film concerns historical figures or events connected with Irish or European culture.
8. The storyline or underlying material of the film addresses actual, cultural, social or political issues relevant to the people of Ireland or elsewhere in the EEA; or, in the case of an animation film, addresses educational or social issues relevant to children in Ireland or elsewhere in the EEA.

**Table 5: S481 industry development test**

**Industry Development Test (from Application Form for Certificate under S481 TCA 1997 as amended)**

1. How is the film of importance to the promotion, development and enhancement of the national culture including, where applicable, the Irish language?
2. How does this film act as an effective stimulus to film making in the State through, among other things, the provision of quality employment and training opportunities?

Clearly, criteria in the certification tests (i.e., the Culture test and Industry development test) are broadly drafted, to allow as many productions as possible to qualify. It is of particular interest that the cultural test is generally put forth (in EU discourse) as a brake on abuse of the relief. However, it is unlikely that any production would, in fact, fail to qualify for the tax expenditure under these conditions. It is possible that a production that provides no concrete evidence of development or enhancement of national culture could fail the Industry development test. However, the deliberate broadness of the parameters of both tests allows the assessors significant leeway in assessment of how a production can pass the tests. A production that assists in development of the audiovisual industries in Ireland, through the provision of training could be held to develop, promote, or enhance national culture. The broad Culture test points to the complexity of the relationship between the promotion of a national culture and a national industry. The explicit recognition of the *either culture and/or industry* is, on the face of it, surprising and potentially not in line with Commission State aid requirements. However, the Industry development test has an explicit cultural thrust, thus providing sufficiently cultural reasons to appease the (admittedly pragmatic) Commission that the expenditure comes within the requirements of the 2013 Communication.

Useful information can be gleaned from the most recent Department of Finance Cost-Benefit Analysis of tax expenditures (DoF CBA, 2018). The DoF CBA briefly alludes to the above qualifying criteria, holding that a ‘significant number’ of productions between 2015 and 2017 met Criterion One of the test. It held that ‘from 2015 to 2017, 288 productions qualified for this scheme, all of which acted as a stimulus to film-making in Ireland. Furthermore, 275 of those contributed to the development and enhancement of the national culture’ (ibid, p.221). Therefore, thirteen productions did not self-certify that they contributed to development and enhancement of national culture. Without additional data, we have to assume these were the incoming film/TV productions that, while they

may not have claimed directly to contribute to national culture, contributed to a national industry.

The current manifestation of S481 supports a complex, outward-looking transnationalised/globalised film industry in Ireland, specifically and overtly geared toward supporting inward investment productions through the 2014 amendments. Whether or not this is for the benefit, or at the expense of, an indigenous industry is beyond the scope of this chapter to analyse. Instead, the purpose of this chapter is to attempt to unpack the complexity around state support for audiovisual industries as a form of cultural policy, identifying values and norms underpinning cultural policy for audiovisual industries in Ireland. The 2018/9 amendments are, it is argued, overtly aimed at a more holistic industry with specific recognition of the need to address the employment and skills development within the industry, given the significant criticism contained in some reports (e.g. Crowe Horwath 2017; JCCHG, 2018). However, while the recognition of the importance of skills development is significant, it is only one aspect of cultural production and is in keeping with a creative industries instrumentalised approach to the audiovisual industries. While a vibrant industry needs skills development, it is but one part of a holistic film culture.

## 6.11 Conclusion

This chapter has identified certain key themes across the political and industrial discourse on S481 which allow for an understanding of the evolution of audiovisual cultural policy in an Irish context as fundamentally marketised, as instrumentalised and as commodified.

This analysis has identified what it considers as an overarching theme as the (d)evaluation of the concept of cultural value of the audiovisual industries, consequent upon the augmentation of the (perceived) economic value of such industries. It also identifies and

contextualises multiple policy silences from multiple perspectives. It is not only that the discourse around S481 silences any meaningful consideration of values outside the economic, but that there is a lack of consideration of diversity and inclusion. It finds that cultural policy (and, it is reiterated that S481 is examined as a cultural policy here) is commodified and instrumentalised for multiple purposes, primarily economic, but also for social and political rationales including the marketisation of the space of the nation-state to attract inward investment.

This chapter has analysed the role of and evolution of S481, with cognisance of the parameters of the EU State aid regime, using a policy research approach to contextualise the rationale and operation of the tax expenditure regime for audiovisual industries. It places the relief in historical context, tracing operation from the introduction in 1987 as S35 relief, to its post-2015 amendments and the 2019 revisions. It uses legislation, secondary legislation, grey literature and theory from both political economy and film studies, to understand the role of S481 as both an economic policy and a cultural policy. The approach taken here has been at pains not to set up a dichotomy between economic and cultural values, between indigenous and inward investment productions, between the national and the transnational, between cultural and creative, between the local and the global but has instead used the concept of a continuum of objectives.

This chapter has drawn on theoretical approaches described in the review of the literature (on political economy, cultural policy, and the concept of the national and transnational within the audiovisual industries) and in the theoretical framework to interrogate the policy norms gleaned from the policy research approach to the policy documents. Also, this chapter has examined the available data (using, where necessary, secondary sources, such as commissioned reports which have had access to Revenue data) on film production in Ireland. It has illustrated how pivotal moments in the history of S481 led to an increasing economisation of evaluation of the relief as a cultural policy, culminating in the 2019 changes, which abandoned the requirement for productions to

pass a cultural test. While there have been some signs of improvement in recognition of the notion of cultural value, it is early days to evaluate policy developments in this area.

This chapter interrogates S481 in the context of (theoretical) developments in the re-conceptualisation of the function of cultural policy around forming an idea of the nation, and in the context of supporting a national culture in a globalised/transnationalised era (note these terms are not used interchangeably but are in some way different manifestations of broad worldwide trends). It looks at how the Irish state policy has responded to the forces of globalisation. It also looks at how the conceptualisation of the function of culture in a nation-forming context has changed in light of these forces. It examines the role of culture in Irish policy and interrogates how audiovisual industries policy serves to construct an image of the nation. According to Skocpol 'a state's means of raising and deploying financial resources tells us more than any other single factor about its...capacities to create or strengthen state organisations...to subsidise economic enterprise, and to fund social programmes' (Skocpol, 1985, p. 17). Thus, the analysis of the operation of S481 as a *cultural* policy sheds light on the Irish government's understanding of the function of culture, concluding that the underlying policy norms illustrate a spatialised, marketised approach to the commodification of both culture and of the nation-state.

In particular, the increased shift towards an industrialised discourse around S481, illustrated by the 2019 amendments which introduced a cultural test and an industrial test, may in future test the Commission's approach to the State aid regime. While thus far the Commission has taken an increasingly pragmatic approach towards audiovisual state aid decisions under the 2013 Communication, wider Commission decisions in the cases of *Apple*, *Starbucks* and more have illustrated that State aid is, as Piernas López says, a 'living instrument' (2015) used to further Commission policies. Thus, it is not inconceivable that future decisions could question the cultural rationale for what is evidently an industrialised policy.

The following chapter further explores recent policy frameworks, including the *Creative Ireland* framework and the associated AAP2018 to understand further the perceived role of S481 as both a cultural policy and an economic policy (DCHG, 2018). There are, it is contended, tentative indications of recognition of the cultural value of S481 (in addition to economic benefits). It remains to be seen how these strategies and frameworks are put into practice in the future in both restructured policy instruments and policy evaluations. The following chapter interrogates how recent attempts at a comprehensive cultural policy for Ireland offer some positives for the audiovisual industries but will conclude that they are still effectively operating within a marketised, commodified framework.

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<sup>1</sup> None of us know the precise impacts of Brexit, the disentangling of the UK from the EU. It is considered that Brexit will have a considerable impact on the Irish economy overall. From an audiovisual perspective, this may have an impact on cross-border production, on the competitiveness of the Irish audiovisual industries comparatively with the UK, and with the acquisition of goods from the UK.

<sup>2</sup> Available at <https://www.chg.gov.ie/app/uploads/2019/03/guidance-note-for-application-to-minister-for-culture-heritage-and-the-gaeltacht-under-section-481-tca-1997.pdf>.

<sup>3</sup> See for example Richard Boyd Barrett's exchange with Josepha Madigan, Minister for Culture, Heritage & the Gaeltacht in the Dáil Debates on 10 April 2019 (<https://www.oireachtas.ie/en/debates/question/2019-04-10/10/>)

# 7 IRELAND'S NEW CULTURAL POLICY FRAMEWORK

‘The first task of the revaluation of value is to *uncouple value from quantification*. Value must be recognised for what it is: irreducibly qualitative’ (Massumi, 2018, p. 4).

## 7.1 Introduction

This chapter analyses developments in Irish cultural and creative industries policy with a focus on the audiovisual industries context. The *Culture 2025* Framework is hailed as the first national cultural policy to embrace the whole cultural sector and is based on the premise that ‘culture adds value to our lives and to our communities’ (Minister’s foreword,

Heather Humphreys, DCHG, 2016, p. 1). The *Culture 2025* policy document sets out ‘values and high-level principles to inform public policy’ (ibid, p.2) and is indicative of broader policy aspirations. The *Culture 2025* Framework is permeated with the cloud of the economic crisis, with the acknowledgement that state support for arts has declined during this time. As it states;

This Framework Policy has been informed by the impact of the economic crisis on arts, culture and heritage and the questions it raised about wider societal values, such as how an improving economy can support culture to develop increased personal well-being and better social outcomes. (ibid, p.5)

More specifically, this chapter focuses on the analysis of the main implementation document for the audiovisual industries, the 2018 Audiovisual Action Plan (“AAP2018”). This long-awaited document sets out recommendations for audiovisual industries and is analysed here within the wider context of the new cultural policy framework. While there are some policy recommendations of significance for the audiovisual industries, there is, it is contended here, an evident instrumentalisation of culture permeating the new policy framework documents, which is played out in AAP2018 and in the early policy implementations so far. Given the relatively short timeframe since the unveiling of the new policy framework, it is early days to assess the implementation thereof. However, there have been some policy interventions (or at least, proposals) in Budget 2019 that (part) implement the intentions. This chapter assesses both the wider new policy framework and the significance of the Budget 2019 policy decisions that affect S481.

This analysis identifies and analyses specific policy interventions within the audiovisual production industry. Ultimately, the analysis aims to gain a more in-depth understanding of the role of S481 within this broader policy framework and its operation as a cultural policy. This thesis has identified in both an Irish and EU context a marketised, instrumentalised discourse around cultural value. An instrumentalist recognition of cultural value is as expected, given Ireland's broader public policy framework which is strongly

reliant on FDI and takes a broadly neoliberal perspective. The use of tax expenditures to attract FDI 'have been the main tool of industrial policy in Ireland for over 50 years' (Stewart, 2018, p. 180). While the term creative industries is not widely used in Irish policy-making, it is implicitly at play in the discourse around audiovisual industries.<sup>1</sup> This analysis is situated within the literature on political economy of cultural policy/media industries, which allows for interrogation of the forces that work to shape both the industry and products within a framework that is simultaneously national, supranational and global. There is, it is contended, a shift to increased instrumentalisation of culture (Gray, 2007). Instrumentalism is the tendency 'to use cultural venues and investments as a means or instrument to attain goals in other areas' (Vestheim, 1994, p. 65). Debates around instrumentalism have shifted from a focus on the causes of instrumentalism to examination of how it plays out in policy design and implementation (Belfiore, 2003; 2018; Gray, 2007). However, given that most cultural policies have some form of instrumental goals (Hesmondhalgh, 2019, p.190; Throsby, 2010); the outright rejection of instrumentalism can be reductive (Nisbett, 2013). Instead, the concern with reliance on instrumental goals as a measure of policy efficacy leads to an overreliance on quantifiable metrics which is problematic within cultural policy, given the complex and multiple forms of cultural value generated by engagement with audiovisual industries. This chapter addresses how the overt instrumentalism and commodification of audiovisual policy is identifiable in recent policy framework documents published by the Government of Ireland in the field of culture, with a particular focus on proposed audiovisual policy strategies and considers how this may shape the specific formulation of S481. While economically driven instrumentalist goals are understandable within a heavy cost film industry, it is important to keep broader recognition of cultural goals in mind, given the role of culture within society. If the arts plays the game of instrumentalism, it walks into the 'instrumental trap' which allows them to be 'cast aside' when something comes along that can better fulfil those instrumental aims.

It is contended that analysis of the ‘new’ audiovisual policy framework, in the context of the wider cultural policy framework, illustrates an instrumentalism of culture. The audiovisual industries, and particularly film, are understood, from a policy perspective, as formed within a space that is planned and datafied (Lefebvre’s conceived space). This arises out of the marketised commodification of Irish culture as something that is instrumentalised to promote a specific manifestation of Ireland on the global stage, highlighting the optics of culture. More specifically in the audiovisual industries, the framing of Ireland as a space for global production through the promotion of S481 as primarily a tool for attracting international (inward/footloose) production can be considered within Lefebvre’s conceived space, operationalised and instrumentalised by explicit policy decisions. The framing of cultural value as something that must be ‘proven’ through presentation of data is consistent with the framing of culture within the conceived space.

## 7.2 The identification of themes of analysis

The various documents making up the new cultural policy framework are analysed through a political economy/media industries lens to identify specific themes (from Herzog et al., 2017, as used by Ramsey et al, 2019) using thematic analysis from Braun & Clark 2006; 2019). The themes identified as pertinent, in an iterative reading of the documents in conjunction with the theory, echo those set out in Chapter Six and include the commodification of the space of the nation in the global context, the optics of the nation/nation branding, a shift to a pragmatic discourse towards culture, increased marketisation of culture, a mismatch of goals between policymakers and researchers, and the recognition of a cultural dividend within S481 policy discourse. From these initial codes and themes, the final themes are developed. These are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is

reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences.

### 7.3 The new cultural policy framework in Ireland

Ireland's introduction of what has been lauded as the first national cultural strategy is contained in *Culture 2025 Programme*. *Culture 2025* is Ireland's first Framework Policy to embrace the whole cultural sector, according to the 2017 Ireland report to UNESCO (O'Connor, 2017). However, while it might be framed as the 'first' national cultural strategy, this does a disservice to the Arts Acts and other policy interventions in this area. For example, the 2003 Arts Act provides for the promotion of arts both within and outside the state by the relevant Minister, the Arts Council strategy published in September 2015 provides for a 'new ten-year strategy, *Making Great Art Work*', and much work has been done by this state body to promote the arts. In this context, what is significant about the new *Culture 2025* framework is the cross-government nature of strategies for the promotion of culture.

This chapter commences with a broad overview of recent overt national cultural policy frameworks as contained in *Project Ireland 2040*, *Culture 2025*, *Creative Ireland* and AAP2018. This analysis narrows to focus on audiovisual industries, including AAP2018 (under the *Creative Ireland* framework). This approach is then further refined to focus

primarily on tax expenditures for audiovisual industries, highlighting the role of such expenditures into the broader policy environment. This section aims to analyse the issue of public value of cultural value as it applies to the audiovisual industries, in context of cultural and creative industries discourse using theories from the political economy of communication to understand and contextualise the policy framework.

According to the UNESCO country report on Ireland from 2017, current cultural policy is represented by the following three significant documents:

1. Government's *Culture 2025* policy framework;
2. Arts Council's strategy document *Making Great Art Work (2016-2025)*;
3. *Creative Ireland Programme (2017-2022)*.

*Culture 2025* sets out high-level principles to inform public policy. It is part of *Global Ireland 2025*, which focuses on the optics of Ireland's image in its objective to 'implement a global Team Ireland communications strategy to present a unified image of Ireland as a good place in which to live, work, do business, invest and visit' (Global Ireland 2025, p.12).

*Culture 2025* is also informed by the *Project Ireland 2040 national planning framework* which contains the Government's 'overarching policy initiative to make Ireland a better country for all of us, a country that reflects the best of who we are and what we aspire to be'.

Taken together, these policy framework documents illustrate an instrumentalisation of Ireland's culture, focusing on the perception of Ireland as a unified entity with which to do business. The Taoiseach's foreword to the *Global Ireland 2025* framework calls for Ireland to become 'an island at the centre of the world' (Government of Ireland, 2018, p. 9). The marketisation of culture that is prevalent in Irish audiovisual policy discourse is illustrated by the promotion of Ireland as a place that is open for business for inward investment, of which S481 plays a significant part in attracting production. Illustrating the transnational/global outlook of policy interventions, it holds that 'as an island nation, we value and depend on effective connections with other countries' governments, businesses,

administrations, and citizens' (p.10). Further, there is explicit recognition of the instrumentalised role of culture and heritage in 'expanding our global footprint' (ibid). Focusing on audiovisual policy considerations, *Global Ireland 2025* highlights how Ireland is a 'centre of excellence for audiovisual production' and considers the instrumentalised aims for such, by referencing tourism, and job opportunities (ibid, p.42). This framework policy emphasises the role of Screen Ireland as a developer of industry, with little if any reference to its role as a cultural body. It highlights the substantial contribution of the film sector to inward investment and describes it as 'a high-impact way of promoting Ireland on the global stage' (ibid) thus illustrating the commodification of both the literal and figurative space of Ireland.

The *Global Ireland 2025/Project Ireland 2040* framework provides for a ten-year cultural investment component via the policy document *Project Ireland 2040 Investing in our culture, language, and heritage 2018-2027* (DCHG, 2018). This ten year, €1.2 billion capital investment plan provides for new international co-production treaties, the reopening of the Screen Ireland office in Los Angeles and aims to double the size of the production sector through a Screen Ireland €200m allocation for 10 years (while impressive on the face of it, this is only a return to pre-crash levels of investment, without taking account of inflation). Explicitly, *Global Ireland 2025* aims to take measures to enable employment and growth in Ireland's audiovisual industries and 'will focus on Ireland's potential to be a global leader' in this area (ibid, p.71), thus taking a creative industries approach and focusing on the instrumentalised, measurable, datafied impacts of such industries with little if any acknowledgement of the intrinsic value of such industries.

### 7.3.1 Culture 2025 – Ireland’s ‘first national cultural policy.’

*Culture 2025* was published in July 2016 and sets out ‘values and high-level principles’ to inform creative policy. Offering new developments in bureaucratic vocabulary, the report identifies seven “pillars” or key values, which are:

1. Put culture at the heart of our lives
2. Foster creativity
3. Celebrate our cultural heritage and traditions
4. Recognize the importance of culture to a vibrant society
5. See collaboration as the new norm
6. Emphasise the international dimension
7. Respond to the digital age. (p.4, *Culture 2025*)

While the framework policy offers much in the way of high-level thinking, it will be in the practical detail and implementation that its true worth will be shown. There is, it is acknowledged, some rhetoric around the recognition of intrinsic values of culture for the individual and society through the recognition of the need for the citizen to participate in cultural life and the fostering of creativity. The instrumentalisation of the value of culture is seen in the framing of culture as important in attracting foreign direct investment with the recognition in *Culture 2025* that a ‘vibrant cultural offering is increasingly recognised as of considerable importance in attracting foreign direct investment’ (ibid, p.13).

*Culture 2025* was launched as a draft discussion document on August 2015, then published in July 2016. The 2016 framework document sets out *Culture 2025* as the first Framework Policy to embrace the whole cultural sector. It is, apparently, the beginning of a journey rather than a destination (p.2). It aims to put culture at the heart of our lives (ibid). It wants to enrich, engage, and participate, including promoting Ireland on the world stage. It claims to recognise both the intrinsic value of culture and the instrumental value of culture for community, participation, economic, social, and soft power. *Culture 2025* has a

distinct quantitative evaluation approach in its recognition of the reduction in public funding for cultural activities and holds that while there is a commitment to increased funding, it qualifies this by saying ‘public funding must be prioritised and used in the most efficient and effective way possible ‘ (ibid, p.22).

The July 2017 Oireachtas Report on the framework policy translated the seven pillars to three ‘understandings’, namely (1) that arts, culture, and heritage are at the hearts of our lives; (2) that the state acknowledges, supports and facilitates creativity; and (3) that arts, culture, and heritage are ‘collaborative, international and borderless’ in the digital age. (JCAHRRG, 2017, p. 25). The framing of Irish culture as ‘international and borderless’ is a problematic flattening of differences; and is difficult to equate with the invocation in the Report of the UNESCO 2001 definition of culture which states that ‘culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group’ (UNESCO 2001, p.15), a definition that is underpinned by the recognition of the diversity of culture.

While fealty is paid to the ‘distinctive features’ of a national arts, culture and heritage policy, the Report has, it is contended, an overly narrow conceptualisation of cultural value. In accountancy-driven language, it recommends that the relevant Minister establish the ‘current value’ of the arts, culture, heritage and Irish language in terms of ‘investment and impact, and in the context ‘foreign-direct-investment’ and tourism (p.7), while holding simultaneously that *Culture 2025* should adopt as a ‘core principle’ that the primary value of arts and culture is intrinsic (p.21).

The Report critiques the current operation of S481 holding that ‘it is one thing to provide production services to an international film that will create short-term jobs but not long-term wealth, but we must strive to simultaneously cultivate our indigenous production environment’ (ibid, p.41). To achieve this goal, it, holds that the State cannot be the only source of funding, albeit that state funding must be ‘prioritised, secured and increased from its embarrassingly low levels’ (ibid). Of interest to the audiovisual industries is the

statement in the Report that ‘*Culture 2025* should empower domestic production in all forms balanced against the need to provide location and production services to international film and television’ (ibid, p.29). Following on from this the Joint Committee proposes that the Minister explore the potential of ‘voluntary cultural contributions’ from foreign direct investors in arts, culture, and heritage (ibid, p.10), an interesting if perhaps unworkable proposal. Further, there is a call for ‘examination of a tax relief scheme similar to S481; designed and enacted for *domestic* cultural projects’ (my emphasis, ibid, p.9). This may point to a misunderstanding of the function of S481, seeing that it is already available for indigenous productions. However, it is more likely that this call may instead be for an expenditure that is more precisely tailored for the indigenous production industry, perhaps with lower thresholds for qualification and more generous rates of relief.

With these policy amendments described in an *Irish Times* editorial as ‘pious words, dismal reality’ (Editor, 2017) it will be crucial to see the practical implementation of these policy interventions in the future. Journalist Hugh Linehan has described the *Culture 2025* framework as ‘too little too late’ and offering little that is new (Linehan, 2017). What will be of interest is the concrete undertakings by policymakers, the direction taken by it and crucially the budget allocated under various issues. S481 is but one policy issue in a broad cultural field but is crucial as a linchpin in the audiovisual industries support.

### 7.3.2 The Creative Ireland Programme

Culture 2025 is an aspirational ‘high-level’ policy framework, offering much in the way of rhetoric around the intrinsic value of the arts. How does this play out in policy design? The five-year all-of-government initiative *Creative Ireland* is the main implementation vehicle for many of the priorities in *Culture 2025* (<https://www.creativeireland.gov.ie/en>). This five-year initiative places creativity at the centre of cultural policy; highlighting the advantages of Ireland as a centre for audiovisual production, given the creative talent, literary history,

geographic location, and the incentive structure available. In comparison to *Culture 2025*, which highlighted an (albeit aspirational) notion of the value of the arts to society, *Creative Ireland* is primarily focused on the economic value of the arts. Rush's analysis of the use of concepts of culture and creativity within *Creative Ireland* describes the use of 'a series of tricky buzzwords, loosely connected' and as a form of 'bureaucratic speak at its vaguest and most inscrutable' (2019, p.13), in particular highlighting what is accepted within the document to be an unproblematic direct link between creativity and the economy contained therein.

*Creative Ireland* contains five key strategies, described as Pillars. Pillars I-III contain promising broad aims around social and community issues and will be significant if implemented correctly. Pillar V is, however, as identified by Rush (2019) is deeply problematic in its articulation of Ireland's values on the global stage. Entitled 'Unifying Our Global Reputation' its instrumentalist conceptualisation of culture within a singular vision as something that can be operationalised to present a unified view of Ireland to the outside world is a worrying and reductive approach to the diversity of Ireland's culture and heritage. Rush is 'deeply concerned' (p.17) about the language in Pillar V, which literally and figuratively commodifies and spatializes the culture of Ireland for industrial reasons. As quoted by Rush '*Creative Ireland* presents an opportunity to create a **single proposition** based on Irish culture and creativity that represents a considered, compelling and imaginative view of how we wish to...be seen by the outside world' (p.29, *Creative Ireland*, in Rush, 2019, p. 16, her emphasis). In an audiovisual context, the problematic assumption of a monolithic view of culture is at odds with production trends that encompass both the g/local (e.g. *Song of Granite*) and the explicitly international (e.g. *The Favourite*). However, it represents a view of cultural policy as explicitly instrumentalised for economic gain. Pillar V fails to fully capture the full value of the cultural industries, instead of focusing primarily on how the programme will aid in the articulation of Ireland's values to facilitate competition

for investment, tourism and export markets, an approach that highlights the conceived space of culture.

This narrow approach to the role of culture is also seen in Pillar IV on audiovisual policy entitled 'Ireland as a Centre of Creative Excellence'. Pillar IV sets as its objective the elevation of the creative industries, with a key focus on Ireland's 'potential to be a global leader' in media production, to tell compelling 'Irish and universal stories' (p.28). Pillar IV in *Creative Ireland* thus also fails to fully capture the full value of the audiovisual industries, instead of focusing primarily on how the programme will aid in the articulation of Ireland's values to facilitate competition for investment, tourism and export markets, an approach that highlights the conceived space of culture. There is little evidence of recognition of the individual or societal benefits of participation in the audiovisual industries, either as a consumer or as a creator albeit that these are given space in other policy documents such as *Project Ireland 2040*, the government plan for capital investment in culture, heritage, and language). Initially, Pillar IV was termed 'Ireland as a Centre of Excellence in Media Production'. This was changed to the current format of 'Ireland as a Centre of Creative Excellence' to reflect the broader scope of the Pillar, as set out in *Creative Ireland End of Year Report 2017* (Creative Ireland, 2017).

Both Pillar IV and V reflect a commodified version of the nation-state and national culture in their reflection of deliberate policy decisions that serve to establish a conceived space of audiovisual production (in Lefebvrian terms) through a deliberate manifestation of Ireland as a place with which and in which to do business. While policy support for industrial audiovisual production may serve the industry in Ireland, it is by no means axiomatic that industrial support will facilitate the production and consumption of culture within a Lefebvrian lived space rationale. The hypermarketisation of culture on industrial rationales is an overly narrow approach to audiovisual industries and fails to engage with a holistic view of such industries.

### 7.3.3 The Audiovisual Action Plan 2018

The Department of Culture, Heritage, and the Gaeltacht (“DCHG”) published a significant policy framework for the audiovisual industries in 2018. The Audiovisual Action Plan (AAP2018) is part of the *Creative Ireland* Programme and sets out an aspirational framework for the development of the audiovisual industries with a core objective ‘to provide the necessary environment for Ireland to become a global hub’ for production (AAP2018, p.9). AAP2018 has been generated from a number of different inputs, including the Economic Analysis by Olsberg SPI with Nordicity (“OSN2017”) and a report by Crowe Horwath published on 23 May 2017 (Crowe Horwath, 2017; Olsberg SPI, 2017).

*Creative Ireland* informs AAP2018; driven by its instrumentalised framework that emphasises the role of the audiovisual industries in generating economic value rather than recognising their cultural value. The core objective is ‘to provide the necessary environment for Ireland to become a global hub’ for production (AAP2018, p.9). The approach framing the policy developments is, it is contended, overly concerned with the commodification of such industries at the expense of considering policy objectives that are less susceptible to quantification. AAP2018 underplays the potential intrinsic, societal, and individual benefits of audiovisual products. The value placed on the audiovisual industries stresses the quantitative cost/benefit measurement in order to rationalise public support for audiovisual production. While it may be a ‘fool’s errand’ to attempt to capture intrinsic values (D. Stevenson, 2017, p.181), recognition of the value of the audiovisual industries over and above the purely quantifiable economic values is of benefit to both the industry and to broader society. If public support is justified solely on instrumentalised grounds, support can be withdrawn if such goals can be attained without diverting funds to such industries.

The Plan contains eight broad proposals on the audiovisual industries.<sup>2</sup> The proposals around S481 are, naturally, of particular interest to this thesis. The tax expenditure operates, it is contended, as a crutch upon which the national industry is

necessarily reliant (given the relative lack of funding available elsewhere). It also operates as a draw to the transnational or international production industry (including both co-productions and productions variously termed runaway or footloose productions) fuelling a subsidy race between jurisdictions within the EU (and beyond) (Hill 2016, Meyer, 2017). AAP2018 acknowledges the significance of the tax expenditure for indigenous production with recognition of the need for a balance between promotion and development of the sector in Ireland with efficient and effective support for inward production. AAP2018 specifically proposes that the maximum expenditure ceiling per project for S481 be extended from €70m to €100m, to attract higher budget productions (p.15). However, this was not implemented in Budget 2019 illustrating a worrying lack of commitment to the proposals by policymakers in the AAP2018, and a concerning rejection of the expert advice offered to the government under the plan. For Flynn, the reluctance to actively embrace the recommendations in the OSN2017 report is informed by the DoF's conservative cost-benefit analysis (Flynn, 2019) in which the not insignificant costs of operating S481 were set out.

The recommendations on changes to funding structures for the film and television industries acknowledge the relative neglect of recent years (AAP2018, pp.16-21). Proposals to increase IFB funding and provide more support for TV production acknowledged that 'Irish domestic TV productions have been limited in recent years' (p.17). While Irish domestic TV drama productions have been relatively limited in recent years, there are indications that both indigenous production and what can be described as transnational Irish production (Flynn & Tracy, 2016) (i.e., Irish production that is supported by global funding) are increasing.

However, while such support is welcome, it is of little value if it is not backed up with sufficient financial support. The authors of AAP2018 envisaged that additional capital funding will focus on co-production, development funding, TV drama/format funding,

new Irish TV drama production, regional production fund and additional training of film workers and crew with estimated costs of €3m on co-production and €2m on development funding. However, ‘the cost of these two elements will be met within the increased Exchequer contribution for Screen Ireland’ (p.21). Further, the TV drama funding will cost an estimated €10m per annum. It appears that part at least of this funding will come from the additional funding allocated to SI, as the Steering Group will review funding proposals ‘having regard to the additional funding provided to Screen Ireland’ (ibid) as well as to the BAI and the national public service broadcaster, RTÉ. Bearing in mind that the funding for SI has not yet been restored to pre-recession times, there are significant expectations for little additional funding (IFB/SI’s funding over the last ten years ranged from a high of €20m capital funding in 2008 to a low of €11.2m in 2016. It was increased to €16.2m for 2019<sup>3</sup> and will be increased to €17.2m for 2020 as announced in Budget 2020 on 8 October 2019 (N. Murphy, 2019).

The recommendation on skills development in AAP2018 explicitly references a 2017 report carried out by Crowe Horwath (“Crowe Horwath, 2017”). This report outlined the need for a national strategy, for improved coordination between providers, and stronger links between training and education providers. Crowe Horwath described the then S481 training requirements as ‘inadequate and inappropriate’ (p.46) a worrying indictment of a policy that relies on the instrumentalist rationale of the provision of jobs for its justification. The recent amendments to S481 policy, which now require a Skills Development Plan to qualify for S481 is a significant step in the right direction (introduced in Budget 2019 and contained in S481 Film Regulations, 2019 effective from 27 March 2019).

Of particular interest is the suggestion to extend S481 to the videogames industry (p.15), following in the footsteps of the UK, which introduced a Video Games Tax Relief (VGTR) in 2014. However, problematically, there is no response in AAP2018 to the

recommendation on extending S481 to videogames. Not surprisingly, therefore, there was no mention in Budget 2019 of any such policy intention. However, bearing in mind the extensive campaign carried out by the industry in the UK to secure approval from the Commission for VGTR, it is evident that there is much work to be done in Ireland to reach this stage.

The proposed measures to bring the videogames industry within the audiovisual industries illustrate a pragmatic shift to a creative industries discourse (Cunningham, 2002) that has already been identified within the changes to UK videogames policy (Mac Sithigh, 2014). The recommendation to extend S481 to videogames will represent a policy challenge, bearing in mind the structural and perceptual differences between the film/TV drama industries and the videogames industries. To introduce a tax expenditure for videogames, the Irish government will require Commission approval under State aid rules. Under Article 107(3)(d) of the TFEU, such approval can be granted on a cultural rationale. Based on the UK experience, it will, in theory at least, be necessary to prove market failure for culturally Irish games. This approach will require more than merely proving the economic benefit to a more productive videogames industry in Ireland but will require in-depth consideration of the broader cultural objectives of such a tax expenditure.

While AAP2018 (and supporting documents) contain some rhetoric around the expression of national identity, without additional funds and supports for indigenous production, Ireland's production industry is, it is contended, over-reliant on inward investment productions. Minister for Culture, Heritage and the Gaeltacht, Josepha Madigan, concludes the foreword to AAP2018 saying that *Global Ireland 2025* 'recognises the importance of Irish cultural heritage in introducing Ireland to the world stage and in expressing our national identity' (p.7). There is thus an assumption – without any further justification - of an axiomatic connection between increased audiovisual production and the expression of national identity. Further, there is a similar assumption of utilising

Ireland's cultural production as a way of representing Ireland on the world stage in the form of soft power.

AAP2018 emphasises the economic benefits to investing in the audiovisual sectors and highlights the importance of measurable outcomes such as jobs, gross value added and 'valuable cultural exports' which reach 'substantial global audiences' thus also benefiting other sectors including the tourism industry (p.10). Of course, some instrumentalist approach to culture and creative industries is to be accepted and welcomed in a way that recognises the benefits of engagement with art and culture to broader society. It is problematic if it is the only measurement of value. One problem is the threat of withdrawal of funding if instrumentalist benefits are unproven or fall out of favour. Also, focusing on the economisation of culture only fails to recognise the broader benefits of cultural production. Inward investment approaches are seen as uncritically beneficial when measured on an economic scale. However, we need to problematise this approach. Taking such an approach to audiovisual industries that promotes the quantified over the less measurable is indicative of policy silences around the wider benefits of the arts and culture to society.

## 7.4 The Economic Analysis from 2017

AAP2018 has been explicitly generated from several different inputs, including an Economic Analysis by creative industries consultants Olsberg SPI with Nordicity ("OSN2017") and the 2017 Crowe Horwath Report (Crowe Horwath, 2017; OSN 2017). It is particularly telling that the Terms of Reference for OSN2017 were to 'measure the current *economic* value of the Irish audiovisual industry and to propose policy changes to support its future growth' (my emphasis, 2017, p. 4) with no mention of *cultural* analysis. This approach can be compared to the position in Australia where the same consultancy firm, Olsberg SPI, undertook a cultural value analysis for Screen Australia using Holden's

approach to evaluating value (his intrinsic, instrumental, institutional approach) (2016 using Holden, 2006). While this approach to cultural value may be overly instrumentalised, it is a welcome reminder that audiovisual industries can and should be evaluated for more than their employment creating possibilities, for their optics in how a nation can be perceived as an investment opportunity from abroad, and other instrumentalised approaches. While Holden's view of institutional value is based on a (self-acknowledged) narrow conceptualisation of the arts, Olsberg SPI (correctly, it is contended) extends the concept of the institutional value to consider the value of culture to *the nation* as an institution. This extension does not only consider the commodification of the nation in the way *Creative Ireland* does (in a way that can be seen through Lefebvre's conceived space, that is space that is appropriated to be commodified) but requires thinking about how culture can reflect national diversity. While the press release on the report focused on the doubling of turnover and employment, OSN2017 also addressed other goals, citing the possibility of increased provision of Irish cultural products to Irish audiences and for export, and greater inward investment. However, measurement of the cultural value of the audiovisual industries is omitted from the Terms of Reference. They are, it is presumed (problematically), to follow from an increase in production, a presumption that is difficult to sustain.

OSN2017 outlined additional benefits emanating from the audiovisual industries, holding that screen content would show Ireland's contribution to world culture, 'creating jobs and inward investment, promoting Ireland as a place to visit for tourists and creating for that generation a sense of pride in living in Ireland and being Irish abroad' (2017, p. 5). OSN2017 aligned itself with aims of Pillar IV of *Creative Ireland* proposing strategies 'which will allow Irish companies to tell Irish stories internationally, as well as to help Ireland to operate as a production base for global content' (ibid, p.10). In this way, there appears to be an increasing recognition at policy level of the non-economic potential of the indigenous creative industries, albeit couched in instrumentalised terms.

OSN2017 also predicted growth in the sector, holding that the ‘audiovisual sector could, in a period of five years, double employment in film, television and animation to over 24,00 full-time equivalents (FTEs) and gross value added of nearly €1.4 billion’ (ibid, p.5). These per annum figures are predicated on growth from the analysis of the 2016 figures which estimated employment of 16,930 FTE and GVA of €1.05 billion. These figures arise out of a broad definition of audiovisual industries to include radio, commercial advertising, postproduction and VFX. Crucially, the publication of this report was delayed to allow for the preparation and publication of a comprehensive plan on the audiovisual industries, i.e., AAP2018.

The adoption of a broad definition of what constitutes the audiovisual industries figure (including data on radio) goes some way towards explaining the potential growth identified in OSN2017 and AAP2018. While it is encouraging to see increased interest in and support for the audiovisual arts, it is necessary to add a note of caution to the overly instrumentalised approach contained in this most recent policy statement. While OSN2017 does contain broader objectives for the audiovisual industries, these are given lower priority in the press release announcing AAP2018. This illustrates the policy priorities for the current government, which are (as we have analysed, they have been consistently in the past) primarily focused on the economic dividends emanating from the audiovisual industries, at the expense of less quantifiable dividends.

The DoF CBA 2018 acknowledged the central role of S481 to the *Creative Ireland* programme. As flagged in Chapter Six and expanded upon below, what is of most interest in this report is that while the DoF has estimated a significant net economic loss per annum from S481, it justified this in passing through a reference to the concept of a ‘cultural dividend’. It is contended by this thesis that issues of cultural value (including diversity of participation, education, and other outcomes) are under-researched in measuring the impact and effectiveness of S481 as a cultural policy.

Initially due for publication in Summer 2017, the release of OSN2017 was delayed to allow for the preparation of a strategic plan to implement its proposals, i.e., AAP2018 and was finally released on December 2017. These policy recommendations proposed, amongst other suggestions, that S481 be extended in scope and extended to encompass the videogames industry. Of particular interest is the proposal to expand the ceiling for S481 tax relief from €70m to €100m. It frames the tax expenditure policy as a way of enticing inward investment to Ireland, given that indigenous production budgets rarely reach these heights. However, the decision in Budget 2019 not to extend the eligible expenditure cap applicable to S481 to the €100m suggested in OSN2017, and AAP2018 somewhat counteracts this view of S481 policy as unthinkingly commodified. It is surmised that the amount was not increased under pressure from the DoF around concerns regarding the significant costs attributable to S481 (and potential misuse of the scheme). Therefore, the shift to a self-reporting approach, which has been criticised by the industry (McCaughren, 2019) will, in theory at least, shift the need for and costs of compliance to the producer. The current difficulty from the producers' point of view arises from the apparent lack of guidance on eligible expenditure. More broadly, the retention of the €70m cap illustrates that despite the rhetoric around the audiovisual industries, the government are reluctant to take on board advice from reports it has itself commissioned. While this may be for pragmatic reasons, it illustrates a lack of commitment to the industry broadly and a certain lack of ambition for such industries.

However, there is also recognition of the importance for S481 for indigenous production with the acknowledgement that there must be a balance between promotion and development of the sector in Ireland with efficient and effective support for inward production. This shift in recognition of the role of S481 in an indigenous context is welcome and acknowledgement that S481 benefits the Irish film industry, not just the film industry in Ireland.

The recommendation on skills development in APP2018 explicitly references the Crowe Horwath Report, one of the documents informing AAP2018. This report recommends the development of a national strategy for the screen industry. However, Crowe Horwath describes the current S481 training requirements as ‘inadequate and inappropriate’ (2017, p. 46) for supporting training and skills development within the industry, a worrying indictment of a policy that relies on the instrumentalist rationale of the provision of jobs for its justification. The 2019 amendments to the operation of S481 which included the requirement for a Skills Development Plan can be seen as an attempt by policymakers to address the industrial problems within the audiovisual industries flagged by Crowe Horwath, the Joint Committee on Arts, Heritage, Regional Rural and Gaeltacht Affairs’ report on *Culture 2025* (Crowe Horwath, 2017; JCAHRRG, 2017) and other interested parties.

There are some promising indications in AAP2018, not least the increase in funding for Screen Ireland (or at least, the restoration of funding levels to pre-2008 levels), the recognition that videogames are both cultural and a potential significant industry in Ireland, and the acknowledgement of the decline in indigenous TV production over the last number of years. However, it must be recognised that the audiovisual industries are *both* a cultural and creative industry. It is necessary to broaden the policy goals/objectives of cultural policy to encompass outcomes that are less quantifiable but still beneficial. While this may be difficult, or perhaps impossible to measure, these objectives should be placed to the forefront of any cultural policy.

Given Ireland’s precarious economic position post-recession, it is perhaps understandable that investing public funds in audiovisual industries has in the past been justified in such narrow instrumentalised terms. In fact, attracting overseas investment has been an objective of Ireland’s audiovisual policy for some considerable time. However, while support for an industry is necessary to provide a structure for creative production

and consumption, economic goals cannot be and should not be the sole objectives of a cultural policy.

#### 7.4.1 The Department of Finance: towards a cultural dividend?

It is useful to consider the ramifications of the 2018 Department of Finance's Cost-Benefit Analysis ("CBA") of S481 to explore the concept of cultural value in an Irish policy context in more detail. The CBA is significant both in its analysis of the cost of S481 and the recognition of the concept of a 'cultural dividend' (2018, p.220). Current policy approaches towards the audiovisual industries are over-reliant on instrumental arguments to justify funding, and thus underplay the intrinsic, societal, and individual benefits of the arts. As expressed in AAP2018, the value placed on the audiovisual industries stresses the quantitative measurement of the costs and benefits in order to rationalise support for the arts. It is acknowledged that the DoF's approach to evaluating S481 is conservative, with Olsberg & Barnes describing the DoF's position as 'highly conservative with regard to the fiscal benefits of an incentive' and 'something of an outlier' in the context of the schemes analysed in their report (2014, p.97).

It is difficult to overemphasise the significance of the concept of a 'cultural dividend' in an acknowledgement of the rationale for justifying S481. As various cost-benefit analyses of S481 over the years have done, the approach in the CBA by the Department of Finance acknowledged the quantifiable direct and indirect benefits arising out of the operation of S481, such as taxes on wages, social welfare savings, VAT, corporation tax and taxes on earnings of foreign labour. Significantly, it acknowledged the additional indirect unquantifiable benefit 'of developing a robust film industry in Ireland and the related Irish cultural impact referred to in the analysis as the 'cultural dividend' (2018, p. 220). The use of the term 'cultural dividend' in the 2018 CBA is itself a significant indication by the DoF that S481 should not be measured solely in quantifiable terms. While

the film/audiovisual industry has in the past spent much time attempting to justify the tax expenditure (and various other initiatives in the cultural field) in economic terms, the DoF itself now acknowledges the cultural dividend from the tax foregone. As the DoF held ‘in essence, the cost identified in the analysis is the price paid for the cultural dividend of having a thriving film sector in the State’ (ibid).

There are some shortcomings to S481 acknowledged in this interim three-year review, of which one is the lack of an agreed definition of domestic and incoming productions on the part of the Revenue (ibid, p.227). Further, there is a lack of data on the third-party contracts involved in these sectors thus the cost and labour figures collected by the Revenue (which are used to calculate the shadow price of labour, of public funds) are incomplete.

The CBA concluded

However, it is important to highlight that data constraints and the unquantifiable nature of the cultural return to society make it difficult to capture the entirety of economic benefits associated with this relief. In particular, no attempt has been made to quantify the cultural impact of this scheme. Indeed, being a location for high profile productions greatly benefits Ireland’s domestic film industry, providing support to maintain a high-quality domestic audio-visual infrastructure that can thereby support Irish culture, which is the main purpose of the scheme. In this regard, the net economic cost can be interpreted as the revealed value which society implicitly places on this cultural dividend. Other incidental benefits include increased tourism to Ireland as a result of big-budget productions choosing to locate in Ireland, which is not incorporated on the benefits side of the CBA. (ibid, pp.233-4)

The inclusion of the cultural dividend concept is, on the one hand, an indication that there is some shift away from entirely economic evaluations of S481 towards recognition of less quantifiable cultural benefits. On the other hand, the use of economic language

implies the need for proof of causal value. The use of the cultural dividend concept in the CBA echoes Cunningham's theorisation of the creative economy, which was problematised by Schlesinger (Cunningham, 2006; Schlesinger 2007; 2017). Cunningham's approach argues the economic grounds for public investment to justify the case for public investment. For him, the case for arts investment is not on their exceptionality but rests on the diffusion 'into the need for creativity' across economy and society (2006, p.4). This approach sees the creative economy as central to the wider economy. It is deeply problematic to see culture as primarily 'embodying tradable economic value' (Schlesinger 2017, p.86). The elision of other values of culture implied by an economic turn crowds out the other, unquantifiable benefits.

## 7.5 The complexity of cultural value

The multiple rationales for state intervention in audiovisual industry production may attempt to strike a balance between economic priorities and cultural priorities; priorities that may conflict but may also be symbiotic (Cowen, 2000; Herold, 2008). Economic rationalisations see the audiovisual industries as an essential part of a globalised digitalised economy. The cultural rationale is in itself a loaded term and can problematically be appropriated by a narrow conceptualisation of what a national culture should be. The various policy documents comprising the new cultural policy framework analysed in this chapter contain rhetoric around the value of the arts, culture, and heritage. They highlight the significance of the intrinsic value of the arts (in *Culture 2025*, for example) and the instrumental value of the arts (*Creative Ireland*) but offer few solutions to the identification and evaluation of all forms of cultural value. The Joint Committee Report on *Culture 2025* recommends that the Minister appoint an 'independent, international curator to organise an international conference on the role and value of arts, culture and heritage in the 21st

Century' (2017, p.6); a development that will be interesting to watch, albeit the inherent assumption that such a conference needs to be international and rely on international expertise is telling.

It is useful to consider how the concept of cultural value has been understood within an even wider policy perspective than those few framework documents. There is also evidence of increased economic instrumentalism within policy discourse around the concept of value of the Arts Council. The 2015 value for money and policy review undertaken under the direction of Professor O'Hagan noted the need to consider 'socio-economic value' while noting the 'methodological challenges' thereto (2015, p.3, "VFMPR"). The VFMPR used a programme logic model, measuring inputs, activities, and outputs, expanding this to consideration of societal outcomes, while acknowledging the challenges in identifying and measuring such societal impacts (p.109). Societal outcomes include establishing a rich and vibrant culture where the arts flourish, a more inclusive society, enhanced reputational value for Ireland and spin-off economic benefits (p.110). Problematically, the 2018 Spending Review of the Arts Council by DCHG considered that Arts Council's 10-year strategy contained a 'perceived imbalance' in its focus on the social value of the arts 'rather than equally emphasising the social and economic importance of the arts' (Mahony 2018, p.10). The methodological approach towards interrogating the nature of value within the Arts Council of VFMPR is perhaps of use in opening the discourse of value towards S481 and the audiovisual industries. In particular, the broadening out of the analysis from a narrow focus on effectiveness to a wider consideration of impacts considers long term impacts on society as a whole.

An analysis of AAP2018 identifies themes that deepen our understanding of the framing of policy interventions in audiovisual industries through a lens of political economy. There is an identifiable rhetoric of economic justification for state intervention in the audiovisual industries (echoing Lefebvre's conceived space). While a vibrant production

economy is a worthy goal, it is contended in this thesis that it alone is insufficient as a measure of the value of audiovisual industries. Instead of reducing the value of audiovisual industries to economic value only, they must also be valued on their broader social, cultural, intrinsic, and other benefits. It is evident from the above analysis that an instrumentalised variation of value is accepted as a policy norm in audiovisual policy discourse. This commodified, marketised approach to audiovisual industries as primarily about economic value fails to consider the cultural value of such industries.

The audiovisual industries can and should, it is contended, be evaluated for more than their employment creating possibilities, for their optics in how a nation can be perceived as an investment opportunity from abroad, and other instrumentalised approaches. While Holden's view of institutional value is based on a (self-acknowledged) narrow conceptualisation of the arts, Olsberg SPI (correctly, it is held) extends the concept of the institutional value to consider the value of culture to *the nation* as an institution. This extension does not only consider the commodification of the nation in the way *Creative Ireland* does (in a way that can be seen through Lefebvre's conceived space, that is space that is appropriated to be commodified) but requires thinking about how culture can reflect national diversity.

Klamer's value-based approach allows us to think about how we value culture (2017). His approach 'generates a culturalist as well as a moral exploration of values while recognizing the instrumental role of prices' (ibid, p.45). This approach recognises that culture has both economic values, i.e., instrumental values, but also personal, social, societal, and transcendental values (ibid, pp.55-59). For him, the instrumentalist approach focuses on the means of commodification only. Instead, Klamer holds that we should broaden our focus on the nature of art as a conversation. As Klamer states 'the economy is not a goal in and of itself: income and economic activity are instrumental to generate other goods' (ibid, p.104).

The concept of spillover within the cultural and creative industries is a useful approach to consider here. The CCS (cultural and creative spillover) project (under the European Research Partnership) was introduced and analysed in Chapter Three under the concept of cultural value. To recap, it attempts to measure the spillover effects of the cultural and creative industries, (categorised under knowledge, industry, network) but has been criticised by some for lack of causality, for indeterminacy and for being overly focused on economic goals (Sokka et al., 2017; Vickery, 2017; McNeilly, 2018). The interlinked spillover categories are further broken down into knowledge (new ideas which spill over into the wider economy), industry (vertical value chain and cross-sector benefits to economy and society in terms of innovation and productivity that stem from the influence of a dynamic creative industry) and network (impacts and outcomes that spillover from a high density of arts/creative industries in a specific location) (TFCC, 2015).

For Vickery, the CCS project questions the problematic evolution of the emergence of methodologies that purport to measure the value of arts and culture. Considering spillovers allows for recognition that value is not just limited to the value in the discrete product (on the open market) but operates as a presence in our social environment, and are generative; that is ‘catalysts of processes’ and ‘sources of empowerment’ (2017, p.4 of 8). However, the term ‘spillover’ problematically impliedly values non-economic impacts as merely the remainder – or what is leftover, not as equal or as the primary value of funding culture.

Initial analysis of Irish audiovisual policy measures contained in AAP2018 allows for identification of spillovers that can be categorised within the knowledge/industry categories primarily (that is, cross-sector benefits via the creative economy). The overt aim of AAP2018 is for Ireland to become a global hub for audiovisual production. However, certain things are less easy to fit within the CCS policy framework developed by TFCC, 2015 (and refined by McNeilly, 2018). While the analysis here does not claim to be

comprehensive, because it is based on research on intended policy as expressed in recent framework documents (as opposed to empirical research on the implementation of policies), it does offer a way of understanding the aims and objectives of audiovisual policy in Ireland. Most significantly, the implication in the AAP is that Ireland's audiovisual industries are a form of calling card on the world stage and thus the audiovisual industries are framed as a form of commodification of the nation space.

The concept of causality underpins the discussion of cultural value and is also seen as fundamental to the CCS project. The concept of the 'creative dividend' in the CBA (2018, p.220) is of particular interest in that it explicitly acknowledges the impossibility of causal, linear evaluation of value in cultural and creative industries. Nevertheless, the etymology of a 'dividend' implies a balance sheet in which the costs of a tax expenditure neatly are balanced by benefits. Knowledge of the audiovisual industries illustrates that such a balance is impossible to calculate, and the concept of a balance is itself questionable. While there may be quantifiable benefits to investment in the audiovisual industries, such as jobs and ancillary benefits, there are additional intrinsic and spillover benefits, including nation-building and cultural representation. Taking a purely quantitative approach to evaluation of audiovisual industry policy is an example of commodification of the national space, an example of Lefebvrian spatialization.

While objectives may be set for culture to achieve specific goals, it is difficult to prove a linear causality between the project and the achievements thereof. Gray addresses the issue of causality in cultural policy, holding that 'whether a deterministic model of causality...can ever be identified is an open question' (2009, p. 577). It is thus difficult to develop any clear methods of measuring impact and of attribution. Thus, problematically what should be secondary considerations for cultural policy replace what should be primary purposes; an argument that is taken to its logical extreme in Gray and Hadley's concept of hyperinstrumentalism (where cultural goals are completely neglected) (2017).

The 'new' framing of cultural policy, it is hoped, beneficial for the audiovisual industries. However, while the centralising of culture and foregrounding of its value in the policy domain is welcome, the implementation of such policy measures is the proof of its value. However, as the creative industries discourse in the UK has shown us, the acceptance of culture into the fold of the policy arena is not necessarily on cultural terms but on instrumentalised and even hyperinstrumentalised terms. However, per Nisbett, the instrumentalisation of culture can be productive. A certain element of instrumentalisation allows for the recognition of the value of culture. It is problematic when culture is only valued for instrumental goals such as jobs, health, and well-being. This is because such a narrow conceptualisation of instrumentalism flounders at the first fence of causality and is subject to the vagaries of proving what may well be difficult to prove. Further, if art cannot be 'proven' to show a direct and causal impact, it is constantly in jeopardy that funding may be withdrawn. It also implies that only art that serves the instrumentalised goals (e.g. of health, of the provision of jobs, of positively representing Ireland on the world stage) will be supported.

Policy frameworks and rhetoric around policy are significant as measures of importance. However, the concrete policy measures and the implementation thereof will show the accurate measure of these policy frameworks for the audiovisual industries. So far, the concrete outcomes have been an increase in funding for Screen Ireland, an extension of S481 in terms of years, a rural uplift, and a suggestion to extend it to videogames (see minutes of Steering Group meetings obtained under FOI on 20 February 2019, Audiovisual Steering Group Minutes). In the first meeting on 9 July 2018, the DoF flagged that the cost of S481 'is significant' (in a preview of the forthcoming CBA later in the year) with a full review to be undertaken in 2020 according to the Third meeting on 22 October 2018. In theory, at least, the conceptualisation of a national cultural policy that places culture at the heart of policy is interesting, but unless it is taken seriously, leading to more concrete outcomes, it is of little use. The problem is not necessarily the need for

evaluation but the reductive, short-term nature of goals. Methods of evaluation are not politically neutral. In this regard, we can think about the measurement of S481 for jobs and spend solely. The measurements do not ask what type and quality of jobs (the Crowe Horwath report is of interest), nor do they interrogate continuity of training, quality of films, representativeness of content, distribution, and other measurements. The changes brought about in Budget 2019 around a Screen Training Plan are thus significant and will, if implemented correctly, address some of the misgivings around the precarious nature of cultural industries employment.

However, underpinning any suggestions on cultural matters is how they are evaluated. There is significant academic research in the broad area of cultural value, and it is acknowledged, for the most part, that ‘proving’ cultural value is difficult, if not impossible. The EU CCS project is an attempt to identify spillovers, but for the most part, acknowledges the complexity around linearity and causality therein. As we have seen in Chapter Three the shift to creative industries discourse in policy circles in the UK was not without controversy being marked by rhetoric of ‘numerical specificity and conceptual ambiguity’ (Volkerling 2001, p. 442). Similarly, the policy discourse around S481 exhibits a conceptual ambiguity around considerations of value over and above economic values. While the various reports analysed in Chapter Six and this chapter may contain some references to some form of cultural values emanating from the audiovisual industries (and specifically around S481), there has been no meaningful engagement around defining and identifying such cultural values.

## 7.6 Conclusion: an incoherent policy

This chapter has examined recent policy developments in the audiovisual area, with a focus on evaluation of S481 as a cultural policy within the ‘new’ cultural policy framework.

Analysing new policy frameworks is a challenge, as it is analysis of hopes, dreams, and projections, rather than concrete policy developments. However, a critical analysis of grey literature can tell us much about the perceptions of what cultural policy is actually for.

Through an in-depth analysis of the various policy frameworks (heralded as Ireland’s first national cultural policy) this chapter has attempted to trace understandings of the role of S481 as a cultural policy within the *Creative Ireland/ Culture 2025* framework. Most significantly, the implication in AAP2018 is that Ireland’s audiovisual industries are a form of calling card on the world stage and thus the audiovisual industries are framed as a form of commodification of the nation-space and national culture.

The interaction between the conceived space of audiovisual production and the lived space shows the incommensurability of abstract conceptualisations of the value of the audiovisual industries in terms of production spend and jobs creation, and the lived space of culture as representational. Taking a spatialised approach to an understanding of audiovisual industries policies allows for consideration of space as perceived, conceived, and lived, and thus of the materiality of the processes underpinning production. This approach allows for theorising of what is happening in cultural and creative industries discourse, around commodification, datafication and explicit recognition of Ireland’s place in a globalised space of production flows.

That said, there is much to celebrate in the AAP2018, not the least the increase in funding for production via Screen Ireland (or at least, the near-restoration of funding to pre-2008 levels), the recognition that videogames are both cultural and a potential significant industry in Ireland, and the acknowledgement of the significant decline in indigenous TV production over the last number of years. However, there is much also to

raise concern. It must be recognised that the audiovisual industries are *both* a cultural and creative industry. If we only measure the impact of audiovisual industries in terms of quantitative outcomes such as jobs, employment, and tourism, what happens if the jobs dry up? Is funding withdrawn? Instead, a broader approach to policy objectives allows for consideration of intrinsic and other values. The adaptation of a cultural and creative spillover approach as used by the EPA and related projects has the advantage of acknowledging the messiness of cultural policy and may be one approach to consider. However, as an evaluation method, it also suffers from over-reliance on proving causality in establishing value in culture.

Of particular interest in OSN2017 is the finding that S481 is cost neutral in that ‘in 2016, every euro of Section 481 outlay returned €1.02 in tax revenue to the Irish government’ (2017, p.6). However, the assumption that S481 must be cost-effective on a conservative basis is itself telling, in that only economic return is valued and not other intrinsic or social values. Of more significance is the finding in the DoF CBA that the economic impact of S481 is estimated ‘at -€40 million and -€72.4 million in 2015 and 2016 respectively’ (2018, p.222) but that this does not take into account a ‘cultural dividend’ (ibid, p.220). The recognition by the DoF that an audiovisual tax expenditure does not necessarily need to be cost-neutral is hugely significant for the audiovisual industries. However, lest we run away with ourselves, we can continue to be concerned about the language borrowed from that of standard economics and balance sheets that implies a direct, causal return; an approach that problematic in the context of wider political economy discourse.

The DoF’s recognition of the ‘cultural dividend’ of S481 is, it is contended, of most significance in the framing of S481 as *cultural* rather than as *industrial* policy. The analysis of recent policy documents has been put into the context of new interventions in the field of cultural value, most notably the significant contribution of ‘*What Matters*’ to the field.

Rather than offering simple solutions to complex questions, this approach emphasises the complexity of the questions around cultural value of the audiovisual industries. There is no simple imputation of causality in cultural value. Taking a spatialised approach allows for consideration of how S481 continues to be framed as an industrial policy, one that is used to frame the cultural space of the nation within a conceived space, that is, one that is commodified, datafied and instrumentalised.

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<sup>1</sup> According to *Creative Ireland*, a consultant led scoping of creative industries policy in Ireland is currently underway.

<sup>2</sup> The recommendations can be summarised as follows. 1. Oversight, 2. S481 amendments, 3. Strategic review of feature film funding, 4. Other funding (to include Screen Ireland), 5. Skills development, 6. Regulatory reform, 7. Marketing, 8. Other – to include Intellectual Property, promotion of Irish language programming and review of factors that inhibit support for Full Time Equivalent jobs.

<sup>3</sup> See data released by Screen Ireland at <https://www.screenireland.ie/about/research-data>, accessed 15 June 2019.

# 8 CONCLUSION

## 8.1 Introduction

This thesis aimed to analyse the concept of state intervention in the audiovisual industries by way of provision of a tax expenditure regime in the form of S481 of the Taxes Consolidation Act. This analysis was achieved by unpacking the assumptions and norms underpinning the operation of reliefs such as S481. To do so, this thesis has aimed to situate the regulation of tax expenditures for the audiovisual industries within the discourse of political economy of both a national and a European dimension, taking into account both the rationalisation of tax expenditures as a policy that is both national/supranational and cultural/industrial.

## 8.2 Towards a pragmatic discourse

In theory, policies for the audiovisual industries support both cultural and industrial rationales; that is for both an Irish film industry and an industry for film in Ireland. Instead, there is an identifiable pragmatic approach in the rhetoric around state support for a national culture, one that does not obviously recognise a difference between a national

industry and a national culture, but instead assumes that investment in a film industry will axiomatically lead to the development of an indigenous industry. The audiovisual industries are increasingly shaped by global flows, operating in an ever more complex environment. It is posited by this thesis that the specific policy intervention by way of S481 explicitly and manifestly commodifies both the national culture and nation-state of Ireland, based on industrialised and marketised rationales. An understanding of the current debates in transnational, global and glocal cinema, within an Irish context, allows for deeper analysis of the significance of S481 policy.

The approach taken in this thesis does not operate as a quantitative or economic analysis but takes a policy research approach interrogating the implicit and explicit policy norms underpinning the policy, as shaped by EU regulation and Ireland's interpretation thereof. This thesis explores the policy norms driving the structuring and evaluation of S481 that underpins the State's role in facilitating the industry and interrogates the notion of value within the discourse. To this end, it examines the development of EU State aid policy that shapes the direction of Irish policy. The EU policy approach (mostly) acknowledges the dual nature of the audiovisual industries as both economic and cultural.

While current Irish government policy towards audiovisual industries favours an overly economic approach, there is also a faint, but identifiable discourse within recent policy frameworks around the representation and construction of a national culture. While there may be an apparent paradox between these discourses of instrumentalisation of cultural products, between reliance on audiovisual products as a way of representing a national culture on the one hand and the economic exploitation, on the other hand, it is contended that such discourses can be symbiotic rather than in conflict. There is, at an Irish level, a careful and knowing use of the concept of Irishness to reflect a form of Irish identity that can be seen as simultaneously local and global, national, and transnational.

The positional nature of cultural goods, that is, their uniqueness which emanates from their cultural nature, is what allows them to enter into the industrial sphere as

commodities. The use value of such goods, as symbolic, cultural, meaning-making representative goods gets to the heart of the very essence of their exchange value. The incentives exist because of the cultural nature of the products produced under the tax policy. However, current policy objectives are inevitably linked to the neoliberal approach to the Irish, European, and global economy in which the audiovisual industries operate. Of necessity, these industries must continue to work in a globalised, capital-intensive business that cannot exist in an economic vacuum.

Ireland's tax expenditure policy imposes territorial requirements to qualify for the relief, as it is entitled to under EU State aid law. While the provisions of S481 require that location shooting or production must take place here, there is, of course, no requirement that Irishness be represented on screen in any way. This position varies somewhat the form of instrumentalism at work in national policies that use culture 'to create and continually reiterate, national identity' (Bell & Oakley, 2014, p.112). However, cultural policy can also be used to reiterate a form of industrial policy that may (at times) be at odds with the establishment of the concept of a national identity. The spatial approach is relevant to an analysis of S481 in Ireland as it is a national policy with a geographic limitation on the necessity of location in Ireland to qualify for the tax expenditure. However, the relevance of the territorial nature of S481 is more nuanced, bearing in mind the open nature of the relief and its applicability to overseas productions that may film in Ireland but use overseas cast and crew.

This thesis explicitly proposes a qualitative approach to understanding and evaluating cultural policy incentives, such as S481, on both an EU and national basis. It calls for continued recognition of the significance of the national within an audiovisual industrial structure that is both globalised and transnational and contends that we must not neglect analysis of the national and the local in considerations of Irish audiovisual industries.

### 8.3 The research questions, revisited

To recap; the research questions addressed in this thesis were:

What do the design, operation, and evaluation of the S481 tax expenditure reveal about the role of cultural objectives and economic objectives in Irish audiovisual policy?

To what extent do cultural and economic rationales underpin State aid regimes towards the audiovisual industries from an Irish perspective?

The research posits that Irish audiovisual production policies, and particularly S481, are driven by both cultural and economic rationales, as can be gleaned from the historical development of both S481 and the wider EU State aid regime context. However, there is an evident commodification of the audiovisual industries identifiable through both the policy discourse around the tax expenditure regime, the design of the regulatory regime around the tax expenditure, and the evaluation thereof. This commodification has been theorised through Mosco's concept of the processes of commodification and spatialization underpinning critical political economy of communications, with a focus on the Regulation School approach, to unpack the state's role in shaping cultural production in a national context, given the ideological complexity of the national in our current globalised environment. It concludes that policy goals cannot be simply divided into a binary of cultural and economic goals but that these goals, in an industrialised production environment, are symbiotic and co-constituted.

This thesis identifies an explicit instrumentalisation of S481 as a cultural policy, given that it is usually (and problematically, it is contended) framed as an industrial policy. This instrumentalisation, which is primarily economic, arises via the commodification of both the space of the state and the national culture. This thesis takes issue with this erosion

of cultural value from the policy framework around S481. In order to explore these issues, Chapter 3 situated the analysis of developments in EU and Irish policy within the literature on a political economy of audiovisual industries.

### 8.3.1 The identified themes: revisited

The qualitative document analysis approach (using Karppinen, Karppinen & Moe, 2019) has allowed for the explicit and deliberate identification of policy silences (following Bacchi, 2009; 2012) around the (relative) lack of data on production figures and on the rationales for policy decisions together with silences around the concept of cultural value. An overall arching theme of the (d)evaluation of the concept of cultural value of the audiovisual industries consequent upon the augmentation of the (perceived) economic value of such industries has shaped the choice of and analysis of relevant policies, policy events, Commission decisions, reports and other documents. Through this analysis, it is posited that State aid is a form of cultural policy and should be analysed as such. It is inevitable that in framing State aid as a cultural policy that it is subject to multiple instrumentalities, akin to all forms of cultural policy in that culture tends to commodification as part of an increasingly globalised environment. The audiovisual industries, as widely defined, are evaluated along a spectrum of culture and economic considerations within the policy and wider discourse.

The supplementary questions developed to assist in formulating an answer to the research question are addressed as follows.

### 8.3.2 The role of EU State aid policy

How has State aid policy for audiovisual industries developed within the EU and how does Commission policy serve to shape national audiovisual policy measures?

In order to understand the reasons behind the shaping of S481 as a mechanism for providing assistance to the audiovisual industries, it was necessary to gain an understanding of the EU policy towards State aid regimes. Therefore, this thesis explored (in-depth in Chapters Three and Five) the development of Commission policy towards State aid for the audiovisual industries and, in particular, analysed the revision process leading to the introduction of the revised soft law policy, the 2013 Communication. It found that Commission policy in this area is cognizant of its role as 'Guardian of the Treaties' and particularly recognising the significance of the cultural exception within the State aid regime as contained in Article 107(3)(d) of the TFEU. However, it is contended that the Commission has taken an increasingly neoliberalised and pragmatic role in attempting to balance cultural goals and economic goals. For example, the revision process leading to the 2013 Communication saw the Commission attempting to introduce measures to counteract a potential 'subsidy war' such as territorialisation clauses and a possible two-tier system with different levels of relief for 'European films' and inward investment films. However, as this thesis has repeatedly emphasised, audiovisual policy is complex given its position as both cultural and industrial. Thus, the Commission's position is not necessarily presented as a simplistic move from 'good' protection of culture to 'bad' protection of industry but is a pragmatic reflection of a continuum of intertwined objectives.

The examination of the development of Commission policy contained in Chapter Five was carried out in the context of the extensive literature on EU audiovisual policy, set out in Chapter Three. The examination of cases decided by the Commission on State aids for audiovisual industries and the development of policy in this area has shown that culture

and economics are inextricably linked in decisions on audiovisual policy. For DG Comp ‘on the one hand, European audiovisual production is an important source of creativity and cultural diversity – one that contributes to defining European identity. On the other hand, cinema is an industry, which has a European dimension’ (2014, p. 1). Instead of seeing culture and economics as conflicting forces, it is more productive to use Herold’s approach of a symbiotic relationship to look at the pluralistic function of the interaction between culture and economics in shaping audiovisual policy at EU and national level. The EU negotiates conceptualising audiovisual production as both industrial and cultural, roles that can be perceived of as symbiotic rather than conflictual. It is held, following Piernas López on State aid law, that the legal notion of aid has evolved in line with the policy priorities of the Commission – an approach that is considered ‘controversial’ in legal circles (Colomo, 2016, p.213) but helps to explain some other Commission decisions such as the *Apple*, *Fiat*, *Starbucks* decisions – where the Commission is using State aid as a policy tool to achieve specific policies. Thus, the application of the State aid regime to simultaneously achieve both industrial and cultural goals is in line with development of wider State aid policy by the Commission.

### 8.3.3 The development of tax expenditure policy in an Irish context

How has tax expenditure policy for the audiovisual industries developed in Ireland from its introduction in 1987 to date?

This thesis explored the development of the regulatory framework in Ireland under S35 of the Finance Act 1987/S481 of the Taxes Consolidation Act 1997 (as amended) in the context of state supports for an Irish audiovisual industry. This was underpinned by analysis of the EU cultural and State aid regulatory framework. The salient findings are that the policy norms underpinning the S481 policy are

reflected in the design and evaluation thereof, implying a narrow view of the audiovisual industries as primarily commodifiable in an industrialised society. It posits that S481 is primarily considered an industrial policy, albeit with some recognition of the cultural nature of audiovisual production. However, rather than a binary of cultural values and economic values, instead, the cultural rationales are of themselves commodified.

### 8.3.4 State aids operate as both an economic and a cultural policy

How does tax expenditure policy for the audiovisual industries operate as both an economic and cultural policy?

Unpacking the aims of State aid policies towards the audiovisual industries required interrogation of the role of such aids in addressing both cultural and economic goals, in the context of EU audiovisual policy and its effects on Irish policy. The research undertaken in this thesis to address this question required extensive analysis of both the theoretical literature on EU cultural and audiovisual policy and the related academic and policy discourse on the Irish audiovisual arena. This analysis concludes that attempts to achieve both economic and cultural goals by way of policy interventions do not consider such goals as mutually exclusive but operate along a continuum. However, the placing of such analysis within the broader political economy discourse leads to the conclusion that such policy interventions are subject to privileging of economic goals as is evident from the foregrounding thereof in the Olsberg SPI Economic Analysis on the Audiovisual Industries and the new national cultural policy framework – with *Creative Ireland* framework proposing a narrow framing of policy per O'Brien and per Rush (O'Brien,2019; Rush, 2019).

### 8.3.5 A national policy in a global environment

How do we conceive of a national industrial and cultural policy in an increasingly globalised and transnationalised environment?

No national industry operates in a vacuum. This recognition is particularly significant in the context of Irish audiovisual policy, as it operates within a globalised/transnationalised environment of production and distribution. This thesis explicitly emphasises the significance of Ireland's membership of the EU to the shaping of audiovisual policy, through the State aid regime. This question raised complex issues around the central meaning of a national cinema in such an environment, given the cultural and industrial roles of audiovisual industries. The use of Mosco's approach of processes of commodification and spatialization (supplemented with Lefebvrian theory) allowed for a more in-depth understanding of the commodification of the nation-space and the national culture in an environment that is subject to forces of the trans/multinational and the global. An interrogation of policy developments from both an Irish and EU perspective illustrates the complexity of issues shaping policy decisions that actively affect audiovisual production. It has identified multiple instrumentalised policy rationalisations affecting the funding structures for audiovisual industries, with consideration of the marketisation of culture identifiable at both EU and Irish level, the concept of nationing within an Irish context and the protection of the internal market shaping the concerns of the Commission.

### 8.3.6 How to evaluate cultural policy, and why does it matter?

'What matters' in the evaluation of cultural policy? Why is the attempt to measure cultural value of significance to society?

Increasingly, the analysis of both EU and Irish policy raised issues about the role of cultural policy within the audiovisual industries that are, by nature, part of a complex, globalised industrial ecology. The issue of evaluation of the policy objectives of measures for support of the audiovisual industries requires consideration of issues around how culture in all its manifestations is evaluated. Thus, the study aimed to deepen understanding of S481 in both a national and an EU context. This thesis achieved an understanding of the context within which S481 operates from both a national and supranational context through analysis of the development of EU policy from both a political economy of audiovisual industries regulation perspective and from a State aid perspective and through analysis of Ireland's film industry and the film industry in Ireland. Specifically, it focused on the development of S481 policy from inception as S35 of the Finance Act, 1987, to the developments introduced in Budget 2019 including the rural uplift and the introduction of a requirement for a Skills Development Plan. The evolution of the policy has been analysed in the context of political economic theories, specifically with consideration of the spatialised commodification of both audiovisual cultural production, and the cultural space of the nation. This thesis has established through this analysis that audiovisual culture is instrumentalised for multiple rationales, for economic, social and for cultural aims.

## 8.4 Policy silences

In order to answer the research question/s, this thesis took a qualitative document analysis policy research approach, using a thematic analysis method, which allowed for interrogation of the 'why', that is, the 'why fund culture' 'why fund culture this way' 'why evaluate culture this way'. This approach is consistent with Bacchi's policy research approach, i.e., 'What's the Problem Represented to be?' which is in contrast to a more evidence-based policy analysis that perceives policy as designed to solve a specific problem.

Instead, Bacchi considers that the questions asked of policy help to shape the specific format of policy, leading to narrow considerations of what a policy might be for. Using Bacchi allows for dismantling of the assumptions underpinning policy discourse, which assumes rational causality of aims and objectives. Instead, we can unpack the norms validating policy decisions and, in this way, identify the values shaping cultural policy, values which in turn shape the environment within which cultural goods are produced and thus, at least implicitly, shape the goods themselves. In particular, the use of Bacchi's policy research approach allows for identification of multiple policy silences, from the lack of voices within the discourse around the development of policy to the lack of holistic thinking around the role of culture in society.

In the context of S481, if the problem is market failure in the audiovisual industries, given the globalised and digital forces affecting production, then the solution offered by S481 is to correct market failure. However, is this formulation of market failure in the provision of economic goods or cultural goods; or both? It is contended that the Irish policy approach appears to see the market failure in the provision of audiovisual products as a form of economic goods, with a consequent neglect of more unquantifiable cultural goals, at least in the structuring and implementation of S481. While an increasingly instrumentalised and economised approach may be identifiable in the EU approach to audiovisual State aid policy, in general, the Commission approach is more nuanced in its recognition of the need to consider cultural goals, albeit that the Commission's position has become increasingly and explicitly aware of the economic rationales for cultural policies in recent times. It is thus contended that the broader values of culture; in Yúdice's terms – the 'transcendent' nature of culture, have been increasingly passed over in an instrumentalised fashion (2003).

This thesis has unpacked certain key concepts underpinning policy towards audiovisual industries. These concepts are unearthed through a policy research approach, that is, a qualitative approach that allows for an understanding of the norms that appear to

be driving audiovisual policy. These policy norms incorporate the explicit and implicit commodification of space of audiovisual production (via spatialization) in a creative industries discourse that problematically values culture primarily for its economic return, with the development of discourse within an Irish context focused on 'proving' the economic value arising out of the investment in the audiovisual industries by way of S481. This narrow conceptualisation of the value of S481 and, by implication, of the audiovisual industries suppresses consideration of wider social and cultural values underpinning policy developments that shape the cultural and creative products produced by the audiovisual industries in an Irish context.

It is contended that there is an acceptance, in policy circles, of neoliberal policy norms in an evaluation of the effectiveness of S481 as an industrial policy. S35/481 is primarily and explicitly formulated as an industrial policy, as shown by the structuring of the tax expenditure policy (at least within the confines of State aid policy requirements) in a way that maximises the perceived quantifiable benefits including the creation of jobs and the provision of employment, through direct and indirect tax take and increased tourism.

It is also contended that it is problematic if state supports for audiovisual production are left to the vagaries of the market, while simultaneously diverting funds (by way of a favourable tax expenditure) to those who are best positioned to avail of such incentives. The structure of S481 as a tax expenditure with a minimum spend, together with the other compliance requirements such as a Skills Development Plan, means that it operates as an incentive for a particularly commercial manifestation of cultural production. Further, it is explicitly marketed towards large-scale inward investment productions (or runaway productions) with the (unverified and unproven) assumption that such productions provide multiple benefits for the Irish industry. However, while inward investment productions may, in theory, offer the opportunity of training, employment and increased international visibility, there has been, once again, little effective longitudinal evaluation of the benefits (and, it is contended, the negatives) of such productions. Inward

investment productions may swamp production space and may perpetuate problematic employment practices within the industry (consider Miller's NICL concept, 2016).

## 8.5 An increasingly marketised discourse

S481 operates as a support (or, indeed, a crutch) for audiovisual production. It is contended that this research illustrates that while it is relied upon as a cultural policy (i.e., that it promotes cultural production), it is primarily structured and evaluated as an industrial policy. While cultural and industrial goals are not necessarily mutually exclusive, the elision of cultural goals is, it is contended, detrimental to the cultural fabric of a nation in that promotion of a particular manifestation of commercialised marketised culture fails to reflect a diverse society. The commodification of the audiovisual industries leads to the evaluation of S481 primarily as an economic policy and thereby has insufficient nuance to consider cultural goals. If an emphasis is placed solely on the evaluation of the effectiveness of a policy from a quantitative perspective, then other unquantifiable social and cultural values are suppressed. Both industry and policy discourse around the audiovisual industries has traditionally highlighted the *economic* benefits from S481, including the provision of jobs, tax take and tourism money. However, the Department of Finance reference to a 'creative dividend' in its evaluation of the benefits of S481 illustrates that evaluation of cultural policy is perhaps evolving into a more nuanced holistic approach (2018).

## 8.6 An expansion of the significance of this research

This thesis addressed the notion of how audiovisual media are both cultural and economic goods and thus can be constituted or modulated across shifting tectonic plates. While this may appear to be a simple or even trite binary tension, the complex role of audiovisual products as both commodities within a capitalist economy and as representational and

meaning-making structures in a national and supranational context means that exploring policy interventions that support production is crucial to understanding the structures that underpin audiovisual production.

This thesis takes as a starting point the understanding that culture is essential to society and has both an intangible and monetary value, and thus study of the means of making cultural products is significant. This study aimed to ask both “why support cultural production through a State aid regime such as S481?” and “What is the role of EU State aid policy?”. In order to address these questions, it is necessary to ask a related question to expand our thinking on this issue, “Why promote a national culture and/or a national industry in today's transnational and globalised environment?” To address these questions, this thesis unpacked the policy regime underpinning S481, at both a national and EU level. It is acknowledged that S481 is but one support for audiovisual production in Ireland and is a complement to the various grant supports from SI. However, it is a significant source of funding of production and thus must be, it is contended, perceived as a cultural policy and not only an industrial policy.

The audiovisual industries have both a cultural and economic role in society. Thus, policies for audiovisual industries should be cognisant of the multiple functions required to fulfil these roles. An in-depth examination of the tax expenditure available for film and high-end television production known as S481 aimed to interrogate this complex role within the political economy of Ireland/the EU. The provision of tax expenditures offers a way of promoting a particular variant of audiovisual production, one that is sufficiently commercial to avail of such reliefs. While this research is at pains to avoid an artificial distinction that assumes commercial art is bad and non-commercial art is good, it is recognised that an over-emphasis on overtly commercial productions may lead to a lack of scrutiny of the value of other less commercially-focused cultural forms. However, it must also be recognised that focus only on a certain form of art, i.e., the feature film, or high-end TV production is also a reductive approach. It is envisaged that discussions around an

extension of S481 to digital games (as proposed in OSN2017 and AAP2018) will open up interesting avenues of thought around perceptions of cultural value, about the role of the state towards funding of audiovisual production, and on the function of digital games within society.

The policy research approach taken in this thesis allows for the identification of and analysis of policy norms underpinning the development of cultural policy at both Irish and EU level. It calls for interrogation of State aid policy as having a social dimension. Policy norms tend to be of a contested nature in both national and supranational contexts. Stevenson holds that policy-making pragmatics require a closure of meaning but academic research must 'disrupt these meanings and values and in doing so interrupt the process by which the value judgements of some are represented as supposedly universal values that should be shared by all' (D, Stevenson, 2017, p.183). Thus, is it crucial to identify and question the policy norms that underpin cultural policy developments.

Gray's concept of ambiguity in cultural policy outlines a working hypothesis of six potential sites of ambiguity within cultural policy, of which expectations, outputs, outcomes, and evaluations are of most interest to the research questions herein (2015). Ambiguity can arise through structural conditioning and/or deliberate choice. Structural conditioning means ideological differences or allocation of responsibility between tiers of government. This can lead to a vagueness which allows policy statements 'to act as expressions of intention rather than deliberate courses of specific action' (ibid, p.66). Deliberate ambiguity may arise as an explicit policy choice to allow for greater scope for innovation. For Gray, the identification of what a government supports, or deems worthy of cultural support, provides an image of underlying values or ideologies of that government and are thus the product of political choices (2015).

The links between culture and economics can be tied to the rise of neoliberalism as the dominant ideology in the Global North. However, it is necessary to acknowledge the necessity of nuance in theorising neoliberalism. Flew takes issue with the tendency to allow

neoliberalism to function as a ‘conceptual trash heap’ (2012, p.14 citing Boas & Gans-Morse, 2009, p.156). By this, he means the tendency to equate neoliberalism with the hegemonic side of global capitalism that presents neoliberalism as a dominant ideology with the neo-Foucauldian interpretation of governmentality as the use of state power to produce a certain kind of subject. For Flew, ‘one of the challenges in developing the cultural economy perspective, then, will be to avoid long-held reflexes that lionise the subversive potential of culture and demonise the restraining hand of economics’ (ibid, p.16).

Lefebvre’s concept of spatialization allows a way of theorising the commodification of both a national culture and a national space. His triadic notion of space interrogates the audiovisual industries as a way of containing and representing the space of the nation. In particular, it allows for interrogation of the concept of value in the context of a cinema that is simultaneously and (at times) paradoxically local and global. In particular, this thesis has aimed to interrogate the development of both a national cinema and a national film industry through engaging with the policies commodifying the literal and figurative space of the nation. Lefebvre’s consideration of his project in *The Production of Space* holds that ‘this book has been informed from beginning to end by a *project*, though this may at times have been discernible only by reading between the lines. I refer to the project of a different society, a different mode of production, where social practice would be governed by different conceptual determinations’ (1991, p.419). Inspired by Lefebvre’s work, this thesis has aimed to open up analysis of audiovisual production as more than merely industrial. Instead, it is significant as a tool for the creation and dissemination of meaning.

This thesis has analysed recent policy developments in Irish cultural and creative industries policy with a particular focus on proposals in the audiovisual industries context. The new cultural policy framework around the *Creative Ireland* policies form a network of interlinked initiatives and frameworks of which S481 is a significant element. However, despite the framing of the policy initiatives as Ireland’s first cultural policy, it is contended

that the various ways of thinking about the role of S481 in Ireland continue to be blinkered, looking in the wrong direction in panicked attempts at justifying the relief within policy circles. The various evaluations (from both interested parties and government departments) throughout the history of S35 and S481 have, for the most part, been attempting to establish why funds should be diverted because they are giving a good return for money, through tax take, through evaluation of spend, through production in Ireland, through making films that win awards. However, it is not only the policymakers that require persuasion that S481 is 'worth it.' Such an approach points to a narrow conceptualisation of what audiovisual policy is for when it is conceived of as primarily industrial policy. Instead, we need to think of S481 as a cultural policy and ask if it is fit for purpose for the benefit of society as a whole.

We must ask, for whom does the EU State aid regime and the Irish tax expenditure (S48)1 exist? The pragmatic answer of course is, it is for all, citizens, producers, consumers. However, if it is for all, it needs to be evaluated as fulfilling multiple objectives; for job creation of course, but also for dreamers, for those who want to create cultural artefacts in this modern, technologically driven, international world that allows films to be made by all - not only major studios. Thus, we need to pragmatically measure S481 as an industrial policy and ask if it is a good use of the scarce resource of public funds. However, we also need to ask more complex questions of the State aid regime. Is it in place to benefit consumers, citizens, or the European 'project'? Is it achieving unquantifiable benefits, and, if so, how can such benefits be identified and evaluated? This thesis concludes that S481 operates within a globalised environment for multiple instrumentalised goals.

To look forward, it appears that S481 will be under review in 2020 (see minutes of Audiovisual Steering Group meetings 2018-2019 (see Chapter Nine). The conclusions to this thesis point to the need to ascertain cultural value, and the means of identifying what might come within a 'cultural dividend'. However, this thesis cautions against imputing

causality to cultural value and instead requires recognition of the uncertainty surrounding quantification of cultural value.

In addition, the proposed extension of S481 to digital games is, notwithstanding the ostensible cultural rationale for approval of State aid regimes by the Commission under the application of the 2013 Communication by analogy, primarily focused on the economic instrumentalist goals of such industries. It is telling that the minutes of the First meeting of the Audiovisual High Level Steering group on 9 July 2018 held that the extension to videogames of S481 needs to make a 'business case'. The conclusions of this thesis ask, what about a 'cultural case'? Who is charged with ascertaining whether policy interventions for digital games are cognisant of wider social and cultural goals? A specific direction for future research is to examine the complexity of cultural value within the digital games industries. This industry, which has certain commonalities with the film and television industries, tends to be lauded in policy discourse (from both a national and EU perspective) as an *economic* success in a way that fails to consider the cultural values thereof.

This thesis has found that tax expenditures are complex, that cultural value is complicated, that attempting to 'measure' the efficiency and success of tax expenditures is not even the right question to ask. Thus, the success of this thesis is that it has learned to ask different questions and nudged cultural policy along a road of thinking about the answers from a broader perspective. This thesis has not succeeded in answering whether S481 is a 'good' policy or not. Instead, it has succeeded in raising questions about how we should think about it, how we appreciate the unquantifiable, and how we cannot measure on a balance sheet whether S481 is de facto good or bad, whether it is inefficient or efficient, as to do so implies a normative approach of evaluation that operates on an economic/balance sheet model that operates on a causal money-in, value-out basis. Instead, 'value' in the context of the audiovisual industries is non-linear, subjective, and difficult to measure causally. Is a blockbuster film 'better' than an arthouse one? Is a film that transmits a moral message 'better' than one that glorifies amoral excess? Is a film that

represents a nation/bounded group positively better than a film that critiques a regime? Is a film that provides 1000 full-time equivalent jobs better than one that is made on a micro-budget with a small cast and crew? As we can see, clearly evaluating what is 'better' is impossible to define.

This thesis has found that the Irish audiovisual policy is set within a glocalised understanding of the role of culture within society, that is has been increasingly subject to forces of cultural marketisation which is, it is contended, overly reliant on economic rationales, driven in part at least due to nature of policy process, that it works within confines of EU policy, that those EU policies are driven by goals that may not work with Irish industrial goals or Irish cultural goals, in that they are concerned with the internal market of EU in a context of marketised dimension.

This thesis calls for more cognisance to be taken on wider cultural and intrinsic values in S481 evaluations. The Department of Finance's recognition of a 'cultural dividend' as part of the 'value' of S481 is a potentially significant policy turn for the audiovisual industries (2018). While this may be a relatively underdeveloped notion within the context of the Department of Finance CBA of S481 (as per private correspondence with officials involved in drafting the CBA), it has made more explicit the notion of how complex such tax expenditures are, and the acknowledgement of this by policymakers and evaluators is heartening.

We must continue to keep in mind the EU context for the State aid regime underpinning S481 and similar expenditures. While the Commission may currently be taking a pragmatic, magnanimous view of the cultural exemption in Article 107(3)(d), it is contended here that an overly instrumentalised approach to audiovisual industries may lead to an overly economised industry, that forgets or downplays about matters of cultural value that cannot be so easily measured or quantified. It may lead to a position where the Commission shift to a less marketised, economic approach, and may take a narrower interpretation of cultural State aid under the Maastricht Treaty and thus may look in

askance at Ireland's hyperindustrialised tax expenditure. State aid policy has a social and cultural role and should not be only evaluated within a neoliberal marketised discourse.

The conclusions to this research are not that S481 is not necessarily fit for purpose, but to insist upon the necessity to think deeply about what it is for. Rather than acting solely as an industrial policy, it needs to be recognised firmly and emphatically as simultaneously a cultural policy and an industrial policy. In this regard, it must be measured as an industrial policy on the usual CBA grounds, but it must also be scrutinised as a cultural policy with all the messiness and lack of causality that this entails. We can take into account the spillover effects, representations of the nation, jobs and training on the ground, awards for the industry, but also the immeasurable benefits of culture, including but not limited to participation, social cohesion, identity formation and many more.

The contribution of this thesis is to add to the discourse around multiple meanings of and benefits of State aids in EU context, building on work of those like Sarikakis and De Vinck; on the work of Mosco in political economy, adding to the application of Lefebvre (building on work of Kerr and Nieborg/De Kloet), and on the work on cultural value building on Klammer, and Meyrick, Phiddian & Barnett. These are key theorists in this area and are all giants upon whose shoulders to stand. This study contributes to thinking about the notion of a national cultural industry in a globalised world. It has achieved a complicating of the notion of the success of S481. It calls for a continued emphasis on the role of the regional and the national within audiovisual discourse in Ireland and the EU, with recognition of the multiple and complex meanings underpinning any cultural consideration of what the national might represent.

This thesis has been hampered by a relative lack of data on the audiovisual industries. It has been simultaneously enriched and hampered by the implementation of policy changes to S481 in 2014 and 2018, and the adoption of a new cultural policy framework in 2017 means there has been little time to implement these new policy measures, and consequently little evaluation thereof. Therefore, this study has focused on

the critical concepts underpinning the policies, rather than a quantitative analysis. As is evident from the matters covered in this thesis, there have been significant developments during the course of the research undertaken, not only in Irish cultural policy framework – with the introduction of the *Creative Ireland* framework but also the publication of the Economic Analysis by OSN (OSN2017) and the AAP2018 (publication of EA was delayed by at least six months from the expected date to allow for drafting of the AAP2018 to implement, at least in part, the recommendations of the OSN2017) it must be noted). Policy developments also took place at the EU level, particularly concerning digital games, with UK VGTR and other Commission decisions in this area. However, the introduction of policy amendments has allowed for a more contemporary and richer interrogation of the policy areas and provided for a wider range of materials for analysis and thus, while it may have prolonged the final production of this thesis, has enhanced it.

## 8.7 Directions for future research

It is usual at this stage to point out limitations of this work undertaken. However, rather than point out limitations as problems, instead they are framed here as the ‘roads not taken.’ In particular, the policy proposals in Ireland to extend S481 to digital games/videogames will allow for in-depth exploration of the nature of the cultural and creative industries in an Irish context. It will also expand on Commission policy in this area given the need for Commission approval of any amendments to the State aid regime for audiovisual industries.

Weiss points to the ‘lure’ and ‘frustrations’ of the policy research ‘enterprise’ where academics want to devise their own research problems and methodological approaches while simultaneously want their work ‘to be so cogent and intellectually compelling that it cannot fail to affect the outcome of policy’ (Weiss, 1977, p.531). With this in mind, this

thesis calls for deeper attention to be paid to the concept of cultural value within the discourse around policies towards the audiovisual industries, while understanding that this is, in one way, an academic solution to an academic problem. However, this thesis also calls for such a solution to be taken seriously by other actors in the field of audiovisual industries, bearing in mind the need to ‘prove’ value. Therefore the rationale for taking on board the recommendations in this thesis is from the perspective of theory and a pragmatic understanding of what the industry might need – which is to ‘prove’ to the policy-makers that S481 is worth investment. Weiss highlights ‘the lack of fit between what decision makers want to know and what researchers can tell them’ (p.533). Weiss proposes that academic research need not necessarily accept ‘the fundamental goals, priorities and political constraints’ of the decision-makers but calls for an ‘enlightenment mode’ (p.544) which makes no such assumptions. Instead, she ‘suggests that decision makers believe it is a good thing to have controversial research, challenging research, research that makes them rethink comfortable assumptions’ (ibid). With this in mind, this research challenges the fundamental notion of why the state supports cultural production.

The discourse of political economy of the digital games production industry simmers throughout the background of this thesis. Initially, this thesis interrogated the development of State aid policy for video games in the UK, through the introduction of the VGTR in 2014, and that decision by the Commission is examined in at least one chapter herein. For reasons of brevity, the chapter dedicated to the UK VGTR policy has been omitted from the final draft and is being prepared as background for future research. This approach was a portent of recent developments in Irish policy. The possibility of extending S481 to digital games raised in both the OSN2017 report and the AAP2018 brings together scrutiny of the role and function of tax expenditures towards cultural and creative industries, and the differing (and potentially incompatible) policy intentions of all actors, including the Department of Culture, Heritage and the Gaeltacht, the Department of Finance, other relevant government actors, EU policymakers and particularly the

Commission as State aid overseers, various lobby groups and industry players and, of course, citizens and society.

This thesis has used Mosco's approach to political economy of communications, focusing on the role of processes of commodification and spatialization. As it primarily interrogates the role of the state and the supranational institution of the Commission, the theories of the Regulation School have been of particular interest. One useful direction for future research could be in the exploration of the commodification and spatialization of the nation-space through location-based promotion. While this thesis takes cognisance of this form of commodification, it does not explicitly explore the overt policy of Screen Ireland towards the encouragement of inward investment location shooting in Ireland. While it is assumed that the use of Ireland as a location for such production is beneficial to the industry, little if any research has been carried out on the Screen Ireland policy, on the knock-on benefits (or problems) for tourism, for training, for the industry, and others. Such an exercise would be hugely beneficial to the industry and the policymakers. The media coverage thereof (e.g. *Star Wars*, *Game of Thrones*) posits that it is unproblematic, while academic research in this area indicates that there are avenues to explore regarding critical analysis of the impact of policy interventions on society (Ramsey, Baker & Porter, 2019).

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## 9.1 Legislation

### **Irish legislation**

Film Regulations, 2019

Film Regulations, 2015

Finance Act, 1980

Finance Act, 1993

Finance Act 2018

Irish Film Board Act, 1980

Section 481 Film Regulations, 2019, effective 27 March 2019

Taxes Consolidation Act, 1997 (as amended)

### **European legislation**

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European Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance) (Commission, 2014h).

European Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (Text with EEA relevance)

### **Other**

Corporation Tax Act 2009

The Cultural Test (Video Games) Regulation 2014 (UK)

Video Games Development Company Manual, HM Revenue & Customs, 12 April 2016, available at <https://www.gov.uk/hmrc-internal-manuals/video-games-development-company-manual/vgdc10000>

## 9.2 Filmography

*About Adam* (2000) Dir. Gerard Stembridge

*An Ranger* (2008) Dir. P.J. Dillon (short)

*Angela's Ashes* (1999) Dir. Alan Parker

*Black '47* (2018) Dir. Lance Daly

*Brooklyn* (2015) Dir. John Crowley

*Camelot* (2011) Created by Chris Chibnall, Michael Hirst. USA: Starz Network.  
Television.

*Caoineadh Art Uí Laoire* (1975) Dir. Bob Quinn

*Ek Tha Tiger* (2015) Dir. Kabir Khan

*Magdalene Sisters* (2002) Dir. Peter Mullan

*Man of Aran* (1934) Dir. Robert J. Flaherty

*Penny Dreadful* (2014-2016) Created by John Logan. USA: Desert Wolf  
Productions/Neal Street Productions/Showtime; UK: Sky Atlantic,  
2014—. Television

*Quantico* (2015-) ABC. USA. Television

*P.S. I Love You* (2007) Dir. Richard LaGravenese

*Reefer and the Model* (1988) Dir. Joe Comerford

*Room* (2015) Dir. Lenny Abrahamson

*Shrooms* (2007) Dir. Pearse Breathnach

*Star Wars: The Last Jedi* (2017) Dir. Rian Johnson

*The Guard* (2011). Dir. John Michael McDonagh

*The Lobster* (2015) Dir. Yorgos Lanthimos

*The Quiet Man* (1952) Dir. John Ford

*The Wind that Shakes the Barley* (2006) Dir. Ken Loach

### 9.3 Commission decisions on audiovisual State aid

181 decisions by the Commission on audiovisual State aid have been identified and analysed. It is not claimed that this list is exhaustive or comprehensive, but all efforts have been made to identify relevant Commission decisions on State aid for the audiovisual industries. This list of Commission decisions on State aid regimes for the audiovisual industries is based on the following sources:

1. A search of the Commission's case database ([http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3)) under NACE code J59 (Motion picture, video and television programme production, sound recording and music publishing activities) under NACE code J (Information and Communication), selecting Cinema Communications 2001-2012, 2013, and Article 107(3)(d). Unfortunately, despite claiming that the database has cases from 2000, the case search database only returns cases from 2007.
2. Cases have been traced from prior to 2007 using academic materials, Commission publications and references in later cases to identify cases from the initial cases of Greece 89/441/CCE, and France N7/92. Academic sources, including Ferri (2016), Pauwels et al. (2007), Duval & Van Rompuy (eds) (2016) have been used to trace cases. The earlier cases (pre N3/ 98) have been identified through references in later Commission decisions, an approach that was used to identify and fill gaps in the table.
3. A FOI request was made to the Commission for copies of early decisions that were not available by public search.

4. A search on the Commission's case database returns information with links to cases, duration of relief/expenditure, and annual expenditure. However, it is difficult to extract this information in a replicable format.
5. A number of schemes are notified to the Commission for approval under Articles 53 (heritage) & 54 (audiovisual works) of the General Block Exemption Regulation (GBER). Such cases turn up in a general State aid database search but have not been included in this list.

The list is organised by date, based on the date of initial notification to the Commission. This may differ to the date of the decision, a crucial point to remember given the significance of specific policy interventions such as the insertion of Article 107(3)(d) (the cultural derogation) in 1993 by way of the Maastricht Treaty and in particular the eventual adoption of the 2013 Cinema Communication. The list does not include aid schemes that are not notified under GBER regulations that provide a *de minimis* requirement for State aid regimes under a certain amount. This is not considered an omission, as the purpose of this list is to identify cases through which the developments in Commission policy can be traced. The majority of decisions are in English. Those that are in Spanish or French have been read in that language, with selected translation where appropriate. Those in other languages have been translated with free translation software where required, sufficiently to identify broad thrusts of the decisions. Cases that are cited directly in the main body of the thesis are listed here with full citation.

## 9.4 Cited Commission Decisions

- European Commission. *Commission Decision of 21 December 1988 on aid granted by the Greek Government to the film industry for the production of Greek films*, 89/441/EEC (Commission, 1998).
- European Commission, *Commission Decision on State aid France*, N3 /98 (Commission, 1998a).
- European Commission. *Commission Decision on State aid Netherlands*, N 486/97 (November 23, 1998)(Commission, 1998b)
- European Commission. *Commission Decision on State aid Nos NN 49/97 and N 357/99 - IRELAND “S35/481” tax-based film investment incentive*, August 18, 1999 (Commission, 1999a).
- European Commission. *Commission Decision on modifications to State Aid regime Germany* N 4/98, April 16, 1999 (Commission, 1999b).
- European Commission. *Commission Decision SWEDEN N748/99 Statligt stöd nr N 748/99 – Sverige*, February 29, 2000 (Commission, 2000).
- European Commission. *Commission Decision in State aid N 353/2003 – United Kingdom Support for film and television production in Northern Ireland: the Northern Ireland Film Production Fund*, December 10, 2003. (Commission, 2003)
- European Commission. *Commission Decision in Staatliche Beihilfe Nr. N 411/2004 – Deutschland Förderung von Film- und Fernsehproduktionen in den deutschen Ländern: Verlängerung der Beihilferegelungen* N 439/01, N 440/01, N 639/01, N 701/01, N 727/01, N767/01, N 549/02 und N 44/03, December 14, 2004. (Commission, 2004)
- European Commission. *Commission Decision in State aid No N 537/04 (ex SI 10/2002) - Slovenia Aid for audiovisual production “Co-financing projects from the budgetary fund for audiovisual media”*, March 2, 2005. (Commission, 2005a).
- European Commission. *Commission Decision in C(2006)2946, State aid No N 279/06; Individual aid for audiovisual production in favour of SEN FILM s.r.o. State aid No N 281/06; Individual aid for audiovisual production in favour of ALEF Film & Media group s.r.o State aid No N 282/06; Individual aid for audiovisual production in favour of TaO Productions, s.r.o. Slovak Republic*, July 4, 2006. (Commission, 2006a)
- European Commission. *Commission Decision in State aid N 695/06 – Germany German Film Fund*, C(2006) 6682 final, December 20, 2006. (Commission, 2006b)
- European Commission. *Commission Decision State Aid N 461/2005 – United Kingdom UK film tax incentive*, November 22, 2006. (Commission, 2006c).

- European Commission. *Commission Decision in Staatliche Beihilfe Nr. N 168/2007 - Austria Fernsehfilmförderungsfonds (Fernsehfonds Austria) – Änderung und Verlängerung der Beihilfenregelung N 77/2005*, June 28, 2007. (Commission, 2007a)
- European Commission, *Commission Decision in State aid N 605/2007 – Malta - Financial Incentives for the Audiovisual Industry Regulations, C(2007) 5639*, 28 November, 2007 (Commission, 2007b).
- European Commission. *Commission Decision in State Aid C 47/06 (ex N 648/05) Tax credit introduced by France for the creation of video games*, December 11, 2007. (Commission, 2007c).
- European Commission. *Commission Decision in State aid N280/09 – Spain Basque aid for the creation, development and production of audiovisual works*, C (2009) 7744, October 7, 2009. (Commission, 2009a).
- European Commission. *Commission Decision in State aid No N 613/2009 – Malta, Financial Incentives for the Audiovisual Industry Regulations (prolongation of State aid N 605/2007)*, C(2009)10025, December 8, 2009. (Commission, 2009b).
- European Commission. *Commission Decision in State aid N 96/2010 – Austria - Austrian film support scheme*, C (2010)6041, August 31, 2010. (Commission, 2010).
- European Commission. *Commission Decision in extension/ prolongation of C (2012) 2558 State aid SA.33943 (2011 / N) – France, extension of aid scheme C 47/2006*, April 25, 2012. (Commission, 2012a)
- European Commission. *Commission Decision in State aid No SA.34722 – Belgium Screen Flanders*, C(2012) 5233 final, July 23, 2012.(Commission, 2012b)
- European Commission. *Commission Decision in State aid SA.37679 (2013/N) – Austria Prolongation of the Austrian film support scheme Filmstandort Österreich*, C(2014) 92 final, January 13, 2014. (Commission, 2014a).
- European Commission. *Commission Decision in State aid SA.37526 (2013/N) – Estonia Support of the audiovisual sector in Estonia*, February 4, 2014. (Commission, 2014b).
- European Commission. *Commission Decision in Aide d'Etat n° SA.37479 (2014/N) – Belgique Fonds FWB-RTBF pour les séries belges*, C(2014) 1745 final, March 17, 2014. (Commission, 2014c).
- European Commission. *Commission Decision in State aid SA.38392 (2014/N) – Croatia Investment incentives for the production of audiovisual works*, C(2014) 4342 final, June 24, 2014. (Commission, 2014d).

- European Commission. *Commission Decision of 27.03.2014 on the State aid scheme SA.36139 (2013/c) (ex 2013/N) which the United Kingdom is planning to implement for video games*, C(2014) 1786 final, March 27, 2014. (Commission, 2014e).
- European Commission. *Commission Decision State aid SA.38959(2014/N) Ireland Film tax relief support scheme modifications*, October 20, 2014. (Commission, 2014f)
- European Commission. *Commission Decision to Initiate Procedure under Article 108(2) TFEU in State aid SA.38418 (2014/N) (ex 2014/N) – Germany Filmförderungsgesetz, State aid SA.38418 (2014/N) (ex 2014/N) – Germany Filmförderungsgesetz* C(2014) 7665 final, October 17, 2014. (Commission, 2014g)
- European Commission. *Commission Decision of 1.9.2016 ON THE AID SCHEME SA.38418 - 2014/C (ex 2014/N) which Germany is planning to implement for the funding of film production and distribution*, C(2016) 5551 final, September 1, 2016. (Commission, 2016)
- European Commission. *Commission Decision in State aid No SA.47892 (C(2017)3146 final / N) – France, extension of aid scheme C 47/2006.*, May 5, 2017. (Commission, 2017a).
- European Commission. *Commission Decision in the Danish direct grant aid scheme for video games C(2017) 3340 final, State Aid SA.45735.*, May 12, 2017. (Commission, 2017b).
- European Commission. *Commission Decision in Bavaria State Aid SA. 46572 (2017/N) – Germany Bavarian games support measure Brussels*, C(2017) 6048, September 4, 2017. (Commission, 2017c).
- European Commission. *Commission Decision in State Aid SA.49294 & SA.49296 – Italy Tax incentives for the production of cinematographic and audiovisual works - modifications*, December 18, 2017. (Commission, 2017d).
- European Commission. *Commission Decision in State aid SA. 53399 – Irish Film Tax Relief Support Scheme, modification*, July 28, 2019 (Commission, 2019).

## 9.5 Commission decisions on audiovisual State aid from 1998 to October 2019

Commission decisions on audiovisual state aid from 1988 to October 2019 extracted from Commission database since 2000. A number of others have been identified that were not retrieved via the database search. All State aid cases that have been the object of a Commission decision since 1 January 2000, including information on block exemption cases registered by the Commission. It does not include information on on-going cases for which no decision has yet been taken. The case title (where provided) is descriptive and not formal.

DATE	COUNTRY	CASE TITLE	CASE NUMBER
1988	Greece	Aid granted by the Greek Government to the film industry for the production of Greek films [1989] OJ L208/38 3	Decision 89/441/CEE
1992	France	French film support scheme	N7/92
1993	France	French film support scheme	N188/93
1996	Denmark	Support for film production	N917/96
1997	Ireland	Film Board production loans scheme funded under the Operational Programme for Industrial Development	N32/97
	Ireland	"Section 35/481" tax-based film investment incentive	NN49/1997
	Netherland	Support for film production	N486/1997
1998	France	Soutane a la production cinematographic	N3/98
	Germany	Modifications au regime de soutien à la production cinématographique	N4/98
1999	Ireland	"Section 35/481" tax-based film investment incentive	N357/1999
2000	Sweden	Commission Decision 2 February 2000 N748/99 [2000] OJ C 134/	N478/1999
	Ireland	Extension of aid schemes to film and TV production	N237/2000
2001	Germany	Filmförderung in den Bundesländern: Mitteldeutsche Medienförderung GmbH (MDM)	N440/2001
	Germany	Film- und Fernsehförderung in Bayern: Film Fernseh Fonds Bayern GmbH	N439/2001
	Germany	Förderung von Film- und Fernsehproduktionen in den Bundeslän- dern Berlin und Brandenburg: Filmboard Berlin-Brandenburg GmbH	N701/2001
	Germany		N639/01
	Germany		N727/01
	Germany		N767/01
2002	Belgium	Aides d'État à la production cinématographique et audiovisuelle belge - régime dit du "tax shelter" cinématographique	N410/02 (CP77-2002)
	Germany		N549/02

2003			N532/2003
	Germany	Förderung der Filmkulturwirtschaft im Bundesland Nordrhein- Westfalen: "Filmstiftung NRW "	N44/2003 (ex CP 172/01)
	UK	Support for film and television production in Northern Ireland: the Northern Ireland Film Production Fund	N353/2003
2004	France	Régimes d'aide au cinéma et à l'audiovisuel	NN 84/2004 et N 95/2004
	Germany	Förderung von Film- und Fernsehproduktionen in den deutschen Ländern: Verlängerung der Beihilferegelungen N 439/01, N 440/01, N 639/01, N 701/01, N 727/01, N767/01, N 549/02 und N 44/03.	N41/2004
2004	Spain	Ayuda pública a Espacio Editorial Andaluza Holding, S.L.	N458/04
	Ireland	Tax relief for investment in film	N387/2004
2005	France	un régime d'aide à la création audiovisuelle innovante	N261/2005 du 9 novembre 2005
	Poland	Polish audiovisual fund	N505/2005
	UK	UK film tax incentive	N461/2005
2006	Germany	FilmFinanzierungsFonds- Hessen-Invest-Film	N103/2006
	UK	Extension of the Northern Ireland Film Production Fund (originally approved as State aid N 353/03)	N 504/2006
	UK	"Screen East Content Investment Fund"	N194/2006
	Ireland	Tax relief for investment in film - Modification of scheme N 387/04	N151/2006
	Slovakia	Individual aid for audiovisual production in favour of SEN FILM s.r.o	N297/06
	Slovakia	Individual aid for audiovisual production in favour of ALEF Film & Media group s.r.o	N281/06
	Slovakia	Individual aid for audiovisual production in favour of TaO Productions, s.r.o.	N282/06
	Slovakia	Individual aid for audiovisual production in favour of JAKUBISKO FILM s.r.o.	N393/06
	Slovakia	N 280/06; Individual aid for audiovisual production in favour of JMB Film & TV Production Bratislava sro	N280/06
	Slovakia	Individual aid for audiovisual production in favour of MIRAS sro	N283/06
2007	Spain	Aid for the creation and production of films in the Basque country	N562/2007
	Germany	Filmförderung Hamburg - prolongation of N 411/2004	N243/2007

	Germany	Cultural film support Schleswig-Holstein Prolongation of N 411/2004	N250/2007
	Belgium	Mesures fiscales en faveur de la production d'oeuvres audio-visuelles(régimz tax-shelter) BE	N121/2007
	Spain	aid to short films in Spain	N564/2007
	Czech Republic	Aid for Eurovize - audiovisual production - CZ	N40/2007
	Germany	Film Funding- Hessen- Prolongation of aid N 411/2004	N238/2007
	Germany	Medienboard Berlin-Brandenburg GmbH- Film funding- prolongation of N 411/2004	N236/2007
	Germany	Filmstiftung NRW - Prolongation of aid N 411/2004	N230/2007
	Czech Republic	Aid to Silver Screen for audiovisual production - Czech Republic	N41/2007
	Germany	Mitteldeutsche Medienförderung GmbH - Film funding, prolongation of N 411/2004	N231/2007
	Germany	Film support Bayern Prolongation of N 411/2004	N248/2007
2008	UK	Northern Ireland Film Production Fund	N214/2008
	Italy	Tax incentives for film production - Italy	N595/2008
	Cyprus	Cinema support - Cyprus	N580/2008
2009	Austria	Fonds zur Förderung des nichtkommerziellen Rundfunks (NKRF)	N632/2009
	Germany	Filmstiftung NRW - Prolongation of aid N 230/07	N717/2009
	Spain	Valencian film production support	N108/2009
	Spain	Basque film support scheme	N280/2009
	Belgium	Régime d'aides en faveur de la production d'oeuvres audiovisuelles	NN33/2009
	Malta	Financial Incentives for the Audiovisual Industry Regulations	N613/2009
	Germany	Deutscher Filmförderfonds	SA.29732 N608/2009
	Germany	Film funding in Hamburg and Schleswig- Holstein	N612/2009
	Austria	Fonds zur Förderung des privaten Rundfunks (PRRF)	N631/2009
	Germany	Aid guidelines of the Medienboard Berlin- Brandenburg GmbH	N598/2009
	Germany	Extension of Bayern film support scheme	N549/2009
	UK	UK Film Council production & development funds	N580/2009
	Germany	FilmFinanzierungsFonds - HessenInvestFilm	N476/2009
	Slovenia	Slovenian Film Fund	N454/2009
	Spain	Andalusia - Film Support 2009-2012	N420/2009
	Italy	Digital cinema tax credit	C25/2009, N673/2008
	Spain	Spanish national film support scheme	SA.29638 2009/N
2010	Italy	Film production in South Tyrol	N498/2010

	Netherland	New regulation for the support of feature films in the Netherlands.	N371/2010
	UK	Northern Ireland Screen Fund ("the Screen Fund")	N550/2010
	Czech Republic	Czech Film Support Programme	N98/2010
	Spain	aid to short films in Spain	SA.32028
	Spain	Aid to the Galician audiovisual production	N485/2010
	Germany	Nordmedia Fonds - Film Funding in Niedersachsen and Bremen - Prolongation of aid N229/2007	N35/2010
	Spain	Basque film support scheme	N102/2010
	Austria	Austrian film support scheme	N96/2010
	Spain	Aid for producing of documentary films- Catalonia	SA.31989 2010/N
	Slovenia	Co-financing of projects from the budget fund for audiovisual media in Slovenia – prolongation of the scheme	N332/2010
	Spain	aid to short films in Spain	N205/2010
	Spain	Basque film support scheme	N406/2010
	France	Aides aux nouvelles technologies en production - volet relief (NTP-relief)	N356/2010
	Belgium	Steunmaatregelen Vlaams Audiovisueel Fonds, verlenging van bestaande, goedgekeurde, steunregeling in afwachting van aanmelding van een geactualiseerde steunregeling in de loop van 2011	SA.32087 2010/N
	Germany	Förderung der Filmkulturwirtschaft in Nordrhein-Westfalen - Filmstiftung NRW - to be defined	N489/2010
	Italy	Cinema Toscana	N221/2010
	Austria	Fonds zur Förderung des Nichtkommerziellen Rundfunks (NKRF)	N73/2010
	Austria	Fonds zur Förderung des privaten Rundfunks (PRRF)	N72/2010
2011	Belgium	Staatssteun ten gunste van producenten van audiovisuele werken.	SA.33098
	Spain	Basque film support scheme	SA.32585
	UK	Northern Ireland Screen Fund (2012 to 2016)	SA.33920
	Spain	Basque film support scheme - modification	SA.33706
	Italy	Tax incentives for film production - Italy	SA.32926 2011/N
	Slovakia	Audivisual Fund	SA.32836 2011/N
	Italy	Italian film tax incentives for film production, investment, and distribution (prolongation)	SA.32927 2011/N
	Denmark	Scheme for the production and broadcasting of Danish TV drama and TV documentary programmes	SA.32479 2011/N
	Spain	Basque film support scheme	SA.34105 2011/N
	Spain	Catalan feature films scheme	SA.33314 2011/N

	France	Aides aux oeuvres cinématographiques de courte durée	SA.33591 2011/N
	France	Fonds pour l'innovation audiovisuelle - volet développement	SA.33490 2011/N
	France	Aides aux cinémas du monde (aide sélective à la production cinématographique)	SA.33880 2011/N
	France	Extension of French film support schemes	SA.33370 2011/N
2012	Austria	Austrian film support scheme	SA.35656 2012/N
	Italy	Lazio regional film support scheme	SA.35678 2012/N
	Italy	Trentino film production scheme	SA.34554 2012/N
	France	Tax credit for foreign films - extension	SA.35633 2012/N
	Belgium	Screen flanders - Steun aan audiovisuele werken	SA.34722 2012/N
	Lithuania	Lithuanian film tax incentive.	SA.35227 2012/N
	Germany	Deutscher Filmförderfonds	SA.35114 2012/N
	Italy	Lazio regional film support scheme	SA.34030 2012/N
	Latvia	Extension of the Latvian film support scheme	SA.35398 2012/N
	Malta	Financial Incentives for the Audiovisual Industry Regulations-Prolongation	SA.35236 2012/N
2013	Italy	Tax incentives for film production, investment, and distribution - prolongation	SA.37922
	Germany	Extension of Bayern film support scheme	SA.37275
	Belgium	Verlenging van de beheersovereenkomst tussen de Vlaamse Gemeenschap en het Vlaams Audiovisueel Fonds 2011 - 2013 (Filmfonds)	SA.38083 2013/N
	Austria	Privatrundfunkfonds (PRRF); Fonds zur Förderung des privaten Rundfunks	SA.36127 2013/N
	Hungary	Hungarian film support scheme (prolongation of SA. 25613 - N 202/2008)	SA.36579 2013/N
	Slovakia	Individual aid to MPhिल्ms s.r.o.	SA.35817 2012/N
	Germany	Nordmedia Fonds - Film Funding in Niedersachsen and Bremen - Prolongation of aid N 35/2010	SA.35957 2012/N-2
	Italy	Cinema Toscana - Prolongation of aid N221/2010.	SA.38084 2013/N
	Spain	Basque film support scheme - prolongation	SA.36100 2013/N
	Netherlands	Modifications to the Supplementary Regulation for Film Investments	SA.37124 2013/N

	France	Crédit d'impôt audiovisuel	SA.37326 2013/N
	Germany	Baden-Württemberg film scheme – amendments	SA.38449 2014/N
	Austria	Prolongation of the Austrian film support scheme Filmstandort Österreich	SA.37679 2013/N
	Estonia	Modifications to the Estonian film support scheme (N742/07)	SA.37791 2013/N
	Germany	Filmförderungsgesetz	SA.36753 2013/N
	Germany	FilmFinanzierungsFonds - HessenInvestFilm	SA.38000 2013/N
	France	Aides aux nouvelles technologies en production - volet relief (prolongation)	SA.37416 2013/N
	Czech Republic	Czech cinematography support scheme	SA.36106 2013/N
	Belgium	Mediafonds	SA.37869 2013/N
	Estonia	Support of the audiovisual sector in Estonia	SA.37526 2013/N
	France	Crédits d'impôt cinéma et audiovisuel – modifications pour l'année 2013	SA.36148 2013/N
		Crédit d'impôt cinéma et audiovisuel et crédit d'impôt pour les œuvres cinématographiques et audiovisuelles étrangères – prolongation 2014,	SA. 37443 & 37444 2013/N
	France	Crédit d'impôt pour les œuvres cinématographiques et audiovisuelles étrangères – modifications pour l'année 2013	SA.36521 2013/N
2014	Spain	Basque film support scheme - modifications	SA.38212 2014/N
	Belgium	Modifications du "tax shelter" pour soutenir des oeuvres audiovisuelles	SA.38370 2014/N
	Belgium	Fonds FWB-RTBF pour les séries belges	SA.37479 2014/N
	Spain	Modification of Spanish scheme for tax deductions in cinema and audiovisual productions	SA.40170 2014/N
	France	Crédit d'impôt cinéma et audiovisuel	SA.38539 2014/N
2014	Croatia	Investment incentives for the production of audiovisual works	SA.38392
	France	TST – services de rattrapage	SA.38446 2014/N
	Ireland	Irish Film tax relief support scheme modifications	SA.38959 2014/N
	Germany	German film fund	SA.38418 2014/N 2014/C
	France	Crédit d'impôt dépenses France	SA.38442 2014/N

	Italy	Tax incentives for audiovisual works	SA.39375 2014/N
2015	France	Crédit d'impôt international - modifications	SA.42428
	France	Crédit d'impôt cinéma et audiovisuel - modifications	SA.42419 2015/N
	Spain	Tax deduction for film and audiovisual productions in the Province of Biscay	SA.40885 2015/N
2016	France	Crédit d'impôt cinéma et audiovisuel et Crédit d'impôt pour les oeuvres cinématographiques et audiovisuelles étrangères – modifications et prolongation	SA.43140 2016/N
	France	Aides financières à la promotion à l'étranger des oeuvres audiovisuelles	SA.44093 (2016/X)
	France	Aid schemes for audio-visual works (Art. 54)	SA. 44094
	Germany	Aid schemes for audio-visual works	SA.44101
2017	UK	High-End Television Tax Relief - prolongation	SA.48771
	Italy	Tax credit for film production companies	SA.48021 2017/N
	France	Aides financières automatiques à la production et à la préparation des oeuvres cinématographiques de longue durée (FR)	SA.48699 2017/N
	France	Aides financières automatiques à la production et à la préparation des œuvres audiovisuelles - documentaire de création et fiction (FR)	SA.48907 2017/N
	Italy	Tax incentives for the production of cinematographic works (IT) - modifications	SA.49294 2017/N
	Italy	Tax incentives for the production of audiovisual works (IT) - modifications	SA.49296 2017/N
2018	Hungary	Further Amendment of the Hungarian Film Support Scheme	SA.50768 2018/N
2019	Ireland	Ireland Irish Film Tax Relief Support Scheme (modification)	State Aid SA.53399 (2019/N)

# APPENDIX A. ANALYSIS OF COMMISSION DECISIONS

## **Commission decisions on State aid regimes for audiovisual industries**

The purpose of the within analysis of Commission decisions on State aid regimes is to identify key trends in the development of policy in order to identify what is termed multiple instrumentalities. To this end, the within analysis is undertaken within a critical political economy perspective. It is emphasised that the Commission decisions are made within a soft law policy context, where (post the introduction of the 2003 and 2011 Cinema Communications) the Commission implements its own policy, subject to the *acquis communautaire* of the EU. While this thesis does not explicitly address the nuances of the concept of soft law governance of the State aid regime, it is interrogated within a Regulation School perspective. This approach considers the context of embedded neoliberalism, a cultural and creative industries discourse, including in particular a consideration of the process of globalisation and an increasing recognition of significance of State aid to attract inward investment. The broad changes in the State aid regime from an EU perspective are taken into account with consideration of the tightening of State aid and the conceptualisation of aid as ‘good’ or ‘bad’.

This analysis identifies some key trends and crucial ‘moments’ in the development of State aid policy towards audiovisual industries within Commission policy. These moments include the introduction of the Maastricht Treaty, with the

simultaneous recognition of the transversal nature of culture and the emphasis on the concept of subsidiarity. Key policy issues are the introduction of the 2001 and 2013 Cinema Communications. The various decisions and policy measures are developed to address the evolution of the audiovisual sector. The number of cases analysed within each wave and overall is imprecise as some decisions are joined together for approval and note that not every case is analysed here.

- The first wave: 1988 to 1998: primarily concerned with restriction of intra-community trade
- The second wave: 1998 to 2001: commencing with the pivotal decision N3/98, the second wave refers to period within which N3/98 is applied by the Commission and the implementation of the 2001 Cinema Communication. This phase shows precedence of cultural rationales but acknowledging industrial elements (applying N 3/98, to schemes in Netherlands, Ireland, Sweden, Germany);
- The third wave: 2001 to 2013: from the introduction of the 2001 Communication identified by a shift to a primarily interventionist approach in the cultural nature of reliefs to the introduction of a more pragmatic approach in the 2013 Communication (approximately 113 decisions)
- Fourth wave: 2013 to date: (post the introduction of the revised soft law policy in 2013) where the Commission's less interventionist stance is driven by the requirements of the creativity framework and can be considered a pragmatic approach (approximately 38 decisions).

**First Wave of State aid decisions:**

The first wave of decisions by the Commission illustrates the early policy approach of the Commission towards the concept of state aids for audiovisual industries. Commencing with the Greek decision in 1988 which considered the dual economic and cultural function of aid to the film industry but reinforced the significance of other freedoms – free movement of workers and services. The identification of cases has been traced between various decisions, and supplements work by Bellucci 2010.

The Greece case from 1988 (89/441/EEC) concerned the Greek film industry selective production support law which entered into force in 1986. The Commission assessed the conditions of the aid for compatibility with the fundamental freedoms guaranteed by the EU Treaty. It was considered discriminatory on the basis that the aid was restricted based on nationality. Crucially, the Commission considered that the aid ‘does not simply establish aid for the Greek film industry, it restricts, needlessly for the purposes of the aid, the possibilities for nationals of other Member States’ to take part in the production. (para IV).

The decision on the Irish production loans policy N32/97 (decided under NN49/97 as not notified) offers some useful nuances on Commission early policy towards supports for the audiovisual sector. While there were conditions around requiring a substantial Irish creative input, and be based on a script reflecting Irish creativity, these conditions do not include nationality restrictions – the director, producer nor certain administrative staff are not required to be Irish. The Netherlands decision 486/87 refers to minimum necessary to support cultural production. In this decision, the Commission are concerned about the issue of inter- Member State trade and the protection of the internal market. The Commission reiterate, as they did in the Irish N32/87 and N817/96 that the audiovisual aids are primarily intended for the creation of

audiovisual products as vectors of national culture and not for development of industrial activity, while the aids may have a stimulus effect. The Netherlands decision highlights that the approved aid measures are to aid the production of culture and not the national industry, illustrated by the fact that the aid is not limited only to expenditure on national territory. This is, it is contended, a difficult distinction to make and is one of degrees, and, given the rise in co-production from the early state aid regime times to later. Co-productions have both shaped the nature of State aid regimes and led the Commission to the pragmatic recognition that aid for industry is aid for culture and aid for culture is aid for industry. The attempt to distinguish between culture/industry is problematic when thinking of audiovisual production which requires a degree of infrastructure.

### **Second Wave of State aid decisions**

A significant 1998 Commission investigation regarding the revisions to the audiovisual State aid regime in France represents a pivotal point in Commission policy towards the audiovisual industries (N 3/98 obtained from Commission on 22 January 2018 under FOI request (Commission, 1998a)). Per Bellucci, N 3/98 can be seen as the commencement of the second phase (2010). In N 3/98, the Commission objected to certain revisions to the French aid scheme (previously approved in N 7/92). The revisions linked aid to the use of French technical cast and crew. Once again, as in the 1988 Greek case, the Commission objected to nationality-based restrictions. Significantly, the Commission took the opportunity in N 3/98 to delineate a general set of compatibility criteria clarifying how the cultural derogation under Article 107(3)(d) should be applied in practice. The four criteria were:

1. Aid should be directed to support the creation of cultural products with responsibility for devising criteria to ensure that the supported production qualified as “cultural” left to the individual Member State.
2. Producers were permitted to spend up to 20 per cent of the supported film budget outside the Member State offering aid. In other words, under the “territorialisation” criterion, the Commission permitted a Member State to insist that 80 per cent of the budget for a supported project be spent within the borders of that Member State.
3. Aid “intensity” (i.e., the amount of the supported project budget which could be funded by state aid) was limited to 50 per cent. This was intended to retain some scope for ‘stimulating normal commercial initiatives inherent in a market economy’ (para. 2.3(b) 2001 Communication).
4. Aid could not be directed at specific elements of the filmmaking process (e.g. post-production) to ensure that aid schemes did not have the effect of stimulating such activity (to the detriment of parallel activities in other Member States) by attracting productions that specifically seek to exploit such supports.

In contrast to the Greek case where the Commission was simply concerned with possible breaches of the principle of non-discrimination and free movement rules, N 3/98 is the first case where the Commission actively invoked Article 107(3)(d) to give consideration to the broader cultural implications of State aid regimes. The case is significant not merely in its recognition that cinema is *both* industrial and cultural but that the industrial and the cultural are mutually constitutive. Decision N 3/98 explicitly outlines that State aid may serve to sustain an industry in that the existence of a minimum audiovisual production infrastructure is a prerequisite for the creation of cinematic *cultural* products. In N 3/98 the Commission held that:

As regards the industrial aspect, it can be seen that, by means of these aids for a product (the film), the audiovisual sector will receive support comparable to operational aid, which is nevertheless necessary to bring to bear a cultural objective, namely audiovisual creation. For these aids to industry, it can be argued that a minimum operational structure must exist in the countries themselves to enable cultural creation. Therefore, if these operational aids are subject to the obligation for their beneficiary to spend the budget in the territory of the Member State, they are compatible with the common market only insofar as that obligation is required to create and *to maintain the minimum industrial fabric necessary for the minimum audiovisual production* in the Member State, without which any production of the desired cultural products is possible. (Commission, 1998a, p.10, my emphasis)

N 3/98 is significant in its recognition that the spatial practices of the Commission in protecting the internal market against threats to intra-community trade are subject to the pragmatic recognition that individual Member States wish to support their indigenous audiovisual industrial space for multiple reasons including industrial, social and cultural, i.e., (in Lefebvrian terms evoking the process of spatialization) constructing the perceived space of policy, the conceived space of commodified production and the lived space of cultural representation. The Commission recognises the necessity of providing an 'industrial fabric' to support audiovisual production. N 3/98 permits a *degree* of territorialisation (i.e., national concentration of State aid spend) to the extent that it is necessary to sustain an infrastructure for cultural production. Territorialisation clauses are justified in terms of shoring up national industries to create a 'strong' national cinema that, in turn, protects the European film industry.

In the Netherlands decision (Commission, 1998b) the Commission considered that ‘audiovisual aids are *primarily* intended for the creation of audiovisual products as vectors of national culture and not for the development of an *industrial* activity’ (my emphasis, p.10). The decision echoed N 3/98 in acknowledging that market forces in individual Member States were insufficient to ensure cultural production of the desired type, and that cultural production *may* require a *minimum* of operational infrastructure, thus justifying some territorial conditions to realise a cultural goal. This illustrates a tension between the supranational goals of the EU – including the protection of the internal market – versus the national goal of promoting a national industry. The Commission pragmatically acknowledged that weak national film industries lead to a weak EU film industry, thus acknowledging that some national support is necessary for the common EU good.

The Commission reiterated its position that audiovisual aids are *primarily* aimed at the creation of audiovisual products as representational of national culture in the German State aid decision (Commission, 1999b). It also acknowledged that aids operate as a stimulus for the film industry (ibid, p. 9). In the Irish aid regime decision, the Commission acknowledged that incentivising private sector investment in audiovisual production was justified to provide some cushion against the inherent risks of investment in film production (Commission, 1999a). This illustrates attempts at achieving balance between the goal of protecting the internal market from competition between Member States and the goal of promoting cultural diversity. In the Swedish decision, the Commission expressly noted the role of national state support schemes in ensuring the expression of cultural and creative capacity, thus ensuring cultural diversity (Commission, 2000). This emphasised the Commission’s duty to protect the internal market, wherein the Commission held that territorial clauses were only compatible with the common market if the obligation was ‘to create and maintain the operational structure *strictly*

*necessary* for a *minimum* of audiovisual production in the Member State, without which it would not be possible to produce the desired cultural products' (para.51, my emphasis).

### Third Wave of State aid decisions.

This wave covers the period between the introduction of the 2001 Communication and the final implementation of the 2013 Communication. Given that this is a relatively long period, there are several shifts in emphasis across Commission policy, as evidenced by a number of different significant decisions.

During this period, the Commission's policy shifted in emphasis considerably, and thus this is not a strict phase, but a non-linear, fluctuating wave of decisions. With this in mind, analysis of the relevant corpus of decisions highlights peaks and troughs and emphasises the Commission's policy position leading into the consultancy on the 2013 Communication. It must be remembered that the 2013 Communication was under consultancy for a number of years. In general, the Commission's policy emphasis shifted from insistence upon a distinction between aid for a national culture and aid for development of industrial activity, to what can be termed a more pragmatic (or neoliberal/marketised) acceptance of the intertwined nature of a national culture and a national industry. However, the lack of interrogation of the nature of such industries and the form of culture that is supported is (as we can tell from a critical political economy of communications approach) problematic.

In the Slovenia decision, the Commission stated, 'aid for audiovisual policy is intended, in particular, to create audiovisual products as means of transferring national culture, but not aid for development of industrial activity' (Commission, 2005a, para.16). This approach is echoed in the decision on German aid, where the Commission stated that 'aid ... is primarily intended for the production of audiovisual works as a vehicle of national culture and not for the development of an industry'(Commission, 2004b,

para.12) while acknowledging that ‘aid also has the *indirect side effect* of stimulating the film-producing industry’ (ibid, para. 12, my emphasis). In the decision on UK/NI aid the Commission stated that ‘the eligibility criteria for projects are primarily cultural’ (Commission, 2003, para.7) and ‘aid for audiovisual production is aimed *primarily* at assisting the creation of audiovisual products as vehicles for the national culture and not at supporting or developing a national industrial activity’ (ibid, para. 17, my emphasis). The Commission again acknowledged that ‘such aid also has the corresponding *indirect* effect of stimulating the film-making industry’ (ibid, para.17, my emphasis). The Commission acknowledged the symbiotic relationship between cultural and industrial goals but emphasises the primacy of the cultural rationale for aids, rather than the industrial rationale.

Within this ‘third wave’, there is a discernible shift in emphasis from the earlier cases analysed in the preceding paragraph to later cases within this wave. The 2012 Belgium Flanders decision illustrates the development of Commission thinking between 2001 and 2012 – hence the use of the term ‘wave’ to describe this period. The verification system for qualifying for aid referenced the ‘economic viability of the financing plan’ (Commission, 2012b, para.8). The Commission accepted the inclusion of economic aspects as legitimate given that contribution of the quality of the local film sector contributes to the preservation of cultural diversity – which is the overarching requirement of Article 167. Commission decisions on State aid cases in the audiovisual arena are driven by a complex set of factors including both the cultural and economic rationales of cultural policy, the aim of cultural diversity and the interplay between the industrial and cultural policies of individual Member States and the protection of the internal market from intra-Community competition. The Commission’s intervention in specific economic aspects of the proposed aid in the Belgian 2012 case is illustrative of

its increasing recognition of the significance of the industrial fabric provided by such aids to the local film industry, in this case the small Flemish film sector.

In the Austria decision, the Commission acknowledged the role of territorialisation clauses in enabling ‘artistic and technical know-how that allows for constant independent intellectual creations in the form of original creative cinematographic works’ (Commission, 2007a, para.15.6). The 2001 Communication permitted territorialisation clauses for spend of up to 80 per cent of budget in the granting territory. The “proportionality” of such clauses could be questioned, as territorialisation clauses of up to 80 per cent of budget go above and beyond what could be considered strictly necessary to ensure minimum industrial infrastructure within a Member State.

The development of a pragmatic approach to State aid regimes is identifiable in the assessment of nationality criteria in aid regimes. In the 2006 German aid decision, the Commission accepted that ‘although the eligibility tests do contain certain criteria which explicitly refer to German origin, this is not discriminatory since ‘German’ does not relate to nationality’ but can refer to ‘residence or to a cultural background’ (Commission, 2006b, para.27) illustrating a nuanced approach reflecting the development of the Commission’s policy in this area. Similarly, the Austria decision acknowledged that the requirement for Austrian or EEA cast and crew was acceptable given the impact of creative European “talents” on the cultural content of the film (Commission, 2010).

The Commission’s decision on the Maltese scheme interrogated the operation of a points-based cultural test to allow the selection of supported productions on the basis of their culturally Maltese/European nature (Commission, 2007b). The Commission expressed concern about the prioritisation in the cultural test of the creative contribution and use of Maltese cultural resources, holding that ‘arguably this section does not

necessarily refer to the cultural content of the supported production as such' (ibid), thus setting up an artificial distinction between cultural and creative content. Only one of three sections contained criteria that are 'based on overtly cultural considerations' (ibid) with the other sections relating to creative requirements, including international distribution and location-based shooting. This decision illustrates that the Commission's narrow focus on cultural rationales for justification of national aid regimes is explicitly framed around the protection of the free movement rationales of the internal market. In the Malta case, sufficient points were required for what the Commission deemed were 'overtly cultural considerations' under Section A (ibid, para. 34) and the test was accepted as constituting 'verifiable national criteria' complying with the 2001 Communication requirements (ibid, para. 36) the Commission's in-depth analysis of the cultural test can be seen as a form of warning-shot to other Member States. The artificial distinction between cultural and creative conditions in the eyes of the Commission can be seen as a reductive/overly simplistic approach to the complexity of audiovisual production.

In the Basque/Spain decision the Commission acknowledged that, despite the specificity of the Basque language and culture, a proposed aid focused on Basque culture may have, at least some effect on intra-community trade given that the beneficiary producer companies may be active in several EU Member States and therefore the measure does constitute State aid (Commission, 2009a). The Commission's conservative approach to what may constitute a distortion of trade illustrates that the Commission is primarily concerned with the protection of the internal market. This decision echoes wider State aid policy which takes a narrow interpretation of what constitutes aid and illustrates how the Commission instrumentalises State aid for its own purposes.

#### Fourth Wave of State aid decisions

Following the adoption of the 2013 Communication, as analysed in Chapter Five, the subsequent decisions of the Commission illustrate the multiple instrumentalities to which Commission policy is subject.

The Commission considered whether schemes are compliant with non-discrimination on nationality grounds in a number of cases. Post-2013 we see a few amendments to notified schemes to ensure that proposals are in line with the 2013 Communication (e.g. the Austrian scheme in Commission, 2014a and Belgium in Commission, 2014c). The 2014 Belgium decision required that associated screenwriters must have an understanding of Belgian Francophone culture, this condition (per the Belgian authorities) did not imply nationality or place of residence (Commission, 2014c). This is a pragmatic reflection of the increasingly globalised nature of the film industries. This approach is also seen in the 2014 Croatian aid scheme decision (Commission, 2014d). The requirement for employment of Croatian residents did not discriminate on grounds of nationality but ensures the ‘cultural and educational objectives of (re)-building Croatian skills and contributing to the transfer of know-how and expertise’ (ibid, para. 35).

The Commission’s approach to State aid is also seen in a decision on a German State aid case (Commission, 2016). The decision of the Commission to initiate proceedings in this matter illustrates the importance of non-discrimination on grounds of nationality. This case concerned funding of video on-demand distribution of films (Commission, 2014g, 2016). This case is one of only two audiovisual State aid cases where the Commission took a decision to initiate proceedings under the Treaties (the other being the Italian case of digitalisation (Commission, 2017d)). Germany notified an amendment to an existing scheme that proposed, to finance the scheme, a levy on video on demand providers located outside Germany, incompatible with Article 110 TFEU,

which prohibits levies on imported products and not domestic products. An amendment to the Audiovisual Media Services Directive (AVMSD) clarified that Member States have the right to require providers of on-demand audiovisual media services under their jurisdiction to contribute financially to the production of European work (i.e., the ‘Netflix tax’). The Commission held on the basis of the 2016 proposal that the proposed levy was compatible with Article 110 and Article 107 (3)(d) TFEU (Commission, 2016).

With reference to application of the 2013 Communication by analogy to the videogames sector, the decisions of the Commission post-2013 illustrate a certain confusion within the EU regarding the nature of the videogames industries. The decision to exclude videogames from the remit of the 2013 Communication is at odds with other European policies, such as Creative Europe 2014-2020 and Horizon 2020, for example. The Commission, as was outlined in the section interrogating the possible extension of the scope of the 2013 Communication to include videogames, has expressed doubts as to the intrinsic or inherent nature of videogames as cultural, thus requiring additional ‘proof’ of the cultural rationale for granting of State aids. The development of this policy is at odds with the Commission’s increasing recognition of the links between culture and industry at the heart of audiovisual industries (albeit, it is argued, Creative Europe 2014-2020 provides for a narrow view of videogames, and provides little in the way of real funding for videogames).

While many submissions stated support for including videogames within the remit of the Communication, little if any market or industry evidence was provided to support this position. While theoretical arguments around the cultural nature of videogames may be of interest, and ostensibly required under the terms of the TFEU, in fact, the Commission needed market evidence of the requirement for cultural support. This evidence was more forthcoming in the UK application, which may be a reason for the granting of approval for the tax relief.

Despite the fact that the 2013 Communication was applied by analogy in the UK Video Games Tax Relief (UK VGTR) case, the Commission assessed the proposed cultural test in detail, concluding that the test would ensure that the scheme only covers distinctively cultural games (Commission, 2014e, para.27). The Commission considered the proposed aid justified given that the objectives of the fund were to make ‘cultural products that are likely to be uneconomical, commercially viable, thereby promoting the production of new cultural products that would not have been made in the absence of the tax relief’ (ibid, para.26). However, the Commission recognised the necessity of sustaining an industry infrastructure and the need to develop ‘skills for the sustainable production of cultural products, relevant British/EEA video games’ (ibid, para.26). Thus, we see the dual nature of the rationale for approving of aids, both cultural and industrial. However, the problematic mismatch between the cultural nature of arguments made to the Commission to justify the granting of VGTR and the reception within the UK, which highlighted the industrial benefits to the industry has been highlighted by Mac Sithigh (Mac Sithigh, 2014). The UK approach can be seen as a form of hypercommodification of the cultural aspect of videogames, in keeping with creative industries discourse at play within the UK.

The Bavarian authorities proposed introducing a State aid regime for videogames upon the basis that cultural games were subject to market failure through domination by large international productions in the marketplace and in digital games stores (Commission, 2017c). The approved aid scheme is based on a selective points-based test divided into three groups. Under the test, points can be gained for cultural content and context (Group 1) use of cultural and creative hub, (including requirement for familiarity with Bavarian culture) (Group 2), and artistic creative and technological innovation (Group 3). Despite the potential restrictiveness of the eligibility and selection criteria citing familiarity with Bavarian cultural character, these criteria were acceptable to the

Commission as not being on nationality/residence grounds. Furthermore, it is evident that the Commission holds videogame regimes to a higher standard than regimes for the film industry. In this decision, the Commission accepted that ‘only digital games of high-quality, which are culturally or educationally valuable’ (ibid, para.43) can qualify for aid. Finally, the Commission did not analyse the technologically innovative element as not cultural but instead stated that the test ‘puts emphasis on the cultural content of the game, its innovative character and its cultural affiliation with the Bavarian games and/or educational community’ (ibid, para.43). This is in stark contrast to the first French decision approach to innovation which discounted the technological innovation criteria in the points-based cultural test.

The Danish scheme aims to provide an incentive for the production of Danish cultural and educational games (Commission, 2017b, para.2.1(2)). Once again, the aid was justified by identification of market failure for ‘culturally significant games’ (ibid, para.2.1(3)). The proposed aid took the form of direct grants and is subject to a cultural test. The game ‘must contain a unique artistic or technical effort that contributes to the advancement of Danish game development as an art form and a culture’ or ‘in other ways have a substantial and significant connection to Danish gaming art or gaming culture’ (ibid, para. 2.4(18)). The application is assessed on a basis of cultural value, originality, implementation, and responsibility. The Commission found that the aid is necessary, proportionate and appropriate to reach cultural objectives holding that ‘the proposed scheme promotes the development, production, distribution and advancement of Danish digital games with a cultural and educational content as opposed to games that are purely for entertainment’ (ibid, para.55). This distinction between cultural games and entertainment games is an overly narrow view of the value of the videogames industry to wider cultural life. Future developments in the area of Commission State aid policy towards the videogames industry will be of interest (in this regard, it is of great interest

that the Olsberg SPI Nordicity Economic Analysis of S481 suggested extending S481 tax relief to videogames – a proposal that has not yet been implemented in Ireland, “OSN2017”).

A brief contrast to the funding of videogames under the Creative Europe scheme illustrates the confusion at the heart of Commission policy in this area. Creative Europe 2014-2020 illustrates a shift to the creativity framework, in that games are required to have narrative, and are subject to other conditions such as match funding, and the requirement that the applicant have already published a game, and have been established, all of which promote a particularly commercially focused approach (albeit this is undermined by the limited funding for Creative Europe 2014-2020 and particularly videogames within this scheme). In contrast to the State aid regime that takes a narrow view of what constitutes a suitable videogame for funding, the Creative Europe framework is driven by different requirements. The 2013 Communication provides that ‘not all games necessarily qualify as audiovisual works or cultural products’ (Commission, 2013, para.24). The lack of axiomatic recognition of videogames as cultural is significant as an indicator of the complex instrumentalisation of a particular part of the audiovisual sector. The privileging of film, certain forms of television production (e.g. the Irish S481 tax expenditure specifically excludes reality TV) and the exclusion of digital games from the scope of the 2013 Communication illustrates how policy is used to reach specific goals.

The principle of subsidiarity and the concept of ‘manifest error’

Under the principle of subsidiarity, as applied by the Commission, it is up to a Member State to set the parameters of the cultural test required to qualify for State aids within its own jurisdiction. The Commission is restricted to checking for ‘manifest error’

under Article 258 of the Treaty on the Functioning of the European Union (TFEU) (ex Article 226 of the Treaty establishing the European Community - TEC). There have been a number of court cases regarding the concept of a manifest error. Most of the court cases have concerned the scope of a Service of General Economic Interest (SGEI) (including *Altmark*, *BUPA*, *Fred Olsen*)<sup>xxi</sup>. A SGEI is a public service that is of particular importance to citizens that would otherwise not be provided, and is thus worthy of support through forms of state aid (for example, education, healthcare, broadband services) and are regulated under Article 107 of the TFEU. Paragraph 46 of the Communication on SGEI from 2012 which gives the Member States ‘a wide margin of discretion in defining a given service as an SGEI’ and limits the Commission’s competence to ‘checking whether the Member State has made a manifest error’ (European Commission 2012d). By analogy, these decisions can be applied to the Commission’s role in assessing the cultural test imposed by Member States when assessing compliance with State aid tax expenditure rules.

The *BUPA* case illustrates that ‘Member States have a wide discretion to define what they regard as SGEIs and that the definition of such services by a Member State can be questioned by the Commission only in the event of manifest error’ (para.166).<sup>xxii</sup> However, the Court sounds a note of caution that even though the Member State has a wide discretion when determining what it regards as an SGEI, that does not mean that it is not required to ensure that that mission satisfies certain minimum criteria within the meaning of the EC Treaty and to demonstrate that those criteria are indeed satisfied in the particular case (para.172). The Court held the Member State should ensure satisfaction of the relevant criteria, or otherwise this may constitute a manifest error of assessment. This decision means that the Commission cannot entirely wash its hands of the Member States’ assessment procedure in this matter but may itself be held to be in manifest error, which then allows for intervention by the Court in matters traditionally

held to be in the sole competence of the Commission. It is thus possible, albeit unlikely given the explicit statements of the Commission in the area of State aids for audiovisual industries, that the Commission could, once again, interrogate the nature and extent of the cultural tests implemented by Member States, as it did in the 2006 UK State aid case (Commission, 2006c).



# APPENDIX B. CINEMA COMMUNICATION 2013 PROCESS: SUBMISSIONS

Issues Paper From 20.06.2011 to 30.09.2011	Citizens 5 Public authorities 31 Registered organisations 27 Non-registered organisations 32	submissions: 95	
Draft 1 From 13.03.2012 to 14.06.2012	Citizens 3 Public authorities 43 Registered organisations 37 Non-registered organisations 14	submissions: 97	
Revised Draft From 30.04.2013 to 28.06.2013	Citizens 0 Public authorities 34 Registered organisations 22 Non-registered organisations 27	submissions: 83	275

Information on consultation process available at

([https://ec.europa.eu/competition/state\\_aid/legislation/specific\\_rules\\_archive.html](https://ec.europa.eu/competition/state_aid/legislation/specific_rules_archive.html))

last accessed 22 October 2019. See also

[http://ec.europa.eu/competition/consultations/2011\\_state\\_aid\\_films/index\\_en.html](http://ec.europa.eu/competition/consultations/2011_state_aid_films/index_en.html)

(last accessed 12 August 2019).

Additional materials obtained under FOI to Commission (**date of receipt 21 November 2017- minutes of meetings**)

All have been read/translated, to develop knowledge of issues at play, inform the thematic analysis, and to understand development of policy.

The below are cited directly, but the other submissions (available on Commission website) have been analysed and have informed the development of the thesis.

### **Full citations for those cited directly (in alphabetical order)**

American Assembly. A Contribution to 'Assessing State Aid for Films and other Audiovisual Works', Sept 30 2011, The American Assembly, Columbia University (submitted by Joe Karaganis, Vice President) (American Assembly Issues, 2011)

BFI. British Film Institute. BFI response to draft communication from the European Commission on State aid for films and other audiovisual works. June 2012 (BFI Draft 1, 2012).

CEPI/FIAPF/IVF. Submission in response to the European Commission Issues Paper Assessing State Aid for Films and other Audiovisual Works, September 30 2011. (CEPI/FIAPF/IVF Issues, 2011).

Creative Scotland. Response to the European Commission Draft Communication on State aid for films and other audiovisual works (14 March 2012). (Creative Scotland Draft 1, 2012)

Creative Skillset. Submission re European Commission consultation on State aid for film, (Creative Skillset Draft 1, 2012)

Contribution of the Czech Republic to the draft of the Communication from the Commission on State Aid for Films and Other audiovisual works. (Czechia Draft 1)

Denmark. Contribution from the Danish government on the draft Communication from the European Commissions on State aid for film and other audiovisual works. 12 June 2012. (Denmark Draft 1, 2012)

EFAD European Film Agency Directors. Contribution to the consultation of the European Commission on the draft Communication on State Aid for films and other audiovisual works. June 2012 (CANNES Declaration). (EFAD Draft 1, 2012)

EGDF. Subject: Consultation on Assessing State aid for films and other audiovisual works, 30.9.2011Drr. Malte Behrmann Secretary General EGDF. (EDDF Issues, 2011).

EGDF European Games Developer Federation. Submission to Consultation on Assessing State aid for films and other audiovisual works. 13.6. 2012. Dr Malte Behrmann Secretary General EGDF. (EDGF Draft 1, 2012).

EuFCN European Film Commissions Network. Statement (EU public consultations Assessing State aid for films and other audiovisual works) 13 September 2011. (EuFCN Issues, 2011)

EuFCN European Film Commissions Network. Contribution to the public consultation on the draft Communication from the Commission on film and other audiovisual work. (EuFCN Draft 1, 2011).

European Producers Club. Submission (and Press Release 21 May 2012) (European Producers Club Draft 1, 2012).

Finland, Ministry of Education and Culture, September 30th, 2011, Finland Response, EU Commission's consultation on assessing State aid for films and other audiovisual works (Finland Issues, 2011).

France. Ministry of Education and Culture. Response EU Commission's consultation on assessing State aid for films and other audiovisual works. September 30 2011 (France Issues, 2011)

Germany. Mitteilung der Bundesregierung der Bundesrepublik Deutschland an die Europäische Kommission. 30 September 2011 (Germany Issues, 2011)

Germany. Deutsche Stellungnahme zum Entwurf der neuen Kinomitteilung der EU-Kommission vom 14. März 2012. 1 June 2012. (Germany Draft 1, 2012).

IFB (Irish Film Board). Contribution to the consultation of the European Commission on the Issues "Assessing State aid for films and other audiovisual works" By Bord Scannán na hÉireann / the Irish Film Board ('BSÉ/IFB') September 2011 (IFB Issues, 2011)

IFB (Irish Film Board). Contribution to the consultation of the European Commission on the Communication from the Commission on State aid for films and other audiovisual works. By Bord Scannán na hÉireann/the Irish Film Board ('BSÉ/IFB') June 2012 (IFB Draft 1, 2012)

IFB 30 April 2013 Bord Scannáin na hÉireann/Irish Film Board. Submissions on EU Commission Consultation on draft Cinema Communication dated 30th April 2013 (IFB Revised Draft, 2013)

Netherlands. Nederlandse reactie op discussienota Europese Commissie 'Beoordeling van staatssteun voor films en andere audiovisuele werken'. September 2011 (Netherlands Issues, 2011)

Norway. Royal Norwegian Ministry of Government Administration, Reform and Church Affairs. Public Consultation on the Review of the Cinema Communication. 30 September 2011 (Norway Issues, 2011)

Olswang. Draft Communication from the Commission on State Aid for Films and Other Audiovisual Works Response from Olswang LLP. 13 June 2012 (Olswang Draft 1, 2012).

TIGA. Submission to the Commission on the Communication from the Commission on State aid for film and other audiovisual works. 21 June 2013 (TIGA Revised Draft, 2013).

UK. UK response to the draft Cinema Communication. 14 June 2012 (UK Draft 1, 2012).

### **Additional documentation relating to consultation process:**

European Commission (2009) Press Release. IP/09/138 State aid: Commission prolongs film support rules until end 2012. 28 January 2009 ([Commission, 2009b](#))

European Commission. (2009). Press Release. State aid: Commission prolongs film support rules until end 2012 - frequently asked questions. MEMO/09/33. 28 January 2009 (Commission, 2009c)

European Commission Consultation Document: (2011). The issues Paper: Assessing State aid for films and other audiovisual works. (Issues Paper)

European Commission. (2011). Issues Paper. Press Release. State aid: Commission consults on support to film sector. Brussels, 20 June 2011. IP/11/757

European Commission. (2011). Issues Paper. FAQ. State aid: Commission consults on film support issues – frequently asked questions. Brussels, 20 June 2011. MEMO/11/428.

### **Minutes of Meetings held during consultation process leading to 2013 Communication.**

Minutes of the first meeting of the Cinema Communication Inter-service and Impact Assessment Steering Group on 24 March 2011, 25 March 2011 (Commission Minutes, 2011a)

Minutes of Meeting with EDAF State Aid working group on 11 July 2011 in Brussels on the issues paper regarding a future Cinema Communication)(Commission Minutes 2011b)

Meeting with Cine-Regio State aid subgroup Brussels, 9 August 2011 (Commission Minutes, 2011c)

Meeting with representatives of European associations of producers, distributors, directors and exhibitors Brussels, 7 September 2011 (Commission Minutes, 2011d)

Minutes of 1<sup>st</sup> Multilateral meeting with Member States on 14 September 2011 in Brussels on the issues paper regarding a future Cinema Communication (Commission Minutes, 2011e)

Minutes of Meeting of the Cinema Communication Inter-service and Impact Assessment Steering Group on 8 May 2012 (Commission Minutes, 2012a)

Minutes of 2<sup>nd</sup> Multilateral meeting with Member States on 5 June 2012 in Brussels on the draft Cinema Communication (Commission Minutes, 2012b)

Minutes of the final meeting of the impact assessment steering group concerning the review of the Cinema Communication on 5 July 2012 (Commission Minutes, 2012c)

Minutes of the final meeting of the impact assessment steering group concerning the review of the Cinema Communication on 30 August 2012 (Commission Minutes, 2012d)

Minutes of 3<sup>rd</sup> Multilateral meeting with Member States on 14 May 2013 in Brussels on the draft Cinema Communication (Commission Minutes, 2013)

European Commission (2012). Press release: IP/12/245: State aid: Commission consults on future film support rules. (“Draft 1”). Brussels, 14 March 2012.  
[https://europa.eu/rapid/press-release\\_IP-12-245\\_en.htm?locale=en](https://europa.eu/rapid/press-release_IP-12-245_en.htm?locale=en)

European Commission (2012). FAQ. MEMO/12/186. Brussels, 14 March 2012. State aid: Commission consults on film support issues – frequently asked questions (updated: 15 May 2012). [https://europa.eu/rapid/press-release\\_MEMO-12-186\\_en.htm?locale=en](https://europa.eu/rapid/press-release_MEMO-12-186_en.htm?locale=en)

European Commission (2012). Draft Communication from the Commission on State aid for films and other audiovisual works. (“Draft 1”)

European Commission (2013) Press Release. IP/13/388. Brussels, 30 April 2013 *State aid: Commission consults on new film support rules*. The revised draft Communication

European Commission (2013). Draft Communication from the Commission on State aid for films and other audiovisual works. (“Revised Draft”).



# APPENDIX C. TABLE OF RELEVANT CLAUSES IN VARIOUS DRAFTS OF CINEMA COMMUNICATION

Document	Subsidy race/cultural test	Territorialisation	Scope
2001 Communication	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')(para 2.3(b) 1).	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 for under the scheme' (para 2.3(b)(2)  The Commission considers that aid should be towards the overall budget of a specific film-making project and the producer should be free to choose the items of the budget that will be spent in other Member States. Aid schemes shaped on this basis are deemed to support the creation of an audiovisual product and not to assist the development of an industrial activity. Consequently, this aid is to be assessed under the culture derogation of Article 87(3)(d) EC	Aid supplements for specific film-making activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided (para 2.3(b)(4).

		rather than the industrial derogation of Article 87(3)(c)(para 2.3)	
Issues Paper	<p>To the extent that this use of public subsidies in effect leads to competition with other Member States, this is detrimental both to the sector and to European taxpayers.... Avoiding subsidy races is precisely one of the objectives of the State aid provisions of the Treaty (para 33).</p> <p>To attempt to address this subsidy race, more emphasis has been placed on the criterion that the film has to be a “cultural product” (para 35).</p> <p>However, the Commission’s experience to date suggests that the Cinema Communication criteria are inappropriate for preventing schemes seeking to compete to attract inward investment productions (para 36).</p> <p>It is difficult to identify standard rules which could exclude or at least limit the distortion</p>	<p>The territorial criterion of the existing Communication allows Member States to insist that up to 80% of the production budget of a subsidised film production is spent in the Member State offering the aid. However, this poses consistency problems with the fundamental principles of the Internal Market, which guarantee the free movement of goods, persons, and services (para 45).</p> <p>The main reason why film producers have supported territorial conditions in the past is that they felt that they helped the funding bodies to encourage Finance Ministries to allow more film funding’ (para 51). ‘Limiting the scope of Member States to impose territorial conditions to, for example, 100% of the aid amount could address the legal concerns while maintaining an incentive to support film production (para 52).</p>	<p>In view of technological changes since 2001, the definition of what constitutes an audiovisual work... may need to be reconsidered. The definition of ‘audiovisual work’ covered by State aid criteria of the current Cinema Communication is limited to films and TV production’ (para 42).</p> <p>Some Member States have argued that different types of audiovisual works, in particular interactive works such as video games, should be assessed using the same criteria as for films and television productions. However, these being sectors with different characteristics from those of films and television productions, other State aid assessment criteria may be appropriate (para 43).</p>

	<p>caused by aid to major foreign productions. One possibility could be to limit aid for a single production to a certain amount, assuming that films with very high budgets can obtain the necessary upfront financing commercially. Another possibility could be to insist in addition that all aid, or at least aid beyond this threshold, is granted on condition that it is reinvested or reimbursed in case the production makes a profit (para 37)</p>		
Draft 1	<p>When the 2001 Cinema Communication was adopted, the phenomenon that Member States try to use film aid to attract major foreign film projects to be produced in their territory had not emerged (para 27).</p> <p>1.1.1.1.1.1 For the application of Article 107 TFEU, it is sufficient that there is a threat of distortion of competition, which clearly exists in this context (para 30).</p>	<p>The Commission considers that Member States may require that up to 100% of the aid awarded to the production of a given audiovisual work is spent in the territory offering the aid. Furthermore, the Commission considers that, for audiovisual support schemes in which the aid intensity is based on the production expenditure in a given territory, such as film tax incentives, any production expenditure within the EEA must be eligible [fn13 The Member State may nonetheless require that up to 100% of the</p>	<p>Games represent a significant opportunity to Europe in the coming years. They have other characteristics regarding production, distribution, marketing, and consumption of them films. Not all games necessarily qualify as audiovisual works or cultural products. Therefore, the rules designed for film production cannot apply automatically to games.</p>

	<p>1.1.1.1.1.2 If the Commission is nevertheless of the view that such aid may in principle be compatible with Article 107(3)d TFEU as aid to promote culture, certain limits have to be set. The amount of aid can be very high, in view of the huge budgets of major third country productions (para 31).</p> <p>1.1.1.1.1.3 Therefore the Commission considers it appropriate to develop different standards for European and other films. If a scheme is open to films and TV productions which do not meet the definition of a European work, as described in the annex, the maximum aid intensity should be reduced for higher budget films, on the basis of a regressive scale (para 32).</p>	<p>production aid is spent in its territory] (para26).</p>	<p>Furthermore, contrary to the film and television sector, the Commission does not have a critical mass of decisions on State aid to games. It would therefore be premature to integrate this sector in the present communication. Consequently, this Communication does not cover aid granted to games.(para 20).</p>
<p>Revised Draft</p>	<p>To be compatible with Article 107(3)(d) TFEU, aid to the audiovisual sector needs to promote culture. In line with the subsidiarity principle enshrined to Article 5 TEU, the</p>	<p>Obligations imposed by the authorities granting the aid on film producers to spend a certain part of the film production budget in a particular territory.... have been controversial since the Commission started looking into</p>	<p>Conversely, although games may represent one of the fastest-growing form of mass media in the coming years, not all games necessary qualify as audiovisual works</p>

	<p>definition of cultural activities is primarily a responsibility of the Member States. In assessing an audiovisual support scheme, the Commission acknowledges that its task is limited to verifying whether a Member State has a relevant, effective verification mechanism in place able to avoid manifest error (para 25).</p> <p>1.1.1.1.1.4 Regarding the possible effect on the European audiovisual sector, foreign production may have a lasting impact as it usually makes wide use of this local infrastructure and of local cast. Overall, this may have a positive effect on the national audiovisual sector...these subsidies would contribute also...to sustaining facilities for national productions (para 42). ..as the amounts of aid for major international productions can be very high, the Commission will monitor the further development of this</p>	<p>film support schemes' (para 27).</p> <p>Allowing...discrimination based on the origin of a good or a service would limit the possibility of companies providing film production services to be freely active within the internal market and would deprive these companies from benefiting from the fundamental freedom is under the Treaty, notably the free movement of goods and services (para34).</p> <p>In view of the specific situation of the European film sector, and provided that member states do not use criteria based on the origin of goods, services or workers on the internal market, film production support schemes may either:</p> <ul style="list-style-type: none"> <li>• require that up to 160% of the aid amount awarded to the production of a given audiovisual work is spent in the territory granting the aid; or</li> <li>• calculate the aid amount as a percentage of the expenditure on film production</li> </ul>	<p>or cultural products. They have other characteristics regarding production, distribution, marketing, and consumption than films. Therefore, the rules designed for film production cannot apply automatically to games. Furthermore, contrary to the film and television sector, the Commission does not have a critical mass of decisions on State aid to games. Consequently, this Communication does not cover aid granted to games. (para 24).</p>
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	<p>type of aid to ensure that competition takes place primarily on the basis of quality and price, rather than on the basis of State aid (para 43).</p>	<p>activities in the granting Member State, typically in case of support schemes in the form of tax incentives (para 52).</p> <p>[even if the scheme requires that certain production activity takes place in the territory granting the aid, expenditure on goods, services or workers from any EEA country must be eligible] (fn25 referencing Laboratoires Fournier 2005 case).</p>	
<p>2013 Communication</p>	<p>To be compatible with Article 107(3)(d) TFEU, aid to the audiovisual sector needs to promote culture. In line with the subsidiarity principle enshrined to Article 5 TEU, the definition of cultural activities is primarily a responsibility of the Member States. In assessing an audiovisual support scheme, the Commission acknowledges that its task is limited to verifying whether a Member State has a relevant, effective verification mechanism in place able to avoid manifest error (para 25).</p>	<p>Obligations imposed by the authorities granting the aid on film producers to spend a certain part of the film production budget in a particular territory.... have been subject to particular attention since the Commission started looking into film support schemes (para 27).</p> <p>...in the case of aid awarded as grants, the maximum territorial spending obligation should be limited to 160 % of the aid amount. This corresponds to the previous '80 % of the production budget' rule when the aid intensity reaches the general maximum stated in paragraph 52(2), namely</p>	<p>Conversely, although games may represent one of the fastest-growing form of mass media in the coming years, not all games necessary qualify as audiovisual works or cultural products. They have other characteristics regarding production, distribution, marketing, and consumption than films. Therefore, the rules designed for film production cannot apply automatically to games. Furthermore, contrary to the film and television</p>

	<p>Regarding the possible effect on the European audiovisual sector, foreign production may have a lasting impact as it usually makes wide use of this local infrastructure and of local cast. Overall, this may thus have a positive effect on the national audiovisual sector...these subsidies would contribute also....to sustaining facilities for national productions (para 40).</p> <p>..as the amounts of aid for major international productions can be very high, the Commission will monitor the further development of this type of aid to ensure that competition takes place primarily on the basis of quality and price, rather than on the basis of State aid (para 41).</p> <p>In the case of schemes designed to support the scriptwriting, development, production, distribution and promotion of audiovisual work is</p>	<p>50% of the production budget (para 35).</p> <p>In the case of aid awarded as a percentage of the expenditure on production activity in the granting Member State, there is an incentive to spend more in the Member State to receive more aid. Limiting the eligible production activity to that which takes place in the Member State granting the aid is a territorial restriction. Consequently, to establish a limit which is comparable to the limit for grants, the maximum expenditure subject to territorial spending obligations is 80 % of the production budget (para 37).</p> <p>In view of the specific situation of the European film sector, film production support schemes may either: Require that up to 160 % of the aid amount awarded to the production of a given audiovisual work is spent in the territory granting the aid, or Calculate the aid amount awarded to the production of a given audiovisual work as a percentage of the expenditure on film production activities in the granting Member State, typically in case of support schemes in</p>	<p>sector, the Commission does not have a critical mass of decisions on State aid to games. Consequently, this Communication does not cover aid granted to games (para24).</p>
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	<p>covered by this Communication, the Commission will examine the following criteria with reference to the audiovisual work which will benefit from the aid to assess whether the scheme is compatible with the Treaty under Article 107(3)(d) TFEU.</p> <ol style="list-style-type: none"> <li>1. the aid is directed to a cultural product. Each Member State ensures that the content of the aided production is cultural according to its own national criteria, through an effective verification process to avoid a manifest error...</li> <li>2. the aid intensity must in principle be limited to 50 % of the production budget...</li> </ol>	<p>the form of tax incentives.</p> <p>In both cases, Member States may require a minimum level of production activity in their territory for projects to be eligible for any aid. This level cannot, however, exceed 50 % of the overall production budget. In addition, the territorial linking shall in no case exceed 80 % of the overall production budget (para 50).</p>	
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<sup>xxi</sup> Altmark, Case C- Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht [2003]

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ECLI-415 (Altmark); Judgment of the Court of First Instance (Third Chamber, extended composition). British United Provident Association Ltd (BUPA), BUPA Insurance Ltd and BUPA Ireland Ltd v Commission of the European Communities. State aid - Case T-289/03. 2008.(BUPA); Case T-17/02 Fred Olsen [2005] ECR II-2031 (Fred Olsen).

<sup>xxiii</sup> BUPA, see above.



# APPENDIX D. IRISH POLICY REPORTS

This appendix contains a selective list of relevant reports (grey literature) on Irish audiovisual policy that have informed the development of the thesis. This appendix contains a list of commissioned reports and policy documents. At times, there is a cross over between what is considered a policy document and a commissioned report, as reports may be commissioned by government departments to be undertaken by independent consultants. The relatively small number of stakeholders whose voice is heard in this cultural policy discourse is of particular interest.

Reports that have been cited directly are listed here by chronological order. The date is expressed in year or month/year if that information is available. The colloquial name is given to allow for a flow of discussion in the main body of the thesis. In addition, at times such colloquial names (e.g. Huston Report, *Creative Capital*) have entered into the lexicon of audiovisual policy. Some of these names are part of public discourse, some are assigned by me to allow for ease of discussion.

Author/	Year	Report title	Colloquial title
The Film Industry Committee.	1968	<i>Report of the Film Industry Committee</i> Dublin.	The Huston Report
Film Makers Ireland	September 1992	<i>Indigenous Audiovisual Production Industry for the Independent Television Production Sector for Irish Film Centre</i>	Film Makers Ireland Report
Coopers and Lybrand	May 1992	<i>Report on indigenous audiovisual production industry.</i>	Coopers & Lybrand 1992 Report.
Dr Joe Durkan	1994	<i>The Economics of the Arts in Ireland</i>	
Indecon International Economic Consultants	1995	<i>A Strategy for Success Based on Economic Realities: The Next Stage of Development for the Film industry in Ireland</i>	Indecon 1995.
The Audiovisual Federation	1997	<i>Report for Irish Film &amp; Television Network<sup>4</sup></i>	IFTN 1997
Indecon International Economic Consultants	1998	<i>Supporting the effective continued Development of the Irish Film Sector</i> Retrieved from Tiernan MacBride library, IFI.	Indecon 1998
Film Industry Strategic Review Group	1999	<i>The strategic development of the Irish film and television industry 2000-2010: final report of the Film Industry Strategic Review Group to the Minister for Arts, Heritage, Gaeltacht, and the Islands. Dublin.</i>	
Joint Committee on Finance and Public Service	2003	<i>The Future of Section 481 Tax Relief for the Film Industry.</i> Houses of the Oireachtas. Film Industry Presentations, Wednesday, 5 November 2003.	
Pricewaterhouse Coopers	2003	<i>Review of S481 of the Taxes Consolidation Act</i>	PwC 2003 Report.
The Economic and Social Research Institute.	2003	<i>The Mid-Term Evaluation of the National Development Plan and Community Support Framework for Ireland, 2000 to 2006: Final Report to the Department of Finance (No. 50). Dublin.</i>	
Screen Producers Ireland	2003	<i>Realising the Potential of the Irish Film and Television Industry - A Unique National Asset.</i> + supplement 'Assessing the	SPI 2003

<sup>4</sup> extract and executive summary available at

<http://www.iftn.ie/news/?act1=record&only=1&aid=73&rid=3105&tpl=archnews&force=1> accessed 15 February 2018

		<i>Economic Contribution of the Irish Film Industry</i> by Aileen O'Meara	
Committee of Public Accounts (CPA).	2005	<i>Second Interim Report.</i> (Committee hearings October 2003 to July 2004) Dáil Éireann	CPA 2005.
Indecon International Economic Consultants	2007	<i>Review of Section 481 Film Relief.</i>	Indecon 2007
Irish Film Board, 2009	27 July 2009	<i>Statement From IFB Regarding An Bord Snip Nua Report.</i> on IFTN <sup>5</sup>	
Commission on Taxation	2009	<i>Commission on Taxation Report 2009.</i> Stationery Office Dublin.	
Special Group on Public Services.	2009	<i>Report of the Special Group on Public Service Numbers and Expenditure Programme</i> (Vols 1 & 2, McCarthy Report by <i>An Bord Snip Nua</i> ).	McCarthy Report 2009
Audiovisual Strategic Review Steering Group	2011	<i>CREATIVE CAPITAL. Building Ireland's Audiovisual Creative Economy. A Report Prepared for the Minister for Arts, Heritage, and the Gaeltacht</i>	Creative Capital 2011
<b>Minutes of Meetings of Creative Capital Inter-Departmental Committee</b>	2011	First Meeting 11 October 2011 Second Meeting 25 October 2011 Third Meeting 17 January 2012 Fourth Meeting 23 February 2012 Fifth Meeting 24 September 2013 <b>(received by FOI on 2 November 2018)</b>	
Department of Finance	2012	<i>Review of Section 481 Film Relief: Department of Finance Consultation Paper</i>	
Indecon International Economic Consultants	2012	<i>Review of Section 481 Film Relief on behalf of IBEC's Audiovisual Federation.</i>	Indecon 2012
		<b>Select submissions to the Department of Finance consultation 2012</b>	
Irish Film Board 2012	31 August 2012	<i>Section 481 Review Response to Department of Finance Request for Submissions</i>	
Animation Ireland	1 August 2012	<i>Review of Section 481 Film Relief. Submission to the Department of Finance,</i>	

<sup>5</sup> The Irish Film & Television Network).

<http://iftn.ie/news/castnews/?act1=record&only=1&aid=73&rid=4282365&tpl=archnews&force=1>

Screen Directors Guild of Ireland	2012	<i>Response to the Review of Section 481 Film Relief.</i>	
Irish Playwrights' and Screenwriters' Guild	29 August 2012	<i>Response to the Review of Section 481 Film Relief</i> <i>End of submission list</i>	
Department of Arts, Heritage, and the Gaeltacht	2012	<i>Statement of Strategy 2011-2014</i>	
Hynes, T., & O'Connor, B.	2012	<i>Economic Impact Assessment of Section 481 Film Relief.</i> Dublin: Department of Finance	Hynes & O'Connor 2012
	23 January 2014	<i>Recommendations and Implementation Plan – Creative Capital Report</i>	
Government of Ireland,	2014	<i>Enterprise Strategy, Competitiveness and Evaluation. Action Plan for Job</i>	Government of Ireland 2014
Inter-Departmental Committee	2014	<i>Report of the Inter-Departmental Committee established to examine the feasibility of implementation of the recommendations in the Creative Capital Report - Building Ireland's Audiovisual Creative Economy</i>	
Department of Arts, Heritage, and the Gaeltacht / Professor John O'Hagan	September 2015	Value for Money and Policy Review of the Arts Council	VFMPR
The Arts Council. / An Chomhairle Ealaíon	September 2015	<i>Making Great Art Work. Leading the Development of the Arts in Ireland Arts Council Strategy (2016–2025) (Making Great Art Work).</i>	
Department of Arts, Heritage, and the Gaeltacht	September 2015	<i>Culture 2025 Discussion Document.</i>	
Department of Culture, Heritage, and the Gaeltacht	July 2016	<i>Culture 2025 / Éire Ildánach</i> Retrieved from <a href="https://www.chg.gov.ie/arts/culture/culture-2025-2">https://www.chg.gov.ie/arts/culture/culture-2025-2</a>	<a href="#">Culture 2025.</a>
Government of Ireland	December 2016	<i>Clár Éire Ildánach, Creative Ireland Programme 2017—2022</i>	Creative Ireland
Olsberg SPI with Nordicity	2017	<i>Economic Analysis of the Audiovisual Sector in the Republic of Ireland.</i>	OSN2017

Thérèse O'Connor from DAHRRG for UNESCO	2017	<i>The Diversity of Cultural Expressions report on Ireland.. At <a href="https://en.unesco.org/creativity/governance/periodic-reports/2017/ireland">https://en.unesco.org/creativity/governance/periodic-reports/2017/ireland</a> (accessed 3 January 2019).</i>	O'Connor 2017
Joint Committee on Arts, Heritage, Regional Rural and Gaeltacht Affairs	2017	<i>Report on Culture 2025 – Éire Ildánach, Framework Policy to 2025</i>	JCAHRRG, 2017
Crowe Horwath	2017	<i>Final Report in respect of a Strategy for the Development of Skills for the Audiovisual Industry in Ireland</i>	Crowe Horwath 2017
Clár Éire Ildánach	2017	<i>The Creative Ireland Programme End of Year Report 2017</i>	Creative Ireland Report, 2017
Government of Ireland	June 2018	<i>Global Ireland 2025: Ireland's Global Footprint to 2025</i>	Global Ireland 2025
Joint Committee on Culture, Heritage, and the Gaeltacht	2018	<i>Development and Working Conditions in the Irish Film Industry, Houses of the Oireachtas</i>	JCCHG 2018
Clár Éire Ildánach	2018	<i>The Creative Ireland Programme End of Year Report 2018</i>	Creative Ireland Report, 2018
Department of Finance	2018	<i>Budget 2019. Report on Tax Expenditures Incorporating outcomes of certain Tax Expenditure &amp; Tax Related Reviews completed since October 2017</i>	DoF CBA
Government of Ireland	June 2018	<i>Global Ireland 2025: Ireland's Global Footprint to 2025</i>	Global Ireland 2025
Government of Ireland/Deirdre Mahony. Evaluation Unit, Department of	July 2018	<i>Spending Review 2018 Implementation of the recommendations of the Value for Money and Policy Review of the Arts Council.</i>	Mahony 2018

Culture, Heritage, and the Gaeltacht			
Department of Culture, Heritage, and the Gaeltacht	2018	<i>Project Ireland 2040 Investing in our culture, language, and heritage 2018-2027</i>	
Department of Culture, Heritage, and the Gaeltacht	2018	<i>An Plean Gníomhaíochta Closambairc Colún 4 den Chlár Éire Ildánach / Audiovisual Action Plan. Creative Ireland Programme Pillar 4</i>	AAP2018
		<b><u>Steering Group meetings. Obtained under FOI 20 February 2019 (Audiovisual Steering Group Meetings)</u></b>	
		<ul style="list-style-type: none"> <li>• Audiovisual High Level Steering Group Meeting. 1st Meeting Report Monday 9<sup>th</sup> July 2018</li> <li>• Audiovisual High Level Steering Group Meeting. 2nd Meeting Report Thursday 27<sup>th</sup> September 2018</li> <li>• Audiovisual High Level Steering Group Meeting. 3rd Meeting Report Monday 22<sup>nd</sup> October 2018</li> <li>• Audiovisual High Level Steering Group Meeting. 4th Meeting Report Monday 10<sup>th</sup> December 2018.</li> </ul>	
Government of Ireland	2019	<i>Project Ireland 2040 Framework. National Development Plan.</i> <a href="https://www.gov.ie/en/campaigns/09022006-project-ireland-2040/">https://www.gov.ie/en/campaigns/09022006-project-ireland-2040/</a> accessed 5 January 2019	Project Ireland 2040

*List of Reports analysed pertaining to the Irish audiovisual industries*

<b>Year</b>	<b>Title (actual and common)</b>	<b>Author</b>	<b>Commissioner (where relevant)</b>
1942	<i>Report of Inter-departmental committee on the Film Industry</i>		Sean Lemass
1968	<i>The Film Industry Committee. (1968). Report of the Film Industry Committee. Huston Report</i>	Film Industry Committee	Government of Ireland
1982	<i>Proceedings of the Public Hearing of Bord Scannán na hÉireann/Irish Film Board</i>		
1992	<i>Indigenous Audiovisual Production Industry for Irish Film Centre (Coopers and Lybrand) Report. Film Makers Ireland Report</i>	Coopers & Lybrand	Owners of Irish Film Centre, at request of Temple Bar Properties
1992	<i>Independent Television Production Sector</i>	Film Makers Ireland	Film Makers Ireland
1992	<i>The Film Production Industry in Ireland (Report of the Special Working Group on the film production industry)</i>	Special Working Group	
1992	<i>May 1992 Report on indigenous audiovisual production industry. (Coopers &amp; Lybrand 1992 Report)</i>	Coopers and Lybrand	Irish Film Centre Building at request of Temple Bar Properties
1994	<i>The Economics of the Arts in Ireland. Dr Joe Durkan.</i>	Dr Joe Durkan	Arts Council
1995	<i>A Strategy for Success Based on Economic Realities: The Next Stage of Development for the Film industry in Ireland. Indecon 1995</i>	Indecon	Department of Arts, Culture, and the Gaeltacht
1995	<i>The Independent Film and Television Production Sector in Ireland – Training needs to 2000 STATCOM report</i>	STATCOM	FÁS
1995	<i>Active or passive, broadcasting in the future tense. Government green paper</i>		
1996	<i>Film in Ireland: The Role of the Arts Council</i>	Erika E King Associates	Arts Council
1997	<i>The Economic Impact of Film Production in Ireland</i>	IBEC Research Information Service	
1997	<i>The Audiovisual Federation (1997). Report for Irish Film &amp; Television Network. (IFTN 1997).</i>	Audiovisual Federation	IFTN
1998	<i>Indecon International Economic Consultants. (1998). Supporting the effective continued Development of the Irish Film Sector.</i>	Supporting the Effective Continued Development of the Irish Film Sector	Department of Arts, Heritage, Gaeltacht, and the Islands

1999	<i>Final Report of the Film Industry Strategic Review Group/The strategic development of the Irish film and television industry 2000-2010: final report of the Film Industry Strategic Review Group to the Minister for Arts, Heritage, Gaeltacht, and the Islands. Dublin. Kilkenny Report</i>	<i>Department of Arts, Heritage, Gaeltacht, and the Islands</i>	<i>Film Industry Strategic Review Group</i>
2003	<i>Review of Section 481 of the Taxes Consolidation Act 1997. PriceWaterhouseCoopers.</i>	<i>PWC</i>	<i>IFB and the Department of Arts, Sports and Tourism</i>
2003	<i>Screen Producers Ireland. (2003). Realising the Potential of the Irish Film and Television Industry - A Unique National Asset. + supplement 'Assessing the Economic Contribution of the Irish Film Industry' by Aileen O'Meara. (SPI 2003).</i>	<i>Aileen O'Meara</i>	<i>SPI</i>
2003	<i>Assessing the Economic Contribution of the Irish Film Industry - Supplement to SPI 2003 by Aileen O'Meara. (SPI 2003).</i>	<i>Aileen O'Meara</i>	<i>SPI</i>
2003	<i>The future of Section 481 tax relief for the film industry. Joint Committee on Finance and Public Service. (2003).</i>	<i>Joint Committee ...</i>	
2004	<i>Film Production in Ireland: Audiovisual Federation Review 2004</i>	<i>IBEC</i>	
2005	<i>Committee of Public Accounts, Dail Eireann, Second Interim Report</i>	<i>Committee of Public Accounts</i>	
2005	<i>Adapting to the changing competitive dynamics of the International film industry</i>	<i>Aileen O'Malley</i>	<i>IFB to Department of Arts, Sport and Tourism</i>
2005	<i>Review of Section 481 of the Taxes Consolidation Act 1997</i>	<i>PriceWaterhouse Coopers</i>	<i>Irish Film Board &amp; Department of Arts, Sport and Tourism</i>
2007	<i>Review of Section 481 Film Relief. Indecon.</i>	<i>Indecon International Economic Consultants</i>	<i>Department of Finance</i>
2007	<i>Creating a Sustainable Irish Film and Television Sector A review of Section 481 film relief IFB Submission to Indecon</i>	<i>Aileen O'Malley</i>	<i>Irish Film Board</i>
2008	<i>Irish Audiovisual Content Production Sector Review</i>	<i>PWC</i>	
2008	<i>Expenditure Review: Irish Film Board/Bord Scannán na hÉireann</i>	<i>Department of Arts, Sport and Tourism</i>	
2009	<i>Report of the Special Group on Public Service Numbers and Expenditure Programme (2 Volumes, McCarthy Report by An Bord Snip Nua)</i>	<i>An Bord Snip Nua</i>	
2009	<i>Commission on Taxation Report 2009</i>	<i>Commission on Taxation</i>	

2011	<i>Audiovisual Strategic Review Steering Group. Building Ireland's Audiovisual Creative Economy. A Report Prepared for the Minister for Arts, Heritage, and the Gaeltacht. Creative Capital</i>	<i>Indecon</i>	<i>Minister for Arts</i>
2011	<i>IBEC Film &amp; Television Production in Ireland</i>	<i>IBEC</i>	
2012	<i>Review of Section 481 Film Relief: Department of Finance Consultation Paper</i>		
2012	<i>Review of Section 481 Film Relief on behalf of IBEC's Audiovisual Federation. Submission to Department of Finance</i>	<i>Indecon</i>	<i>IBEC</i>
2012	<i>Response to the Review of Section 481 Film Relief.</i>	<i>Screen Directors Guild of Ireland</i>	
2012	<i>Review of Section 481 Film Relief: Submission to the Department of Finance</i>	<i>Telegael</i>	
2012	<i>Submission to Department of Finance</i>	<i>Ardmore Studios</i>	
2012	<i>Response to Review of Section 481 Film Relief</i>	<i>Audiovisual Federation</i>	
2012	<i>Response to Consultation on Section 481 Film Relief</i>	<i>Crowe Horwath</i>	
2012	<i>Submission to Department of Finance</i>	<i>Deasy Advisory Services</i>	
2012	<i>Submission to Department of Finance</i>	<i>Dublin City Business Association Ltd</i>	
2012	<i>Statement to Department of Finance</i>	<i>Games Ireland</i>	
2012	<i>Submission to Department of Finance</i>	<i>IADT</i>	
2012	<i>Response to Department of Finance</i>	<i>Irish Playwrights' and Screenwriters' Guild</i>	
2012	<i>Comment to Department of Finance</i>	<i>Jim O'Hanlon</i>	
2012	<i>Submission: Irish Film Industry Talent</i>	<i>Octagon Film s</i>	
2012	<i>Submission to Department of Finance</i>	<i>animation Ireland</i>	
2012	<i>Submission to Department of Finance</i>	<i>Brown Bag Films</i>	
2012	<i>Response to Department of Finance</i>	<i>Irish Tax Institute</i>	
2012	<i>SEC 41 Film Relief Review/Review of International Audiovisual State Supports</i>	<i>BDO</i>	<i>Department of Finance</i>
2012	<i>Section 481 Review Response to Department of Finance Request for Submissions</i>	<i>IFB</i>	
2012	<i>Assessment of the Economic Impact of the Arts in Ireland: An Update Report</i>	<i>Indecon</i>	<i>Arts Council</i>
2012	<i>Economic Impact Assessment of Section 481 Film Relief. Hynes &amp; O'Connor for Department of Finance.</i>	<i>Hynes &amp; O'Connor</i>	<i>Department of Finance</i>

2012	<i>Recommendations and Implementation Plan – Creative Capital Report 23 January 2012</i>		
2012	<i>Statement of Strategy</i>	<i>Department of Arts, Heritage &amp; the Gaeltacht</i>	
2013	<i>Report on Promotion of Investment in Studio Infrastructure</i>	<i>Dorgan Associates</i>	<i>Department of Arts, Heritage &amp; the Gaeltacht</i>
2014	<i>Inter-Departmental Committee. (2014). Report of the Inter-Departmental Committee established to examine the feasibility of implementation of the recommendations in the Creative Capital Report - Building Ireland's Audiovisual Creative Economy</i>		
2014	<i>Government of Ireland, Enterprise Strategy, Competitiveness and Evaluation. Action Plan for Jobs</i>		
2015	<i>Department of Arts, Heritage, and the Gaeltacht. Culture 2025 Discussion Document.</i>		
2015	<i>Policy on Section 481</i>	<i>SPI</i>	
2015	<i>Department of Arts, Heritage, and the Gaeltacht. Professor John O'Hagan. Value for Money and Policy Review of the Arts Council.</i>	<i>Professor John O'Hagan</i>	<i>Dept of Arts, Heritage, and the Gaeltacht</i>
2016	<i>Report of working group (July 2016)</i>		
2016	<i>Strategic Plan 2016—2020: Building on Success</i>	<i>Irish Film Board</i>	
2016	<i>Action Plan for Jobs</i>	<i>Government of Ireland</i>	
2016	<i>The Arts Council. /An Chomhairle Ealaíon. (2015, September) Making Great Art Work. Leading the Development of the Arts in Ireland Arts Council Strategy (2016–2025)</i>	<i>Arts Council</i>	
2016	<i>Department of Culture, Heritage, and the Gaeltacht. (2016, July). Culture 2025 / Éire Ildánach. Culture 2025</i>		
2016	<i>Project Ireland 2040. Government of Ireland. Project Ireland 2040 Framework. National Development Plan.</i>		
2016	<i>Creative Ireland Programme 2017-2022. Government of Ireland.</i>	<i>Government of Ireland</i>	
2017	<i>UNESCO. 2017. The Diversity of Cultural Expressions report on Ireland. Thérèse O'Connor from DAHRRG</i>		
2017	<i>Pre-Budget Submission - Budget 2017. Screen Producers Ireland.</i>		
2017	<i>Final Report in respect of a Strategy for the Development of Skills for the Audiovisual Industry in Ireland. Crowe Horwath.</i>	<i>Crowe Horwath</i>	<i>Irish Film Board &amp; Broadcasting Authority of Ireland (BAI)</i>
2017	<i>Clár Éire Ildánach The Creative Ireland Programme End of Year Report 2017. (Creative Ireland Report, 2017)</i>	<i>Creative Ireland</i>	

2018	<i>Clár Éire Ildánach The Creative Ireland Programme End of Year Report 2018. (Creative Ireland Report, 2018)</i>	<i>Creative Ireland</i>	
2018	<i>Department of Culture, Heritage, and the Gaeltacht. (2018). An Plean Gníomhaíochta Ciosamhairc Colún 4 den Chlár Éire Ildánach / Audiovisual Action Plan. Creative Ireland Programme Pillar 4. Audiovisual Action Plan</i>	<i>Department of Culture, Heritage, and the Gaeltacht</i>	
2018	<i>Department of Finance. (2018). Budget 2019. Report on Tax Expenditures Incorporating outcomes of certain Tax Expenditure &amp; Tax Related Reviews completed since October 2017.</i>	<i>Department of Finance</i>	
2018	<i>Development and Working Conditions in the Irish Film Industry. Joint Committee on Culture, Heritage, and the Gaeltacht. (2018).</i>	<i>Joint Committee on Culture, Heritage, and the Gaeltacht</i>	
2018	<i>Department of Culture, Heritage, and the Gaeltacht. 2018. Project Ireland 2040 Investing in our culture, language, and heritage 2018-2027.</i>	<i>Department of Culture, Heritage &amp; the Gaeltacht</i>	
2018	<i>Government of Ireland. Spending Review 2018 Implementation of the recommendations of the Value for Money and Policy Review of the Arts Council. Deirdre Mahony. Evaluation Unit, Department of Culture, Heritage, and the Gaeltacht.</i>	<i>Deirdre Mahony</i>	<i>Department of Culture, Heritage &amp; the Gaeltacht</i>
2019	<i>Report on the Accounts of the Public Service 2018: Chapter 18. Tax relief on film production (published October 2019)</i>	<i>Office of the Comptroller and Auditor General</i>	



APPENDIX E. S481  
FIGURES – SCREEN  
IRELAND (AS OF APRIL  
2019)

## Breakdown of Projects Availing of Section 481 Ireland's 32% Tax Credit for Film, Television & Animation.

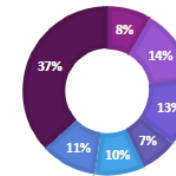
TRENDS	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Amount of S481 Projects	34	38	43	57	57	52	67	67	66	76	85	12%	150%
Total Value of S481 Projects	€ 153,614,868.67	€ 159,257,197.00	€ 196,872,832.00	€ 346,281,063.00	€ 287,495,357.00	€ 224,218,207.00	€ 324,088,450.00	€ 432,779,315.00	€ 206,335,932.00	€ 636,746,040.00	€ 590,630,506	-7%	284%
S481 Raised	€ 94,841,717.00	€ 102,894,934.80	€ 99,951,061.00	€ 160,249,440.00	€ 113,423,118.00	€ 138,539,823.00	€ 177,383,122.00	€ 231,593,595.00	€ 113,733,165.00	€ 258,239,125.00	€ 286,398,839	11%	202%
Irish Expenditure	€ 100,425,444.51	€ 108,441,729.00	€ 105,477,863.00	€ 164,581,541.00	€ 118,248,839.00	€ 142,968,378.00	€ 183,142,646.00	€ 237,387,613.00	€ 118,618,238.00	€ 264,829,803.00	€ 292,286,854	10%	191%
Labour	€ 65,295,893.00	€ 58,286,969.00	€ 58,457,894.00	€ 85,675,165.00	€ 64,047,085.00	€ 79,975,994.00	€ 108,535,856.00	€ 137,240,663.00	€ 64,967,670.00	€ 140,036,341.00	€ 178,229,282	27%	173%
Goods and Services	€ 33,466,888.00	€ 50,307,893.00	€ 49,947,508.00	€ 75,044,088.00	€ 54,684,827.00	€ 62,992,384.00	€ 74,045,304.00	€ 99,286,882.00	€ 53,417,518.00	€ 124,796,403.00	€ 115,533,375	-7%	245%

**S481 TRENDS**



**S481 FUNDING BY TYPE**

■ Animation Local 
 ■ Animation Incoming 
 ■ Film Local 
 ■ Film Incoming 
 ■ TV Drama Local 
 ■ TV Drama Incoming 
 ■ Documentary\*



Amount of S481 Projects	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	2	2	3	6	6	3	7	5	3	7	7	0%	250%
Animation Incoming	5	3	6	8	8	9	12	10	8	8	12	50%	140%
Animation Total	7	5	9	14	14	12	19	15	11	15	19	27%	171%
Film Local	6	10	9	8	13	8	11	12	13	11	11	0%	83%
Film Incoming	3	5	5	9	6	10	9	14	9	6	6	0%	100%
Film Total	9	15	14	17	19	18	20	26	22	17	17	0%	89%
TV Drama Local	10	10	14	8	10	9	11	10	11	9	8	-11%	-20%
TV Drama Incoming	8	6	3	11	5	8	9	5	2	10	9	-10%	13%
TV Drama Total	18	16	17	19	15	17	20	15	13	19	17	-11%	-6%
Documentary	0	2	3	7	9	8	7	11	20	25	32	24%	

### Breakdown of Projects Availing of Section 481

Section 481 Raised	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	€ 2,306,152.00	€ 4,463,522.00	€ 4,475,255.00	€ 7,804,666.00	€ 11,102,731.00	€ 9,967,780.00	€ 6,392,978.00	€ 4,780,849.00	€ 6,661,376.00	€ 8,219,128.00	€ 8,149,201.00	-1%	253%
Animation Incoming	€ 12,942,169.00	€ 8,635,130.00	€ 12,841,119.00	€ 22,986,290.00	€ 20,393,996.00	€ 21,917,842.00	€ 37,629,372.00	€ 34,083,427.00	€ 13,512,726.00	€ 23,277,094.00	€ 46,451,034.00	100%	259%
Animation Total	€ 15,248,321.00	€ 13,098,652.00	€ 17,316,374.00	€ 30,790,956.00	€ 31,496,727.00	€ 31,885,622.00	€ 44,022,350.00	€ 38,864,276.00	€ 20,174,102.00	€ 31,496,222.00	€ 54,600,235.00	73%	258%
Film Local	€ 6,893,813.00	€ 19,966,417.00	€ 10,770,801.00	€ 7,714,698.00	€ 19,898,820.00	€ 13,156,820.00	€ 11,611,619.00	€ 28,095,087.00	€ 12,403,507.00	€ 14,045,658.00	€ 19,874,080.00	41%	188%
Film Incoming	€ 5,591,845.00	€ 12,342,537.00	€ 17,151,794.00	€ 21,417,035.00	€ 12,726,383.00	€ 14,866,669.00	€ 23,075,988.00	€ 19,422,098.00	€ 20,495,329.00	€ 20,440,809.00	€ 33,559,225.00	64%	500%
Film Total	€ 12,485,658.00	€ 32,308,954.00	€ 27,922,595.00	€ 29,131,733.00	€ 32,625,203.00	€ 28,023,489.00	€ 34,687,607.00	€ 47,517,185.00	€ 32,898,836.00	€ 34,486,467.00	€ 53,433,305.00	55%	328%
TV Drama Local	€ 25,533,322.00	€ 20,508,894.80	€ 25,581,111.00	€ 13,670,687.00	€ 16,931,566.00	€ 20,927,818.00	€ 15,454,958.00	€ 18,431,601.00	€ 20,835,713.00	€ 21,541,068.00	€ 10,029,351.00	-53%	-61%
TV Drama Incoming	€ 66,349,911.00	€ 36,510,934.00	€ 27,880,736.00	€ 84,453,376.00	€ 28,014,902.00	€ 53,356,194.00	€ 80,667,322.00	€ 120,524,070.00	€ 31,758,819.00	€ 159,593,375.00	€ 155,787,016.00	-2%	135%
TV Drama Total	€ 91,883,233.00	€ 57,019,828.80	€ 53,461,847.00	€ 98,124,063.00	€ 44,946,468.00	€ 74,284,012.00	€ 96,122,280.00	€ 138,955,671.00	€ 52,594,532.00	€ 181,134,443.00	€ 165,816,367.00	-8%	80%
Documentary	€ -	€ 467,500.00	€ 1,250,245.00	€ 2,202,688.00	€ 4,354,720.00	€ 3,475,300.00	€ 2,550,885.00	€ 6,256,463.00	€ 8,065,695.00	€ 11,121,993.00	€ 12,343,916.00	11%	

Total Value of S481 Projects	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	€ 2,841,035.00	€ 6,831,866.00	€ 6,755,290.00	€ 9,759,391.00	€ 18,460,822.00	€ 13,797,665.00	€ 8,672,246.00	€ 15,838,831.00	€ 10,650,099.00	€ 18,712,269.00	€ 16,090,697.00	-14%	466%
Animation Incoming	€ 36,430,458.00	€ 21,661,273.00	€ 43,183,095.00	€ 57,547,189.00	€ 61,979,778.00	€ 40,495,769.00	€ 80,008,318.00	€ 69,774,365.00	€ 38,933,590.00	€ 62,942,947.00	€ 92,452,633.00	47%	154%
Animation Total	€ 39,271,493.00	€ 28,493,139.00	€ 49,938,385.00	€ 67,306,580.00	€ 80,440,600.00	€ 54,293,434.00	€ 88,680,564.00	€ 85,613,196.00	€ 49,583,689.00	€ 81,655,216.00	€ 108,543,330.00	33%	176%
Film Local	€ 10,418,605.00	€ 29,131,108.00	€ 16,688,953.00	€ 12,852,888.00	€ 32,791,862.00	€ 21,008,335.00	€ 16,937,073.00	€ 50,133,155.00	€ 20,515,047.00	€ 25,243,274.00	€ 33,484,565.00	33%	221%
Film Incoming	€ 11,041,538.00	€ 25,996,274.00	€ 56,445,649.00	€ 77,458,774.00	€ 87,820,435.00	€ 44,861,013.00	€ 52,543,787.00	€ 42,813,530.00	€ 53,679,036.00	€ 202,888,465.00	€ 79,099,444.00	-61%	616%
Film Total	€ 21,460,143.00	€ 55,127,382.00	€ 73,134,602.00	€ 90,311,662.00	€ 120,612,297.00	€ 65,869,348.00	€ 69,480,860.00	€ 92,946,685.00	€ 74,194,083.00	€ 228,131,739.00	€ 112,584,009.00	-51%	425%
TV Drama Local	€ 25,533,322.00	€ 25,773,958.00	€ 32,071,582.00	€ 17,396,431.00	€ 21,551,457.00	€ 26,243,538.00	€ 19,320,402.00	€ 23,089,364.00	€ 26,044,645.00	€ 30,082,899.00	€ 12,536,686.00	-58%	-51%
TV Drama Incoming	€ 66,349,911.00	€ 49,147,826.00	€ 39,946,744.00	€ 167,876,885.00	€ 55,566,706.00	€ 72,383,048.00	€ 142,178,889.00	€ 221,035,290.00	€ 45,627,754.00	€ 282,641,122.00	€ 337,727,439.00	19%	409%
TV Drama Total	€ 91,883,233.00	€ 74,921,784.00	€ 72,018,326.00	€ 185,273,316.00	€ 77,118,163.00	€ 98,626,586.00	€ 161,499,291.00	€ 244,124,654.00	€ 71,672,399.00	€ 312,724,021.00	€ 350,264,125.00	12%	281%
Documentary	€ -	€ 714,892.00	€ 1,801,519.00	€ 3,389,505.00	€ 7,324,297.00	€ 5,428,839.00	€ 4,427,735.00	€ 10,094,780.00	€ 10,885,761.00	€ 14,235,064.00	€ 19,239,042.00	35%	

Irish Expenditure	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	€ 2,678,978.00	€ 5,108,264.00	€ 4,828,835.00	€ 9,017,331.00	€ 11,588,733.00	€ 10,209,245.00	€ 7,447,823.00	€ 5,020,803.00	€ 7,076,047.00	€ 8,722,559.00	€ 10,220,614.00	17%	282%
Animation Incoming	€ 12,942,524.51	€ 8,635,686.00	€ 12,841,119.00	€ 22,986,330.00	€ 20,393,996.00	€ 21,917,842.80	€ 37,494,197.00	€ 34,083,428.00	€ 13,676,662.00	€ 23,277,094.00	€ 46,451,014.00	100%	259%
Animation Total	€ 15,621,502.51	€ 13,743,950.00	€ 17,669,954.00	€ 32,003,661.00	€ 31,982,729.00	€ 32,127,087.80	€ 44,942,020.00	€ 39,104,231.00	€ 20,752,709.00	€ 31,999,653.00	€ 56,671,628.00	77%	263%
Film Local	€ 7,388,310.00	€ 21,252,252.00	€ 11,504,611.00	€ 8,086,700.00	€ 20,504,507.00	€ 13,490,755.00	€ 12,399,328.00	€ 29,297,469.00	€ 13,359,548.00	€ 14,715,171.00	€ 20,668,717.00	40%	180%
Film Incoming	€ 5,591,983.00	€ 12,364,940.00	€ 17,185,720.00	€ 21,547,938.00	€ 12,726,949.00	€ 14,881,607.00	€ 23,457,286.00	€ 19,923,919.00	€ 20,662,962.00	€ 20,440,809.00	€ 33,586,806.00	64%	501%
Film Total	€ 12,980,293.00	€ 33,617,192.00	€ 28,690,331.00	€ 29,634,638.00	€ 33,231,456.00	€ 28,372,362.00	€ 35,856,614.00	€ 49,221,388.00	€ 34,022,510.00	€ 35,155,980.00	€ 54,255,523.00	54%	318%
TV Drama Local	€ 24,727,080.00	€ 24,068,451.00	€ 29,678,360.00	€ 15,944,567.00	€ 20,153,467.00	€ 24,317,347.00	€ 18,562,284.00	€ 21,429,352.00	€ 23,124,451.00	€ 24,305,355.00	€ 11,625,922.00	-52%	-53%
TV Drama Incoming	€ 47,096,569.00	€ 36,512,697.00	€ 28,020,542.00	€ 84,590,289.00	€ 28,027,467.00	€ 53,482,973.00	€ 81,064,325.00	€ 120,524,069.00	€ 31,758,819.00	€ 160,835,070.00	€ 155,791,688.00	-3%	231%
TV Drama Total	€ 71,823,649.00	€ 60,581,148.00	€ 57,698,902.00	€ 100,534,856.00	€ 48,180,934.00	€ 77,800,320.00	€ 99,626,609.00	€ 141,953,421.00	€ 54,883,270.00	€ 185,140,425.00	€ 167,417,610.00	-10%	133%
Documentary	€ -	€ 499,439.00	€ 1,418,676.00	€ 2,408,386.00	€ 4,853,720.00	€ 3,797,207.00	€ 2,717,403.00	€ 7,108,573.00	€ 8,959,749.00	€ 12,533,745.00	€ 13,942,093.00	11%	

### Breakdown of Projects Availing of Section 481

Labour Expenditure	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	€ 1,620,806.00	€ 2,314,839.00	€ 3,416,299.00	€ 4,484,804.00	€ 8,306,840.00	€ 4,780,911.00	€ 5,114,719.00	€ 3,408,719.00	€ 3,026,189.00	€ 6,024,865.00	€ 5,995,580.00	0%	270%
Animation Incoming	€ 7,623,881.00	€ 4,540,432.00	€ 6,881,776.00	€ 12,385,972.00	€ 11,581,404.00	€ 14,789,779.00	€ 25,557,826.00	€ 22,081,355.00	€ 7,344,783.00	€ 13,734,944.00	€ 32,212,078.00	135%	323%
Animation Total	€ 9,244,687.00	€ 6,855,271.00	€ 10,298,075.00	€ 16,870,776.00	€ 19,888,244.00	€ 19,570,690.00	€ 30,672,545.00	€ 25,490,074.00	€ 10,370,972.00	€ 19,759,809.00	€ 38,207,658.00	93%	313%
Film Local	€ 3,427,344.00	€ 11,463,757.00	€ 5,622,620.00	€ 4,085,679.00	€ 11,369,521.00	€ 7,233,090.00	€ 6,822,106.00	€ 15,009,239.00	€ 6,198,838.00	€ 7,615,118.00	€ 10,794,136.00	42%	215%
Film Incoming	€ 4,640,873.00	€ 6,249,111.00	€ 8,049,351.00	€ 10,927,605.00	€ 6,660,193.00	€ 6,288,634.00	€ 11,848,988.00	€ 9,851,826.00	€ 10,451,537.00	€ 8,344,365.00	€ 16,611,151.00	99%	258%
Film Total	€ 8,068,217.00	€ 17,712,868.00	€ 13,671,971.00	€ 15,013,284.00	€ 18,029,714.00	€ 13,521,724.00	€ 18,671,094.00	€ 24,861,065.00	€ 16,650,375.00	€ 15,959,483.00	€ 27,405,287.00	72%	240%
TV Drama Local	€ 11,318,883.00	€ 15,831,279.00	€ 17,193,406.00	€ 8,922,122.00	€ 11,287,537.00	€ 12,437,862.00	€ 10,025,072.00	€ 12,540,481.00	€ 13,547,340.00	€ 12,055,419.00	€ 5,544,773.00	-54%	-51%
TV Drama Incoming	€ 36,664,106.00	€ 17,723,537.00	€ 16,606,471.00	€ 43,741,424.00	€ 12,719,894.00	€ 31,864,538.00	€ 47,959,540.00	€ 71,092,378.00	€ 20,126,309.00	€ 86,118,961.00	€ 99,450,682.00	15%	171%
TV Drama Total	€ 47,982,989.00	€ 33,554,816.00	€ 33,799,877.00	€ 52,663,546.00	€ 24,007,431.00	€ 44,302,400.00	€ 57,984,612.00	€ 83,632,859.00	€ 33,673,649.00	€ 98,174,380.00	€ 104,995,455.00	7%	119%
Documentary	€ -	€ 164,014.00	€ 687,971.00	€ 1,127,559.00	€ 2,121,696.00	€ 1,943,528.00	€ 1,207,605.00	€ 3,256,665.00	€ 4,272,674.00	€ 6,142,669.00	€ 7,620,882.95	24%	

Goods & Services Expenditure	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017 % Annual Change	% Overall Change
Animation Local	€ 1,089,353.00	€ 2,597,241.00	€ 1,810,281.00	€ 4,291,092.00	€ 3,281,893.00	€ 5,428,334.00	€ 2,383,105.00	€ 1,853,872.00	€ 3,847,164.00	€ 2,647,942.00	€ 4,270,033.00	61%	292%
Animation Incoming	€ 5,318,643.00	€ 4,095,254.00	€ 5,959,343.00	€ 10,828,026.00	€ 8,795,231.00	€ 7,128,063.80	€ 12,008,059.00	€ 12,002,073.00	€ 6,331,879.00	€ 9,554,730.00	€ 14,386,601.00	51%	170%
Animation Total	€ 6,407,996.00	€ 6,692,495.00	€ 7,769,624.00	€ 15,119,118.00	€ 12,077,124.00	€ 12,556,397.80	€ 14,391,164.00	€ 13,855,945.00	€ 10,179,043.00	€ 12,202,672.00	€ 18,656,634.00	53%	191%
Film Local	€ 3,865,069.00	€ 9,421,122.00	€ 5,599,048.00	€ 3,882,128.00	€ 9,245,174.00	€ 6,257,665.00	€ 5,577,232.00	€ 14,309,147.00	€ 7,166,410.00	€ 7,077,980.00	€ 10,779,634.00	52%	179%
Film Incoming	€ 928,943.00	€ 6,218,029.00	€ 9,203,556.00	€ 10,137,100.00	€ 7,870,219.00	€ 8,592,973.00	€ 10,998,470.00	€ 8,810,628.00	€ 10,362,289.00	€ 12,108,180.00	€ 16,975,655.00	40%	1727%
Film Total	€ 4,794,012.00	€ 15,639,151.00	€ 14,802,604.00	€ 14,019,228.00	€ 17,115,393.00	€ 14,850,638.00	€ 16,575,702.00	€ 23,119,775.00	€ 17,528,699.00	€ 19,186,160.00	€ 27,755,289.00	45%	479%
TV Drama Local	€ 13,510,698.00	€ 8,644,272.00	€ 12,482,730.00	€ 6,804,958.00	€ 8,823,737.00	€ 11,879,485.00	€ 8,463,855.00	€ 9,027,756.00	€ 9,452,025.00	€ 12,336,047.00	€ 6,329,065.00	-49%	-53%
TV Drama Incoming	€ 8,754,182.00	€ 18,996,550.00	€ 11,161,730.00	€ 37,809,021.00	€ 14,001,471.00	€ 21,618,435.00	€ 33,104,785.00	€ 49,431,691.00	€ 11,632,510.00	€ 74,700,678.00	€ 56,350,806.00	-25%	544%
TV Drama Total	€ 22,264,880.00	€ 27,640,822.00	€ 23,644,460.00	€ 44,613,979.00	€ 22,825,208.00	€ 33,497,920.00	€ 41,568,640.00	€ 58,459,447.00	€ 21,084,535.00	€ 87,036,725.00	€ 62,679,871.00	-28%	182%
Documentary	€ -	€ 335,425.00	€ 730,820.00	€ 1,291,763.00	€ 2,667,102.00	€ 1,853,679.00	€ 1,509,798.00	€ 3,851,715.00	€ 4,625,241.00	€ 6,370,846.00	€ 6,441,581.05	1%	

Certification of Projects under S481 of The Taxes Consolidation Act, 1997  
(CHG figures obtained 1 December 2018)

Summary of Key Statistics **1994-2014**

Year	Total of projects certified	Total spend €m	Irish spend €m	S481 Amount €m
1994-2001	240	1,294.1	697.5	581.8
2002	22	142.9	87.9	62.2
2003	25	282.7	135.6	84.8
2004	22	119.6	66.5	58.1
2005	28	125.5	63.9	54.8
2006	39	202.6	116	110.8
2007	34	153.3	100.4	94.8
2008	38	159.3	108.4	102.9
2009	44	204.5	106.7	101.2
2010	57	346.3	164.6	160.2
2011	59	294.7	119.6	114.8
2012	52	226.6	143	138.5
2013	66	324.1	183.1	177.7
2014	66	432.8	237.4	231.6
Total €	792	4,309	2,330.6	2,074.2

The figures above relate to the investor model of S481 Film Tax Relief for projects certified up to the end of 2014 and operational up to 15 February 2015. New arrangements came into effect from 2015 when S481 changed from an investment model to a tax credit model. As a result of the short overlap period until 15 February 2015, some projects shooting in 2015 are included in 2014 figures as they were under the old system. The figures for certification in 2015, therefore, do not fully reflect the level of activity during the early months of 2015.

Summary of Key Statistics 1994-2001

Year	Total of projects certified	Total spend £m	Irish spend £m	S481 Amount £m
1994	11	79.0	44.8	36.7
1995	48	119.0	74.0	67.3
1996	31	84.2	53.2	45.4
1997	32	170.6	78.7	64.9
1998	32	151.1	82.0	73.9

1999	35	90.2	56.7	48.0
2000	28	136.6	72.9	62.6
2001	23	188.5	87.0	59.4
Total	240	1019.2	549.3	458.2
€		1294.1	697.5	581.8



# APPENDIX F. CODING SHEET – COMMISSION DECISIONS ON STATE AID FOR AUDIOVISUAL INDUSTRIES

The coding process informed the analysis in chapters 6, 7 and 8 on EU policy and Irish policy, which itself was informed by theory and literature in prior chapters, leading to the development of overarching themes that express the complexity of policy towards audiovisual industries policy.

The coding process is represented in three appendixes:

- Coding of Commission decisions on State aids for audiovisual industries
- Coding of development and implementation of soft law policy 2013  
Cinema Communication
- Coding of the development of Irish audiovisual policy

This appendix sets out the development of themes on EU policy towards State aids for the audiovisual industries. The corpus of material is the body of Commission decisions on Member States' State aid regimes for audiovisual industries.

The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences

Step	Summary	Explanatory note
<b>Preliminary step</b>	This preparatory step involves familiarisation with the field. This was an essential pre-step to 6-step approach that is not made explicit in Braun & Clark, 2006, 2019, but assumes familiarity with field. While Braun & Clark do acknowledge informed reader and inductive or deductive approach, the express setting out of these concepts is essential both for researcher and reader.	The development of themes is not by way of linear steps, but is iterative and circular. In this regard, the analysis of the decisions was informed by the academic literature on Irish taxation, cultural and audiovisual policy, EU law and policy and, in particular, integration theories, EU State aid, cultural, audiovisual, and competition policy.
<b>Step 1:</b>	The relevant data was identified and read for familiarity. The data for the development of this chapter is the corpus of decisions by the Commission on State aids for audiovisual industries as contained in Appendix 1. The development of codes and themes was also informed by the discourse around the development of the 2013 Cinema Communication.	The informed deliberate identification of and selection of Commission decisions towards State aid policy was undertaken to assist in developing an analysis of the policy objectives underpinning EU policy in this area, and to allow for contextualisation of the analysis of Irish tax expenditure policy for the audiovisual industries.

		<p>The initial search carried out was evidently incomplete on first examination, thus additional cases have been identified through the academic literature, through references in later cases, and through examination of Commission annual Competition reports. Sufficient cases have been analysed to identify broad trends in Commission decisions on State aid for audiovisual industries. It is possible that there are more/less than the 165 identified; a very small number (under 5) refer to State aid for industries other than audiovisual industries. However, this number is as complete as possible. No data set is entirely reliable.</p>
<p><b>Step 2.</b></p>	<p>Initial codes were developed. Taking into account the context, the data set was approached with consideration of the social, economic, industry and cultural rationales for State aid approval, the significance of key policy events including the decision on French State aid N3 /98, technological developments including the increase in streaming services, the recognition of the increasing significance of the digital games sector and an increasingly neoliberal conceptualisation of the audiovisual industries.</p> <p>The coding and development of themes was carried out in</p>	<p>Bearing in mind the inherently interdisciplinary nature of cultural policy research, the initial development of codes was built upon a foundation of academic discourse within multiple disciplines including Irish tax law, EU audiovisual and cultural policy, EU integration theories, EU law, and political economy of culture and communications,</p>

	conversation with the analysis of the Commission soft law policy.	
<b>Step 3.</b>	<p>Themes were developed. The development of codes into themes was assisted by the following questions:</p> <p>What is the wider context within which policy is developed?</p> <p>What are the objectives of the aid scheme?</p> <p>Whose voice is heard?</p> <p>What are the policy silences?</p>	<p>The data was approached with an understanding of the broad themes of the shifting emphasis between culture/economic values, the instrumentalism of culture and cultural value, the relationship between integration of EU and subsidiarity, the EU project and cultural diversity, national culture and industry.</p> <p>Marketisation of culture – what is the subject of the State aid, distribution, new/digital media.</p>
<b>Step 4.</b>	<p>The themes were revised with further deeper reading of documents, of theory and of supplemental documents, leading to use of themes of spatialization, of marketisation of cultural/creative industries, the symbiotic relationship between culture/economics; culture/integration/competition the elision of cultural value, tension between integration of EU and the national/glocal, an increased shift to a creativity framework in a globalised EU, a shift to a pragmatic discourse.</p>	<p>The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.</p> <ul style="list-style-type: none"> <li>o The multiple instrumentalities of cultural policy</li> <li>o The commodification of culture</li> <li>o The commodification of the nation and national space</li> <li>o The shifting balance of culture and economic value within policy discourse.</li> </ul>

<b>Step 5</b>	Define themes	The development of definitions of the themes was informed by the literature review on political economy and on cultural policy
<b>Step 6</b>	Write-up	<p>The writing up phase was an iterative process, rather than linear, and involved a continuous back and forth process with theory and data. Policy developments were ongoing throughout the analysis period.</p> <p>In particular the data set of Commission decisions was continuously expanded by ongoing decisions throughout the analysis period.</p>

# APPENDIX G. CODING SHEET – THE EU 2013 CINEMA COMMUNICATION

The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences

Step	Summary	Explanatory note
<b>Preliminary step</b>	This preparatory step requires familiarisation with the field. This was an essential pre-step to 6-step approach that is not made explicit in Braun & Clark, 2006, 2019, but assumes familiarity with field. While Braun & Clark do acknowledge	The development of themes is not by way of linear steps, but is iterative and circular. In this regard, the analysis of the soft law policy documents and the submissions by interested

	<p>informed reader and inductive or deductive approach, the express setting out of these concepts is essential both for researcher and reader</p>	<p>parties was informed by the academic literature on EU law and policy and, in particular, EU integration theories, EU State aid, cultural, audiovisual, and competition policy.</p>
<p><b>Step 1:</b></p>	<p>The relevant data was identified and read for familiarity. The main document analysed is the 2013 Cinema Communication, with the 2001 Communication and extensions thereof forming part of the corpus of analysed documents. The revision process leading to the final draft 2013 Communication gave rise to extensive documents, including 2 prior drafts and various submissions by interested parties (with the submissions treated as a subsidiary data set). In addition, certain documents were obtained under FOI from the Commission (minutes of meetings).</p>	<p>The informed deliberate identification of and selection of Commission soft law policy documents and submissions leading to the revision of the 2013 Communication was undertaken to assist in developing an analysis of the policy objectives underpinning EU policy in this area, and to allow for contextualisation of the analysis of Irish tax expenditure policy for the audiovisual industries.</p> <p>All submissions were publicly available on the Commission website, and have been downloaded and analysed for key trends. In addition, the consideration of policy silences (from Bacchi, 2009) allows for analysis of a <i>lack</i> of submissions.</p>
<p><b>Step 2.</b></p>	<p>Initial codes were developed. Taking into account the context, the data set was approached with consideration of the social, economic, industry and cultural rationales for State aid approval.</p> <p>The coding and development of themes was carried out in conversation with the analysis</p>	<p>Bearing in mind the inherently interdisciplinary nature of cultural policy research, the initial development of codes was built upon a foundation of academic discourse within multiple disciplines including Irish tax law, EU audiovisual and cultural policy, EU integration theories, EU</p>

	<p>of the Commission State aid decisions.</p> <p>Initial codes were developed around subsidiarity, marketisation, equity of tax expenditures, how does policy sit with other EU policies such as <i>Creative Europe</i>, Digital single market, national production, co-production, inward investment productions, cultural diversity, employment in industry, film as culture, film as industry, silences within the discourse, and transnational production trends.</p>	<p>law, and political economy of culture and communications.</p>
<b>Step 3.</b>	<p>Themes were developed. The development of codes into themes was assisted by the following questions:</p> <p>What is the wider context within which policy is developed?  What are the objectives of the aid scheme?  Whose voice is heard?  What are the policy silences?</p> <p>Out of this, themes were developed around the concept of the role of subsidiarity, the function of cultural /audiovisual policy within the EU, the tensions between national culture/national industry and the EU, the commodification of culture.</p>	<p>The data was approached with an understanding of the broad themes of the shifting emphasis between culture/economic values, the instrumentalism of culture and cultural value, the relationship between integration of EU and subsidiarity, the EU project and cultural diversity, national culture and industry.</p> <p>Marketisation of culture – what is the subject of the State aid, distribution, new/digital media.</p>
<b>Step 4.</b>	<p>The themes were revised with further deeper reading of documents, of theory and of supplemental documents, leading to use of themes of spatialization, of marketisation of cultural/creative industries, the elision of cultural value, tension between integration of</p>	<p>The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately</p>

	EU and the national/global. A political economy of law/regulatory system.	<p>approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.</p> <ul style="list-style-type: none"> <li>o The multiple instrumentalities of cultural policy</li> <li>o The commodification of culture</li> <li>o The commodification of the nation and national space</li> <li>o The shifting balance of culture and economic value within policy discourse.</li> </ul>
<b>Step 5</b>	Define themes:	The development of definitions of the themes was informed by the literature review on political economy and on cultural policy
<b>Step 6</b>	Write-up	The writing up phase was an iterative process, rather than linear, and involved a continuous back and forth process with theory and data. Policy developments were ongoing throughout the analysis period.



# APPENDIX H. CODING SHEET – SECTION 481

The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.

- The multiple instrumentalities of cultural policy
- The commodification of culture
- The commodification of the nation and national space
- The shifting balance of culture and economic value within policy discourse.
- The significance of policy silences

Step	Summary	Explanatory note
<b>Preliminary step</b>	This preparatory step requires familiarisation with the field. This was an essential pre-step to 6-step approach that is not made explicit in Braun & Clark, 2006, 2019, but assumes familiarity with field. While Braun & Clark do acknowledge informed reader and inductive or deductive approach, the express setting out of these concepts is essential both for researcher and reader. express setting out of these concepts is essential both for researcher and reader.	The development of themes is not by way of linear step, but is iterative and circular. In this regard, the analysis of primary and secondary legislation, and the relevant grey literature chosen as the subject of analysis, was informed by the academic literature on EU law and policy, and, in particular, discourse on the concept of Irish cinema, cinema and the nation, cultural,

		audiovisual and competition policy.
<b>Step 1:</b>	<p>The relevant data was identified and read for familiarity. The data for the development of this chapter is the Irish grey literature and policy documents, the primary and secondary legislation and supporting documents. Recent policy developments around Ireland's 'first' cultural policy (Creative Ireland) were analysed primarily as they pertain to audiovisual policy.</p>	<p>The informed deliberate identification and selection of the corpus of documents on Irish policy was driven by the specific contextual requirements of the research approach, and was shaped by the subjective positioning of the researcher as a lawyer with knowledge of and understanding of (significance of) the various legal instruments (Irish and EU) driving State aid policy towards the audiovisual industries. Thus, the initial choice of material stems from the Irish tax policy, Section 481, and expands therefrom to encompass various grey literature reports and supplemental materials to develop an understanding of the policy rationales (and silences) underpinning the policy as a cultural policy.</p>
<b>Step 2.</b>	<p>Initial codes were developed. Taking into account the context, the data set was approached with consideration of the social, economic, industry and cultural rationales for state support of the audiovisual industries.</p> <p>The coding and development of themes was carried out in conversation with the analysis of the Commission State aid decisions.</p>	<p>Bearing in mind the inherently interdisciplinary nature of cultural policy research, the initial development of codes was built upon a foundation of academic discourse within multiple disciplines including Irish tax law, EU audiovisual and cultural policy, EU integration theories, EU law, and political</p>

	Initial codes were developed around the economic, industry and cultural rationales for S481, an increasingly instrumentalised discourse around value, the concept of nationing.	economy of culture and communications.
<b>Step 3.</b>	<p>Themes were developed. The development of codes into themes was assisted by the following questions:</p> <p>What is the wider context within which policy is developed?          What are the objectives of the aid scheme?          Whose voice is heard?          What are the policy silences?</p>	The data was approached with an understanding of the broad themes of the shifting emphasis between culture/economic values, the instrumentalism of culture and cultural value, the role of culture in the context of a national culture and commodification of nation-space.
<b>Step 4.</b>	<p>The themes were revised with further deeper reading of documents, of theory and of supplemental documents, leading to use of themes of spatialization, of marketisation of cultural/creative industries, the elision of cultural value, tension between integration of EU and the national/global.</p> <p>This step identified overarching 'reflexive' themes including the spatialization of the virtual and real space of the state, increased marketisation of culture, a shift to a pragmatic discourse towards culture, State aid as a 'living instrument', the mismatch of goals between policymakers and researchers, the recognition of a cultural dividend within S481 policy discourse.</p>	<p>The final themes are expressed as follows, with an overarching theme of the (d)evaluation of cultural value of the audiovisual industries. It is reiterated here that this thesis deliberately approaches the analysis of EU State aid policy and Irish taxation policy as a form of cultural policy.</p> <ul style="list-style-type: none"> <li>o The multiple instrumentalities of cultural policy</li> <li>o The commodification of culture</li> <li>o The commodification of the nation and national space</li> <li>o The shifting balance of culture and</li> </ul>

		economic value within policy discourse.
<b>Step 5</b>	Definition of themes	The development of definitions of the themes was informed by the literature review on political economy and on cultural policy
<b>Step 6</b>	Write-up	<p>The writing up phase was an iterative process, rather than linear, and involved a continuous back and forth process with theory and data. Policy developments were ongoing throughout the analysis period.</p> <p>The thesis benefited from significant policy developments in the Irish cultural policy field</p> <ul style="list-style-type: none"> <li>• 2014 amendments to S481 policy</li> <li>• 2019 amendments to S481 policy</li> <li>• The introduction of Ireland’s first national cultural policy in 2018 with the Creative Ireland policy and the (much-delayed) publication of an Economic Analysis of the audiovisual industries and the Audiovisual Action Plan (2017).</li> </ul>

		The qualitative analysis of the documents relating to this policy benefited from the work already carried out on the EU policy and on Irish S481 policy.
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