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Indo-U.S. FTA: Prospects for Audiovisual Services

Arpita Mukherjee
Paramita Deb Gupta
Prerna Ahuja

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Abbreviations

AIR	All India Radio
AM	Amplitude Modulation
BECIL	Broadcast Engineering Consultants India Limited
CAGR	compound annual growth rate
CAS	Conditional Access System
CBFC	Central Board of Film Certification
CCI	Communication Commission of India
CD	compact disc
CECA	Comprehensive Economic Cooperation Agreement
CGI	computer-generated imaging
CII	Confederation of Indian Industry
CPC	Central Product Classification
C&RA	Classification and Rating Administration
CSS	contractual service suppliers
DBS	Direct Broadcasting Satellite
DTH	direct-to-home
DVD	digital video disc
DVR	digital video recording
ENTs	Economic Needs Test
EMEA	Europe, Middle East and Africa
EU	European Union
FCC	Federal Communication Commission
FDI	foreign direct investment
FFI	Film Federation of India
FICCI	Federation of Indian Chambers of Commerce and Industry
FII	foreign institutional investment
FM	Frequency Modulation
FTA	Free Trade Agreement
FTII	Film and Television Institute of India
GATS	General Agreement on Trade in Services
GDP	gross domestic product
HFC	Hybrid Fibre Coaxial
HITS	Heads end-in-the-Sky
IDBI	Industrial Development Bank of India
IFPI	International Federation of the Phonographic Industry
IMI	Indian Music Industry
IPR	Intellectual Property Rights
IP	independent professionals
IP-TV	Internet Protocol based Television
IT	information technology
JVs	joint ventures
LCO	local cable operator

MFN	most-favoured nation
MNC	multinational companies
MoU	memorandum of understanding
MPAA	Motion Picture Association of America
MSO	multi-system operators
NAFTA	North American Free Trade Agreement
NAMA	Non-Agriculture Market Access
NASSCOM	National Association of Software and Service Companies
NCR	National Capital Region
NFDC	National Film Development Corporation
NRI	non-resident Indian
OCB	Overseas Commercial Borrowings
PIB	Press Information Bureau
PIO	people of Indian origin
PwC	PricewaterhouseCoopers
RBI	Reserve Bank of India
R&D	research and development
SID	Source Identification Code
SIMCON	States and Union Territories Ministers for Information and Cinematography
TIL	Tips Industries Limited
TRAI	Telecom Regulatory Authority of India
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TV	television
U.K.	United Kingdom
UNCPC	United Nations Provisional Central Product Classification
U.S.	United States
USC	United States Code
USTR	United States Trade Representatives
UT	Union Territories
VAT	value-added tax
VCD	video compact disc
VSNL	Videsh Sanchar Nigam Limited
WEA	Warner-Elektra-Atlantic International Incorporate
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Abstract

Many WTO (World Trade Organization) member countries, including India, are defensive about opening up of the audiovisual sector in the Doha Round due to reasons of cultural sensitivity. On the other hand, the United States is pushing for liberalizing trade in this sector – both in the WTO and in its bilateral FTAs (Free Trade Agreements). With the slow progress of the Doha Round, India and the United States are exploring the possibilities of entering into FTAs with like-minded trading partners. In this context, the present paper discusses the prospects of liberalizing audiovisual services under a possible Indo-U.S. FTA.

The study found that India and the United States have significant trade complementarities in this sector which can be further enhanced under an FTA. It identifies areas such as co-production of films, digital content creation and broadband infrastructure in which companies from India and the United States can enter into mutually beneficial collaborations. It argues that India should enter into a media cooperation agreement with the U.S. to facilitate the inflow of technical know, finance and best management practices. It discusses regulatory and other reforms which would not only improve the productivity and global competitiveness of the Indian audiovisual sector but also enable it to gain from the FTA.

JEL Classification: F13, F14, L82
Keywords: Indo-U.S. FTA, GATS, bilateral agreements, audiovisual, services

Foreword

Audiovisual services are an important sector in the U.S. FTAs. Due to the slow progress of the Doha Round of negotiations, WTO member countries including India and the United States are focusing on bilateral/regional agreements. This paper is a part of the study undertaken by ICRIER on *"Indo-U.S. Trade in Services: Prospects for the Information Communication Technology Sector under a Possible Free Trade Agreement"* for NASSCOM. This survey-based study analyzes the current trade between India and the United States in audiovisual, identifies the trade barriers and suggests how these can be addressed if the two countries enter into an FTA.

I am confident that this paper will provide significant inputs to policy makers, negotiators, industry associations and academicians working towards realizing the potential of this sector.

Rajiv Kumar
Director and Chief Executive

February 20, 2007

Introduction[1]

Audiovisual services play a significant role in preservation and dissemination of indigenous culture, in shaping public opinion and in safeguarding the democratic system. Due to these reasons, governments of both developed and developing countries have taken various measures to protect and promote domestic audiovisual industry. Although cultural protection has been used as an argument for not undertaking multilateral liberalization commitments under the GATS (General Agreement on Trade in Services), there has been significant commercialization and trade in this sector due to technological development and globalization. Technological developments, such as Internet, satellite and digital network, have brought about a revolution in the way audiovisual content are created, produced and distributed. It has given consumer access to a multitude of entertainment and information services leading to growing commercialization in this sector. Technological developments have led to consolidation and growth of few large multinational players who increasingly control a large share of the global consumer market. Globalization enabled audiovisual service providers from countries such as the United States to outsource certain production and post-production services to countries such as India, China and Taiwan, which can offer quality services at a lower cost.

The United States is the largest producer and exporter of audiovisual services. Hence, the country has a strong interest in seeking liberalization of trade in this sector – both in its multilateral and bilateral negotiations. India, with a rich cultural heritage, has a thriving audiovisual industry. It is one of the fastest growing sectors of the economy and the country's exports of audiovisual services increased rapidly since the mid-1990s. India was one of the few countries to offer liberalization commitments in this sector in the Uruguay Round. However, unlike the United States, India is cautious about opening up the sector both in the Doha Round of WTO (World trade Organization) negotiations and its bilateral engagements.

This paper discusses the prospects of liberalizing trade in audiovisual services, if India and its major trading partner, the United States enters into a bilateral agreement. With the slow progress of the Doha Round, both India and the United States are exploring the possibilities of entering into bilateral/regional agreements with like-minded trading partners. Audiovisual services would be one of the priority areas for discussion if the two countries enter into an FTA (Free Trade Agreement).

The structure of the paper is as follows. Section 1 discusses the coverage of audiovisual services under the GATS, four U.S. FTAs and Indo-Singapore CECA (Comprehensive Economic Cooperation Agreement). Section 2 discusses the structure, recent trends and developments in audiovisual services in the United States and India. Based on a survey, it discusses the current and potential trade between India and the United States in this sector. Section 3 examines the multilateral liberalization in audiovisual services. Section 4 discusses the bilateral liberalization in this sector. More specifically, it discusses

[1] We would like to thank Rajiv Kumar (Director and Chief Executive, ICRIER), B K Zutshi (Former Indian Ambassador to GATT) and Sumanta Chaudhuri (Former Counsellor, Permanent Mission of India to the WTO) for their valuable comments. We are grateful to NASSCOM for sponsoring this study. We are also grateful to the Ministry of Information and Broadcasting, Government of India, and all survey participants for their valuable inputs.

the liberalization commitments in the four U.S. FTAs and the Indo-Singapore CECA. Section 5 discusses the barriers faced by the United States companies in India and the Indian companies in the United States. It also discusses how these barriers can be addressed under an FTA and India's negotiating strategies and options. Section 6 presents the reform measures that are needed for overall development of this sector and to gain from liberalization commitments undertaken bilaterally and in WTO. Section 7 draws the main conclusions.

1. Coverage of the Sector

Audiovisual services encompasses a wide range of services including motion picture, videotape production, projection, distribution and exhibition; radio and television programme production, distribution, transmission and broadcasting; post-production services; sound recording services; services of artists, technicians, among others.

During the Uruguay Round of WTO negotiations, members drew up a Services Sectoral Classification List (MTN.GNS/W/120) based on the UNCPC (United Nations Provisional Central Product Classifications) for the purpose of negotiations. In the W/120, *Audiovisual Services* is listed as a sub-sector of the C*ommunication Services*[2] and is further classified into six sub-sectors. These six sub-sectors and sub-categories within each sub-sector are given in Table 1.1.

Table 1.1: Classification of Audiovisual Services under W/120

1. Motion Picture and Videotape Production and Distribution services (CPC 9611)	Promotion or advertising services (CPC 96111)
	Motion picture or videotape production services (CPC 96112)
	Motion picture or videotape distribution services (CPC 96113)
	Other services in connection with motion picture and videotape production and distribution (CPC 96114)
2. Motion Picture Projection Service (CPC 9612)	Motion picture projection services (CPC 96121)
	Videotape projection services (CPC 96122)
3. Radio and Television Services (CPC 9613)	Radio services (CPC 96131)
	Television services (CPC 96132)
	Combined programme making and broadcasting services (CPC 96133)
4. Radio and Television Transmission Services (CPC 7524)	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)	

Source: Compiled by the authors from W/120 and UNCPC.
Note: The corresponding CPC numbers are given to have an understanding of the coverage of the sub-sectors.

[2] Other four sub-sectors under Communication Services are postal services, courier services, telecommunication services and other.

During the Uruguay Round of negotiations, all WTO members did not agree on the above classification. Some used the original UNCPC while others used their own definitions for the purpose of scheduling commitments. For listing their MFN (most-favoured nation) exemptions in audiovisual services, most countries 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 audiovisual sector. For example, normally satellite broadcasting is categorized under the audiovisual sector whereas cable TV (television) transmission could be classified under the telecommunication sector. Moreover, such broad classifications does not include services such as DTH (direct-to-home) satellite services, services related to exhibition of films in theatres, services related to the operations of theatres, and new Internet services such as online trading and e-commerce.

The United States proposed a much wider coverage of audiovisual services in its Communication to the WTO on December 18, 2000,[3] which covered complex and diverse set of activities which form a part of audiovisual. The proposed coverage is presented in Appendix A.

In its revised offer (submitted in May 2005), the United States presented a detailed coverage of audiovisual services. It divided audiovisual and related activities into two broad sub-sectors under C*ommunication Services* - (a) *Audiovisual Services*, which cover core audiovisual services, and (b) *Other Communication Services*, which cover audiovisual services having linkages with the telecommunication services. This classification is given in Figure 1.1.

A comparison of the W/120 classification (Table 1.1) and the U.S. classification in its revised offer (Figure 1.1) shows that there has been no change in three sub-sectors, namely Motion Picture and Videotape Production and Distribution Services (CPC 9611), Motion Picture Projection Service (CPC 9612) and Sound Recording Services. The sub-sector -- Radio and Television Services (CPC 9613) -- has undergone modification in the U.S. revised offer. Within this sub-sector, the sub-category -- Radio and Television combined Programme making and Broadcasting services (CPC 96133) (Table 1.1) -- has been moved to the new sub-sector Other Communications Services. Under Radio and Television Services (CPC 9613), the United States has introduced a new sub-category - Radio and Television Distribution Services, excluding Transmission (distribution services include the licensing of radio and television programmes to other service providers for exhibition, broadcast or other transmission, rental, sale or other use). The Radio and Television Transmission Services (CPC 7524) shown in Table 1.1 has been moved to Other Communications Services (see Figure 1.1). In addition, the United States added two more services under Other Communications Services namely, Cable Service provided over Cable Systems (as defined in 47 U.S.C 522 (6) and 47 U.S.C.522 (7)) and One-way Satellite Transmission of DTH and DBS (Direct Broadcasting Satellite) Television Services and of Digital Audio Services (Figure 1.1).

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[3] WTO (December 18, 2000) S/CSS/W/21.

Figure 1.1: Classification of Audiovisual Services in the U.S. Revised Offer

Classification of the Audiovisual Services in the U.S. Revised Offer

Audiovisual Services

Motion Picture and Videotape Production and Distribution Services (CPC 9611)
Promotion or advertising services (CPC 96111)
Motion picture or videotape production services (CPC 96112)
Motion picture or videotape distribution services (CPC 96113)
Other services in connection with motion picture and videotape production and distribution (CPC 96114)

Motion Picture Projection Service (CPC 9612)

Radio and Television Services
Radio services (CPC 96131)
Television services (CPC 96132)
Radio and television distribution services, excluding transmission

Sound Recording Services

Other services in connection with radio and television production

Other Communications Services

Cable Service provided over Cable Systems

One-way Satellite Transmission of DTH and DBS Television services and of Digital Audio Services

Programme Transmission Services (CPC 7524)

Television Broadcast Transmission Services (CPC 75241)

Radio Broadcast Transmission Services (CPC 75242)

Radio and Television combined Program making and Broadcasting services (CPC 96133)

Source: Compiled by the authors from the U.S. Revised Offer, TN/S/O/USA.

Audiovisual services is one of the important services sectors covered under all the four U.S. FTAs – U.S.-Australia (signed in February 2004), U.S.-Singapore (signed in February 2003), U.S.-Chili (signed in December 2002) and U.S.-Morocco (signed in June 2004), which have been analyzed for the purpose of this study. In the U.S. FTAs, this sector is covered in the chapter on *Cross-border Trade in Services*. Given the nature of these services certain issues, such as protection of encrypted programme-carrying satellite signals, are covered in the chapter on Intellectual Property Rights (IPR) while delivery of digital products are covered in the chapter on *E-commerce*. The definition and terminologies are largely covered in the IPR and e-commerce chapters.

India signed the first bilateral agreement covering services – Indo-Singapore CECA on 29 June 2005, which came into force on 1 August 2005. Audiovisual services is an important service sector covered in this Agreement under *Trade in Services* chapter. India and Singapore broadly followed the W/120 classification. The *Trade in Services* chapter states that all juridical persons[4] registered in Singapore or India are included in the Agreement irrespective of ownership or control. This implies that the benefits of the CECA would extent to the citizens, permanent residents, local companies as well as foreign multinational companies (MNCs) that are constituted or otherwise organized in India or Singapore. However, there is a special carve out for education, audiovisual, telecommunication and financial services sectors. In these sectors, there would be requirement of ownership and/or control by persons of both countries. In case of audiovisual services, this special carve out would be reviewed after 18 months of entry into force of CECA and requirement of ownership and/or control would automatically cease after three years of entry into force of the agreement, if not earlier when negotiations in WTO are concluded. In CECA, too, digital deliveries are covered in the E-commerce chapter.

2. Audiovisual Sector in the United States and India

2.1. India and the U.S. in the Global Context

There are only a very few studies which provide the size of the global audiovisual industry. This is because many countries do not have an organized system of collecting and collating data on audiovisual services. Moreover, data collected from different sources are not often comparable. A comprehensive study on the size of the global entertainment and media industry in terms of spending shows that the United States is largest market for audiovisual services (Table 2.1.1) and its share in the total entertainment and media market was 42 per cent in 2004. India, on the other hand, is a small player - share was only 0.7 per cent in 2004. The study also shows that the global entertainment and media industry is expected to increase from around US$1.25 trillion in 2004 to approximately $1.8 trillion in 2009, growing at a CAGR (compound annual growth rate) of 7.3 per cent during that period. The U.S. industry is expected to increase from $525 billion in 2004 to $690 billion by 2009 with a CAGR of 5.6 per cent. During this period, India is expected to witness a growth rate of around 15 per cent, which is one of the highest, with market size exceeding $18 billion by 2009. Also, while the share of the U.S. entertainment and media market is predicted to decline to around 38 per cent by 2009, India's share is expected to increase marginally to 1 per cent. For certain segments such as television network and radio/out-of-home advertising, the Indian market is expected to grow at a significantly higher rate than average global growth rate.

[4] Juridical persons means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether private-owned or government-owned, including and corporation, trust, partnership, joint venture, sole proprietorship or association; cooperative or society.

Table 2.1.1: Size of Entertainment & Media Market, 2004: Global, United States and India

(in $ million) #

	Films	Television (both Network and Distribution Market)	Recorded Music	Radio/ Out-of-Home Advertising	Others*	Total Entertainment & Media Industry
Global	84,195	2,98,387	37,753	61,046	7,69,753	1,251,134
United States	34,971 (41.5 %)	1,40,390 (47%)	12,782 (34%)	25,745 (42%)	3,10,889 (40%)	5,24,777 (42%)
India	1,200 (1.4%)	3,040 (1%)	148 (0.4%)	185 (0.3%)	4,473 (0.6%)	9,046 (0.7%)

Source: Compiled by the authors from PwC (2005), various tables.[5]

Notes: (1) *Figures in the brackets indicate the shares of the United States and India in the corresponding segments*

(2) *# Size of the entertainment and media market is estimated in terms of spending (such as consumer spending, advertiser spending) in the different markets.*

(3) **Others' category include 9 market segments, namely, Internet advertising and access spending, video games, business information, magazine publishing, newspaper publishing, book publishing, theme parks and amusement parks, casino games and sports.*

2.2. Audiovisual Services in the United States

The United States is not only the largest market for audiovisual services it is also the largest producer and exporter of these services. Unlike many developed countries such as France and Canada, where there is significant government intervention in this sector on the grounds of preservation of cultural identity, the U.S. audiovisual sector is highly liberalized.

[5] PwC (2005) is a study of global entertainment and media industry. It is a forecast for the period 2005-2009 of spending in 5 regions (United States; Europe, Middle East and Africa or EMEA; Asia/Pacific; Latin America; and Canada) in 14 entertainment and media segments (Filmed Entertainment, Television Networks, Television Distribution, Recorded Music, Radio & Out-of-Home Advertising, Internet Advertising and Access Spending, Video Games, Business Information, Magazine Publishing, Newspaper Publishing, Book Publishing, Theme Parks & Amusement Parks, Casino Games, and Sports). The data is compiled from different sources such as the MPA.

The government mainly plays the role of a facilitator, implementing appropriate regulations to support technological development and commercialization of these services. The sector has grown through competition among private players and technological innovations.

In films, the United States rank among the top five film producing countries of the world. Expenditure per film is highest in the United States. In the year 2000, average expenditure per film was only $0.6 million in India, $9.4 million in the U.K. (United Kingdom), $4.3 million in France and Japan and $13.6 million in the United States.[6] The U.S. film industry is oligopolistic in structure with seven motion picture studios[7] accounting for majority of the revenues earned by this industry. In 2005, 18 of the top 20 films (in terms of box office collections) were distributed by these studios.[8] Box office collections are an important source of revenue for the film industry. The Motion Picture Association of America (MPAA) provides data on the American film industry. MPAA data shows that box office collection of Hollywood movies is projected to increase from $7.6 billion in 2000 to $11.6 billion in 2009, growing at a CAGR of 4 per cent.[9] Various factors such as a large marketing expenditure, release of films on many screens simultaneously and growing use of international day-and-date releasing have resulted in the increase in box office collections. Foreign markets account for a significant proportion of revenue of the U.S. film industry. This is evident from the fact that between 1986 and 2000, domestic box office receipts increased by 28.3 per cent while exports of films and tapes increased by 426 per cent.[10] The United States has positive trade balance with most of its trading partners. Trade deficit of EU vis-à-vis the United States in audiovisual products has increased two-and-a-half times between 1992 and 2002 and is close to $10 billion.[11] According to MPAA, the U.S. films are shown in more than 150 countries worldwide and the U.S. productions account for 85 per cent of the international film audience. The U.S. film industry provides most of the pre-recorded videos and DVDs (digital video discs) sold throughout the world. In films, Hollywood films represent more than half and sometimes more than two-thirds of the totals box office receipts in major markets.[12] The European countries are the main importers of the U.S. audiovisual products followed by developed countries such as Australia and Canada and developing countries such as Brazil.

In the past, box office collections were the major source of revenue for films. Of late other modes of distribution such as home video are gaining prominence. The United States is the largest consumer of home entertainment products in the world. In 2004, there were 99.5 million home video households which are expected to increase to 107 million by 2009.[13] The

[6] FICCI (2002).
[7] The seven biggest motion picture studios in the United States are Buena Vista Pictures Distribution; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios, LLP; and Warner Bros. Entertainment Inc.
[8] MPA (2005).
[9] PwC (2005).
[10] Yale Global Online (2002).
[11] Council of Europe, Parliamentary Assembly (2004).
[12] Yale Global Online (2002).
[13] FICCI-PwC (2005).

U.S. film industry contributes substantially to employment. In 2004, around 4 lakh people were employed in this industry.[14]

There are hardly any major regulations in the film sector. There is no government body for censorship of films produced in the United States. MPAA through the Classification and Rating Administration (C&RA) issues ratings for movies. The system was instituted in 1968 and is voluntary, with no official status. However, majority of the film producers do submit their films for ratings. The theatres also follow C&RA's guidelines and diligently enforce its provisions.

The United States has one of the most developed television markets in the world. In 2004, there were around 110 million television households in the United States comprising 98.4 per cent of total households in the country. There were around 324 cable and satellite channels.[15] Similar to the film industry, the U.S. television network market is dominated by few broadcasters who own majority of channels (for instance, ABC Network owns 5 national channels while Fox Network owns 11 national channels). In 2004, the size of the television distribution and network market was around $140 billion (Table 2.1.1) out of which television networks market constituted $53.7 billion, with cable television accounting for 66 per cent of the total television networks market.[16] It has been projected that the sector would grow at a CAGR of around 5.7 per cent in the next 5 years. The United States is a major exporter of television programmes. According to MPAA, American television programmes are broadcast in over 125 international markets. All major U.S. broadcasters have global presence.

The U.S. radio market consists of radio stations (AM and FM), radio networks and satellite radio. This sector grew at the CAGR of 3.5 per cent in 2004 and is expected to reach $27.2 billion by 2009, with a growth rate of 6.5 per cent.[17] The U.S. radio industry is facing stiff competition from the local cable television industry. However, with the entry of satellite radio[18] and digital audio broadcasting (DAB), the revenue of this segment is expected to increase in the future. Since 1996, there has been consolidation of radio station ownership -- at both national and local levels. This has been partly due to the Federal Communication Commission (FCC) decision to let broadcasters own an unlimited number of radio stations. The policy led to establishment of some large radio groups owning a number of radio stations. Before 1996, the largest radio-group owner had less than 65 stations.[19] Post-1996, one of the largest players -- Clear Channel Communications owns approximately 1,200 stations.[20] Radio advertisement rates have increased almost 90 per cent since 1996.

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[14] MPA (2004).
[15] MPA (2004).
[16] PwC (2005).
[17] PwC (2005).
[18] There are two companies providing satellite radio service in the US- XM Satellite Radio and Sirius Satellite Radio.
[19] "*Broadcast ownership should not change limits,*", 21 Jan, 2003, http://www.usatoday.com/news/opinion/editorials/2003-01-21-meyer_x.htm
[20] Clear Channel Radio Fact Sheet, http://www.clearchannel.com/Radio/PressRelease.aspx?PressReleaseID=1563&p=hidden

The U.S. regulation recognizes that with technological development the distinction between audiovisual services, telecommunication services and information technology (IT) services has become blurred. The FCC, which was set up by the Communications Act of 1934, is responsible for regulating not only the telecommunication sector but also the radio and television sector. The FCC grants licence for setting up television and radio stations. It does not have much control over the programme content since the Communications Act prohibits it from censoring the broadcast matter. It, however, has the authority to fine a station or revoke its licence if it has aired obscene language programme when children are likely to be the audience. Television and radio stations in the United States can either be public or commercial. The commercial stations generally support themselves through advertisement revenue. The public stations are supported by contribution from listeners and viewers and they may also receive government funding.

The global music industry has been going through a bad phase and after four years of negative growth, the industry started recovering in 2004 with an annual growth rate of 5.7 per cent. Similar to the global industry, there was a recession in the United States. The U.S. music industry started recovering in 2004 with a growth rate of 6.3 per cent which was higher than the global average. It has been projected that the sector would grow at a CAGR of around 8 per cent per annum in the next 5 years.[21] This increase in growth would be due to adaptation of new forms of music distribution such as mobile music and licensed digital distribution. It is predicted that there will be further fall in prices of DVDs. In the United States, there are five major music companies -- Universal, Sony, Time Warner, EMI/Virgin and BMG (division of Bertelsmann).

Various factors have favoured the growth of the U.S. audiovisual industry and its export. The sector is highly integrated. For example, Warner Brothers Entertainment, a Time Warner Company, is a fully integrated broad-based entertainment company offering a wide range of services including production, distribution, licensing and marketing of all forms of entertainment and related activities across different segments of audiovisual services such as films, television, home video/DVD, etc. The U.S. production companies not only own distribution networks in the United States but also in major export markets. The top 10 U.S. studios are amongst the top international distributors. In the U.K., U.S. studios control 83 per cent of the market share in distribution. The oligopolistic nature of the industry gives U.S. companies a competitive edge over their international competitors.

The U.S. companies are pioneers in implementing technology and are fast to capture markets in new areas such as video games and home entertainment. When the multi-channel household penetration in the United States reached almost 86 per cent in 2003, cable operators started entering into other areas such as DVR (digital video recording), video-on-demand and pay-per-view. The industry has also been successful in reducing risk and increasing market share by delivering products through different formats. This is evident from the fact that theatrical revenue constitutes only around 35 per cent of the revenue of the films, the rest coming from home video, television rights, etc. The U.S. companies have a strong export focus. They not only spend a huge amount of money in marketing and

[21] PwC (2005)

advertising their products in international markets but often products are oriented towards international audience. For instance, many U.S. producers prefer to make action films since it has a higher demand in international markets. Last, but not the least, audiovisual industry in the United States has received government patronage. Although, unlike European countries, there are very few direct support programmes, the U.S. government is treating this as a priority sector in its multilateral/bilateral/regional negotiations, pressurizing its trading partners to remove barriers to trade in this sector. It is almost impossible to sign a bilateral agreement with the United States without substantial commitments to liberalize this sector.

2.3. Audiovisual Sector in India

Audiovisual is one of the fastest growing sectors of the Indian economy. Various factors such as high gross domestic product (GDP) and per capita income growth; demand for India-specific products both domestically and from non-resident Indians (NRIs) and other South Asians in international markets; increase in exports of television content, films, etc. and availability of high-skilled labour at competitive prices which enabled the sector to develop as a post-production, animation and graphic hub have supported its growth. India's trade in audiovisual services has increased since the mid-1990s.

A unique feature of the Indian audiovisual industry is that it has largely grown and prospered under private initiatives, and governments, both at the centre and state, have played the role of facilitator--removing the barriers and implementing complementary regulations[22] to support its growth. In the recent years, many large corporate houses have entered into this sector. For instance, in 2005, Reliance Capital bought a majority stake in Adlabs Film Company Limited which enabled it to establish presence across films production, exhibition and distribution. It has also entered the radio segment. Tata Group (Tata Sky Limited) has entered into the support network for DTH system and manufacturing of set-top boxes. Foreign investment in this sector is also increasing.

There is no official estimate of the size of the Indian audiovisual industry and most segments do not have a centralized agency for tracking data. Certain segments such as cable television and films are largely dominated by the unorganized sector. Moreover, many companies are not willing to share financial information and/or have transparent accounting practices. Of late, some industry associations along with consultancy organizations have tried to estimate the size of the industry and its future growth potential. Although these estimates vary, they nevertheless give an indication of the size and future growth potential. One of the recent studies is the FICCI-PwC study.[23] It provides data on segment–wise composition of the Indian audiovisual industry and its growth potential (Table 2.3.1).

[22] Such as reduction in entertainment tax and granting "industry" status to films.
[23] "The Indian Entertainment and Media Industry: Unravelling the Potential," March 2006.

Table 2.3.1: Segment-wise Composition of Indian Audiovisual Industry

(Rs. million)

Segment-wise breakdown of revenue	2004	2005E	2010F	CAGR (2005-2010) in percentage
Films	56,500	68,000	153,000	18
Television	128,700	148,000	427,000	24
Radio	2,400	3,000	12,000	32
Recorded Music	6,700	7,000	7,400	1
Total	194,300	226,000	599,400	27.6

Source: Extracted from FICCI-PwC (2006), page 12

Notes: (1) E: Expected, F: Forecast, CAGR : Compound annual growth rate
(2) Some calculations are done by the authors

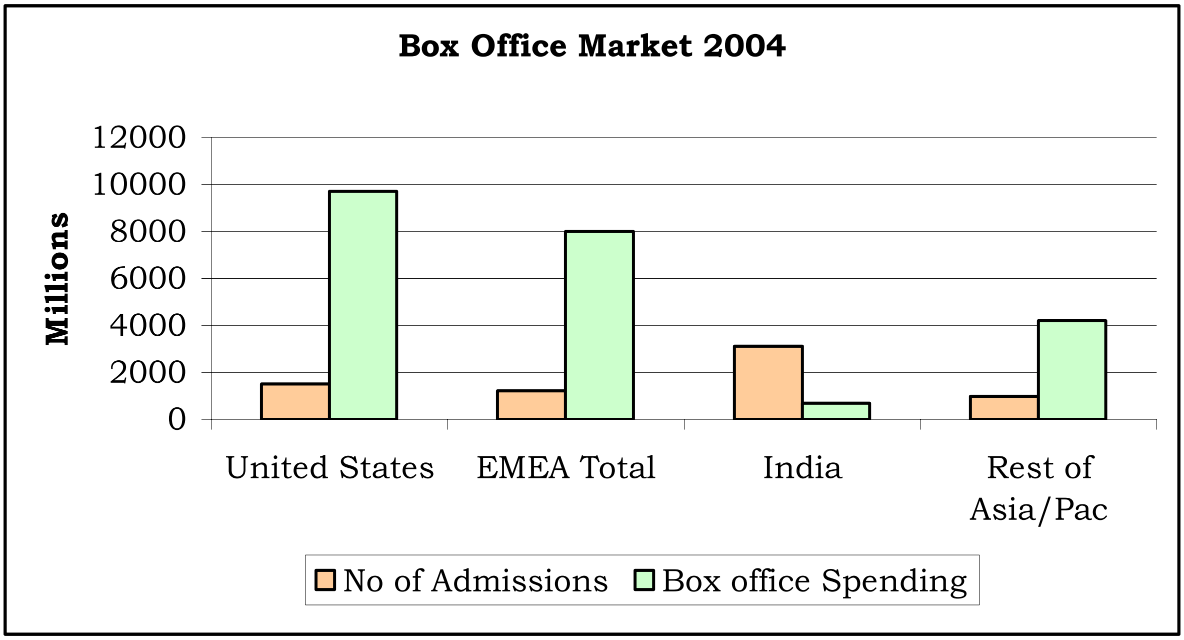
The figure taken above indicates only the legitimate industry revenue in each segment. Revenues from animation and gaming segments are not included. It is important to note that there are differences between the estimates given by the PwC (2005) as shown in Table 2.1.1 and those given by FICCI- PwC (2006) as shown in Table 2.3.1. This is due to the fact that PwC (2005) estimates are based on consumer spending whereas FICCI-PwC (2006) is based on industry estimates of revenue. Also, the categories considered are different in both the reports.

2.3.1. Films

Film is the most popular form of entertainment in India. India is the largest film producing country in the world, more than 1,000 films are produced annually (in the year 2005, 1,041 Indian feature films were certified by the Central Board of Film Certification).[24] Since its beginning in 1931 more than 67,000 films, short-films, documentaries, etc. have been produced in over 30 different languages and dialects. In 2004, India recorded the highest ticket sale at 3,100 million compared to only 1,500 million in the United States (Figure 2.3.1.1). The industry is labour-intensive and employs more than 6 million people -- 5 million directly and a million indirectly. Since film and film-based content has highest viewership and consumption, the growth of the film sector has multiplier effect on growth of other sectors such as music, live entertainment and private radio channels. The sector contributed to 29 per cent of the total revenue in 2004 and is expected to grow at a CAGR of 18 per cent during the period 2005-2010.

[24] In the same year 739 films were made in Hollywood.

Figure 2.3.1.1: Number of Admission and Box Office Spending



Source: Extracted from FICCI (2005), page 16 and PwC, Global Entertainment and Media Outlook
Note: EMEA stands for Europe, Middle East and Asia.

In contrast to the U.S. film industry which has an oligopolistic structure, the Indian film industry is unorganized, highly fragmented and characterized by the presence of proprietorship or partnership. The industry is gradually moving towards corporate formats. Unlike developed countries, the box office receipts are not recorded properly. Ticket prices are low and film industry's revenue is only around one per cent of the total global film industry revenue. As shown in Figure 2.3.1.1, although box office admission was highest in 2004, box office spending in India is much lower than the United States due to low average admission prices and under-declaration of box office receipts. Unlike countries such as the United States, which earns only 35 per cent of its revenue from theatrical viewership, in India 70 per cent of the revenue is from domestic and overseas theatrical viewership. It is only recently that new modes of delivery, such as home videos, are coming up. Investment in Indian films is much lower when compared with other international productions because the cost of production (especially the post-production cost) and the marketing/promotion budget is lower in India than in countries such as the United States. During the survey it was pointed out that in 2005 average cost of production and marketing cost per Bollywood film was $1.5 million and $500,000 respectively while that for a Hollywood film was $47.7 million and $27.3 million respectively. Of late some major producers are making significant investments in marketing/promotions and are investing in latest technical know-how.

Given the availability of a large pool of highly qualified low-cost manpower, India is developing as an outsourcing hub for various services. In the audiovisual sector, India is maturing as an outsourcing destination for post-production services, animation, graphics, special effects, gaming, among others. India has developed state-of-the-art studios that are capable of offering end-to-end services of desired quality. For instance, in the past few years, Hyderabad-based Ramoji Film City provided equipment, crew sets and post-production facilities to over seven Hollywood films including Oscar–winning *Gladiator*. Indian animation and graphic industry has seen significant growth in the recent past with the sector growing at a rate of over 20 per cent during 2004. The size of the industry was estimated at $250 million in 2004.[25] NASSCOM (National Association of Software and Service Companies) estimated that over 27,000 people were employed in this sector in 2001. Cities such as Mumbai, Chennai, Bangalore, Hyderabad and Thiruvananthapuram have emerged as country's animation hub. Overseas entertainment giants such as Walt Disney, IMAX and Sony are increasingly outsourcing cartoon characters and special effects to companies such as Pentamedia Graphics, Prasad Studios, Jadooworks and Toonz Animation. It is expected that this would be one of the fastest growing segments, growing at a rate of around 30 per cent in the next five years. NASSCOM estimates that by 2008, the digital content development, engineering and design industry would employ around 300,000 people.[26]

Although the film industry is largely in the private sector, various measures have been taken by the government to support its growth. India is one of the few countries where there are government-funded training institutes for film-making and television production. National Film Development Corporation (NFDC), which works under the aegis of the Ministry of Information and Broadcasting, has been set up to support upcoming directors, low-budget films and films with socially relevant themes. Every year government organizes film festivals to provide a platform to Indian filmmakers to interact with their global counterparts and showcase their work. Both central and state governments offer various incentives for the development of infrastructure. For instance, the Union Budget (2002-03) announced exemption of 50 per cent profits from tax under Section 801B of the Income Tax Act for large convention centres and multiplex theatres in non-metros for a period of five years. The Karnataka and Gujarat governments offer subsidy for producing films in regional languages and also provide various tax exemptions for locally produced films. West Bengal imposes a higher entertainment tax[27] on non-Bengali and foreign films. The government also provides various incentives to promote exports. For instance, revenue earned from exports of film software is exempted from income tax.

In 2000, the government conferred industry status to film industry to enable the sector to corporatize and access institutional finance. As a follow up, the Reserve Bank of India (RBI) and the Industrial Development Bank of India (IDBI) formulated guidelines for banks and financial institutions to finance the film sector. Copyright protection is essential for the growth of the creative industries. Several amendments were made to the copyright law to bring it to the international standards. The amendment in the year 1999 made the Copyright Act fully compatible with the TRIPS (Trade-Related Aspects of Intellectual Property Rights).

With liberalization of the economy in the 1990s, the restrictions on import of foreign films and foreign investment have been gradually removed. Prior to the 1990s, the NFDC had the sole authority to import foreign films. Foreign film producers and trade associations

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[25] NASSCOM , A Report on Animation Industry, 2005.

[26] *India animated by special effects outsourcing*, Asia Times Online, April 21, 2005, www.atimes.com/atimes/South_Asia/GD21Df05.html

[27] Entertainment tax is the tax levied at the exhibition stage on cinemas, theatres, cable operators, etc.

had to enter into an agreement with NFDC for import and distribution of their products in India. This restriction was removed in 1992. In the same year, government removed the quantitative restriction on import of foreign films[28] and the prohibition on dubbing of foreign films in Indian languages. However, certain qualitative checks on foreign films (films which have won an award in any International Film Festival recognized 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) continued till 2002. A new policy was initiated in that year which allowed import of films without a licence. The process of dual certification[29] was done away with and the only remaining regulatory requirement is that any film exhibited in India has to be certified for public exhibition by the Central Board of Film Certification (CBFC). Realizing that inflow of technical know-how, finance and skill would improve the quality of film production, distribution and exhibition, from March 2002 onwards, 100 per cent FDI is allowed in film financing, production, distribution, exhibition, marketing and associated services through the automatic route. Since advertising is a major source of revenue for the creative industry, 100 per cent foreign investment in advertising was allowed in March 2002 through the automatic route.

Liberalization and reforms have benefited the industry. The unorganized and fragmented industry is gradually moving towards corporatization. In the past, it was difficult for film producers to access institutional finance and they largely depended on private financers who charged exorbitant rate of interest leading to high cost of productions. After the sector was conferred the industry status, film financing from organized sources have increased. Accounting practices are becoming more transparent. Large players are integrating their operations across different segments such as film production, distributing and exhibition. There has been increase in investment in film infrastructure – studios, exhibition theatres, multiplexes, etc. Many film production/distribution/exhibition companies have come up with public issues.

Since mid-1990s, exports of films have increased significantly. Indian films are exported to over 95 countries worldwide. Almost 30 per cent of the total number of films produced is released in overseas markets and this generates 65-70 per cent of the revenue of the film. Many Indian producers are using international distributors present in India such as Columbia Tristar Films of India Limited to distribute their productions in international markets. Some Indian companies are also taking up overseas distribution rights to expand further. For instance, UTV has launched a worldwide film distribution network with offices in the United States, the United Kingdom and Mauritius. In the past, Indian films largely catered to NRIs and other South Asians but in recent years they have become more acceptable to wider international audience. Competition and collaborations with foreign film-makers have made Indian film-makers more quality conscious. They are now investing in technology, marketing and promotion and are participating in international film festivals. Many Indian directors, artists, musicians, technicians and actors have received international recognition and are now working with renowned global banners.

[28] Previously only 100 titles were allowed to be imported.

[29] The process of dual certification involved the qualitative check by the Ministry of Information and Broadcasting and certification by the Central Board of Film Certification.

2.3.2. Television

Television is the largest segment of the audiovisual industry. It contributed to 66 per cent of the revenue in 2004 (Table 2.3.1). It constitutes of two major segments: the public service broadcaster (Doordarshan) and private players (including broadcasters, production companies and cable operators). The modes of operation and funding structure of these two segments are widely different. Doordarshan has a social responsibility and its operation and delivery is not related to profits alone. It is partly funded through budgetary grants. Private broadcasters do not receive any direct financial support from the government and they operate on commercial basis. Doordarshan, with 26 channels[30] covering 78 per cent of the land area and over 90 per cent of the population, is one of the largest terrestrial broadcasting networks in the world. Prior to the 1990s, Doordarshan had a monopoly in broadcasting. In the 1990s, private broadcasters were allowed to operate in the country, initially through the cable network and in recent years new delivery platforms such as DTH, IP TV (Internet Protocol based Television), etc. are coming up. During their initial years of operation, most satellite channels were in an analogue format and free-to-air, and were financed by advertisement revenues and subscriptions. As channels multiplied, there has been a stiff competition among them to increase their share of advertisement revenue. This has propelled them to explore alternative revenue sources and more recently, many of them have become pay channels. Competition among channels and fragmentation of audience has also led to mergers and acquisitions. In line with global developments, broadcasters are gradually shifting to digital technologies.

Cable television is the fastest growing segment within the television industry. However, this segment is highly fragmented and is characterized by the presence of a few multi-system operators (MSOs) and a large number of unorganized small cable operators catering to specific localities. Since these unorganized cable operators do not have a transparent accounting practice, the subscription revenue is often underquoted, making it difficult to estimate the size of the sector. Proliferation of the channels has led to the growth of programme producing companies. From a few production houses catering to the public broadcaster, the programme producing industry is now characterized by large corporations catering to both domestic and international markets.

Industry estimates shows that the television industry would grow at a CAGR of 24 per cent during the period 2005-2010 (Table 2.3.1). Subscription revenue would be the key driver of this growth. The subscription revenue would increase not only due to the rise in the number of cable television households but also from new distribution platforms such as DTH.

A number of reforms have been initiated to support the growth of this sector. In 2001, to enable the distribution of contents through alternative platforms, the government removed the ban on reception and distribution of television signals on Ku-band and allowed the operation of DTH services. Subsequently, the government dissolved the monopoly of public service provider Videsh Sanchar Nigam Limited (VSNL) in uplinking, which was forcing

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[30] Ministry of Information and Broadcasting, Annual Report (2005-06).

most foreign channels to uplink from countries in South East Asia. The new policy allowed any television channels, which is aimed at Indian viewership irrespective of its ownership, equity structure and management control, to uplink from India. It also allowed the Indian news agencies to have their own uplinking facilities for the purpose of news gathering and its further distribution to other news agencies/broadcasters. On October 20, 2005, the Cabinet granted one-year permission to foreign news channels to uplink live feed from India.[31] The current FDI regulations in television are given below.

Table 2.3.2.1: FDI Regulations in Television

Segments	**FDI Limits**
TV software production	100%, subject to certain conditions
Setting up hardware facilities such as uplinking, hub, etc.	49%, inclusive of both FDI and FII, subject to Uplinking Policy.
Cable network	49%, inclusive of both FDI and FII and subject to Cable Television Networks Rules (1994)
DTH	49%, inclusive of both FDI and FII. Within this limit, FDI component should not exceed 20%. This is subject to guidelines issued by the Ministry of Information and Broadcasting.
Uplinking of news and current affairs television channel	26%, inclusive of both FDI and FII, subject to certain conditions.
Uplinking of a non-news and current affairs TV channel	100%

Source: Ministry of Information and Broadcasting, India, http://www.mib.nic.in, *and Department of Industrial Policy and Promotion, FDI Policy, India, April 2006, http://dipp.nic.in/Publications/fdi_policy_2006.pdf.*

With technological convergence it is difficult to have separate regulators for telecommunication and broadcasting services. Realizing this, in January 2004, Telecom Regulatory Authority of India (TRAI) was given the mandate to regulate cable and broadcasting services. In the past two-and-a-half years, TRAI has issued a series of tariff orders and came up with several recommendations out of which some have already been implemented.

Liberalization and reforms has led to significant growth of the television sector and widened the choice available to Indian consumers. Today there are over 300 TV channels, in different languages. Many foreign players have also entered the Indian market. Collaboration

[31] Earlier the permission was considered on event to event basis.

with foreign players and access to international technical know-how and best management practices has improved the production quality and Indian producers are now exporting content in international markets. According to the Electronic and Computer Software Export Promotion Council the export of television content accounts for over 20 per cent of the total revenue of content producing sector. Indian broadcasters such as Zee Telefilms Limited, B4U Television Network India Private Limited and Sony Entertainment Television have set up operations abroad. Zee TV programmes are telecast in more than 50 countries. Doordarshan, launched its international channel – DD-India (now renamed as DD World) in 1995, which reaches more than 50 countries.

2.3.3. Radio

Radio is the cheapest form of entertainment in India. It is dominated by the public sector broadcaster - All India Radio (AIR) -- which covers more than 91 per cent of land area and 99 per cent of the population. In 2000, private FM channels were allowed to operate in the country. In November 2005, the government permitted 20 per cent FDI (inclusive of FII investment) in FM radio. The government invited bids from Indian companies for 337 FM radio channels in 91 cities, out of which 280 channels were successfully bid.[32]

As of date, the growth of radio has been modest. AIR has not been successful in increasing its advertising share which is its sole source of revenue. Advertising constitutes 2 per cent of the revenue in India compared to 13 per cent in the United States. The government is in the process of streamlining its regulations to encourage private participation. In 2000, when government first started allowing private players in FM broadcasting, private players suffered heavy losses since the licence fee and operational costs were too high. To encourage private participation, the government reformulated its policy and the Phase II policy was announced in July 2005. The new policy allowed FM radio players, new as well as existing one, to switch over to a revenue-sharing regime from the licence fee structure. The government then has allotted more FM stations to private players in 13 cities. Phase III of radio policy is expected to be announced very soon. Under this, smaller towns and cities are expected to be opened for FM radio and more frequencies will be offered to private FM channels.

With increasing private/foreign investment in FM channels and the advent of satellite radio and community radio, it is expected that the sector would grow at a CAGR of 32 per cent during the period 2005-2010 (Table 2.3.1). During the survey it was pointed out that to sustain this growth, there is a need for investment in infrastructure. Survey participants also emphasized that the growth of channels is creating demand for technical expertise and creative content hence foreign collaborations would be beneficial.

2.3.4. Music

The global recession is affecting the Indian music industry which is growing at a very slow pace (Table 2.3.1). Prior to the 1990s, there were a few large players in music production and the segment was dominated by film and devotional music. Post 1990s, with

[32] Ministry of Information and Broadcasting, Annual Report (2005-06).

the advent of satellite channels, non-film music, remixes and Indi-pop (Indian pop) music have gained popularity. All major international music companies (such as Sony Music, Times Warner, etc.) have entered the Indian market. However, unlike most countries the Indian music industry is heavily dependent on film music whose share is around 65 per cent of the revenue. The process of technological development is slow and physical formats (such as music cassettes, compact discs) accounts for 90 per cent of the revenue. In recent years new modes of music distribution such as mobile music are gaining prominence.

Overall, the Indian audiovisual sector witnessed significant developments in the past fifteen years. As the industry is maturing -- consolidation and vertical integration among content producers, distributors, exhibitors, broadcasters and music companies has been a common feature.[33] The use of technology has increased and contents are being delivered through multiple formats. Given the unsaturated domestic market and large population base, there is a huge potential for the industry to grow.[34] International market has become an important source of revenue for certain segments of the industry such as films and animation and graphic designing.

2.4. Indo-U.S. Trade in Audiovisual Services

India and the United States are major exporters of audiovisual services and have significant export interest in each other's markets. The United States is the largest export market for Indian audiovisual services. The United States has a huge NRI (around 1.7 million in the year 2002) community and South Asian population which have generated a strong demand for India-specific audiovisual content. Moreover, the Indian population in the United States is affluent – the per capita yearly income of the Indian community is around $65,000, compared to the average per capita income of $48,000.[35] The high purchasing power and sustained demand for India-specific audiovisual content made the United States an important market for Indian audiovisual service providers.

India is an important audiovisual market for the U.S. companies. Indian audiovisual sector witnessed significant liberalization over the past 15 years, and there are no major entry barriers. The Indian government is encouraging foreign investment in television software, film production, studios, exhibition theatres/multiplexes, post-production services, etc. and this offers immense opportunities for the U.S. companies. The U.S. market in some segments, such as cable television, is reaching near saturation while the Indian market is growing. Many U.S. companies are outsourcing post-production, animation, graphics and special effects to India.

There are hardly any studies on Indo-U.S. bilateral trade in audiovisual services. To fill this lacuna, a survey was conducted to understand the bilateral trade flow between India

[33] There are some large media houses that have entered into various entertainment and media segments. For instance, the Times Group has interests in print, radio, TV channel and music; Reliance Entertainment Private Limited is making its foray into movies, radio and post-production services.

[34] For instance, cable television network in 2004 only reached 42 per cent of the total television households and 25 per cent of the total households.

[35] http://desitalk.newsindia-times.com/2005/20nyc6-top.html

and the United States in this sector, identify areas of trade complementarities and future trade potential and barriers to trade in the context of an FTA. The survey covered 90 respondents from different segments of audiovisual services across -- Chennai, New Delhi, Noida, Kolkata, Mumbai, Hyderabad and Bangalore. The sampling frame is enclosed in Table 2.4.1.[36]

Table 2.4.1: Sampling Frame

Type of Respondents	Number of Respondents
Indian Film Producers/Distributors	12
U.S. Film Distributors in India	4
Indian TV Broadcasters in the U.S.	5
U.S. TV Broadcasters in India	5
Multi-system Cable Operators/ Local Cable Operators	10
Production Houses/ Post-production/ Animation and Graphics/Studios, etc.	19
Music Companies	7
Artist/Technicians	12
Associations (Film Federation of India, Indian Music Industry, etc.)	6
Central Ministries/State Government/Local Bodies	10
Total	**90**

The survey was based on semi-structured questionnaires. Some questions were kept open-ended to collect as much information as possible and to boost the exploratory nature of the research. Different questionnaires were designed for Indian and the U.S. companies across different audiovisual segments. Only individuals/companies with trade links with the United States in this sector were interviewed. Interviews were collected through repeated on-site visits and each interview lasted for approximately an hour.

Indian film producers/distributors pointed out that the United States is the biggest export market for Indian films and accounts for around 30 per cent of the total export revenue. Almost all films released in the international market are released in the United States. According to Film Federation of India (FFI), in 2004, the export earning of the Indian entertainment industry was Rs. 1,300 crore, of which Rs. 585 crore (45 per cent) was from the United States. Indian films are promoted and distributed in the United States through various ways. Distributors such as Yash Raj Films Distributors and UTV Software Communications Limited have their own distribution offices in the United States, while others such as Eagle Films use U.S. distributors. Dharma Production and Entertainment One use other Indian distributors for distributing their films in the U.S. market. Narshimha Enterprise Lens has a distributor in the United Kingdom which looks after worldwide

[36] The survey was executed by Planman Consulting, New Delhi.

distribution of their films including the United States. Eros International is the biggest distributor of Indian movies in the United States. National Award-winning films are promoted in the international markets by the government through film festivals and cultural exchange programmes. Private film producers/directors also participate in various U.S. film festivals such as the Los Angeles Film Festival, the San Francisco Film Festival, the South Asian Film Festival and the New York Film Festival. Survey participants pointed out that unlike Hollywood, the Indian film industry is highly fragmented and there are only a few large players. The marketing and promotional budget for Indian films is much lower compared to Hollywood movies. However, in recent years, Indian producers/distributors are making large investments in marketing and promotion.

Indian producers/distributors pointed out that they do not face any direct competition from U.S. films in other international markets since the content and audience base is different. They do not face any major competition from the U.S. films in the U.S. market due to the niche audience base. Most of the Indian films for the U.S. market are subtitled in English since dubbing is costlier. Some films are only released in DVD formats. A few Indian producers pointed out that in the United States, Indian population is not highly concentrated as in the United Kingdom and theatres are far away. It is often difficult for people to travel to theatres to watch movies and this has led to the growth of home theatres and DVDs.

The U.S. films constitute the majority of foreign films shown in India. In the calendar year 2005, 275 foreign films were certified by the Central Board of Film Certification, among which 182 were U.S. films.[37] During the survey, Indian film producers/distributors pointed out that they do not face any major competition from the Hollywood productions. They added that although there are no major entry barriers in India, the market size of foreign films is much lower than the domestic productions. However, some regional film producers stated that dubbed Hollywood movies sometimes affect their revenues.

There are a few Indo-U.S. joint productions. For the movie *Kaante*, White Feathers Films entered into a co-production agreement with a U.S.-based company, Film Club Limited, which provided equipment and got the clearance for shooting. Entertainment One (Adlab Films) is jointly producing a film *Marigold* with Hyperion Pictures. Entertainment One has a revenue/equity sharing arrangement with Hyperion Pictures and is providing production services and has taken the rights to distribute movies produced by the Hyperion Pictures in India. Sony Pictures Releasing of India Limited has entered into a co-production agreement with film-maker Sanjay Leela Bhansali for Sony's first Indian film, *Saawariya.*

Survey participants pointed out that in future India's export to the United States would increase since Indian films are now increasingly being appreciated by the American audience. The growing success of cross-over films such as *Bride and Prejudice* has given Indian films global acceptance. Realizing the export potential, Indian film-makers have focused on development of contents which is more globally acceptable rather than concentrating on contents that are only of interest to NRIs. There are using latest technical know-how and are trying to improve the production quality to match international standards.

[37] Ministry of Information and Broadcasting, Annual Report (2005-06)

To reduce piracy and enhance revenue, movies are released simultaneously in India and in important markets such as the United States.

The United States is one of the most preferred shooting destinations for Indian film-makers. Survey participants referred to several benefits of shooting abroad. First, the shooting can be completed in a single stretch without delay (caused by factors such as actors being pulled away by other producers). Second, Indian audience prefer movies in which some scenes are shot abroad. To enhance the production quality, Indian film-makers sometimes employ technicians, cameramen and other personnel from Hollywood. Till date, only a few U.S. movies have been shot in India.[38] This is mainly because there are some barriers to shooting (which are discussed in Section 5.1.1) and, for shooting in India the content has to be India-centric.

U.S. distribution companies such as Columbia Tristar, Paramount Films and Twentieth Century Fox have established offices in India. In fact, Paramount Films had set up operations almost 60 years ago. U.S. distributors pointed out that they primarily distribute films through the theatrical mode since the market for home theatres is still evolving in this country. The number of films distributed and revenue earned varies across the different distributors. For instance, Columbia Tristar distributes 35 to 40 films annually, including 25-30 Hollywood movies, which makes it one of the largest distributors in India. Paramount Films of India Limited distributes around 15 films per annum. In 2003-04, Columbia Tristar earned revenue of Rs. 100 crore while Paramount Films earned revenue of Rs. 25 crore. Columbia Tristar has ventured into distribution through partnership with iDream Productions. In major cities they have their own offices while in smaller towns they franchise local companies to distribute movies. Many Indian producers are distributing their films in international market through U.S. distributors present in India.

During the survey, it was pointed out that as compared to other international markets overhead cost of setting up office in India is low. There are no major entry barriers and the demand for Hollywood films is increasing due to focused marketing, growth in multiplexes, dubbing of movies in Hindi and local languages, growth of per capita income, increase in expenditure on audiovisual products, etc. However, compared to other Asian countries such as Japan, Singapore and Korea, per capita income is low and hence, ticket prices and revenues are low. India has a thriving domestic film producing and distributing industry which offers significant competition to foreign films. The market for foreign films largely concentrates in the metros and large cities.

The survey found that there is significant scope for Indo-U.S. collaboration in the film sector. With increased corporatization and professionalism in the Indian industry, investment from the United States would increase. Some U.S. and Indian companies have expressed interest in entering into co-production agreements**.**[39] As Indian film and television

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[38] Famous Hollywood star Michael Douglas has signed a co-production agreement with two Indian companies – Percept Picture Company and Sahara One Motion Pictures for the film *Romancing in Rains*. This will be the first American production to be shot wholly in India.

[39] Many Hollywood film production companies such as Paramount Pictures Limited, Walt Disney and Hyde Park Entertainment have expressed interest to co-produce films in India.

industry is increasingly adopting digital technology, it would gain from technical collaborations with the U.S. companies. Survey participants pointed out that collaborations would lead to the inflow of best management practices. They also pointed out that U.S. investment in training institutes, state-of-the-art studios and post-production facilities would help the industry to achieve global standards. Since the market for distribution and exhibition of Indian films abroad is relatively underdeveloped, Indian producers and distributors would benefit from collaboration with the U.S. distributors. The U.S. market is over-screened while in India there is a shortage of exhibition theatres. Investment by U.S. companies in exhibition theatres would be beneficial for India.

Indian production/post-production companies offer services such as CGI (computer-generated imaging), animation, visual effects, editing, dubbing and re-recording, to U.S. clients for television, films and commercials. Indian studios such as Ramoji Film City in Hyderabad have facilities similar to Hollywood studios which can be used for a much lower cost. Survey participants pointed out that studio rental in Hollywood is usually $1,000 per hour whereas in India it is $1,000 for entire day. The low-cost of production together with high quality manpower and production facilities is attracting U.S. companies to outsource work to India.

Most of the Indian animation and graphic companies started offering services to foreign clients after the year 2000. The United States is the biggest market for animation industry and exports to the United States are increasing in the recent years. For instance, in 2002-03, exports to the United States constituted 5 per cent of the total exports of Maya Entertainment Limited which increased to 20 per cent in 2003-04. In 2003, the total export of Crest Animation Studios Limited was around Rs. 15 crore, 80 per cent of which was to the United States. In 2004, total exports increased to Rs. 20 crore and share of the United States was 95 per cent. Some companies such as UTV Software Communication Limited and Toons Animation India Private Limited have offices in the United States. Til Studios is a member of the Visual Effects Society of Los Angeles from which it gets projects. Crest Animation Studios Limited acquires animation business from Nest Entertainment in U.S., and has also established a wholly-owned subsidiary in Los Angeles – Rich Crest Animation. Others get business through associations, trade exhibitions, seminars, direct contacts, personal visit and client reference.

Survey participants pointed out some of the U.S. companies are outsourcing a part or end-to-end production to Indian companies while others have established presence in India (for instance, Paprikaas Animation Studios, a U.S.-based firm has set up development studio, Paprikaas India, in Bangalore). Indian companies are creating their own animated cartoons based on Indian folklore and mythology and are exporting it to countries such as the United States.

Survey participants pointed out that one of the major advantages of India is that the cost of production is much lower not only in comparison to the United States but also in comparison to countries such as Singapore, Taiwan and Korea. The cost of producing a half-an-hour animated programme in the United States is around $250,000-400,000, in Korea and

Taiwan it is around $110,000-120,000 while in India it costs approximately $60000.[40] India has a distinct advantage over China in terms of availability of low-cost, highly-skilled English-speaking manpower. Animation requires familiarity with the English language and Indians have a high degree of English proficiency and are able to understand Western humour. Quality standards of Indian products are higher than that of countries such as China.[41] A number of Indian companies have set up high-tech studios equipped with state-of-the-art hardware and software to execute overseas projects. In India, there are no barriers to import of equipment and the industry is supported by a sustained increase in domestic demand.

At present, the major part of the work outsourced to India involves 2D animation. Although India has made a mark for itself in this arena, international trends point towards 3D animation and post-production, both requires huge investment in terms of infrastructure and manpower. Indian companies felt that collaboration with U.S. companies in 3D animation would be mutually beneficial. Such collaboration would lead to the inflow of technology, finance and skill which the industry needs.

In the television segment, many Indian broadcasters have already entered the U.S. market. Doordarshan entered the U.S. market in 2005, Zee TV started its operation in 1998 and Sony Entertainment Asia was launched in the United States in 2000. Indian channels mostly cater to NRIs and South Asian population and largely concentrate on films, music and sitcoms. Since they have a niche audience base, they compete among themselves and do not face any competition from the U.S. channels. Some channels have entered into collaborative ventures. For instance, SAB TV has a joint venture with TV Asia. During the survey it was pointed out that to expand their reach to mainstream American audience, Indian channels need to enter into joint ventures (JVs)/collaborations with U.S. companies and change their programming style. Indian broadcasters pointed out that the initial cost of entering into the U.S. market is very high and collaborations would enable them to share the risk.

After India allowed foreign satellite channels in the early 1990s, a number of U.S. channels, such as MTV, CNBC TV, CNN, Cartoon Network, HBO, Discovery and TNT, have entered the Indian market. The U.S. companies pointed out that although purchasing power in India is lower than developed and many developing countries (hence prices of audiovisual products are lower), the large population base and huge untapped market provide significant scope for volume consumption. As the Indian television market is growing, U.S. channels are planning to expand their operations in India. Most of them have tied up with Indian broadcasters. For instance, to increase its distribution network, Discovery Communication India has entered into a joint venture with Sony Entertainment Television in 2003 and formed a company -- Set Discovery Private Limited. Modi Entertainment Network distributes and markets the channels for Hallmark India Private Limited. To enhance their viewership, U.S. channels have re-oriented their programmes and are telecasting India-specific programmes. For instance, MTV India playlist consist of more than 70 per cent Indian music (film and pop). CNBC Asia Pacific and Television Eighteen Indian Limited

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[40] FICCI-PwC (2005).

[41] Also discussed in, “If it’s animation, it must be India!”, www.rediff.com/money/2005/mar/16spec1.htm

(TV18) produce programmes for the dedicated Indian feed of CNBC India. TV18 also markets the channel to advertisers in India. Zee Turner manages the cable distribution for CNBC India. Cartoon Network, a channel for children owned by the U.S. company, Turner Broadcasting System Inc., is now telecasting dubbed programmes in Indian languages such as Hindi and Tamil to increase viewership. Some Indian channels such as Set Max, the Hindi movie channel of Sony Television (India) Limited, are telecasting dubbed Hollywood films.

Programmes, especially India-specific programmes, are often purchased from Indian production houses such as Balaji Telefilms. Discovery pointed out that it also purchases some programmes from Doordarshan and Film and Television Institute of India (FTII) in Pune. Some channels such as MTV India pointed out that they face strong competition from other similar Indian channels such as Zee Music, while others like Discovery have a niche market.

The U.S. companies pointed out that although their current audience base is largely confined to urban elites, with re-orientation of the programmes and increase in cable penetration in rural areas, they expect their customer base to increase. They pointed out that since the cable television segment is fragmented and highly unorganized, the number of customers and hence revenues is often under-declared. If the cable segment becomes more organized, revenues would increase in the future.

With growth in the number of channels in India and the entry of Indian channels in foreign markets, the demand for India-specific programmes has increased manifold. Production companies such as Balaji Telefilms Limited and Zee Telefilms Limited pointed out that United States is a major export market for Indian productions. Indian television producers have shown a keen interest in co-producing programmes with the U.S. companies.

There is scope for Indo-U.S. technical collaborations in broadcasting even in third country markets. For instance, Broadcast Engineering Consultants India Limited (BECIL), set up by the Government of India in 1995, has signed an agreement with Constellation Business Inc, of U.S., for establishing a television channel in Kabul on turnkey basis.[42]

In 1998, AIR started live services on Internet. With this service, it is possible to extend the coverage of AIR programmes to the United States, where signals of AIR External Service Division are not received adequately. For satellite digital radio service in India, Prasar Bharati has entered into an agreement with World Space Corporation, a U.S.-based satellite company, which helped AIR to launch a digital radio service to the Middle East and North East Africa. In January 2005, Digital Media Entertainment, a U.S. company, signed a memorandum of understanding (MoU) with Digital Broadcasting Private Limited – an Indian company, to establish 25 FM radio stations across India during 2005-06. The U.S. company will provide turnkey solutions to private operators interested in commissioning FM radio stations across the country**.**

Indian music companies and some international music companies operating in India were interviewed. Additionally, the association of music recording companies – Indian

[42] Ministry of Information and Broadcasting, Annual Report (2005-06).

Music Industry (IMI) -- provided detailed information. International companies such as Sony Music Entertainment, Virgin Records, Universal Music India Private Limited and BMG-Crescendo (India) Pvt. Ltd are also IMI members. Both Indian and the U.S. music companies pointed out that Indian music is widely appreciated internationally. The United States is a major export market for Indian music and around 40 per cent of the exports are to the United States.

Indian music is distributed in the United States mainly through physical formats such as CDs, cassettes and DVDs. During the survey, only one company - Universal Music India Private Limited – distributed music through the Internet (it has alliance with companies such as APPLE and IPOD) and cable operators (by selling music rights) along with the other modes such as sales through dealers. Times Music pointed out that it was planning to distribute music through the Internet. Some companies such as Saregama India Limited have their own office in the United States for music distribution. Since the Indian production is heavily skewed towards film music, the bulk of export constitutes of film music. NRIs constitute more than 80 per cent of the consumer base.

Some Indian music companies have entered into collaborations with U.S. companies. For instance, in 2001, Tips Industries Limited (TIL) signed a three years exclusive licensing deal with the multibillion global music conglomerate -- Warner Elektra Atlantic International Inc. (WEA). This licensing agreement gave Tips the right to manufacture and market Warner and its affiliates' -- Warner Brothers Records Inc, Atlantic Records Inc, Elektra Entertainment Group, products throughout India and in the neighbouring countries.

Opinions about the future trade with the United States varied. Times Music argued that trade would increase with new form of distribution such as Internet. Universal Music India Private Limited also felt that Indian music is gaining popularity. On the other hand, Saregama India Limited pointed out that in future there would not be substantial increase in trade because NRIs (especially younger generation) are getting more inclined towards western music.

Indian musicians, cameramen, artists, technicians, art directors and production designers have received global recognition. They generally visit the United States on short-term basis for shooting of Indian movies or for working in U.S. film/television productions on contract basis. Indian technicians pointed out that there is high demand for skills such as art directors, cinematographers and cameraman in the United States. They pointed out that there are no major entry barriers in the U.S. film industry and the service quality of Indian technicians are well-recognized and appreciated. They get their contracts to work in the United States through personal contacts, the Internet, etc. Sometimes the clients themselves approach due to the global reputation of the person. Indian artists frequently visit the United States to perform in live events. Majority of the respondents have travelled to the United States on B-1/ B-2 visas. Some had 10-year multiple-entry visas. Only one of the artists has a work permit and H-1B visa. Technicians and artists pointed out that they are sometimes appointed by the Indian producers through event management companies in India which take care of the procedure relating to visa processing. Respondents have not faced any major barriers in taking equipment to the United States. Most individuals travelling to the United

States for shooting or live performance sign their contracts in India for specific remunerations while their accommodation, travel and other expenses are taken care of by the producers. During the survey it was pointed out that when Indian movies are shot in the United States, sometimes local technicians are hired due to the union rules. A few pointed out that the technicians hired in the United States are paid better salary than their Indian counterparts. However, they could not give the exact salary difference.

Artists and event management companies pointed out that more than 70 per cent of their audience in the United States are NRIs and other South Asians constitute another 20 per cent. However, in the past few years, Indian artists are gaining popularity among wider U.S. audience which is mainly because of the growing acceptability of Indian films.

Indian event management companies such as Wizcraft World have organized events for U.S. artists in India. Wizcraft has liaison office in Los Angeles. Another company DNA Networks Private Limited has office in New York. Through these offices they host shows of Bollywood artists in the United States.

Overall, the survey found that India and the United States have trade complementarities in audiovisual services and United States would continue to be the most important export market for Indian companies. Although, both India and the United States are major exporters of audiovisual services, they hardly compete with each other in third country markets since the content and audience base is different. Even in India's domestic market, unlike European countries, where U.S. companies have a major share of the market, the share of U.S. companies is small (for example, in spite of no major restrictions on film imports the share of U.S. films is only 5 to 6 per cent in terms of revenue). Given that both India and the United States have bilateral trade interest in this sector, audiovisual is likely to be an important service sector in FTA negotiations.

3. Multilateral Liberalization in Audiovisual Services

The Uruguay Round (1986-94) of the WTO negotiations introduced services for the first time into the multilateral trading system. The General Agreement on Trade in Services (GATS), which came into force on January 1, 1995, envisages progressive liberalization of trade and investment in services through periodic rounds of negotiations. The broad framework of GATS is given in Appendix B.

The United States is a major exporter of audiovisual services and, therefore, has a strong interest in removing barriers to trade in this sector. Audiovisual services is one of the most restrictive service sectors and many important WTO member countries including EU (European Union), Australia and Canada have imposed trade barriers to protect and promote their indigenous culture and prevent competition from foreign players. The barriers include minimum quotas for domestic programmes,[43] local content requirements, restrictions on foreign ownership and cross-media ownership restrictions, among others. These countries have repeatedly raised concerns about the capability of the GATS framework to take into

[43] These include television broadcasting quotas, screen time quotas, radio broadcasting quotas, etc.

account the democratic, cultural and social aspects. They explained that audiovisual sector is largely covered by domestic regulations and normal trade rules are not applicable to these services.

Due to these reasons, only 19 countries undertook liberalization commitments in audiovisual services during the Uruguay Round of negotiations. Major players such as EU, Australia and Canada did not undertake commitments. Moreover 33 members (including the EU as one) undertook MFN (most-favoured nation) exemptions specific to this sector. Most of the MFN exemptions were related to bilateral and plurilateral co-production agreements in the film and television sub-sectors and were for unspecified duration. Some countries undertook MFN exemptions for regional funding agreements for the film and television.

Among important WTO members, only the United States undertook substantial commitments. It undertook commitments in all the six sub-sectors (Table 1.1) of audiovisual services. The United States did not impose any market access restrictions for motion picture and videotape production and distribution services. However, it retained the option (by imposing limitations on national treatment) to provide aid to the U.S. citizens and non-profit companies. It offered full commitments in motion picture projection services. For radio and television transmission services, the United States imposed the requirement of U.S. citizenship for radio and television broadcast licences. The United States also imposed a cross-media ownership restriction. This was imposed primarily for maintenance of national security, cultural integrity and for restricting anti-competitive practices. It undertook MFN exemptions in the one-way satellite transmission of DTH, DBS television services and of digital audio services for indefinite period to allow differential treatment for countries with which it has entered into reciprocity arrangements or international agreements.[44] It also reserved the right to allow the deduction for expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a U.S. market only where the broadcast undertaking is located in a foreign country that allows a similar deduction for an advertisement placed with a U.S. broadcast undertaking.[45]

India was among the few countries to undertake commitments in the Uruguay Round. The commitments, however, were very restrictive. India only made commitments in motion picture or videotape distribution services. Within this sub-category, India scheduled partial commitments in commercial presence, left Mode 1 unbound, left Mode 2 unbound due to reasons of technical infeasibility and commitments in Mode 4 was to the extent indicated in the horizontal schedule. 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 stipulated that foreign films should be certified before display in Indian theatres. There were certain conditions for such certification. The film should have either won an award or participated in any international film festival notified by the Ministry of Information and Broadcasting, or received good reviews in prestigious film journals. The

[44] Mukherjee (2002).

[45] The purpose of this exemption is to encourage the allowance of advertising expenses internationally. In practice these measures only apply adversely to Canada. (see United States Trade Policy Review, April 2006, for details)

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 also 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. Although the multilateral commitments were far below the autonomous regime at that time it had certain distinguishing features such as India did not impose any restrictions on dubbing of foreign films in Indian languages. This has enabled foreign films to expand their reach in India.

The debate on how to treat cultural goods and services continued after the Uruguay Round. The United States continued to push for multilateral liberalization in audiovisual services while EU, Canada and others opposed. Until 1998, the U.S. official position was that audiovisual service is not different from other services and, therefore, should be treated exactly like any other service sector under the GATS Agreement. However, this view changed after 1998 to accommodate some of the concerns of other member countries. The new U.S. position is reflected in its Communication to the WTO on December 18, 2000.[46] This proposal points out that the "all or nothing" approach of the Uruguay Round does not take into account the special characteristics of audiovisual services and the growing trade in this sector. The purpose of the proposal was to provide a framework for future work in the WTO that would strike a balance between promoting and preserving national cultural identity and liberalizing trade in audiovisual services. Since the late 1990s, the U.S. audiovisual industry representative, MPAA has pointed out that unlike other service sectors (such as telecommunication) where the U.S. service industries are seeking comprehensive rollback of all existing barriers, the primary aim of the audiovisual negotiations is to obtain commitments reflecting the current state of market access – "standstill commitments."[47] MPAA pointed out that some of the measures employed by countries to boost local production are not trade distorting, and where they are, the United States would negotiate for their removal. Standstill commitments would also ensure that countries would not impose new barriers in future. With the IT revolution, electronic delivery of audiovisual services increased trade in this sector. The primary focus of the U.S. negotiators now is to ensure that countries do not impose any new barriers to trade through digital network. In line with this view, the United States is actively trying to keep digital network free from cultural protectionism. The new U.S. position is reflected in its request lists to trading partners in the ongoing Doha Round of negotiations.

As members of the WTO, India and the United States are actively participating in the Doha Round of negotiations. The negotiations were initially based on a request-offer approach,[48] that is, each country made bilateral requests to its trading partners to remove barriers in areas of its export interest but commitments will be multilateral. The date for submitting requests was June 30, 2002, initial offer was March 31, 2003, and revised offer

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[46] WTO (December 18, 2000), S/CSS/W/21.
[47] Richardson (2002).
[48] Plurilateral negotiations began only after the Hong Kong Ministerial.

was May 31, 2005. Accordingly, WTO members made bilateral requests to their trading partners in areas of export interest.

Both India and the United States made requests to each other in audiovisual services. India's request covered all categories of audiovisual services listed in Table 1.1. India requested for full commitments in Mode 4, but it did not make request in any other mode. The United States made a detailed request to India. It requested India to follow the broad classification suggested by the United States and bind the existing regime in Modes 1, 2 and 3 for each sub-sector. The United States also hinted that quantitative and other restrictions on foreign content would be discussed bilaterally.

The United States submitted its revised offers in May 2005 which provided a broader coverage of audiovisual services (Figure 1.1) than in the W/120. The commitments are liberal and there are no major restrictions except that in the case of "other communication services" a single company or firm may be prohibited from owning a combination of newspapers, radio and/or television broadcast stations serving the same local market. It also stated that a foreign government; a corporation chartered under the law of a foreign country or of which more than 20 per cent of capital stock is owned or voted by non-U.S. citizens; a corporation chartered under the U.S. laws that is directly or indirectly controlled by a corporation more than 25 per cent of whose capital stock is owned by non-U.S. citizens or foreign government may not be allowed to hold radio and television broadcast licence. For motion picture production and distribution services, the United States retained the national treatment limitation that grants from the National Endowment for the Arts would only be reserved for individuals with U.S. citizenship or permanent resident alien status and non-profit companies. In its revised offer, the United States removed the MFN exemptions in one –way satellite transmission of DTH, DBS television services and of digital audio services which it had undertaken during the Uruguay Round.

India submitted its revised offer in August 2005. The revised offer in general shows significant improvements over the Uruguay Round commitments and the initial offer (submitted in January 2004). It reflected India's interest in pushing for multilateral liberalization in the service sector. Although overall this was one of the best revised offers submitted in the WTO, in the audiovisual sector there has been virtually no improvement in the offers from Uruguay Round commitments except that India removed the national treatment restrictions under Mode 3. The government defended its position on grounds that audiovisual is a sensitive sector. In fact, India's position in the current round has been very different from the Uruguay Round, where it was one of the few countries to undertake commitments in audiovisual services.

The United States has repeatedly raised concerns about the paucity of commitments in audiovisual services in the Doha Round. It expressed unhappiness about the progress of negotiation in this sector and has cautioned that the extent of market access it will allow to its trading partners is conditioned on the trading partners' offers in sectors such as audiovisual services. Along with countries, such as Mexico, Japan and Hong Kong China, the United States submitted a joint statement on the negotiations on audiovisual services to the WTO on

June 30, 2005.[49] In the statement it has been pointed out that out of 61 initial/revised offers till June 2005, only 26 includes offers in the audiovisual sector, mainly in motion picture and video tape production and distribution services and motion picture projection services (six initial/revised offers contained new offers in this sector). It also argued that opening the audiovisual market would be beneficial to the domestic industry since it would lead to inflow of new technologies, development of a multitude of new services and create an environment that would encourage investment in digitalization. The sector has spillover effects on other services sectors such as tourism. Trade in audiovisual services results in cultural exchange -- the best way to promote cultural diversity.

The progress of GATS negotiations prior to the Hong Kong Ministerial was slow. Many WTO members had not submitted their initial/revised offers and many of the offers that were submitted did not reflect the autonomous liberalization that the countries had undertaken since the Uruguay Round. The Hong Kong Ministerial Declaration outlined the need to intensify negotiations towards achieving meaningful liberalization. The Annex C of Hong Kong Ministerial Declaration pointed out that in order to achieve a higher level of liberalization, members should undertake commitments at the existing level of market access on a non-discriminatory basis across sectors of interest to trading partners for Modes 1 and 2. It also requested members to remove the existing requirement of commercial presence for offering services under Modes 1 and 2. In Mode 3, members were requested to undertake commitments to enhance the level of foreign equity participation, remove or substantially reduce economic needs tests (ENTs) and allow greater flexibility on the type of legal entity. In Mode 4, members were asked to undertake new or improved commitments on (a) Contractual Service Suppliers and Independent Professionals delinked from commercial presence and (b) Intracorporate Transferees and Business Visitors. Annex C pointed out that commitments made in these four categories should reflect removal or substantial reduction of ENT and indicate the prescribed duration of stay and possibilities of renewal. Annex C also pointed out that members should remove or substantially reduce MFN exemptions and clarify the remaining MFN exemptions in terms on scope of application and duration.

Annex C pointed out that in order to expedite the negotiations, in addition to the request-offer approach, members can enter into plurilateral negotiations in accordance with the principle of GATS and the Guidelines and Procedures for Negotiations on Trade in Services. The timeline for submitting the plurilateral requests was February 28, 2006, and revised offer was July 31, 2006. Around 35 WTO member countries participated in the negotiations. Plurilateral requests were made in 16 sectors, all four modes and in MFN exemptions. The United States along with Singapore, Hong Kong China, Japan, Mexico, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu made a plurilateral request in audiovisual services to around 27 countries, including India. The request highlighted the benefits of liberalizing audiovisual services and focused on motion picture and videotape production, distribution services, motion picture projection services, sound recording services, advertising services and other services connected with motion picture and video tape production and distribution. It did not cover radio and television segments of audiovisual services. The targeted countries have been requested to bind the existing level of openness for Modes 1 and 2, in Mode 3 remove certain barriers such as content quotas,

[49] WTO (June 30, 2005) TN/S/W/49.

foreign equity limitations, restriction on the number of suppliers and other quantitative limitations, nationality and residency requirements, restrictions of type of legal entity, discriminatory tax treatment, ENTs, among others. It also called for reduction in the scope and number of MFN exemptions in the sub-sectors mentioned in the plurilateral request and clarification of the remaining MFN exemptions in terms on scope of application and duration in line with Annex C of Hong Kong Ministerial Declaration. It pointed out that certain flexibilities in terms of subsidies, co-production agreements, etc. would be discussed during the course of the plurilateral negotiations.

A plurilateral request for removal, reduction and clarification of MFN exemption on audiovisual services was made by China, Hong Kong China, Japan, Mexico and Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to countries such as India. Since the issue of MFN exemptions is also discussed under the plurilateral request in audiovisual services, the co-sponsors of this request pointed out that they would pursue the negotiations under the plurilateral negotiation on audiovisual services.

India, too, actively participated in drawing up the plurilateral requests and was the coordinator of plurilateral requests in Modes 1 and 4. The requests were made to a large number of countries including the United States. In the plurilateral request on Mode 1 the requesting countries provided a list of sectors/sub-sectors in which they would want their trading partners to undertake full market access and national treatment commitments. Audiovisual services was not covered in the list. While the Unites States is very keen to liberalize trade through Mode 1 in audiovisual services, India did not undertake any commitments in its revised offer. The United States, on the other hand, offered full commitments in Mode 1 except that for motion picture and video tape production services grants from the National Endowment for the Arts are only available for U.S. citizens or individuals with permanent resident alien status and non-profit companies.

The plurilateral request in Mode 4 focused on new improved commitments in CSS (contractual Service suppliers) and IP (independent professionals) delinked from commercial presence. It also provided a list of service sectors/sub-sectors where requesting countries would want greater market access for CSS and IP in Mode 4. Audiovisual services is not covered in that list.

The Doha Round of negotiations were temporarily suspended on July 24, 2006, after the talks in agriculture (market access and domestic support) and NAMA (Non-Agriculture Market Access) between six major members – Australia, Brazil, the EU, India, Japan and the United States broke down on July 23, 2006. Hence the revised offers were not tabled on July 31, 2006. There were two rounds of plurilateral discussions prior to the suspensions of the Round. The discussions focused on exchange of information on the policy regimes of different countries, clarification of doubts and explanation to what extent the request can be met among others. During the discussions, India pointed out that it will be able to meet the plurilateral requests in audiovisual services. This is despite the fact that the sector is unilaterally liberalized, there are no major entry barriers and India's export of audiovisual services is increasing. Since the United States has significant interest in liberalizing trade in this sector, India could have bargained for greater market access in Modes 4 and 1 and in return bind the unilateral liberalization.

Although the multilateral negotiations have resumed on February 7, 2007, this is likely to be a low ambition round and there will not be substantial liberalization in the audiovisual sector. Given that India is not willing to liberalize this sector multilaterally due to cultural sensitivity, there is significant scope for the United States to gain greater market access bilaterally. Indian audiovisual service providers also face several barriers in the U.S. market which can be addressed bilaterally.

4. Audiovisual Services and Bilateral Liberalization

The failure of the Uruguay Round to achieve meaningful liberalization and the slow progress of the Doha Round prompted WTO members to enter into bilateral/regional agreements with like-minded trading partners to improve/enhance the speed of liberalization. In the past few years, the United States has signed several bilateral agreements – both with developed and developing countries, and is in the process of negotiating many more. India, too, is in the process of negotiating bilateral/preferential/regional agreements and has signed the Indo-Singapore CECA on June 29, 2005. These agreements are in the form of "New Age FTAs" which goes beyond just merchandise trade liberalization to encompass liberalization of services trade and investment among others. Four U.S. FTAs (U.S.-Chile in December 2002, U.S.-Singapore in February 2003, U.S.-Australia in February 2004 and U.S. Morocco in March 2004) have been studied to understand how audiovisual sector has been treated in FTAs. An appropriate mix of U.S.-FTAs with developed and developing countries are selected to understand how the extent of bilateral liberalization varies with their levels of development. The analysis of U.S.-FTAs would also give some idea about U.S. negotiating stance in FTAs and what it is likely to ask India in an FTA negotiation.

Audiovisual services is a key area for negotiations in all U.S. FTAs. Unlike WTO, where the four U.S. FTA partners - Australia, Morocco, Singapore and Chile -- have expressed reservations in offering commitments in this sector, the United States has been successful in getting liberalization commitments in its bilateral agreements.[50] An analysis of U.S. FTAs show that it is difficult for countries to sign an FTA with the United States without making substantial commitments in audiovisual sector. Even a country such as Australia, which has expressed significant reservations in opening up the sector multilaterally, has made substantial commitments in its bilateral FTA. The United States agreed to enter into FTA talks with Korea only after the latter agreed to scrap the screen quota system, requiring local cinema to project a minimum number of hours of Korean films.[51]

The treatment of audiovisual sector in the four U.S. FTAs is more or less similar and reflects the strategy of the United States to keep digital network free of cultural protectionism.[52] In fact, the U.S. Congress enacted the "Bipartisan Trade Promotion Authority Act of 2002" which gave fast-track authority to Executives[53] to conclude free trade

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[50] Roy, Marchetti & Lim (2006).
[51] http://www.bilaterals.org/IMG/pdf/Overview.pdf.
[52] For details see Bernier (2004).
[53] Fast-track is a grant of constitutional authority from the U.S. Congress to the Executive branch to regulate trade treaties with foreign countries.

agreements with the instructions, among other things, to conclude trade agreements that anticipate and prevent the creation of new trade barriers that may surface in the digital age environment.[54]

One of the important differences between GATS and U.S. FTAs is that the latter follows a negative list approach while GATS has a positive list approach. Under positive list approach, the negotiating countries list down the sectors which they have agreed to liberalize and then state the level of liberalization. On the other hand, in a negative list approach, all parties are bound in all sectors of services, except to the extent that they have inscribed reservations or exceptions in their list or schedule. In GATS, many countries have offered limited commitments in audiovisual services. However, under the negative list approach, U.S. trading partners have to clearly give reasons for excluding the concerned sectors/sub-sectors and also state their existing levels of restrictions. The negotiations then focus on the excluded sectors. As a consequence, all U.S. FTAs covered audiovisual services, with some reservations.

In the four FTAs, it has been accepted that existing financial support or subsidies for culture and content production need not be dismantled. The United States only requested for dismantling of trade distorting subsidies and other financial support schemes. Trading partners are free to give subsidies for cultural protection. Many WTO member countries heavily subsidize their audiovisual sector and although the multilateral discipline on subsidies in GATS is still evolving, it is a subject of great concern. As of now, subsidy in audiovisual sector under GATS is covered by national treatment exemption or MFN (Article II) exemption. As mentioned earlier, the United States, too, has taken a national treatment exemption.[55] By allowing its trading partners to give subsidy, U.S. FTAs have taken care of one of the major concerns of its trading partners.

The United States and its trading partners have clearly listed the existing trade barriers. The United States has few reservations and it is largely the same across the four FTAs. They are essentially intended to preserve the right of the United States to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access or national treatment with respect to one-way satellite transmission of DTH and DBS television services and digital audio services. They have also stated reservation concerning the right to restrict ownership of radio licences for all communications by radio, including broadcasting. The trading partners, on the other hand, have imposed several reservations. The extent of restrictions varies across countries, with Singapore being the least restrictive. The United States did not pressurize its trading partners to eliminate existing regulations that discriminate against foreign content through traditional technologies such as broadcasting or the cinema. Rather trading partners have been asked to schedule their existing audiovisual regulations and thus freeze them at a particular level. The United States has requested for commitments on new audiovisual services such as video-on-

[54] Wunsch-Vincent (2003).

[55] Grants from the National Endowment for the Arts are only available for individuals with U.S. citizenship or permanent resident alien status and non-profit companies.

demand and new form of content distribution.[56] Overall, in its FTAs, the United States has been more interested in securing openness for future developments in digitally-delivered content.

Among some important reservations by trading partners, Chile, has a local content requirement which states that programmes broadcasted through public (open) television channels should include up to 40 per cent of Chilean production. In Chile, the owner of a social communication medium such as sound and image transmissions or a national news agency has to meet nationality and residency requirements. Among other measures, Chile and Morocco reserve the right to adopt or maintain any measures that accords differential treatment to countries under any existing or future bilateral or multilateral international agreement with respect to cultural industries, such as audiovisual cooperation agreements. Australia has an elaborate and complex list of reservations. Australia reserved the right to adopt or maintain co-production agreement for films and television productions. It retained its existing commercial television quota (55 per cent of programmes to be Australians and minimum amount of sub-quotas for adult and children dramas and documentaries), its existing content quota for commercial radio (up to 25 per cent) and its existing requirement that subscription television broadcasting (pay TV) spend 10 per cent of programme budget of drama and general entertainment channels on new Australian drama. In investment, Australia preserved the existing broadcast and newspaper limits on foreign investments. In U.S.-Morocco agreements it is stated that in order to be established in Morocco, production companies must be organized as corporations or limited-liability companies with capital fully paid, and that a production company engaging in executive production must comply with certain conditions such as having produced, as an enterprise established in Morocco, at least one feature-length film or three short films turned in Morocco.

If one compares the plurilateral request in the Doha Round with what U.S. FTAs have achieved, commitments secured by the United States in its FTAs far exceeds that what is demanded in the plurilateral request since the latter does not even touch upon television/radio-related services.

There is a close relationship between delivery of audiovisual services and copyright issues. Internet piracy is the single biggest impediment to the growth of digital delivery of audiovisual services. Through its FTAs, the United States tries to ensure the full implementation and enforcement of TRIPS (Trade-Related Aspects of Intellectual Property Rights). The purpose of FTA negotiations is to ensure that (a) any trade agreement governing intellectual property rights reflect a standard of protection similar to that found in the U.S. law, specifically the Digital Millennium Copyright Act of 1998 (Appendix C); (b) the standard of protection and enforcement should keep pace with technological developments, and in particular ensure that right holders have the legal and technological means to control the use of their works through the Internet and other global communication media and to prevent the unauthorized use of their works; (c) the trade agreement provide strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property. The United States strongly recommended the adoption of the two WIPO (World Intellectual Property Organization)

[56] Wunsch-Vincent (2003) and Roy, Marchetti & Lim (2006).

treaties – the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (they are known as the WIPO Internet Treaties), in its FTAs.

There are six main principal international treaties that provide protection for audiovisual services. These are the Berne Convention for Protection of Literary and Artistic Work, Brussels Convention, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, Rome Convention and Geneva Phonograms Convention. These are discussed in Appendix C. The United States is a signatory to five of these treaties (with the exception of Rome Convention). Among its trading partners, Australia has signed the four treaties and would sign the two WIPO treaties as part of its commitment in Australia-Singapore FTA by mid-2007. Chile has signed all except Brussels Conventions while Morocco is a signatory to Brussels and Berne Convention only. Singapore has signed the Berne Convention and the two WIPO Internet Treaties. A close analysis of FTAs shows that the U.S.-Chile and U.S.-Singapore FTAs satisfied all U.S. digital trade objectives. Both these FTAs have ensured strongest measures of intellectual protection and copyright enforcement. WIPO Internet Treaties have been implemented, including strong prohibition against circumventing technological measures that protect copyrighted works against unauthorized access and copying. Copyright owners, including record producers have been given exclusive rights to make their works available online. Recent trends in copyright law have also been incorporated in the agreement, including the extension of the term of protection under copyright from life-of-the-author plus 50 years to life-of-the-author plus 70 years. For audiovisual works and sound recordings, Chile and Singapore have extended the term of protection from 50 years from publication to 70 years. In fact, commitments on intellectual property rights in the U.S.-Chile Agreement go well beyond WTO provisions.

The India-Singapore CECA was signed on June 29, 2005, and became effective on August 1, 2005. There are distinct differences between U.S. FTAs and CECA. This agreement was based on positive listing of sectors and followed a request-offer approach similar to GATS. Both India and Singapore offered commitments in a wide range of services – India in 9 sectors and Singapore in 12 sectors. However, their offers in audiovisual services are very limited. India's commitments in CECA are more restrictive than those in its revised offer in the Doha Round (August 2005). Singapore's commitments in CECA are less than what it has offered in U.S.-Singapore FTA. Overall, commitments in audiovisual services in CECA are much lower than what the United States expects from its trading partners.

The uniqueness of CECA is that it has a separate chapter on cooperation in media. Recognizing that cooperation in media may offer avenues for economic and cultural exchange, India and Singapore proposed to cooperate in the field of media such as print, film and broadcasting through exchange of views and information between the regulatory authorities of both the countries. The cooperation also includes leveraging each other's competitive strength to develop content and service for the global market, encourage the marketing of each other's media content globally, education and training of media executives, facilitation of co-production of television content/films among others.

5. Indo-U.S. Bilateral Negotiation – Audiovisual Services

This section discusses the barriers faced by U.S. audiovisual service providers in India and Indian audiovisual service providers in the United States. It also analyses what India and United States are likely to ask each other during the proposed FTA negotiations, and India's possible response to U.S. demands.

5.1. Barriers Faced by U.S. Audiovisual Service Providers in India

During the survey, the U.S. companies were asked about the barriers that they face in India. Some of these barriers are common across all or some segments of audiovisual services whereas others are specific to each sub-sector. Some of these barriers have also been raised in the United States Trade Representatives (USTR) "Report on Foreign Trade Barriers," which is published annually. It is likely that during FTA negotiations, the United States would push for the removal of these barriers, many of which are related to domestic reforms. Even the Indian audiovisual service providers face some of these barriers which adversely affect their global competitiveness.

Piracy is one of the main barriers faced by both Indian and U.S. companies.[57] Piracy has adversely affected the revenue of the film and music segment. The U.S. industry estimates show that, U.S. copyright industry (motion pictures, sound recordings and musical compositions, computer programmes and books) lost sales worth around $500 million in the year 2003-04 due to piracy in India.[58] During the survey it was pointed out that the domestic music and film industry lose as much as 40 per cent of their revenue due to piracy. In the film segment, bulk of the piracy is due to illegal transmission of pirated VCDs or DVDs through the unorganized cable network. The U.S. companies pointed out that pirated VCDs and DVDs of the U.S. movies are available for sale and are displayed through the cable network even before their release in theatres. This leads to a loss in revenue for the entire audiovisual industry including films, home video and television.

U.S. companies pointed out that India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine whether optical disc legislation is necessary are now underway.[59] Survey participants pointed out that Indian Copyright Law is of international standards but it is not implemented properly. The Copyright Act has been amended many times – 1983, 1984, 1992, 1994 and 1999 -- in response to technological developments. In fact, the 1999 amendment made the Act fully compatible with TRIPS Agreement. To reduce piracy, the Cable Television Networks (Regulation) Act was amended in the year 2000 making it mandatory for cable operators to secure copyright of all programmes they telecast, notably films. However, in practice it is very difficult to implement these Acts. Given the quasi-federal nature of the government, the enforcement of the Act is the responsibility of the state governments. Some states (such as Tamil Nadu's Goonda Act) have taken various steps to curb piracy while others are far behind. Moreover, enforcing agencies such as police, local bodies and municipalities are not

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[57] This has also been raised in USTR (2006).
[58] USTR (2005).
[59] This is also mentioned in USTR (2006).

fully aware of the copyright-related issues nor have the adequate infrastructure to effectively enforce IPR (Intellectual Property Rights) laws. Cable industry in India is highly fragmented and unorganized which makes it impossible to monitor the content delivered through cable network. Some other enforcement problems include low public awareness, convictions are few, cases take a long period in the courts and deterrent punishments (such as imprisonment up to three years provided in the copyright law) are rarely awarded.

In its FTAs, the United States has been pushing for adequate and effective copyright protection. It has also asked its trading partners to sign the two WIPO treaties which India has not signed. For many years a “core group” of the government officials, local industry representatives, academics and lawyers has been discussing amendments to the Indian Copyright Act which would enable the country to implement these treaties. However, the necessary legislation is yet to be implemented. Moreover, IPRs related to programme production and broadcasting are not clearly defined in India. 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. It is likely that United States would raise all these issues during the negotiations.

The U.S. companies raised the issue of regulation in the broadcasting sector. They pointed out that a series of bills in this regard have been proposed resulting in an uncertain environment for companies operating in this segment. In 1997, the government introduced the Broadcasting Bill which proposed to establish an autonomous Broadcasting Authority for the purpose of facilitating and regulating broadcasting services in India. This bill intended to have some control over foreign channels but was not passed by the Parliament. The next attempt was the introduction of Communication Convergence Bill 2001 on August 31, 2001, to promote and develop audiovisual, telecommunication and information technology sectors in an environment of increasing convergence of technologies, services and service providers. The bill envisages the creation of an independent body – the Communications Commission of India (CCI) in the line of FCC (U.S.) – to promote, facilitate and develop in an orderly manner the carriage and content of communications.[60] This Bill lapsed due to the dissolution of the 13th Lok Sabha. In January 2004, TRAI was given the responsibility to regulate the broadcasting and cable sector. As a regulator, TRAI makes recommendation but does not have the authority to implement them. The Ministry of Information and Broadcasting is responsible for the implementation. This dilutes the power of TRAI. Also, TRAI does not have the licensing authority and content is not in its jurisdiction.

More recently, the Ministry of Information and Broadcasting has proposed a Broadcasting Services Regulation Bill (2006) which aims to provide the framework for regulating the broadcasting sector – both carriage and content. It also proposes to establish an independent authority – the Broadcasting Regulatory Authority of India -- for regulating and facilitating development of broadcasting services in India. If implemented this would repeal the existing Cable Television Networks (Regulation) Act of 1995. The U.S. companies expressed various reservations against this Bill. They argued that this Bill does not clearly

[60] See Mansukhani (2006) for details on different regulations.

mention whether the Broadcasting Authority will be "autonomous." If the members of the Broadcasting Authority are appointed by the central government, it would be difficult for the authority to be non-partial. The Bill also refers to a minimum domestically sourced content in foreign channels to promote indigenous audiovisual industry. Although U.S. companies are sourcing content domestically, they found this to be a restrictive condition. Both Indian and foreign broadcasters expressed strong reservations against the restrictions on content which the Bill proposed. Moreover, the Bill proposed not only to cover television content but also films. Survey participants pointed out that industry should be self-regulated. They argued that with technological development it would be difficult, if not impossible, to have separate regulators for the telecommunication and broadcasting sector and the government should take this into consideration before coming up with piecemeal regulations.

Barriers in specific segments of audiovisual services are given below:

5.1.1. Film

The U.S. producers and distributors pointed out that unlike Hollywood, a large part of the Indian film industry is unorganized and lacks professionalism and transparency in accounting. This makes it difficult for them to invest in film sector and enter into co-production agreements.

The U.S. distributors and MPAA pointed out that although there are no major barriers to film imports, Indian Customs Department often imposes various restrictions. For instance, the film importing company has to provide a declaration on a stamp paper that the imported film does not contain any illegal/pornographic material together with a synopsis of the film. Moreover, the customs duties are high because the Indian Customs Department often overvalues the cost of prints. Due to overvaluation, the overall cost increases, thereby adversely affecting the distribution process. Although the Indian government allows the import of merchandise/promotional material, U.S. companies are experiencing difficulties in importing film/video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions.[61]

Some U.S. and Indian companies questioned the power of the Central Board of Film Certification (CBFC). They pointed out that even if a film is approved by CBFC, it sometimes 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. They also complained that the process of getting the film certified is time-consuming.

Both the U.S. and Indian companies complained about the high entertainment tax. This is levied on the theatre tickets and leads to a hike in prices which, in turn, deters people from watching films in theatres. India has one of the highest levels of entertainment tax among Asian countries. Moreover, since this tax is administered by state governments, it differs from state to state. Till a few years back, the tax in some states was as high as 150 per cent and varied from 14 per cent to 150 per cent across different states. In 2001, the central

[61] This has also been raised in USTR (2006).

government, after discussion with the state ministers, had 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, most of the states did not decrease their tax rates. In April 2005, during the 25th Conference of States and Union Territories Ministers for Information and Cinematography (SIMCON), all the states agreed to work towards reducing the entertainment tax to around 25 to 30 per cent.[62] Some states have different rate of taxes for dubbed movies. For example, in Tamil Nadu, tax charged on local Tamil movie is around 15 per cent while that on dubbed movies is around 50 per cent.

Both the U.S. and Indian companies pointed out that the government often takes ad-hoc decisions. For instance, in 2005 the Indian government banned smoking scenes in movies and television broadcasts. All films predating the ban with offending scenes have to run health warnings across the bottom of the screen. This was done at the initiation of Ministry of Health even without the prior consent of Ministry of Information and Broadcasting – the nodal ministry in this sector.

The U.S. companies pointed out that the number of exhibition theatres/screens in India is far below than what is required to cater to the Indian audience. Moreover, the quality of infrastructure, such as seating facilities, audio systems, etc. is far below the global standards. Though multiplexes are coming up, their growth is slow (especially in non-metros). Moreover, there is a strong demand for India-centric movies and domestic production is large. All these factors make it difficult for U.S. distributors to get an outlet for displaying their films. In some exhibition theatres the box office earnings are not recorded properly. When asked whether they would be interested in investing in exhibition theatres, U.S. companies pointed out that multiple taxes[63] together with high property prices in metros such as Delhi and Mumbai act as a disincentive for foreign investment in theatres/exhibition halls.

The U.S. companies pointed out that although India has varied topography and beautiful locations, the country has not been successful in marketing itself as an important shooting location. They pointed out that foreign companies face various barriers while shooting in India. First of all, there is a requirement of prior clearance of script. Foreign companies have to submit details of the members of the filming team and their travel itinerary to the Ministry of Information and Broadcasting and the clearance process is time consuming. In case of shooting in sensitive areas such as Jammu and Kashmir, North-Eastern India or border belts the approval is given in consultation with the Ministry of Home Affairs and this takes even longer time to be cleared than a normal application. The most restrictive requirement is that the shooting should be done is presence of a Liaison officer who is provided by the Ministry of Information and Broadcasting. The role of the Liaison Officer is to ensure that nothing detrimental to the image of India or the Indian people is shot or included in the film and enable the team to get local permission. Often this has resulted in

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[62] *Deccan Herald,* "States, UTs agree to cap entertainment tax at 30 per cent," http://www.deccanherald.com/dccanherald/april172005/national1825152005416.asp

[63] These include new release tax, show tax, service tax and various other incidental taxes such as municipal and property tax.

cases of bribery and corruptions since the foreign film producers are highly dependent on the Liaison Officer.

5.1.2. Post-Production/Animation

The U.S. companies pointed out that India has comparative advantages in offering post- production, animation, graphics, and special effect services. However, there are various barriers which are affecting the ability of the industry to expand. The cost of infrastructure is very high compared to other countries such as China. IPR regulations are not strictly enforced. There are only a few visual art schools and training institutes. This creates shortage of specific skills such as 3D animators. Some companies (for example, Maya Entertainment Limited) have set up in-house training facilities. The number of studios is far less in India compared to competing countries such as South Korea. Some companies are facing financial difficulties. Public sector banks are not very keen to give loans to multimedia companies. Unlike software, these companies have not been successful in getting venture capitalist funding.

Survey participants pointed out that the animation industry is disorganized, Indian companies are slowly getting exposed to international market and no Indian studio has so far been successful in fully integrating all segments of the value chain to offer large-scale end-to-end services to its clients. While globally, there is a trend towards 3D animation, most Indian companies concentrate on 2D animation because they do not have the financial resource to make requisite investment for 3D animation. Some Indian companies do not adhere to international quality standards. When outsourcing of animation work first started in 1990s, Indian players concentrated more on quantity than on quality. With increasing competition from countries such as China and Philippines, it is important to ensure that the quality of Indian animators meet the global standards. Some Indian companies fail to adhere to strict time deadlines.

5.1.3. Television

U.S. broadcasters/channels face several barriers in India. An important market access barrier raised during the survey is the monopoly of Prasar Bharati over terrestrial broadcasting network. India's terrestrial broadcasting network is one of the largest in the world and this restriction prevents both private and foreign broadcasters from reaching a wider audience by using the existing infrastructure. Respondents argued that Doordarshan is not making adequate investment in terrestrial broadcasting network and, due to this, even all Doordarshan channels cannot be transmitted through this network Also, the terrestrial transmission of Doordarshan is primarily in analogue mode while in most developed countries it is in digital mode. The U.S. broadcasters argued that government should allow private investment in terrestrial broadcasting.

Both foreign and domestic private channels are unhappy about the preference shown to public broadcaster – Doordarshan. For instance, on October 20, 2005, Cabinet approved that private channels must share the feed of cricket and other sporting events of national importance with Prasar Bharati. It means that no private channels will be allowed to carry live broadcast of any event unless Prasar Bharati has been offered the terrestrial and DTH broadcasting rights for the same event. Further, the "Policy Guidelines for Downlinking of Television Channels" announced by the Ministry of Information and Broadcasting in November 2005[64] makes it mandatory for channels downlinking into India to share cricket rights[65] with Doordarshan on a revenue-sharing basis.

Another issue raised by U.S. companies is that a foreigner, firm with foreign partners, and company not incorporated in India, is not permitted to hold a licence for providing broadcasting services. In cable television, FDI is limited to a maximum of 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 stations/hubs and provide uplinking services. Although, India has significantly liberalized the uplinking policy, there are still certain restrictions on foreign investment. The applicant seeking permission to set up an uplinking hub/ teleport or uplink a TV channel or uplink facility by a news agency should be a company registered in India under the Indian Companies Act of 1956. In order to set up uplinking hub/teleports the foreign equity holding cannot exceed 49 per cent. For uplinking a news/current affairs TV channel, the foreign equity holding FDI/FII/NRI investment cannot exceed 26 per cent. For news channels, operational control of the editorial content must be in Indian hands. News agencies are permitted to have their own uplinking facilities if they are 100 per cent Indian owned with Indian management control, the company/agency has to be incorporated in India and accredited by the Press Information Bureau (PIB) of the Ministry of Information and Broadcasting.[66]

The U.S. companies found the "Policy Guidelines for Downlinking of Television Channels" to be restrictive. As per these guidelines, channels downlinking into India have to be registered in the country under the Indian Companies Act of 1956, irrespective of their equity structure, foreign ownership or management control. The company must have a commercial presence in India. Also, they must have a minimum net worth of Rs. 1.5 crore in case of a single channel and Rs. 1 crore for every additional channel. It mandates that news and current affairs channel downlinking into India cannot carry advertisements aimed at Indian viewers. Also, such channels have to be the standard international channel and should not be designed specifically for Indian audiences. All channels downlinking into India must subscribe to the Programme and Advertisement Code prescribed under the Cable Television Networks (Regulation) Act of 1995. In spite of their reservations against these guidelines, the survey found that most U.S.-based channels are adhering to these guidelines.

The U.S. companies pointed out that operation of DTH services is subject to several restrictions. A company applying for a DTH licence should be registered under the Indian Company Act of 1956. Total foreign investment (FDI/NRI/OCB/FII) has been restricted to 49 per cent and within this limit the FDI component cannot exceed 20 per cent. The applicant company should have Indian management control with majority representatives on the board

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[64] Ministry of Information and Broadcasting, "Policy Guidelines for Downlinking of Television Channels", November 2005, http://mib.nic.in/informationb/CODES/downlinkchannel.htm.

[65] All matches featuring India and the finals and semi-finals of international competitions.

[66] For details, see Ministry of Information and Broadcasting, "Guidelines for uplinking from India," http://mib.nic.in/informationb/CODES/UG-0112-secy.doc

as well as the chief executive of the company being a resident Indian. In order to ensure that programmes/channels distributed through the DTH platform comply with the Indian Programme and Advertisement Code, it is mandatory that these should be uplinked from India. To prevent monopoly, 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 licence period. The U.S. companies pointed out that the restrictions on cross-media ownership would prevent convergence. Moreover, in an era of technological convergence, telecommunication and broadcasting platforms (DTH) should have same FDI limits (that is, 74 per cent). The survey also found that the licence fees, taxes and other charges for DTH are not comparable with other platforms such as cable television services, which makes investment in this sector non-viable.

A major barrier faced by both U.S. and domestic channels is that cable industry in India is highly fragmented and unorganized. There is no monitoring agency for cable operators and they often underreport the subscriber base. In fact, cable operators sometimes declare only 15-20 per cent of their paid connectivity to MSOs and broadcasters.[67] Due to this, broadcasters and MSOs suffer huge revenue losses. In the current system, cable operators enjoy a commanding position in the distribution network. The revenue model is skewed in their favour. The entire collection of subscription revenue is cash-based and therefore cable operators can evade taxes. Although, there has been some consolidation and the industry is getting organized with MSOs such as Incablenet, Siticable, Asianet, Hathway cable and Datacom buying over the small local cable operators (LCOs) and setting up integrated network, the process is slow. Unlike other countries where consumers' pay only for the service that they want to access, in India consumers have limited choice. They have to pay the cable operator a flat rate which varies from area to area, operator to operator. The government has been trying to implement the conditional access system (CAS) to bring addressability in this sector. However, the process on implementation has been very slow due to inadequate infrastructure (unavailability of set-top boxes), confusion relating to pricing issues, etc.

The U.S. broadcasters pointed that the network capacity of the cable operators is very limited. Network has been upgraded only in metro cities (with operators setting up Hybrid Fibre Coaxial [HFC] networks and 750/860MHz networks). The number of channels shown in metros varies from 80 to 90 in Mumbai, 60 to 70 in Delhi, Bangalore and Hyderabad, while in smaller towns it varies from 25 to 45 depending upon the capacity of networks.[68] To encourage more and more channels into the country, capacity of operators needs to be increased. There is urgent need for more investment in broadband infrastructure and cable industry should club broadband with their cable services. However, multiple licensing and time-consuming clearance process deters investment in broadband infrastructure.

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[67] http://www.zeetelevision.com/pdf/contact/Whitepercent20Paperpercent20Indianpercent20Cablepercent20and percent20Satellitepercent20Industry.pdf

[68] http://www.zeetelevision.com/pdf/contact/Whitepercent20Paperpercent20Indianpercent20Cablepercent20and percent20Satellitepercent20Industry.pdf

Both Indian and U.S. companies have raised the issue of inconsistency of taxes. They argued that while government has imposed service tax on electronic media, print media is not subject to this tax.

The U.S. companies pointed out that advertising revenue is very low in India and this slows the growth of audiovisual sector. They also referred to the restrictions on advertising. Although Doordarshan had a strict advertisement and programme code prior to August 2000, this was not applicable to private/foreign broadcasters. In August 2000, the Indian Parliament passed the Cable Television Networks (Regulation) Amendment Bill, which made it mandatory for all foreign and domestic satellite channels distributed through the cable network to abide by the country's programme and advertising code. As per the new regulation, advertisements related to the promotion of alcohol, baby food, tobacco products, etc. are not permitted in channels distributed through the cable network. The restriction on advertisements of certain products makes it difficult for channels to earn high advertisement revenue.

5.1.4. Radio

The U.S. companies raised several issues regarding India's radio privatization policy. Total foreign investment is limited to a maximum of 20 per cent (including FII) and is subject to certain conditions. Private FM channels are not allowed to air news and current affairs programmes. As per the Phase II liberalization policy, which was announced on July 13, 2005, every applicant is allowed to run only one channel per city provided the total number of channels allocated to the entity is within the overall ceiling of 15 per cent of all allocated channels in the country. This kind of restriction would compel the channels to compete for listeners with similar populist fare rather than come up with creative programming.

The process of liberalization is slow. In the first phase of liberalization, a total of 108 frequencies in 40 cities were made available for bidding, out of which services started only in 14 cities. In the second phase, 337 channels in 91 cities have been made available for bidding by Indian private companies. As part of this process, the government has so far allotted stations to 58 bidders in 13 cities. Respondents argued that India, with its vast cultural and geographical diversity, can easily accommodate 3,000 FM stations. The United States, which is a far more homogenous market, has over 14,000 radio stations. Even a small country like Philippines has over 350 radio stations (90 per cent of it is privately owned). By limiting the number of channels, the government is limiting the choice available to consumers.

As of now, World Space is the only satellite radio player in India, providing around 40 radio channels.[69] Only a small fraction of the population is availing the service. Survey participants pointed out that satellite radio has a good market in India but has not taken off due to various reasons.[70] First, the radio set for satellite radio is quite costly compared to ordinary AM/FM sets. Some of the channels are pay channels so there is considerable amount of recurring expenditure. The most important barrier is that a listener cannot get local

[69] World Space came to India in 2003.
[70] Also see, TRAI (December 29, 2004), "Consultation Paper on Issues Relating to Satellite Radio Service."

news and announcements on weather or traffic conditions in his city. He can only listen to international news from channels such as CNN and BBC. Another drawback is that the receiver is specific to World Space broadcasts as the channels are coded. So if this service suddenly closes down, then the set becomes useless. Also, if other players enter the Indian market, then new set has to be bought to receive their services. To take care of all these problems as well as encourage new players, there is need for proper government policy regarding satellite radio in India. However, till date, there is no policy or regulatory framework in place.

The U.S. companies pointed out that although government opened up the Community Radio Broadcasting in December 2002 by announcing a new policy under which Community Radio Licences are granted to educational institutions/organizations which are recognized by the central government or the state government, the process of expansion of community radio is very slow due to various reasons. The licensing process is very complex. The application procedure is time-consuming and clearances have to be obtained from various ministries/departments such as the Ministry of Home Affairs, Ministry of Defence, Ministry of Human Resource Development and Ministry of External Affairs. Although there is no licence fee, the licensee has to furnish a bank guarantee and pay spectrum usage fee. Since only education institutes are allowed to operate this service, non-government organizations and development agencies cannot avail this facility. Moreover, community radio stations are not allowed to generate revenue through commercial advertisements or broadcast any news or current affairs programme.

5.1.5. Music

As discussed earlier, a major barrier faced by both United States and domestic music companies is piracy. During the survey it was pointed out that the volume of piracy is rising even though the price of legitimate products is falling. According to industry estimates, in 2005, piracy was estimated to be Rs. 4.3 billion, which accounted for 43 per cent of the music industry's total revenues (Rs. 10 billion).[71] During the survey it was pointed out that high price of original CDs and cassettes, lack of consumer awareness and poor enforcement of laws are main reasons for piracy. Digital piracy is rising in India with increase in PC penetration and growing popularity of downloading in MP3 format. Digital Piracy is also fueled by the import of a large number of CDs from countries such as Taiwan.

For the U.S. companies one of the major barriers to market expansion is the high demand for Indian music -- especially film music and low penetration of CDs. Sale of music CDs is profitable because gross margins and recovery rates for CDs are higher than that of cassettes. CD penetration is low in India due to high CD prices.

5.2. Barriers Faced by Indian Audiovisual Service Providers in the United States

The U.S. is one of the most liberalized markets for audiovisual services and there are only a few entry barriers. Indian audiovisual service providers frequently travel to the United

[71] CII-KPMG (2005).

States for various purposes such as shooting of a film, for performing in live entertainment shows, working for an U.S. company, etc. and a major barrier faced by them is getting work permits and visas. The application process is time consuming – sometimes application has to be made more than three months in advance. Often visas are rejected without valid reasons. Indian technicians and helpers have a high chance of visa rejections since they often fail to provide all the requisite documents. To avoid rejections, the company sponsoring them has to give a letter of guarantee for them. Moreover, it is very difficult to extend the period of stay in the United States. This is extremely problematic for those traveling to the United States for shooting.

The survey also found that there is a general lack of awareness about the different type of visas available for audiovisual service providers travelling to the United States and how one should apply for it. The United States has special visas for audiovisual service providers. "O" visa is given to a person who has extraordinary achievement in the field of motion picture or television to work or perform in the United States. The initial period of stay is three years and this can be extended. Only large companies such as Dharma Production have availed this visa. Artists, entertainers and athletes recognized at an international level, artists and entertainers performing under a reciprocal agreement between the United States and their country, or artists and entertainers whose performances are considered culturally unique are all eligible for "P" visa. Foreign-based entertainment groups that are recognised internationally are generally given this visa. Participants in international cultural exchange programmes approved by Attorney General for the purpose of providing practical training, employment and the sharing of history, culture and traditions of the one's home country are eligible for "Q" visa. The U.S. visa rules state that athletes and entertainers who do not qualify in the O or P categories can seek H-1B visa. The H-1B visa covers two types of temporary employment – those in speciality occupations that require college or advanced degree at minimum entry-level and artists, entertainers, athletes and fashion models of distinguished merit and ability along with persons assisting in their performances. The visa category for the latter is known as H-1B3. Spouses and children of H, O and P (not Q) visa holders are eligible to accompany the principal applicant so long as the principal applicant is able to show that he/she will be able to support his/her family while in the United States. During the interview, it was found that the application process for H-1B visa is very laborious and time-consuming.

In order to avoid delays, Indians often apply for B1/B2 visas which are given for visiting the United States temporarily for business and pleasure (B1 is for business and B2 for pleasure/medical treatment). Majority of the survey participants applied for B1/B2 visas and spoke of the delays and difficulties in getting these visas.

Piracy is another major problem in the U.S. market. With increase in DVD penetration optical disc piracy is increasing in the United States. Pirated products manufactured in other Asian countries (such as Malaysia and Pakistan) are often shipped to the United States and sold through flee markets, online auctions and small retail stores. Digital piracy is a major barrier to growth of Indian music trade with the United States. Music companies and IMI pointed out that there are over 600 illegal sites based on U.S. servers from which Indian music can be downloaded. They have already requested the U.S.

consulate to shut these sites. Even MPAA estimated that between 1998 and 2002, economic losses due to audiovisual piracy in the United States were $1.25 billion.[72]

Indian producers/directors who are interested in entering into co-production agreements with the U.S. companies or service U.S. clients pointed out that they have limited knowledge about the U.S. market. Moreover, their U.S. counterparts are not aware of their quality of production and they often have to prove their credentials. Since many of these companies have recently ventured into international markets, they are yet to build a reputation and they do not often have the experience required by U.S. clients/partners. In fact, some of them are facing a vicious circle – without experience they are not getting business and without clients they cannot have experience.

In the United States there is no censorship requirement and hence there is no problem in getting clearance to display movies. However, Indian producers find it extremely difficult to get a movie theatre/exhibition hall to display their movies. This is because the U.S. market is vertically integrated and major U.S. producers have their own distribution networks which are very strong. Only a few U.S. theatres are interested in showing Indian films because subtitled foreign films have acquired the status of a highly specialized taste in the United States. Due to the shortage of exhibition hall, the play dates are shorter in the United States. Moreover, distributors of foreign films cannot spend huge amount of money in publicity and advertisement as is done by the U.S. distributors.

Film and television producers pointed out that shooting in the United States is much costlier than countries such as Switzerland. Although the large companies pointed out that the process of getting clearance for shooting is structured and well-organized, smaller companies felt that the process was cumbersome. It is important to note that larger companies generally appoint U.S. lawyers who get the clearances on their behalf. Indian broadcasters pointed out that the initial investment cost is high in the United States. Improper handling of equipment by U.S. customs sometimes creates problems for event management companies.

A few survey participants pointed out that in developed countries such as the United States, 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 the strong union pressures. Since Indians working in the audiovisual sector are not organized into unions, they lack the bargaining power in international dealings. However, most participants felt that trade unions do not create any major entry barriers.

Although survey participants did not refer to any major barriers in the U.S. television and radio sector, there are some entry barriers. U.S. citizenship is required to obtain radio and television licences. There are restrictions on holding and transfer of broadcast and common carrier radio communication licences and such licences may not be granted to a foreign government; a corporation chartered under the law of a foreign country or corporation of which more than 20 per cent of the capital stock is owned or voted by non-U.S. citizens; a

[72] MPA (2004).

corporation chartered under the laws of the U.S. that is directly or indirectly controlled by a corporation whose more than 25 per cent capital stock is owned by non-U.S. citizens or a foreign government.[73]

There are six cross-media ownership restrictions in the United States. These have been put in place with the objective of promoting competition, diversity and localism in media production. The Dual Network Rule permits an entity to own a maximum of two broadcast networks as long as one of the networks is not ABC, CBS, NBC or Fox. The National Television Ownership Rule limits the viewing audience that one entity can control to 35 per cent. The Broadcast-Newspaper Cross-Ownership Rule bans company from owning a newspaper and broadcast stations in the same local area while the Television-Radio Cross-Ownership Rule limits the number of television and radio stations an entity may commonly own in a local market. The Local Television Multiple Ownership Rule permits ownership of two TV stations in a market, with limited restrictions and the Local Radio Ownership Rule limits the number of radio stations a company may own depending on market size. In 2001, the FCC started reexamining these cross-media restrictions and has subsequently made some relaxations. For instance, the limits on ownership of local TV stations by a single company have been relaxed and the 35 per cent limit in the case of National Television Ownership Rule has been raised to 45 per cent. The FCC is trying to eliminate the existing ban on broadcast-newspaper and radio-television cross-ownership in large markets and replacing them by a set of cross-media limits in small- and medium-sized markets. During the survey, Indian companies pointed out that the relaxation of the ban may not be beneficial for non-U.S. companies since it would lead to consolidation among major U.S. players and due to the existing foreign ownership restrictions, non-U.S. companies would not be able to reap the benefit of this liberalization.

There are no major restrictions on advertising in television and radio, except that Federal Law prohibits advertising of tobacco products. Commercial television stations are required to air programmes based on educational and informational needs of children (16 years and below) and there are certain advertisement guidelines for such programmes.

5.3. Indo-U.S. FTA Negotiations

Audiovisual service is a priority sector in U.S. FTA negotiations and the sector witnessed significant liberalization in other U.S. FTAs. Although India has unilaterally liberalized this sector, it has not bound the unilateral liberalization in the WTO. Hence, there is an opportunity for the United States to gain greater market access through an FTA.

Since the United States is pushing for a negative list approach in its bilateral agreements, where countries have to clearly state their existing market access and national treatment barriers, it is likely to ask India to do the same. So far, India has followed a positive list approach in its bilateral agreements. While preparing for an FTA with the United States, India needs to carefully draw up a list of reservations which the country is likely to impose. Since the regulatory regime in certain areas such as broadcasting is still evolving, it

[73] See Section 310 of the U.S. Communications Act for more details.

may be difficult to draw up the negative list. During the negotiations, the United States would try to ensure that India does not impose any trade barriers in the future. Although the focus of U.S. negotiations in bilateral FTAs is on binding the existing regime, it is likely that in the case of DTH, cable services, etc., the United States may ask India to relax the existing FDI restrictions. In fact, the United States would request India to increase the FDI limit from 49 per cent to 74 per cent as in the case of telecommunications. It is also likely that the United States would push for the removal of existing barriers to private participation in terrestrial broadcasting. Indian government is already looking at this issue and even TRAI has recommended that private players should be allowed in this segment.[74] It is likely that the United States would not raise any major objections to cross-media ownership restrictions since it itself has implemented them. On its part, India may like to retain the cross-media restrictions to prevent anti-competitive practices, especially since the regulatory regime is still evolving.

Within the audiovisual sector the U.S. is more interested to secure binding commitments in segments such as motion picture and video tape production, distribution, transmission services and sound recording services. Since there are no major restrictions in these services in India it would not be difficult for the country to meet the U.S. request. The U.S. would also push for securing binding commitments in digital delivery of content. Although India is a major exporter of audiovisual services and has comparative advantage in some outsourcing services such as animation and graphics, the country has expressed reservation in opening up Mode 1 in audiovisual services in the Doha Round of WTO negotiations. The survey participants pointed out that as the industry is moving towards digital delivery of content India should be ready to undertake commitments in Mode 1 and work together with the United States to remove barriers to trade through this mode.

In its other FTAs, the United States has only objected to trade distorting subsidies. In India, there are very few direct subsidies and there are hardly any trade distorting subsidies. Subsidies received by India's audiovisual sector are one of the lowest among U.S. major trading partners and it is likely that the United States would not raise any major objection to subsidies during its FTA negotiations with India.

Existing regulatory requirements in India such as the "must carry" rule have to be stated and listed during the FTA negotiations. India has imposed a "must carry" rule in the year 2000 to ensure the broadcast of public channels (Doordarshan) through the cable network. As per the Cable Television Networks (Regulation) Amendment Bill (2000), it is mandatory for all cable networks to carry three Doordarshan channels – two national and one regional – in the prime band. This has been imposed to maintain the heterogeneity of culture. Since India has entered into bilateral cultural agreements, cultural exchange programmes and co-production agreements with different countries, any preferential treatment to these countries have to be mentioned during the FTA negotiations. India also needs to reserve the right to enter into bilateral cultural agreements, co-production agreements, etc. and accord differential treatment to other trading partners in future trade agreements.

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[74] TRAI (August 29, 2005), "Recommendations on Issues Relating to Private Terrestrial TV Broadcast Service."

Since piracy is a major problem in India, the United States would request India to adopt the two 1996 WIPO treaties – the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Even Indian industry associations such as Indian Music Industry (IMI), Film Federation of India, Indian Motion Pictures and Producers Association are in favour of adopting these treaties. The necessary amendment to Indian Copyright Act which would enable the implementation of these treaties is currently under discussion. Piracy is also a major problem for Indian companies exporting to the United States. During the survey it was pointed out that India and United States should work together to reduce piracy. Since a lot of pirated Indian audiovisual products enter the United States through other Asian countries industry associations pointed out that any product entering the United States should have authorization letter from the respective company. During the FTA negotiations India should request the United States to make this mandatory. The governments and industry associations of the two countries should collaborate to address digital piracy. They should work together to close down the illegal sites for music downloads and strengthen IPR implementation.

The survey found that there are several barriers to movement of people from India to the United States. The FTA should facilitate movement of service providers between the two countries. Although India has a comparative advantage in the supply of manpower for providing audiovisual services, this sector is not covered in the plurilateral request in the WTO. Hence, an FTA would be the only route to facilitate movement of people in this sector. During the FTA negotiations, India should push for an easier visa/work permit regime in the United States. Respondents felt that India should ask for reduction in application time, relaxation of the requirement of multiple documentations and extension of period of stay. Instead of requesting for greater market access for CSS and IP as in the WTO, India should explore the possibilities of availing the different visas which are given to countries with which United States has cultural exchange programmes and reciprocal agreements. The FTA should facilitate people-to-people contacts, exchange of artists, technicians, collaboration in training, etc. between the two countries.

Although the Indian government has taken a defensive position in liberalizing this sector in WTO, majority in the Indian industry felt that India should aggressively participate in the audiovisual negotiations since the country has a comparative advantage in trade in this sector and has a secure domestic market of niche clientele. They pointed out that an Indo-U.S. FTA would be mutually beneficial. They pointed out that India should enter into a media cooperation agreement with the United States, even before the FTA which would lead to transfer of technology, investment in infrastructure, increased professionalism and enhance the recognition and presence of Indian audiovisual sector in the United States. Cooperation in R&D and technical innovation would be beneficial for the Indian industry. Indian film, television production and post-production industries pointed out that the FTA should facilitate co-production agreements with the United States. They argued that such co-production would enable the Indian industry to access finance and latest technical know-how. It would also increase professionalism and enhance production quality. The film industry pointed out that co-production would also enable the Indian industry to adopt a few Hollywood legal and best practices. They also pointed out that Hollywood's banks, insurance companies and completion guarantors can collaborate with Indian counterparts to help them to learn how to manage risks in film-making. U.S. investment and collaboration in digital content creation would be beneficial for India. The United States and India can collaborate in developing infrastructure facilities for audiovisual sector. Financial and technical collaboration in broadband infrastructure would be beneficial for Indian companies. India can offer tax and other incentives for U.S. companies to set up studios and post-production facilities which will service the parent U.S. companies. This would increase employment in India and U.S. companies would benefit from low-cost high-skilled manpower. As India is developing as a post-production hub, U.S. investment in a media city in a SEZ (Special Economic Zone) and in training institutes in India (especially for animation and graphics) will make the industry more competitive. Indian companies will gain from collaboration with the U.S. companies in film marketing and exhibition. India and the United States can jointly market their audiovisual products in third countries. The FTA should facilitate showcasing of Indian creativity in the United States through joint exhibitions/seminars, film festivals, road shows, etc. During the survey it was pointed out that India should try to attract U.S. investment in exhibition theatres. More specifically, major studios in Hollywood can set up multiplexes and amusement parks in India which will not only benefit the audiovisual sector but also the Indian tourism industry. Survey participants pointed out that Prasar Bharati can enter into technical collaboration with its counterparts in the United States for exploring opportunities in the third country markets. Overall, the survey found that India and the United States have trade complementarities in this sector which can be further enhanced through an FTA. Hence, this should be a priority sector in the FTA negotiations.

6. Reforms

This section lists some of the reform measures which if implemented will not only enhance the productivity, efficiency and global competitiveness of Indian audiovisual sector but also enable the country to gain from liberalization commitments undertaken bilaterally and in WTO. This section also discusses what the industry should do and how industry and government can collaborate to enhance the growth of this sector.

During the survey it was pointed out that piracy is one of the major problems affecting the growth and revenue of Indian audiovisual industry. Since copyright is under the purview of the Ministry of Human Resource Development while audiovisual 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. Both central and state governments need to work in close coordination to fight piracy. Some states have taken proactive steps towards reducing piracy (such as the Goonda Act[75] enforced in Tamil Nadu, Karnataka and Andhra Pradesh) while others are lagging behind. All states should implement the Goonda Act and set up IPR cells in their police departments to deal exclusively with copyright violations. Each state should also assign a designated nodal officer who will work closely with the copyright owners and the copyright industry organizations. Many states/union territories have set up either separate copyright

[75] The Goonda Act empowers the police to extern *goondas* (local goons) from the cities. Any one indulging in the audio and video piracy comes under the purview of the Goonda Act.

enforcement cells or special cells in the crime branch to look after copyright offence cases. Others should also do the same at the earliest.

Since the industry is a victim of piracy, there is a need for public-private partnership in addressing this issue. The industry has to become more vigilant and bring to the notice of the enforcement agency any copyright violation cases. There is also need for investment in technology that prevents piracy. Piracy persists due to lack of awareness and poor enforcement of copyright law. While the industry is trying to raise awareness through advertisements, campaigns, etc., state police departments should organize 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 can be jointly organized with industry associations such as IMI. Strict enforcement indicates that punishment for the offence has to be more stringent. The government should set specially designated courts to deal with copyright issues. This will speed up the judicial proceedings Also, the reward system for reporting instances of piracy should be strengthened.

The small/unorganized players are often not aware of their IPRs. Government should encourage registration of the copyright work. This will not only help in establishing ownership but will also enable the right holder to prove ownership in case of litigation. Pirated products often enter India from countries such as Taiwan and Malaysia. Customs officials have to be trained to become more vigilant.

Piracy can be reduced through implementation of certain technology. For instance, digital cinema helps to reduce piracy since digital files can be protected through sophisticated encryption techniques, which keep data secure at every stage, from the production house to the cinema. Also, good engineering design of the cinema devices ensures that the data is never unencrypted and extractable. Digital cinema is still in a nascent stage in India and there is an urgent need for Indian studios to shoot more and more movies in the digital mode. Another effective measure to tackle piracy has been introduced by IFPI. IFPI has created the International SID (Source Identification Code) which helps trace CDs to the plants from where they are manufactured. This code is recommended and accepted by WIPO and other international organizations. However, in India, most CD manufacturers or entertainment companies refuse to implement the same within their organizations. The government can impose fine on all CD plants that are not using SID Code, and all entertainment companies buying/using CDs without the SID Codes. India should implement the Optical Disc Law (as suggested by IMI) to differentiate between original and pirated CDs. To reduce piracy, especially digital piracy, government should make the necessary amendments to the copyright law and implement the two WIPO treaties.

In certain segments such as cable television there is no monitoring agency. The regulatory regime in India is still evolving. Although in January 2004 TRAI was given the responsibility of regulating the broadcasting and cable sector, it can only make recommendations but does not have the authority to implement them. The government needs to come up with a comprehensive regulatory framework which would take into account the convergence issues of broadcasting and telecommunication.[76] With technological convergence, the best option would have been to have a single independent regulatory for the audiovisual, IT and telecommunication sectors as was proposed by the Communication Convergence Bill, 2001. As a second best option there can be two regulators – one for carriage and one for content. TRAI has also pointed out that internationally there is a trend towards adopting a converged regulatory framework for carriage.[77] The licensing regime should recognize convergence and be technology neutral. There is need for inter-ministerial coordination and consultancy regarding the regulation of telecommunication and broadcasting services as they are currently under different ministries and each is keen in retaining its autonomy in regulation. Also, there is a need for stakeholder's consultation on whether content should be regulated and if so to what extent.

The government should rationalize the tax structure across different media. During the survey it was pointed out that the government had imposed service tax on electronic media while the print media is free from such taxes. In an era of cross-media ownership, taxes should be similar across all media.

The next sub-sections present reform measures that is specific to different sub-sectors of audiovisual services.

6.1. Films

The Indian film industry is in its first stage of corporatization. There is an urgent need to speed up the process of corporatization since it will help the sector to become more efficient, enhance professionalism and transparency in accounting. It will also increase the ability of film producers to access structured finance at cheaper interest rates. The film industry should concentrate on producing quality films of international standards. Since large part of the industry is in the private sector, the government can act as a facilitator by offering tax concessions and other incentives for upcoming directors and innovative films. The government can urge banks and financial institutes to provide loans at concessional rates for production of quality films. During the survey it was pointed out that the government can help in the corporatization process by going in for co-production agreements with countries such as the United States. This would lead to the inflow of finance, technical know-how, global best practices and increase professionalism.

The government should speed up and ease the procedure for giving permission to foreign films for shooting in India. The requirement of prior clearance of script and other conditions governing shooting, especially that all shooting should be done in the presence of a Liaison Officer, needs to be reviewed in the light that foreign film producers are facing various barriers in India. If more and more foreign films are shot in India, the country will be promoted as a tourist destination.

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[76] It is important to note that TRAI in its recommendations for implementation of the second phase of Unified Licensing Regime on January 13, 2005, covered the broadcasting sector along with the telecommunication sector.

[77] TRAI (March 20, 2006), "Recommendations on Issues Relating to Broadcasting and Distribution of TV Channels."

There is an urgent need to address the state-level restrictions. India has one of the highest entertainment rates in Asia which vary across different states. Some states have imposed different tax rates on dubbed films while others have given concessions to films in regional languages. Moreover, at various stages of production, service tax is being levied which adversely affects the profitability of the producers. Different tax rates across different states have to be rationalized. During the survey respondents argued 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 thus encourage more people to see films in theatres. At present, foreign investors are not very keen in investing in theatre construction. A proper tax structure will encourage foreign investment in this sector. Also, the government should bring in single or one-point levy of taxes for the film producers instead of levying taxes at various levels. There should be a centralized system for recording box office collections. To increase transparency, the theatre owners should introduce computerized ticketing system.

The government needs to play a more proactive role in developing a legal structure for film insurance which is still in a nascent stage. Film insurance is usually a customized offering. The premium varies from film to film and depending on the extent of the risk cover of the production. Leading insurance companies have agreed to compensate for delays and losses due to cyclones, bandhs, strikes, adverse weather conditions and traffic interruptions as well as harm to individuals involved in film-making. Depending on the type of policy taken, insurance in Hindi films can be grouped under the following broad heads.

- Named artistes such as the main cast, important support cast, directors, technicians, etc.
- Properties, sets, production equipments, negatives, etc.
- Public liability
- Money insurance
- Workmen insurance
- Accident insurance

However, film insurance does not cover the risks relating to disturbances/discontinuance of the exhibition after release of the film for any reason whatsoever and the consequential loss arising therefrom. The insurance policy also does not cover disputes arising out of copyright/ownership right on film stories and the loss due to this. Insurance companies must develop new policies which take these into account.

High customs duties are a major barrier for foreign films.[78] The procedure for evaluation should be made transparent and the cost of the prints should be valued correctly which will automatically reduce the customs duties on positives and negatives of the prints of films. Also, the government should remove unnecessary restrictions and streamline the customs process. The process of importing film/video publicity materials should be made easier and restrictions on importing unexposed films (countervailing duties) should be removed.

[78] MPAA has raised this issue several; times with the concerned authority.

6.2. Post-Production/Animation

Since the animation industry is facing an acute shortage of trained manpower, there is an urgent need to establish institutions providing training in computer graphics, animation and special effects. Government through appropriate incentives can encourage private/foreign investment in training institutes. Also, the government should encourage formation of societies such as Visual Effects Society of Los Angeles to facilitate exchange of ideas.

Indian companies pointed out that their competitors from countries such as China and Philippines receive significant support from their respective governments in terms of finance and infrastructure. Chinese government offers various incentives to this sector in Special Economic Zones. Philippines, too, has recognized animation as one of its top priority industries. Japanese government agencies sponsor overseas studio executives for visiting their exhibitions. In India, there are no specific central or state government policies which aim at helping the animation companies, as they exist for the software companies. To support the growth of this sector, the government needs to provide high quality infrastructure at low cost. During the survey it was pointed out that the government can set up special SEZs/animation parks similar to the media park in Dubai. This will also enhance the quality of Indian animated films. Through appropriate tax and other incentives (for instance, concessional land for studio construction), Indian programming/content providing companies should be encouraged to invest in infrastructure (such as studios and sound recording facilities) of international standards. Concessionary customs duties on import of studio equipment and software would also enable the sector to become globally competitive.

The Indian animation industry should develop a national brand identity. The government can help in doing so by sending industry representations in major international animation festivals. It should also aggressively market the potential of this sector in our international engagements. The government can urge banks and other financing institutions to provide loans to animation/post-production companies at low rates of interest. It should develop specific central or state policies aimed at the animation industry similar to those existing in the software industry. Also, entertainment software should be treated at par with IT software.

On their part, Indian animation companies should concentrate on high-end work and move towards 3D animation. They should focus more on quality and meet global standards if they want to successfully compete with countries such as China and Philippines.

6.3. Television

During the survey both private and foreign players pointed out that FDI limits in DTH, cable television, etc. are very restrictive. They argued that with technological development and convergence, FDI limit in broadcasting and telecommunications should be consistent. Since FDI in telecommunication has been increased to 74 per cent FDI caps in broadcasting should be reviewed and revised. TRAI also recommended that the government should review the FDI policy and make it consistent to have a level-playing field for competing technologies.[79] Given that India needs foreign investment and technology in this sector, government should increase FDI limits.

One important barrier raised by private and foreign players during the survey is the monopoly of Prasar Bharati over terrestrial broadcasting network. They pointed out that most countries have a well-developed private terrestrial television broadcasting service which developed even before the development of cable and satellite television. There are various other benefits of private participation in terrestrial broadcasting. With the technological convergence, broadcasting-cum-interactive services can be provided through the terrestrial broadcasting network. Since large investment is required for providing multiple television channel and Doordarshan so far has not been able to make such investments, private investment can supplement public investment in this segment. This would give additional choice to the consumers to view channels in a free-to-air mode. TRAI also recommended that private sector should be allowed in terrestrial television broadcasting.[80] TRAI pointed out that due to the inherent advantages of digital transmission over analogue most developed countries have adopted a timetable for switching over to digital television within next 10 years. Although majority of the private and foreign players suggested that private terrestrial broadcasting should be permitted in the digital mode, TRAI pointed out that spectrum is available for private participation in both analogue and digital mode. There is an urgent need for the government to take up this issue.

The progress on implementation of CAS is slow. The present system provides no choice or very little choice to consumers, except in cities like Chennai and Delhi where CAS has been implemented. CAS would enable subscribers to pay only for those pay channels which they wish to watch. It will also bring in transparency in the system, since accurate figures of subscriber base will be available. TRAI has suggested three models of CAS.[81] In the first model the government mandates CAS so that pay channels can only be accessed through set-top boxes. This system was introduced last year but has failed. The second model relates to CAS through a system called TRAP. Although this is a cheaper option, TRAI is not in favour of implementing it since it involves old technology. In the third model, only new pay channels are accessed through the set-top boxes. Some government officials are in favour of this model, which is referred to as “a bit of CAS.” During the survey it was found that no single model can be applied across the whole country since the requirements of consumers in different parts of the country are different. The requirements of the consumers should be carefully evaluated and the appropriate CAS model should be implemented at the earliest.

In many cases, the consumer does not have the choice to even change the operator. In this context, appropriate regulatory intervention is required to provide choice to existing and potential consumers, in terms of either more number of operators in the same platform or alternate platforms (for example, DTH, telephone lines) and increase the content availability.

[79] TRAI (March 20, 2006), “Recommendations on Issues Relating to Broadcasting and Distribution of TV Channels.”

[80] TRAI (August 29, 2005), “Recommendations on Issues Relating to Private Terrestrial TV Broadcast Service.”

[81] TRAI (October 1, 2004), “Recommendations on Issues Relating to Broadcasting and Distribution of TV Channels.”

Although both DTH and telephone lines are allowed as alternate platforms, there is a need to attract more investment in these areas. There are many advantages of DTH. It does away with the need for the local cable operator and the broadcasters can directly be in touch with the consumers. It offers better quality picture and stereophonic sound effects. It can also reach remote areas where terrestrial transmission and cable TV have failed to penetrate. Through DTH, it is possible to have interactive TV services such as movie-on-demand, Internet access, video conferencing and e-mail. However, in order to survive and have a profitable operation, DTH service providers must invest in programming that is exclusive to its subscribers. 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. On its part, the government needs to rationalize licence fees, taxes and other charges of DTH and bring them at par with the cable industry. Also, the cost of the installation equipment for DTH (which includes the receiver dish and the set-top box) should be brought down to make it a viable option.

Though there has been a move towards digitalization, 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 digitalization. Many countries including the United States have adopted a timetable for digitalization of cable TV networks, DTH services as well as terrestrial transmission systems. In this context, TRAI came up with recommendations on digitalization of cable television.[82] It stated that there should be a national plan for digitalization from April 1, 2006, till March 31, 2010. It also recommended reduction in customs duties for set-top boxes and reduction in import duties to facilitate the digitalization process. It discussed the licensing issues related to digitalization. These recommendations have to be implemented to support the digitalization process.

There is also a need to upgrade the cable network system (for example, use fibre optic cables) and invest in the broadband infrastructure. The licensing and clearance process for broadband services should be made simpler and less time-consuming. The government should also bring down the duty charged on imported broadcasting equipments.

The role of the public broadcaster should be clearly defined. The U.S. Public Broadcasting Services caters to around 3 per cent of elite section of the population and concentrates on education, art and current affairs programmes. On the other hand, in India, the public broadcaster targets the weaker section of the society and its reach is much wider than the reach of cable or DTH. Instead of competing with private channels, the public broadcaster should concentrate on niche programming such as education and health care.

6.4. Radio

At present, private FM channels are not allowed to beam news and current affairs programmes. Since private television channels have been allowed to do so, survey participants argued that this restriction on private radio channels should be removed. The FM Radio Reform Committee, 2003, also recommended that the restriction on news and current affairs should be lifted. Often security issues have been cited as the reason for not allowing

[82] TRAI (September 14, 2005), "Recommendations on Digitalisation of Cable Television."

private players to operate news and current affairs programmes. In this regard survey participants argued that even in the neighbouring countries such as Nepal and Sri Lanka, which had political unrest and civil wars in recent time, private FM stations have been allowed to broadcast news and current affairs programmes. Hence, there is no rational argument to restrict it in India.

Survey participants argued that the current FDI limit of 20 per cent is restrictive since FDI is needed for the inflow of finance, technical know-how and equipments. Moreover, in an era of convergence, FDI limit should be similar for all broadcasting services – television and radio. The government should increase the FDI limit so that this becomes an attractive investment.

In order to popularize radio amongst the majority, the current cap on each company owning just one station per city should be removed. This will enable the media houses to introduce different channels catering to different genres. Also, there is need to open up more air waves for private players. Currently, the private broadcasters have to share the spectrum with other non-broadcasting users of the spectrum (such as walkie-talkie users). These bands should be freed so that more frequencies are available to private FM players.

There is need for reforming the AIR. The public broadcaster should look for innovative ways (such as renting out its studios and content) to increase its advertisement revenues. AIR can enter into exchange programmes with radio stations in the United States and thus increase its reach.

Satellite radio is different and better than conventional radio in many ways. It is available in India and is much cheaper than subscribing to cable or wireless services. Since the broadcast is digital, reception is free from interference; it is fade-free and offers crystal clear sound. Satellite radio is growing rapidly in many parts of the world such as North America, Japan and Korea. In a multi-lingual country such as India, satellite radio will provide the opportunity for language-niche programming catering to different genres. This can be of great benefit to citizens living away from their home language area, and help to further integrate communities across dispersed geographies. In order to popularize this mode of radio and provide clearly defined guidelines for existing and potential future satellite radio operators, there is need for a proper regulatory framework. In July 2005, TRAI made a number of recommendations relating to satellite radio broadcasting.[83] It has recommended 100 per cent foreign ownership in satellite radio broadcasting with no entry fee, licences for a period of 10 years and permitting news and current affairs programmes. These recommendations should be implemented. Other problems such as high cost of satellite radio sets should also be addressed. Currently, BPL Electronics is the licensed manufacturer of these radio sets in India. A few foreign brands are also available from large consumer electronics stores. Government should encourage more and more companies to set up manufacturing base in India as that would drive down the prices. Also, import of receivers should be allowed at concessional duties.

[83] TRAI (June 27, 2005), "Recommendations on Issues Relating to Satellite Radio Service."

Community Radio can serve as a platform for the local community by taking up their issues and day to day concerns. Although a policy for granting licences to such radio stations was announced in 2002, only 3-4 educational institutions have launched the service. There are number of issues that need immediate attention to make community radio a success in India. The range of community radio should be increased from 5-10 km (which is at present) to 10-15 km so that it is beneficial to a greater number of people. It should be opened up for non-profit organizations and civil societies. In August 2004, TRAI floated a consultation paper on issues related to community radio post which in December 2004 TRAI came up with some recommendations for the government.[84] The main recommendations are -- any legal entity or individual should be eligible to apply for community radio licence, there should be no spectrum fee for the first two years of licence to reduce the financial burden on a community radio station in its initial years and the Ministry of Home Affairs should give its recommendations/clearance within three months from the last date of filing of applications. The government should act on these recommendations at the earliest.

6.5. Music

The main barrier facing the music industry – piracy – has been discussed earlier. In order to reduce the tax burden on the music industry, this industry should be reclassified at par with other IPR industries for VAT/sales tax purpose so that it attracts lower duty.

7. Conclusion

Audiovisual services witnessed limited liberalization in the WTO due to reasons of cultural sensitivity. Even India, which is a major exporter of audiovisual services, has expressed reservations in offering liberalization commitments in the ongoing Doha Round. The largest exporter of audiovisual services – the United States, on the other hand, is pushing for removal of barriers to trade in this sector both in the WTO and in its bilateral FTAs. Unlike the WTO, the United States has been successful in liberalizing this sector substantially in its bilateral agreements. This paper analyzes the possibilities of liberalizing trade in audiovisual services if India and its largest trading partner – the United States – enter into an FTA.

The study found that both India and the United States have significant trade interest in each other's market. Companies from the two countries rarely compete with each other in domestic and third country markets since the content and audience base is different. Collaboration between the two countries would not only enhance bilateral trade but also trade in third country markets. Although the Indian government has taken a defensive position in liberalizing audiovisual services in its multilateral and bilateral negotiations, the sector has been unilaterally liberalized since the 1990s, there are no major entry barriers and exports of audiovisual services have grown rapidly in the post-liberalization period.

[84] TRAI (December 9, 2004), "Recommendations on Licensing Issues Relating to Community Radio Stations."

The negotiating position of the Indian government has changed since the Uruguay Round. In that Round, India was one of the few countries to offer liberalization commitments in this sector. In the bilateral-request offer process in the Doha Round, India made a request for liberalizing movement of people in audiovisual services. However, the sector is not covered in the plurilateral requests in Modes 1 and 4, which India is coordinating. The study found that since India has a comparative advantage in the supply of manpower and service providers are facing various entry barriers in the U.S. market, bilateral negotiations is the only route to facilitate movement of people in this sector. India’s multilateral commitments are far below the unilateral liberalization and hence, there is significant scope for the United States to gain greater market access through an FTA.

Based on a survey the study found that this should be a priority sector in the Indo-U.S. FTA negotiations. It argued that the trade complementarities between the two countries could be further enhanced through a media cooperation agreement with the United States. Such an agreement would lead to transfer of technology, investment in infrastructure, increase professionalism and enhance the recognition and presence of India audiovisual sector in the United States. India and the United States can collaborate to address problems such as piracy which is adversely affecting the industry in both countries. Cooperation in areas such as R&D, technical innovation, marketing and training would be beneficial for the Indian industry.

The regulatory regime in India for certain sub-sectors such as broadcasting is still evolving and this has resulted in an uncertain investment environment for companies operating in that segment. The study listed certain regulatory and other reforms which would enhance the growth, productivity and global competitiveness of the sector and enable the country to gain from bilateral/multilateral liberalization. It also identified areas in which the industry and government can collaborate to improve efficiency and enhance growth.

Appendices

Appendix A

A Summary List of Audiovisual and Audiovisual-Related Service Activities

In this list, the United States describes the set of activities that forms part of audiovisual services. Some of these activities are classified under W/120 as audiovisual services while others have been classified as part of other services such as distribution, telecommunication, business, leasing and recreational services.

I. 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 specialized truck delivery services or *via* satellite or *via* digital networks*
– Exhibition of films/operation of cinemas*
–

II. Television

– Creation (production) of content
– Programme 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
–

III. 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.)
–

IV. Transmission services

– From producers to broadcast stations, cable head-ends, satellite uplink stations,* and to end-users by:
– analogue or digital broadcast
– Direct-to-home satellite services*
– Multi-channel Multi-point Distribution Systems (wireless) cable systems*
– or, increasingly, by “converged” transmission services which also transmit other forms of data, voice or other communications services*

V. 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.
- Programme packaging of channels of music for distribution on multi-channel transmission systems, or hotels, office buildings, etc.

Note: An asterisk (*) indicates those service 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 B

GATS Framework

A unique feature of GATS is the classification of the services trade under four different modes:

a) *Cross-border Supply or Mode 1* refers to the delivery of services across countries such as the cross-country movement of passengers and freight, electronic delivery of information and data, etc.

b) *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.

c) *Commercial Presence or Mode 3* refers to the establishment of foreign affiliates and subsidiaries of foreign service companies, joint ventures, partnerships, representative offices and branches. It is analogous to foreign direct investment in services.

d) *Presence of Natural Persons or Mode 4* refers to natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers temporarily present in the other member's market to provide services.

In Modes 1 and 2, service supplier is not present within the territory of the member, while in Modes 3 and 4, service supplier is present within the territory of the member.

The GATS contains two sorts of provisions. The first are general obligations, some of which apply to all service sectors (e.g. MFN, Transparency) and some only to scheduled specific commitments (e.g. Article XI: Payments and Transfers). The second are specific commitments, which are negotiated undertaking particular to each GATS signatory.

Under the Most-Favoured Nation (MFN) Treatment (Article II) a member is obliged to provide to another member treatment which is no less favourable than that it provides to any other country, whether a member or not (i.e., if a WTO member country offers a certain privilege to any other country, whether it be a member or not, it has to extend the same treatment to all WTO member countries). However, GATS allowed member countries to undertake exemptions to this clause, in their initial commitments in the Uruguay Round, subject to review.

Transparency (Article III): This clause requires each member country to publish all measures of general applications which pertain to or affect the operation of the agreement. Countries are also required to publish international agreements pertaining to or affecting trade in services. Or in other words, the Council of Trade in Services will have to be informed, at least annually, of the introduction of any new, or any changes to existing laws, regulations and administrative guidelines. WTO member countries can make request regarding specific information, which the concerned country will have to provide promptly.

Article III requires member countries to establish enquiry points to provide specific information to other members.

GATS aims to progressively liberalize services trade under the four modes of service supply. For each mode, a country can impose two types of barriers: market access barriers and/or national treatment barriers. A country is said to have imposed a market access barrier if it does not allow (or partially allow with some restrictions) foreign services or service providers to enter and operate in its market. A national treatment barrier exists when foreign services or service providers are allowed to enter the market but are treated less favourably than domestic service providers. During the successive rounds of negotiations, member countries negotiate and undertake commitments to liberalize market access and/or national treatment in specific sectors in what is known as sectoral schedule of commitments and across all or several sectors in the horizontal schedule of commitments. Both the sectoral and horizontal schedules have to be read together to understand the extent and nature of commitments undertaken in a particular sector. Thus, market access and national treatment are negotiated obligations. It is possible for countries not to grant full market access and deny national treatment by putting limitations and conditions on market access and conditions and qualifications on national treatment in particular sectors/sub-sectors. This is done by recording such limitations and qualifications in the commitment schedules under market access and national treatment columns. In its schedule a country is said to have made a “full” commitment in a particular mode of supply of service if there are no restrictions on market access or national treatment. A country is said to have made a “partial” commitment if the commitment is subject to some restrictions on market access and/or national treatment. If a country does not make any commitment to liberalize a particular sector or mode of supply and retains the right to impose restrictions in the future, then it is said to have kept the sector/mode “unbound”. It is expected that successive rounds of negotiations will secure further liberalization by adding more sectors to a country’s schedule and removing limitations and qualifications, if any, in sectors/sub-sectors already in the schedule. This is done mode-wise for each sector/sub-sector. It is also possible for countries to make commitments which are outside the scope of market access and national treatment as defined in GATS. These are called Additional Commitments (Article XVIII). This provides scope for making commitments in such regulatory areas as licensing, qualifications and standards applicable to services.

GATS covers all services except those supplied in the exercise of government authority. It follows a positive list approach which indicates that there is no a priori exclusion of any service sector and that countries are free to choose the service sectors/sub-sectors and modes within those sectors/sub-sectors for scheduling commitments.

Appendix C

C1. DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 (DMCA)[85]

The Digital Millennium Copyright Act (DMCA) was signed into law by President Clinton on October 28, 1998. The legislation implements two 1996 World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. DMCA also addresses a number of other significant copyright-related issues.

DMCA is divided into five titles:

- Title I, the "**WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998**," implements the WIPO treaties. The law provides that no person shall circumvent a technological measure that effectively controls access to a copyright-protected work.
- Title II, the "**Online Copyright Infringement Liability Limitation Act**," creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities.
- Title III, the "**Computer Maintenance Competition Assurance Act**," creates an exemption for making a copy of a computer programme by activating a computer for purposes of maintenance or repair.
- Title IV contains six **miscellaneous provisions**, relating to the functions of the Copyright Office, distance education, the exceptions in the Copyright Act for libraries and for making ephemeral recordings, "web casting" of sound recordings on the Internet, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.
- Title V, the "**Vessel Hull Design Protection Act**," creates a new form of protection for the design of vessel hulls.

C2. INTELLECTUAL PROPERT RIGHTS PROTECTION

There are six principal international treaties in force today that provide protection for artists, musicians and producers of recorded music.

- **Berne Convention for the Protection of Literary and Artistic Works:** The Berne Convention, last revised in 1971, is the principal treaty protecting authors and composers of music. This treaty provides a list of rights enjoyed by these authors--such as the right to authorize or prohibit reproduction, public communication, or adaptation of these works. It also allows treaty countries to provide certain exceptions to protection. Some countries also protect producers of sound recordings as "authors" under this convention.

[85] U.S. Copyright Office, http://www.copyright.gov/legislation/dmca.pdf.

- **Brussels Convention:** Brussels Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite was adopted in 1974 and provides that each Contracting State will undertake adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal. The aim is to develop an international system under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors.
- **WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty:** Two treaties adopted by the international community in 1996, the WIPO Copyright Treaty (WCT) applicable to authors and the WIPO Performances and Phonograms Treaty (WPPT) applicable to performers and phonogram producers, bring copyright protection into the digital age. These update previous treaties by granting rights with respect to distribution activities and computer programmes; protecting against unauthorized Internet use; and protecting technological measures used on copyright material and rights-management information against hacking, removal or alteration. Together, these are also known as WIPO Internet treaties.
- **Rome Convention:** The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, known as the "Rome Convention," provides international protection for record producers, as well as performers and broadcasters. Producers in treaty countries are protected against unauthorized copying of their recordings, and have a right to payment for broadcast of their recordings, subject to certain exceptions.
- **Geneva Phonograms Convention:** An additional treaty was adopted in 1971 to deal with the growing problem of piracy of recorded music. The Convention for the Protection of Producers of Phonograms against unauthorized duplication of their phonograms, known as the "Geneva Phonograms Convention," protects against unauthorized duplication of sound recordings, and against unauthorized import and distribution of such copies.

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