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Audio-visual Policies and International Trade: The Case of India

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Abbreviations

BBFC	British Board of Film Classification
CAS	Conditional Access System
CBFC	Central Board of Film Certification
CCI	Communications Commission of India
DTH	Direct-to-home
ETIG	Economic Times Intelligence Group
EU	European Union
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce and Industry
FII	Foreign Institutional Investment
FTII	Film and Television Institute of India
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IBA	Indian Bank's Association
IDBI	Industrial Development Bank of India
IPR	Intellectual Property Right
IT	Information Technology
Ministry of I&B	Ministry of Information and Broadcasting
MFN	Most Favoured Nation
MPAA	Motion Picture Association of America
MSOs	Multi System Operators
NDTV	New Delhi Television
NFDC	National Film Development Corporation
NRI	Non-resident Indian
OCB	Overseas Corporate Bodies
PIB	Press Information Bureau
PVR	Priya Village Roadshow
SNG	Satellite News Gathering
SRFTI	Satyajit Ray Film and Television Institute
TV	Television
UK	United Kingdom
USA	United States of America
VSNL	Videsh Sanchar Nigam Limited
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Introduction[*]

Audio-visual services play a crucial and formative role in any society. These services are closely linked to the preservation of cultural identity and social values, and play a major role in shaping public opinion, safeguarding the democratic system and developing creative potential. Due to these reasons, governments of both developed and developing countries not only provide direct and indirect incentives to promote the growth of the domestic industry but also impose various restrictions on trade to protect the receiving society from foreign cultural influence.

Technological developments and globalisation have changed the audio-visual scenario. On the one hand, it has given consumers access to a multitude of entertainment and information services leading to growing commercialisation in this sector, on the other, it has made the domestic industry more prone to competition from global players. Technological progress, especially digitalisation, has reduced the government's ability to restrict the entry of foreign content into the domestic market. With increasing interactivity and internationalisation of production and delivery offered by Internet-based broadcasting services, the challenge before any government is to initiate an appropriate regulation so that the country can enhance its cultural resilience and at the same time benefit from the globalisation process.

This paper investigates whether the Indian audio-visual policy has been successful in striking a balance between promotion and preservation of the rich cultural heritage of the nation and growth through economic integration. The study focuses on the two major sub-sectors of the audio-visual services – television and films. This is primarily because the most comprehensive policy framework is usually contained in legislation concerning the broadcasting/distribution market, content ownership and programming/production.

The next section will present a broad overview of India's audio-visual policies in the television and film sector, emphasising on industry structure, institutional set-up, regulations and support tools. The following section will present the liberalisation measures undertaken since the 1990s. Section 3 will investigate the trade barriers in the Indian audio-visual market. Section 4 will discuss the impact of India's audio-visual policy on international trade and investment. Since India is a member of the WTO (World Trade Organisation) and is actively participating in the GATS (General Agreement on Trade in Services) 2000 negotiations, Section 5 will investigate the implication of the unilateral liberalisation for India's future negotiations. This section will also highlight how India is preparing for the negotiations and what are its expectations from these negotiations. The last section will draw up the main conclusions.

[*] I would like to thank the Ministry of Information and Broadcasting, Film Federation of India, Indian Broadcasting Foundation, Federation of Indian Chambers of Commerce and Industry and Motion Picture Association of America for their help and support. I would like to especially thank Ms Ruchika Sachdeva for her help in collecting the information and compiling the report.

1. An Overview

Audio-visual services is one of the fastest growing sectors in the Indian economy. India is the largest film producing country in the world,[1] producing on an average 800 feature films and 900 short films annually in 52 different languages and dialects. India is the third largest producer of original entertainment software with over 40,000 hours of original programming (as of early 2001). The terrestrial broadcasting network is one of the largest in the world. It is, however, difficult to estimate the exact size of the television and film industry since the contribution of these sectors to the GDP (Gross Domestic Product) is not recorded in the National Accounts Statistics. Many private organisations have attempted to estimate the size and growth potential of these sectors. However, the findings of these studies cannot be compared due to problems relating to measurement, classification, disaggregation and coverage. The most acclaimed study is the FICCI-Arthur Anderson annual study of the entertainment industry.[2] This study has shown that the industry will grow from US$ 2.75 billion in 2001 to US$ 6.20 billion by the end of the year 2006. The study found that in spite of the global slowdown and the decline in the growth rate of Indian GDP,[3] the entertainment industry experienced a growth of 30 per cent in 2001. The other important study, the Economic Times Intelligence Group (ETIG) study, shows that the entertainment industry[4] is likely to grow from around US$ 3.20 billion in 2000 to US$ 10.19 billion in 2005. Although the projections vary, they clearly indicate that audio-visual services are a high growth sector.

1.1 Industry Structure

Television broadcasting assumes tremendous importance in a developing country like India, which has a low literacy rate and has varied cultures and multiple languages. Indian television broadcasting industry consists of two major segments – Doordarshan, the public service broadcaster, and the private broadcasters, which include both domestic and foreign broadcasters. The modes of operation and funding structure of these two segments are widely different. Unlike private operators, Doordarshan has a social responsibility and its operation and delivery of content is not related to profits alone.[5] While Doordarshan is

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[1] In the year 2000, India produced 855 feature films, followed by the US, which produced 762 feature films.

[2] This study was initiated in 1999 by the private sector. The entertainment industry includes films, television broadcasting, cable television, television software, music, radio and live entertainment. The Indian government does not collect any data on audio-visual/entertainment services and quotes the findings of this study.

[3] The growth rate declined from 6.1 per cent in 1999 to 5.4 per cent in 2001.

[4] Including television, films, radio and music.

[5] For instance, Prasar Bharati, the autonomous public service broadcaster, has initiated special packages for increasing the coverage of Doordarshan in Jammu and Kashmir and North Eastern states. The hilly terrain in these states makes it necessary to have a large number of transmitters for a small population. The private sector has not shown any interest in investing in terrain regions since the cost of setting up of networks and day-to-day operations far outweighs the return.

partly funded through a budgetary grant, private broadcasters do not receive any direct financial support from the government. Another difference is that, unlike private players, Doordarshan has a three-tier programming service: national, regional and local. The national channel caters to the information, education and entertainment needs of the people through its various stations located across the country. The regional and sub-regional channels located in various states disseminate regionally relevant programmes, while the local stations set up in district headquarters are area specific and provide entertainment and information to local communities.

From a slow beginning, the Indian television industry has achieved significant growth. In 2001, the size of television industry was estimated at US$ 1.99 billion, with television broadcasting, cable television and television software accounting for US$ 0.76 billion, US$ 0.84 billion, and US$ 0.38 billion respectively. In the same year, the industry grew by 38 per cent, but this growth was not evenly spread across all segments. Television broadcasting, cable television and television software grew by 19 per cent, 68 per cent and 27 per cent respectively. Prior to the 1990s, Doordarshan was the sole service provider. In the early 1990s, foreign and domestic private satellite channels started operating in the country. Since then, there has been a proliferation of satellite channels, which has widened the range of choice available to Indian viewers. This has also led to the growth in allied sectors such as television programming and cable television. Presently, with more than 79.4 million television households, 38 million cable TV subscribers and around 100 cable TV channels, India has one of the largest television markets in the world.[6]

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.

Prior to 1985, the programmes telecasted through Doordarshan were either produced in-house or acquired from overseas. In 1985, Doordarshan started commissioning programmes to private production houses and this marked the beginning of Indian television programme producing companies. The advent of satellite channels created a significant demand for local programming and this further boosted the development of the programming industry.

Most Indian television contents providing companies specialise in a particular type of programme[7]. As compared to other segments of the entertainment industry, the television software industry is characterised by a relatively high degree of corporatisation. The increase in production costs and competition has led to closure, mergers and

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6 FICCI, 2002.

7 For example, Balaji Telefilms specialises in dramas and soaps while Shri Adhikari Brothers specialises in sitcoms and NDTV in news-based programmes.

acquisitions. This is evident from the fact that, towards the end of the 1990s there were around 3000 programming companies but this number has declined to 250 in the year 2001. In the same year the top 10 content producing companies controlled nearly 45 per cent of the market.

Cable television is the fastest growing segment in the television industry. In its initial stage (i.e., in the early 1990s), the cable industry was highly fragmented and was characterised by the presence of a large number of small cable operators catering to specific localities. With proliferation of channels, requirement for heavy investment and advent of value-added services, such as Internet over cable, pay-per-view, etc., many small operators have entered into franchising agreements or have merged with large operators, known as the Multi System Operators or MSOs. These MSOs are corporatised and have the financial ability to make the necessary investment in infrastructure. The MSOs tend to concentrate in a specific geographical area and distribute all channels in that area. In the recent years, many broadcasters have integrated their business with MSOs in order to have greater access to the subscribers.

Film is the most popular form of entertainment in India. In the year 2001, India produced 1,013 films, indicating a growth of 18 per cent in terms of volume since 2000 (855 films). It is, however, difficult to estimate the size of the Indian film industry since the industry is unorganised, highly fragmented and, unlike developed countries, the aggregate box office collection is not reported to a central agency. In 2001, the size of the industry was US$ 0.52 billion in terms of costs and US$ 0.95 billion in terms of revenue[8], and it accounted for 19 per cent of the total revenue earned by the Indian entertainment industry.

Global market for motion picture production and distribution is characterised by an oligopolistic structure, dominated by a few major companies. By contrast, the Indian industry is characterised by the presence of proprietorship and partnership. There are a few large producers and a host of small and medium-size producers. The industry is not vertically integrated and most producers do not distribute their own productions. The distribution sector is equally fragmented and each distributor tends to concentrate in a specific region and owns the distribution rights for that region.[9]

The development of film industry is localised with some states, such as Maharashtra, West Bengal, Andhra Pradesh, Karnataka and Tamil Nadu, focusing on film production while others, such as Gujarat, focusing on development of film infrastructure (theatres, multiplexes, etc.). The industry is labour intensive and, at present, around 5 million people are employed in the sector directly and another 40 million are employed

8 The cost based approach takes into account the artists' remuneration, production expenses, technicians' expenses, marketing expenses, studio charges and other fixed costs. The revenue-based approach takes into account the revenue from domestic theatrical sale, sale of overseas rights, sale of music rights, sale of television and video rights, corporate sponsorship and merchandising. (FICCI, 2002).

9 At present, there is no all-India distributor and hence, most films are distributed by more than one distributor.

indirectly. Although direct employment tends to concentrate in film producing regions (such as Mumbai (Bombay) in the state of Maharashtra), indirect employment is more evenly spread across India.

Investment in Indian films is much lower when compared with other international productions. In 2000, the average expenditure per film was US$ 13.6 million in the USA, US$ 9.4 million in the UK and only US$ 0.6 million in India (see Table A1 in Appendix A). This is mainly because, as compared to India, other major film producing countries invest substantially in special effects, post-production and film marketing.

As of now, there are 25 studios and three film cities.[10] India lags far behind the developed countries in terms of studio infrastructure and most Indian studios are small compared to their global counterparts. An average studio floor in India is 100 ft by 150 ft compared to international standard of 220 ft by 350 ft. This makes it difficult to build large sets. Moreover, small studios can accommodate only 2–3 films at any point of time. In the recent years, various initiatives have been undertaken by the film industry to develop studios with high quality cinematographic equipment and sophisticated production facilities that can be comparable to international standards.

India also lags behind developed and many developing countries in terms of film exhibition infrastructure (theatres, multiplexes, etc.). Currently, there are around 11,962 theatres operating in India, for a population of 1 billion, i.e., only 11.9 screens per million population. Comparatively, in the US there are around 117 theatres per million population. Moreover, out of the 11,962 theatres operating in India, approximately 8,400 are permanent theatres and the rest are temporary and military theatres. These figures clearly show that in India there is a shortage of exhibition centres and it is difficult for the film producers to have an outlet to display their films.

1.2 Institutional Set-up

Indian television and film industry is largely concentrated in private hands. On the regulatory front, these two sub-sectors are governed by a large number of ministries/departments at the national, state and local level. At the national level, the Ministry of Information and Broadcasting is the apex body for the formulation and administration of rules and regulations relating to these two sub-sectors. The Ministry is also responsible for international co-operation in the field of mass media, films and broadcasting, and interacts with its foreign counterparts on behalf of the Government of India. The main Secretariat of the Ministry is divided into three wings: the Broadcasting Wing, the Film Wing and the Information Wing. The Broadcasting Wing handles matters relating to the electronic media. It formulates policies related to the public service broadcaster (Prasar Bharati), operation of cable television, private television channels, etc. The Film Wing, through its various units, produces and distributes documentary films for internal and external publicity, provides training, organises film festivals for the promotion of "good cinema", formulates import and export regulations for films, etc. The Information

[10] Economic Times Knowledge Series (EITG).

Wing deals with policy matters regarding the print media and the press, and publicity requirements of the government. The media units/autonomous bodies/public sector units under these three wings are presented in Figure A1 in Appendix A.

The Department of Culture, under the Ministry of Tourism and Culture, preserves, promotes and disseminates all forms of art and culture. The Department also implements bilateral cultural agreements between India and the foreign countries on behalf of the Government of India. Copyright related issues are under the aegis of the Department of Education, Ministry of Human Resource Development.

India has a quasi-federal political set up and different states have set up their own ministries/departments for regulating the audio-visual services. The Constitution of India has laid down the division of power and responsibilities between the central (Union) and the state governments. The Constitution clearly lays down the areas of sole legislative competence of the Union, areas of sole legislative competence of the states and areas of concurrent jurisdiction of both Union and states. Broadcasting and other forms of communications are under the legislative power of the Union. The Union government also has the power to sanction cinematography films for exhibition. Exhibition of entertainment products are under the legislative powers of the respective state governments who have the flexibility to charge entertainment tax on cinemas, theatres, cable service providers, etc. and other forms of live entertainment.

1.3 Laws and Regulations

Various laws governing the television and film sectors are presented in Appendix B. The television industry is governed by two main laws – one is applicable strictly to the public broadcaster, Doordarshan, while the other regulates the operation of cable networks. Doordarshan is governed by the Prasar Bharati Act[11], which has led to the establishment of Prasar Bharati, a statutory autonomous body under the Broadcasting Wing of the Ministry of Information and Broadcasting. Prasar Bharati comprises of Doordarshan (the national television) and All India Radio. Cable television networks are regulated by the Cable Television Networks (Regulation) Act, 1995. This Act imposes registration and citizenship conditions for operation of cable television network. The other important regulation affecting operation of satellite channels through the cable network is the Cable Television Networks (Regulation) Amendment Bill, 2000. This Bill states that all foreign and domestic satellite channels, distributed through the cable network will have to abide by the country's program and advertising code.[12] The Bill has also imposed a "must carry" rule on cable operators since according to the Bill, it is mandatory for all cable operators to re-transmit three Doordarshan terrestrial channels on prime band, two national and one regional.

India has not imposed any local content requirements and there are no minimum quotas for domestic production. The country does not have any restrictions on the total

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

[12] Prior to imposition of this bill, only Doordarshan had to abide by the program and advertising code.

number of films broadcast through the pay or free-to-air channels. There are no specific rules relating to delay between exhibition of a film in theatres and its television broadcast. In order to reduce the unauthorised display of films through the cable network (or cable piracy), the Cable Television Networks (Regulation) Amendment Bill, 2000, made it mandatory for the cable operators to secure copyrights for all programmes telecasted by them, notably films. This Act provides for stringent actions against cable operators violating the Act, including seizure of equipment.

To introduce addressability in the cable industry, The Cable TV Networks (Regulation) Amendment Bill 2002 was passed in the Lower House (Lok Sabha) of the Parliament on May 15, 2002. This bill makes it mandatory for pay channels to be routed through a set-top box. Once this bill is passed by both the Lower and Upper Houses of the Parliament and becomes an Act, consumers can select the channels they want to see and pay only for them.[13] According to the Bill, free-to-air channels will be included in the basic service package and charged a fixed rate by the cable operators. The government has the right to specify the number of free-to-air channels, the genre-wise mix of channels in the package and the maximum rate that the cable operator can charge for the basic package. The private broadcasters will have the flexibility to determine the rates for their pay channels.

As of now, India does not have an independent regulatory authority regulating the audio-visual sector. In order to develop the communication services and establish a regulatory framework for carriage and content of communication in a scenario of convergence, the Government of India introduced the Communication Convergence Bill, on August 31, 2001. This bill envisages the creation of an independent body – the Communications Commission of India (CCI) – for facilitating the convergence of broadcasting, telecommunication and information technology sectors. As per the draft bill, the CCI will have a wide range of regulatory power including the sovereign power of licensing and enforcement of license conditions in these sectors. CCI will also oversee the development of communication services, establishment of new infrastructure, introduction of new technologies, will formulate codes for television broadcast, and regulate content on the Internet and other broadcasting services. If enacted, the Bill will repeal many existing laws, including the Cable Television Networks (Regulation) Act, 1995. The Prasar Bharati Act, 1990, and the Cinematography Act, 1952, would continue to co-exist. The decision on implementation of the Bill is still pending in the Parliament.

The most important Act regulating the film industry is the Cinematography Act, 1952, which has led to the establishment of Central Board of Film Certification (CBFC). As per this Act, a film can be exhibited in India only after it has been certified by the CBFC.

[13] At present, cable operators charge a flat rate for their service and this rate varies from area to area and across different operators. As more and more channels are becoming pay, the cable operators are increasing their subscription rates in a haphazard manner, leaving consumer with no choice but to pay the high rates.

Copyright related issues are regulated by the Copyright Act, 1957. Over the years, this Act has been amended several times to take into account technological developments and meet new challenges to copyright protection.

1.4 Direct and Indirect Support from the Government

The sector-wise break up of the approved Ninth Five Year Plan (1991–2002) and Annual Plan (2001–2002) outlay of the Ministry of Information and Broadcasting is presented in Table A2 in Appendix A. Table A2 shows that the bulk of the Ninth Plan (90.3 per cent) expenditure has been allocated to the broadcasting sector, while the film sector has received only 6.4 per cent.

Apart from budgetary allocations, the government offers various direct and indirect incentives to support the growth of the television and film industry and preserve the rich cultural heritage of the nation. Since a large part of the audio-visual sector has been privatised, government incentives are mainly in the forms of tax exemptions/concessions.

In the ***television*** segment, the public broadcaster, Doordarshan is partly funded through an annual grant voted by the Parliament. Doordarshan also generates internal resources through commercial operations. Doordarshan has certain public service obligations and the government's budgetary grants enable it to meet those obligations and also bridge the gap between its commercial earnings and cost of operations. In the year 2001–02, Doordarshan generated commercial revenue of US$ 129.5 million and the approved annual plan outlay was US$ 118.3 million. The government has also tried to ensure a wide audience base for Doordarshan through various regulatory measures, such as "must carry rule" for cable operators and monopoly of Prasar Bharati over terrestrial broadcasting **–** the largest broadcasting network in India.

Domestic private broadcasters do not receive any subsidies from the government. However, since the late 1990s, the government has been providing various indirect incentives mainly through tax exemptions/concessions, which has benefited both the domestic and foreign players operating in this sector. These include removal of excise duties on recorded tapes for television content and broadcast, reduction of custom duty on studio equipment, introduction of clarity through Section 80 HHF of the Income Tax Act by which export income from entertainment software is tax exempted, etc. In the Union Budget (2002–03), custom duties on earth gears and studio equipment were reduced from 35 to 25 per cent. This will reduce the cost of production (it is estimated that the cost will fall by 15 to 20 per cent per year) for films and television projects and may encourage players to set up satellite uplinking hubs.

Through the Film Wing of the Ministry of Information and Broadcasting, the government offers various incentives to the ***film*** industry. The two training institutes, Film and Television Institute of India (FTII) and Satyajit Ray Film and Television Institute (SRFTI), under the Ministry of Information and Broadcasting, provide training in the art and technique of film making and television production. India is probably one of the few countries where there are government funded training institutes. To support low-budget film production and production of upcoming directors, the government has set up the National Film Development Corporation (NFDC). NFDC produces films with socially relevant themes. It has a scheme for giving commercial loans up to US$ 0.07 million for theatre construction. Of late, NFDC is suffering from financial constraints and it is becoming extremely difficult for this organisation to finance film production and theatre construction. In fact, in the past 3–4 years, NFDC has not disbursed any loans for theatre construction. The Directorate of Film Festival organises the National Film Festival every year, which provides a platform for non-commercial film producers to reach a wider audience.

Since a large part of the film industry is not corporatised, it cannot avail institutional finance. Indian films are largely financed by private financiers who charge an exorbitant rate of interest leading to a high cost of production. In order to enable the industry to get financial support from banks and financial institutions, the government conferred industry status to the film industry in the year 2000. As a follow up, Reserve Bank of India and Industrial Development Bank of India (IDBI) formulated guidelines for banks and financial institutes to finance the film sector. The IDBI has also set aside US$ 21.2 million corpus fund for film financing out of which US $ 13.45 million has already been disbursed.

On the fiscal side, government has been providing various tax incentives which includes reduction in the basic custom duties on cinematographic cameras and other related equipment from 40 to 25 per cent and that on colour positive films in jumbo rolls and colour negative films in rolls of certain sizes from 15 to 5 per cent. The countervailing duties have also been exempted from these items. These measures have significantly reduced the cost of film production.

Various initiatives are provided to promote and encourage film exports. The revenue earned from exports of film software is exempted from income tax. The duty paid towards the import of raw stocks is refunded back to the exporters by the way of duty drawback. On an average, an exporter receives approximately US$ 25 to US$ 30 as duty drawback per print.

Both the central and state governments have taken various steps to encourage investment in film exhibition theatres/multiplexes. They have not only allowed private players to enter into joint ventures with foreign companies for theatre/multiplex construction and maintenance, but are also providing various fiscal incentives for construction of theatre/multiplexes. For example, the Union Budget (2002–03) announced an exemption of 50 per cent profits from tax under Sec 801B of the Income Tax Act for large convention centres and multiplex theatres in non-metros for the next five years. This will provide incentives for developers to invest outside the large metro cities.

Apart from the centre, many state governments provide various incentives to support the growth of regional film industry and promote production of films in local languages. Many states have set up the State Film Development Corporation to support production of films in local language. The Karnataka and Gujarat governments offer subsidy for producing films in regional languages and also provide various tax exemptions for locally produced films. The state of West Bengal imposes a higher entertainment tax[14] on non-Bengali and foreign films. Various states, such as Gujarat, Maharashtra and Andhra Pradesh, provide entertainment tax exemptions to facilitate theatre construction. The Gujarat government also provides a seven-year tax holiday for construction of multiplexes. State governments of Andhra Pradesh and Maharashtra, are providing concessional land for studio construction.

2. Liberalisation since the 1990s

From a closed economy, India started liberalising in the 1990s. The aim was not only to integrate the economy with the rest of the world but also to increase the productivity, efficiency and global competitiveness. Reforms and liberalisation in the audio-visual sector were a part of this overall liberalisation drive. This section will discuss the liberalisation measures undertaken in the television and film sectors since the 1990s.

Prior to the 1990s, Doordarshan was the sole player in the television broadcasting sector and it distributed its signals primarily through the terrestrial network. In the early 1990s (during the Gulf War), a host of foreign and domestic satellite channels entered the Indian market[15]. Although the terrestrial broadcasting network continues to be a monopoly of Prasar Bharati, there are no restrictions on the entry of private/foreign satellite channels and/or total number of service providers.

In January 2001, the government removed the ban on reception and distribution of television signal on Ku-band and allowed the operation of DTH (direct-to-home) services. During the initial years of the growth of satellite broadcasting, VSNL (Videsh Sanchar Nigam Limited) was the sole provider of uplinking facilities in India and most foreign satellite channels used to uplink from countries such as Hong Kong, Singapore, and Thailand. Over the years, the government has significantly liberalised the uplinking policy and as per the new policy, an Indian private company, which need not be a broadcaster, is permitted to set up uplinking hub/teleport facilities for purpose of hiring out/licensing to broadcasters. The new policy permit any television channel which is aimed at Indian viewership irrespective of its ownership, equity structure or management control to uplink from India. It also allows the Indian news agencies to have their own uplinking facilities for the purpose of newsgathering and its further distribution to other news agencies/broadcasters.

To facilitate the growth of the advertising industry and enable the audio-visual sector to increase its share of advertisement revenue, foreign equity restriction on advertising was removed in March 2002. Foreign investors can now invest up to a maximum of 100 per cent equity through the automatic route (i.e., without prior approval from the Reserve Bank of India).

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

[15] CNN was the first private (and foreign) satellite channel to enter the Indian market.

Unlike television broadcasting, even before the liberalisation of the 1990s, the film industry was largely concentrated in private hands and government mainly acted as a facilitator. However, there were many restrictions on the imports of foreign films, which have now been removed.

Prior to the 1990s, the National Film Development Corporation (NFDC), under the Film Wing of the Ministry of Information and Broadcasting, had the sole authority to import foreign films. Foreign film producing companies and trade associations had to enter into agreements with NFDC for import and distribution of their products in the Indian market. This restriction was removed in the year 1992. India had a quantitative restriction on film imports and the total number of titles imported was restricted to 100 per year. This restriction was also removed 1992, enabling foreign films satisfying certain qualitative standards to enter the Indian market. In the same year, the prohibition on dubbing of foreign films in Indian languages was removed.

India had also imposed qualitative restrictions on film imports. The film import policy stated that, to be qualified for imports, a foreign film had to satisfy either of these conditions:

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

These restrictions were removed in the year 2002 and the new policy stated that:

- Import of cinematograph feature films and other films (including film on videotape, compact video disc, laser video or digital video disc) shall be allowed without a license;
- The importer of films should comply with the provisions of all applicable Indian laws governing the distribution and exhibition of films and would have to obtain a certificate for public exhibition from the Central Board of Film Certification which was set up under the Cinematographic Act of 1952; [16]
- Import of any unauthorised/pirated films shall be prohibited;

[16] As per the Cinematographic Act, 1952, any film exhibited in India should be certified by the Central Board of Film Certification (CBFC). Organisations similar to CBFC are BBFC in the UK and the Australian Classification Board. When Indian films are exported abroad, they have to go through the certification process in countries which have a censorship board. Presently, India does not have any agreement with countries having a censorship board, whereby a film certified in India will not have to obtain a separate certification in the foreign country. The Indian government is considering the possibilities of signing such an agreement with Australia.

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

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

Prior to 2002, FDI in the film sector was subject to the following:

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

These restrictions were removed in March 2002 and currently foreign direct investment is allowed up to 100 per cent through the automatic route (i.e., without prior approval from the Reserve Bank of India) in film financing, production, distribution, exhibition, marketing and associated services.

The above mentioned liberalisation measures were coupled with reduction in taxes and import duties, which have already been discussed in Section 1.3.

3. Existing Trade Barriers

This section will discuss the current trade barriers in the Indian audio-visual sector. These include barriers to entry into specific segments of the industry, foreign equity ceiling, licensing and registration, restrictions on cross-media ownership, restrictions on advertising, lack of intellectual property protections, high and multiple taxes on entertainment industry, etc. While some of these barriers restrict the entry of foreign service providers, others affect their day-to-day operations.

3.1 Barriers in the Television Sector

An important market access restriction in the television broadcasting sector is the monopoly of Prasar Bharati over terrestrial broadcasting network. Indian 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.

A broadcaster is required to have a license to set up operations in the country.[17] A foreigner, firm with foreign partners, and company not incorporated in India, is not permitted to hold a license for providing broadcasting services.

In cable television, foreign direct investment (FDI) is limited to a maximum of 49 per cent. This FDI cap has been imposed to ensure Indian management control. 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 liberalised the uplinking policy, there are still certain restrictions on foreign investment. License for setting up uplinking hub/teleports is given only to companies whose foreign equity holding (including NRI/OCB) does not exceed 49 per cent. 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. This regulation prevents international broadcasters to set up their own teleports and use the Satellite News Gathering (SNG) facilities.

The operation of DTH services is also subject to certain restrictions which are imposed for national security reasons, to preserve morality and social values and to prevent vertical monopoly in distribution and broadcasting of television services. A company applying for a DTH license should be registered under the Indian Company Act, 1956. The total foreign equity holding, including FDI, investment by NRI and overseas corporate bodies owned by them, and foreign institutional investment (FII), is limited to a maximum of 49 per cent. Within the foreign equity, the FDI component cannot exceed 20 per cent. The applicant company should have Indian management control with majority representatives on the board as well as the chief executive of the company being an resident Indian. In order to ensure that programmes/channels distributed through the DTH platform comply with the Indian programme and advertisement code, it is mandatory that these should be uplinked from India.[18] 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 license period. Foreign players, who are willing to invest in DTH services in India, have pointed out that the restrictions on cross-media ownership would prevent convergence.

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 program and advertising code. As per

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[17] Unlike countries such as the UK, USA, Hong Kong and Thailand, cable operators do not need a license to start operations in India.

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

the new regulation, advertisements related to the promotion of alcohol and tobacco products are not permitted in channels distributed through the cable network. Channels are forbidden from showing advertisements which offends the morality, decency and the religious susceptibilities of the people, degrades women, adversely affects India's friendly relations with foreign countries, etc. The television industry has pointed out that the restriction on advertisements of certain products makes it difficult for channels to earn high advertisement revenue.

India has also imposed a "must carry" rule to ensure the broadcast of public channels (Doordarshan) through the cable network. As per the Cable TV 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.

Private and foreign broadcasters have pointed out that[19] since there is no system of licensing of cable operators, there is no record of the total number of cable operators in India. Moreover, it is difficult to monitor the content delivered through the cable network and many cable operators under-report the number of viewers and consequently broadcasters lose the subscription revenue. The entire collection of subscription revenue is cash-based and therefore cable operators can evade taxes. In the absence of licensing, cable operators do not have any security of investment. Presently, there is no law regulating the broadcasting sector. Foreign players have pointed out that the government should issue some broad guidelines and set up an apex body, such as the Broadcasting Authority of India, which will have the responsibility to set up the regulatory framework independent of the government.

The single most important issue that will decide the future growth and trade in the television segment is addressability. Since there is no record of the number of cable operators or their subscribers, the cable operators can charge any rate or under-report the number of subscribers. Addressability can be introduced through the Conditional Access System (CAS). This system, which is implemented globally, would increase transparency in the subscriber base and pay channels would get their rightful share of subscription revenue. To introduce addressability, The Cable TV Networks (Regulation) Amendment Bill (2002) was passed in the Lower House of the Parliament on May 15, 2002. However, decision on Bill is still pending in the Upper House. In spite of the government's initiatives, there are a number of hurdles in the process of implementation of the Conditional Access System. A set-top box costs between US$ 32 – US$ 106 and it is yet to be determined who will pay for it. Globally, broadcasters and cable operators share the cost of the set-top boxes but in India, many small cable operators do not have the financial capability to make the requisite investment. Broadcasters have also expressed their reluctance to bear the cost. Even if the cable operators do not have to pay for the set-top boxes, they will have to invest in the installation of subscribers management systems and other CAS equipment at their head-ends.[20] Moreover, there are issues related to what should be the technical standard of the set-top boxes, whether they should be analogue

[19] This was pointed out by Indian Broadcasting Foundation during the survey interview.

[20] It would require an investment of US$ 11 – US$ 42 thousand.

boxes or digital ones, etc. The government should work closely with the industry to resolve these issues at the earliest.

The IPRs (Intellectual Property Rights) related to programme production and broadcasting are not clearly defined. As a consequence, content providers often do not 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.

3.2 Barriers in the Film Sector

Although India has removed all major restrictions on the import of foreign films, there are restrictions on import of publicity materials, posters, sample T-shirts, electronic press kits, etc., which are required for the promotion of the imported films. There is a penalty of 100 per cent on the value of the materials on any such imports.[21]

The Motion Picture Association of America (MPAA) has pointed that although import licenses are no longer required, Indian Customs often impose various restrictions. For example, the film importing company has to provide a declaration on a stamped paper that the film imported does not contain any illegal/pornographic material together with a synopsis of the film. Foreign players have questioned the power of the Central Board of Film Certification (CBFC). Even if a film is approved by the CBFC it may run into problems at the exhibition stage on account of hurting the sentiments of a particular section of the society and state governments/municipal corporations have the authority to impose a ban on the exhibition of the film. All foreign films imported and exhibited in India have to pay a scrutiny fee of Rs 5,000 (i.e., US$ 105.2).

There are some restrictions on co-productions. These include the requirement to get the script approved by the Ministry of Information and Broadcasting so as to ensure that the project does not hurt the sentiments of any segment of the society or is not against the national security interest. For shooting feature films in Indian locations, the foreign film producers have to obtain permission from the Ministry of Information and Broadcasting. Proposals for shooting of documentary films are cleared by the Ministry of External Affairs. There are no major restrictions on the movement of international artists, producers, directors, technicians, etc., except those related to work permits and visas. Revenue repatriations are as per the Reserve Bank of India rules.

Since the film industry is fragmented and non-corporatised, it is risky for foreign investors to invest in this sector. Although the government has already taken a few steps (such as granting the industry status to the film industry) to promote corporatisation, it can further encourage corporatisation through measures such as giving exemption from capital gain tax on the conversion from a partnership/proprietorship status to corporate status, for a limited period of time.

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[21] Film Import Policy-Tradeport.

Piracy is one of the major problems affecting trade in this segment. The unauthorised reproduction of films in video forms and/or display of the video through cable network without proper authorisation from the film producers are the most common forms of piracy in India. At present, there is no uniform method of estimating the contribution of core copyright industry to the GDP and the potential loss of revenue due to piracy. According to the Film Federation of India, the film industry is loosing approximately US$ 76 million per annum in revenue due to piracy.

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

Although the Cable Television Networks (Regulation) Amendment Bill, 2000, had made it mandatory for the cable operators to secure copyrights of the films programmes telecasted by them, in practice, it is extremely difficult to implement the Act since there are more than 10,000 cable operators and unlike other countries there is no regulatory body to monitor them.

It is worth noting that India has a strong copyright law, which has strict penalties for unauthorised retransmission of television broadcasts. In spite of a sound legal framework the main reason for the high level of piracy is that the general public and enforcement agencies are not fully aware of the copyright related issues and copyright laws. Convictions are few and deterrent punishments (such as imprisonment up to three years provided in the copyright law) are rarely awarded.

WIPO (World Intellectual Property Organisation) since 1996 has initiated two treaties – the WIPO Copyright Treaty and WIPO Performances & Phonograms Treaty – for combating global piracy. These treaties also cover piracy on the Internet. India, so far, has not acceded to these two treaties.

In India, the entertainment tax is very high and this has affected the revenue earnings of both the domestic and the foreign films. In fact, India has one of the highest levels of entertainment tax among the Asian countries (Table A3 in Appendix A). Since exhibition of entertainment products are under the legislative powers of the respective state governments, the nature and extent of the tax varies widely across the different states, ranging from 14 to 167 per cent. Due to this, a large proportion of the theatre ticket receipts go towards tax, which could have been invested for the development and maintenance of the theatres. Moreover, different state governments have different statutory framework for entertainment tax. For example, in Delhi the entertainment tax is regulated by the Delhi Entertainment and Betting Tax Act (1996), in Gujarat by the Gujarat Entertainment Tax Act (1977) and in West Bengal by the Bengal Amusement Tax Act (1922) and the West Bengal Entertainment-cum-Amusement Act (1982). The central government does not have any statutory power to issue directions to the state governments for levying entertainment tax. The analysis of entertainment tax in some major states is presented in Table A4 in Appendix A. Apart from the basic entertainment tax, municipal show tax, new releases tax and property tax are levied by most state governments/municipal authorities/local bodies which generally range between 1–2%. The non-uniformity of regulatory framework creates confusion and acts as a disincentive for foreign investment in theatres/exhibition halls. In 2001, the central 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, so far, none of the states charging higher tax rates have revised them downwards.

4. Impact of the Audio-visual Policy on Growth of the Sector, International Trade and Investment

The main objective of the Indian audio-visual policy is to strike a balance between preservation of the rich cultural heritage of the nation and increase efficiency and global competitiveness of the sector through privatisation and foreign investment. Indian government believes that liberalisation of trade in audio-visual services would foster investment and encourage the inflow of advanced technology and skills which would, in turn, enable the domestic industry to become competitive in the export markets. Liberalisation would also widen the range of choice available to the Indian consumers. This section will analyse whether the policy measures have been successful in achieving the desired objectives or whether the entry of foreign players has led to cultural degeneration and/or has adversely effected the performance of the domestic industries.

It has only been a decade since the government started liberalising audio-visual services. Liberalisation was in a phased manner with the government carefully monitoring the impact of opening-up of the sector to private and foreign participation. In the early 1990s, foreign and private satellite channels started entering the Indian market. The entry of foreign and private players did not immediately impact the growth of Doordarshan or its market share. The reason for this is that Doordarshan is primarily a terrestrial broadcaster while foreign and private broadcasters are only allowed to operate satellite channels. Moreover, the growth of Doordarshan was extremely slow prior to the mid-1980s. Doordarshan had only two channels in the early 1990s which has now expanded to 23 channels. Parallel to the growth in the number of channels, there was a rapid expansion of studio centres and transmitters in the post-liberalisation period (Figures A2a and Figure A2b in Appendix A).

Entry of private and foreign satellite channels boosted the cable television industry since they are mainly transmitted through the cable network.[22] From only 4.12 thousand households in 1992, the cable television industry has achieved an enormous growth in connectivity to around 38 million households in 2001.[23] The number of channels through the cable network increased from 6–14 in the early 1990s to 75–100 channels in 2001.

India, with a large audience base, is an attractive market for investment by international channels. Cost of operating a satellite channel in India is much lower than in the developed countries.[24] The developed markets are becoming saturated and, among the developing countries, India has a liberal foreign investment policy. All these factors have encouraged foreign satellite channels to invest in India.

Some major domestic and foreign broadcasters which are currently operating in India are Star India Private Limited which is a wholly owned subsidiary of the News Corporation Ltd. (one of the world's largest media companies); Sony Entertainment Television (a venture of Sony Picture Entertainment); Zee Telefilms Limited; Turner International Private Limited (a subsidiary of AOL Time Warner); and Modi Entertainment Network (a subsidiary of Modi Entertainment Group).

The mushrooming of satellite channels has led to the growth of television programme producing industry. From a few production houses catering to the public broadcaster, the software producing industry is now characterised by large corporations catering to both the domestic and international markets. From an importer of television content, India is becoming a hub for television software exports and Indian companies are trying to gain presence across varied media platforms. Given the availability of high-skilled manpower, technical know-how and lower cost of production, India has the potential for exporting television content. The Electronic and Computer Software Exports Promotion Council estimated that exports of television content was around US$ 74 million during 2001, which accounted for 20 per cent of the total revenue of content producing sector. India also has the potential of exporting content through new technologies such as web-casting. Companies like United Television (through their portal sharkstream.com) and Pentamedia Graphics (on NumTV, a pay platform that hosts a bouquet of regional language channels) have already taken steps in this direction. Indian content producing companies are exploring the possibilities of co-productions with renowned international players. India is also developing as a post-production hub, offering such facilities to global content producing companies.

After having their foothold in India, by the mid-1990s, Indian companies started expanding into the global markets. This expansion has been encouraged by the significant international demand for Indian language programmes. Repatriate Indians maintain a close

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[22] DTH services started operating after the removal of ban on reception and distribution of television signals on Ku-band in January 2001. However, its coverage is very low.

[23] FICCI, 2002.

[24] Average cost of operating a channel in the US is US$ 4.19 billion per annum whereas in India it is only US$ 0.419 billion per annum (Indian Broadcasting Foundation).

cultural and linguistic tie with their motherland and there is a strong and growing demand for Indian-language programmes from non-resident Indians (NRIs). Other South Asian communities with similar language and culture (such as Pakistanis, Bangladeshis, Sri Lankans, etc.) have also generated substantial demand for Indian-language programmes. To meet this demand, many broadcasters, such as Zee Telefilms Limited, B4U Television Network India Private Limited and Sony Entertainment Television, have set up operations abroad. For instance, in 2001, the channel Zee TV had more than 30 million viewers across 51 countries. Doordarshan too, launched its international channel DD-India (now renamed as DD-World) in 1995. This channel currently reaches more than 50 countries.

Prior to the entry of private and foreign satellite channels, the share of print media in total advertisement expenditure was more than 70 per cent and that of television was around 10 per cent. As the number of satellite channels and their coverage increased, the share of television in total advertisement revenue also increased. In 1999, the share of television in the total advertising expenditure increased to 36 per cent, while those of print media declined to 55 per cent.

Liberalisation has widened the choice available to the Indian viewers. They now have access to a wide range of channels – both domestic and international. With the advent of satellite channels, Doordarshan is facing intense competition from these channels and this has affected its commercial (advertisement) revenue. Table A5 in Appendix A shows that the growth of Doordarshan's commercial revenue tapered down in the post-liberalisation period. Doordarshan's share in the total advertisement revenue accruing to television fell from 100 per cent in 1988 to 76 per cent in 1995 to 26 per cent in 1999. It is also predicted that, although Doordarshan currently has the highest viewership due to its monopoly over terrestrial broadcasting, there will be a significant drop in its viewership with the increase in cable penetration and growth of DTH services.[25] To survive in this competitive environment, Doordarshan is in the process of upgrading its technology, developing a strong marketing strategy and improving its programme quality. Doordarshan is also exploring alternative sources of revenue, such as selling of television programmes to channels abroad, renting of studios and production facilities, etc.

The above discussion clearly shows that liberalisation has led to the growth of Indian television industry and enhanced its export potential. Liberalisation has also encouraged the public broadcaster (who was the sole player in the broadcasting sector prior to the liberalisation) to upgrade its technology to global standards. Indian television industry would continue to grow in the future. The FICCI-Arthur Anderson study on the entertainment industry predicted that the size of the television industry would more than double in the next five years (from US$ 1.99 billion in 2001 to US$ 4.66 billion in 2006). A substantial part of this growth will be accounted by exports.

Prior to 1992, there were various restrictions on the import of foreign films. The film import policy has now been significantly liberalised. Even after the removal of quantitative restrictions of 100 titles per year, the MPAA has pointed out that on an

[25] Indian Broadcasting Foundation.

average only 75–80 foreign films are imported each year. In 2002, MPAA companies market share was approximately 5–6 per cent in terms of box office revenue and 3 per cent in terms of the number of movies exhibited in that year. In the same year, the share of European movies was less than 1 per cent in terms of movies exhibited. These figures show that the removal of quantitative restriction did not lead to an increase in imports of foreign films. The reason behind this is that the contents of Indian films are different from foreign films and Indian films are more appealing to the Indian audience. This niche audience base gives Indian films a natural protection from external competition.

After 1992, major US distributors have opened their branch offices in India. These include Columbia Tristar Films of India Ltd., Twentieth Century Fox India Inc., Paramount Films of India Ltd., and Warner Bros. (F.E.) Inc. They distribute their respective principals' films in India. Additionally, Columbia Tristar Films of India Ltd. distributes Buena Vista Films; Twentieth Century Fox India Inc. distributes MGM films; and Paramount Films of India Ltd. distributes United Artists and Universal films. Some Indian distributors have raised concern that the entry of foreign distributors has adversely affected their revenue share. Although it cannot be denied that Indian distributors are facing competition from their global counterparts, many global distributors are sub-contracting the Indian distributors to distribute films within particular regions of India. Moreover, many Indian producers are distributing their films in international markets through these international distributors. Prior to the entry of foreign distributors, film production and distribution was not vertically integrated. With the entry of foreign players the industry is gradually becoming more integrated.

Although there are no major restrictions on co-production, international co-production has not taken off in India. This is primarily because the Indian industry is not corporatised and the international producers conceive it to be highly risky to invest in this sector. Moreover, lack of knowledge of the Indian culture and tradition, non-transparent accounting practices and lack of professionalism (artists do not stick to schedule, there is no agreed time-frame for shooting, the scripts are not completed before shooting, etc.), has prevented the inflow of foreign investment in film production. Even though the country needs exhibition theatres and cinema halls and there are no major restrictions on investment in this sector, foreign investors have not shown a keen interest in investing in multiplexes/theatres. Also, the private sector has not enthusiastically responded to joint ventures with foreign companies. At present, around 200 multiplexes are under construction and none of them have foreign shareholding.

Even before the liberalisation there was a strong demand for Indian films in overseas markets. Films are exported not only to countries with high South Asian and NRI population but also to countries in South Africa, Latin America, CIS states, etc. The opening-up of the economy in general and audio-visual sector in particular has made the domestic producers more export oriented. Many production houses, such as Yashraj Productions and Rajshri Production, have set up their own distribution networks in the international markets. Others are tying up with international distributors to distribute their films globally. To reach and attract a wider audience the industry is restructuring the content, adapting new marketing strategies, exploring the non-traditional markets (such as

Japan, Kenya and Latin America), upgrading the technical and editorial standards to international level and exploring the possibilities of increasing exports by using digital technology, such as pay-per-view and web-casting. As a consequence, film exports have grown from more than US$ 48.4 million in 1998 (198 titles) to around US$ 100 million in 2000 (412 titles) to US$ 111 million in 2001.[26] Presently, Indian films are exported to around 95 countries world-wide. Among them, the US and Canada accounted for 30 per cent of the total exports (by volume of prints) in the year 2000, followed by the UK (25 per cent).

In order to improve their production quality, the film industry imports various production and post-production equipment. The reductions in import duties have facilitated such imports. With the inflow of technical know-how and skills, India has made significant progress in production and exports of animation software, special effects and computer graphics. In fact, many global players have established their presence in India. For instance, Pentamedia Graphics, one of the top three[27] computer animation companies in the world, has its headquarter in India. The global computer animation industry is growing at a rate of 20 per cent per annum and is currently pegged at US$ 25 billion. On the other hand, Indian animation industry is pegged at around US$ 0.5 billion and is expected to grow at 30 per cent per annum. Given the availability of low-cost trained manpower, India can develop as a post-production hub for international productions. Realising this potential many companies, such as SIBAR Media and Entertainment Limited, have already set up studios with latest animation and special effects technologies.

The above analysis shows that liberalisation did not have any adverse impact on the Indian film industry. This is because, since its inception, the industry largely concentrated in private hands and direct intervention of the government or public financial support to the sector was minimal. With the opening up of the economy, the industry has become more export oriented. Since the content and audience base is different from that of other major exporters such as the US, Indian film industry does not face any direct competition from global exporters, both in the domestic and international market. Access to the international market have enabled the industry to import latest technical know-how and skills and upgrade their technical and quality standards to international level.

The liberalisation also aimed to enable the film industry to access international funding. In this respect the government policy has been less successful. International majors have not shown much interest in investing in film infrastructure or enter into co-production agreements with Indian players. This is largely due to domestic constraints, such as non-corporatised sector, cumbersome laws related to ownership of real estate, non-transparent accounting procedures, etc.

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[26] FICCI, 2001 and 2002.

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

5. Unilateral Liberalisation, India and GATS

During the Uruguay Round of the WTO negotiations, the audio-visual sector witnessed limited liberalisation. Only 19 WTO member countries made commitments in this sector while 33 members (including the EU as one) undertook MFN exemptions specific to this sector. Many countries have repeatedly raised concerns about the capability of the GATS framework to take into account the democratic, cultural and social aspects. Others have explained that the audio-visual sector is largely covered by domestic regulations and normal trade rules are not applicable to these services. Although it cannot be denied that the audio-visual services play a crucial role in transmission and diffusion of cultural values and ideas, excluding them from trade cannot be an ideal solution, considering the growing commercialisation in this sector. Therefore, in the current round of negotiations, the challenge before the WTO member countries is to strike a balance between promoting and preserving national cultural identity and liberalising trade in audio-visual services.

India's own commitments in the Uruguay Round were extremely limited. India only scheduled partial commitments under commercial presence in motion picture or videotape distribution services, and in that sub-sector too, the country did not bind the existing regime (Table A6 in Appendix A). For example, in its schedule, India imposed both qualitative and quantitative restrictions on film imports. However, the quantitative restriction on import of foreign films to 100 titles per year, was removed/relaxed in 1992, much before the close of the Uruguay Round. During the time of negotiation, India did have the qualitative restriction, which stated that films could only be imported if they had 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 determination of the film festivals and journals was left to the discretion of the Ministry of Information and Broadcasting. Under market access restrictions, foreign distributors were only allowed to set up representative offices in India and had 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. Overall, India's commitments in this sector were very restrictive both in terms of sectoral coverage and modes of delivery.

Indian audio-visual industry has grown significantly since the Uruguay Round and the country has now developed export potential in different segments of the television and film sectors. India is currently exporting films, television software and programmes, post production facilities, computer animation and graphics and the industry is exploring new markets and delivery platforms. India also has an import interest in the two sectors. In order to encourage the inflow of advance technology and development of skills, achieve economies of scale through large investment and increase efficiency through competition, India has unilaterally liberalised the television and film industry in the 1990s. It is, therefore, in India's interest to push for liberalisation of trade in this sector. On its part, the country should broaden its commitments in the current round.

Both the Ministry of Commerce (which is the focal ministry for the WTO negotiations) and the Ministry of Information and Broadcasting have expressed the desire to liberalise trade in audio-visual services and towards this end, various government departments are working closely with industry representatives to prepare the requests and offers.

Industry sources have pointed out that India should offer liberal commitments in motion picture and videotape production and distribution services. Many Indian producers are interested in entering into co-production agreements with foreign players and they believe that a liberal commitment under commercial presence would facilitate international co-productions. Foreign investment in film productions would benefit the industry financially and technically. Since, India has already liberalised its import policy and has an export interest in this sub-sector, it can open up Mode 3 (commercial presence) subject to the existing policy. India should reciprocally ask its trading partners to allow greater market access for commercial presence in film/videotape production and distribution. This will help the Indian industry to enter into co-production agreements and set up distribution networks abroad. Presently, Indian producers and distributors face several barriers in the international markets. Countries such as Brazil prohibit the importation of colour prints for television and theatrical display. Many trading partners, such as Spain, Italy, Brazil, etc., have imposed screen quotas.[28] Others have imposed restrictions, which are specific to contents of Indian origin. For instance, Pakistan has imposed a ban on Indian films and Egypt has a fixed quota for Indian films but it has not imposed a similar quota for Hollywood (US) films. In Indonesia, foreign film and video distributors are prohibited from establishing branches or subsidiaries. Under their Film Law, only 100 per cent Indonesian-owned companies are allowed to import and distribute. Since India has not imposed any such restrictions, it should negotiate for removal of such barriers.

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

Indian film industry has pointed out that the country needs foreign investment in film infrastructure/exhibition theatres. Although motion picture projection services are covered in the MTN.GNS/W/120 classification[29], the classification does not specifically refer to the exhibition of films and operations of cinemas. One of the challenges before India in the current round is to determine whether the existing definition is comprehensive and whether it is in India's interest to broaden the definition to include new services. This

[28] For example, the Italian government has "seat and screen" quotas which requires all multiplex movie theatres of more than 1300 seats to reserve 15–20 per cent of their seats, distributed over no fewer than three screens, for showing Italian and EU films. Spain imposes similar quotas under which television operators are required to reserve 51 per cent of their annual broadcast time to European audio-visual works. Spanish movie theatres are required to show at a minimum one day of European films for every three days of films from a third country (MPAA).

[29] The classification, which was drawn up during the Uruguay Round, is based on the United Nations Provisional Central Product Classification.

issue is also being discussed between the Ministry of Commerce, Ministry of Information and Broadcasting and industry representatives.[30]

India is currently exporting television programmes and software and this export is likely to increase in the future. On the import side, Indian programme production companies do not face any direct competition from foreign players. There is a strong demand for ethnic programmes[31] in India and many global players, such as MTV, Channel V and Star TV, have reoriented their programmes to cater specifically to the Indian taste. Therefore, India can offer liberal commitments in this sector. However, the government should continue to regulate the content of imported programmes in order to safeguard the national security, morality and cultural and social values.

India has imposed some commercial presence restrictions in television broadcasting. For instance, private players are not allowed to enter the terrestrial broadcasting sector and foreign investment in DTH services is limited to a maximum of 49 per cent. Since India has allowed foreign satellite channels to operate in the country, it can offer commitments in television transmission and broadcasting subject to the existing regulations.

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

Many countries of export interest to India have imposed various restrictions on broadcasting (such as broadcasting quotas, local content requirements, restriction on exit from market, rules of origin, etc.). Since India has not imposed similar restrictions, India should negotiate for removal of such barriers.

In the Uruguay Round, all WTO member countries were reluctant to open up Mode 4, i.e., temporary movement of service providers. Most countries left it unbound except as indicated in their horizontal commitments. Some have imposed additional restrictions on trade *via* this mode which are specific to audio-visual sector. For example, the US has imposed additional restrictions on radio and television transmission services. Only a US citizen can obtain radio and television licenses. Indian film producers, directors, actors, cameramen, technicians, etc. often go abroad to shoot films, acquire training or work in international projects. Although there are no major restrictions on the movement of persons for shooting a film abroad, Indian technicians (cameramen, editors, music directors, etc.) sometimes find it difficult to take up temporary employment in the developed countries (for example, the USA and UK) due to the strong union pressures. These unions insist on

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

[31] Programmes which are in local languages, have local content, and are closely related to the local cultural values, etc.

using local skills. In the current round, India should push for liberal market access in Mode 4. Since India has not imposed any major restriction on the entry, except those related to work permits and visas, India can offer reciprocal commitments in Mode 4.

In the last round, India had taken MFN exemption to allow preferential treatment to countries with which it has co-production agreements in motion pictures and television programmes. Some industry representatives recommended that India should continue to retain the MFN exemption. On the other hand, such exemptions reduce the scope for MFN trade, especially since India is not a member of regional organisations. Whatever stand India takes in this regard, would depend upon the stand taken by its major trading partners. If the major trading partners retain their MFN exemptions, it is likely that India would continue to do the same.

India has bilateral cultural agreements with 109 countries (the list of countries is presented in Table A7 in Appendix A). The purpose of these agreements is to strengthen the cultural links with an objective to promote India's cultural image abroad. One of the major manifestations of this policy is to hold cultural festivals of India in selected foreign countries and reciprocally host their festivals in India. It is often argued that bilateral agreements are more beneficial for India than the multilateral agreements and India should continue to have bilateral agreements.

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

Both the government and industry representatives believe that India should actively participate in the GATS 2000 negotiations and offer to bind the unilateral liberalisation undertaken so far.[32] It has been pointed out that an offer consistent with the existing policy will increase India's bargaining power and enable the country to gain from liberalisation commitments under the GATS. It is, therefore, expected that India will push for increased market access during the negotiations. Any initiative to liberalise trade through multilateral negotiations can only be successful if it is backed by appropriate domestic reforms. Various government departments and industry associations are working closely together to initiate necessary measures and regulatory reforms to make the audio-visual sector globally competitive, enable the country to take advantage of the market access opportunities created by GATS as well as facilitate the implementation of its own commitments.

[32] India's commitment for removing the existing restrcitions would depend on the course of the negotiations at the WTO, and the willingness of its major trading partners to take forward looking commitments.

Conclusion

The purpose of this study is to investigate whether the Indian audio-visual policy has been successful in striking a balance between the preservation of the rich cultural heritage of the nation and growth through economic integration. The study found that India has successfully sustained its cultural diversity in the process of globalisation. Instead of crowding out the domestic players, opening-up of the economy has led to the growth of the audio-visual industry and increased the country's export of audio-visual products. Competition from foreign players has encouraged the domestic sector to upgrade its technology to global standards and improve the quality of productions. It has also increased the range of choice available to Indian consumers.

Indian television and film industry largely concentrates in private hands and the government plays the role of a facilitator – initiating appropriate regulatory and fiscal reforms to support the sectoral growth, investment and exports. Even in the case of the public broadcaster, the government does not interfere in the day-to-day activities. The government's support in the sector largely concentrates in provision of training facilities, in setting up connectivity through the terrestrial network and offering appropriate tax relief to enable the sector to become globally competitive.

Until a few years ago, the audio-visual industry was divided into two groups. One group believed that opening up of the economy would make the sector vulnerable to international competition and this would lead to cultural degeneration. The other group has pointed out that access to international technical know-how and skills would enable the sector to achieve global standards and access to finance would lead to economies of scale. The government itself was very skeptical about opening up the sector and hence, the process of liberalisation was slow and hesitant. The outcome of liberalisation leaves no doubt that it has benefitted the Indian industry. The market for Indian audio-visual product has grown with such rapidity that it is now compared to the growth of the software sector in India. In fact both these sectors have grown with minimum government interference.

A culture's survival is not ensured by its insularity but by its ability to absorb the best of other cultures. The entire debate on cultural connotation of the audio-visual services has to be viewed in this context. India is a good example of a country where different cultures co-exist and have evolved over the ages. Liberalisation can lead to cultural degeneration, if it crowds out the domestic players. So far, this has not happened in India. International producers operating in India had to reorient their products to cater specifically to Indian culture and tradition. On the other hand, Indian products have secured a niche market abroad and do not face any direct competition from the major global players such as the US. Thus, on the whole, India has gained through unilateral liberalisation and the country should now use the GATS 2000 negotiations to push for increased market access in countries of export interest.

Appendix A

Table A1
Country-wise Production of Films and Expenditure on Film Production in the Year 2000

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

Source: FICCI- Frames, 2002.

Table A2
Sector-wise Break-up of the Ninth Plan (1997-2002) and Annual Plan (2001-02) Outlay to the Three Wings of the Ministry of Information and Broadcasting

Sector	Approved Ninth Plan Outlay (1997-2002)		Approved Annual Plan 2001-02 Outlay	
	In crore rupees	In million US$	In crore rupees	In million US$
Broadcasting Sector (Prasar Bharati)	2567.05 (3065.09)	540.5 (645.4)	752.93	158.5
a) All India Radio	805.09 (746.13)	169.5 (157.1)	190.93	40.2
b) Doordarshan	1761.65 (2318.96)	370.9 (488.3)	562.00	118.3
Information Sector	93.30 (94.61)	19.6 (20)	17.08	3.6
Film Sector	182.70 (212.16)	38.4 (44.6)	41.39	8.7
Total	2843.05 (3371.86)	598.6 (710)	811.40	170.8

Source: *Annual Report, 2001-02*, Ministry of Information and Broadcasting, Government of India.

Note: The figures in bracket are total outlay for five annual plans actually provided.

Exchange rate (Rs/US$) used for the calculation is 47.49 for April-January, 2001-02. The exchange rate is so taken to facilitate the comparability of the approved ninth plan outlay and the approved annual plan (for the year 2001-02) outlay (Source: The Economic Survey, 2001-02).

Table A3
Entertainment Tax Rate of Various Asian Countries

Country	Entertainment Tax (%)
Hong Kong	0.00
Japan	3.00
Singapore	3.00
Thailand	7.00
Taiwan	7.62
Korea	16.60
Indonesia	25.0–30.00[1]
Malaysia	30.90
Philippines	33.00
India	**14.00–167.0[2]**
	Average: 60.00[3]

Source: Film Federation of India
Note: [1] the range of entertainment tax in Indonesia.
[2] the range of entertainment tax in India.
[3] 60 % entertainment tax is charged in Maharashtra.

Table A4
Nature of Entertainment Tax Imposed in India

State	Entertainment Tax	Nature of Tax Imposed and Incentives Provided
Bihar	110 %	Further compounding of taxes from 10 to 30 per cent based on gross collection capacity per show
Assam	80% 100%	Up to Rs 2,000 (US$ 42) Above Rs 2,000 (US$ 42)
Jammu and Kashmir	100%	
Rajasthan	100%	Further compounding of taxes at 10 to 35 per cent based on category of city.
Madhya Pradesh	75%	Further compounding of taxes from 10 to 45 per cent based on gross collection capacity.
Orissa	60% or 70%	Entertainment tax is levied at a rate not exceeding two rupees for every one hundred seats or a part thereof.
Maharashtra	60%	In Maharashtra differential rates of entertainment tax is payable on cinematographs including video exhibition. These differential rates vary according to the location of the place of the entertainment, with a higher rate structure being prescribed for urban centres. Different rates of taxation are applicable to videos, permanent cinema, and touring cinemas. Provides tax exemption for next three years and 75 per cent rebate for next 2 years to multiplexes with more than 4 screens and capacity greater than 1200 seats.
Uttar Pradesh	60%	Provides tax exemption for multiplexes for 1 year and tax rebate of 75 per cent for next two years for projects worth Rs 15 million or more.

State	**Entertainment Tax**	**Nature of Tax Imposed and Incentives Provided**
Chandigarh and Haryana	50%	
Delhi	40% or 60%	Tax is charged depending on the admission rate.
Gujarat	35% to 40%	Tax is levied depending on whether the population is less than or greater than 100 thousand. Different tax rates are prescribed for drive in theatres. Different tax rates are charged from cable operators in urban and rural areas. Provides 7 year tax exemption (dependent on proportion of investment) for multiplexes
Kerela	30%	
Tamil Nadu	25% 20%	On new films On films older than 10 years Provides subsidy of Rs 0.5 million (US$ 10.5 thousand) to low budget Tamil films.
Karnataka	15% or 28%	Tax is charged depending on the population and number of shows per week. No entertainment tax is levied on Kannada, Kodava, Tulu, Konkani and Banjara language films that are made in the state of Karnataka. Cable operators are required to pay entertainment tax at the rate of Rs 15 per month, per connection.
West Bengal	15% 65%	For Bengali and Nepali films For Hindi and foreign films Entertainment tax applicable to cable television services cannot exceed 25% of the monthly gross receipts.
Andhra Pradesh	12% 10%	Telegu films Low budget films
Punjab	Variable	Tax charged is based on tax paid by cinemas in the last 10 years
Himachal Pradesh	0%	Provides 10-year tax exemption for multiplexes. This exemption is from tax such as municipal show tax, new release tax, property tax, etc.

Source: FICCI, 2002.
Note: Exchange rate (Rs./US$) figure is taken from the Economic Survey, 2001-02.

Table A5
Gross Commercial Revenue of Doordarshan in the Pre and Post Liberalisation Period

Pre Liberalisation		Post Liberalisation	
Year	**Revenue (million US$)**	**Year**	**Revenue (million US$)**
1976–77	0.89	1990–91	141.5
1977–78	2.4	1991–92	122.8
1978–79	6.1	1992–93	117.5
1979–80	7.6	1993–94	118.9
1980–81	10.2	1994–95	126.7
1981–82	12.6	1995–96	128.6
1982–83	16.4	1996–97	161.3
1983–84	17.4	1997–98	131.9
1984–85	26.5	1998–99	94.9
1985–86	49.2	1999–00	137.8
1986–87	73.0	2000-01	139.5
1987–88	105.1	2001-02	128.9
1988–89	111.3		
1989-90	126.1		

Source: Doordarshan, *Annual Report*, 2001-02.
Note: Average Exchange rate figures (Rs/US$) for each year are taken from The Handbook of Statistics, 2002, Reserve Bank of India.

Table A6
India's Commitment in Audio-visual Services

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

Source: India's Schedule of Specific Commitments (GATS/SC/42), www.wto.org
Notes: 1) Cross-border supply, 2) Consumption abroad, 3) Commercial presence, 4) Movement of natural persons
* Unbound due to technical unfeasibility

Table A7
Countries with which India has Cultural Agreements

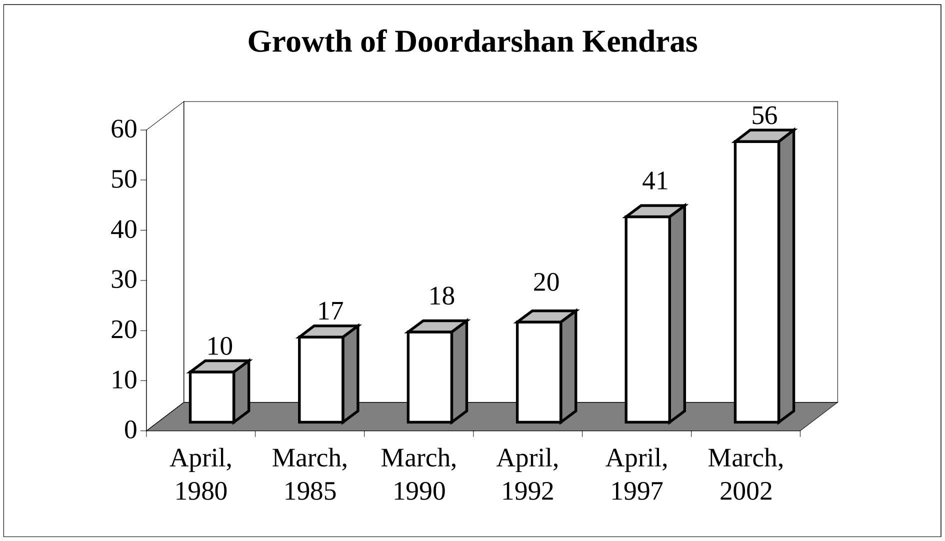
Serial Number	Country	Serial Number	Country	Serial Number	Country
1	Afghanistan	38	Iraq	75	Pakistan
2	Australia	39	Italy	76	Qatar
3	Argentina	40	Israel	77	Romania
4	Algeria	41	Japan	78	Rwanda
5	Armenia	42	Jordan	79	Russia
6	Bulgaria	43	Jamaica	80	Senegal
7	Brazil	44	Kuwait	81	South Korea
8	Bangladesh	45	Kenya	82	Sudan
9	Belgium	46	Kyrghystan	83	Syria
10	Bahrain	47	Kazakhstan	84	Sri Lanka
11	Burkina Faso	48	Lesotho	85	Somalia
12	Benin	49	Libya	86	Spain
13	Belarus	50	Laos	87	Seychelles
14	Belize	51	Latvia (MOU)	88	Surinam
15	Botswana	52	Luxembourg	89	Singapore (MOU)
16	Bolivia	53	Lebanon	90	Slovak
17	Colombia	54	Mongolia	91	South Africa
18	Cuba	55	Mexico	92	Slovenia
19	Cyprus	56	Mauritius	93	Turkey
20	China	57	Malaysia	94	Tunisia
21	Chile	58	Morocco	95	Tanzania
22	Cambodia	59	Mozambique	96	Thailand
23	Czech	60	Maldives	97	Trinidad & Tobago
24	Croatia	61	Malta	98	Turkmenistan
25	Djibouti	62	Maldova	99	Tadjikistan
26	Egypt	63	Madagascar	100	UAE
27	Ethiopia	64	Norway	101	Uganda
28	Estonia	65	North Korea	102	Uzbekistan
29	France	66	Nigeria	103	Ukraine
30	Finland	67	Netherlands	104	Vietnam
31	Greece	68	Nicaragua	105	Venezuela
32	Germany	69	Namibia	106	Yemen
33	Guyana	70	Oman	107	Zambia
34	Ghana	71	Poland	108	Zaire
35	Hungary	72	Philippines	109	Zimbabwe
36	Indonesia	73	Portugal		
37	Iran	74	Peru		

Source: Department of Culture, Government of India, *Annual Report*, 2000–2001.

Figure A1: Various Units under the Ministry of I&B

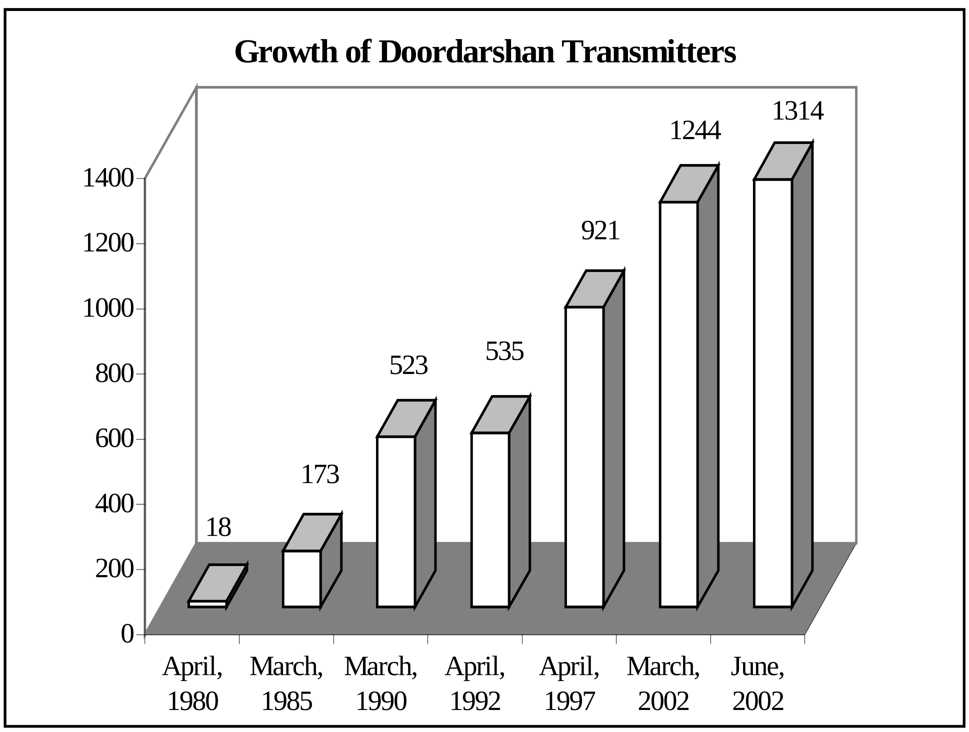
- Ministry of Information and Broadcasting
  - Information Wing
    - Photo Division
    - Registration of Newspapers for India
    - Research Reference and Training Division
    - Press Information Bureau
    - Photo Division
    - Directorate of Advertising and Visual Publicity
    - Press Council of India
    - Indian Institute of Mass Communication
    - Song and Drama Division
  - Broadcasting Wing
    - Prasar Bharati (All India Radio and Doordarshan)
    - Broadcasting Engineering Corporation of India Ltd. (provides consultancy services in the field of Acoustics, Audio, Video, MMDS, Digital Satellite, etc.)
  - Film Wing
    - Film Division (produces documentaries)
    - Directorate of Film Festival: (holds National Film Festival every year)
    - Film and Television Institute of India (training)
    - Satyajit Ray Film and Television Institute (training)
    - National Film Development Corporation (film production)
    - Central Board of Film Certification (certifies movies)

Figure A2a



Source: Doordarshan, *Annual Report*, 2001-02.

Figure A2b



Source: Doordarshan, *Annual Report*, 2001-02.

Appendix B

Laws Affecting Television and Films Sector in India

Television

1. **Prasar Bharati Act, 1990**
   The Act provides for the establishment of a Broadcasting Corporation for India, Prasar Bharati. The Act defines the composition of the Prasar Bharati, its functions and powers. The jurisdiction of the Act extends to the whole of India.

2. **The Cable Television Networks (Regulation) Act, 1995**
   The Act regulates the operation of cable television network in the entire country so as to bring about an uniformity in their operations. This Act requires cable television network to be operated only after registration and show programmes which are in conformity with the programme code prescribed under the Cable Television Networks Rules, 1994. As per this Act, only an individual who is a citizen of India, or an association of individuals whose members are citizens of India, can be a cable operator and provide cable television network or can be responsible for the management and operation of cable television network.

3. **Cable TV Networks (Regulation) Amendment Bill, 2000**
   The bill seeks to amend the existing cable laws and bring all free-to-air satellite channels broadcasting in India under the ambit of the country's existing program and advertising code. The amendments give the state powers to regulate obscenity, and allow it to block tobacco and liquor advertising from television channels. The amendment bill also ensures that viewers around the country receive quality signals of the national broadcaster by making it mandatory for cable operators to re-transmit three Doordarshan terrestrial channels on the prime band, two national and one regional.

Other laws and regulations applicable to cable operators are

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

4. **Communication Convergence Bill, 2001**
   The Communication Convergence Bill was introduced in the Lower House of the Indian parliament on August 31st 2001. The bill primarily intends to promote and develop the entire communications sector, in the scenario of increasing convergence of technologies in the IT, telecommunication and audio-visual sector. In the audio-visual

sector the bill will encompass five existing laws-The Indian Telegraph Act-1885, Cable TV Networks Act 1995, Indian Wireless Telegraphy Act-1933, The Telegraph Wires (Unlawful Possession) Act 1950 and the Telecom Regulatory Authority of India Act 1997.

The bill has four main objectives

i. to facilitate development of national infrastructure for an information based society, and to enable access thereto;
ii. to provide a choice of services to the people with a view to promoting plurality of news, views and information;
iii. to establish a regulatory framework for carriage and content of communication in the scenario of convergence of telecommunication, broadcasting, data-communication, multimedia and other related technologies and services; and
iv. to establish the powers, procedures and functions of a single regulatory and licensing authority and of the Appellate Tribunal.

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

Films

1. Cinematography Act, 1952

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

U– for universal viewership or unrestricted public exhibition.
UA– for restricted viewership. Children below 18 years can see the film accompanied by their parents.
A– for adult viewership.
S– for restricted viewership, for only certain sections of the society.

The Cinematography Act has been amended several times (in1953, 1957, 1959, 1960, 1973, 1981 and 1984).

2. **The Cine Workers Welfare Cess Act, 1981**
   The Act has been implemented to provide for the levy and collection of a cess on feature films for the financing of activities to promote the welfare of certain cine-workers and for matters connected therewith or incidental thereto.

3. **The Cine Workers Welfare Fund Act, 1981**
   An Act to provide for the financing of activities to promote the welfare of certain cine-workers.

Laws Affecting both Films and Television Sector

Copyright Act, 1957

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

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

Copyright with respect to photographs, cinematographic works and sound recordings span for 60 years of its first publication. This Act has been amended several times in the years 1983, 1984, 1992, 1994 and 1999. The amendments in 1994 were quite extensive and in response to technological changes in the means of communication, emergence of new technologies like computer software, and with the aim of reducing piracy through simplification of certain concepts and rights, enhancement of penal provisions and provisions for collective administration. It was further amplified that communication through satellite or cable or any other means of simultaneous communication to more than one household, place or residence shall be deemed to be communication to the public. The 1999 amendments made the Copyright Act fully compatible with the Trade Related Aspects of Intellectual Property Rights.

Copyright in cinematographic works is more complex in nature as there exists a variety of copyrights in a single work and many a times these rights are also overlapping. The first right in the film is the 'theatrical right' i.e. the right to exhibit films in theatres. The producer is the copyright holder. The distributors buy theatrical rights from producers and then make some arrangements with the theatre owner for actual exhibition to the public. The theatrical rights are limited by territory and time. Films are also released in videocassettes and in this case the producers sell the video rights to another party, who makes videocassettes for sale in the market. These cassettes are meant for 'home viewing' only. Such cassettes cannot be used for showing films in cables or through satellite channels. For showing films through cables and satellite channels, the operator requires separate set of rights – cable rights and satellite rights respectively.

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