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INDIA'S TRADE POTENTIAL IN AUDIO-VISUAL SERVICES AND THE GATS

ARPITA MUKHARJEE

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INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS
Core-6A, 4th Floor, India Habitat Centre, Lodi Road, New Delhi-110 003

Contents

Abbreviations i

Foreword iii

Introduction 1

Coverage of the Sector 2

Objectives and Structure 2

1. An Overview 3
    - 1.1 Recent worldwide developments in audio-visual services 3
    - 1.2 Audio-visual services in India. 19
2. Domestic and External Constraints 37
    - 2.1 Domestic constraints 37
    - 2.2 External constraints 47
3. GATS and Audio-visual Services 49
    - 3.1 A brief overview of GATS 50
    - 3.2 Coverage of audio-visual services under GATS 51
    - 3.3 Discussion of commitments 52
4. Strategies for Current Negotiations 56
    - 4.1 India's trading partners and the type of restrictions imposed by them 58
    - 4.2 Countries which have export interest in India and the type of restrictions they face 59
    - 4.3 India's strategies for the GATS 2000 negotiations 64
5. Domestic Reforms 68

Conclusion 78

Appendix A 80

Appendix B 92

Appendix C 99

Appendix D 100

References 105

List of Tables

Table A1	Employment in US Motion Picture Industry	80
Table A2	Country-wise Production of Films and Expenditure on Film Production in the Year 2000	80
Table A3	Use of Recreational and Audio-visual Services across Countries	81
Table A4	Television and Multichannel Homes in Various Countries	82
Table A5	Music Sales for Various Countries	83
Table A6	Media Units/PSUs/Autonomous Bodies Under the Three Main Wings of Ministry of Information and Broadcasting	84
Table A7	Some Basic Statistics on All India Radio	87
Table A8	Commercial Revenue (Gross Revenue) of Doordarshan (1976-77 to 1999-00)	88
Table A9	Entertainment Tax Rate of Various Asian Countries	89
Table A10	Hit/Flop Rates of Hindi Films	*89*
Table A11	Countries with which India has Cultural Agreements	90
Table B1	Summary of Commitments in Audio-visual Services	92
Table B2	Commitments in Audio-visual Services for Each Mode of Supply	93
Table B3	Percentage by Sector and Mode of Supply- Audio-visual Services	94
Table B4	a) India's Commitments in Audio-visual Services	95
	b) India's MFN Exemptions in Audio-visual Services	96
Table B5	Proposed Definition of the Audio-visual Services by the USA	97

List of Figures

Figure A1	Total Entertainment Industry Revenue	91

Abbreviations

ABS	Australian Bureau of Statistics
AFTRA	American Federation of Television and Radio Artists
AIR	All India Radio
ASEAN	Association of Southeast Asian Nations
BBC	British Broadcasting Corporation
BBFC	British Board of Film Classification
bn	Billion
CAS	Conditional Access System
CBFC	Central Board of Film Certificate
CCI	Communication Commission India
CD	Compact Disc
CEAC	Copyright Enforcement Advisory Council
CEAI	Cine Exhibitors Association of India
CFSI	Children’s Film Society, India
CPC	Central Product Classification
DBS	Direct Broadcast Television Service
DFF	Directorate of Film Festival
DTH	Direct-to-home
DVD	Digital Video Disc
EBU	European Broadcasting Union
E-commerce	Electronic Commerce
ETIG	Economic Times Intelligence Group
EU	European Union
Eurostat	European Statistics
FCC	Federal Communication Commission
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce and Industry
FIPA	Federation of Indian Producers Association
FTII	Film and Television Institute of India
GATS	General Agreement on Trade in Services
GCTV	Global Connections Television
GDP	Gross Domestic Product
GIC	General Insurance Corporation
ICCR	Indian Council for Cultural Relations
IDBI	Industrial Development Bank of India
IFPI	International Federation of Phonographic Industry
IMI	Indian Music Industry
IMPDA	Indian Motion Pictures Distributors Association
IPR	Intellectual Property Right
IPS	Internet Services Provider
IT	Information Technology
KBC	Kaun Banega Crorepati
LIC	Life Insurance Corporation
MFN	Most Favoured Nation

mn	Million
MPA	American Motion Picture Association
MSOs	Multi System Operators
NDTV	New Delhi Television
NFDC	National Film Development Corporation
NRI	Non-resident Indian
OCB	Overseas Corporate Bodies
OECD	Organisation for Economic Co-operation and Development
OGL	Open General License
PBS	Public Broadcasting Services
PIB	Press Information Bureau
PVR	Priya Village Roadshow
RBI	Reserve Bank of India
SCRIPT	Society for Copyright Regulations of Indian Producers of Film and Television
SNG	Satellite News Gathering
SRFTI	Satyajit Ray Film and Television Institute
SW	Short Wave
TRAI	Telecom Regulatory Authority of India
TRIPS	Trade Related Intellectual Property Rights
TV	Television
TWF	Television Without Frontiers
UAE	United Arab Emirates
UK	United Kingdom
UNCPC	United Nations Provisional Central Product Classification
USA	United States of America
USTR	United States Trade Representative
VCD	Video Compact Disc
VOA	Voice of America
VRS	Voluntary Retirement Scheme
VSNL	Videsh Sanchar Nigam Limited
w.e.f	with effect from
WDI	World Development Indicators
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Foreword

Audio-visual service sector is one of the fastest-growing service sectors in India and the country's exports of audio-visual products have shown a rapid increase in the past decade. This study examines India's potential for expanding trade in audio-visual services in the context of the ongoing GATS 2000 negotiations. It is a part of the Ministry of Commerce project "Trade in Services: Opportunities and Constraints".

This study shows that there is an increasing demand for Indian audio-visual products from regions with high non-resident Indian and South Asian concentration. India also has the potential of exporting post-production facilities, computer animations and graphics. Since the Indian audio-visual industry caters to a niche audience, India does not face any direct competition from major players such as the US. Based on these findings, the study recommends that it is in India's interest to actively participate in the ongoing GATS negotiations and push for the removal of external barriers to trade. The study also recommends a number of domestic reform measures, which would enhance the efficiency, productivity and global competitiveness of this sector.

I am confident that this paper will provide significant input to policy makers, industry associations and academicians working towards realising the potential of the audio-visual sector in India's services trade.

(Isher Judge Ahluwalia)
Director & Chief Executive
ICRIER

April, 2002

Introduction[*]

Audio-visual services play a crucial and formative role in any society. These services are closely linked to the preservation of cultural identity and social values, and play a major role in shaping public opinion, safeguarding democratic system and developing creative potential. Due to these reasons, governments of both developed and developing countries not only provide direct and indirect incentives to their domestic industries but also strictly regulate the content of audio-visual media.

During the Uruguay Round of WTO (World Trade Organisation) negotiations, audio-visual service sector witnessed limited liberalisation. Even major players such as the EU, Australia and Canada did not make any commitments to liberalise trade in these services. This was primarily to protect the domestic industries from foreign competition, promote their growth and to protect the cultural heritage of the nations from foreign influence. Many countries have repeatedly raised concerns about the capability of the GATS (General Agreement on Trade in Services) framework to take into account the democratic, cultural and social aspects. Others have explained that audio-visual sector is largely covered by domestic regulations and normal trade rules are not applicable to these services.[1]

In spite of concerns among the WTO member countries regarding liberalisation of international trade in these services, audio-visual sector is one of the fastest growing service sector and technological changes have given consumers worldwide access to a multitude of entertainment and information services. Technological progress, especially digitalisation, reduced the government's ability to restrict the entry of foreign content into domestic market. With increasing interactivity and internationalisation of production and delivery offered by Internet-based broadcasting services, various countries are modifying their regulatory set up and opening up their markets for foreign players. It is, therefore, expected that in the current round of negotiations relatively more countries would commit to liberalisation of trade in these services. The new multimedia services will receive special attention in the GATS 2000 negotiations and one of the challenges in the current round will be to ensure that the different facets of audio-visual and audio-visual related services are appropriately addressed.

Audio-visual services are closely related to other services sector such as tourism, software and recreational, cultural and sporting services. Disneyland and Universal Studios in the US are important tourist destinations. The increasing use of computer-generated production and special effect technologies has boosted the growth of

[*] I am grateful to Isher Judge Ahluwalia for giving me an opportunity to work in this area and for her encouragement and support. I am also grateful to BK Zutshi for his guidance and useful comments. This study was a part of the project sponsored by the Ministry of Commerce, Government of India. I am grateful to the Ministry of Commerce and Ministry of Information and Broadcasting for their comments. I would also like to thank Abhijit Sen Gupta and Ruchika Sachdeva for their efficient and prompt research assistance.

[1] These are discussed in detail in Section 4.

entertainment software producing industries. Hence, any commitment to liberalise trade in this sector will have implications on the growth and development of other services sectors.

Audio-visual service sector is one of the fastest growing sectors in the Indian economy. India is the largest film producing country in the world, producing on an average 800 feature films and 900 short films annually in 52 different languages and dialects. The music industry is third largest in Asia and ranks nineteenth in the world. India is the third largest producer of original entertainment software with over 40,000 hours of original programming (as of early 2001). Indian radio and terrestrial broadcasting network is one of the largest in the world. Given that there is a large and growing overseas market for Indian films, music, and entertainment software, India has tremendous potential for exporting these services. In order to encourage the inflow of advanced technology and development of skills, India has significantly liberalised the audio-visual service sector since the 1990s. It is, therefore, important to identify the country's opportunities and constraints to trade in audio-visual services not only for the current round of GATS 2000 negotiations but also to enhance the global competitiveness and future trade prospects in this service sector.

Coverage of the Sector

Audio-visual services encompasses a wide range of services including motion picture, videotape, television and radio programme production and distribution services; post-production services; sound recording services; motion picture and video projection services; radio and television broadcasting services; talent agency services (including the services of artists); coaching services and other services such as, the content of multimedia products.

Objectives and Structure

This study examines the prospects of liberalising trade in audio-visual services and its costs and benefits under the GATS framework. Other objectives of the study are: (a) to assess the opportunities available to and constraints faced by the Indian audio-visual service sector; (b) to recommend strategies for the Indian government in its negotiations in this sector at the WTO; and (c) to suggest various domestic reforms and measures that would be required to strengthen the sector.

The study consists of five sections:

- Section 1 analyses the place of audio-visual services in the domestic and world economy - emphasising on the recent trends and developments in this sector.

- Section 2 discusses the domestic constraints and external barriers to India's trade in audio-visual services.

- Section 3 provides the coverage of the sectors under GATS, initial commitments made by India and other major trading partners in this sector.

- Section 4 analyses the possible demand for liberalisation by India's trading partners in audio-visual services and India's response thereto in the light of further scope for liberalisation during the GATS 2000 negotiations. This section also identifies markets of export interest to India, entry barriers in those markets and the demands India should make on its trading partners in this regard.

- Section 5 discusses the regulatory and other reforms required in India to make this service sector globally competitive and to meet the challenges and opportunities arising from trade liberalisation under the GATS.

1. An Overview

1.1 Recent worldwide developments in audio-visual services

Audio-visual sector is one of the fastest growing services sectors in the world. Over the years, the number of entertainment options has increased from radio to television to Internet. Growth rate of audio-visual services is closely related to the level of development of the country, growth of per capita income, level of urbanisation, literacy level, existence of restrictions on entertainment options[2], etc. In most developed and developing countries the proportion of income spent on leisure and entertainment comprises a growing proportion of the average household's budget. For instance, the Canadian consumer market for entertainment services grew almost 50 per cent in real terms from 1986 to 1996.[3]

Traditionally, audio-visual service sector covered the production and distribution of audio-visual contents such as motion pictures, radio and television programmes and sound recording. Technological developments (such as Internet, satellite and digital networks) have brought about a revolution in the way audio-visual contents are created, produced and distributed. Digital revolution resulting in so-called convergence has blurred the boundaries between the IT (Information Technology), telecommunication and audio-visual sector.

Technological developments have given consumers access to a multitude of entertainment and information services and have stimulated the growth of audiovisual products around the globe. On the other hand, audiovisual sector plays an important role in fostering new technologies. For example, electronically developed audiovisual products and services have increased the use of network and encouraged investments in digital networks.

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[2] For example, in countries such as Bhutan there are various restrictions on entertainment options, resulting in very little scope for growth of the sector.

[3] Earl (1999).

Technological developments have fostered better and cheaper way of delivery of audio-visual contents to the consumers and have widened their choice. Conditional access system (CAS) allows consumers to select the television channels of their choice and pay only for them. The development of digital camcorders and graphic design equipment has reduced the cost of audio-visual production. Services such as video-on-demand allow consumers to receive programmes at a time that is convenient for them. Television production companies are in the process of launching (or have already launched) entertainment portals, which enables the customers to view their favourite programmes at any time in any time zones.

Over the years, there have been noticeable developments in audio-visual infrastructure. For example, in the case of cinema the development of multiplexes, where both foreign and locally produced films can be viewed side-by-side, together with digital sound system and modern infrastructure have made movie going a broader based leisure and consumption experience. Globally, the number of screens has increased while the number of seats per screen has decreased. As a result of these developments, many owners/operators of cinemas such as Village Roadshow (Australia), AMC (USA), Golden Harvest (Hong Kong), have expanded their operations worldwide, especially in developing markets.

There have been significant changes in the method of financing and pricing of audio-visual services. Traditional broadcasting media was primarily financed by license fee, government grants, etc. When private broadcasters entered the market in the 1970s and 1980s they were mainly financed through advertisement revenues. With the proliferation of channels in the late 1980s and 1990s, audience share per channel has become fragmented. Advertisement revenue is no longer sufficient to finance many new channels. As a consequence, cable and satellite channels are initiating new modes of financing such as monthly subscription and pay-per-view. In the case of cinema, blockbusters are barely meeting the production costs through the sale of cinema tickets and the profit is accumulated through the sale of other goods in multiplex cinemas, and sale of associated items such as clothing, toys and videos.

Digitalisation of audio-visual production has led to significant changes on the supply side. Large media companies are outsourcing the content creation to small and medium sized enterprises for a range of audio-visual products, as well as new CD-ROM's and on-line multimedia services. These small and medium sized enterprises in many countries, especially in Asia, are becoming the seedbeds of innovative content creation in digital technologies.

With multiplicity in the modes of delivery of audio-visual content, companies are restructuring their production and delivery system to target particular groups of audience. Global programming companies have oriented their products to cater to local markets. For example, ESPN India carries more cricket and polo events than ESPN service in most countries. MTV has 28 separate channels around the world, each of which is unique, with its own programming and local identity.

In the recent years there has been an increase in delivery of audio-visual content through the Internet. With increase in Internet-based broadcasting services governments are finding it difficult to restrict the entry of foreign content in to domestic markets. For example, at present, many countries have quotas for domestic programmes whereby television broadcasters have to devote a certain amount of broadcast time for local programming. This restriction will become obsolete with technological development as domestic viewers can download foreign programmes at a reasonable cost from a satellite dish or through Internet. Thus, the government of various countries will need to restructure their regulatory framework to take into account the interactivity and globalisation of production and delivery offered by the Internet-based network services.

The distribution of audio-visual content over the Internet has reduced the cost and increased the global sale of these products. This is especially true for the music industry where on-line sale and promotion of recorded music is well-established and online delivery of music on demand and webcasting is growing. The growth of on-line music market will allow consumers world-wide direct access to their favourite artists at discounted prices. Consumers will be able to entirely bypass traditional retailers, with significant implications for the cost structure and configuration of the present industry. However, at present, the full potential of delivery through Internet cannot be realised due to the difficulties in protecting copyright on the Internet.[4]

It is now widely debated whether the delivery of audio-visual content over the Internet would siphon off revenue and viewership from other modes of delivery such as the television. Some studies[5] have pointed out that Internet has not yet become a mass media like television and will remain a medium of distribution of audio-visual content to few selected users. Others[6] have pointed out that Internet has affected TV viewership since the time spent on net means less TV viewing time, and this in the medium term will lead to greater fragmentation of TV revenue. For example, the Myers study in the US shows that on-line advertisement spending will go up from US$4 billion in 2000 to US$32 billion in 2005. In the same period, advertising revenue for broadcasting will increase marginally from US$17 million to US$19 million.

Since the creation of audio-visual content requires heavy capital investments and commercial success is uncertain, in order to reduce the risk audio-visual service providers have to distribute their products in both domestic and international markets. Access to international markets is becoming increasingly necessary to recoup production costs. This has initiated the process of globalisation in audio-visual services. Joint ventures and co-productions are some of the means by which foreign players are entering the market previously dominated by nationals. For instance, joint ventures in European film productions have increased significantly in the 1990s. Joint ventures are also common in

[4] This is discussed later.

[5] For example, see Siwek.

[6] Prasar Bharati Report; Myers Group study.

multichannel digital broadcasting where there is a need for more differentiated service content.

With increase in the modes of delivery of the same service, traditional audio-visual service providers are facing stiff competition from the new entrants. For instance, due to the competition from telephone companies, direct-to-home (DTH) satellite TV and wireless cable, the number of subscribers for cable TV in the US dropped significantly. In order to retain their market share, US cable operators have introduced high capacity cable modems, which allows delivery of multimedia content including videos. Thus, competition has provided a strong incentive for enhancement of technology in the traditional audio-visual services. Competition has also improved the quality of services offered to the consumers and, in turn, improved their standard of living. For example, in Britain, the cable-television companies which also provide low cost telephone services, have introduced free itemised billing and other schemes to encourage poorer households to acquire a telephone.[7]

With digitalisation, the markets of audio-visual products is becoming more concentrated. Digital technology allows content to be used in many different formats, thus opening up a wider market for the same product. This has led to alliances and concentration between companies hitherto involved in different sectors of the economy such as broadcasting and telecommunication. With increase in the number of cross-sectoral and cross-media ownership, competition policy needs to be applied with detailed attention to market, sectoral, product and technological evolution.

The use of computer-generated digital production and special effects technologies have changed the employment pattern in audio-visual sector and increased the demand for skilled workers in this industry.

With increasing globalisation of audio-visual products, private sectors would play the leading role in deciding the optimal conditions necessary for the growth and development of network based content production and delivery. The government would act as a facilitator initiating appropriate regulatory reforms to promote the growth and development of this service sector.

Statistical information on audio-visual services

It is extremely difficult to present a comprehensive and accurate statistical information on the recent trends in audiovisual services since information on this sector is rarely available in the national accounts statistics, even from the developed countries. Moreover, the available information is subject to problems related to measurement, classification, disegregation and coverage which makes it difficult to present a cross-country comparison.

7 Cairncross, 1997

In many developed countries studies have been undertaken to estimate the contribution of copyright industries[8] to the national exchequer. The core copyright industries contributed US$348.4 billion to the US national exchequer (i.e., 4.3 per cent of the GDP) in 1997.[9] Although such industries are less significant in the developing countries such as India, this is likely to change with the growing weight of knowledge-based services sector in these countries and its importance for their closer integration into the global market economy.

The US is the largest market for audio-visual product as a whole, and is also the largest producer and exporter of these services. The EU, however, dominates in world-wide music recordings, with three European groups BMG (Germany), EMI (UK) and Polygram (Netherlands) controlling over 40 per cent of the world market. In 1998, the US film, television and home video industries earned over US$12 billion through exports to 105 countries. Collectively the copyright industries generated over US$70 billion in foreign exchange earnings in the same year.[10]

Audio-visual sector is a labour intensive sector and has significant potential for job creation. A study published in April 1998 on the "Economic Impact of the Entertainment Industry in California" showed that employment in the entertainment production sectors rose by 38 per cent between 1992 to 1996 which was seven times faster than that of the total Californian economy.[11] In 2000, around 631 thousand were employed in the US motion picture industry.[12] Table A1 in Appendix A presents the employment pattern in the US motion picture industry. Employment in US motion picture industry grew by more than 53 per cent during 1991-2000. In 1997-98, around 180 thousand were employed in video and motion picture production and distribution activities in the EU. Among these nearly 42 thousand were employed in France and over 34 thousand in the UK.[13]

For film industry, it is difficult to determine the overall number of productions and nationality of the films produced due to numerous co-production arrangements, definitional differences,[14] and other related factors. India is the world's largest producer of films followed by the US while other countries are far behind (Table A2 in Appendix A). Other important film producing countries are Japan, Hong Kong, UK, Egypt, France, Spain, Italy, etc. Investment in the feature films is highest in the USA.[15] Table A2 in

8 These include printing and publishing industries, computer industry, radio, recording, music, television, and advertising.

9 IFPI website.

10 MPAA, 2001.

11 See http://europa.eu.int for details.

12 MPAA Worldwide Market Research.

13 Eurostat, European Union Website.

14 That is, whether the nationality or residency of the producer, the production location, the origin of financing, nationality of the actor or director defines the characteristic of the film.

15 FICCI, 2001.

Appendix A shows that the average investment in a Indian film is much lower when compared to that of films produced in more developed countries. This is because as compared to Indian films, foreign films invest substantially in special effects, post-production and film marketing.

Domestic theatrical box office receipt is highest in the USA. In the year 2000, the US domestic box office receipt recorded its ninth consecutive annual increase (from US $4.80 billion in 1991) reaching US$7.66 billion.[16] The USA, Hong Kong and India are some of the major film exporting countries in the world.

Available information on film infrastructure shows that China has the largest number of cinemas and exhibition theatres (140,000) followed by USA (25,000).[17] Currently, India has around 11,962 screens.[18] Annual cinema attendance per capita is highest in Lebanon (slightly over 35 times), followed by China (12.3 times) and Hong Kong (10.3 times).[19]

In 1998, nearly 97 per cent of the US and EU households had a television set and 85 per cent of the US households and 70 per cent of the EU households had a video player.[20] DVD penetration was much lower and in 1999 only 0.9 per cent of the EU household had DVD players. An average European spends between 3 to 4 hours each day watching television (the number of hours is much higher for children). Globally, between 1990 and 1996 the number of homes taking multichannel television rose by almost 160 per cent from 90 million to 233 million. Tables A3 and A4 in Appendix A present the spread of various audio-visual media in different countries.

DTH was launched in North America in 1994 and by 1999 DTH subscribers reached 12 million.[21] DTH service in the USA now includes value-added services such as pay-per-view, video-on-demand and Internet on television. In Europe, there are around 7 million digital DTH subscribers. The growth of DTH services has been much slower in the Asian countries. Among the big DTH service providers in Asia, SkyPerfect TV of Japan has 1.6 million subscribers, Astra of Malaysia has 250,000 subscribers and United Broadcasting Corporation of Thailand has 178, 000 subscribers.

The USA is the largest market for recorded music followed by Japan (Table A5 in Appendix A). The total turnover (sales and rentals) of videocassettes in the EU[22] has

16 See MPAA Worldwide Market Research for details. The domestic box office includes the USA and Canada.

17 WTO, 1998.

18 FICCI, 2002.

19 WTO, 1998.

20 The figures for US are from MPAA Worldwide Market Research and figures for EU are from Eurostat.

21 Economic Times; Nov, 2000.

22 The estimates cover United Kingdom, Finland, Ireland, France, Denmark, Italy, Belgium, Germany, Luxemburg, Netherlands, Spain, Portugal, Austria, Sweden and Greece.

increased from 3.6 billion ECU in 1990 to 5.5 billion ECU in 1998, which is one third the size of the US market with the turnover from prerecorded video sales and rentals of 16.1 billion ECU. However, the fastest growing markets for recorded music are located in the developing countries. The Latin America market grew by 8 percent per annum in the 1990s and is expected to exceed 10 per cent growth rate by 2005.[23] Share of developing countries in the music market is likely to increase in the future since music has a strong regional dimension and niche customers. For example, Indian film music is very popular among non-resident Indian (NRI) and this has significantly increased the export of recorded music to countries with large NRI population.

The market for production of music content is highly concentrated with 5 companies holding around 75 per cent of the world sales: BMG (Germany), Polygram (Netherlands), Sony (Japan), Time Warner (USA) and EMI (UK). Most of these companies (other than EMI) have diversified their operations[24], in which music revenue accounts for a smaller share of the total revenue (10 per cent for Sony and 33 per cent for BMG). Inspite of such financial concentration there are many smaller players in the industry catering to niche customers. Increasingly, these companies are having alliances with the major players.

Although, developing countries such as India and Brazil have significant export potential in music, trade in this sector is skewed in favour of developed countries. This is primarily because the developing countries do not have large firms and financial structures necessary to invest significant capital into sophisticated marketing and distribution machinery with a global reach. Other factors affecting the growth and exports of music are weak institutional support, low levels of entrepreneurial capability, massive copyright infringements, etc.

Growth of the music industry is directly related to technological developments. With increasing use of Internet as a better and cheaper mode of delivery, it is predicted that 7.5 per cent of the overall music market will be distributed on-line by 2002 and up to 10 per cent by 2005. It is also predicted that by 2005 global Internet music sale will reach US$4 billion.[25]

Regulations and restrictions affecting trade in audio-visual services

Audio-visual service sector is an important and influential medium for cultural expression and hence, trade in this sector is often heavily regulated for preservation of the cultural identity and social values. Many WTO member countries have raised concerns that the overwhelming presence of foreign cultural products causes the erosion of cultural values and identities in receiving societies. Regulations on audiovisual services concern not only social and cultural issues, but also promotion of domestic industry and

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[23] Anderson, B *et al.,* 2000.

[24] The major companies have diversified their operations into related sectors such as film productions, broadcasting and retailing operations.

[25] Anderson, B. *et al*. 2000.

protection from foreign competition. With increased globalisation it is becoming difficult for the local producers to compete with imports from global players such as the US and it has, in turn, threatened the viability of local production companies.

Countries promote and protect their indigenous audiovisual industry through a variety of policy measures and institutions. The most comprehensive policy framework is usually contained in legislation concerning the broadcasting markets, content ownership and programming. Some of the direct and indirect restrictions[26] imposed by different WTO member countries are discussed below:

a) Minimum quotas for domestic programmes/Local content requirements

One of the most common restrictions in audio-visual sector is the imposition of a minimum quota for domestic programmes with the view of safeguarding the domestic industry's interest. These restrictions are in the form of television broadcasting quotas, cinema hall exhibition quotas, radio broadcasting quotas, etc. Many important WTO members such as the European Union (EU), Canada, Brazil, China, Malaysia, Korea, Egypt, etc. have implemented regulations imposing such restrictions. For instance, on October 3, 1989, EU adopted the "Television Without Frontiers" (TWF) directives which allows broadcasters to reserve majority of their transmission time for European origin programmes. France is even more restrictive and the French broadcast quota exceeds the requirements established by the EU Broadcast Directive. In France, it is mandatory to reserve 40 per cent of the (a) total number of feature films and (b) total transmission time allocated to audiovisual works for programme of French origin. In addition, 60 per cent of the number of feature films and audiovisual broadcast must be of EU origin. Thus, on the whole, 40 per cent of the broadcasting must be exclusively of French origin, and an additional 20 per cent of EU origin. These broadcasting quotas are also applicable to prime time viewing slots. Further, France has imposed radio broadcast quotas that require 40 per cent of songs on almost all private and public radio stations to be Francophone. In Italy, over 50 per cent of the monthly transmission time (including prime-time programming) is reserved for programmes of EU origin. The Italian government also has "seat and screen" quotas which requires all multiplex movie theatres of more than 1300 seats to reserve 15-20 per cent of their seats, distributed over no fewer than three screens, for showing Italian and EU films. Spain imposes similar quotas under which television operators are required to reserve 51 per cent of their annual broadcast time to European audiovisual works. Spanish movie theatres are required to show at a minimum one day of European films for every three days of films from a third country.

In Canada, the federal broadcasting regulator, the Canadian Radio Television and Telecommunication Commission, requires that Canadian programmes should cover 60 per cent of the total television broadcast time and 50 per cent of the time during evening hours (6 p.m. to midnight). It is also required that 35 per cent of the total popular musical selections broadcast on radio should qualify as "Canadian" under a Canadian determined

[26] Restrictions imposed by India are discussed in Section 4.

points system. For direct-to-home (DTH) broadcast services, more than half of the channels received must show Canadian programmes.

In Korea, domestically produced programmes must cover a minimum of 50 per cent (non-terrestrial) and 80 per cent (terrestrial) of the broadcasting time. Upper limit for the share of total foreign broadcasting time for any foreign films, animation or popular music, from a single country is kept at 60 per cent. Korea has also imposed screen quotas.

The Chinese schedule of commitments stated that upon accession to WTO China would allow the importation of films for theatrical release on a revenue-sharing basis but the total number of such imports will be limited to 20 per year.

Among the developing countries, Brazil has imposed theatrical screen quotas for local films. Malaysia has imposed a quota under which broadcasters are required, through licensing conditions, to devote 70-80 per cent of airtime to local programming.

b) Other production, distribution and broadcast regulations

Other than local content requirements, countries such as Brazil, Canada, China, India, Indonesia, Mexico, Singapore, etc. have imposed various forms of direct restrictions on programme production and broadcasting. For instance, Brazil prohibits the import of colour prints for television and theatrical display. In the past, distribution of sound recordings, videos and movies faced significant barriers in China. After China's accession to WTO, foreign service suppliers are permitted to establish joint ventures with Chinese partners to engage in the distribution of audio-visual products, excluding motion pictures, but China retained the right to examine the content.[27] There are also certain restrictions on carriage of foreign satellite channels by cable operators. Direct re-broadcasting of satellite transmission is not permitted in Korea.

Some countries have imposed "must carry" rules for their cable television. In the UK, cable television operators holding licenses issued before the Broadcasting Act 1990 must carry programmes of all national broadcasting services. Subject to the Broadcasting Act 1996, digital cable television operators are required to carry programmes of all national and regional television services. In Canada, cable television operators and wireless system operators must carry programmes of the public broadcaster, local and regional stations and educational programmes. Satellite operators must carry programmes of the public broadcaster and at least one affiliate of each national television networks licensed on a national basis. Additionally all operators are required to carry all Canadian speciality. According to the Cable TV Networks Amendment Bill 2000, it is mandatory for all cable networks in India to carry three Doordarshan (public broadcaster) channels out of which two are national and one regional.

The Cable Television Consumer Protection and Competition Act (1992) of the US provide television stations with certain carriage rights on local market cable television

[27] GATS/SC/135

systems. "Must carry" requirements are outlined in Sections 614 and 615 of the Act; "retransmission consent" requirements are contained in Section 325. Cable operators are generally required to carry local television stations on their cable systems in a tier of service provided to every subscriber without degrading the television station's signal. Must carry is a provision that allows a broadcaster to require a cable operator to retransmit the stations signal on the cable system. Must carry provisions have been adopted to ensure (i) the availability of free over-the-air television, (ii) the benefits derived from local origination of programming from television stations, and (iii) the continued distribution of unique, noncommercial, educational programming services.

c) Foreign ownership/investment restrictions

Several countries have imposed restrictions on foreign ownership of audio-visual services. The most common form of these restrictions includes limits on foreign equity participation, local incorporation requirements, licensing requirements, nationality and citizenship requirements, etc. For instance, in China foreign investment in construction and/or renovation of cinema and in Mexico foreign investment in broadcasting are limited to 49 per cent. In Japan, under the Cable Television Broadcast Law, foreign investment in satellite services is restricted to 20 per cent for programme suppliers, 33 per cent for facility providers and 20 per cent for suppliers of both programmes and facilities. Both Malaysia and Korea prohibit foreign investment in terrestrial broadcasting. Malaysian government also imposes a 20 per cent limit on foreign investment in cable and satellite operations through licensing agreements. In Korea there is a foreign equity ceiling of 49 per cent on foreign investors in cable transmission network business. Foreign investment in Korean satellite broadcasting is limited to 33 per cent. In some countries such as Philippines foreign investors are not allowed to invest in cable infrastructure.

In the UK, only UK nationals and nationals of European Economic Area member states or corporate bodies registered in such states are eligible to hold licenses to provide national and regional commercial television services, domestic satellite services, national and local analogue services. This restriction may be removed in the near future once the Communication Bill is passed. In the US, a broadcasting license cannot be provided to an alien; a corporation with more than 20 per cent of its capital owned or voted by aliens; a corporation controlled by any other corporation in which more than 25 per cent of its capital is owned or voted by aliens. In Switzerland, broadcasting licenses are granted only to foreign individuals domiciled in the country or foreign controlled legal entities with their head quarters in Switzerland, provided that the foreign state extends reciprocal facilities in the same degrees to Swiss nationals or Swiss-controlled entities. For legal entities, it is specified that over half of the capital or equity shares should be owned by national’s domiciled in Switzerland or legal entities with their headquarters in the foreign state extending reciprocal facilities in the same degree to Swiss nationals or Swiss-controlled entities. And that in either case they should hold over half the votes at the annual general or shareholders meeting.

Other than foreign ownership restrictions, there are several restrictions on private ownership of audio-visual media and these are naturally applicable to the foreign players. For instance, in Japan a single entity is not allowed to own or control more than one broadcasting station. In the UK, for analogue TV, a single entity is not allowed to hold or control licenses for more than 15 per cent of the total television audience; for digital television, the maximum number of points (utilising the point scheme and total number of points allocated) that a single entity is allowed to hold varies between 20–25 per cent of the total digital programme service. Also, in the UK, a single person or a corporate body is not allowed to hold more than three multiplex licenses.28 In France, a single entity is not allowed to own more than 49 per cent of the shares in a national broadcasting company.

d) <u>Cross-media ownership restrictions and cross-sectoral ownership restrictions</u>

Many WTO members have imposed restrictions on cross-media/cross-sectoral ownership. These restrictions act as a barrier to the development of new services incorporating content from various media. In the era of digitalisation these restrictions limit the growth of audio-visual content and prohibit the content provider from achieving cost advantages and higher profits by delivering through multiple platforms. In Australia and Japan a single entity is not allowed to control the ownership of broadcasting television, radio and newspaper in the same geographical market. In Australia, those controlling commercial television broadcasting licenses (or public broadcasters) are not permitted to control datacaster transmitter licenses. In Korea, owners of newspapers and major industrial groups cannot own or manage a general or news channel in terrestrial, cable or satellite broadcasting. Newspapers and major industrial groups cannot exceed 33 per cent of shares of cable systems operator or satellite operator.

The holder of national radio license in the UK is not allowed to own a national or regional television license. Additionally, the holder of a regional television license cannot own a local radio license in the same geographical area. The holder of newspaper group having more than 20 per cent of the total national circulation is not allowed to own a national or regional television/radio license, or more than 20 per cent share in such a license. Additionally, applications by other newspaper groups are subject to a public interest test. The British Broadcasting Corporation (BBC) is specifically restricted from holding a license to provide cable television services.29

French terrestrial television companies licensed to provide services to an area having a population of 4 million or more are not allowed to provide cable television infrastructure. On the other hand, cable television operators licensed to provide cable television infrastructures covering an area having a population of 6 million or more are not allowed to provide terrestrial television services.

[28] Some of these restrictions may be removed once the Communication Bill is passed.

[29] See footnote 29.

Korea has imposed some restrictions on cross-ownership of terrestrial broadcasting and cable operations. A terrestrial broadcaster cannot own more than 33 per cent of shares of a satellite operator while a satellite broadcaster cannot own more than 33 per cent of shares of a cable systems operator.

Until recently, the US had cross-media restrictions under which a cable system was not allowed to carry the signal of any television broadcasting station which is owned, operated or controlled by the cable system and which overlaps the service area of the cable system. This restriction on media companies owning both cable systems and local broadcasters in the same market was removed by the US federal court decision in February 2002.30 The US also has restrictions on ownership, operation and control of the radio, television station and a daily newspaper, which is published in the same community.

e) Duties, taxes and levies

Several countries have imposed taxes and duties on audio-visual services and this in turn has hampered the growth of the sector. For instance, countries such as China, India, Indonesia, Malaysia and Pakistan impose high entertainment taxes which act as a impediment to free trade and limits the growth of theatrical industry by artificially increasing box office prices. In China the theatrical and home video industries are subject to excessive high duties and taxes totaling over 50 and 75 per cent respectively. The Indian entertainment tax varies across states and in some states it is more than 100 per cent of the theatre admission price. Indonesia has imposed duties and charges on imported films.31 Both Malaysia and Pakistan have high entertainment taxes for theatre admissions. The Pakistani government also imposes admission price controls that further make it difficult for the theatres to operate profitably.

f) Support programme, tax concessions, subsidies, etc.

Often various support programmes, tax holidays and subsidies are used to promote the growth of domestic audio-visual industry. Increasingly these forms of assistance are replacing the direct restrictions on foreign entry. Even developed countries such as Australia, Canada, EU and the US have a wide range of support programmes.

The EU programming industry suffers from fragmented national markets, a low-rate of cross-border programming, distribution and circulation, financial deficits, and an inability to attract financial resources. Support programmes for the film industry such as the Media II plan initiated by the European Commission, The Eurimages initiative of the Council of Europe, and the Eureka programme, aims to promote production and distribution of European audio-visual products, encourage training of professionals, eliminate internal barriers to EC-wide broadcasting distribution, help the industry to adapt to the demands of the single market, promote the use of new technologies, etc. For

[30] McKinsey Quarterly report on Media and Entertainment.

[31] Duties and tariff are imposed on videos, laser discs, DVDs and VCDs.

instance, the Media II programme, adopted for a period of five years (1996-2000) with a budget of 310 million ECU focuses on three key areas: training, development and distribution. Support in the field of project development is directed primarily at films and television dramas, documentaries and animations. Producers and creators of work with commercial potential in the European market are eligible for financial and technical assistance for scriptwriting, for putting together the financial package and producing the business plan. In the area of distribution (of video, cinema and television) the programme aims to encourage distributors to invest in production of promising films to add to their catalogues and to enhance their chances of worldwide distribution by increasing the number of copies available and the amount spent on promotion. This programme also provides for support initiatives for improving skills in the economic and commercial management of audio-visual projects. Eurimages, on the other hand, was initiated to enhance EU-wide co-productions.

Through Telefilm Canada (the Canadian Film Development Corporation), the Government of Canada provides support as a partner, to the private sector for the production of film and broadcast material, at all stages from screenplay development to final production and beyond to the distribution and marketing of the finished products in Canada and abroad. Australia also has various support programmes for the film industry through various organisations such as Australian Film Commission (administers government funds to assist the development of both feature and non-feature films and film related organisations) and the Australian Film Finance Corporation (provides a mechanism for financing Australian features, mini-series, tele-movies and documentaries).

In the US, public funding to support domestic content production is relatively low, but individual states provide a range of incentives to attract production. Federal funds are distributed for film and video art production by the National Endowment for the Arts.

Many developed countries such as France, Germany, Australia and Japan provide aids and subsides to the domestic audio-visual industry. The French Centre National de la Cinematographie (CNC) requires the film distributors, exhibitors, exporters, etc. to pay a levy which is used to generate subsidies for the local film industry. There are also special admission tax revenues and fees for censorship, visas, permits and registration that are used to generate subsidies for the domestic industry. German government provides aid for film promotion and other related activities by imposing levies on box office receipts and home video.

The Australian government provides tax concessions for investments in particular format and programmes. These tax concessions are designed to encourage private investment and they allow investors to claim 100 per cent tax deductions on certified films.

g) Lack of intellectual property protection

Since the production of audio-visual content is based on creative expression and related intangible assets, protection of intellectual property is crucial for the growth and export of such services. Given the direct relationship between copyright and income generation in the audio-visual sector, appropriate copyright administration is essential in creating the conditions for the development of this sector. Although issues related to intellectual property rights are covered under the TRIPS (Trade Related Intellectual Property Rights) Agreement, it is important to mention how copyright violation can act as a barrier to international trade in audio-visual services.

Piracy is a global phenomenon and has effected the growth of the industry in both developed and developing markets. With the development of new forms of delivery of audio-visual content, traffic in pirated recording is rapidly diversifying into new technologies and formats. In the year 2000, global pirated music market totalled 1.8 billion units. More than a third of all CDs and cassettes around the globe are illegally produced and sold.[32] Piracy level is much higher in the developing countries than developed countries. In China until recently the piracy level was as high as 80–85 per cent. The US motion picture industry sustains an annual loss of US$120 million in China, US$66 million in India and US$50 million in France due to audio-visual piracy.[33] Piracy has almost destroyed the music industry in Pakistan and Sri Lanka. Trade in pirated videos, CDs and cassettes have increased dramatically. Countries such as Malaysia are major producer and supplier of pirated VCDs to India, Indonesia, Philippines, Singapore, New Zealand and Australia. Pirated VCDs from Malaysia are also sold in South America, South Africa and throughout Europe *via* the Internet.

With the distribution of files on the Internet, piracy has taken a new dimension. An IFPI (International Federation of Phonographic Industry) study[34] found that there were more than 25 million illegal music files available on the Internet. The same study showed that in 1999 the 11.6 billion European music industry suffered losses of 1.24 billion Euros as a result of global piracy. The EU governments lost an estimated 85 million Euros in tax revenue as a result of piracy in that year.

The problem of Internet piracy is primarily linked to the lack of domestic legislation and a poor international copyright regime for audio-visual content delivered on-line. Various countries have taken unilateral measures to restrict piracy. For instance, action taken by the French Enforcement Agency SCPP in 2000 has resulted in closure of 350 infringing sites with nearly 60,000 MP3 files.[35] However, there is a need to develop a global copyright regime.

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32 IFPI (International Federation of Phonographic Industry) Music Piracy Report, June 2001.

33 MPAA, 2001.

34 Reported by IFPI (International Federation of Phonographic Industry), Oct 2000.

35 FICCI, 2000.

h) E-commerce restrictions

E-commerce (electronic commerce) broadly refers to the sale and purchase of goods and services using some form of Internet-based communication. The delivery and payment may be performed off-line. E-commerce also includes the use of non-Internet communications systems, such as telephone ordering, interactive television and electronic messaging. It includes privately owned electronic networks usually run by businesses and their partners for their own account.

E-commerce can develop as a viable mode for distribution of audio-visual content such as music, films, etc. However, realisation of the full potential of trade through this mode requires a legal framework that permits content owners to provide for the security of their property online. Copyright owners must be assured of their ability to control the security and integrity of their creations as they are disseminated through downloading or streaming on the world-wide web, on-demand services, or other new interactive media. Without such assurances, there will be little incentive to make these valuable works available on-line. Presently, there is no international law regulating e-commerce and therefore the growth of services is severely constrained in the absence of an international legal framework.

Since 1996, WIPO (World Intellectual Property Organisation) has initiated two treaties: the WIPO Copyright Treaty and WIPO Performances & Phonograms Treaty for combating global piracy. These treaties also cover piracy on the net and hence have implications for the development of e-commerce. The treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. Out of 178 countries that are members of WIPO, only 34 countries have ratified the WIPO Copyright Treaty, while 31 countries have ratified the WIPO Performances & Phonograms Treaty. The WIPO Copyright Treaty entered in to force on March 6, 2002, and the WIPO Performances & Phonograms Treaty will enter into force on May 20, 2002.

In order to fully implement the WIPO treaties, individual countries will have to modify their copyright laws, whether through minor changes or more substantial revisions. Many countries have already taken steps in this direction, For instance, countries in the Asia Pacific region have amended their domestic copyright laws to bring it in compliance with the WIPO treaties. Hong Kong and Singapore have amended their copyright laws. Nevertheless, the revised laws have not been fully successful in Internet Service Provider (ISP) liability. India is also planning to amend its copyright law. India has already passed an Information Technology Act to regulate e-commerce. However, the Act needs to be suitably modified to include clauses ensuring security and protection of on-line consumers.

Since only a small number of countries have ratified the WIPO treaties, their applicability at a global level will not be very effective. Prompt ratification and implementation of the WIPO Treaties in as many countries as possible is therefore an essential element in the strategy to foster the growth of global electronic commerce.

E-commerce is a horizontal issue for telecommunication and other sectors. So full potential cannot be realised without significant contribution in every sector. Also to improve e-commerce legal issues such as encryption, electronic authentication, electronic payment of tax and tariffs, protection of personal data, electronic contract, commercial communications and the domain name system all need to be regulated on a world-wide basis where a minimum set of requirements is acceptable to all countries.

i) Other restrictions

Restrictions on other interlinked services sectors such as discriminatory tariff barriers in the telecommunication sector and restrictions on advertising services affect the operation of audio-visual services. Advertising is an essential source of financing for the media sector. Many countries have imposed restrictions on advertising in audio-visual media. For example, France bans advertisement of movies on television, the US has imposed restrictions on the content and amount of advertising on children programming and in India there is a ban on liquor and tobacco advertisement in satellite channels.

Some countries such as Malaysia, Australia and Indonesia have imposed regulations which promote the broadcast of local advertising. For instance, in Malaysia 80 per cent of advertising content has to be of Malaysian origin and in Australia at least 80 per cent of advertising time broadcast each year by commercial television licensees, between the hours of 6 am and midnight, have to be used for Australian produced advertisements.

There are several restrictions on the movement of temporary persons for providing audio-visual services. These include strict eligibility conditions for application for work permits/visas, cumbersome procedure for actual application and processing of these work permits/visas, limitations on the length of stay and transferability of employment in the overseas markets, etc. There are also entry barriers related to recognition of qualifications; requirement of certain years of work experience; licensing/certification requirements; and residency and nationality requirements. All these restrictions raise the direct and indirect (due to uncertainty and delays) costs of entering a foreign market. Almost all WTO member countries have imposed restrictions on the temporary movement of persons.

Restrictions versus Trade Liberalisation

It is now widely debated whether the above mentioned restrictions promote and protect the indigenous culture and industry or act as a barrier to the development of audio-visual services. Proponents of these restrictions have repeatedly pointed out that these measures would safeguard and promote the domestic audio-visual sector. On the other hand, free trade proponents argue that liberalisation of audio-visual market would foster foreign investment and encourage adoption of new technologies and this would, in turn, lead to the development of more a competitive domestic industry.

Globalisation and new technological developments have reduced the need and practicability for restricting foreign content. Traditionally, one of the main reasons for regulations was that limited number of services could be delivered to the viewers on the available channels and hence, public authorities had to ensure adequate representation of local programmes. With the proliferation of channels, and development of new services such as video-on-demand there is a need for content to fill the increasing number of broadcast hours. Similarly, the development of multiplexes, where both foreign and locally produced films to be viewed side-by-side, have reduced the need for screen quotas for locally produced movies. In fact, local programming companies of many countries are unable to meet the domestic demand. For instance, during the period 1994–98, although France heavily subsidised the film industry, the number of French film produced were far less than what was required to fill the quota of French films during prime-time viewing. On an average, only 10 French films per year had enough successes (more than one million viewers) to be candidate for broadcasting during prime time compared to an average of 24 US films. As a result, French television channels had to recourse to massive reruns of French films, thus restricting the choice available to the viewers. This has made it inevitable for broadcasters, movie theatre owners, etc. to import foreign programmes.

Delivery of audio-visual content through multiple platform have made the local content and quota restrictions redundant. For instance, the EC quota on foreign movies in television programmes will become obsolete when the EC viewers will be able to download foreign movies at reasonable costs from the satellite dish through Internet.

In this era of globalisation, the challenge before the government is to initiate an appropriate regulation so that the country can enhance its cultural resilience and at the same time benefit from the globalisation process.

1.2 Audio-visual services in India.

Audio-visual service sector is one of the fastest growing service sectors in India. Different studies have estimated various growth rates for this sector. For instance, the FICCI-Arthur Anderson study projected[36] that Indian entertainment industry (including films, television broadcasting, cable television, television software, music, radio and live entertainment) will grow from around Rs 130 billion in 2001 to Rs 293 billion by the end of the year 2006 (as shown in Figure A1 in Appendix A). Inspite of the global slowdown and poor performance of the Indian economy, audio-visual and entertainment industry grew from Rs 100 billion in 2000 to Rs130 billion in 2001 (with a growth rate of 30 per cent). On the other hand, the Economic Times Intelligence Group (ETIG) study shows that the entertainment industry (including television, films, radio and music) is likely to grow from around Rs 144 billion in 2000 to Rs 481 billion in 2005. Although the projections vary, they clearly indicate that this is a high growth sector.

[36] FICCI, 2002

India is the largest film producing country in the world, producing on an average 800 feature films and 900 short films in 52 different languages and dialects. The music industry is third largest in Asia and ranks nineteenth in the world (Table A5 in Appendix A). India is the third largest producer of original entertainment software with over 40,000 hour of original programming (as of early 2001). The radio and terrestrial broadcasting network is one of the largest in the world.

Indian audio-visual and entertainment industry is largely unorganised and concentrated in private hands. On the regulatory front, this sector is governed by various ministries/departments at the national, state and local levels. At the national level, Ministry of Information and Broadcasting is the apex body for the formulation and administration of rules and regulations relating to the mass communication media consisting of radio, television, films, the press, publications, advertising, etc. The Ministry is also responsible for international co-operation in the field of mass media, films and broadcasting and interacts with its foreign counterparts on behalf of the Government of India. The main Secretariat of the Ministry is divided into three wings: the Broadcasting Wing, the Film Wing and the Information Wing. The Broadcasting Wing handles matters relating to the electronic media. It formulates policies related to the public service broadcaster (Prasar Bharati), operation of cable televisions, private television channels, etc. The Film Wing through its various units produce and distribute documentary films for internal and external publicity, provide training, organise film festivals for the promotion of "good cinema", formulate import and export regulations for films, etc. The Information Wing deals with the policy matters regarding the print media and the press and publicity requirements of the government. The media units/ autonomous bodies/ public sector units under these three wings are presented in Table A6 of Appendix A.

The Department of Culture, which under the Ministry of Tourism and Culture, preserves, promotes and disseminates all forms of art and culture. The Department also implements bilateral cultural agreements between India and the foreign countries on behalf of the Government of India. Copyright related issues are under the aegis of the Department of Education, Ministry of Human Resource Development. Additionally, different states have their own ministries/departments for audio-visual and related services.

Realising that the audio-visual media plays a vital role in preserving cultural democracy, the main objective of the Indian audio-visual policy is to strike a balance between preservation of the rich cultural heritage of the nation and offering a wider choice of services to the consumer through liberalisation and increased privatisation. Since a large part of audio-visual and related services have already been privatised, government meets the objectives of liberalisation and cultural protection through appropriate regulatory measures, which are revised from time to time in keeping with the global developments in this sector.

Prior to the 1990s, audio-visual and related services (other than film production, distribution and exhibition) was largely owned by the public sector. Since the 1990s there were significant liberalisation in this sector, which in turn, was a part of the broader reform measures initiated by the government. In the early 1990s private satellite channels were allowed to operate in India. In 1998, the government granted industry status to the film industry. Required changes were made in the IDBI (Industrial Development Bank of India) Act 1964 to enable the sector to get institutional financing. On January 2001, the government removed the ban on reception and distribution of television signal on Ku Band and allowed the operation of Direct-to-Home (DTH) service[37]. Other liberalisation measures include issuing of licenses for private FM broadcasting; removal of excise duties on recorded tapes for television content and broadcast; introduction of clarity through Section 80 HHF of the Income Tax Act by which export income from entertainment software is tax exempted; allowing uplinking facilities to 80 per cent Indian owned television channels; reduction in the basic custom duties on cinematographic cameras and other related equipment from 40 to 25 per cent and that on colour positive films in jumbo rolls and colour negative films in rolls of certain sizes 15 to 5 per cent[38], etc.

The recent Union Budget 2002-2003 offered various incentives to the audio-visual and entertainment industry. The budgetary support to the Ministry of Information and Broadcasting has been increased by 23 per cent to Rs 415 crores for the year 2002-2003. It was also announced that there would be an exemption of 50 per cent profits from tax under Sec 801B of the Income Tax Act for large convention centers and multiplex theatres in non-metros for the next five years. This will provide incentives for developers to invest outside the metros. The custom duties on earth gears and studio equipment were reduced from 35 to 25 per cent. This will reduce production costs (it is estimated that the costs will fall by 15 to 20 per cent per year) for the films and television projects and may encourage players to set up satellite uplinking hubs.[39]

In the past, foreign direct investment in advertising sector was only allowed up to a maximum of 74 per cent. This restriction has been removed in March 2002 and now foreign investors are allowed to invest up to 100 per cent through automatic route.

These liberalisation measures together with increasing urbanisation and rising per capita income have led to greater media penetration. Privatisation and foreign investment not only lead to technological upgradation and growth in audiovisual services, it has enhanced the global competitiveness of these services. This is evident from the fact that India’s exports of audiovisual products have shown a rapid increase in the past decade.

[37] DTH broadcasting service refers to distribution of multi channels TV programmes in Ku Band by using a satellite system by providing TV signals directly to subscribers premise without passing through an intermediary such as cable operator.

[38] The countervailing duties have also been exempted from these items (Business Standard; March 2, 2000).

[39] However, it should be noted that since Indian channels have entered into a three to five year contract with the uplinking centers abroad, any early exit will involve a huge price as the channels will have to pay for the remaining period of the contract. Therefore, a reduction in the custom duty may not be enough to get these channels to switch over to a base in India.

For instance, export of video films/software increased by 65 per cent from Rs 7.25 billion in 1999/2000 to Rs 12 billion in 2000/2001.[40]

Various segments of the Indian audio-visual and entertainment industry are discussed below together with their growth and trade potential.

Public Broadcaster

Indian public sector broadcaster "Prasar Bharati" is a statutory autonomous body under the Broadcasting Wing of the Ministry of Information and Broadcasting. Prasar Bharati was established under the Prasar Bharati Act, 1997,[41] and comprises of All India Radio and Doordarshan which were earlier working as independent media units under the Ministry of Information and Broadcasting.

<u>All India Radio</u>

The Indian radio network is one of the largest in the world covering over ninety per cent of the country in terms of area and reaching around 99 per cent of the population in 24 languages and 146 dialects. All India Radio (AIR) has achieved significant growth since independence. At the time of Independence, India had only 6 broadcasting stations and 18 transmitters. In the year 2001, the country had 207 broadcasting stations and 324 transmitters. The total revenues in 2001 were Rs1.9 billion of which Rs 1 billion was advertisement revenue and the remaining was sponsorship revenue.[42] Although, over the years, there has been a shift from radio to other entertainment mediums for example television, radio continues to be an important source of entertainment in smaller cities and villages and, at present, radio sets outnumbers the number of television sets by 3:1.[43] Statistical information on AIR is presented in Table A7 in Appendix A.

All India Radio has a three-tier system for domestic broadcasting: national, regional and local. National channel caters to the information, education and entertainment needs of the people through its various stations located across the country. Regional and sub-regional channels located in various states disseminate regionally relevant programmes, while the local stations set up in district headquarters are area specific and provide entertainment and information to local communities.

The "External Services Division" of AIR is one of the largest external radio networks in the world both in terms of reach and range. This division covers around 100 countries[44] in 26 languages (16 foreign and 10 Indian) with a programme output of

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[40] FICCI, 2002.

[41] This Act was enacted in 1990 but came into force in 1997.

[42] FICCI, 2002.

[43] FICCI, 2001.

[44] It covers West, North, East and South East Asia; North West and East Africa; Australia; New Zealand; Europe including the UK and Indian subcontinent. It does not cover the American continent.

around 71 hours. It exports recordings of music and other programmes to around 150 countries and foreign broadcasting organisations under the cultural exchange agreements and AIR's programme exchange agreements. In order to upgrade its technical know-how and programming skills, AIR conducts training programmes with other foreign broadcasting organisations such as Radio BBC (UK), Deutsch Welle,(Germany), and Australian Broadcasting Corporation (Australia). On its part, AIR offers training facilities to radio networks of other developing and least developed countries. AIR also has co-production agreements with foreign players such as Deutsch Wella and Australian Broadcasting Corporation. In order to broaden the news coverage, AIR has entered into a "Radio News Exchange Programme" with members of the Asia Pacific Broadcasting Union.

Over the years in line with the global developments, there has been technological upgradation and modernisation in AIR. In 1998, AIR launched the radio-on-demand service in New Delhi. In the same year it introduced news-on-phone service. In order to widen its reach overseas, Internet broadcasting was introduced in the year 2000. Through Internet, AIR services can now reach countries such as the US, Canada and South Africa where AIR signals do not reach. Around 95 per cent of visitors to the AIR website are NRIs, 70 per cent being from the American continent. Digital based technology has been introduced to ensure superior production and transmission facilities. On 15th August 2000, AIR launched its satellite digital radio service to Middle East and North-East Africa. For satellite digital radio service, Prasar Bharati has entered into an agreement with World Space Corporation, the US based satellite company. World Space Corporation plans to invest US $25 million by the year 2003 to expand its activities in India.[45] It is expected that digitalisation and delivery through multiple platforms will increase the revenue earnings of AIR. Digital radio will facilitate the possibility of charging subscription revenue for tier-based programming using smart-card technology almost similar to the revenue model followed by cable television and DTH.[46]

The rate of growth and speed of modernisation is directly depended upon the revenue earned and advertisements provide a major source of revenue for radio. In the developed countries, radio accounts for more than 12 per cent of the total advertisement spending since advertisement on radio is cheaper, more interactive and flexible. However, inspite of its vast reach, All India Radio accounts for only 2.5 per cent of the total advertisement spending. This is primarily because, in India, television is more popular as a mass entertainment medium and offer advertisers access to audience with distinct taste and demographic profile.

In order to improve the programming quality and increase the revenue earnings, government announced the privatisation of FM channels in 1999. Companies registered in India with share holdings held by Indians (except for limited portfolio investments by foreign institutional investors, NRIs and overseas corporate bodies) are allowed to apply for the licenses. The government also decided that the programme content of private FM

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[45] Business Standard, 14.9.2000

[46] FICCI, 2001

broadcast would exclude news and current affair programmes and would only include music, entertainment, information and education. Globally, privatisation has accelerated the advertisement earnings of radios. For example, in Sri Lanka radio's share of the total advertisement spending increased from 7 per cent in 1992 to 15 per cent in 1999 due to privatisation which created more than 15 FM radio channels in Colombo alone.[47] Besides improving the quality of the entertainment programme, it is expected that private FM channels will offer advertisers access to captive audience such as commuters caught in a traffic jam.

Future growth and trade potential

The future growth of radio would depend on its ability to attract private investment and advertisement spending. Since there is an increasing demand for India-specific programmes from the South Asians and NRIs in the South Asia region, Middle East and in developed countries with high NRI concentration such as the UK, USA, Canada and Australia; there is a significant potential for exporting programmes either directly or through tie-ups with overseas radio stations. There exist large potential for radio programmers to develop programmes catering specifically for NRIs and South Asians listeners. There are also possibilities of technical collaborations with neighbouring countries for coordinating the frequency distribution, monitoring the services, etc. With the launch of the Internet radio, Indian programmes can now be heard in all parts of the globe.

India also has import interest in this sub-sector. India can import technical know-how and skills which would enable the industry to become globally competitive.

<u>Doordarshan (DD)</u>

Doordarshan, the Indian national television service, with around 1,174 transmitters[48] (as of March 2001), 51 studios, 21 channels, reaching around 88 per cent of the population (over 70 million homes) and covering 74.8 per cent of the country is one of the largest terrestrial broadcasting networks in the world[49]. It has 49 programme production centres, producing programme output of 1,485 hours per week.

Doordarshan started its operation in 1959 through a makeshift studio at New Delhi's AIR's headquarters. Since then, it has achieved noticeable growth and inspite of the advent of several satellite channels, Doordarshan has the highest amount of viewership both in the urban and rural areas. In 1999, DD1 (National) had a viewership of 86.4 per cent of the population, comparatively Zee TV had a viewership of only 3.7 per cent.

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[47] FICCI 2000

[48] Ministry of Information and Broadcasting, *Annual Report 2000-2001*.

[49] In India, Doordarshan has the exclusive right for terrestrial broadcasting.

Doordarshan is partly funded by the Government of India through annual grants voted by the Parliament. Doordarshan also generates internal resources through commercial operations. The revenue in 1999-2000 was Rs. 6.10 billion. The commercial revenue earned by Doordarshan during the period 1976–2000 is presented in Table A8 in Appendix A. Table A8 shows that between 1976 and 1995, advertisement revenue showed a steady increase but thereafter it decreased in 1997-98 and 1998-99 due to the proliferation of private channels.

Similar to AIR, Doordarshan has a three tier programming service: national, regional and local. In the year 2000, Doordarshan had around 21,500 employees engaged in programme production, transmission and allied activities. It has in-house training facilities and also sends its employees for training at various national and international institutes such as Film and Television Institute of India at Pune and the Asia Pacific Institutes for Broadcasting Development at Kualalumpur.

In its early years, most of the programmes were produced in-house or acquired from overseas. In 1985, DD started commissioning programmes to private production companies and this marked the beginning of the Indian television programme producing industry. Advent of satellite channels further boosted the development of programming industry.

The international channel of Doordarshan, DD-India (now renamed as DD-World) was launched in 1995 and reaches around 50 countries in Asia, Africa, Europe, USA and Canada through PAS-4 and PAS-1 satellites. DD-India began 24-hours transmission from 27th December 1999. In the past, only a few international cable television networks, ethnic channels, etc. distributed DD-India's signal. From January 1, 2000, Doordarshan has entered into an agreement with Global Connections Television (GCTV) in the USA for sustained and wide distribution of its programmes. In the same year Doordarshan also entered into an agreement with Thaicom, PANAM SAT and a Sri Lankan based company to redistribute its signals over Africa and West Asia, USA, and UK respectively.

Recently, a decision was taken by the Prasar Bharati Board to invite global tenders from countries such as the USA, Canada and the UK for allocating DD-India signals. In Sarjah and UAE in the Middle East small cable operators are authorised to broadcast DD programmes on payment of a fee. These distributors are allowed to show commercials and the advertisement revenue is shared between Doordarshan and the cable operators.

Over the years, Doordarshan has upgraded its technology in line with global developments.[50] However, the speed of adaptation of technical know-how is far behind its global competitors. For instance, globally most TV channels have adopted digital technology while many channels of Doordarshan are yet to be digitalised. On 15th August 1999, Doordarshan introduced digital technology. However, the process of transfer from

[50] For instance, at present, Doordarshan is planning to introduce Digital Terrestrial Transmission.

analogue to digital is slow due to financial constraints. Lack of funds is also affecting the programming quality and Doordarshan is finding it increasingly difficult to match it programming standards with that of the satellite channels.

With the advent of satellite channels in the 1990s, Doordarshan started facing stiff competition from them and its share in the total advertisement revenue fell from 76 per cent in 1995 to 26 per cent in 1999. Doordarshan also has strict programming and advertisement codes which makes it difficult to operate commercially. For example, Doordarshan cannot advertise baby food.

With the reductions in budgetary support and advertisement revenue, Doordarshan is under constant pressure to explore alternative sources of revenues. Various suggestions have been made to increase the revenue earnings of Doordarshan. One group suggested that some channels of Doordarshan should be privatised in the same line as FM channels and the revenue earned can be utilised to upgrade the existing facilities. Others have pointed out that since there are so many existing private channels, privatisation of DD-channels would not be a viable business proposition. It is also suggested that Doordarshan should enter into strategic joint ventures with key industry players. In order to ease the financial pressure, the Doordarshan channel "DD-Metro" entered into a contract with an Australian Company, Nine Network, for airtime sale during the prime time slot 7p.m. to 10p.m. This contract was for a period of one year and Doordarshan earned Rs 121 crores. Under such an agreement Doordarshan does not have any major control over the type of programmes telecast.

Future growth and trade potential

In future the growth of Doordarshan would depend on its ability to generate more revenue and upgrade its technology and programming quality to international standards.

In the past, Doordarshan had exported its programmes abroad. However, at present, only few international channels purchase DD programmes. For programme exports, Doordarshan faces stiff competition in the international market and its future exports will not grow unless it improves the programming quality. On request from other countries Doordarshan also exports "stock shot" from the DD archive. In the past, DD had imported programmes from various countries and had entered into co-production agreements (for instance DD had a co-production agreement with BBC, UK). In the last 3–4 years there were no co-productions or imports. This is mainly due to financial problems. Doordarshan also participates in various international training programmes.

Although the international channel (DD-India now renamed as DD-World) covers a large number of countries, it does not cover the ASEAN countries which have a large concentration of NRIs who are willing to pay for such niche channels. Doordarshan also finds it difficult to penetrate the Gulf market due to the stringent regulations on television broadcasting in those countries.

Since many satellite channels have already penetrated the international market, it is likely that Doordarshan will face stiff competition from these channels even in the international market. Inspite of a growing demand for India-specific programmes among the NRIs and South Asian population, Doordarshan's future exports depends on its ability to improve the quality of programmes to international levels and compete with other Indian and international channels.

Satellite Channels, Television Software, Cable Television

Although satellite broadcasting was initiated by Doordarshan, it gained momentum in the early 1990s when foreign satellite channels started operating in the country. This boosted the television broadcasting, programming and the cable television industry. Presently, India is one of the largest television markets in the world with some 79 million television (TV) households, more than 37 million cable TV subscribers, around 100 cable TV channels.[51]

Size of the television industry was estimated at Rs 94 billion in 2001 with television broadcasting accounting for Rs 36 billion, cable television Rs 40 billion and television software Rs 18 billion. The industry grew by 38 per cent in 2001 over 2000 but this growth was not equally spread across all segments. Television broadcasting, cable television and television software grew by 19 per cent, 68 per cent and 27 per cent respectively.

Proliferation of satellite channels has widened the range of choice available to the viewers. While some channels have more generic programmes catering to all sections of the society, others like MTV and Channel V (for music), Cartoon Network are niche channels catering to specific taste of particular communities. Additionally, there are various regional channels catering to the demands of particular linguistic groups. The increase in number of channels has led to fragmentation of audience and intensified the competition among channels to retain the audience share.

Initially, most satellite channels were financed through advertisements and subscriptions. With the increase in number, there is a stiff competition among channels for increasing their share of advertisement revenue. Hence, satellite channels are investigating the alternative sources of revenues and more recently, many of them have become pay channels.

Television broadcasting industry is capital intensive. The need for large-scale investment for technical upgradation and modernisation is crowding out the smaller players and is leading to mergers and acquisitions. Smaller players are facing stiff competition from the major players. In order to survive in this environment, smaller players will have to develop a niche market for themselves through brand building.

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[51] FICCI, 2002.

In the past few years, Indian government provided various incentives to enhance the growth of television broadcasting industry and enable it to adapt to the latest technical know-how. For instance, in the year 2001, government lifted the ban on Ku Band reception and allowed DTH operations. Until recently, VSNL was the sole provider of uplinking facilities in India. In 1999, the government permitted uplinking from India to Indian broadcaster with minimum 80 per cent Indian shareholding and Indian management control either through VSNL or through their own earth stations. In 2000, the policy was further liberalised and as per the new policy, an Indian company, which need not be a broadcaster, will be permitted to set up uplinking hub or teleport facilities for purpose of hiring out to broadcasters. The new policy also permits uplinking of any television channel from India and allows the Indian news agencies to have their own uplinking facilities for purpose of news gathering and its further distribution. Permissible foreign equity in such companies would be same as the telecommunication sector (presently 49 per cent inclusive of NRI). As of now, fourteen companies including SUN TV, Jain TV, etc. have been permitted by the Ministry of Information and Broadcasting to set up their uplinking hubs.

Mushrooming of television channels have led to the growth of television software producing industry. Success of a channel largely depends on its programming content. Good quality content generates viewership and this in turn helps the channel to attract advertisement revenue. For instance, the Kaun Banega Crorepati (KBC) programme of Star TV gained high popularity and consequently it attracted significant advertisement revenue. In fact, this programme siphoned off viewership and advertisement revenue from competing channels such as the Zee TV and Sony, forcing them to launch similar game shows. With increasing competition, programming houses are coming up with innovative programmes. Consequently, the production costs are steadily rising.

Most Indian television content providing companies specialise in a particular type of programme. For example, Balaji Telefilms specialises in dramas and soaps while Shri Adhikari Brothers specialises in sitcoms and NDTV in news based programmes. In terms of revenues the size of the industry was estimated at around Rs 17.59 billion in 2001.[52] As compared to other segments of the entertainment industry, television software industry is characterised by relatively high degree of corporatisation. The increase in production costs and competition has lead to closure, mergers and acquisitions. For instance, towards the end of the 1990s there were around 3000 programming companies and the number has reduced to 250 last year. Presently, top 10 content producing companies control nearly 45 per cent of the market.

Cable television industry started its operation during the Gulf War period. It has achieved tremendous growth since then and in 2001 the size of the industry was around Rs 40 billion. Initially, the cable industry was highly fragmented and was characterised by the presence of a large number of small cable operators catering to specific localities. With proliferation of channels, requirements for heavy investments and advent of value-added services such as Internet over cable, pay-per-view, etc., many small operators have

[52] FICCI, 2002.

entered into franchising agreements or have merged with the large operators. These large Multi System Operators or MSOs (for example, Siticable, Asianet, InCablenet, Hathway Cable) have consolidated the cable networks and in a convergence era it is likely that they will become the convergence service providers.

Future growth and trade potential

The future growth of satellite channels would depend on their ability to retain audience share, implement new and innovative methods of financing and improve their programming quality. With developments in communication technology and broadband networks a variety of value-added services such as Internet over cable, video-on-demand, cable telephony, and cable e-commerce will be available to the consumers. With digitalisation, content can be delivered across multiple platforms, which can be adapted or customised to the liking of the customer and his access devise. Indian industry is exploring the possibilities of setting up new modes of delivery such as interactive television. With the development of requisite bandwidth, Indian companies can introduce web-casting.[53]

In order to facilitate the process of convergence, the Government of India introduced the Communication Convergence Bill, on August 31, 2001. The bill envisages the creation of an independent body – the Communications Commission of India (CCI) – for facilitating the convergence of broadcasting, telecommunication and information technology sectors. As per the draft bill, CCI will have the sovereign power of licensing and enforcement of license conditions in these sectors. The CCI will have wide range of powers and will completely subsume Telecom Regulatory Authority of India (TRAI) into its fold.[54] CCI will also oversee the development of communication services, establishment of new infrastructure, introduction of new technologies, will formulate codes for television broadcast, and regulate content on the Internet and other broadcasting services. India is one of the pioneer countries (the US was the first country to have a Federal Communication Commission) to have initiated such an extensive bill relating to convergence.

There is a substantial demand for Indian language programmes among NRIs and South Asian population abroad. To meet this demand many satellite channels such as Zee TV, B4U and Sony have already set up operations abroad. For instance, in 2001, Zee TV had more than 30 million viewers across 51 countries. Sony TV has presence in the Indian subcontinent, South East Asia, Middle East, UK and the USA. Most of these channels are subscription driven and advertisement revenue constitutes a small proportion of their earnings. As more and more Indian channels are planning to tie up with DTH

[53] Web-casting refers to the streaming of content over a high-capacity communication backbone to the viewers. This content can be accessed through a television set with the aid of a set-top box or through a personal computer.

[54] It is worth noting that the Communication Convergence Bill will not affect Prasar Bharati which will continue to be governed by the Prasar Bharati Act, 1997.

platform worldwide, it is expected that international subscriptions would constitute a significant proportion of the revenue earnings of these channels.

Given the availability of high-skilled manpower, technical know-how and lower costs of production, India has the potential of exporting television content. The Electronic and Computer Software Exports Promotion Council estimated the export of television content at Rs 3.5 billion during 2001, which accounted for 20 per cent of the total revenue. In the year 2000, a large content producing company Nimbus earned an export revenue of Rs 65 million through its exports to the UK, UAE, Malaysia, South Africa, Mauritius, Sri Lanka, Bangladesh, the USA and Singapore. India also has the potential of exporting content through new technologies such as web-casting. Companies like United Television (through their portal Sharkstream.com) and Pentamedia Graphics (on NumTV, a pay platform that host a bouquet of regional language channels) have already taken steps in this direction. Indian content producing companies are also exploring the possibilities of co-production with renowned international players.

Future exports of television programming would depend on the ability of the production houses to market their products to international channels. Programming houses such as UTV have already started providing animation content for cartoon and other channels in international market. With improvements in production quality, India can offer post-production facilities for television programming.

India, with a large audience base, provides a large market for investments for international channels. Cost of operating a satellite channel in India is much lower than in the developed countries.[55] Moreover, due to high cable penetration the scope for expanding the market is more limited in the developed countries. India has a liberal foreign investment policy as compared to many other important countries. All these factors have encouraged foreign satellite channels to invest in India.

Films

India is the largest film producing country in the world. In the year 2001, India produced 1,013 features films against 855 in year 2000.[56] The industry is labour intensive and provides direct and indirect employment to around 5 million people (1 million people directly and 4 million indirectly).[57] Film is one of the most important mediums for mass communication for the country's population.

Indian film industry is largely concentrated in the private sector and is characterised by sole proprietorship and partnership. The government mainly plays a peripheral role. The Film Wing of the Ministry of Information and Broadcasting has various units (shown in Table A6 in Appendix) through which the Ministry promotes the

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[55] Average cost of operating a channels in the developed countries is Rs 20,000 crores per annum where as in India it is only Rs 2,000 crores per annum.

[56] The share of Hindi films in 2001 was 23 per cent (Film Federation of India; FICCI, 2002).

[57] IBA, 1999 and FICCI, 2001.

development of the industry. Since the late 1990s, government implemented various measures to support the growth of the film industry. For instance, the basic custom duties on cinematographic cameras and other related equipment have been reduced from 40 per cent to 25 per cent, while basic custom duties on colour positive films in jumbo rolls and colour negative films in rolls of certain sizes have been reduced from 15 per cent to 5 per cent. The countervailing duties have also been exempted from these items. It is expected that all these measures will reduce the cost of film productions.[58]

Since the Indian film industry is unorganised and fragmented, it is extremely difficult to measure the size of the industry in terms of total revenue. Unlike countries such as the USA and UK, aggregate box office collections of films are not reported to a central agency. Nevertheless, many studies have estimated the size of this sector. For instance, the FICCI-Arthur Anderson study estimated that the size of the film industry in 2001 was Rs 25 billion in terms of costs and Rs 45 billion in terms of revenue.[59]

Filmmaking involves three distinct stages: production, distribution and exhibition. Film production includes shooting, editing, dubbing, audio recording and completion of the film. Producers sell the theatrical rights to the distributors. For the purpose of distribution, the whole country and the overseas market is divided into different territories depending on their revenue potential. Film exhibition includes the screening of films in theatres, multiplexes, etc.

As of now, India has 25 studios and three film cities.[60] The studio facilities in India are not as developed as in the advanced countries. Most Indian studios are smaller compared to their global counterparts. For example, an average studio floor in India is 100 ft by 150 ft compared to international standard of 220 ft by 350 ft. This makes it difficult to build large sets. Moreover, small studios can accommodate only 2/3 films at any point of time. Financial constraints have led to closure and poor maintenance of the studios.[61] For instance, the Ranjeet Studio at Mumbai has closed down due to the lack of funds. In the recent years, various initiatives have been undertaken by the film industry to develop studios with high quality cinematographic equipment and sophisticated production facilities that can be comparable to international standards. For instance, the Ramoji Film City at Hyderabad has facilities similar to that of Hollywood studios.

Over the years there has been substantial improvements in film producing technology. Introduction of digital technology has reduced the cost of production. In line

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[58] The Film Federation of India, however, pointed out that the scrapping of countervailing duties of 18 per cent provides little benefit as long as the finished rolls converted from jumbo rolls attract central value-added tax. The manufacturers of both these films are international companies such as Agfa, Fuji, etc. Even chemicals used in the process of printing are charged a steep duty of around 35 per cent. All this increases the print cost for the distributors.

[59] FICCI, 2002.

[60] Economic Times Knowledge Seriesb (EITG).

[61] The EITG study estimated that a film city requires an investment of around Rs 500 crores. If utilised to full capacity a film city can break even in 5 to 7 years, with a return of 20–30 per cent.

with global developments, there have been significant developments in post-production facilities in India. Animations, computer graphics and special effects are now widely used in Indian cinemas.

At present, there are around 11,962 theatres operating in India, for a population of 1 billion, i.e., only 11.9 screens per million people. Comparatively in the US there are around 117 theatres per million population. Moreover, out of 11,962 approximately 8,400 are permanent theatres and the rest are temporary and military theatres. These figures clearly show that in India there is a shortage of exhibition centres and it is difficult for the film producers to have an outlet to display their films. Also, many of these exhibition centres are not well maintained and the lack of infrastructural facilities have forced Indians to view films at home on cable/video/DVD rather than going to the theatres.

Slow growth of film infrastructure is primarily due to the fact that the construction of theatres requires huge investments and profits can only be earned after a gestation period. The sophisticated technologies used in modern multiplexes have high maintenance costs. High levels of entertainment taxes also act as a disincentive for investment in this sector.

Government has taken various steps to encourage investment in movie theatres/multiplexes. For instance government has allowed private players to enter in to joint ventures with foreign companies. The first Indian multiplex set-up in Delhi, Priya Village Roadshow (PVR) is a joint venture between Priya Exhibitors of the Bijli Group of Companies and Village Roadshow Limited, Australia, which is one of the largest exhibitors in the world. These multiplexes are using latest technical know-how. In the Union Budget 2002-2003, government announced the exemption of 50 per cent profits from tax under Section 801B to large convention centres and multiplex theatres in non-metros for the next five years. This will encourage the construction of multiplexes in non-metro cities.

Since filmmaking is becoming increasingly technology driven, there is a need for trained manpower to handle the production and post-production equipment. The Film and Television Institute of India (FTII) and Satyajit Ray Film and Television Institute (SRFTI) under the Ministry of Information and Broadcasting, provides training in the art and technique of film making and television production. FTII is one of the few prestigious film schools in the world with a proper course structure funded by the government. The other similar schools are in Australia, Cuba (which is on the verge of closing), Germany and Moscow. SRFTI and FTII also participate in various students films festivals abroad as part of bilateral cultural agreements.

Government provides financial support to the film industry through National Film Development Corporation (NFDC). NFDC also produce films with socially relevant themes. However, lately NFDC is suffering from financial constraints and it is becoming increasingly difficult for this organisation to finance film productions. NFDC also has a scheme for giving loans up to Rs15lakhs for theatre construction, but loans have not been disbursed in the past three/four years.

In developed countries film industry is corporatised and film productions are generally financed by the banks. Indian films are mostly financed by private financiers. These financiers charge exorbitant interest rates leading to high cost of productions. Since the industry is unorganised and highly fragmented, it offers ample opportunities for investment of underworld money. In order to streamline the financing process, Government of India conferred the industry status to the film industry in 1998. It is expected that corporatisation will enable the industry to access funds from organised sources and this will weed out the underworld involvement in this sector. However, corporatisation is still in its nascent stage in India. To facilitate the financing of film production, the IDBI has decided to set aside Rs 1000 million corpus fund for film financing of which Rs 635 million has already been disbursed. Many big business houses such as Tatas and financial institutions such as ICICI, IFCI, etc. have also shown interest in film financing.

Future growth and trade potential

The FICCI-Arthur Anderson study predicted that the Indian film industry would grow at an annual average rate of 25 per cent, reaching Rs 66 billion by 2005. The future growth of this sector would depend on expansion and upgradation of infrastructural facilities (such as studios and exhibition theatres), growth in exports of films and film software, reduction in piracy, rationalisation of entertainment tax, rate of adaptation to new modes of delivery such as web-casting, pay-per-view, etc.

Given the growing demand for Indian films among the non-resident Indians (NRIs) and South Asian population, India has tremendous potential for exporting films. International market provides a major source of earnings for the Indian film industry. In the recent years many films which have not been very successful in the domestic market are earning profits through exports. Film exports have grown rapidly over the years from Rs 2 billion in 1998 (198 titles) to Rs 4.50 billion in 2000 (412 titles) to Rs 5.25 billion in 2001).[62] Indian films are exported to around 95 countries worldwide. The major markets are countries with large NRI presence (for instance, Middle East, USA, UK and Canada) and neighbouring South Asian countries. Among them, the US and Canada accounted for 30 per cent of the total exports (by volume of prints) in the year 2000 followed by the UK (25 per cent).

Since India has made significant progress in production of animation software, special effects and computer graphics, India has the potential for exporting entertainment software both for the film and television industry. Companies like Pentamedia Graphics, which one of the top three[63] computer animation companies in the world, has its headquarter in India. The global computer animation industry is growing at rate of 20 per cent per annum and is currently pegged at US$25 billion. On the other hand, Indian

[62] FICCI, 2001 and 2002.

[63] The other two companies – Disney Studios and Lucas Digital – are based out of the US.

animation industry is pegged at around US$500 million and is expected to grow at 30 per cent per annum.

Indian film/television software production companies have a cost advantage over their global counterparts, as the cost of production is lower in India given the availability of trained manpower. In the long run India can develop as a post production hub for Hollywood movies. Since the post-production budget for these movies are much higher, it would be profitable for Indian companies to be an outsourcing hub for film producers of developed countries. Realising this potential, many companies such as SIBAR Media and Entertainment Limited has already set up studios with latest animation and special effects technologies.

So far, there are very few co-productions between commercial film producers and their international counterparts. This is primarily because the western film producers donot always have a clear understanding of the Indian culture and tradition. Moreover, since the Indian industry is highly unorganised, factors such as lack of transparency in accounting and non availability of a detailed script and production schedules makes it difficult for international players to enter into co-production agreements. Of late, many Indian production companies have shown interest in co-production with British, Canadian and American producers.

Indian government provides various initiatives to promote the growth of film exports. The revenue earned from exports of film software is exempted from income tax. The duty paid towards the import of raw stocks is refunded back to the exporters by the way of duty drawback. On an average, an exporter receives approximately Rs 1200-1400 as duty drawback per prints. The government has allowed 100 per cent foreign direct investment in film production and distribution through automatic routes.

The private sector also has taken various steps to promote exports. For instance, production houses such as Yashraj Productions and Rajshri Production have set up their own distribution network in the international market. More recently, some producers are using international distributors to distribute their films. For instance, Sony Classic has acquired the rights to distribute the movie “Lagaan” in the US market and Columbia Tristar in the UK. Although Indian films generally cater to a niche audience, the industry is coming up with new marketing strategies to attract a wider international audience. For example, the Indian industry organised the India International Film Academy Awards in Malaysia. Film producers are also releasing books on the making of films such as “Lagaan” and “Asoka” and are organising various roadshows abroad to popularise their films among international audience. The industry is trying to export films and related services to non-traditional markets such as Japan, Kenya, etc. For this they would need the help and support of the Indian Embassies located in those countries. The industry is also exploring the possibilities of increasing exports by using digital technology such as pay-per-view and web-casting. This would enable the industry to reach a wider audience.

On the import side, the US films dominate the market for foreign films in India. Around 120 American films are imported annually and this constitutes 2 per cent of the total market revenue.[64]

In order to improve their production quality, Indian filmmakers import latest production and post-production equipment including movie cameras, camera dolly, sound recording equipment, video equipment, camera lens from countries such as the UK, Singapore, Germany, USA, Hong Kong and Japan.

To meet the growing demand for exhibition theatres, the Indian government has allowed joint ventures/technical collaborations in cinema infrastructure. Foreign investment in exhibition theatres will lead to inflow of finance and technical expertise. For example, the entire infrastructure in any PVR theatre is of international standards. On their part, foreign investors have also shown a keen interest in setting up operations in India. This is primarily because the markets in the developed countries have become saturated, returns to investments are low and revenues are falling.

Music

In terms of value, the Indian music industry is third largest in Asia after Japan and Korea and nineteenth in the world. It is the second largest in the world in terms of volume.[65] In the year 2000, Indian music industry earned revenue of around Rs 7.5 billion through the sale of 126 million legitimate music cassettes and 7.5 million CDs. However, if the pirated market is taken into account the total turnover of the music industry was Rs 12.5 billion in 2000.

The main source of revenue for the music industry is the sale of music cassettes. As compared to more developed markets Indian CD market is still at a nascent state,[66] but is likely to grow in the future as CDs become more affordable and more users realise the superior quality and longevity of digital music. With technological developments, the industry is focusing on the distribution of music through various modes such as the Internet.

Indian music industry is dominated by film music which constitute seventy per cent of the music sale. Non-film music constitutes 20 per cent while the balance is made up by international music.

In the recent years there has been a noticeable growth in the music industry. Factors contributing towards this growth are the emergence of satellite music channels which help to promote new albums and have increased the demand for music content; development of organised retailing in music such as Times Group-Planet M, RPG Group-Music World; demand for music from private FM channels; growth of Internet as a

[64] Times of India, December 20, 1999.

[65] The USA is the largest country in terms of volume.

[66] CD penetration is only 6 per cent compared to more than 70 per cent in developed countries.

powerful music distribution channels; growing demand for India music among NRIs and South Asian population; increasing demand for non-film music such as Indipop and regional music; etc. With the liberalisation in the 1990s, restrictions on foreign equity ownership have been relaxed and this has encouraged the inflow of FDI in this sector. Entry of global players such as Sony music and Universal have expedite the process of growth and absorption of new technologies. Foreign collaborations also changed the existing distribution and marketing system.

Future growth and trade potential

It is predicted that the Indian music industry will continue to grow in the future and become more diverse in terms of different genres of music. Also, with developments in technology, the industry will adopt more sophisticated methods of production and distribution. For instance, with increasing use of Internet, on-line sale of music is likely to grow. It is also likely that in the future there would be an increase in CD sales due to the increasing affordability of the CD players and more awareness among the users about the superior quality and longevity of digital music.

Globally, large players in the music industry have diversified their operations across various media. For instance, Sony and Universal have entered into film production, television broadcasting, radio, etc. It is likely that in future leading Indian players would consolidate their position and would invest across various segments of the entertainment industry. For instance, Venus, a music company, has ventures into film production and is exploring the possibilities of moving into visual entertainment downloads.

With increasing NRI presence, there is a huge demand for Indian music cassettes and CDs in countries such as the UK, USA, Middle East countries, Sri Lanka, Mauritius, Malaysia, and Singapore (mostly for Tamil music). In some of these markets there are regular distribution channels to cater to the increasing demand.

In the recent years there has been an increase in imports of international music. The growth of satellite music channels has popularised this category of music. The government has allowed FDI in sound recording services subject to the prior approval of the Foreign Investment Promotion Board (FIPB).

Since there is a substantial demand for Indian music both in the domestic and international markets, there is a significant growth potential for the Indian music industry. However, realisation of this potential would depend on the ability to curb piracy through traditional modes such as unauthorised copying of audiocassettes and more recent modes such as Internet.

Recent trends in the audio-visual and entertainment services

The above analysis clearly shows that audio-visual service sector is one of the fastest growing service sector in the Indian economy. The industry is gradually adapting to the new technological developments and there has been an increasing use of information technology. The discussion also highlights that India has significant trade potential in this sector. With the increase in size and competition, larger players are consolidating their position while the smaller players are either merging with the bigger players or are catering to a niche market. For instance, television channels are forming bouquets amongst themselves in order to counter competition and provide different types of programmes under one package which will enable to increase their market shares. Zee and AOL Time Warner have tied up while Star has joined hands with NBC to distribute National Geographic channel. To survive in this competitive environment, the industry is trying to diversify across media and several delivery platforms. Diversification also helps to mitigate risk. For instance, satellite channels such as Zee Telefilms Ltd. has invested in cable network, music company Venus has invested in film production, and Yash Raj Films has a video and DVD distribution network under the label Yash Raj Entertainment.

In future, the growth of this sector would depend on factors such as the ability of the industry to raise funds from the capital market, increase its revenue base by delivering products through various modes/platforms and increase its exports by exploiting the existing markets and entering into new markets.

2. Domestic and External Constraints

As noted in the preceding section, India has the tremendous potential of increasing trade in audio-visual services and can emerge as one of the major players in some of these services. This section outlines the main domestic and external constraints inhibiting the growth and global competitiveness of this sector. These include structural, regulatory and financial constraints.

2.1 Domestic constraints

This section will discuss the domestic constraints that are across all segments of the entertainment industry and affect the overall performance of the industry and those that are specific to particular segments of the industry.

Piracy is one of the major problems for the Indian audio-visual and entertainment industry and it affects all segments of the industry from film production to music to live entertainment. The nature and extent of piracy varies across the various segments. For instance, in case of films, unauthorised reproduction of the film in video forms and/or display of the video through cable networks without proper authorisation from the film producers are the most common forms of piracy in India. Music piracy occurs when (a) songs of different legitimate cassettes/CDs are copied and complied into a single cassette/CD and then packaged to look different from the original products; (b) unauthorised reproduction of original cassettes/CDs; and (c) unauthorised recordings of live performance by artists for reproductions and sale. Since the Indian film and music industry are inextricably linked to each other, piracy in one sector has an adverse effect on the other as well.

At present, there is no uniform method to estimate the contribution of core copyright industry[67] to the GDP and the potential loss of revenue due to piracy.[68] According to the Film Federation of India, the film industry is loosing approximately Rs 3.6 billion per annum in revenues due to piracy. Music CD piracy in India is rapidly increasing from a low about one per cent in 1996 it has reached 8 per cent in the year 2000.[69] In 1999, 40 per cent of total sale of music through cassettes, CDs, etc. was pirated, representing a revenue loss of Rs 5 billion to the rightful owners. The government also lost a revenue of around Rs 34 crores on account of evasion of taxes (sales tax, excise duty, etc.) and Rs 22 crores on account of income tax losses due to piracy.[70]

Indian films are first released in the theatres and/or cinema halls and subsequently they are released through other media such as videos and cable satellites. However, in many cases the unauthorised version of the films are shown through the cable network or videos and this affects the earnings of the film industry. On an average, a theatre owner looses as much as 40 per cent of legitimate business due to piracy by the cable operators.[71] This problem is equally serious for foreign films screened in India. Hollywood movies are released in India few months after their international release. As soon as the movies are released in other international markets, copies of the films are brought into the country and circulated through various routes much before their theatrical release. To restrict piracy, overseas rights of the Indian films are sold simultaneously with their release in India. Nevertheless, this has not been very successful in curbing piracy.

To reduced piracy, the Cable Television Network (Regulation) Act was amended in the year 2000 making it mandatory for cable operators to secure copyrights for all the programmes they telecast, notably films. This Act provides for stringent action against cable operators violating the Act including seizure of equipment. However, in practice there are more than 10,000 cable operators and unlike other countries there is no regulatory body to monitor them.

The main reason for the high level of piracy is the lack of awareness of copyright and copyright law among the general public and enforcement agency. Convictions are

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[67] India's copyright regime is discussed in Appendix C.

[68] The National Productivity Council has done an extensive study for the Ministry of Human Resource Development.

[69] Business Standard; December 1, 2000.

[70] FICCI, 2000.

[71] Times of India; September 11, 2000.

few and deterrent punishments (such as imprisonment up to three years provided in the copyright law) are rarely awarded.

The other major problem faced by the Indian entertainment industry is the high entertainment tax. Since entertainment is a state subject, the nature and extent of tax varies widely across states ranging from 14 to 167 per cent. Among the Asian countries India has one of the highest levels of entertainment tax (Table A9 in Appendix A). Due to this, a large proportion of the theatre ticket receipts go towards taxes which could have been invested for the development and maintenance of the theatres. In 2001, the central government, after discussion with the state ministers, has decided to fix the upper limit of entertainment tax at 60 per cent uniformly across the country, giving the states the freedom to fix their rates within this ceiling. However, so far none of the states charging higher tax rates have revised them downwards.

Currently, India does not have the proper infrastructural facilities needed for the growth of e-commerce. This has resulted in congestion, under performance of low-cost servers and high set up and operational cost.

Advertisement spending, which is one of the main sources of earnings of the audio-visual and entertainment industry, is relative low in India as compared to its global counterparts. For instance, advertisement spending as a percentage of GDP is 1.32 per cent in the US, 1.24 per cent in the UK, 0.83 per cent in Brazil and only 0.40 per cent in India. Moreover, there are significant restrictions on advertising. For example, the advertisement of tobacco and liquor is prohibited in channels distributed through the cable network.

Domestic constraints faced by the different segments of the entertainment industry are discussed below:

Prasar Bharati

This section will discuss the common constraints faced by All India Radio and Doordarshan.

One of the major problems faced by Prasar Bharati is the lack of funds. Although both AIR and Doordarshan started moving towards digital technology in the late 1990s, the shift from analog to digital requires heavy investment and the process of modernisation has slowed down due to the lack of funds. Poor resources have also affected the programming quality. The other major problem faced by Prasar Bharati is the lack of professional management.

In order to adapt new technologies and achieve international quality standards, AIR and Doordarshan have to invest in research and development. At the moment, such investments are very low primarily due to the lack of funding.

Unlike the private broadcasters, AIR and Doordarshan do not have an aggressive marketing drive. For example, AIR does not have a publicity department. Although AIR and Doordarshan have an audience research unit they do not have a regular programme feedback scheme which will enable the public broadcaster to improve the programme quality and match it to the changing demand.

In India, there are several restrictions on advertisements in public broadcasting services and the type of programmes telecast. For example, some programmes in AIR are not open to commercial operations (advertisements are not allowed on the world services channel due to the lack of an uniform code of conduct). The advertisement of baby food is prohibited in Doordarshan.

Although Prasar Bharati was established in 1997, the process of transfer of employees from the Ministry of Information and Broadcasting to this public broadcasting corporation has been slow and hesitant. As of now, most of the staffs in Doordarshan and AIR are government employees. Since an alternative service condition has not been provided the staffs face job insecurities and uncertainties. Working under such conditions is bound to effect their performances.

Prasar Bharati suffers from overstaffing. Moreover, the allocation of staffs across the various departments is not optimum. There are overstaffing in certain departments while there are shortage of manpower in the others. For instance, the technical wing is overstaffed while the programming wing has a shortage of manpower. Although there are around 50,000 employees in Prasar Bharati, the programming wing has less than 4,000 staffs, while the requirement is 7,000. Due to this, several radio stations are not able to produce even one hour of original programmes.

All India Radio

Unlike its global counterparts, AIR has not been very successful in attracting advertisement revenue. Globally radio accounts for 5–12 per cent of the total advertising revenue whereas the advertisement spending in AIR is only 2 per cent of the total advertisement spending. The inability to generate revenue has slowed down the growth and modernisation process.

In order to improve the programming quality and increase revenue earnings, government announced the privatisation of FM channels in 1999. In the beginning the private sector enthusiastically responded to this initiative, but subsequently many of them withdrew their bids and even after more than two years of its announcement only two private channels have commenced operation.[72] As a consequence, although the government was initially expecting to collect Rs 4.25 billion as license fee, only 1.6 billion was actually collected by mid-2001. The main reasons for the slow response of the private sector is that it requires significant investment to cover for the license fees,

[72] Several players holding licenses have decided not to commence their operations in certain locations. For instance, Entertainment Network has decided not to launch its service in Hyderabad and Lucknow.

content creation, station costs, etc. and profits can only be reaped after a gestation lag. Private sector has repeatedly pointed out that the license fee charged by the government is too high and renders the project non-viable. Since private FM channels are not allowed to broadcast news and current affairs programmes it would be difficult to popularise the channels and increase audience/advertisement share. In its privatisation policy, the government stated that while a company can own any number of stations, each station must be independent in terms of content. Due to this, radio broadcasters are not able to exploit the nation-wide/region-wide audience for a particular type of programming. Also, the current policy does not allow foreign companies to invest in FM channels and this, to some extent, has restricted the availability of funds.

Out of the licenses awarded to 10 players for setting up 37 FM stations in 19 cities within the deadline of December 2001, only two companies – Music Broadcast India Private Limited (under the brand Radio City) and Entertainment Network India Limited (under the brand Radio Mirchi) commenced operations. The license requirement to form a consortium of players in each metro circle is problematic because if a member drops out of the consortium, the investment burden of the remaining players goes up.

All India Radio has a limited number of SW (short wave) transmitters and hence, it is becoming extremely difficult to sustain the large number of broadcast of the External Services Division. Duration of many of the services offered by the External Services Division is inadequate and is not in keeping with the demands from target listeners. Moreover, unlike other international broadcasting organisations such as BBC (British Broadcasting Corporation), VOA (Voice of America), Radio Netherlands, and Deutche Welle-Germany, AIR does not have transmitters outside the country and this affects the reception quality in the target areas.

Unlike most other diplomatic missions/embassies, the Indian embassies abroad do not provide adequate and efficient logistic support in terms of getting feedback about the quality of broadcasts, helping in procuring music of specific area, etc.[73]

Doordarshan

With the advent of satellite channels, Doordarshan is facing intense competition from these private satellite channels. This has affected its revenue earnings and Doordarshan's share in the total advertisement revenue has decreased from 76 per cent in 1995 to 26 per cent in 1999. Presently, Doordarshan has a much wider coverage than the satellite channels. However, with the increase in cable penetration, the terrestrial broadcaster would steadily lose the comparative advantage of a wider coverage.

Satellite Channels/ Television Software/ Cable Television

Globally, cable television is essentially a pay platform. For instance, in the US individual satellite channels can either be free-to-air or pay channels. The cable operators

[73] This information was provided during the AIR survey interview.

are bound to carry the free-to-air channels on the basic programming tier, which is accessible to all subscribers. Access to pay channels is provided only to those subscribers who desire to pay for it. Presently, Indian cable operators charge a flat rate for their service and this rate varies from area to area and across the different operators. More recently, as many Indian channels are becoming pay channels, the cable operators have increased their subscription rates in a haphazard manner leaving consumer with no choice but to pay the high rates. To introduce addressability in the Indian cable industry, The Cable TV Networks (Regulation) Amendment Bill 2002 was passed in the Lower House (Lok Sabha) of the Indian Parliament on May 15, 2002. This bill makes it mandatory for pay channels to be routed through a set-top box. Once this bill becomes an Act, consumers will have the power to select the channels they want to see and pay only for them. According to the Bill free-to-air channels will be included in the basic service package and charged a fixed rate by the cable operators. The government has the right to specify the number of free-to-air channels, the genre-wise mix of channels in the package and the maximum rate that the cable operator can charge for the basic package. The private broadcasters will have the flexibility to determine the rates for their pay channels. Although it is believed that conditional access system would reduce the likelihood of under-reporting of subscription revenue (thereby increase transparency) and lead to higher advertisement revenue for the industry as cable television will have a more focused viewership, there are various issues related to its implementation. For instance, a set-top box cost between Rs 1,500–5,000 and it is not yet determined who will pay for it. Globally, broadcasters and cable operators share the cost of the set-top boxes but in India many small cable operators do not have the financial capability to make the requisite investment. The broadcasters have also expressed their reluctance to bear the cost. Even if the cable operators do not have to pay for the set-top boxes, they will have to invest in the installation of subscribers management systems and other CAS equipment at their head-ends.[74] Moreover there are issues related to what should be the technical standards of set-top boxes, whether they should be analog boxes or digital one, etc. The digital boxes are much more expensive but users can access the Internet and value-added services such as interactive TV and tele-shopping.

India has more than 37 million cable TV homes. Industry representatives have pointed out that it would be difficult for the Indian manufactures to meet the demand for set-top boxes and there is likely to be a demand-supply gap.

Since a large section of Indian cable viewers are in the middle and lower income groups, it is likely that majority of them would subscribe to the basic channels. Moreover, although subscribers may be willing to pay for the niche channels such as National Geographic and HBO, CAS (conditional access system) is likely to adversely affect the viewership of mass entertainment pay channels. Industry representatives have raised concerns that CAS will adversely affect the weaker channels which are currently bundled with one bouquet or another. They may have to close down if there are no takers for them.

[74] It would require an investment of Rs 5–20 lakhs.

Unlike developed countries such as the UK and the USA, cable television industry in India is characterised by limited regulation. Cable operators in countries such as the US, UK, Honk Kong and Thailand, need to have a license to start operation and this enable the authorities to monitor their activities. Indian cable operators do not have to obtain a license and this has resulted in the haphazard growth of the industry. The industry is highly fragmented and is marked by the presence of a few large players and a large number of small operators. This makes it difficult for the regulatory authorities to monitor the content delivered through the cable network. Since the industry is unregulated it is characterised by under-reporting of subscription revenue. Cable operators often underestimate the number of viewers and satellite channels lose their revenue earnings. The entire collection of the subscription fee is cash based and hence cable operators can evade paying taxes. Moreover, in the absence of licensing cable operators do not have any security of their investment. The sector is not corporatised and hence, cannot get institutional funding. The need for high investments together with the lack of accountability has provided incentives to the underworld and criminal elements to invest in this sector. Restrictions on foreign equity participation, to some extent, act as a barrier to the growth of the cable television industry which requires huge initial capital.

Compared to India, advertisement revenues are much higher in the developed countries and hence they can support the high programming costs. Moreover, in India there are several restrictions on advertisements which makes it difficult for channels to earn advertisement revenues.

In India, the IPR (Intellectual Property Right) issues related to programme production and broadcasting are not clearly defined. Programming companies, especially the smaller companies, are not always aware of their Intellectual Property Rights. As a consequence, content providers do not often get the due share for their creativity. In developed countries the programme-IPR is generally owned by the production houses where as in India it is mainly owned by the different channels.

Presently, the content providing companies donot have an uniform accounting practice and this makes it difficult and risky for investors to invest in this sector. There is an urgent need to improve transparency and formulate standard accounting policies in line with international norms. This will encourage investors to invest in this sector.

The development of broad band cable connection has been extremely slow. Most companies in the business have not been able to meet their deadlines primarily due to financial constraints. Other constraints include delays in clearance, multiple clearance process, delays in setting up the infrastructure, etc. This has serious affected the establishment of an active news network in the country. In the US companies such as Vyxx have linked the entire country through fibre optic cables and news/information can be transferred swiftly and smoothly through these cables. In India many news networks are still using backdated technologies such as information being transferred through telephone.

Although the Multi System operators (MSOs) have started promoting new services such as Internet over cable, the process has been slow. New services such as interactive television can only be implemented once the requisite infrastructure is in place.

As of now, India has only few training institutions such as Film and Television Institute of India (FTII) and Satyajit Ray Film and TV Institute that offer training courses for software development. With increasing size of the content producing industry there is an urgent need to develop trained manpower.

Although the government has approved DTH, the private sector has not shown enthusiasm in investing in DTH. Space television is the first company to apply for a license to operate DTH service. Industry representatives have pointed out that DTH requires significant initial investment and it is difficult for the private sector to finance for it. The total foreign investment – including foreign direct investment and investment by NRIs, overseas corporate bodies and foreign institutional investors is restricted to 49 per cent. A broadcasting or a cable company cannot hold more than a 20 per cent stake in DTH company. Moreover, a DTH company will have to pay an entry fee of Rs 10 crores at the time of applying for the license, along with a bank guarantee of Rs 40 crores for the license-period of 10 years. It will also have to share 10 per cent of its annual revenue with the government. Due to these reasons the private sector has shown reluctance to invest in DTH services. It is likely that the high initial set up cost would confine DTH broadcasting to high-income brackets. Moreover, since cable television is already delivering a large number of channels, it would be difficult for the DTH service providers to deliver a unique package not available through the cable network. Moreover, unlike many other countries, in India there are certain qualitative restrictions on content.

The Union Budget 2002-2003 has imposed a service tax of 5 per cent on the cable operators and broadcasters. Industry sources have pointed out that this would reduced the profitability of the operation since many of them are not able to pass on the tax to consumers due to stiff competition among themselves.

Films

In India, the aggregate box office collection is not recorded to a central agency. This makes it difficult to evaluate the total earnings of this sector. Moreover, due to black marketing there is under-reporting of the box office collections.

Many Indian studios are small and donot have the latest technology to support modern filmmaking. These small studios donot have the facilities to build large sets and can support only 2/3 films at any point of time. Due to this a large part of the shooting is done outdoors. Many important studios such as Ranjeet Studio in Mumbai have closed down due to the lack of funds. Since building of studio requires huge investment and profits can only be reaped after a long gestation lag, production houses have not shown a keen interest in investing in studio facilities.

To improve the production quality and align the production technology to global standards, film producers/studio owners have to import equipment from abroad. The Indian industry has pointed out that they have to pay high duties and taxes on imported equipment and this increases the cost of production.

Although the government has conferred industry status to the film industry, financing of film production is perceived to be a very risky by the banks and financial institution. This is primarily due to the lack of transparency in the accounting system. Film financing is generally on a case-by-case basis. While banks and financial institutes are more willing to finance the reputed production companies they are hesitant to finance the new comers. Risk perceptions also vary across the banks and financial institutes.

Very few Indian films are successful at the box office and the "flop" rate is very high. Table A10 (in Appendix A) shows that, in 1997, the average "flop" rate for Hindi films was as high as 81 per cent. Table A10 also shows that the average "flop" rate is increasing. Due to the high flop rate, banks and financial institutes find it highly risky to invest in this sector. On the other hand, the industry believes that with the availability of bank finance at reasonable interest rates as against the high rates charged by private financiers, the viability of films will improve and the success rate will also improve in tandem.[75]

Film producers face various problems while shooting a film in Indian locations. India is one of the few countries which has imposed location charges. For instance, one has to pay Rs 10,000 a day to shoot on the road, Rs 25,000 to shoot in a park and on an average Rs 35,000–40,000 for shooting in a government institution. Since most countries do not have location charges, this has encouraged Indian film producers to shoot abroad. Moreover, in the absence of a single window clearance scheme, film producers have to take permissions from multiple authorities for shooting and this makes the process time consuming and cumbersome. At the local level, the Municipal Corporation imposes various shooting restrictions. Other barriers include restrictions on shooting in historical places, archeological sites, etc.

Although there is a significant demand for Indian entertainment software in the international market, lack of marketing and networking infrastructure prevents the industry from attaining its actual potential.

One of the major constraints faced by the Film and Television Institute of India (FTII) and Satyajit Ray Film and Television Institute (SRFTI) is the lack of funds. Financial constraints have made it difficult for these institutes to provide state-of-art equipment for training. Also, with the growing demand for trained manpower it is becoming difficult for these institutes to cater to the needs of the Indian film industry.

For distribution of foreign films, especially Hollywood films, Indian distributors face severe competition from international players. All top production houses

[75] IBA, 1999.

internationally (for example, Columbia Tristar, 20th Century Fox, etc.) have opened their branch offices in India and distribute their own films.

The number of exhibition theatres/screens in India is far below than what is required to cater to the Indian audience. This makes it difficult for film producers to have an outlet to display their films. For instance, although China produces fewer films than India, it has 1,40,000 theatres while India has only 11,962. Only around 30 per cent of the films get proper screen coverage in India. Moreover, the quality of infrastructure such as seating facilities, audio system, etc. is far below global standards.

Investment in film infrastructure is capital intensive. First of all the theatre owner has to select a prime location and compete with commercial rates for land acquisition. This is often financially non-viable since the project involves a long gestation period and profits cannot be reaped immediately. Moreover, the building by-laws for conversion of the existing single screen cinemas to multiplexes is backdated and cumbersome and this discourages developers from renovating the existing theatres. A developer of multiplex has to get permissions and no objection certificates from various departments of the government. The process is time consuming and cumbersome. The import duties on sophisticated machineries used in multiplexes (such as vending machines) are very high. Since cinema exhibition business is not corporatised (it is owner driven), the industry finds it difficult to get institutional financing.

Pricing of tickets is also a state subject and regulations for pricing differs from state to state. While some states such as Maharashtra do not have any restrictions on pricing, in some Southern states ticket prices are fixed by collectorate and theatre owners do not have the full freedom to price the tickets. This together with high entertainment taxes makes it difficult to operate and maintain the theatres profitably.

Indian film industry pointed out that the multiple taxes/duties imposed by the central and state governments (such as advertisement taxes, excise duties on raw stocks, show taxes, sales taxes, professional taxes, etc.) not only increase the cost of productions but also impose heavy financial burden on the distribution and exhibition sectors.

Advertisement is a major source of earnings for the theatre owners. Advertisement revenue in Indian films is much lower as compared to developed countries, since the industry is not yet exposed to high-end advertising.

Music

One of the main reasons for the slow penetration of CDs is the high CD prices in India. The CD prices are 7–10 times the price of music cassettes while in developed countries it is only 3–4 times.

Piracy is the most pressing problem inhibiting the growth of Indian music industry. One of the main reasons for music piracy in India is the high price of original cassettes and CDs. This has encouraged the users to record songs of their choice in a single cassettes/CD. As double deck cassette players and CD writers are becoming more and more affordable, this form of piracy will rise unless the prices of legitimate cassettes/CDs are lowered.

Although the manufacturing process is the same there is no excise duty on CD-ROM's but the production of audio/video CDs is subject to excise duty. This has increased the price of CDs and adversely affected its market penetration. Moreover, the higher is the excise duty, the larger is the price difference between legitimate and non-legitimate CDs. This has indirectly encouraged piracy.

Sales taxes are levied by the state governments and different states have levied different sales taxes on music cassettes and CDs. For instance, in Rajasthan it is 4.6 per cent for music cassettes and 11.25 per cent for CDs while in Maharashtra it is 15.3 per cent for both. This not only makes the accounting and distribution process more cumbersome but also encourages infiltration of music products from states with lower taxation to states with higher taxation.

2.2 External constraints

As discussed in Section 1.1, audio-visual and related services is one of the heavily regulated services sector and many countries have imposed restrictions to preserve their cultural identities, protect the domestic industry from foreign competition and promote growth.

Since India is one of the major exporters of audio-visual services, barriers to international trade seriously inhibits the growth of this sector. Currently, the Indian industry faces most of the restrictions discussed in Section 1.1. In many countries of export interest such as Canada and the EU there are television broadcasting quotas and local content requirements. This restricts the delivery of content of Indian origin.

Many developed countries for example, the EU, Canada and Australia heavily subsidies their domestic industry. It is becoming difficult for the Indian content providing companies to compete with these subsidised industries.

Some countries have imposed restrictions on audio-visual services which are specific to contents of Indian origin. For instance, Pakistan has imposed a ban on Indian films and satellite channels.[76] Egypt has a fixed quota for Indian films but it has imposed similar quotas for Hollywood (US) films.

Indian broadcasters often find it difficult to operate in the international markets due to the lack of information regarding the demographic and psychographic profiles of viewers. Indian broadcasters have pointed out that many countries do not have proper rules and regulations for ethnic broadcasters. Since the Indian channels cater to a niche

[76] Pakistan has banned cable operators from airing Indian channels using national security reasons.

viewership they find it difficult/economically non-viable to finance for/set-up the expensive infrastructure.

Indian film producers, content providers, etc. finds it difficult to market their products abroad, penetrate into the existing distribution chain and set up their own distribution chains. Since the products cater to a niche audience, global distributors are not interested in distributing these products.

Presently, a large number of films are shot at locations outside India. Indian producers do not face any major barriers abroad but have to obtain the permission for shooting from the respective authorities. However, recently, the UK Government has asked for a Bank Guarantee for the value of goods imported in the UK for shooting purposes and for the re-export of the same from the UK. The British Film Commission has taken up this matter with their Government for an exemption.

Some countries have imposed restrictions on co-production. The most common restriction is the requirement to spend the money (or a part of it) in the co-producing country. France and Canada have imposed this restriction. For instance, if France finances for an international co-production, it is expected that most of the finance would be spent on French people or facilities (in or outside France). This, of course, makes the co-production less attractive since resources in Europe are more expensive.

In many countries, Indian producers often find it difficult to display their movies due to the lack of availability of screens/theatres. In developed countries theatres are very expensive and are not easily available for screening foreign movies. For instance, a renowned Indian film producer Yash Chopra had dubbed one of his Hindi films "Lamhe" in English (An Indian Summer) but found it extremely difficult to screen it in theatres abroad. On the other hand, dubbed Hollywood movies are displayed in Indian theatres without any major restrictions.

Due to the popularity of Indian films and music, there is wide-spread piracy in the international markets. Pakistan is a major market for pirated music cassettes and film videos. Apart from Pakistan, Singapore, Malaysia and Middle East countries are also important markets for pirated goods. In countries such as Pakistan, Middle East and some South Asian countries there are several small-scale industries which make copies of Indian films and music in various formats such as videos, cassettes, CDs, DVDs, etc., for reselling in India or in other countries (such as the UK, USA, etc.) where there is a high demand for these products.

Of late, the Indian industry organisations are working closely with similar organisations abroad in order to reduce piracy. For instance, the Indian Music Industry (IMI) jointly with British Phonographic Industry had appointed a consultant/investigator in February 2000 for anti-piracy operations specifically for Indian repertoire. Since then, there has been several seizures of pirated CDs by custom authorities of different airports and this has been successful in putting pressure on those importing and dealing with pirated Indian cassettes and CDs in the UK. In Netherlands, IMI commissioned the services of BREIN/ Buma-Sterma (the Right Protection Body of Entertainment Industry in Holland) for concerted anti-piracy action against pirates of Indian music repertoire. IMI is considering anti-piracy operations in the USA and Canada and is currently holding meeting with local trade bodies.

Since there are no international agreements on e-commerce, the Indian industry has not been able to benefit by using e-commerce as a viable mode of distribution of audio-visual content.

A large part of India's trade in audio-visual services is through the temporary movement of persons. For instance, producers, directors and artists go abroad to shoot a film, technicians go aborad to acquire training or work in international productions, etc. Presently, there are several restrictions inhibiting the inter-country movement of persons. These include work permit and visa related restrictions, requirement of certain years of work experience, licensing requirements, nationality/citizenship requirements, social security and double taxation related issues, etc.

In many developed countries such as the USA and UK actors, musicians, technicians, etc. are members of unions which play an important role in negotiating their wages and working conditions. These unions protect the domestic service providers and it is often difficult for Indian service providers to penetrate into these markets due to strong union pressures. Since Indian artists, musicians, technicians, etc. are not organised into unions they lack bargaining power in international dealings.

3. GATS and Audio-visual Services

As noted in Section 1, audio-visual service sector is one of the most restrictive service sector and many important WTO member countries have imposed trade barriers to protect and promote their indigenous culture and prevent competition from foreign players. It is widely debated whether these restrictions have really been successful in achieving the desired objectives. Moreover, with the increasing use of Internet it is becoming increasingly difficult for governments to control the entry of foreign content. With globalisation, technological developments and increasing use of information technology (IT), governments of various countries are modifying their existing regulations and are opening up the markets for foreign players.

In the Uruguay Round, WTO member countries were very reluctant to undertake liberalisation commitments in audio-visual services. Even major players such as the EU, Australia and Canada did not make any commitment, while commitments of other such as India were very restrictive both in terms of sectoral coverage and modes of delivery.

This section will present a brief overview of the GATS, the coverage of audio-visual services under GATS and the commitments made by WTO member countries and India in the Uruguay Round.

3.1 A brief overview of GATS

The General Agreement on Trade in Services (GATS), established in the Uruguay Round (1986-1994), is the first ever set of multilateral, legally enforceable rules governing trade in services. The main aim of GATS is to progressively liberalise trade and investment in services through periodic round of negotiations.

Under GATS, services are traded in four different modes:

- Cross Border Supply or Mode 1 refers to delivery of services across countries such as electronic delivery of music in MP3 format.
- Consumption Abroad or Mode 2 refers to the physical movement of the consumer of the service to the location where the service is provided and consumed.
- Commercial Presence or Mode 3 refers to the establishment of foreign affiliates and subsidiaries of foreign service companies. It is analogous to foreign direct investment in services.
- Movement of Natural Persons or Mode 4 refers to the temporary movement of service providers to provide services to clients in overseas markets.

The GATS Agreement enforces two types of general obligation on the part of the signatories.

- Most Favoured Nation Treatment: Under the MFN treatment a country is obliged to provide a treatment to a country, which is no less favourable than the treatment it provides to any other country (that is if a GATS member country offers certain privilege to any other country, whether it be a member or not, it has to extend the same treatment to all GATS member countries). However, GATS allows member countries to undertake exemptions to this clause, in initial commitments, subject to review.
- Transparency: This clause requires every country to publish all measures of general applications that affect the operation of the Agreement. This clause is extremely important for traders doing business in a foreign country, as they are often not aware of the laws and regulations of the other country.

Under GATS, for each of the above-mentioned modes of supply of services, a country can negotiate and make commitments to liberalise market access and national treatment for specific sectors in the sectoral schedules of commitments and across sectors in the horizontal schedule of commitments. The former is applicable to the particular sector while the latter relates to all sectors and could override, compliment or qualify the sectoral commitments. In its schedule of commitments a country can impose restrictions on market access and/or national treatment. A country is said to have imposed a market access restriction if it does not allow (or partially allow with some restrictions) foreign service providers to enter and operate in its market. A national treatment restriction exist when foreign service providers are allowed to enter the market but are treated less favourably than domestic suppliers of the same services. GATS also allow a country to impose additional restrictions. A country is said to have made a "full" commitment in a particular mode of supply of services if there are no restrictions on market access or national treatment. A country is said to have made "partial" commitments if the commitments are subject to some restrictions on market access or national treatment. If the country does not make any commitment to liberalise the sector and retains the right to impose restrictions in the future then it is said to have made an "unbound" commitment.

3.2 Coverage of audio-visual services under GATS

In the Services Sectoral Classification List (MTN.GNS/W/120), which was drawn up during the Uruguay Round based on the United Nations Provisional Central Product Classifications (CPC), audio-visual services were listed as a sub-sector of the communication services. Under the Services Sectoral Classification List, audiovisual services have been classified into six sub-subsectors. These include:

1. *Motion picture and videotape production and distribution services (CPC 9611)*
   This category includes:

   - Promotion or advertising services (CPC 96111)
   - Motion picture or videotape production services (CPC 96112)
   - Motion picture or videotape distribution services (CPC 96113) and
   - Other services in connection with motion picture and videotape production and
   - distribution (CPC 96114)

2. *Motion Picture Projection Service (CPC 9612)*
   This category includes:

   - Motion picture projection services (CPC 96121)
   - Videotape projection services (CPC 96122)

3. *Radio and Television Services (CPC 9613)*
   This category includes:

   - Radio services (CPC 96131)
   - Television services (CPC 96132)
   - Combined programme making and broadcasting services (CPC 96133)

4. *Radio and Television Transmission Services (CPC 7524)*
   This category includes:

   - Television broadcast transmission services (CPC 75241)

- Radio broadcast transmission services (CPC 75242)

5. *Sound Recording (CPC not applicable)*

6. *Other (No CPC category specified, but could cover, for example, the contents of multimedia products)*

During the Uruguay Round of negotiations, all WTO members did not agree on this definition. Some used the United Nations Provisional Central Product Classifications while others used their own definitions for the purpose of negotiations. For instance, in the list of MFN exemptions, most countries have used their national definitions. It is worth noting that the above classification makes it difficult to assess the boundary between the services covered under the telecommunication sector and those under the audio-visual sector. For example, normally satellite broadcasting is categorised under the audio-visual sector whereas cable TV transmission could be classified under the telecommunication sector. Moreover, such broad classifications does not include services such as DTH satellite services, services related to exhibition of films in theatres, services related to the operations of theatres, and new Internet services such as on-line trading, e-commerce, etc.

3.3 Discussion of commitments

Trade in audio-visual services is primarily through commercial presence (Mode 3). With increasing use of IT there has been an increase in trade via cross-border supply (Mode 1). Temporary movement of persons in this sector is often associated with commercial presence. Additionally, there are some cross-country movements of persons related to training, shooting of movies in foreign locations, etc.

In the Uruguay Round, audio-visual service sector witnessed limited liberalisation. During the negotiation process, many countries raised concerns about the capability of the GATS framework to take into account democratic, social and cultural issues. Even major players such as the EU, Canada and Australia did not make any commitments primarily for cultural preservation and for promotion of domestic audio-visual industries. At the end of the negotiations only 19 WTO member countries made commitments in this sector. Moreover, 33 members (including the European Community as one) undertook MFN exemptions specific to this sector while eight more had scheduled MFN exemptions applicable to all sectors including audio-visual services.[77] Many important WTO members such as Australia, Canada and EU did not make any commitments, but undertook MFN exemptions.

[77] The 33 MFN exemptions covering audio-visual services were undertaken by Australia, Austria, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, Cuba, Columbia, Cuba, Czech Republic, Ecuador, Egypt, European Community, Finland, Hungary, Iceland, India, Israel, Liechtenstein, New Zealand, Norway, Panama, Poland, Singapore, Slovak Republic, Slovenia, Sweden, Switzerland, Tunisia, United States and Venezuela. The eight general MFN exemptions potentially impacting audio-visual services were by El Salvador, Malaysia, Peru, Philippines, Sierra Leone, Thailand, Turkey and the United Arab Emirates.

The Uruguay Round negotiations largely focused on film production, film distribution and terrestrial broadcasting of audio-visual services. Overall, the commitments were limited both in terms of sectoral coverage and modes of delivery. Among the major players, only the USA undertook substantial commitments in the various sub-categories. Among major countries, Japan, India and Hong Kong offered limited commitments while EU, Canada, etc. did not make any commitments. The failure of offer liberalisation commitments indicated that these countries reserved the right to impose a more restrictive regime in the future. A summary of the commitments made by various countries is presented in Table B1 in Appendix B.

The largest number of commitments (17 countries) was in motion picture and videotape production and distribution services, followed by motion picture projection services (10 countries). Only 7 members undertook commitments in each of the two sub-categories – radio and television services and sound recording services and 8 members made commitments in radio and television transmission services. Six member countries undertook commitments in "other services". Only two countries – Central African Republic and United States – made commitments in all the six sub-categories. New Zealand had undertaken commitments in five sub-sectors (i.e., all except sound recording); Panama, Lesotho and Gambia in four each; and Hong Kong and Japan in three sub-sectors. The remaining 9 members had undertaken commitments in two or less sub-sectors.

The distribution of commitments across the four modes of supply (cross-border supply, consumption abroad, commercial presence, and movement of natural person) is presented in Table B2 in Appendix B. This table shows that across all modes, majority of the countries had undertaken partial commitments with some restrictions on market access and/or national treatment. A sub-sector wise classification (Table B3 in Appendix B) shows that majority of the countries had scheduled binding commitments in motion picture projection services under both market access and national treatment, followed by radio and television services. The most common restrictions included market access restrictions on the movement of natural persons, foreign equity limits, restrictions on the share of screening time allotted to foreign production and exclusion from national treatment in respect to domestic subsidies. As in the case of other services sectors, most countries left Mode 4 (i.e., movement of natural persons) unbound except as indicated in the horizontal commitments.

Important WTO member countries such as the United States, Japan and Korea did not impose any market access restrictions on trade via Mode 1 (cross-border supply) for motion picture and video tape production and distribution services. Countries such as India, Israel and Thailand had left this mode unbound. Malaysia made it necessary for a service supplier to have some investment in the country to trade via cross-border supply. Even though United States had opened up this sector to the foreign service suppliers it retained the option (by imposing limitations on national treatment) to provide aid to US citizens and non-profit companies. For Mode 2 (consumption abroad), most countries (except India) offered commitments to fully liberalise this mode. In the case of commercial presence, some countries such as Hong Kong did not impose any restriction while others had opened up this mode with partial restrictions. For instance, in Malaysia foreign investment is only through local incorporations with the foreign shareholding not exceeding 30 per cent. Almost all the member countries agreed to liberalise Mode 4 to the extent of commitments made in their horizontal schedules.

Among the major players, the USA, Japan and New Zealand had made commitment in motion picture projection service. The USA had made full commitments in this sub-sector while Japan had left it unbound due to the technical infeasibility. Major players had not imposed any restrictions on Mode 3 i.e., commercial presence. For private film screening services in Mexico, the foreign investment was limited to 49 per cent. Film screening required a permit issued by the Ministry of Interior. Mexico also imposed a 30 per cent screen time quota for Mexican films. Most member countries left Mode 4 unbound except as indicated in their horizontal commitments.

In both radio and television services and radio and television transmission services majority of the commitments were undertaken by small developing countries. Among the countries which are of interest to India, New Zealand, United States and Thailand, had undertaken commitments in radio and television services while New Zealand, United States and Malaysia, undertook commitments in radio and television transmission services. For Mode 1 in radio and television services, New Zealand and United States did not impose any market access limitations, while Thailand left the mode unbound. Under national treatment, New Zealand retained the right to provide aid to local programming. Among the major players, the US imposed restrictions on market access for commercial presence in radio and television transmission services. These include the requirement that only US citizens could hold radio and television broadcast licenses. The US also imposed cross-ownership restrictions. A single company was not allowed to own newspapers, radio and/or TV broadcast stations serving the same local market. With respect to national treatment, the US schedule mentioned that grants from National Endowment of the Arts were available solely to US citizens, permanent resident aliens and non-profit companies. Given that the US had made liberal commitments in other sub-sectors, partial commitments in this sector indicates that even the developed countries perceive this sub-sector to be of utmost interest and were apprehensive about allowing allow foreign service providers to operate these services. The cross-ownership restrictions were primarily imposed for the maintenance of national security and cultural integrity and to restrict competitive practices.

In sound recording, almost all the major countries had undertaken fairly liberal commitments. Countries such as Hong Kong, Japan, Korea, USA and Singapore did not impose any restrictions on market access under Modes 1, 2 and 3.

Unlike other service sectors, a large number of countries that had undertaken MFN exemptions in audio-visual services. These exemptions were mostly undertaken to cover the co-production arrangements for film and television productions. Many WTO Members had signed bilateral or plurilateral agreements on co-production with other Member countries and thereby retained the right to extent discriminatory treatment to the service suppliers from these countries. The main reasons for these arrangements were to facilitate the exchange of audio-visual services between the signatory countries and to promote cultural linkages. These agreements grant national treatment status to the foreign service supplier in respect to eligibility for financial assistance, tax benefits and simplified entry procedures for natural persons.

The most wide-ranging MFN exemptions were those of the European Community and Venezuela. Under the MFN exemptions, the EU extended several discriminatory treatments to its members and other European countries especially in broadcasting and distribution of audio-visual works. The EU's MFN exemption in this sector included both "redressive duties" which may be imposed to respond to unfair practices by certain third countries distributors of audio-visual works and other measures that discriminate (favorably) in the application of national treatment to the audio-visual products of other EU member states. The EU exemptions also include support programmes for the supply of television contents and cinematographic works that meets European origin criteria. These support programmes, such as Action Plan for Advanced Television Services, MEDIA and EURIMAGES have been initiated to preserve and promote the "regional identity of countries within Europe which have long standing cultural links".

Canada undertook MFN exemptions in the area of film, video and television programming, co-production and distribution. These measures focus on differential treatment accorded to works co-produced with countries with which Canada/Quebec may have co-production agreements/arrangements as well as to natural persons engaged in such co-productions, to improve the availability of Canadian and Quebecois audio-visual productions in Canada.

The US too had reported MFN exemptions in the one-way satellite transmission of DTH (direct-to-home), DBS (direct-broadcast) television services and of digital audio services. This exemption in direct satellite broadcasting allows the USA to retain control over companies broadcasting from satellite into the territory of the United States.

The above restrictions clearly indicate that there are significant barriers to trade in audio-visual services and the focus of the GATS 2000 negotiations would be to remove some of these restrictions.

India's Commitments in Audio-visual Services

In the Uruguay Round, India's commitments only included motion picture or videotape distribution services (Table B4 in Appendix B) and excluded all other sub-categories of audio-visual services. Within this sub-category, India scheduled partial commitments in commercial presence and left all other modes unbound. India imposed both quantitative and qualitative restrictions on film imports. The import of foreign films was restricted to 100 titles per year. The national treatment limitation stipulates that foreign films should be certified before display in Indian theatres. There are certain conditions for such certification. The film has to either win an award or participate in any international film festival notified by the Ministry of Information and Broadcasting, or receive good reviews in prestigious film journals. The determination of the film festivals and journals was left to the discretion of the Ministry of Information and Broadcasting. Foreign distributors in India were only allowed to set up representative offices to function as branches of companies incorporated outside India.

India had listed a MFN exemption that allows it to accord preferential treatment to motion pictures and television programmes from countries with which it has co-production agreements. This exemption was undertaken to promote cultural exchange and was applicable for an unspecified period of time.

On the whole, India’s commitments in audio-visual services were very restrictive and the country did not bind the existing regime. For instance, India’s commitments did not cover film production even though there were no major restrictions in this sub-sector.

4. Strategies for Current Negotiations

It is evident from the preceding sections of the study that despite globalisation and increase in trade in audio-visual and related services, many countries, including many developed countries, are reluctant to open up this sector to foreign players. As discussed earlier, in the Uruguay Round many important countries did not undertake any commitments in this sector while others such as India offered limited commitments. The lack of commitments implies that in future these countries may impose additional restrictions on foreign service providers without penalty. Moreover, the failure to offer commitments deprives the trading partners of any knowledge of the trade barriers that may exist in these countries. During the Uruguay Round negotiations, countries were widely divided on the issue of treating audio-visual services under a trade agreement such as GATS. While one group believed that audio-visual services can be treated as any other service sector, others pointed out that since this sector has strong cultural and social implications it should not be treated as any other service sector. Although it cannot be denied that audio-visual services play a relevant role in transmission and diffusion of cultural values and ideas, excluding them from trade cannot be an ideal solution considering the growing commercialisation in this sector. Countries such as the US, Brazil and Switzerland have pointed out that the “all or nothing” approach of the Uruguay Round does not take into account the special characteristics of audio-visual services and the growing trade in this sector. Therefore, in the current round of negotiations, the challenge before the WTO member countries is to strike a balance between promoting and preserving national cultural identity and liberalising trade in audio-visual services. Liberalisation of trade in these services would not only facilitate the inflow of technical know-how, increase efficiency through competition, but would also widen the choice available to consumers.

The definition of audio-visual services, which was used in the Uruguay Round, has certain drawbacks. For instance, this definition did not cover film exhibition services, DTH satellite services, etc. As the world moves towards convergence, one of the challenges before the negotiators is to have a comprehensive definition that would encompass the different facets of audio-visual and related services. The US has proposed a much wider definition of audio-visual services which would cover the complex and diverse set of activities that are now a part of audio-visual services. The proposed definition is presented in Table B5 in Appendix B. Although the European Broadcasting Union (EBU) also believes that there is a need for a more detailed, commonly agreed definition which would encompass the different facets of audio-visual sector, it has expressed its reservation against the US classification. EBU has pointed out that the US classification seeks to separate out areas of US interest for example, home video entertainment.[78]

During the Uruguay Round of negotiations, the USA had exerted significant pressure on its trading partners to liberalise trade in audio-visual services and on its own it had undertaken significant liberalisation. The US is the major exporter of these services. On the other hand, countries such as Canada, EU and Australia are major importers of US audio-visual products and services. These countries used the "cultural preservation" argument for not making any liberalisation commitments. This was primarily because the domestic industry of these countries faces significant competition from the US imports. In the current round the US will continue to push for more liberal trade in these services. However, the negotiating strategies of some of its major trading partners have not changed much since the last round of negotiations. For instance the EU has clearly stated that[79]:

Audio-visual services are markedly different from other services to the extent that they are a medium for the expression of cultural diversity. It is essential to ensure that international trade agreements respect the diversity of cultural products. One of the EU's main objectives in the New Round of WTO negotiations will be the defense of cultural diversity. To that end, the European Union insists that EU Member States will maintain their freedom to regulate audio-visual services, and to subsidise their producers and distributors, where appropriate.

It is likely that in the current round, US will partner the like-minded countries in order to push for liberalisation of trade in audio-visual services.

In the Uruguay Round, a large number of countries (33 members) reported MFN exemptions. In the current round there is likely to be strong pressure from the US to remove all MFN exemptions for audio-visual products, including exemptions based on cultural considerations. Also, the MFN exemptions of "indefinite" duration is likely to be questioned on the ground that they are not consistent with the 10-year limits on MFN exemption suggested as a basic principle in the GATS Annex on such exemptions. This is likely to put pressure on countries such as the EU and Canada who had reported several MFN exemptions. It is worth noting that in the previous round, the US also reported

[78] See EBU website for details.

[79] Source: Trade-info.Cec.Eu.int/europa/2001 newround/ser.pdf

some MFN exemptions. Experts believe that these measures were aimed at Canada for refusing to relax certain restrictions on foreign ownership of Canadian assets.[80]

Many WTO member countries subsidise their domestic audio-visual sector. General subsidy rules under GATS Article XV are yet to be developed. In the previous round many countries had scheduled their subsidies under national treatment limitations. During the current round of negotiations, member countries may want to consider developing an understanding on subsidies that will respect each country's need to foster its cultural identity. On the other hand, such subsidies should not be allowed to distort trade in services, especially since it would be difficult for industries from developing countries to compete with subsidised industries of developed countries.

The emergence of Internet as a potential medium for distribution of audio-visual content is an important issue for discussion in the current round of talks. Countries such as the US and EU have emphasised on a "duty-free cyberspace" in order to encourage the growth of global e-commerce. Both the US and the EU have mentioned that the expansion of e-commerce should be market led and that countries should not impose any domestic barriers to trade.[81] Presently, there is no international law regulating e-commerce and this has severely constrained trade in services such as on-line music. For instance, there are security issues related to payment by credit card on the Internet. Moreover, in the absence of any international regime there is widespread piracy on the net. During the GATS 2000 negotiations, trading partners will have to develop a common regulatory framework to promote the growth of e-commerce.

The distribution of audio-visual content over the Internet has made it difficult for countries to regulate and restrict the entry of foreign content. This has questioned the imposition of restrictions such as broadcasting quotas, screen quotas and local content requirements. In keeping with technological developments, WTO member countries will have to objectively evaluate the need for the existing regulations.

With digitalisation and increasing use of IT there has been significant concentration in audio-visual services and this has raised the issue of anti-competitive behaviour such as abuse of dominant positions. During the current round of negotiations such anti-competitive practices can be addressed under Article IX of the GATS Agreement or as reference paper (if there are any issues related to anti-competitive practices, which are specific to audio-visual services).

Before analysing India's possible negotiating strategies for the on-going round of negotiations it is important to identify India's major trading partners and the type of restrictions they have imposed.

4.1 India's trading partners and the type of restrictions imposed by them

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[80] For detail see Siwek.

[81] For details see Siwek

As mentioned earlier, India has significant trade potential in some sub-sectors of audio-visual services. These include the exports of films, television software, radio and television programmes and music. India can also offer post-production facilities to global film/television industries.

The markets of export interest to India are those with large NRI concentration. Expatriate Indians maintain close ethnic connections with their motherland and have generated a strong demand for both Hindi and regional programmes. Countries with high NRI concentration includes the USA, EU, Canada, Australia, Middle East countries such as UAE and Kuwait, some South Asian countries such as Singapore, Malaysia, Hong Kong and Indonesia, and African countries such as Kenya, Nigeria, Tanzania, Uganda, etc. There is a strong demand for Indian language programming from neighbouring countries such as Pakistan, Bangladesh and Sri Lanka. In the recent years, Indian programmes are penetrating into non-traditional markets such as Japan. Indian film and television industry is also exploring the Latin American market (Brazil and Argentina).

The demand for Indian programmes has a strong regional dimension. For instance, there is a high demand for Tamil music in Singapore, Bengali music in Bangladesh and Punjabi music in north Pakistan.

As discussed in Sections 1.1 and 2.2, many trading partners have imposed significant barriers to trade in audio-visual services. These includes local content requirements; restrictions on movement of artists, producers, directors, technicians, etc.; restrictions on co-productions; restrictions on screening of foreign movies; high level of piracy of Indian origin films and music; high entertainment taxes (in countries such as Pakistan), etc.[82] Moreover, many countries (especially developed countries) heavily subsidise their audio-visual sector which makes it difficult for Indian companies to compete with the subsidised sector.

In the Uruguay Round, many important trading partners did not make any commitment in audio-visual services. For instance, the EU, Canada, Australia, Pakistan, Sri Lanka, Bangladesh, Kuwait and UAE did not schedule commitments in this sector. Among the trading partners, the US made significant commitments, while both Singapore and Malaysia had committed in only two sub-categories (Table B1 in Appendix B). On the whole, the commitments made by India's trading partners were extremely limited.

4.2 Countries which have export interest in India and the type of restrictions they face

Many countries, especially developed countries such as the US, EU, Japan and Australia, have shown a keen interest in exporting audio-visual and related services to India. For instance, India with a large base of English speaking audience is a growing market for Hollywood films. The growth of satellite music channels has popularised western music in India. Many international satellite channels have either started operating

[82] These have been discussed in details in the previous sections of the report.

or are planning to set up operations in India. Companies such as Pentamedia Graphics have set up their head quarters in India. Global multinationals such as Village Roadshow Limited (Australia) have already invested in multiplexes and single screen theatres. Foreign companies also have interest in technical collaborations with India. For instance, the US based satellite company World Space Corporation has entered into an agreement with Prasar Bharati for satellite digital radio services.

It is likely that during the GATS 2000 negotiations, India will receive pressure from these countries to remove the existing restrictions to trade in audio-visual services. It is therefore important to understand the type of restrictions which India itself has imposed.

India is one of the least restrictive countries and foreign players are allowed to operate in many segments of the audio-visual industry. The Indian industry largely concentrates in private hands and the government primarily acts as a facilitator.[83] The restrictions imposed by India on trade in audio-visual services are given below:

Films

India is the largest film producing country in the world. Indian film industry is largely concentrated in private hands and the government does not provide any major subsidies or support programmes, as in the case of European film industry. In the past, government provided financial support for film production through National Film Development Corporation (NFDC). However, such financial supports are dwindling due to the lack of funds. NFDC also has a scheme for giving loans up to a maximum of Rs 15 lakhs for theatre constructions. This has not been disbursed in the last few years. The Indian government supports two training institutes Film and Television Institute of India, Pune, and Satyajit Ray Film and Television Institute. Through Directorate of Film Festivals, the government promotes "good cinema".

In the past, India had quantitative restrictions on film imports and the total number of titles imported was restricted to 100 per year. This restriction has now been removed. In the year 2002, government removed the qualitative restriction on film imports.[84] The current policy states that:

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[83] Various laws related to this sector are discussed in Appendix D.

[84] The qualitative restriction stated that to be qualified for imports the foreign film has to satisfy either of these conditions:

- The film should have won an award in any of the International Film Festivals notified by the Ministry of Information and Broadcasting,
- Or have participated in notified International Film Festivals,
- Or received good reviews in prestigious film journals notified by the Ministry of Information and Broadcasting.

- Import of cinematograph feature films and other films (including film on videotape, compact video disc, laser video or digital video disc) shall be allowed without a license;

- The importer of films should compile with the provisions of all applicable Indian laws governing the distribution and exhibition of films and would have to obtain a certificate for public exhibition from the Central Board of Film Certification which was set up under the Cinematographic Act of 1952; [85]

- Import of any unauthorized/pirated films shall be prohibited;

- Import of foreign reprints of Indian films shall not be permitted without the prior permission in writing from the Ministry of Information and Broadcasting, Government of India;

- The Ministry of Information and Broadcasting, on being satisfied that it is necessary or expedient in public interest to do so, may waive or relax the above requirements.

Although the foreign players have welcomed the liberalisation measures, they still face certain barriers. For instance, Motion Picture Association of America (MPAA) has pointed out that its member companies have to pay a custom duty on remittances. They have also pointed out that although import licenses are no longer required, Indian Customs often impose various restrictions. For example, the film importing company has to provide a declaration on a stamped paper that the film imported does not contain any illegal/pornographic material together with a synopsis of the film. Foreign players have questioned the power of the Central Board of Film Certification. Even if a film is approved by the Central Board of Film Certification it may run into problems at the exhibition stage on account of hurting the sentiments of a particular section of the society and state governments/municipal corporations have the authority to impose a ban on the exhibition of the film. All foreign films imported and exhibited in India have to pay a scrutiny fee of Rs 5,000.

There are some restrictions on co-productions. These include the requirement to get the script approved by the Ministry of Information and Broadcasting so as to ensure that the project does not hurt the sentiment of any segment of the society or is not against the national security interest. For shooting feature films in Indian locations, foreign film producers have to obtain permissions from the Ministry of Information and Broadcasting. Proposals for shooting of documentary films are cleared by the Ministry of External Affairs. There are no restrictions on the movement of international artists except those

[85] Organisations similar to Central Board of Film Certification are BBFC in the UK and Australian Classification Board. When Indian films are exported abroad they also have to go through the certification process in countries which have censorship boards. Presently, India does not have an agreement with country's having censorship board, whereby a film certified in India will not have to obtain a separate certification in the foreign country. The Indian government is considering the possibilities of signing such an agreement with Australia.

related to visas and work permits. The revenue repatriations are as per the RBI (Reserve Bank of India) rules.

Foreign direct investment is allowed up to 100 per cent in film financing, production, distribution, exhibition, marketing and associated activities through the automatic route.[86]

There is a restriction on the import of publicity materials, posters, sample t-shirts, electronic press kits which are required for the promotion of the foreign film in India. On import of any of these items there is a penalty of 100 per cent of the value of the materials.[87]

Television Broadcasting, Content, Cable Television

In India, there are some restrictions on advertisements. These have been imposed to ensure national security, integrity, social and cultural values, etc. In the past, the advertising restrictions were applicable to the public broadcaster. However, on August 2000, the Indian Parliament passed the Cable TV Networking (Regulation) Amendment Bill, which extended the country's programming and advertisement codes to all foreign channels distributed through the cable networks. As per the new regulation, advertisements related to the promotion of alcohol and tobacco products are not permitted in channels distributed through the cable networks. Channels are forbidded from showing advertisements which offends the morality, decency and the religious susceptibilities of the people, degrades women, adversely affects India's friendly relations with foreign countries, etc.

A foreigner, firm with foreign partners, and companies not incorporated in India, is not permitted to hold licenses for providing broadcasting services. India has one of the world's largest terrestrial broadcasting networks but this has not been opened up for privatisation and foreign participation. The FDI in cable television network is limited to 49 per cent.

In most developed countries uplinking is allowed freely whereby broadcasters, private companies or satellite management companies can set up their own uplinking

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[86] In the past FDI was subject to the following :

- Companies with an established track record in films, TV, music, finance and insurance would be permitted
- The company should have a minimum paid up capital of US $10 million if it is the single largest equity shareholder and at least US$5 million in other cases
- Minimum level of foreign equity investment would be US$2.5 million for single largest shareholder and US$1million in other cases.
- Debt equity ratio should not be more than 1:1, i.e., domestic borrowing should not exceed the equity.

This restriction was removed in March 2002.

[87] Film Import Policy-Tradeport.

stations/hubs and provide uplinking services. In the past, VSNL was the sole provider of uplinking facilities in India.[88] However, the Indian government has liberalised its uplinking policies and as per the new policy, an Indian private company, which need not be a broadcaster, is permitted to set up uplinking hub/teleport facilities for purpose of hiring out/licensing to broadcasters. The new policy permit any television channel which is aimed at Indian viewership irrespective of its ownership, equity structure or management control to uplink from India. It also allows the Indian news agencies to have their own uplinking facilities for the purpose of newsgathering and its further distribution to other news agencies/broadcasters. In spite of the liberalisation measures there are still some restrictions, especially on foreign investments. Licenses for setting up uplinking hub/teleports is given only to companies whose foreign equity holding (including NRI/OCB/PIO) do not exceed 49 per cent. News agencies are permitted to have their own uplinking facilities if they are 100 per cent owned by Indians with Indian management control, the company/agency has to be incorporated in India and accredited by Press Information Bureau (PIB). Such regulations prevent broadcasters like Star TV to set up their own teleports and use the Satellite News Gathering (SNG) facilities.

One January 2001, Indian government removed the ban on the reception and distribution of television signal on Ku Band and allowed the operation of DTH service. However, there are certain restrictions on the operation of DTH service which have been imposed for national security reasons, to preserve morality and social values and to prevent vertical monopoly in distribution and broadcasting of television services. A company applying for a DTH license should be registered under Indian Company Act, 1956. The total foreign equity holding, including foreign direct investment (FDI), investment by NRI and overseas corporate bodies owned by them, and foreign institutional investment (FII), is limited to a maximum of 49 per cent. Within the foreign equity, the FDI component cannot exceed 20 per cent. The applicant company should have Indian management control with majority representatives on the board as well as the chief executive of the company being an resident Indian. In order to ensure that programmes/channels distributed through the DTH platform comply with the Indian programme and advertisement codes, it is mandatory that these should be uplinked from India.[89] To prevent monopolies, the government has imposed restrictions that broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20 per cent of the equity of a DTH company at any time during the license period. Foreign players who are willing to invest in DTH services in India have pointed out that the restrictions on cross-media ownership would prevent convergence. They further pointed out that most countries including the US, UK, Europe, France, Canada, and Australia have not imposed any cross-media ownership restrictions with regard to DTH services.

Presently, the Ministry of Information and Broadcasting is the prime body for regulating the broadcasting sector. Foreign players have pointed out that the government should issue some broad guidelines and set up an apex body – 'Broadcasting Authority of

[88] Foreign satellite channels mostly uplink from Hong Kong, Singapore and Thailand.

[89] This also takes care of the concerns related to national security.

India' – which will have the responsibility to set up the regulatory framework independent of the government.

Other restrictions in audio-visual services

The MPAA has pointed out that the entertainment tax in India is one of the highest among the Asian countries. Moreover, the tax varies across the different states ranging between 14 to 167 per cent (Table A9 in Appendix A). Piracy is another major problem affecting the foreign exporters. MPAA has pointed out that the Hollywood movies are released in India few months after their international release. As soon as the movies are released in the international market, copies of the films are brought into the country and circulated through various routes much before their theatrical release. This has severely affected the earnings of the film production and distribution companies. Cable piracy, that is, unauthorised transmission of the films through cable networks is one of the predominant forms of piracy which has directly affected the foreign players. The MPAA further pointed out that although India has a strong copyright law which has strict penalties for unauthorised retransmission of television broadcasts, there are various problems related to its enforcement (such as overburdened court system and inefficient judicial system). Moreover, in India there are numerous cable operators and there is no regulatory authority monitoring their activities.

In the recent years government has allowed privatisation of radio channels. However, FDI is not allowed in private FM channels.

4.3 India's strategies for the GATS 2000 negotiations

Indian audio-visual industry caters to a niche audience and hence, does not face any direct competition from the major players such as the US. India's trade in audio-visual and related services is steadily increasing and the Indian industry is exploring new markets and delivery platforms. It is, therefore, in India's interest to push for liberalisation of trade in this sector. In this respect, India may consider the possibilities of allying with major players such as the US to push for increased market access.

In the Uruguay Round, India only made commitments in motion picture and videotape distribution services. However, as mentioned earlier, India has export potential in various other segments of the industry and therefore the country should broaden its commitments in the current round. Also, since the last round, India has unilaterally opened up various segments of the industry for foreign players.

Among the various sub-categories of audio-visual services, India can offer commitments in motion picture and videotape production and distribution services. Many Indian producers have shown a keen interest in entering into co-production agreements with foreign players. A liberal commitment under Mode 3 would facilitate international co-productions. Foreign investments in film productions would benefit the industry financially and technically. In the past, India had some quantitative restrictions on film imports, which have now been removed. Imported films had to go through a qualitative check which has also been removed in the year 2002. Since, India has already liberalised its import policy and has an export interest in this sub-sector, it can open up Mode 3 (commercial presence) subject to the existing policy.[90] India should reciprocally ask its trading partners to allow greater market access for commercial presence in film/videotape production and distribution. This will help the Indian industry to enter into co-production agreements and set up distribution networks abroad. Presently, Indian producers and distributors face several barriers in the international markets. For instance, in Indonesia, foreign film and video distributors are prohibited from establishing branches or subsidiaries. Under their Film Law, 100 per cent Indonesian-owned companies are only allowed to import and distribute. Since India does not have any foreign investment limitations in film production and distribution, India should negotiate for removal of such barriers.

Countries such as Brazil prohibit the importation of colour prints for television and theatrical display. Many trading partners such as Spain, Italy, Brazil, etc. have imposed screen quotas. Others have imposed restrictions which are specific to contents of Indian origin. For instance, Pakistan has imposed a ban on Indian films and Egypt has a fixed quota for Indian films but it has not imposed a similar quota for Hollywood (US) films. India should negotiate with these countries for removal of such restrictions.

With increasing use of Internet as a mode of delivery of audio-visual products, India should offer liberal commitments under Mode 1 and insist its trading partners to do the same.

It is often argued that allowing the entry of foreign production would crowd out the Indian producers and would lead to cultural degeneration. This has not happened so far and even though there are no major restrictions on imports of foreign films (which consist mostly of Hollywood movies), they constitute only 2 per cent of the total market revenue. Hollywood movies cater to a small section of the society and even when many of them are dubbed in ethnic languages[91], the viewership has not increased significantly.

Indian film industry has pointed out that the country needs foreign investment in film infrastructure/exhibition theatres. Although the motion picture projection service is covered in the MTN.GNS/W/120 classification, the classification does not specifically refer to the exhibition of films and operations of cinemas. One of the challenges before India in the current round is to determine whether the existing definition is comprehensive and whether it is in India's interest to broaden the definition to include

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[90] This has been discussed in details in the previous sub-section.

[91] However, many Indian producers have strongly protested against the dubbing of foreign films in Indian vernacular languages and screening them in India. They have argued that dubbed films are attractive due to their superior technology and special effects and hence affect the viewership of regional movies. They have cited the example of Hungarian and Polish film industry which collapsed after the entry of dubbed foreign films.

new services. For this, the Ministry of Commerce will have to work closely with the industry representatives and Ministry of Information and Broadcasting.[92]

India has the potential of exporting radio/television programmes and television software and hence can offer liberal commitments in this sector. On the import side, Indian programme production companies do not face any direct competition from the foreign players. There is a strong demand for ethnic programmes in India and many global players such as MTV, Channel V and Star TV have reoriented their programmes to cater specifically to the Indian taste. Therefore, India can offer liberal commitments in this sector. However, the government should continue to regulate the content of imported programmes in order to safeguard the national security, morality and cultural and social values.

India does not have any major restrictions on television broadcasting but FDI is not allowed in private FM channels. Private players are not allowed to enter the terrestrial broadcasting sector. Since India has allowed foreign satellite channels to operate in this country and has significantly liberalised its broadcasting policies, it can offer commitments in radio and television transmission and broadcasting subject to the existing regulations. For instance, India can impose market access restrictions on terrestrial broadcasting.

Any commitments in broadcasting should take into account the role and responsibility of Prasar Bharati – the Indian pubic broadcaster – and the special privileges which it enjoys. Prasar Bharati has a social responsibility and hence it cannot be compared to a commercial broadcaster. It is likely that, in future, Prasar Bharati will continue to receive budgetary support and hence any liberalisation commitments in broadcasting should exclude Prasar Bharati.

As discussed earlier, many countries of export interest to India such as the EU and Canada have imposed various restrictions on broadcasting such as broadcasting quotas and local content requirements. Since India has not imposed similar restrictions, India should negotiate with these countries for removal of such restrictions.

India has opened up sound recording services for foreign investment. Hence, it can offer liberal commitments under Mode 3. Also, with increasing use of Internet for music downloads, India can offer liberal commitments under Mode 1 (cross-border supply). The sale of on-line music is severely affected by piracy on the net. Presently, numerous sites for downloading Indian music in MP3 format are hosted from servers in foreign countries, mainly the US. Necessary enforcement actions against these sites and servers can only be initiated with international co-operation. The Indian government should take up such issues at the WTO.

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[92] It should be noted that under Article XIX, the countries have the freedom to undertake commitments in any sub-sector or in any activity classified under a particular sun-sector.

Consumption abroad or Mode 2 is not an important mode for delivery of audio-visual services and most countries of export interest have not imposed any restrictions on trade *via* this mode. Since India does not have any major restrictions on trade *via* this mode, it can also offer liberal commitments in this mode.

Unlike professional services such as software or health, India's export possibilities through Mode 4, i.e. movement of natural persons, is much less for audio-visual services. Indian film producers, directors, actors, cameraman, technicians, etc. often go abroad to shoot films, acquire training or work in international projects. Although there are no major restrictions on the movement of persons for shooting a film abroad, Indian technicians (cameramen, editors, music directors) sometimes find it difficult to take up temporary employment in the developed countries (such as the USA and UK) due to the strong union pressures. Workforces in the audio-visual sector of these countries are members of unions which insist on using local skills. Many Indian technicians, actors, directors, etc. have worked on international projects through bilateral co-production agreements. This has enabled them to bypass the recognition of qualification and related barriers. They also receive offers to work on foreign productions. These offers are largely made on a case-by-case basis depending on the fame and recognition of the person. For instance, AR Rehman, the famous Indian music director, has recently been offered the music direction of a Hollywood movie.

Many Indian audio-visual companies, especially music companies, export their products to international markets through licenses since setting up of their own operations would involve a much higher cost. In this set-up, the licensee is given the right over intellectual property in that particular country/region and to manufacture and sell locally. Generally the Indian company assigns a representative in that particular country/region to monitor the work of licensee. However, in countries such as Malaysia, Australia and USA for being eligible for a work permit the company has to be registered in those countries and hence representatives can not have work permits.

In the Uruguay Round, all WTO member countries were reluctant to open up Mode 4. Most countries left it unbound except as indicated in their horizontal commitments. Some have imposed additional restrictions on trade *via* this mode which are specific to audio-visual sector. For example, the US has imposed additional restrictions on radio and television transmission services. Only a US citizen can obtain radio and television licenses. In the current round, India should push for liberal market access in Mode 4. Since India has not imposed any major restriction on the entry (except those related to work permits and visas) of foreign producers, directors, technicians actors, etc., India can offer reciprocal commitments in Mode 4.

In the Uruguay Round, India had taken MFN exemptions to allow preferential treatment to countries with which it has co-production agreements in motion pictures and television programmes. Some industry representatives have pointed out that India should continue to retain MFN exemptions in co-production since the Indian film industry has benefited through these co-production agreements. In certain cases mutual recognition of qualification barrier has been circumvent through co-production agreements. Others have pointed out that such exemptions reduce the scope for MFN trade since India is not a member of regional organisations such as NAFTA. In the current round, it is likely that countries such as the EU and Canada would continue to retain the existing MFN exemptions. Whatever stand India takes would depend upon the stand taken by its major trading partners. If the major trading partners retain their MFN exemptions, India can also continue to do the same.

India has bilateral cultural agreements with 109 countries (the list of countries is presented in Table A11 in Appendix A). The purpose of these agreements is to strengthen the cultural links with an objective to promote India's cultural image abroad. One of the major manifestations of this policy is to hold cultural festivals of India in selected foreign countries and reciprocally host their festivals in India. It is often argued that bilateral negotiations are more beneficial for India than multilateral agreements and India should continue to have bilateral agreements.

It is worth noting that India does not have bilateral agreements with many major trading partners such as the US, UK and Canada. Moreover, these agreements have helped only some segments of the industry namely, AIR and Doordarshan. A large part of the Indian audio-visual service sector is concentrated in private hands and the bilateral cultural agreements does not have much relevance for the private sector. Moreover, the bilateral agreements have not focused on removal of trade barriers and hence have not contributed towards increase in India's export. It is, therefore, important for India to negotiate in a multilateral forum for the removal of barriers to trade in audio-visual services.

On the whole, it is suggested that India should actively participate in the GATS 2000 negotiations and offer to bind the existing regime. An offer consistent with the existing policy will not only increase India's bargaining power but will enable the country to gain from liberalisation commitments under the GATS.

5. Domestic Reforms

This section will discuss the regulatory and other reforms that are required to increase the productivity and efficiency of the audio-visual service sector. Any initiative to liberalise through multilateral negotiations can only be successful if it is backed by appropriate domestic reforms. The government and various industry associations/organisations have to work in close co-ordination and initiate necessary measures to make the audio-visual sector globally competitive, enable India to take advantage of the market access opportunities created by the GATS as well as facilitate the implementation of its own commitments.

Piracy is one of the major problems of the Indian audio-visual industry. It robs the producer of his due returns to creative work, reduces revenue of the legitimate sector which can be reinvested for development and the government losses revenue due to the evasion of excise tax, sales tax, income tax, etc. Since copyright issues are under the purview of the Ministry of Human Resource Development while audio-visual sector is under the Ministry of Information and Broadcasting, both these ministries will have to work in close coordination on issues related to copyright violation. The two ministries together should set up a nodal agency to deal with matters related to copyright piracy. To reduce piracy all state governments should set up IPR cells in their police department to deal exclusively with copyright violations. Each state should also assign a designated nodal officer who will work closely with the copyright owners and copyright industry organisations.[93] So far, special cells for copyright enforcement has been set up in 23 States and Union Territories.[94] State police departments should organise training programmes and seminars to educate the police force about various forms of copyright violations and their roles and responsibilities in reducing such crimes. These workshops and seminars can be jointly organised with organisations such as Indian Music Industry, which are actively working for the reduction of piracy.

To reduce piracy, the copyright act will have to be more strictly enforced and the punishment for the offence should be made more stringent. The government should set up specially designated courts to handle copyright issues. This will speed up the court proceedings. There is a need to conduct awareness programmes through media such as the press, cinema halls, etc. Also, the reward system for reporting instances of piracy should be strengthened. Pirated products manufactured in India constitute a small segment of the Indian piracy market. Steps should be taken to restrict the influx of pirated products from countries such as Pakistan, Malaysia, China, etc.

As mentioned earlier, WIPO (World Intellectual Property Organisation) since 1996 has initiated two treaties – the WIPO Copyright Treaty and WIPO Performances & Phonograms Treaty – for combating global piracy. These treaties also cover piracy on the Internet. India should accede to these two WIPO treaties. For this purpose, the copyright law would require necessary amendments. Piracy is a global problem. Indian industry organisations should work closely with their international counterparts to reduce piracy in markets of export interest.

The Indian industry, especially the smaller players are not very aware of their IPRs. The government should encourage registration of copyright work. This will not only help in establishing ownership but will also enable the right holder to prove ownership in case of litigation.

In 2001, the Indian film and cable industry reached an agreement to curb piracy. As per the agreement, no cable operator should show any film without a valid license under the Copyright Act and no film should be shown on cable or satellite television for one year after its release except when permitted by the copyright owner.

[93] At present, designated nodal officers are in the states of Andra Pradesh, Goa, Haryana, Karnataka, Kerela, Madhya Pradesh, Maharastra, Rajasthan, Tripura, Uttar Pradesh and West Bengal and in the Union Territories of Chandigarh, Daman and Diu, Lakshwadeep, and Pondicherry.

[94] These are Andra Pradesh, Assam, Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Delhi, Goa, Gujarat, Hariyana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerela, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal

This agreement, if properly implemented, would reduce piracy through the cable network.

One of the most pressing demands of the entertainment industry is that the Government should rationalise the tax structure across states. Although the government has agreed to fix a ceiling of 60 per cent on entertainment tax uniformly across the country, this has not been implemented since entertainment is a state subject and it requires the acceptance of all states before the uniform entertainment tax rates are implemented. The Indian industry has pointed out that entertainment should be moved from the state list to the concurrent list. A reduction in tax rates will lower the theatre ticket prices and consequently encourage more people to see films in theatres. This will result in additional revenue earnings for the exhibitor enabling them to expand, upgrade and develop infrastructure to international standards. A proper tax structure would also encourage international players to invest in theatre construction. It has been proven internationally that when the tax rate reduces, the tax net goes up. Indian industry representatives have pointed out that the government should fix the tax rate between 20-30 per cent, which would make the tax structure comparable to that of other Asian countries.

The government should frame broad regulations and guidelines for banks and financial institutions in order to facilitate lending to the audio-visual sector. Given its significant export potential, the government should bring the audio-visual sector on par with the information technology sector with respect to overseas investment and stock listing options.

As of now, audio-visual exports largely cater to NRI/South Asian demands. In order to sustain the growth of exports, the industry will have to target a much wider international audience. For this purpose, the content should be made more appealing to the global audience and technical standards and editorials will have to be upgraded to international standards.

Prasar Bharati

Although Prasar Bharati was established in 1997, till date it is not fully independent of the Ministry of Information and Broadcasting. For smooth day to day operations, both AIR and Doordarshan would require more flexibility and freedom. The structure, financing and personnel policies of the public service broadcaster should be independent from pressures of the government. On the one hand, Prasar Bharati should be responsible for its own operational and financial decisions on the other should cooperate and collaborate with the government in crucial areas such as education, health, environment and rural development.

The government should, at the earliest, streamline the process of transfer of employees to Prasar Bharati and provide them with an alternative service condition. A pay package based on the merit and performance of the employee will improve the quality of employment. Prasar Bharati employees will have to be properly allocated across the various departments/centres so that the imbalance between different departments/centres is minimised. Moreover, the Prasar Bharati management should have the autonomy to select employees whom they would like to retain. For the remaining employees, the government will have to come up with a scheme for alternative employment or offer them packages such as the Voluntary Retirement Scheme (VRS).

There is an urgent need for professionalism in management of Prasar Bharati. The organisation needs to be akin to private organisation in its management at the same time perform the duties of the public service broadcaster. Professionalism would enable the public broadcaster to compete with existing private and international players.

Opinions widely differ as to the role of the public broadcaster in India. As a public broadcaster AIR and Doordarshan have a social responsibility and the programming and delivery of content should not be motivated by profits alone. For instance, in the recent years the Ministry of Information and Broadcasting together with Prasar Bharati have initiated special packages for improving the coverage of AIR and DD in Jammu and Kashmir and North Eastern states. The hilly terrain makes it necessary to have a large number of transmitters for a small number of people, and such investment may not be financially viable for the private players. Some analysts have pointed out that public broadcasters should not be pressurised to earn revenue through sell of airtime or privatisation.

The role of the public broadcaster varies across countries. For instance, in Sweden the public Broadcaster SVT plays a leadership role in setting up programming norms and standards. Even after the advent of commercial terrestrial broadcasting in 1991, the SVT's market share did not fall below 40 per cent. The UK public broadcaster, BBC, plays a leadership role in setting up programming norms and standards. BBC initially invested in landmark natural history programmes and many commercial channels subsequently came up with similar programmes such as Survival and Equinox. On the other extreme, the US Public Broadcasting Services (PBS) concentrates on education, art and current affair programmes and caters only to 3 per cent of the audience. While the US public broadcasting is elite oriented, Indian public broadcaster target the weaker section (lower level of literacy, low per capita income, etc.) of the society. In India, there are 79 million television homes and only around 37 million cable homes. Hence the reach of public broadcaster is much wider than that of cable operators. The public broadcaster should explore this wide audience base by concentrating on niche programmes such as education and health care. Moreover, both Doordarshan and AIR should improve their programming quality and develop branded channels, which provides a good mix of education and entertainment and caters to different sections of the society.

Globally, public broadcasters are financed through various modes such as license fees, advertisement revenues, public subsidies and government grants. In the UK, BBC is funded by a license fee and through the sale of its television contents and services. BBC channels in the UK are not financed by advertisements95, sponsorships or subscription

[95] BBC's global channels are financed by advertisements.

revenues. In Japan and Sweden, public broadcasters rely entirely on license fees. Spain's TVE and New Zealand's NZTV are totally financed by advertisement revenues. PBS, in the US, is funded by government grants and private donations. The two main sources of financing of Indian public broadcaster are advertisement revenues and government budgetary support. Since both Doordarshan and AIR are depended on budgetary support, it would be difficult for them to have independent decision-making.

In order to be financial independent, both Doordarshan and AIR should improve their programming quality and develop a strong marketing strategy to promote their programmes. Both Doordarshan and AIR should explore alternative methods of financing such as selling television programmes to channels abroad, renting of studios and production facilities, etc. Instead of commissioning out the programmes, the public broadcaster should explore the possibilities of using in-house human resources and hardware to produce high quality programmes. This will significantly reduce the cost of production.

All India Radio

Currently, private channels are not allowed to transmit news and current affairs programmes. In order to encourage the privatisation of FM channels, government should remove the ban on news and current affairs programming and give the private radio operators the same freedom as is given to private television channels. Since investment in private channels is capital-intensive, the government can encourage such investments by providing incentives such as reduction in the import duties on transmitters. The government also needs to work closely with the industry in deriving a license fee structure, advertising code, etc. so that private players find it commercially viable to invest in FM channels.

In its privatisation policy, the government has stated that while a company can own any number of stations, each station must be independent in terms of content. The removal of this constraint will also encourage privatisation since it will enable the broadcasters to exploit the nation-wide/region-wise audience for a particular type of programming.

AIR will have to investigate new modes of earning revenues such as leasing out the studios and equipment owned by it. The government, on its part, should remove all barriers such as restrictions on leasing of channel time, restrictions on leasing/hiring of studios owned by AIR, etc., in order to facilitate the growth of the radio industry.

The Indian Missions abroad should provide appropriate logistic support. The AIR should co-ordinate with the Indian Embassies to have a regular programme feed back scheme which will enable AIR to improve its programming quality.

On the technology front, there is an urgent need to introduce digital audio broadcast (for all the foreign and Indian language broadcast) in External Services

Division. This will improve the reception quality and ensure global standards in international broadcasting.

Doordarshan

One of the major constraints faced by Doordarshan is the lack of funds. In order to ease the financial pressure, Doordarshan had entered into a one-year contract with an Australian company for the sale of airtime. As a consequence of this agreement, Doordarshan as a public broadcaster owns neither the programming content or marketing rights. Industry representatives have strongly argued that the public broadcaster should not enter into an agreement where it does not have any control over the programme content. Instead, the public broadcaster should explore alternative methods of financing such as renting of studios and improve its programming quality in order to increase its share of advertisement revenue.

Satellite Channels/ Cable Television/ Television Software

Although the Indian Parliament has passed The Cable TV Networks (Regulation) Amendment Bill 2002 which makes it mandatory for pay channels to be routed through a set-top box; conditional access system can only be successfully implemented once issues such as who should bear the cost of the set-top boxes and what should be the technical standards of set-top boxes are resolved. The broadcasters, cable operators and consumer forum will have to reach a consensus regarding who should bear the cost of the set-top boxes. Once CAS is implemented, many broadcasters will find it difficult to retain their viewership in the new environment. To retain and attract viewership, television broadcasters will have to invest in niche programming.

With the proliferation of satellite channels, it is extremely difficult for the viewers to have a count of the number of channels that are available and the type of programmes they telecast. There is a need to have a good television guide which will keep the viewers well-informed about the type of programmes telecast. The television broadcasting industry will have to work closely with the content providing industry to develop a proper archive system for the programmes produced.

In order to attain global programming standards, Indian programming/content providing companies need to invest in infrastructure such as studios, sound recording facilities, etc. To reduce the production costs and ensure profitability, the channels will have to offer a judicial mix of high-budget programming and low-budget quality programming. Globally, content providers are trying to gain presence across varied media platforms in order to cross-promote their content and derive maximum value. Indian companies should not only expand their operations across media but also try and increase their share in the global content market by leveraging on their cost advantage and relationships with the foreign satellite broadcasters present in the country.

Currently, the content providing companies donot have an uniform accounting practice and this makes it difficult and risky for investors to invest in this sector. There is an urgent need to improve transparency and formulate standard accounting policies in line with international norms. This will encourage investors to invest in this sector.

In India the IPR (Intellectual property Right) issues related to programme production and broadcasting are not clearly defined. As a consequence, content providers do not often get their due share for their creativity. As in the case of developed countries, the production houses should own the programmes IPRs. This will enable the progamming companies to get the due share of their revenue, which can be then be invested to improve the progamming quality.

In line with global developments the television broadcasting industry will have to introduce new technologies such as Interactive TV, video-on-demand, etc. The government, on its part, should facilitate this development process through appropriate legislation.

Even though there has been a move towards digitalisation, there are no legal compulsions or fixed time frame within which television signals have to be converted into digital signals. This has slowed down the process of digitalisation. In the US, the Federal Communication Commission (FCC) has ruled that all television signals have to be converted into digital signals by 2003 and the customers should change the equipment in their household to receive these signals. The Indian government needs to coordinate with the industry to set up a time frame for conversion into digital signals. The industry should work towards achieving this deadline.

Although the government has approved DTH, the service providers will find it difficult to have a large customer base since the cost of DTH is high and cable television is already delivering a large number of channels. In order to survive and have a profitable operation, the DTH service providers will have to invest in programming that is exclusive to its subscribers. DTH service providers will have to compete with cable operators in regions of high cable penetration and the same time reach areas where there is no cable penetration. They will have to keep the subscriptions low to match the rates of the cable operators and hence the cost of digital decoder is crucial for a successful business operation. Also, the DTH service providers will have to provide new services such as pay-per-view, video-on-demand, Interactive TV, etc.

The cable television industry in India is largely unregulated. This is primarily because the cable operator donot need a license to set up operation. This has resulted in a large number of fragmented operates with no accountability or addressibility. There is a need to upgrade the cable network system (for example, use fibre optic cables) and introduce addressibility before new technologies such as digital Interactive television, video-on-demand, etc. can take off.

Government needs to enact the Convergence Communication Bill at the earliest. This will facilitate the development of communication services, introduction of new technology, and regulation of content through appropriate licensing. It is worth noting that in a convergence era, it is extremely difficult for any government to directly regulate the content of audio-visual media and hence the licensed service providers will have to self-regulate the content.

Films

There is a serious need to evaluate the roles of various autonomous organisations/bodies under the Ministry of Information and Broadcasting. Many of them have functional responsibility and do not play a major part in the growth and development of the industry. For instance, in most countries film festivals are organised by the film producing bodies. Although the Indian industry is capable of organising similar festivals, it is organised by the Directorate of Film Festival (DFF) and is financed by the Ministry of Information and Broadcasting. DFF does not have any autonomy with respect to decision making or financing. On the other hand, if private sectors sponsor the film festivals, government funds allocated for organisations such as DFF can be better utilised for technological upgradation and funding of training institutes. The Ministry of Information and Broadcasting should evaluate the roles and responsibilities of the various autonomous units and retain only those which directly affect the performance of this sector and enable the sector to grow and increase its trade potential.

In India, there are several associations such as the IMPDA (Indian Motion Pictures Distributors Association), FIPA (Federation of Indian Producers Association), FFI (Film Federation of India) and CEAI (Cine Exhibitors Association of India), which looks after particular aspects/sub-sectors of the film industry and none of them have been able to bring the entire industry under one umbrella. There is a need to have an association like the Motion Picture Association of America, which would look into all the aspects related to film industry and would liaison with the government and other international organisations.

Although government has granted industry status to the film industry, the industry is yet to be corporatised. The government can encourage corporatisation by giving an exemption from capital gain tax on the conversion from a partnership/proprietorship status to corporate status for a limited period of time.

Indian film producers find it very difficult to get institutional funding. In order to apply for loans, the industry needs to be more organised and the producers should submit a detailed production script, production schedules, duration of the production, etc. to the funding institutes. On the whole, the film industry needs to be more transparent in its accounting and operation and adopt corporate management, professionalism and global industry practices.

As film making require substantial investment, it is essential for the Indian filmmakers to have appropriate insurance covers for any unforeseen events. The government needs to play a more proactive role in developing a legal structure for film insurance.

At present, the following insurance covers are available to the film industry:

- Property, set and wardrobe insurance (fire risk is covered)

- Film negative insurance (faulty negative, spoilt negative and consequent re-shooting expenses of films)

- Accident insurance (covers the loss arising out of accidents occurring during film shooting)

- Cast insurance or key persons insurance (the risk of personal injury, illness, etc. are covered)

The existing insurance does not cover cost overruns, production completion risks and loss of profits. It also does not cover risk relating to disturbances/discontinuance of exhibition after release of the film for any reason whatsoever and the consequential loss arising therefrom. The insurance policy does not cover disputes arising in copyright/ownership right on film stories, etc. and the loss due to this. Insurance companies such as LIC and GIC have to develop new products to mitigate the risks related to production completion including financial loss due to production delays, loss arising from delays in obtaining censor certificate and loss due to discontinuation of exhibition. The existing "key man insurance policy" should be modified not only to cover the risk of life of a key person associated with the film but also the risk of loss of business and profits in the event of the person leaving the project.

The Indian Bank Association has pointed out that the film industry should coordinate with the Export Credit Guarantee Commission for possible insurance cover against payment from abroad for export of films and other film related rights sold to overseas parties.

Since filmmaking is increasingly becoming technology driven, there is a need for trained manpower to handle the production and post-production equipment. The increasing use of special effects, animations and graphics has created demand for software personnel. The market for 3D animation is growing but India, as of now, does not have a training institute for learning 3D animation techniques. There are only a few training institutes such as Film and Television Institute of India (FTII), Pune and Satyajit Ray Film and Television Institute (SRFTI) which offers technical training related to film production. The government needs to work in close coordination with the private sector for setting up training facilities. Private film producing and film software companies also have to invest in training of technical manpower. For instance, Crest Communications and Zee group is planning to set up a training institute for 3D animation and Crest Communication has taken over the US based 3D animation studio Rich Animation for US $ 2 million for this purpose. Mukta Arts Ltd. has entered into a joint venture with the Maharastra Film, Stage and Cultural Development Corporation Ltd. (an autonomous body) to build a film and television training institute. The government can support these private initiatives through appropriate measures such as grant of concessional land for setting up of the training institute.

To reduce the financial constraints, both FTTI and SRFTI have to mobilise their own funds by utilising the available infrastructure and through co-sponsoring of television programmes.

In order to facilitate the production of films of international standards, there is a need to develop integrated studio facilities which can provide a large number of services under one production roof. EITG study estimated that this would require an average investment of Rs 500 crores. Indian film industry has pointed out that the government can facilitate investments in film studios/film productions by reducing the import duties/taxes on equipment. This will not only encourage the inflow of latest technical know-how and reduce the cost of production of Indian films but also encourage foreign filmmakers to use Indian post-production facilities which can then be made available at competitive prices.

Indians have a great appetite for movies. The lack of good theatre infrastructure is forcing them to watch movies at home through videos or cable networks. Expansion and upgradation of film exhibition infrastructure will induce more people to view films in theatres. State governments should encourage the growth of multiplexes through appropriate fiscal incentives. For example, the Government of Gujarat has declared a seven-year tax holiday for such projects. As a result, three multiplexes have been set up in the state. Other states can also give such incentives. To encourage investment in cinema infrastructure, the government can offer land at concessional rates in prime locations.

There are around 600 seats in an average Indian theatre and only 35 per cent of these are utilised. There is a urgent need to reduce the seating capacity per theatre and this would enable the industry to achieve higher utilisation. Large theatres can be converted into multiplexes with various seating capacities which would enable the theatre owners to shift films between the auditoriums in accordance with the demand.

Couple with high entertainment tax, some states have imposed ceiling on theatre ticket prices while others (Karnataka and Andra Pradesh) have restricted the total number of shows. These restrictions should be removed since it has rendered the operation of many theatres unprofitable. There is an urgent need to have a centralised system for recording box office collections. To increase transparency, the theatre owners should introduce computerised ticketing system.

The government can facilitate film exports through various incentives. For example, the government can set up export processing zones for films and television software. The government can also set up a separate film export council for the exports of Indian films. Moreover, the government can grant tax exemptions to income from film exports, etc.

To enhance the exports of films and related services, producers should explore non-traditional markets such as Japan, Kenya, Tanzania, Latin American, etc. In a competitive environment film producers should have aggressive marketing strategies and aim at popularising their films through various modes such as the Internet. Through Internet, Indian movies can be made accessible to Indian/South Asian viewers in countries where Indian movies are not screened owing to non-availability of adequate demand. Implementation of new technology such as web-casting, pay-per-view, video-on-demand will increase the revenue earnings of the film industry. The industry should restructure the content to make it more appealing to the global audience and upgrade the technical and editorials standards to international level. Indian producers should also explore the possibilities of co-production with foreign filmmakers. This will not only expose them to advance technology but also enable them to have their presence in the international market.

In the US, studios such as Disneyland and Universal Studios, are important tourist destinations. This enables the studios to earn revenues which can be used for maintenance and technological upgradation. India should also develop the studios and film cities into tourist destinations. The tourism industry should work in close co-ordination with the film industry to promote new destinations and encourage tourism. This has started in a big way in many developed and developing countries. For instance, the British Film Commission has a film map of Britain that encourages the foreign filmmakers to shoot movies in Britain and it also promotes the tourism industry. To encourage Indian and foreign producers to shoot films in Indian locations, the government should remove location charges and implement a single window clearance system for granting permission for shooting in Indian locations.

Music

Indian music industry strongly feels that the existing excise duties on audio CDs and cassettes should be removed. This would reduce the price differential between legitimate and illegitimate CDs/cassettes. Reduction in the prices of CDs would promote CD penetration. Since the manufacturing process is the same, the industry feels that the government should treat audio/video CDs on par with CD-ROMs.

The music industry is also asking for a uniform value-added tax instead of sales tax. This would increase the transparencies in the accounting procedures.

Conclusion

Audio-visual service sector is one of the fastest-growing service sectors in India and India's exports of audio-visual products have shown a rapid increase in the past decade. This study examines India's trade potential in audio-visual services within the GATS framework.

Audio-visual services are closely linked to the preservation of cultural identity and social values and hence, even major players such as the EU, Australia and Canada were reluctant to open up this sector during the Uruguay Round. India's own commitments in this sector were also limited, both in terms of sectoral coverage and modes of delivery.

This study shows that India has significant potential for expanding exports to countries with large NRI and South Asian population. India's exports of audio-visual services not only include films, music, television software and radio programmes but also post-production facilities, computer animations and graphics. Since Indian products cater to a niche audience, India does not face any major competition in the international market. India also has import interest in this sector. FDI in audio-visual services will ease the financial pressure and enable the inflow of latest technical know-how and skills. Given that India has already opened up the audio-visual sector for privatisation and foreign investment, the study recommends that it is in India's interest to actively participate in the ongoing GATS negotiations and push for the removal of external barriers to trade.

The study also recommends various domestic reforms and measures, which if implemented, would enhance the efficiency, productivity and global competitiveness of the sector and enable the country to gain from liberalisation commitments under the GATS. Since a large part of the industry is in private hands, the government and private sector will have to work in close coordination towards implementation of a regulatory environment that will facilitate growth and exports.

Appendix A

Table A1

Employment in US Motion Picture Industry
(In 000s)

Year	Production and Service	Theatres	Video Tape Rental	Other	Total	Growth Rate
1988	113.7	108	103.3	15.9	340.9	–
1989	133.9	109.9	118.2	12.7	374.7	9.9
1990	147.8	112.1	133.7	14.1	407.7	8.8
1991	153.1	112	131.2	14.6	410.9	0.8
1992	148.8	110.2	127.1	14.8	400.9	-2.4
1993	152.7	110.6	132.4	16.3	412	2.8
1994	169.6	113.4	138.8	19.4	441.2	7.1
1995	200.7	118.7	146.1	22.1	487.6	10.5
1996	222.5	123.9	155.1	23.2	524.7	7.6
1997	237.4	133	160.9	19.1	550.4	4.9
1998	255.4	136.8	166.7	17.1	576	4.7
1999	278.3	138.2	175.7	17.6	609.8	5.9
2000	296.2	132.2	184.4	18	630.8	3.4

Source: MPAA Worldwide Market Research.

Table A2

Country-wise Production of Films and Expenditure on Film Production in the Year 2000

	Number of films	Film expenditure (US $ mn)	Average expenditure/film (US $ mn)
India	855	478	0.6
USA	762	10388	13.6
Japan	282	1203	4.3
Hong Kong	185	–	–
France	171	742	4.3
Philippines	103	–	–
Italy	103	180	1.7
Bangladesh	100	–	–
Spain	98	163	1.7
UK	90	849	9.4

Source: FICCI- Frames, 2002.

Table A3

Use of Recreational and Audio-visual Services across Countries

Country	Cable Television Subscribers (per 1000 people)	Radios (per 1000 people)	Television Sets (per 1000 people)	Daily Newspapers (per 1000 people)
Australia	43.56	1376.00[a]	638.90[a]	293.25[b]
Bangladesh	NA	50.40[a]	6.31[a]	9.18[b]
Denmark	248.42	1141.20[a]	584.98	309.39[b]
India	18.84[a]	121.44[a]	69.09[a]	NA
Indonesia	NA	156.41[a]	135.69	23.66[b]
Iceland	NA	952.87[a]	359.16a	537.04[b]
Hungary	146.45[a]	689.01[a]	437.39[a]	185.91[b]
Japan	114.78[a]	955.09[a]	707.00a	578.12[b]
Italy	2.77	877.95[a]	485.60	103.87[b]
Malaysia	5.18[a]	419.93[a]	166.13[a]	158.31[b]
Nepal	NA	38.20[a]	5.91[a]	11.47[b]
Netherlands	378.33[a]	978.13[a]	543.40[a]	306.31[b]
Brazil	16.26[a]	444.08[a]	316.31[a]	40.07[b]
Korea, Rep.	138.34	1032.81[a]	345.81	NA
Pakistan	0.05	97.72[a]	87.85	NA
Philippines	8.22	158.80[a]	107.70[a]	79.28[b]
United States	244.34	2146.31[a]	847.32[a]	214.90[b]
United Kingdom	45.87	1435.53[a]	644.65	328.76[b]

Notes: a – The figures are given for the year 1997.
b – The figures are given for the year 1996.
Source: WDI, 2000, CD-ROM.

Table A4

Television and Multichannel Homes in Various Countries

Income Groups	Receivers per 100 inhabitants	Television homes as per cent of total homes	Multichannel homes as per cent of total homes
Low-income countries	12.9	47.0	18.0
China	24.7	62.5	15.3
India	6.1	31.7	32.3
Lower middle-income countries	20.4	71.0	12.7
Philippines	10.0	56.7	4.0
Poland	12.6	91.9	37.5
Upper middle-income countries	26.0	89.6	44.7
Brazil	27.8	87.7	NA
South Korea	32.1	99.3	66.4
High-income countries	61.2	90.1	51.9
United States	77.6	94.9	69.2
Singapore	36.2	88.2	5.9
World	22.8	65.9	33.5

Source: Cairncross, 1997, Page 60.

Table A5

Music Sales for Various Countries

Country	Sales (million US $)	Share in World Sales (%)
USA	12297.70	30.88
Japan	6762.30	16.98
UK	2709.80	6.80
France	2318.00	5.82
Brazil	1394.50	3.50
Canada	911.60	2.29
Australia	815.20	2.05
Netherlands	660.10	1.66
Italy	637.50	1.60
Spain	584.90	1.47
South Korea	516.60	1.30
Belgium	443.40	1.11
Taiwan	415.90	1.04
Sweden	402.60	1.01
Switzerland	401.30	1.01
Mexico	399.30	1.00
Austria	396.70	1.00
Denmark	306.80	0.77
India	298.00	0.75
Total of Above	32672.2	82.04
Total World Sales	39825	100.00

Source: The Recording Industry in Numbers '97, IFPI, London, 1997.
www.education.nic.in/htmlweb/cpr4.htm

Table A6

Media Units/PSUs/Autonomous Bodies under the Three Main Wings of Ministry of Information and Broadcasting

1. **The Broadcasting Wing**

- ***Prasar Bharati: the autonomous Broadcasting Corporation of India***
    - All India Radio
    - Doordarshan

2. **The Film Wing**

- ***Film Division***: the objective of this division is to educate and motivate people in the implementation of national programmes and to project the image of the heritage of the country to Indian and foreign audiences. The division produces documentaries/news magazines, films on defence and family welfare and features with a rural basis.

- ***Central Board of Film Certificate***: certifies films for public exhibition in India.

- ***National Film Archives of India***: its three principal objectives are to (i) trace, acquire and preserve for posterity, the heritage of Indian cinema; (ii) to classify, document data and undertake research relating to films and; (iii) to act as a centre for dissemination of film culture.

- ***National Film Development Corporation***: is the central agency established to promote "good cinema" movement in the country. Its objective is to plan, promote and organise an integrated and efficient development of the film industry in accordance with national economic policy and objectives laid down by the government from time to time.

- ***Film and Television Institute of India, Pune***: the institute offers training in the art and techniques of film making and television production.

- ***Satyajit Ray Film and Television Institute***: consists of eminent personalities connected with film and television and caters especially to the needs of eastern and northeastern region. The institute offers diploma courses in film direction, motion picture photography, editing and sound recording.

- ***Directorate of Film Festival***: this division provides a platform for the best in Indian cinema by holding the National Film Festival every year.

- ***Children's Film Society, India***: is engaged in the production of films, television serials, featurettes and animation films for children and young people. Rights of foreign films are purchased by CFSI and the same are exhibited after dubbing them in Indian languages.

3. The Information Wing

- ***Press***

  - Press Information Bureau: is the nodal agency for dissemination of information to the print and electronic media on government policies, programmes, initiatives and achievements.

  - Photo Division; this division documents photographically, the growth and social changes in the country and provides photographic material to the media units of Ministry of Information and Broadcasting, other central and state government ministries and departments, and Indian missions abroad.

  - Research Reference and Training Division: serves as an information bank as well as an information feeder service provider to the media units to help in their programming and publicity campaigns.

- ***Publicity***

  - Publication Division: aims at disseminating information to the common people by way of making available good and informative books at affordable prices.

  - Directorate of Advertising and Visual Publicity: is the primary multimedia advertising agency of the central government to inform the people about the government's activities, policies and programmes and motivate them to participate in development activities.

  - Directorate of Field Publicity: works as a two-way communication channel between the government and people. It enlists participation of the people in promotion of national integration, democracy and secularism and development schemes formulated by the government. It also measures people's reaction to various programmes and policies of the government.

  - Song and Drama Division: aims at developing communication using the traditional folk medium.

- ***Regulation of the Press***

  - Registration of Newspapers for India: performs functions such as verification of titles of newspapers, issue of certificate of registration to newspapers, compilation and maintenance of a register of newspaper, scrutiny of annual statement sent by publishers and compilation of an annual report containing summary of information relating to newspapers and a report on the status of newspapers in India.

- Press Council of India: has twin objective of preserving the freedom of the press and maintaining and improving the standards of newspapers and news agencies in India.

- ***Training***

    - Indian Institute of Mass Communication: is a centre for advanced study, research, and training in various fields of mass communication.

Source: Ministry of Information and Broadcasting, *Annual Report 1999-2000*.

Table A7

Some Basic Statistics on All India Radio

Stations	207
Transmitters	324
(A) Medium Wave	149
(B) Short Wave	55
(C) VHF (FM)	120
Coverage	
By Area	90.0%
By Population	98.8%
Number of	
Radio Households	10.9 crores
Radio Sets	11.5 crores
Sets with FM facilities	5.7 crores
Sets without FM facilities	5.8 crores
Average actual listeners on any day	28.4crores

Source: All India Radio, 2000.

Table A8

Commercial Revenue (Gross Revenue) of Doordarshan (1976-77 to 1999-00)

Year	Revenue (Rs billion)
1976-77	0.008
1977-78	0.021
1978-79	0.050
1979-80	0.062
1980-81	0.081
1981-82	0.113
1982-83	0.159
1983-84	0.180
1984-85	0.315
1985-86	0.602
1986-87	0.933
1987-88	1.363
1988-89	1.612
1989-90	2.101
1990-91	2.539
1991-92	3.006
1992-93	3.602
1993-94	3.730
1994-95	3.980
1995-96	4.301
1996-97	5.727
1997-98	4.902
1998-99	3.993
1999-00	6.103

Source: Doordarshan, 2000.

Table A9

Entertainment Tax Rates of Various Asian Countries

Country	Entertainment Tax (%)
Hong Kong	0.00
Japan	3.00
Singapore	3.00
Thailand	7.00
Taiwan	7.62
Korea	16.60
Indonesia	25.00-30.00[1]
Malaysia	30.90
Philippines	33.00
India	**14.00-167.0[1]**
	Average-60.00[2]

Source: Film Federation of India
Note: [1] shows the range of entertainment tax.
[2] 60 % entertainment tax is charged in Maharashtra.

Table A10

Hit/Flop Rates of Hindi Films

Year	Releases	Hits	Flops	Flop %
1980	114	60	54	47.37
1981	134	64	70	52.24
1982	135	66	69	51.11
1983	109	47	62	56.88
1984	115	51	64	55.65
1985	143	63	90	55.94
1986	137	37	100	73.00
1987	127	34	93	73.22
1988	140	23	117	83.58
1989	148	30	118	79.73
1990	165	38	127	76.97
1991	161	38	123	76.40
1992	144	25	119	82.64
1993	133	39	94	70.67
1994	121	31	90	74.38
1995	126	29	97	76.99
1996	123	24	99	80.49
1997	119	23	96	80.67

Source: IBA, May 1999.

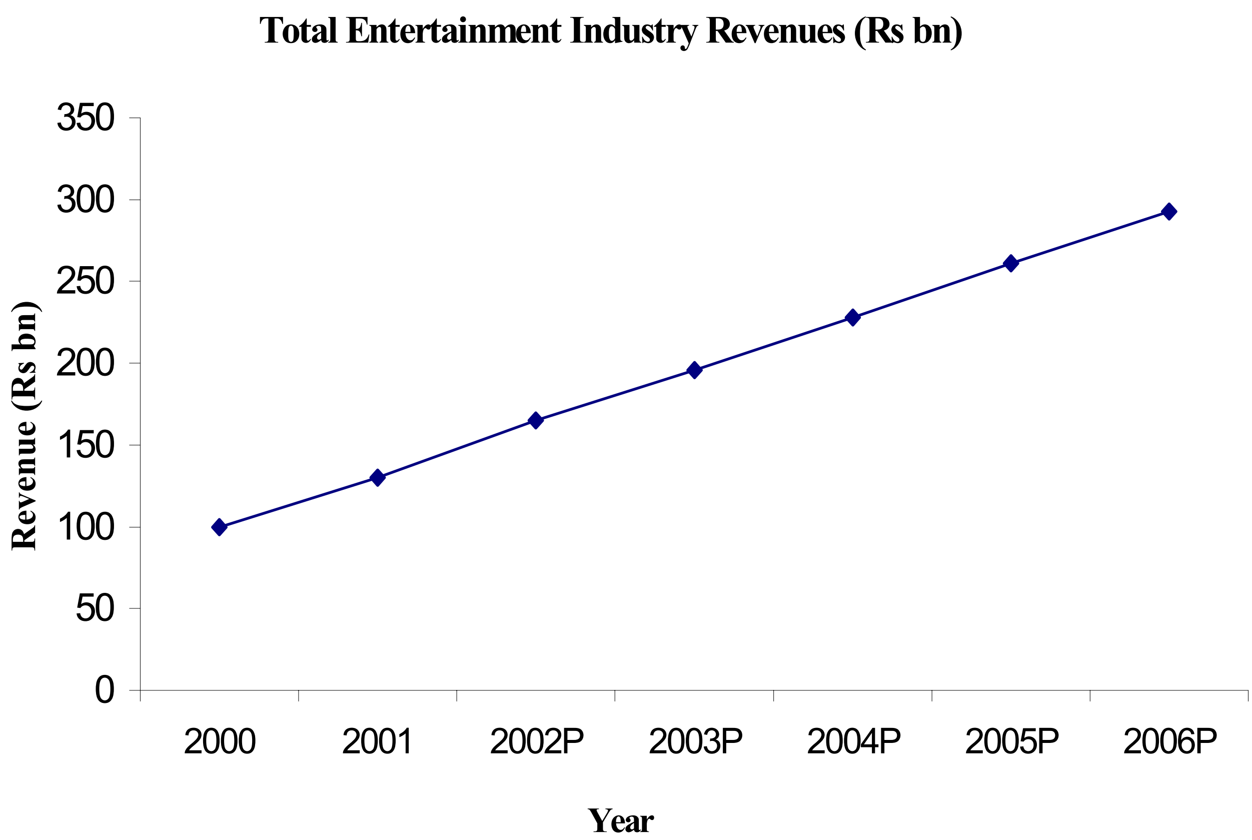
Table A11

Countries with which India has Cultural Agreements

S. No.	Country	S. No.	Country	S. No.	Country
1	Afghanistan	38	Iraq	75	Pakistan
2	Australia	39	Italy	76	Qatar
3	Argentina	40	Israel	77	Romania
4	Algeria	41	Japan	78	Rwanda
5	Armenia	42	Jordan	79	Russia
6	Bulgaria	43	Jamaica	80	Senegal
7	Brazil	44	Kuwait	81	South Korea
8	Bangladesh	45	Kenya	82	Sudan
9	Belgium	46	Kyrghystan	83	Syria
10	Bahrain	47	Kazakhstan	84	Sri Lanka
11	Burkina Faso	48	Lesotho	85	Somalia
12	Benin	49	Libya	86	Spain
13	Belarus	50	Laos	87	Seychelles
14	Belize	51	Latvia (MOU)	88	Surinam
15	Botswana	52	Luxembourg	89	Singapore (MOU)
16	Bolivia	53	Lebanon	90	Slovak
17	Colombia	54	Mongolia	91	South Africa
18	Cuba	55	Mexico	92	Slovenia
19	Cyprus	56	Mauritius	93	Turkey
20	China	57	Malaysia	94	Tunisia
21	Chile	58	Morocco	95	Tanzania
22	Cambodia	59	Mozambique	96	Thailand
23	Czech	60	Maldives	97	Trinidad & Tobago
24	Croatia	61	Malta	98	Turkmenistan
25	Djibouti	62	Maldova	99	Tadjikistan
26	Egypt	63	Madagascar	100	UAE
27	Ethiopia	64	Norway	101	Uganda
28	Estonia	65	North Korea	102	Uzbekistan
29	France	66	Nigeria	103	Ukraine
30	Finland	67	Netherlands	104	Vietnam
31	Greece	68	Nicaragua	105	Venezuela
32	Germany	69	Namibia	106	Yemen
33	Guyana	70	Oman	107	Zambia
34	Ghana	71	Poland	108	Zaire
35	Hungary	72	Philippines	109	Zimbabwe
36	Indonesia	73	Portugal		
37	Iran	74	Peru		

Source: Department of Culture, *Annual Report, 2000-2001*.

Figure A1



Source: FICCI 2002
Note: P: Provisional

Appendix B

Table B1

Summary of Commitments in Audio-visual Services

	Motion Picture and VideoTape Production and Distribution	Motion Picture Projection Service	Radio and Television Services	Radio and Television Transmission Services	Sound Recording	Others	Total
Central African Republic	*	*	*	*	*	*	6
Dominican Republic				*		*	2
El Salvador				*		*	2
Gambia	*	*	*	*			4
Hong Kong	*				*	*	3
India	*						1
Israel	*						1
Japan	*	*			*		3
Kenya	*	*					2
Korea RP	*				*		2
Lesotho	*	*	*	*			4
Malaysia	*			*			2
Mexico	*	*					2
New Zealand	*	*	*	*		*	5
Nicaragua	*	*					2
Panama	*	*	*		*		4
Singapore	*				*		2
Thailand	*		*				2
USA	*	*	*	*	*	*	6
Total	17	10	7	8	7	6	

Source: WTO, 1998.

Table B2

Commitments in Audio-visual Services for Each Mode of Supply

Mode of Supply	**Market Access**			**National Treatment**		
	Full	Part	No	Full	Part	No
1) Cross-border Supply	4	10	5	4	9	6
	21%	53%	26%	21%	47%	32%
2) Consumption Abroad	5	12	2	5	10	4
	26%	63%	11%	26%	53%	21%
3) Commercial Presence	3	15	1	5	14	0
	16%	79%	5%	26%	74%	0%
4) Presence of Natural Persons	0	17	2	1	14	4
	0%	89%	11%	5%	74%	21%

***Source*: WTO, 1998.

Table B3

Percentage by Sector and Mode of Supply - Audiovisual Services (Percentages in each activity)

I. Market Access	**Cross-border**			**Consumption abroad**			**Commercial presence**			**Natural persons**		
	Full	Partial	No	Full	Partial	No	Full	Partial	No	Full	Partial	No
Motion Picture and Video Tape Production and Distribution	29	47	24	29	59	12	18	65	18	0	88	12
Motion Picture Projection Service	40	30	30	60	30	10	30	60	10	0	90	10
Radio and Television Services	43	29	29	43	43	14	14	71	14	0	86	14
Radio and Television Transmission Services	25	50	25	38	50	13	0	75	25	0	75	25
Sound Recording	29	57	14	43	57	0	29	57	14	0	71	29
Other	0	67	33	17	83	0	0	83	17	0	67	33
II. National Treatment	**Cross-border**			**Consumption abroad**			**Commercial presence**			**Natural persons**		
	Full	Partial	No	Full	Partial	No	Full	Partial	No	Full	Partial	No
Motion Picture and Video Tape Production and Distribution	29	35	35	29	47	24	29	59	12	6	71	24
Motion Picture Projection Service	50	20	30	60	20	20	70	30	0	10	70	20
Radio and Television Services	71	14	14	57	29	14	57	43	0	14	71	14
Radio and Television Transmission Services	50	38	13	50	38	13	25	63	13	13	63	25
Sound Recording	57	29	14	57	29	14	57	43	0	14	43	43
Other	33	33	33	33	50	17	33	67	0	17	50	33

Note: Percentages may not add up to 100 due to rounding. Basis of total is listed sectors.
***Source*:** WTO, 1998.

Table B4

a) India's Commitments in Audio-visual Services

Sector or subsector	Limitations on market access	Limitations on national treatment
a) Motion picture or video tape distribution services (CPC 96113)	1) Unbound 2) Unbound* 3) i) Only through representative offices which will be allowed to function as branches of companies incorporated outside India ii) Import of titles restricted to 100 per year 4) Unbound except as indicated in the horizontal section	1) Unbound 2) Unbound* 3) Subject to the prescribed authority having certified that the motion picture has: a) won an award in any of the international film festivals notified by the Ministry of Information & Broadcasting, Government of India; or b) participated in any of the official sections of the notified international film festivals; or c) received good reviews in prestigious film journals notified by the Ministry of Information & Broadcasting, Government of India. 4) Unbound except as indicated in the horizontal section

Notes: 1) Cross-border supply, 2) Consumption abroad, 3) Commercial presence, 4) Movement of natural persons
* Unbound due to technical infeasibility

Source: India's Schedule of Specific Commitments (GATS/SC/42), www.wto.org

b) India's MFN Exemptions in Audio-visual Services

Sector or sub-sector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Audiovisual Services	Measures which define norms for co-production of motion pictures and television programmes with foreign countries and grant national treatment to motion pictures and television programmes co-produced with foreign countries which maintain a co-production agreement with India	All countries	Indefinite	The agreements aim at the promotion of cultural exchange.

Source: www.wto.org

Table B5

Proposed Definition of the Audio-visual Services by the USA

1. ***Theatrical Motion Pictures***
   - Production of films
   - Pre- and post-production services
   - Duplication of prints
   - Distribution (licensing) of films
   - Delivery of motion pictures to theatres via specialised truck delivery services or via satellite or via digital networks*
   - Exhibition of films/operation of cinemas*

2. ***Television***
   - Creation (production) of content
   - Program packaging, i.e., acquiring distribution rights to programming
   - of others, arranging programming in an attractive stream, selling
   - schedule stream, advertising, etc.
   - Sale of advertising time by programmers, broadcasters, cable service providers, Direct to Home service providers, or converged system operators

3. ***Home Video Entertainment***
   - Production of content
   - Duplication/Reproduction of the tape/optical media product*
   - Distribution of home video entertainment to general merchandise stores for sales of programming on any format for resale to home consumer and distribution directly to home consumers*
   - Leasing of home video entertainment to video rental stores for rental/viewing of content at home or to other business customers (airlines, bus companies, etc.)

4. ***Transmission services***

- From producers to broadcast stations, cable headends, satellite uplink stations,* and to end-users by:

- Analog or digital broadcast

- Direct-to-Home satellite services*

- Multichannel Multipoint Distribution Systems (wireless) cable systems*

- Or, increasingly, by "converged" transmission services which also transmit other forms of data, voice or other communications services*

5. ***Recorded Music***

- Representation/signing of artists

- Production of sound recording

- Duplication/reproduction of tapes/optical media recording

- Distribution (licensing of rights) for broadcast on radio or television

- Distribution (wholesaling) of recorded music to intermediaries for sales of copies to consumers

- Distribution (retailing) of recorded music directly to home consumers.

- Program Packaging of channels of music for distribution on multi-channel transmission systems, or hotels, office buildings, etc.

Source: Communication from the United States: Audio-visual and Related Services, S/CSS/W/21.

Note: Some of the activities mentioned in this proposed definition are classified in the MTN.GNS/W/120 as audiovisual services, while others are classified in other sectors such as distribution, telecommunications, business, leasing, or recreation services. An asterisk indicates those services sectors that do not appear to be covered by an existing GATS classification, or that may be covered by more than one GATS classification.

Appendix C

Copyright in India

Since the protection of copyright is vital for the growth and development of the audio-visual industry, this section will provide a brief overview of the Indian copyright regime.

The Indian Copyright Law is comparable to those of many developed countries. Since its inception in 1957, the Indian copyright legislation has been amended from time to time (i.e., in 1983, 1984, 1992, 1994 and 1999) in order to keep pace with the technological developments. Simultaneously, the punishment for copyright violation has been made more stringent. For instance, the Copyright Act was amended in 1984 to include stringent provisions to check piracy by enhancing punishments for offences of infringement and augmenting the powers of the police to seize infringing copies. The present law is almost in conformity with the Uruguay Round Agreement on Trade Related Intellectual Property Rights (TRIPS). Since India is a member of two major copyright conventions of the world (The Berne Convention and The Universal Copyright Convention), Indian works and works of Indian authors are accorded copyright protection in all major countries of the world. Likewise, foreign works and works of foreign authors are accorded the same protection as Indian works.

Besides revising the copyright laws, the government has set up a Copyright Enforcement Advisory Council (CEAC) for advising the government on measures for improving the copyright enforcement. The CEAC is reconstituted from time to time to review periodically the progress of enforcement of the Copyright Act and to advise the government on measures for improving the enforcement.

For collective administration of copyright, three copyright societies were set up under the Copyright Act of 1957. These are the Society for Copyright Regulations of Indian Producers of Film and Television (SCRIPT) for cinematography films, Indian Performing Rights Society for musical work and Phonographic Performance Limited for sound recording. These societies are actively involved in reducing piracy. Various organisations such as the Indian Music Industry (IMI), which is an association formed by 95 per cent of the music companies, have taken various measures to curb piracy. These include setting up of anti-piracy units and helping the police to conduct raids.

Due to the initiative taken by government and industry organisations piracy levels in India came down from 80 per cent in the early 1990s to 40 per cent in the recent years.

Appendix D

Various Laws Affecting the Audio-visual Sector

Prasar Bharati Act, 1990

The Prasar Bharati Act was enacted by the parliament in September 1990. The main aim of the Act is to provide for the establishment of a Broadcasting Corporation for India, to be known as Prasar Bharati (Broadcasting Corporation of India), to define its composition, functions and powers and to provide for matters connected therewith or incidental thereto. The Act was brought into force w.e.f from September 1997 and the Prasar Bharati was established w.e.f November 1997.The jurisdiction of the Act extends to the whole of India.

Indian Telegraphic Act, 1985

The Indian Telegraphic Act authorises the surveillance of communications, including monitoring telephone conversation and intercepting personal mail, in case of public emergency or "in the interest of the public safety or tranquility." These powers are used by all state governments.

The Cable Television Networks (Regulation) Act, 1995

The Cable Television Networks (Regulation) Act, 1995 seeks to regulate the operation of cable television networks in the entire country so as to bring about uniformity in their operation

The Act requires-

- Cable television network not to be operated except after registration.
- In India, only an individual who is a citizen of India, or an association of individuals whose members are citizen of India, or a company which has more than 51 per cent of paid up capital owned by the citizens of India, can be a cable operator and provide cable television network or can be responsible for the management and operation of cable television network.
- Any person who is operating or is desirous of operating a cable television network may apply for registration as cable operator to the registering authority.
- No person shall have a right to transmit or re-transmit through a cable service any programme which is not in conformity with the programme code prescribed under the rule 7 of the Cable Television Networks Rules, 1994.
- Every cable operator shall maintain a register in the prescribed form indicating therein in brief the programmes transmitted or re-transmitted through the cable service during a month and such register shall be maintained by the cable operator for a period of one year after the actual transmission or re-transmission of the said programmes.

- The cable television operators must also ensure that it is not transmitting programmes of foreign satellite channels, which can be received without the use of any gadgets or decor.
- Programmes of foreign satellite channels, which can be received without the use of any specialised gadgets or decoder, are, however, exempted from the operation of this section.
- No cable operator shall, on and from the date of the expiry of a period of three years from the date of the establishment and publication of the Indian Standard by the Bureau of Indian Standards in accordance with the provisions of the Bureau of Indian Standards Act, 1986, use any equipment in his cable television network unless such equipment conforms to the said Indian Standards.
- Every cable operator shall ensure that the cable television network being operated by him does not interfere, in any way, with the functioning of the authorised telecommunication systems.
- Foreign equity in a cable network company is limited to 49 per cent.

Cable TV Network (Regulation) Amendment Bill, 2000

Aimed at bringing all private television channels within the scope of the programme and advertising codes to curtail obscenity on television. The bill seeks to amend the existing cable laws and bring all free-to-air satellite channels broadcasting in India under the ambit of the country's existing program and advertising codes. The amendments will give the state powers to regulate obscenity, and allow it to block tobacco and liquor advertising from television channels. The amendment bill also ensures that viewers around the country receive quality signals of the national broadcaster by making it mandatory on cable operators to re-transmit three Doordarshan terrestrial channels on the prime band, two terrestrial and one regional.

Other laws and regulations applicable to cable operators are:

- The Drugs and Cosmetic Act, 1940
- The Pharmacy Act, 1948
- The Emblems and Names (Prevention of Improper Use) Act, 1950
- The Drugs (Control) Act, 1950
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Prevention of Food Adulteration Act, 1954
- The Prize Competition Act, 1955
- The Trade and Merchandise Marks Act, 1958
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Consumer Protection Act, 1986

Copyright Act, 1957

The Copyright Act, 1957 confers copyright to (i) original literacy, dramatic, musical and artistic works, (ii) cinematograph films and (iii) sound recording. The word 'original' means that it should not be copied from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorise doing a number of activities. The important among these are:

a) to reproduce the work in material form
b) to publish work
c) to perform the work in public or communicate it to public
d) to produce, reproduce, perform or publish any translation of the work
e) to make any cinemtographic film or a record in respect of the work
f) to make any adaptation of the work
g) to do, in relation to a translation or an adaptation of work, any of the acts specified to the work in subclauses to a) and f).

Copyright with respect to photographs, cinematographic works and sound recordings span for 60 years of its first publication.

The act underwent a number of changes to meet the new challenges to copyright protection that arose from time to time. The Act was amended in 1983, 1984, 1992, 1994 and 1999. The amendments in 1994 were quite extensive. These amendments were a response to technological changes in the means of communication, like broadcasting and telecasting, and the emergence of new technologies like computer software. The amendments were also made with the aim of fighting piracy. This was done through simplification of certain concepts and rights, enhancement of penal provisions and provisions for collective administration. The scope of the definition of the term "communication to the public" was enlarged to mean "making any works available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such works regardless of whether any number of the public actually sees, hears or otherwise enjoys the work so made available". It was further amplified that communication through satellite or cable or any other means of simultaneous communication to more than one household, place or residence, shall be deemed to be communication to the public. The 1999 amendments have made the Copyright Act fully compatible with the Trade Related Aspects of Intellectual Property Rights (TRIPS).

Copyright in cinematographic works is more complex in nature as there exists a variety of copyrights in a single work and many a times these rights are also overlapping. The first right in the film is the 'theatrical right' i.e. the right to exhibit films in theatres.

The producer is the copyright holder. The distributors buy theatrical rights from producers and then make some arrangements with the theatre owner for actual exhibition to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes and in this case the producers sell the video rights to another party, who makes video cassettes for sale in the market. These cassettes are meant for 'home viewing' only i.e. one can buy a copy of it for seeing at home. Such cassettes cannot be used for showing films in cables or through satellite channels. This is because showing films in cables and through satellite channels requires acquisition of separate sets of rights namely, 'cable rights' and 'satellite rights' respectively.

Cinematography Act, 1952

It allows the censorship of films and lays down the mechanism for such censorship. Films can be exhibited in India only after they have been certified by the Central Board of Film Certification (CBFC). The Cinematograph (Certification) Rules, 1983 lays down the rules and regulations for certification of films by the board. The Board after examination of the films, may give one of the following grades to the film or may refuse to sanction the film for public exhibition. The grades are as follows

U– for universal viewership or unrestricted public exhibition.

UA– for restricted viewership. Children below 18 years can see the film accompanied by their parents.

A– for adult viewership.

S– for restricted viewership, for only certain sections of the society.

The Cinematography Act has been amended in the following years – 1953, 1957, 1959, 1960, 1973, 1981 and 1984.

The Cine Workers Welfare Fund Act, 1981

This Act is to provide for the financing of activities to promote the welfare of certain cine-workers.

The Cine Workers Welfare Cess Act, 1981

This Act is to provide for the levy and collection of a cess on feature films for the financing of activities to promote the welfare of certain cine-workers and for matters connected therewith or incidental thereto.

Broadcasting Bill, 1997

The Bill seeks to establish an autonomous Broadcasting Authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies, apart from becoming a catalyst for social change, promotion of values of Indian culture and shaping of modern vision. It will also curb monopolistic trends in this sensitive field so that people are provided with a wide range of news and views.

Communication Convergence Bill, 2001

The Communication Convergence Bill was introduced in the Lower House of the Indian Parliament on August 31st 2001. The bill primarily intends to promote and develop the entire communications sector, in the scenario of increasing convergence of technologies in the IT, telecommunication and audio-visual sector. In the audio-visual sector the bill will encompass five existing laws-The Indian Telegraph Act, 1885; Cable TV Networks Act, 1995; Indian Wireless Telegraphy Act, 1933; The Telegraph Wires (Unlawful Possession) Act, 1950; and the Telecom Regulatory Authority of India Act, 1997.

The bill has four main objectives and they are:

i. to facilitate development of national infrastructure for an information based society, and to enable access thereto;

ii. to provide a choice of services to the people with a view to promoting plurality of news, views and information;

iii. to establish a regulatory framework for carriage and content of communication in the scenario of convergence of telecommunication, broadcasting, data-communication, multimedia and other related technologies and services; and

iv. to establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal

The convergence bill provides for the creation of a single autonomous body called, 'Communications Commission of India' (CCI). The bill envisages wide-ranging functions, duties and powers to CCI. The commission shall be responsible for issuance of licenses and regulating the communications sector including the infrastructure and the content delivered through the infrastructure. The commission shall decide any dispute between two or more service providers on issues relating to spectrum interference, interconnectivity, denial of fair access and practices restrictive of fair competition and between a service provider and a group of consumers. The bill also proposes setting up 'Communications Appellate Tribunal'. Any person aggrieved by any decision or order or penalty of the commission could appeal to the tribunal for speedy decision on the appeal. The commission and the appellate tribunal shall have power equivalent to that of a civil court.

References

Andersen, B. *et. al., Copyrights, Competition and Development: The Case of Music Industry*, 2000.

Asia-Pacific Broadcasting Union, *Trade Liberalisation in the Audiovisual Services Sector and Safeguarding Cultural Diversity*, Discussion Paper, July 1999.

Cairncross, F., *The Death of Distance: How will the Communications Revolution Change our Lives*, Pub Harvard Business School Press, 1997.

Earl, L., *Entertainment Services: A Growing Consumer Market*, Analytical Paper Series, Number 23, Statistics Canada, May 1999.

European Broadcasting Union, *GATS 2000/WTO New Round, Preliminary EBU Reply to the Questionnaire on Audio-visual Services*, 1999.

European Commission, *Culture, The Cultural Industries and Employment*, Commission Staff Working Paper, May 1998.

FICCI, jointly with Arthur Andersen India Pvt. Ltd., *Indian Entertainment Industry: The Show goes on and on…*, March 2002.

FICCI, jointly with Arthur Andersen India Pvt. Ltd., *Indian Entertainment Industry: Envisioning for Tomorrow*, March 2001.

FICCI, jointly with Arthur Andersen India Pvt. Ltd., *The Indian Entertainment Industry: Strategy and Vision*, March 2000.

Indian Bank's Association, *Bank Finance for Film Industry*, Report of IBA Working Group, 1999.

International Federation of Phonographic Industry, *Music Piracy Report*, June 2001.

Messerlin, P. A., and Cocq, E., *Preparing Negotiations in Services: EC Audiovisuals in the Millennium Round,* September 1999.

Ministry of Information and Broadcasting, Report of the Review Committee on the Working of Prasar Bharati.

Motion Picture Association of America, Trade Barriers Report, 2001.

National Productivity Council, *Study on Copyright Piracy in India*, Sponsored by Ministry of Human Resource Development, Government of India, 1999.

OECD, *Content as a New Growth Industry*, Working Party of the Information Economy, 1998.

OECD, *Policy and Regulation Issues for Network-based Content Services*, Working Party of the Information Economy, 1999.

Siwek, S. E., Changing Course: Meaningful Trade Liberalisation for Entertainment Products in GATS.

The Economic Times, Entertainment 2001-2002, The ET Knowledge Series.

The McKinsey Quarterly, *Media and Entertainment*, Various Issues.

United States International Trade Commission, *General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia/Pacific Trading Partners*, Investigation No. 332-374, Publication 3053, USITC, Washington, DC 20436,1997.

United States Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers,* 2001.

World Trade Organisation, *Audiovisual Services: Background Note by the Secretariat*, Council for Trade in Services, 1998.

World Trade Organisation, Communication from Various Countries on Audiovisual Services.

World Trade Organisation, *The People's Republic of China: Schedule of Specific Commitments*, Trade in Services, February 2002.

World Trade Organisation, *Trade Policy Review*, Korea, 2000.

Annual Reports, Various Issues

All India Radio

Department of Culture, Government of India

Doordarshan

Ministry of Information and Broadcasting, Government of India

Penta Media Graphics Limited

Newspapers

Business Standard

The Economic Times

The Financial Express

The Hindustan Times

The Indian Express

The Times of India

Websites

http://stats.bls.gov

http://www.nfcindia.com

http://www.ifpi.org

http://www.indianinfoline.com

http://www.sabtv.com

http://www.indiantelevision.com

http://www.dhan.com

http://www.indianmi.org

http://www.businessindia.com

http://www.indiaip.com

http://www.ndtv.com

http://www.iprs.org

http://www.hindubusinessline.com

http://www.virtualpune.com

http://www.educationtimes.com

http://www.indiaworld.co.in

http://www.t-series.com

http://www.wto.org

http://artindia.net

http://europa.eu.int

http://www.setindia.com

http://www.pplindia.org

http://www.karvy.com

http://www.desiipo.com

http://www.screenindia.com

http://www.comminit.com

http://vigyanprasar.com

http://www.wizcraftworld.com

http://www.broadcastindia.com

http://news.india-today.com

http://www.economist.com

http://www.education.nic.in

http://www.indianembassy.org

http://www.ddindia.net

http://www.nic.in

http://www.nasscom.org

http://www.india-today.com

http://www.connectmagazine.com

http://www.mib.nic.in

http://pib.myiris.com