TRENDS IN AUDIOVISUAL MARKETS

REGIONAL PERSPECTIVES FROM THE SOUTH

Burkina Faso
Colombia
India
Nigeria
Peru
Philippines
Senegal
Thailand
Venezuela

UNESCO
United Nations
Educational, Scientific and
Cultural Organization

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Harnessing ICTs for the Audio-visual Industry and Public Service Broadcasting in Developing Countries

UNESCO Cross-Cutting Theme (CCT) project 2004-2005

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In 2001, the General Conference of UNESCO approved the introduction of a new cross-cutting theme in the Organization's programme: *The contribution of information and communication technologies to the development of education*, science and culture and the construction of a knowledge society, aimed at reinforcing intersectoral cooperation within UNESCO.

In line with UNESCO's strategy on the contribution of information and communication technologies (ICTs) to the development of education, science and culture and the construction of knowledge societies outlined in UNESCO's Medium-Term Strategy for 2002-2007, the Organization launched an internal call for project proposals under this new theme focusing on strengthening capacities for scientific research, information-sharing and cultural exchanges.

Within this context, the Communication and Information Sector and the Sector of Culture jointly formulated the project, *"Harnessing ICTs for the audio-visual industry and public service broadcasting in developing countries"*, a proposal going beyond the areas and themes traditionally covered by each sector (e.g. media development, cultural industries and enterprises), and introducing a new, intersectoral dimension into the programme: the impact of international trade on the audiovisual industry and its effects on local cultural expression. The project was approved for implementation by the General Conference in November 2003.

The research conducted under this project in 2004-2005, and presented in this book, provides an overview of the main trends in the broadcasting and audiovisual industry worldwide, with a focus on regional patterns of production, consumption and trade in Africa, Asia and Latin America. The sample of countries was selected so as to represent contrasted audiovisual landscapes, some of the studied countries boasting tremendous audio-visual trade volumes while others have very limited production capacities.

Parallel to the publication of this research, UNESCO organised a series of regional workshops where the findings of the studies were shared and discussed with key groups in the three regions, and where a dialogue was encouraged among stakeholders.

While developing countries are facing crucial decisions affecting the broadcasting and audio-visual industry, today's pillar for information and cultural exchange, policy and decision makers in these countries may sometimes lack the necessary tools to adequately inform their choices and strategies. We hope that this work will assist UNESCO Member States in analysing and understanding the impact of multilateral, regional and bilateral trade policies on the future audiovisual landscapes of their countries, while stimulating a reflection on the potential implications, positive or negative, for the expression of local cultures. Ultimately, we expect that this work will encourage appropriate action in terms of international and national audiovisual and broadcasting policies.

Finally, we would like to thank all participating researchers for their work and commitment, with a special recognition to Pierre Sauvé who wisely guided UNESCO throughout the research process.

Abdul Waheed Khan
Assistant Director-General
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INTRODUCTION

PIERRE SAUVÉ

The economic and regulatory analysis of cultural industries remains complex and data, whether on market trends or on regulatory regimes, is largely deficient, especially in developing countries. This seriously complicates analytical enquiries into the sector at the same time that it clouds the efficacy of policy-making initiatives. Mindful of this reality, UNESCO has promoted the project. “Harnessing ICTs for the Audiovisual Industry and Public Service Broadcasting in Developing Countries”. The collection of background papers[1] prepared under it and reviewed in this introduction confirms that treating cultural products like any other product is no more realistic in a developing country context than it is in developed countries. Policy-makers and trade negotiators who choose to ignore this reality are bound to encounter resistance and commit potentially costly policy mistakes. The project’s findings, even if preliminary in nature at this stage, draw close attention to some of the policy and rule-making considerations (and sensitivities) that underlie ongoing efforts at negotiating a UNESCO Convention on the protection of the diversity of cultural contents and artistic expressions, a central aim of which is to strike an acceptable balance at the trade-culture policy interface.

This summary does not purport to synthesize the wealth of information contained in the five background papers. Rather, it aims to delineate some of the key policy challenges that the audiovisual industry poses for developing countries and to highlight a number of key trends in industry development. It does so with a view to sketching out a range of issues that may warrant further analytical attention and call for specific capacity building activities in developing countries.

1. MAIN ISSUES IN THE AUDIOVISUAL INDUSTRY IN DEVELOPING COUNTRIES

The products of creative industries and in particular cultural industries, such as music, cinema and television (i.e. the audiovisual

1. Project background papers:
1) *Audiovisual Markets in the Developing World. Statistical Assessment of 11 countries: Burkina Faso, China, Costa Rica El Salvador, India, Mexico, Nigeria, Philippines, Senegal, S. Korea and Thailand.* By Emmanuel Le Coq with Florence Levy
2) *Treatment of Cultural Goods and Services in International Trade Agreements.* By Craig Van Grasstek.
3) *Trends and Perspectives of the Audiovisual Markets in Colombia, Peru and Venezuela*. By German Rey
4) *Trends in Audiovisual Markets: Perspectives from Africa. Burkina Faso, Nigeria and Senegal*. Coordinated by Olivier Barlet. Contributors: Yamlaneda A. M. Paulin Yameogo, Oumar Sall, and Tunde Oladunjoye.
5) *Trends in Audiovisual Markets: Perspectives from Asia. India, Philippines and Thailand.* Coordinated by Madanmohan Rao. Contributors: Arun Jethmalani, Srikanya Mongkonsiri, and Mary Ebitha Y. Dy.

industry), differ from other, more conventional, goods and services. Cultural products are best understood as "experience goods"[2], whose value cannot always be measured in the same way as other commercial products[3]. The nature of the production process of such products is different, with an expensive front-end development process typically characterized by high sunk costs in order to arrive at a master copy of an intellectual property-protected product, and subsequently characterized by a low-cost reproduction process. Unless enough copies of the art work are sold, producers are bound to face losses on their investments. In this context, the sale of counterfeit products represents a major problem. Piracy remains ubiquitous in the great majority of developing countries and poses a serious challenge to the viability of many domestic audiovisual production projects, in addition to creating recurring frictions with large trading partners. This is confirmed by all background papers prepared for this project.

Another characteristic that differentiates cultural products from other products lies in the greater relative difficulty of knowing in advance what type of audio-visual product will be economically successful. Market research is notoriously ineffective in predicting successful audiovisual products. Because most cultural products fail commercially, larger operators who can afford to diversify their portfolios and provide marketing support are better equipped than are smaller players or countries, especially developing countries. This is why public support measures may typically be required. However, such support is particularly expensive from a purely commercial perspective, and "picking the winners" in this area is often harder than in other economic sectors (at the same time, one must acknowledge that not all commercial "losers" represent a loss from a societal perspective). The latter reality poses a special challenge to budget-constrained developing countries[4].

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2. According to the classification used by UNESCO, the core cultural goods include such items as recorded media, audiovisual media (videogames, exposed film, etc.), heritage goods (i.e., antiques, archives, etc.), visual arts (i.e., painting, sculpture, graphic arts, art handicrafts, etc.), newspapers and periodicals, other printed matter (e.g., maps, pictures, designs, etc.). These core items are to be distinguished from "related cultural goods" such as equipment and support material (i.e., musical instruments, sound-playing equipment, television and radio receivers, etc.) and other goods that are only partially cultural in their content (e.g., architectural plans and drawing, and advertising material). Similarly, the classification distinguishes between core cultural services (i.e., audiovisual services and copyright royalties) and related cultural services (i.e., information services, news agency services, and advertising and architectural services). *International Flows of Selected Cultural Goods and Services, 1994 - 2003*, UNESCO Institute for Statistics, Montreal 2005.

3. Richard E. Caves. *Creative Industries: Contracts between Art and Commerce*. Cambridge, Mass.: Harvard University Press, 2000.

4. Korea, Mexico and India are examples of countries with an active industrial policy in film-making. See the paper by E. Cocq.

The nature of consumption of cultural products is also different, as consumers value such products mainly for the experience they convey rather than for their material form, even if the media on which creative products are fixed may itself add value in some circumstances. For instance, a DVD is generally considered a more attractive product than a video cassette because of its more sophisticated viewing features. As each cultural product is unique and irreplaceable, there is, moreover, more limited scope for substitution.

Demand patters are also specific. Demand for news and sports programming fades almost instantaneously, while movies may maintain their appeal for decades. Furthermore, there is often no free consumer choice for many cultural products. Most are subject to gatekeepers, such as broadcasters or publishers, who may largely pre-determine demand. Such gatekeepers often have specific interests in promoting one product over another, and may not always reflect the true tastes or wishes of the viewing public. This remains a particular challenge for developing countries as their domestic distribution sector is generally weak (for movies) or monopolized (for TV and radio), such that many consumers are priced out of the cultural product markets and/or lack the necessary equipment to consume audiovisual products[5].

Furthermore, due to the large economic and (even more importantly) non-economic interests at stake, production, commercialisation - including through international trade - and distribution of cultural products is subject to often dense public regulation and intervention. Audiovisual products may result in external benefits, so-called "positive externalities". For example, the domestic production of news, documentary programs or films may increase a population's level of information on national institutions, events, and issues while also fostering a home-grown perspective on international affairs. It may also promote the greater use of local languages, help build or strengthen national identities, promote cultural diversity, and so on. However, producers, distributors, and exhibitors who bring such domestic products to market may not receive full (or even partial) compensation for the provision of such external benefits. This may then lead to an under-supply of such socially desirable products. Government intervention may thus be required to compensate for this market failure, notably through intellectual property rights and their enforcement. Interventions of this kind are notoriously difficult and costly to carry out, clearly posing a challenge to most developing countries. As the background studies to this project

5. See the Senegal case study prepared by Oumar Sall in the background paper on West Africa coordinated by Olivier Barlet.

attest, many developing countries are sufficiently hard-pressed in budgetary terms to even have a national policy on culture as such, let alone the means to articulate and implement it[6].

'Domestic' audiovisual products are generally the main beneficiaries of various types of regulatory, financial and fiscal support measures. It should be noted that the 'domestic' product category is not always straightforward to identify. A locally-produced audiovisual product whose content does not reflect domestic reality or is clearly foreign may not qualify as a 'domestic' product for the purpose of cultural policy. For instance, movies such as the "The Lord of the Rings" produced in New Zealand may be considered in some respect as US movies. International co-production arrangements complicate the matter even further. However, from the perspective of developing countries, as mentioned earlier with regard to support measures for potentially profitable but under-invested audiovisual ventures, support geared towards broader 'cultural' objectives remains challenging because of existing budget constraints. Indeed, few developing countries appear to have well-funded support policies[7]. For African countries, much of the support comes from international cooperation[8].

Beyond the fact that many developing countries suffer from inadequate regulatory regimes, difficulties also stem from political disagreements over the proper role of government intervention in cultural matters[9]. In this regard, it bears noting that screen or broadcasting quotas for domestic products are comparatively much less used in developing countries than is the case in developed countries, in part since the regulatory means to monitor compliance with and enforce such quotas is so much weaker in developing countries. Furthermore, most developing countries do not have independent regulatory agencies in the audiovisual sector[10]. Areas of regulatory policy that have significant impact on the audiovisual industry include taxation, foreign investment restrictions[11], telecommunications and broadcasting licensing and regulation[12].

6. See the Nigeria case study prepared by Tunde Oladunjoye in the background paper on West Africa coordinated by Olivier Barlet.
7. See the African case studies in the background paper coordinated by O. Barlet.
8. See the background paper by E. Cocq as well as the one coordinated by O. Barlet.
9. See the background paper coordinated by O. Barlet.
10. See the background paper by E. Cocq.
11. For instance, both India and Thailand still have some foreign investment limitations in AV industries. See the respective case studies by Arun Jethmalani and Srikanya Mongkonsiri in the background paper coordinated by M. Rao.
12. Major reforms have been recently introduced in these areas in Thailand, see the background paper coordinated by M. Rao.

With regard to the appropriate role of public intervention in the audiovisual sector, countries continue to have rather different perspectives. This is particularly so when large export interests are concerned. In an international trade regime generally geared towards open markets and economic integration, the question then becomes: should cultural goods and services be treated any differently from other products? This fundamental debate pits proponents of a generally unrestricted opening of cultural goods and services markets - the United States being perhaps the most resolute and articulate advocate - against those who feel that cultural products are not the same as other products and need protecting and supporting. Canada and France fall prominently on this side of the debate, followed by many other sympathisers, including a majority of developing country members of the WTO. Services negotiations during the Uruguay Round and currently under the Doha Development Agenda (albeit to a significantly much lesser extent) have been and remain central battle grounds for such a confrontation. This policy interface, and the dilemmas to which it gives rise, has also popped up in several regional trade agreement negotiations, as well as in the context of WTO accession negotiations[13]. It has, as well, proven the main theatre in which UNESCO member countries have sought to reach multilateral consensus on a Convention on Cultural Diversity.

There is currently no dedicated "international agreement on trade in cultural goods and services," in the sense of an agreement that explicitly and exclusively deals with cultural trade and investment per se. Rather, there are many trade agreements administered by the WTO - the General Agreement on Trade in Services (GATS) in particular but also the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) - as well as other regional integration agreements that affect the terms by which cultural goods and/or services are traded across borders (together with other goods and services that are not cultural in nature).

The cultural sector ranks amongst those policy domains in which WTO Members have exercised clearest regulatory precaution, displaying considerable reluctance to undertake GATS commitments in the sector. The GATS does not define "cultural services" per se. The most important cultural services are instead included as subsectors within the broader classifications of "communications services" and "recreational, cultural, and sporting services." While some 58 WTO members have made (typically) partial commitments in one or more

13. For details, see the background paper prepared by Craig VanGrasstek.

cultural sub-sectors, 82 other members have made no commitments whatsoever[14].

The largest number of commitments is in the area of entertainment services (defined to comprise theatre, live bands, and circuses), where 40 countries have scheduled commitments. This group includes some members, such as the European Communities, that are otherwise highly reluctant to undertake commitments in other cultural sectors. Somewhat surprisingly, motion picture and video production and distribution services ranks as the second most committed of the cultural sub-sectors, with 29 WTO members having made commitments in this culturally sensitive sub-sector though with strong limitations in most cases. This is followed by libraries, archives, and museums, with 18 members subscribing commitments. Meanwhile, twelve WTO members have agreed to commit themselves in sound recording and in radio and television production and transmission services respectively[15].

The above data recalls how developed and developing countries alike are manifestly reluctant to pursue cultural policy objectives in a trade policy setting. This applies even to countries such as India that have a rather liberal domestic audiovisual regimes and a vibrant domestic industry[16]. Such a trend is likely to continue in the future in light of the policy sensitivities that the industry continues to elicit. Yet, as a growing range of developing countries become important exporters of audiovisual products, it is important to consider both their offensive (i.e. market access) and defensive interests (i.e. a desire to maintain policy space for purposes of industry support and protection). This may call for more sophisticated negotiating postures, which will need to be informed by a deeper understanding of industry trends and policy priorities in each country and across regions.

Another key international issue for developing countries is to find the means to combat piracy, which imposes large losses on foreign as well as domestic audio-visual producers[17]. Piracy takes various forms,

14. Several influential WTO members made no commitments in any of the cultural sectors (e.g., Australia, Brazil, Canada, Norway, Switzerland, and Chinese Taipei), while a number of large members made commitments in just one sector (e.g., China, the European Communities, India, and Mexico). Apart from the United States, the only countries to make commitments in all cultural subsectors were the Central African Republic, Gambia, and the Kyrgyz Republic. Only four WTO members have made commitments in four out of five subsectors: Armenia, Japan, Jordan, and Panama.
15. The fact that radio and television attracted the smallest number of commitments might be attributed in part to the issues of national security that surround control of the airwaves; that same explanation would not appear to be applicable in the case of sound recording.
16. See the India case study in the background paper coordinated by M. Rao.
17. This fact is confirmed by all case studies. Changes have been introduced in several countries, see for instance the Philippines case study in the background paper coordinated by M. Rao.

more or less prevalent in each country, including counterfeiting of music and movies on different supports, pirate music broadcasting and movie showing as well as pirate selling of encrypted TV programming. This issue is made more complex in light of the broader objective of ensuring fair access to cultural products for consumers with limited resources in developing countries and of the sheer economic importance that the counterfeit industry has acquired. For instance, it is estimated that in Nigeria the counterfeit industry employs about 300 000 people or as much as the film-making industry itself[18].

2. MAIN TRENDS IN THE AUDIOVISUAL INDUSTRY IN DEVELOPING COUNTRIES

Despite acute data shortcomings, there is little doubt that trade in cultural products is still primarily concentrated in the hands of a few industrialized countries. In the case of motion pictures and other audiovisual services trade, the dominance of the United States is well-known. The only other OECD countries to enjoy a trade surplus in audiovisual trade are the United Kingdom, Ireland, and Mexico. Conversely, developing countries still account for a small share of cultural exports, but encouragingly their market share is growing.

Nonetheless, many developing countries are becoming important exporters of cultural products. UNESCO figures concerning cross border trade of selected cultural products show that in 1994, developing countries exported $4.2 billion worth of core cultural goods, and accounted for 11.5 percent of the global market. By 2002, their exports had grown to $11.6 billion, representing just over a fifth (21.2 percent) of the global market. This growth was not however uniform across all types of cultural products. It was largest for audiovisual media, where the developing country share of global exports rose from 27.6 percent in 1994 to 44.6 percent in 2002. The market share of developing countries also rose sharply for recorded media - from 6.1 to 17.6 percent, and for visual arts - from 19.7 to 29.8 percent, but less rapidly for books - from 14.2 to 15.9 percent, and other printed matter - from 11.9 to 12.3 percent over the 10994-2002 period. The developing countries' share dropped in the areas of heritage goods - from 3.1 to 2.6 percent, and newspapers and periodicals -from 5.5 to 4.4 percent during the same period[19].

Some developing country markets are also acquiring prominence in import terms as they witness booming domestic sales. The

18. The Nigeria case study in the background paper coordinated by O. Barlet.
19. See background paper by Craig Van Grasstek.

music market in China, for example, is growing at rates of over 30 percent. India's entertainment industry has registered annual growth rates of 20 percent in recent years, with TV broadcasting the country's fastest-growing segment[20]. However, as noted earlier, in virtually all developing countries, intellectual property piracy remains rampant, diverting a significant share of the sales revenues away from right-owners.

Developing countries face greater obstacles in some areas of cultural production than in others. This depends in part on the technical sophistication and capital costs associated with an audiovisual undertaking, which can be particularly high in the audiovisual field, especially motion pictures. Most developing countries lack the financial and human capital needed to produce the technically sophisticated films that do well in mass markets. However, there are important exceptions. The Hong Kong movie industry has a long tradition of presence in international markets. India now produces more films than any other country even if, in value terms, its production is still 24 times less than that of the United States. China, Thailand and the Philippines are also emerging as important movie producing nations. In Africa, Nigeria has developed a thriving home video industry, a path countries such as Madagascar, Ghana and Cameroon are also trying to follow.

Moreover, there are several examples of countries where limited but quality film production exists, giving rise to the perspective of further development if the necessary supporting measures are put in place. Countries such as Burkina Faso or Senegal belong to this category.

Film distribution in developing countries is usually run by the big, and mainly American, distributors. The competitive effects of this situation warrants closer analytical scrutiny[21]. The same applies to the market for music production, which is generally dominated by large, developed country, firms[22]. In most of Africa, where such firms are largely absent, local production remains primarily artisanal in nature.

Capital requirements are much smaller for television programming, where production costs also tend to be much lower. Countries such as Brazil, China, India, Korea, Mexico and Thailand have a

20. See the India case study in the background paper coordinated by M. Rao.
21. African films appear to have great difficulties in distribution, see the background paper coordinated by O. Barlet.
22. However, for instance, the Music industry in Thailand is run by two major companies: GMM Grammy and RS Promotion, both local Thai companies. See the background paper coordinated by M. Rao.

domestic production capacity that allows them to adequately supply the home market. Both Brazil and Mexico are also major exporters of television programming, with India rapidly following suit in supplying a large diaspora population abroad.

These and other cases notwithstanding are not however typical. In general, for every developing country that has done well in some audiovisual markets, there are several more that produce few or no cultural products for the domestic market or for export.

For most developing countries, structural difficulties represent daunting obstacles to cultural production and its diffusion. This ranges from factors as diverse as the paucity of disposable income to spend on non-essential consumption, literacy, problems of secure and reliable access to electricity, particularly in rural areas, the low availability of consumer equipment (TVs, DVD players), as well as a general dearth of producers, broadcasters and distributors' facilities. The latter include movie theatres - there are on average 80 movie screens per million people in developed countries as compared to 27 in developing countries. Meanwhile, investment in audiovisual production remains in most countries limited and sub-optimal. This curtails the ability of local artistic talent to express itself and limits the production and diffusion of audiovisual products rooted in local patrimony. Both phenomena can interact in ways that may pose a threat to cultural diversity.

In the case of the film industry, for example, developing countries produced 1,2 movies per million inhabitants on average in 2002. This figure compares with 6.27 in developed countries – five times more. With a few notable exceptions, the major firms active in the production of audiovisual products tend to steer clear of the majority of developing countries. For instance, with the exception of South Africa, none of the four music giants - Sony/BMG, Universal Music, EMI and Warner Music - is present on the African continent.

Not surprisingly, international cooperation, and co-production agreements in particular, remain quite important for many countries' audiovisual industry. However, as in other areas, such cooperation is no panacea. In some African countries, the free (or almost free) availability of European TV products may reduce the incentive to produce TV programmes locally[23], recalling the highly distortive effects export subsidies exert in agricultural markets.

23. See the background paper by E. Cocq.

3. ISSUES REQUIRING FURTHER RESEARCH WORK AND CAPACITY BUILDING ACTIVITIES

The audiovisual industry with its economic peculiarities and its important public policy ramifications poses difficult challenges to the governments of developing countries. Confronted with what are often regarded as more pressing priorities, many countries have not been able to give the audiovisual sector the attention it requires. There is, accordingly, a clear need to pursue further research on trends in audiovisual industries and on best-practice support policies through both diagnostic and thematic studies and to provide adequate resources to build the necessary capacities within the relevant administrations and stakeholder communities in developing countries.

The vast majority of developing countries suffer from a lack of statistical data on the audiovisual industry and the impact public policies exert on it. Emmanuel Cocq's contribution to this project reviews the situation and, on the basis of existing sources, assembles a database of both industry and regulatory indicators for the countries under study. Building on Cocq's approach and on the experience of the country studies prepared for this project in terms of issue coverage and data collection, further diagnostic studies could be carried out, ideally for all Member States of UNESCO or at the very least a larger and more representative subset of countries across all major regions of the world.

The aim of such studies, the logic of which could be likened to the periodic multilateral surveillance, monitoring and continuous policy dialogue that the WTO has pursued under its Trade Policy Review Mechanism (see Box), should be to deepen the knowledge of the audiovisual industry of the countries under study (or regions where the pooling of analytical resources may be warranted where individual countries are too small), and to review their regulatory and policy frameworks, as well as their international commitments and existing cooperation activities in the audiovisual sector. In addition, such diagnostic studies should provide an assessment of country needs in terms of capacity building in audiovisual industries, both in respect of building capacity to produce and to support producers and their products.

From what already emerges from the case studies conducted under this project, many developing countries need to establish and/or strengthen their regulatory frameworks so as to encourage high-quality audiovisual production. Quality production refers both to the use of new technologies, which may ensure the commercial viability of audiovisual ventures, and to their artistic and cultural value content.

TOWARDS A CULTURAL POLICY REVIEW MECHANISM? LEARNING FROM WTO PRACTICE

The World Trade Organisation's Trade Policy Review Mechanism (TPRM) was an early result of the Uruguay Round, being provisionally established at the Montreal Mid-Term Review of the Round in December 1988. Article III of the Marrakech Agreement, agreed by Ministers in April 1994, placed the TPRM on a permanent footing as one of the WTO's basic functions and, with the entry into force of the WTO in 1995, the mandate of the TPRM was broadened to cover services trade and intellectual property.

The objectives of the TPRM, as expressed in Annex 3 of the Marrakech Agreement, include facilitating the smooth functioning of the multilateral trading system by enhancing the transparency of Members' trade policies. All WTO Members are subject to review under the TPRM. The Annex mandates that the four Members with the largest shares of world trade (currently the European Communities, the United States, Japan and Canada) be reviewed each two years, the next 16 be reviewed each four years, and others be reviewed each six years. A longer period may be fixed for least-developed country Members. In 1994, flexibility of up to six months was introduced into the review cycles, and in 1996 it was agreed that every second review of each of the first four trading entities should be an "interim" review.

Reviews are conducted by the Trade Policy review Body (TPRB) on the basis of a policy statement by the Member under review and a report prepared by economists in the Secretariat's Trade Policy review Division. The TPRB's debate is stimulated by two discussants, selected beforehand for this purpose. In preparing its report, the Secretariat seeks the cooperation of the Member, but has the sole responsibility for the facts presented and views expressed.

The reports consist of detailed chapters examining the trade policies and practices of the Member and describing trade policymaking institutions and the macroeconomic situation; these chapters are preceded by the Secretariat's Summary Observations, which summarize the report and presents the Secretariat's perspective on the Member's trade policies. The Secretariat report and the Member's policy statement are published after the review meeting, along with the minutes of the meeting and the text of the TPRB Chairperson's Concluding Remarks delivered at the conclusion of the meeting.

Source: WTO at www.wto.org

Establishing an enabling regulatory framework is a daunting task as the audiovisual industry, in its three main components - music, cinema and television - requires specific rules in areas as diverse as intellectual property protection, competition policy, taxation, telecommunications regulation, the regulation of several categories of professional service providers, the temporary movement of service providers and key personnel across borders, distribution service regulation, as well as the design of fiscally sustainable and culturally efficient domestic support measures.

The regulatory framework may involve and indeed require the use of particular incentives and support instruments to compensate for the lack of domestic facilities and venture capital. Foreign investment attraction policies and incentive schemes specific to the audiovisual sector will typically need to be put in place. Furthermore, specific support to education and training in new technologies (e.g. terrestrial digital video broadcasting), film-making and the performing arts will also need to be established and/or increased[24].

The costs and benefits of the various support and incentive instruments noted above need to be assessed more rigorously, and user-friendly methodological frameworks to conduct such assessments should be developed. Knowledge derived from the study of cross-country and cross-regional policy experiments in this regard may prove particularly useful in designing and adapting domestic audiovisual policies.

Capacity building may help countries establish or buttress a functioning regulatory framework and pursue sounder support policies. Building on the analytical foundations laid in the background documents developed in this project, additional country diagnostic studies could provide an assessment of the specific needs of countries on the basis of a more thorough periodic review of the situation of the domestic or regional audiovisual industry and of existing regulatory frameworks.

In the support and capacity building areas, resources should be made available and sought from donors. International and interregional cooperation can also provide avenues to increase such analytical support. Thematic research on how best to pursue such cooperation activities is needed, focusing yet again on who does it efficiently and on whether and how best to transplant such good practices in other country, regional and cultural settings.

24. See the background paper by O. Barlet.

The regulatory framework also has an important international dimension in so far as the audiovisual industry involves important trade and investment interests. The trend towards trade and investment liberalisation as reflected in multilateral, regional and bilateral negotiations requires greater attention from policy makers in developing countries, as it may significantly affect - and possibly constrain - their ability to pursue specific sectoral policies in audiovisual industries. So too must developing countries learn to better navigate the overlapping set of legal commitments flowing from various international agreements brokered in various institutional settings, notably the links between the WTO/GATS disciplines and those arising from the Draft UNESCO Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions currently under negotiation. Here again, building capacity for the negotiation and implementation of international commitments can play a useful role, and offers scope for heightened cooperation between the key agencies involved - UNESCO, WTO, WIPO and UNCTAD at the multilateral level.

Of significant international concern is the issue of effective intellectual property protection. Here again capacity building on how to implement international obligations is necessary, together with thematic research on the appropriate modalities to do so in the specific context of developing countries, where audiovisual markets present rather diversified characteristics.

Finally, the international oligopolistic market structures that predominate in many audiovisual markets, notably in sound recording and film distribution, exert potentially significant impacts on many developing countries' audiovisual industries. Thematic research should be carried out on this issue, with a view to increasing the capacity of domestic administrations to better understand and deal with the reality of the global marketplace and deploy appropriate policy instruments in addressing instances of anti-competitive conduct.

The cross-fertilization of diagnostic studies and thematic research proposed in this introduction should provide developing countries with a richer pool of knowledge on how to approach the audiovisual industry. At the same time, it should facilitate the identification, design and provision of country-specific assistance in the area of capacity building in audiovisual industries while also promoting heightened dialogue among key stakeholders - both public and private - at the national, regional and multilateral levels.

AUDIOVISUAL MARKETS IN THE DEVELOPING WORLD
STATISTICAL ASSESSMENT OF 11 COUNTRIES

Burkina Faso, China, Costa Rica El Salvador, India, Mexico, Nigeria, Philippines, Senegal, S. Korea, and Thailand

EMMANUEL COCQ WITH FLORENCE LEVY

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The purpose of this study is to draw up a panorama of the major characteristics of the audiovisual markets (television, film and music) in eleven developing countries belonging to three major geographical areas: Central America (Costa Rica, El Salvador, Mexico), Asia (China, India, South Korea, Thailand) and West Africa (Burkina Faso, Nigeria, Senegal,). Our work rests on the building-up of a statistical database of 149 indicators. 110 of these indicators inform us on the structural characteristics of the markets. The remaining indicators refer to regulatory aspects (inventory of the various regulations and aid systems).

The analysis rests on a precise distinction between three major content industries: the television programme production industry (whose main outlet is television), the film industry and the music industry. It favours two main themes:

- The positioning and the development potential of the various countries and geographical areas within the global trade of audiovisual programs. The aim is to identify the strengths and weaknesses of the various components of their respective industries: resource level of the broadcasters (television, radio), structure of the television (and radio) market, analysis of the production sector, analysis of the distribution market, impact assessment of technological progress on the current equilibriums, etc.
- The level of entry barriers and the efficiency of support/regulation systems.

Concerning these two issues, the analysis rests on a systematic comparison with the situation of audiovisual markets in Europe (Cocq and Kohler (2003)). In regards to this, the elaboration of aggregate indicators at the geographical level allows to have a fine vision of certain regional specificities and to evaluate the points of similarity and of difference between developed and developing countries but also among the different developing countries studied herein.

The study is made up of four parts. At first, the point is to define the methodological choices that underlie the elaboration of our statistical database. We asses availability, quality and degree of homogeneity of the statistics pertaining to audiovisual markets (Section I). The other sections are dedicated to the market research of the television industry (Section II), the film industry (Section III) and the music industry (Section IV).

1. CREATION OF A STATISTICAL DATABASE ON AUDIOVISUAL MARKETS

1.1. Lack of a public database on audiovisual services at the international level

Concerning audiovisual services, any analysis founded on a statistical database faces two fundamental pitfalls. The first involves the availability and the reliability of the data. The second is related to the comparability of statistical data. Numerous studies (Peltier and Moreau (2002), Cocq and Kohler (2003), Almeida and Alleman (2004)) mention important shortcomings at this level. There is no efficient public database on audiovisual markets at the international level. It is true that UNESCO attempts indeed to give a set of statistical information on the cultural industries in its 1999 *Statistical Yearbook*. However, as Peltier and Moreau (2002) point out, "this data remains for the moment very patchy"[1].

These information gaps are expressed in the reduced number of indicators we use in this study. Concerning the film sector (the most complete), the UNESCO (2000) database is limited to seven indicators for each country: the number of films produced (with a distinction based on international co-productions), the number of screens per million people, annual cinema-going figures, the number of imported films, the proportion of imported films in the total amount of distributed films, the two main exporting countries. This limitation constrains any pertinent analysis attempt and this even more so that for the majority of indicators only a single figure is provided for the 1994-1998 period. Moreover, it would be desirable that an organisation such as the UNESCO - which is so much implicated in issues pertaining to cultural diversity - integrate indicators resting on the regulatory aspects or on aid systems relative to the sector.

This elements emphasize the importance of the statistical tool to grasp the economic reality of a sector in particular under the angle of cultural diversity. They also reveal the dynamic aspect of cultural diversity and, through this, the necessity of a constant adjustment of the tools of public involvement in order to tend towards the satisfaction of the set objectives. In this regard, the statistical tool must contribute to the efficiency of the markets and of public involvement. The analysis of the French film policy is particularly enlightening in this regard. It reveals a dynamic resting on a diagnosis relayed to the decision-making power by the mobilization of professional lobbies to finally arrive at the necessary adjustments of the regulations and/or aid systems.

1. See Peltier and Moreau (2002), p. 20.

1.2. The different statistical sources

As we lack of reliable public database at the international level, the indicators used in the present study are based on data published by private organisations. Several private institutes publish directories on the audiovisual markets. This data generally serves as reference to the businesses active in these markets, which guarantees a decent level of reliability. However, these directories reveal certain approximations. First of all, they only provide a very little information on the methodology and collection conditions of their data. Yet, for the same indicator for a given country, there are many discrepancies between the various directories. Hence the methodological approach prevents the identification of the origin of these discrepancies and somewhat jeopardizes the quality of the information provided. Furthermore, these directories being essentially geared towards private organisations, the number of countries treated is limited and the angle of the approach purely sector-based. This aspect implies a certain heterogeneity in our sources, which may jeopardize comparative analysis. The choice of our sources and the collection of our data have thus been organised in order to limit as much as possible this twofold problem.

<u>Statistical data pertaining to the television and radio markets</u>

For this sector, our statistics are essentially those published by the annual directory edited by the OMSYC (2003), which provides the main statistical data on television and radio by major geographical area (North America, Latin America Asia-Pacific, Europe). For Latin America, among the countries covered in the study, only Mexico is treated. The Asia-Pacific area includes China, India, South Korea and Thailand. The data on Costa Rica and the Philippines originates from the directory published by Informa Media Group, after having verified the coherence of the orders of magnitude between the countries. These two sources allow us to provide the information for the indicators pertaining to:

- The value and structure of television and radio resources
- The penetration level of equipment in households (televisions, radios, multi-channel television, etc.)
- The main regulatory characteristics of the various television markets
- The structure of the markets (audience breakdown, main broadcasters, etc.)

IDATE also publishes a statistical directory on the international television market each year. It includes the essential indicators provided by OMSYC and Informa Media Group but for a more limited number of countries. Within the scope of our study, there only is information on China, India and Mexico. However, the IDATE directory does not limit itself to statistical data alone. More specifically, it provides an in-depth analysis on the characteristics of the audiovisual landscape in the countries treated. These developments provide information used for some of our indicators. Furthermore, it provides a monograph of the 50 main communication groups in the world. This data is interesting insofar as it makes it possible to acquire some information on the degree of internationalisation of the firms in the regions under study and/or on their capacity to develop an international strategy.

Statistical data pertaining to the film industry

Concerning the film industry in its global picture, we re-use the data published by Screen Digest. These cover all segments of the film industry: number of films produced, amount invested in production, market share of domestic films, number of new releases distributed in the course of a given year, number of screens, number of screens per million people, number of admissions per year, number of admissions per inhabitant, box office receipts, ticket price, etc. Most of this data is available for China, India, Mexico, the Philippines, South Korea and Thailand.

The existence in certain countries (Mexico, South Korea) of major support mechanisms for the film industry allows the collection of data on the regulation mechanisms and structure of the domestic sector. Some of these organisations publish an annual report and/or official statistics that are much more complete than those provided by Screen Digest. The publication by the European Audiovisual Observatory of an annual study on the main trends of the world film market has also made it possible to obtain some indicators on Senegalese and Burkinan cinema.

Statistical data pertaining to the music industry

The availability of data pertaining to the markets of recorded music reveals a profound disparity between the North and the South. From a global standpoint, the slightest regulation in the music sector leads to a restricted volume of statistics, publications and official reports in each country. However, numerous national industry unions and associations publish information pertaining to the American, European, Japanese or Australian markets: the Recording Industry Association of America (RIAA) for the U.S.A., the National Union of Phonographic Publishing (SNEP, *Syndicat National de l'Edition Phonographique*) in France, the Japan Recording-Media Industries Association (JRIA) in Japan or the Australian Record Industry Association (ARIA) in Australia.

The equivalents of such federations do not necessarily exist in all developing countries. Only three out of the nine countries in our sample (India, Mexico and Thailand) are endowed with an organisation representing the recording industry acknowledged by the International Federation of the Phonographic Industry (IFPI). Moreover, when they exist, these organisations are generally poorly structured, do not have official statistics and only publish little of their own information. In this way, the Indian Music Industry (IMI), although it represents a considerable market and powerful national corporations, does not publish statistics on the Indian music market. Even an organisation of regional dimension, such as the Federation of Latin American Phonographic Producers (FLAPF), does not communicate any information on South American markets.

In the face of rare and not very exhaustive national and regional resources, the reports published by international organisations, such as the IFPI and the International Intellectual Property Alliance (IIPA), represent the only available references on the musical markets. The IFPI's annual report provides indications on several countries in our sample (China, India, Mexico, the Philippines and South Korea). For all industries studied, these statistical yearbooks do not provide any data concerning West African countries, El Salvador and Costa Rica (in the case of cinema and music). For these countries, data collection was based on local contacts (economic delegations and audiovisual attachés of French embassies) and on various sector-based studies: WAMEU (2004) for Senegal and Burkina Faso, Sow Huchard (2004) for Senegal and Benítez (2003) for El Salvador.

1.3. Limits of an analysis solely based on a statistical database

The second obstacle relative to our study concerns the pertinence of a comparative analysis based only on statistical data. This obstacle is even more so obvious that our database, despite all of our attention, remains subject to caution in terms of the quality of certain data. Bernier (2003) lists the difficulties and errors that the use of statistical data in the analysis of cultural markets might produce. The first difficulty concerns the notion of local content. This notion takes us back to very different classifications according to the country. On this subject Bernier (2003) mentions in particular the case of New Zealand. For this country, local content designates at the same time all material essentially produced in New Zealand and reflecting New Zealand identity and culture: “Thus, programs that are produced in the New Zealand but fail to reflect the New Zealander reality are not inclued in local content, nor are programs about New Zealand[2]” and thus are not included in terms of meeting the broadcasting quota. Concerning this issue, an important element of divergence among the countries involves the scope covered by the possible obligation to broadcast local content. For some, this is only limited to staple programmes with a more or less restrictive definition of a staple programme. For others it includes all programmes (staple and throwaway), which are, however, very distinct programmes that relate to two different industries (and, hence, to two regulation processes). These disparities make the comparison between the countries more complex. They make it necessary to obtain precise information on the definitions relative to each country, without which the analysis would become distorted.

Another difficulty concerns the notion of nationality of a cinematographic work. This is a particularly important issue. On the one hand, the criteria for assigning a nationality condition the number of films produced by a country (and, thus, the vitality of its production). On the other hand, they influence the level of an indicator with a very pronounced political reach: the market share of domestic cinema. The definition of nationality is a complex task that strongly varies according to the various countries. *The Lord of the Rings* is thus considered in certain countries as a New Zealand film (which reduces the market share of American cinema in these countries), whereas in other countries it is considered American. Furthermore, the workings of international co-productions may lead to a poor evaluation of the artistic vitality (and not financial) of a country’s productive sector. *Dogville*, an Anglo-Franco-Danish co-production and the latest film by the Danish director Lars Von Trier, is thus considered a French film by France, an English one by Great Britain and a Danish one by Denmark. It is to avoid these troublesome redundancies in the accuracy of the analysis that the European Audiovisual Observatory has formalized the “Lumière” database. This database considers in a homogeneous fashion that the nationality of a film produced in a co-production scheme is that of the majority co-producer. This methodology leads to noticeably different results from the official statistics provided by various governments. In the case of France, the market share of domestic cinema in 2001 amounts to 38.89 %

2. See. Bernier (2003), pp.9-10.

according to this methodology against 41.5 % according to official statistics. Conversely, the share of American cinema on the French market rises from 46.4 % to 49.1 %, due, in particular, to the American nationality being assigned to certain co-productions between Great Britain and the U.S.A. classified as British by France.

Finally, a last difficulty lies in the analysis itself of the statistics obtained. Bernier (2003) exposes the biased and oriented point of view that statistical data allow to adopt. In the same way, the following paragraph, which is taken from the study of Peltier and Moreau (2002), gives way to multiple interpretations. Basing themselves on the market shares of the different film industries on the French territory, the authors draw the following conclusion: "the diversity offered by origin is globally stable in the 1990-2000 period, with a share of about 30 % reserved to films that are neither French nor American. Since 1992, the share of French films on the screens is, by the way, very slightly higher than that allocated to American films. From the standpoint of consumption diversity by origin, if the admissions for French films are rising slightly over the period, they are rising much more slowly than for American films... As a conclusion, if French and American films each represent 36 % of the films distributed in 1999, their share in terms of admissions respectively is 32 % and 55 %. Similarly, "European" films and "others" represent 14 % of the consumption in 1999 compared to 28 % of the films distributed. The diversity offered by origin thus is higher than the diversity consumed"[3]. On first sight, this paragraph seems to confirm the efficiency of the workings of French cinema policies. Because of this, they lead to an offer of higher diversity than what the market would produce based on demand alone. However, this conclusion rests on inappropriate statistical indicators. Indeed, the consumption deficit from the viewpoint of an offer based on the simple ratio of 'number of films of a given nationality/total number of films distributed' neglects a determining point in the structuring of consumption: the distribution and exhibition conditions of these films. Yet, on the French market, practises of a saturating offer (concerning commercially promising films) and the shrinking of the life span of films in theatres most certainly imply a deterioration of the offer of diversity in European and French independent films (in terms of number of screenings), thus underlining a relative failure on the part of government policies to curb market failures.

In this context, the choice of a high number of indicators seems pertinent to us. On the one hand, it guarantees a precise analysis and limits the biases or errors of interpretation mentioned above. On the

3. See Peltier and Moreau (2002), p. 30.

other hand, by basing ourselves on an indicator database as close as possible to that elaborated by Cocq and Kohler (2003) for European markets, our analysis will also be able to asses the points of agreement and/or divergence between developed and developing countries.

1.4. Database formalization

Our database is made up of 149 indicators: 72 concern the television sector of the countries studied, 56 the structure of their film industry, 21 deal with their music industry (see Table 1). These indicators are of two kinds: structural indicators (110) and regulation indicators (39).

Structural indicators

The choice of our indicators refers to the main results of the economic analysis of television[4]. The activity of a broadcaster (television channels/radio broadcaster) is structured around two main markets. On the “primary” market, or programme market (excepting internal production), broadcasters provide the demand for the offer proposed by producers, distributors or copyright portfolio management companies. The financing of television activity (or radio broadcasting) defines a second market: the secondary market (resource market), on which broadcasters position themselves as providers of a programme schedule. The segmentation of this market around the three types of available resources (public resources, subscriptions and/or advertising resources) conditions the broadcasters’ economic behaviour and the terms of their relations with the television audience and thus content industries. These elements explain the structure of our database. It relies on a twofold segmentation. In the first place, it distinguishes television activity - and the industry producing audiovisual programmes - (first part of the database, 72 indicators) from the film industry (second part of the database, 56 indicators) and the music industry (third part of the database, 21 indicators).

Film and musical works, unlike other audiovisual works, do not boil down to a simple offer of rights on the primary television (or radio) market. Their main outlet remains the cinemas for the first type of works and various media (CD players, radio cassette players, vinyl record players, iPod, etc.) for the second type. This characteristic brings us back to the traditional concept of the film industry’s organisation (production,

4. Concerning this point, see Samuelson (1964), Minasian (1964), Owen, Beebe and Manning (1974), Spence and Owen (1977), Owen and Wildman (1992). This list is not exhaustive.

distribution and cinema theatre exhibition). However, the development of the methods used to distribute film works and make them profitable, particularly in most developed countries, quite often condition their inclusion in a broader scope of analysis. Hence, the central role that television now plays in the financing of European film production (by way of regulation or through simple market speculation) implies a tight nesting of the film industry within the audiovisual programme industry, which in turn is part of the communications industry. Creton (1994) believes that today it is “necessary to account for these far-reaching relations and analyse them in order to understand the economic balance of this branch”[5]. This development justifies the inclusion of indicators such as “Broadcaster share in the financing of film works”. Secondly, standard criteria (marketing or free access, assembly of various programme schedules or single programme schedule), making it possible to identify the various television services structure the television sector around three separate markets: the market for free single channel terrestrial television (hereafter refered to as conventionel), the market for single channel pay television and the market for multi-channel television. Within the part pertaining to television activity, a distinction is thus established between free single channel television (public/private) and pay television (single channel/multi-channel).

Table 1 - Indicator breakdown according to sector

	Number of indicators	Among which structural	Among which regulation
I - Television	72	48	24
1.1 Market access regulation	7	0	7
1.2 Financing of the audiovisual landscape	10	10	0
II - Free conventional television	7	7	0
2.1 Private operators	15	11	4
2.2 Public operators	8	8	0
2.3 Obligations of free conventional television	20	7	13
III - Pay television	5	5	0
Film industry	56	44	12
Music industry	21	18	3
Total	**149**	**110**	**39**

Source: E. Cocq, 2005.

5. See Creton (1994), p. 66.

Regulation indicators

Audiovisual services are a distinct sector of the economy. As the main conveyor of a country's cultural specificity and identity, they obviously are politically very sensitive sectors. This aspect is even more so evident that the professionals in the audiovisual field are by nature experts in public relations, without mentioning the conscious or subconscious fascination they might exert on political figures. The "deathblow" that a handful of film directors gave to the Multilateral Agreement on Investment (MAI), at a moment when it was nonetheless clear that the audiovisual sector was excluded from the scope of this agreement (Henderson, 1999), perfectly illustrates this ability to persuade. In the same way, television is at the heart of the relations between the political body and citizens. Thus, governmental decisions concerning the economic development of the audiovisual sector are strongly constrained by this reciprocal dependency.

In this context, government intervention often imposes itself as a central element in the economy of audiovisual markets. The inventory by Cocq and Kohler (2003) of the regulatory policies of 10 European countries shows that these generally pursue a double objective. First of all, the idea is to promote harmonious development and operation of the television landscape, not only from an economic point of view (frequency management, granting of licences), but also from a cultural and social standpoint (protection of minors, guarantee of political pluralism, quality of broadcasted programmes). The second objective aims to support the domestic content production industries (film industry, audiovisual programs production industry, music industry).

Government intervention within audiovisual markets thus relies on a great number of instruments. On the basis of works by Schmitt (1992), Rouet (2000), Cocq and Kohler (2002) and the UNESCO (2002), several distinctions can be made.

<u>The various categories of aid to the film industry</u>

Aid granted to the film industry can sometimes be excessive. In the case of the French film industry, Cocq and Messerlin (2005) have taken stock of close to 80 different kinds of aid. It is thus important to be able to fathom these according to specific criteria. Rouet (2000) sets apart four major categories of aid:

- Subsidies
- Financial aid with counterparts (most common example: advance on proceeds)
- Loan guarantee
- Tax measures (preferential VAT rate for cultural industries, tax credits, tax shelters)

Furthermore, the analysis must consider four fundamental points:

- The nature of the measure.

- The stage in the distribution chain concerned by the measure: production, distribution, exhibition. The interest in making this distinction is to refer us back to the "relative importance of upstream and downstream activities in distribution chains and of the ties between them in order to assess to which degree aid systems take these into account or not"[6].

- The object of the measure, "by distinguishing between whether support is addressed to a specific product or to a company as a whole or again to all companies in a branch having the same activity or common characteristics"[7]. This aspect is essential because it makes it possible to assess the actual finality of aid, particularly on the basis of the economic/cultural pair. The conditions for grating aid, by distinguishing between automatic and selective, provide important information at this level. In the case of selective aid, the analysis of subsidy criteria (first film, film of quality, experimental films, little shown foreign films, cinemas showing art films, etc.) generally allow an assessment to be made of the content and truly cultural dimension of government intervention.

<u>Quotas and other entry barriers</u>

Three kinds of quota can be identified on audiovisual markets:

- The broadcasting quota forces broadcasters and/or cinema exhibitors to dedicate a part of their broadcasting/programming time to domestic works.

- The production quota is generally imposed on broadcasters. It may then consist in an obligation to dedicate a part of their turnover to ordering domestic audiovisual and/or film works. In the case of

6. See Rouet (2000), p. 10.
7. See Rouet (2000), p. 10.

audiovisual works, the production obligation constitutes a complement to the broadcasting quota in order to ensure observance of the latter by fresh production. For film works, the idea is to direct a part of the broadcasters resources towards domestic film production as a fair compensation for the prejudices that the broadcasting of film works on television causes on cinema attendance (and thus on the compensation coming from this medium).

- The quest for a balance in the relations between broadcasters and the film industry can also rest on another kind of quota: the limitation of the amount of films broadcasted by television channels (quantitative limitation and/or of broadcasting days and/or of broadcasting time slots). As an extension to this limitation, the protection of theatrical release can also go through the implementation of a distribution chronology for a film. This chronology aims to regulate the life cycle of a work of film according to the various distribution media (cinemas, video, pay tv, pay-per-view, free channels, etc.).

Beyond these instruments, the regulation of audiovisual markets is based on numerous rules pertaining to the access conditions of these markets and on the economic behaviour of the players (frequency allocation, limitation of direct foreign investments (DFI), specifications, concession plans, regulation of the advertising market, etc.). Aid or regulatory measures cannot necessarily be assimilated to a market access restriction. In the same way, the formalization of entry barriers cannot limit itself to these instruments alone. It must thus consider the natural barriers linked to the structure of markets and to the resulting degree of concentration (structural indicators).

Quite often, these instruments get tangled up in such a way that it is difficult to assess their actual level and efficiency. In the case of French cinema policies, Cocq (2000) thus reveals many redundancies. In this respect, the way in which broadcasters are treated in terms of support to domestic film production is exemplary. In France, it is based on an investment obligation in the form of turnover taxation. However, in a contradictory way, these investments enable the film branches of these television channels to acquire the right to automatic support (in case of a contribution in the form of a co-producer’s share). This situation is even more so paradoxical that broadcasters are, via a tax on their turnover, the first source of financing of the support account for the film industry. They thus contribute to its financing with 5.5 % of their total resources to finally benefit in return from the resources of this same account through their film branch receiving up to 12.2 % of the sums that they have paid. In this specific case, Cocq (2000) underlines the harmful effects that come of this in regards to the initial objectives of French cinema policies: “this contradictory entanglement of the instruments can finally be analysed as a dispossession (orchestrated through the regulations) by the television sector of part of the potential revenues of producers or other entitled beneficiaries. Such a situation then allows this sector to reduce by up to 7.6 % the cost of honouring its obligations”.[8]

Completeness level of the database

Table 2 presents the completeness level of the database according to the countries and sectors covered. The total completeness level reaches 69 %, which is a decent level but sensibly lower to the one obtained by Cocq and Kohler (2003) for the television and film markets in 10 European countries. These global results hide strong disparities between sectors and countries. The television sector shows a very high level of completeness. On average per country, 81 % of indicators are filled in, which corresponds to a higher completeness level than the one obtained in the case of European countries.

On the other hand, for the film industry, the completeness level is 30 percentage points lower than that for European countries. There are major differences between countries. There is practically no data for the Costa Rican and Salvadoran film industries. On the contrary, they are numerous and up to European standards for India, Mexico, Nigeria, the Philippines, South Korea and Thailand. However, in the case of the latter, the high level is misleading. It merely translates the total disappearance of the film industry, which is replaced by the prosperous, creative, anarchical and informal video industry.

For the other countries, this good level of information results from the combination of several factors: considerable level of activity and/or market size (coverage by statistical directories and the object of several studies, this is the case for India, the Philippines, South Korea, and Thailand), powerful support or protection mechanisms (transparency, object of the USTR (United States Trade Representative) inventory: case of Mexico and of South Korea), commitments made within the context of the GATT (General Agreement on Tariffs and Trade) (and thus the inclusion in the list of commitments of certain measures that remain excluded from the principles of the GATT: case of India, Mexico and Thailand).

8. See Cocq (2000), p. 317.

Table 2 - Indicator completeness level by country and sector (in %)

	Television	Film Industry	Music Industry	Total
India	95	93	65	**91**
Thailand	85	80	45	**78**
Philippines	84	93	55	**83**
South Korea	77	82	70	**78**
China	89	38	75	**68**
Mexico	88	89	75	**87**
El Salvador	60	7	15	**34**
Costa Rica	89	7	10	**42**
Senegal	95	59	30	**72**
Burkina Faso	70	61	5	**58**
Nigeria	59	86	50	**68**
Total	**81**	**63**	**45**	**69**
Europe (10 countries) Cocq-Kohler	79	90	N/A	**82**

Source: E. Cocq, 2005 *N/A: Not available*

2. TELEVISION MARKETS

2.1. Major characteristics of television in developing countries

Household equipment rate in television sets

The penetration rate of audiovisual equipment in households strongly varies according to the country. The disparities between developed and developing countries are even more so pronounced that technological development is recent. While the penetration rate of television sets or radios in the households of developing countries tends to come close to that of developed countries, the differences still remain considerable concerning equipment in VCRs (51.9 percentage points less for developing countries) and in DVD players (15.5 percentage points).

Table 3 - Development of household equipment in audiovisual appliances

	Share of households equipped with a television set (in %)		Penetration rate of VCRs in households (in %)		Penetration rate of DVD players in households (in %)		Penetration rate of radios (in %)	
	1996	2002	1996	2002	1996	2002	1996	2002
India	36	39	N/A	2	0	0,7	N/A	N/A
Thailand	90	93	19	30	0	2	68	69
The Philippines	N/A	71	N/A	50	0	4	N/A	N/A
South Korea	99	99	80	91	0	18	98	99
China	82	87	15	21	0	1	91	92
Mexico	94	96	35	48	0	2,4	98	N/A
El Salvador	N/A	45	N/A	N/A	N/A	N/A	N/A	N/A
Costa Rica	N/A	37,6	N/A	N/A	N/A	N/A	N/A	N/A
Senegal	N/A	10	N/A	N/A	N/A	N/A	N/A	N/A
Burkina Faso	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nigeria	6	10	N/A	HIGH	N/A	N/A	N/A	N/A
Western Europe	97	98	61	75	0	12	99	100
North America	99	99	77	87	0	32	100	100
Developed countries[1]	97	99	72,5	85,3	N/A	18,3	97	98
Developing countries[2]	83,5	86	25,1	33,4	N/A	2,8	85	86,2

Source: OMSYC (2003) and Informa Media Group (2003).
N/A: Not available
1. The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.
2. The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.

The data pertaining to television sets alone underlines the slowness of the convergence process. Between 1996 and 2002, the relative under-equipment in television sets of households in developing countries has only dropped by half of a percentage point, whereas the level reached by developed countries has been saturated for long. However, the situation in developing countries is very mixed. Thailand, South Korea, China and Mexico have penetration rates close to or even higher than the standard in developed countries (around 90 %). Unsurprisingly, South Korea imposes itself, by the way, as a country that is particularly permeable to technological developments in terms of audiovisual appliances. Its equipment rate in VCRs is higher than the average in developed countries, its equipment rate in DVD players is higher than in Western European countries. Conversely, the penetration rate of television sets remains low in the Philippines (71 %), a minority in India (39 %), El Salvador (45 %) and Costa Rica (37 %) and practically nil in West African countries (around 10 %).

Table 4 - Development of television resources (in billion US $)

	1996	2001	2002	Variation in % (1996-2002)	Variation in % (excl. inflation)
India	1,1	1,7	1,9	+72,7	+20,5
Thailand	0,6	0,9	0,9	+50	+25,9
The Philippines	N/A	0,4	0,5	N/A	-
South Korea	1,7	2,6	2,7	+58,8	+26,9
China	1,2	4,4	4,6	+283,3	+278,4
Mexico	1,4	3,5	3,8	+171,4	+36,4
El Salvador	N/A	N/A	N/A	N/A	-
Costa Rica	N/A	0,1*	0,1	N/A	-
Senegal	N/A	0,008	N/A	N/A	-
Burkina Faso	N/A	N/A	N/A	N/A	-
Nigeria	N/A	0,06	N/A	N/A	-
Western Europe	41	51,1	52,4	+27,8	+11,7
North America	65	78,9	84	+29,2	+15,9
Developed countries[1]	122,5	151,9	151,4	+23,6	+10,9
Developing countries[2]	16	24,6	34,4	+115	-6,4

Source: OMSYC (2003) and Informa Media Group (2003). E. Cocq, 2005.
N/A: Not available
** advertising only*

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*

Resources of the television markets

In 2002, the amount of resources dedicated to television by a developing country reached an average figure of 1.2 billion dollars, compared with 6.3 billion for a developed country. Moreover, this difference has increased since 1996. In 1996, the volume of resources mobilised by the television markets of developing countries represented 13 % of that of developed countries. In 2002, it only represented 11 %.

Table 5 - Share of TV resources (excl. taxes) in the GDP (in %)

	1996	2001	2002
India	0,1	0,3	0,3
Thailand	0,5	06	0,7
The Philippines	-	05	0,6
South Korea	0,4	05	0,4
China	0,1	0,4	0,3
Mexico	0,5	0,4	0,4
El Salvador	N/A	N/A	N/A
Costa Rica	N/A	0,3	0,3
Senegal	N/A	0,2	N/A
Burkina Faso	N/A	N/A	N/A
Nigeria	N/A	0,05	N/A
Western Europe	0,4	0,6	0,6
North America	0,8	0,8	0,8
Developed countries[1]	0,6	0,6	0,6
Developing countries[2]	0,8	0,7	0,8

Source: OMSYC (2003) and Informa Media Group (2003).
N/A: Not available
1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*

This situation does not, however, signify a generalised under-funding of television channels in developing countries. In fact, for the latter, the weight of television resources in the GDP is slightly higher than that in developed countries. Developing countries dedicate on average 0.8 % of their GDP to the financing of their television markets compared with 0.6 % for developed countries. However, among the countries in our study, only Thailand and the Philippines show ratios close to those in developed countries. Conversely, the Indian, Korean, Chinese and Mexican television markets seem greatly under-funded. This observation must however be qualified. In the 1996-2002 period, the television resources of these four countries increased by more than 20 % in terms of volume (+278.4 % for China), whereas, at the same time, the growth rate of developed countries was reaching on average 10.9 %. Under these conditions, the stagnation at a relatively low level of the weight of television resources in the GDP of these countries reflects, for a great part, the very high growth rate of their economies between 1996 and 2002. Moreover, in 2002, the Chinese and Mexican television markets reached the 10th and 11th position on an international level, thus a respective gain of 7 and 1 places in relation to 1996.

Table 6 - The weight of subscription resources in television financing (in %)

	1996	2001	2002
India	60,2	59,7	58,5
Thailand	5	13	12,2
The Philippines	N/A	32	40
Mexico	45	40	42
South Korea	23,5	33,8	37
China	0	40,9	41,3
El Salvador	N/A	N/A	N/A
Costa Rica	N/A	N/A	N/A
Senegal	N/A	N/A	N/A
Burkina Faso	N/A	N/A	N/A
Nigeria	N/A	N/A	N/A
Western Europe	34,6	40,9	41,2
North America	43,9	53,2	53,8
Developed countries[1]	31,4	36,1	33,7
Developing countries[2]	28,8	35,8	37,3

Source: OMSYC (2003) and Informa Media Group (2003). N/A: Not available

1. The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.

2. The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.

In 2002, advertising revenues continue to impose themselves as the main source of television financing in developing countries. On average, they represent 62.7 % of all private resources of television markets in these countries. Only India stands out with a larger share of subscription resources. Nonetheless, the 1996-2002 period corresponds to a sustained growth phase of subscription resources. This growth is particularly significant in Thailand, South Korea and China. For the first two countries, the share of subscription resources in television financing has increased respectively by 7.2 and 13.5 percentage points. For China, subscription resources, which were non-existent in 1996, represented more than 40 % of the total private resources of domestic television in 2002. This increase is even more so remarkable that it occurs in a context of growth in advertising resources. All in all, the weight of subscriptions in television financing in developing countries is higher in 2002 to that observed in developed countries, which marks a significant change in relation to 1996 and 2001 (see Table 6).

The significance of subscription resources reveals the increasing importance of multi-channel television in developing countries. As opposed to what is happening in Europe, there is no experience of single channel pay television in the countries of our sample. Under these conditions, all subscription resources are linked to multi-channel offers (cable, satellite, Multichannel micro-wave distribution systems MMDS in the case of African countries). This situation reveals the peculiar character of the development of the terms of competition on the markets in developing countries, particularly with respect to the European experience. For most European countries, the opening of the television landscape to competition took place in two steps:

- The first step (1985-1994) corresponds to the opening of the conventional television market to competition. This has led to the emergence, side by side with public operators, of a private audiovisual sector, which is solely financed by advertising resources. Thus, between 1982 and 1994, the number of conventional channels in Europe moved from 34 (with 26 public channels) to 78 (with 36 public channels). 77 % of this growth can be attributed to the arrival of new private channels. This step comes together with a deep modification in the balances: significant fragmentation of the audience, success of new incoming private players and disruption of the financing structure with the increasing importance of advertising resources.

- The second step, which is still under way, corresponds to the development of pay television on cable and satellite, then on the conventional network, particularly thanks to the digital revolution. As opposed to the first phase, this development did not lead to a renewal of the players and the start of a new competitive context but by the simple transfer of income from conventional operators to the multi-channel television market.

The sequence is reversed in the case of the developing countries studied. The conventional television market has only developed very little. It continues to be structured around the domination of monopolies or duopolies (public, private or mixed) (2.2). In the countries concerned, as opposed to what is happening in Europe, it is through the development of multi-channel television that firms are renewed and the income of legacy operators on the single channel television market are eroded (2.3).

2.2. A frozen and dominant single channel free television market

Table 7 - Free conventional television

	Number of broadcas-ters	Market structure	Audience share of free conventional television (in %)	Audience share of the three main broadcasters (in %)
India	6	Public monopoly	60	62
Thaïlande	6	Oligopoly	96	77
The Philippines	5	Duopoly	85	81,40
Mexico	6	Duopoly	97	N/A
South Korea	15	Duopoly	>75	57
China[1]	300	Public oligopoly	cf. *	N/R
El Salvador	13	Quasi-monopoly	More than 95	90
Costa Rica	5	Duopoly	90	70
Senegal	1	Public monopoly	56	N/A
Burkina Faso	4	Quasi-monopoly	N/A	N/A
Nigeria	72	Quasi-monopoly	N/A	N/A

Source: OMSYC (2003) and Informa Media Group (2003).
N/A: Not available N/R: Not relevant
** 60 (Beijing area), 25 (Guangzhou area), 45 in Shanghai*
[1.] *In China, the channel offer being very different according to the region, it is difficult to compile audience rates for statistics at the national level.*

For most of the countries, the free single channel television market continues to characterise itself by a significant level of concentration, a clear presence of public authorities and a dominant position on the audience market (and thus of advertising resources, see Tables 7 and 8). Public operators who occupy a central place on the market (China, India, South Korea) and who do not limit themselves to occupying thematic segments (denominational television, educational channel, as in Costa Rica, Mexico and the Philippines), have advertising as the main resource. The essential distinctions between countries thus concern the degree of development of this dominant model. In India (Doordashan group) and in Senegal (RTS), public monopoly is the historical structure and does not present any signs of change. Similarly, the ABS-CBN and GMA duopoly has been imposing itself in the Philippines since 1961.

Table 8 - The weight of conventional public television

	Number of broadcasters	Audience share of public broadcasters (in %)	Advertising share in the budget of public channels (in %)
India	6	50% (36% of advertising resources)	60
Thailand	3	30% (35% of advertising resources)	N/A
The Philippines	3	5%	100
Mexico	2	<5%	Very low
South Korea	4	54% (including MBC)	>70
China	300	60% (Beijing area), 25 % (Guangzhou area), 45 % in Shanghai.	80
El Salvador	1	Very low	N/A
Costa Rica	2	2%	Very low
Senegal	1	56%	>50
Burkina Faso	1	N/A	N/A
Nigeria	cf. *	N/A	Minor

Source: OMSYC (2003) and Informa Media Group (2003).
N/A: Not available
** 1 national channel + 48 local channels*

The upheavals observed in other countries have generally only slightly modified the market balances. The public operator in Burkina Faso, TNB, has been confronted for 10 years with the competition of new private broadcasters (of which the latest arrived in 2003, Canal 3), without its position being seriously affected.

In Nigeria, the opening to competition started in 1993 as the first licenses were granted to private operators. However, this development has only slightly altered the monopolistic position of the public operator (NTA) and this even more so that it remains the only operator of a national network. Surely AIT, a private broadcaster held by DAAR Communications, is seeking to impose itself as the second national network, but the financial and regulatory obligations demanded by the National Broadcasting Commission are hindering its capacity for development.

In Thailand, the privatisation of Channel 3 in 1991 (28 % of the audience in 2002) and of Channel 7 (28 % of the audience in 2002) did not introduce any major upheavals. These two channels, like five of the six channels making up the free conventional television market, depend on concessions agreed by the army or by the Mass Communication Organization of Thailand. Therefore they are strongly dependent from these government organisations. The position of ITV (created in 1996), recently acquired by ShinCorp, marks a noteworthy development with a sensitive assertion of a form of freedom of expression and an audience share of 10 %.

In El Salvador, the historic monopoly of the private group TCS (owner of three channels: Channel 2, Channel 4 and Channel 5) has hardly been contested by the emergence of new commercial stations in the course of the 1980's. In 2002, these three channels represented close to 85 % of the audience, of which only 40 % for Channel 2. The tight links between the TCS group and the government constitute a powerful entry barrier to the Salvadoran television market and this even more so that the government imposes itself as the broadcasters' main advertising client. Paradoxically, this market is one of the only ones in which foreign businesses invest. Up until recently, the Mexican operator TV Azteca was a shareholder of Channel 12. In the same way, Megavision (owner of channels 15, 19 and 21), TCS's main competitor, has developed many partnerships with foreign businesses and more specifically transnational networks (MTV, NickelOdeon and the Hispanic Telemundo network). The programming of Channel 15 thus entirely relies on MTV programmes and that of Channel 19 on NickelOdeon programmes. Lastly, in 2000, Megavision developed an alliance with TV Chile in order to propose an alternative to the current programming on Salvadoran television (alternating American and Mexican programs). To this end, Channel 21 proposes programming centred on the combination of the offer of TV Chile, Telemundo and a few local programmes.

Finally, only South Korea and Mexico have significantly modified the balance of their conventional television market. In South Korea, the sector was opened in 1990 with the creation of the first private channel (SBS). Surely, the coverage of this private operator remains limited to the local level, but it includes the strategic region of Seoul. This channel quickly challenged the predominance of the three main public channels (KBS1, KBS2, MBC, all created in 1961). Hence, as of 1994, it represented 25 % of the audience market and 21.7 % of the advertising market, thus asserting itself as the second channel in the Korean conventional television landscape. Thanks to the arrival of this new player, Korean conventional television has moved from a situation of public monopoly (but financed by commercial resources) to that of a duopoly. In the case of Mexico, the advent of the duopoly also imposes itself as a breakdown of the monopoly of the private Televisa group. This occurred following the privatisation of the public networks in 1996 and their acquisition by the private group TV Azteca. This opening of the Mexican market is accompanied by a significant internationalisation trend of the sector. In fact, TV Azteca associated itself in 1995 to the American NBC network to make up for its lack of experience. Furthermore, the group develops television networks in El Salvador and in the U.S.A. In 2002, the channels of the TV Azteca group represented 25 % of the Mexican audience.

Similarly to Europe and to most developed countries, access to the conventional televisor market in developing countries is thus particularly restricted and this regardless of the investors' nationality (even if most countries have implemented restrictions on direct foreign investments).

2.3. A contrasted development of multi-channel television according to countries

The development conditions of multi-channel television deeply differ from country to country. The South-East Asia region greatly distinguishes itself from the Latin American one and to, a lesser degree, from the European region by a large development of cable television.

Multi-channel television in South-East Asian countries

According to IDATE, the Asia-Pacific region is the most cabled in the world. This supremacy is however greatly due to India and China. These two countries represent 80 % of the households receiving cable television in the region. They respectively show a penetration rate of 41 % and 30 % (see Table 9). South Korea also shows a substantial penetration rate (48 %). For the other countries in the region, the rates are lower than 20 % (the Philippines) or even insignificant (Thailand).

The development of the cable market reveals very distinct situations, as much in terms of its impact on the balance of the free single channel television market, as in terms of the renewal of players and the internationalisation of the television industry. In India, cable television has considerably affected Doordoshan's broadcasting monopoly. As such, the share of the public group on the advertising market was only 36 % in 2002, compared with 76 % in 1995. Started at the beginning of the 1990's, the emergence of Indian cable television has enabled new businesses to enter onto the market. Admittedly, the conventional channels of the public group are present on the cable network ("*must carry*" rule, see Table 9). Likewise, the group has developed new channels on this market in order to counter the competition and recover audience shares. It has therefore signed many agreements with foreign channels (ESPN, Discovery Channel). It also launched DD Metro, DD Sports and DD Movie Club in partnership, among others, with the French pay channel Canal + (Vivendi). However, the market has quickly structured itself around major domestic (Zee Telefilms Ltd, Raheja Group) and foreign (Sony, News Corp) private industrial groups. These major corporations have then become involved in operations aimed at franchising small operators and modernising network equipment. According to Mukherjee (2005), this development has led to the removal of many institutional barriers and an intensified internationalisation of the market.

Internationalisation comes in many forms. It may consist in direct presence. This is Sony's strategy, which is launching the Sony TV channel and a network package (Sony Discovery One). The Australian-American group News Corps also is directly present in the Star and ESPN network packages. Its presence also takes on the form of minority participation in the capital of the Hathway cable operator. Furthermore, the domestic firm Zee has allied itself with AOL-Time Warner for its Zee-Turner network package of pay channels and has done so to counter the competition from Star TV. While access to the cable market is relatively free of constraints for foreign investors, it is a different story for the satellite market (see Table 9). Up until 1991, satellite television was forbidden in India. Now, with this ban removed, the satellite market remains very constrained, particularly with regard to the international standard.

Table 9 - Multi-channel television

	Multi-channel television players
India	Cable Siticable (Zee Telefilms Ltd) INCCableNet (IMC) Hathway (Raheja Group, News Corp) Satellite Dish TV (Essel Group) Doordashan
Thailand	Cable: UBC Satellite: UBC
The Philippines	Cable SkyCable (ABS-CBN): 60% of cable subscribers Home Cable (Philippines Long Distance Telephone)
Mexico	Cable: CableVision (450 000 subscribers), Megacable (360 000 subscribers) Cablemas (300 000 subscribers), MVS Multivision (268 000 subscribers) Satellite: Direct TV (Hugues Electronic Corp) Sky Latin America (News Corp, Globo, TCI et Grupa Televisa)
South Korea	Cable Cable and Multimedia (Chosun International) DCCN (Hyundai) Satellite Skylife (86-channel network package)
China	Cable: Shangai Cable Network, Shandong Cable Network Satellite: Officially: 0% (satellite dishes are prohibited) Star TV: the Chinese version of the Asian network package includes nine satellite channels broadcasted from Hong Kong
El Salvador	N/A
Costa Rica	Cable : Amnet Television, Cable Tica (Teletica) Satellite: Direct TV
Senegal	MMDS: EXCAF Satellite: Canal Plus (France), Multichoice (South Africa), EXCAF
Burkina Faso	MMDS: Neerwaya Multivision, Satellite: MultiTV Afrique
Nigeria	MMDS Satellite DSTV (South Africa), Multichoice Nigeria (South Africa), FSTV (Nigeria)

Source: E. Cocq, 2006
N/A: Not available

Entry barriers	Penetration rate of multi-channel television
- FDI (Foreign Direct Investment): 49 % - Cable or terrestrial investor cannot exceed 20 % of a satellite platform - 10 % tax on revenues from satellite platform - Initiation fee of $2.2 million for service providers (satellite) - Significant amount of piracy-Must carry rule for Doordashan channels	47% (41 % for cable)
- Advertising prohibited - Operators are not compensated with advertising resources from foreign channels	3% (2 % for cable)
- 40 % (in theory) - Advertising prohibited on cable - Significant amount of piracy - Underestimation of the number of subscribers	17%
- FDI: 49 %	18% (of which 13 % for cable)
- FDI: 33 % on satellite and 49 % on cable - Foreign channels cannot make up more than 10 % of a network package offer - Broadcasting quota: 50 % of broadcasting time, 30 % for film works, 45 % for animation - On satellite television, reuse of foreign channels cannot exceed 10 % of a network package offer	51,6% (of which 48 % for cable)
- FDI : 0% - Satellite dishes forbidden - The penetration of foreign channels is restricted by a broadcasting license	30% (cable only)
N/A	7%
N/A	13%
N/A	N/A
N/A	N/A
- Piracy	0,2%

This extensive internationalisation of the market is not seen in South Korea where entry barriers relative to foreign investment are numerous (see Table 9). In Thailand and the Philippines, the market of pay television is in a very precarious situation. It either leads to the emergence of a new monopoly (case of Thailand with the UBC channel born out of the merger of IBC and UTV in 1998), or to the extension of the market power of legacy conventional television groups (case of the Philippines where ABS-CBN dominates the pay television market via SkyCable). In both cases, regulations (particularly concerning advertising) strongly limit the income of the businesses present on the market, which implies an accentuated concentration of the sector around domestic businesses and a stagnation of the market.

Multi-channel television in Latin American countries

In Latin America, IDATE estimates at 18 % the number of households with access to multi-channel television. This market is characterised by a strong domination of cable (15 % of households subscribed) and a low development of satellite. Many disparities persist between the different countries in the area. The penetration rate of cable reaches 35 % in Argentina or in Guatemala, compared to 6 % in Brazil and 7 % in El Salvador. In Mexico, in the same way as with TV Globo in Brazil, the cable and satellite market is structured around the omnipresence of the main group of the single channel television market: Grupo Televisa (income transfer). The Mexican group is thus the majority shareholder of the main Mexican cable operator Cable Television. It also participates in the capital of the Sky Latin America network package alongside with News Corp and Globo. This domestic supremacy enables development abroad, particularly in Spanish-speaking areas. The Mexican group is thus present in multi-channel television experiences of many countries in the region: in Colombia (15.3 % of the satellite platform), in Chile (30 % of the joint venture that owns the satellite platform) and in Argentina. It also is involved in the development of pay television in the U.S.A. (30 % of Univision, which represents 82 % of the audience of the American Spanish language network) and in Spain (10 % of the Via Digital satellite platform).

2.4. Broadcasters' obligations and the programming industry

Despite the development of multi-channel television, free conventional television remains the dominant model in nearly all countries. With the exception of India and of certain regions in China and Senegal, conventional broadcasters represent more than 80 % of all television audience and therefore attract most of the resources. In this context, most provisions aiming at promoting domestic television production concerns conventional broadcasters. Yet, for the countries studied, the upheavals observed over the last 20 years on the conventional television market did not lead to a convincing arrival of new broadcasters. When this was the case, the newcomers only slightly modified the historic balances of the market.

The terms of the development and of the analysis of the audiovisual programming industry, as drafted by Cocq and Kohler (2003) in the case of European countries, cannot be transposed to developing countries. These authors show indeed that the emergence of the actual idea of a domestic audiovisual production industry in Europe is directly linked to the opening of the conventional television market to competition. The emergence of new laterally financed conventional operators has led to a major natural need for programmes and profound disruptions in terms of programming behaviours. The objective of public authorities was then to rely on this upsurge in demand to ensure the development of an independent staple programme industry (and to put an end either to monopolistic structures or to a production model integrated within broadcasters). It is within this context that the European directive Television without Frontiers was drafted (1989). The broadcasting and production obligations it contains aim to constrain the natural propensity of broadcasters to schedule non-domestic programs. This is a behaviour that is likely to hinder the emergence and the efficiency of a programme industry within the various European countries. Thus, in the European case, there is a very clear materialisation of a political (and economic) objective that is made possible by a specific development of the market. However, this determining development did not occur in developing countries or, if so, in only a very modest way.

Table 10 - Obligations of conventional broadcasters

	Broadcasting obligations of conventional broadcasters	Number of domestic programmes among the 10 best audiences of 2003
India	No quota (nationality)	10 domestic programmes: 1 sports programme, 2 series, 6 films and 1 special programme
Thailand	No quota (nationality)	10: 10 television series
The Philippines	No quota (nationality) Major principles stated in the KBP code: - Promotion of national culture and identity - Use of domestic resources, talents and contents - News broadcast (30 minutes per day from Monday to Friday)	- 6 domestic programmes: 4 television series, 1 news programme, 1 game show - 4 foreign fictions (Taiwan)
Mexico	No quota (nationality)	10 domestic programs: 3 soap operas (*telenovelas*), 4 comedies, 2 real TV programmes, 1 news programme
South Korea	Broadcasting quota - 80 % national programmes - 25 % of time dedicated to the broadcasting of films must go to domestic cinema, quota of 45 % for domestic animation and 60 % for broadcasting of domestic music Production quota - Between 20 and 35 % of independent productions (for KBS, MBC and SBS, 10 % of prime time must be dedicated to independent productions)	10 domestic programmes: 8 television series, 1 entertainment programme, 1 sports programme
China	- Limitation of the broadcasting of foreign fiction: 25 % of total fiction time and 15 % for prime time - Broadcasted programmes (domestic and foreign) must obtain a state licence	- 10 domestic programmes: 2 special programmes, 7 television series, 1 news programme - In the Guangzhou test region alone: 0 domestic programmes (10 drama series from Hong Kong)
El Salvador	No quota	N/A
Costa Rica	- The number of programmes filmed or taped abroad must be less than or equal to 60 % of the total number of programmes broadcasted on local television every day	- 3 domestic programmes, 1 sports programs, 1 entertainment programme, 1 soap opera (*telenovela*) - 7 foreign programmes: 3 films (USA), 2 *telenovelas* (Brazil), 1 *telenovela* (Venezuela), 1 real TV programme (Mexico)
Senegal	Major principles: - Meet the needs and desires of the audience in the fields of information, culture, education and leisure - Contribute to the knowledge of Senegal	N/A
Burkina Faso	- 50 % of national programmes - 30 % of local productions for scientific, cultural, recreational, religious and sports programs	N/A
Nigeria	- 40 % of foreign programmes on conventional channels and 80 % on cable channels	N/A

N/A: Not available
Source: Médiamétrie (2004).

Broadcasting and production obligations

In this way, the political will of developing countries in terms of developing a programme industry is much less pronounced than for European countries. Moreover, it is interesting to note that numerous indicators pertaining to this segment show the lowest completeness rate. Likewise, a minority of countries have set up broadcasting quotas for domestic programmes: South Korea, China, Nigeria and Burkina Faso. Furthermore, only South Korea and, to a lesser extent, China seem to contain the broadcasting obligation within a truly coherent framework from an industrial standpoint: domestic animation and the music industry for the former, fiction for the latter.

Conversely, the designations of the broadcasting obligations of Nigeria and Burkina Faso are to say the least vague. They concern programming as a whole and do not make a distinction between throwaway and staple programmes. For the other countries, broadcasters must indeed observe certain requirements. However, these are based on very general principles: promotion of culture and identity, use of domestic resources, talents and contents (the Philippines), contribution to the country's knowledge (Senegal).

Means of control and observance to obligations

The implementation and observance of such measures are conditioned by the existence of an authority in charge of monitoring the observance of such rules and, above all, endowed with a sanctioning power in case of non-observance of the established obligations or principles. The existence of an independent authority is an exception in developing countries. Only South Korea with the Korean Broadcasting Commission (KBC) and the African countries distinguish themselves on this point. The Korean KBC has a regulating and sanctioning power. While it expresses an opinion on licence requests, the delivery of these is decided by the Ministry of Communications. Senegal, Burkina Faso and Nigeria have an independent administrative authority. However, none of these administrative bodies has any sanctioning power.

In most countries, governmental authorities exert control on the media sector and more particularly on television. Sometimes, several ministries share this task. In Mexico, the Ministry of Communications and of Transport is in charge of granting licences, the control of content being the responsibility of the State Secretaries. However, certain countries are showing a vague desire for change in this matter. Facts reveal that this implementation requires a lot of time.

In India, the Communications Convergence Bill 2001 thus plans the creation of a regulating authority (the Communications Commission of India) for all communication markets. Similarly, the reforms undertaken in Thailand between 1997 and 2000 stipulated the project of creating two independent regulating organisations: the National Broadcasting Commission and the National Telecommunications Commission. These still have not been set up.

In China, since 1998, the Ministry of Radio, Film and Television is reorganised into a state administration for radio, film and television (the SARF). The desire to develop a clear and transparent regulatory system is clearly being felt, especially since China joined the World Trade Organisation. However, under the appearance of the implementation of a transparent regulatory arsenal, the Chinese state is pursuing its traditional form of management with a strong control of the television sector. In fact, since 1997, the sector is clearly becoming tougher (ban on investments made by businesses from outside the sector, limitation of foreign programmes, etc.).

<u>Offer and audience of domestic programmes</u>

Despite the disparities between countries both in terms of the formulation of broadcasting obligations and of the means of control, it is interesting to note certain convergences in the structure of the offer and in the audience of domestic programs. Data pertaining to the structure of the programming generally is rare. At this level, the only indicator selected and properly filled in is the number of domestic programmes among the ten best audiences for the year 2003 for each of these countries. This indicator reveals that, no matter the level of obligation and control, the programmes demanded by television viewers are massively of domestic origin.

Out of six countries for which there is information (India, the Philippines, Mexico, South Korea, China, Costa Rica and Thailand) five present a rate of 100 % for domestic programmes among the ten biggest audiences (China, India, Mexico, South Korea and Thailand). For these countries, the types of these domestic programmes are very varied. Television series come out ahead by far: 34 programmes out of a total of 40, ahead of throwaway programs (sports, special programmes, news) and feature films. This result is interesting insofar as it provides an indication, even though basic, on the level of development of the domestic production of television works of fiction for each country.

China, India, Mexico, South Korea and Thailand seem to benefit from a production capacity that is liable to meet the (social) requirements of prime time programming, which supposes a domestic offer. In South Korea and in China, these results come about within the framework of a sharp regulation system (combined with an aid system in Korea). Conversely, in Mexico and in India, this production capacity is the result of market forces alone. However, the development method of the production activity differs significantly according to the country. In the case of India, the production of staple programs has developed out of businesses that are independent from broadcasters. Initiated during the 1990's, this boom has relied on one hand on the outsourcing decision made by Doordoshan and on the other hand on the development of multi-channel television. Today, this sector is characterised by a high level of organisation and an increasing degree of concentration. Hence, at the end of the 1990's, it was still highly fragmented, with close to 3000 active companies. Yet, in 2001, only 250 firms were still present and the 10 most active firms controlled close to 45 % of the market. Thanks to the internationalisation of the television sector induced by the development of multi-channel television (see 2.2.), the Indian audiovisual production sector is now organised around businesses that are meeting domestic and external demand. In 2000, the Nimbus company, which is specialised in the production of television programs, generated 65 million Rupees (1.4 million dollars) in export revenues thanks to sales in the United Kingdom, the United Arab Emirates, Malaysia, South Africa, the U.S.A. and Singapore (see Nielson et Taglioni (2004)). A net importer of television content for a long time, India seems to have become an export centre. The Electronic and Computer Software Exports Promotion Council estimates that the exports of television programs reached 74 million dollars in 2001, i.e. 20 % of the total value of production.

Mexican television production is integrated within the broadcasting groups. Grupo Televisa, the main group of free conventional television (but also of multi-channel television, see 2.2), enjoys a specific position, which is relatively similar to that of TV Globo on the Brazilian market. Its productive strength rests entirely on its dominant position within a prosperous conventional market. With 2.2 million dollars of advertising resources in 2002, Mexican conventional television is one of the best endowed in the world: the 8th place, according to this criterion, behind the U.S.A., Japan, Germany, Brazil, the United Kingdom, Italy and France. This is a market which remains largely dominated by the activity of the three channels of Grupo Televisa. This corporation represented close to 75 % of the audience in 2002. Under these conditions, television fiction (in particular *telenovelas*), the programming keystone of Mexican broadcasters and the source of the best audience figures, naturally benefit from the largest share of these abundant resources. The Televisa Group thus imposes itself as the leading producer of domestic audiovisual works and as a powerful exporter. It owns a catalogue of more than 70 000 hours of programmes in Spanish language. As Mexican *telenovelas* are paid off on the domestic market, they are sold on foreign markets at their marginal distribution cost[9] with the possibility of differentiated rates according to the economic characteristics of these markets[10]. In the same way as American products, they benefit from an advantage in terms of price-competitiveness over the domestic productions of many countries. This competitiveness in rates is coupled with a qualitative advantage linked to the difference in available resources invested in productions. To a lesser extent, the strategic positioning of Azteca is similar, as the production of audiovisual works is mostly integrated within the channel. In 1999, 80 % of the channel's prime time programming was produced in-house and 50 % on day time. As a result, despite the lack of broadcasting quotas, the two main channels in the Mexican television landscape (Televisa's Canal 2 and TV Azteca) dedicate 90 % of their air time to national productions.

The dynamism of Thailand's production capacity must be analysed with caution. On one hand, little data is available on the level of Thai audiovisual production. Furthermore, the statistics on the structure of the main broadcasters' programming reveal that in 1995, Channel 3 imported 45 % of its programming (essentially from the U.S.A., Japan, Hong Kong, Australia and Germany), Channel 7 only imported 25 % and Channel 9 imported nearly all of its programmes. However, the devaluation of the baht in 1997 seems to have led to a

9. However, this price-competitiveness of Mexican productions cannot only be attributed to a deliberately aggressive rating policy It can also reflect the exercising of a negotiation power on the part of importing firms. Noam (1991) thus explains the persistence of low rates for American fiction works in Europe as the result of a monopsony power exerted by European broadcasters. According to the author, this power, which is inherited from the monopoly situation, has maintained itself during the passage to open competition because of the persistence of a relatively restricted number of operators (oligopsony) and their financial limitations.
10. According to Mato (2003), the purchase price of a one-hour episode varied in 1998 from 15,000 dollars for a German generalist channel to 50 dollars for a broadcaster in Zambia.

durable substitution of imports to the advantage of domestic programme production, with a strong specialisation in the most popular genre, the soap opera. Today, foreign programmes rarely obtain the best audience figures, except for Chinese soap operas and American films. There are has major production groups in the country. Kanthana has thus imposed itself as an essential player in the development of domestic production. Specialised in the production of throwaway programs (game shows, debates, pop music), it has about 1000 employees and is tending to develop at the international level. It has thus acquired the broadcasting rights of the fifth Cambodian channel and owns representative offices in Indonesia, Malaysia, Vietnam and Cambodia. Through its subsidiary Kantana Film and Commercial Production, it also sells production and post-production services to the television and film sectors.

The Philippines and Costa Rica do not follow this standard[11] where domestic programs dominate in the audience box office figures. However, in the case of the Philippines, the data provided by the Mediasie website estimate at 5 % the proportion of foreign programs broadcasted by the two main Filipino channels (80 % of the audience). Conversely, this proportion reaches 60 %, 40 % and 30 % for the channels with a more restricted audience (RPN9, ABC 5, IBC 13). In Costa Rica, the main portion of the broadcasters' programming relies on rebroadcasting programs from satellite network packages and on programs from Latin America: Globo (Brazil) supplies Canal 2, TV Azteca (Mexico) supplies Canal 4 and Teletica has a supplying agreement with Televisa (Mexico). The main part of domestic programmes is made up of throwaway programs (sports and news).

The situation in the African countries is remarkable to say the least. There is virtually no statistical data concerning these issues. However, a recent WAMEU study (2004) makes it possible to identify certain characteristics of the programming behaviour of African broadcasters (Senegal and Burkina Faso). It seems that public broadcasters in a monopoly situation do not contribute at all to the production or to the remuneration of broadcasted domestic programs. This total disengagement from the broadcaster is the result of several factors. First of all, the acquisition conditions of foreign programmes affect the incentive processes for the broadcasting/remuneration of domestic programmes: free French series (provided by Canal France International), nearly free German series, no cash remuneration for

11. This standard seems to stand out at the international level. The Médiamétrie data on a television year in the world reveal that out of 72 countries covered, 71 % of the most successful programmes in every country are of domestic origin, 12 % are initiated by a member country of the same geographical area and 9 % are imported from the U.S.A., see Médiamétrie (2004).

Latin American *telenovelas* (bartering), or low price on the international market for old American series. Furthermore, the production process of domestic works has for long rested on an abnormally identical pattern to that of works of film. Most times, the work was then offered for free by Canal France International (CFI). This pattern revealed a total disconnection between the order of the series and the broadcaster's economic behaviour.

Under these conditions, the WAMEU (2004) estimates that while television fiction occupies a central place in the programming of Senegalese public broadcasters (estimated at 22 %), it is made up of foreign programmes by 95 %. Between 1999 and 2002, the production of Senegalese fiction is believed to have been limited to seven 13-minute episodes of *Kagango le Griot*, nine 13-minute episodes of Xale and one series of skits: Gorgulu (13 minutes, 4 times per week). In Burkina Faso, seven fiction series were initiated between 1999 and 2002; three series were in production in 2003. At this level, the development of multi-channel television has not played the expected structuring role. On one hand, re-broadcasters of private foreign channels are not restricted by contribution obligations to the development of national programmes. Only the agreement concerning the establishment of Canal+ Horizons in Senegal includes the payment of a percentage (3 %) of the turnover into a production financing fund. However, according to the WAMEU (2004), this French firm is believed to only have respected this clause very partially. On the other hand, the licence fees paid by MMDS operators to the governments as a counterpart for exhibition rights are low and, in the case of Senegal, assigned to the Press Support Fund.

3. FILM INDUSTRY

The analysis of the various sectors of the film industry shows that it is structured around a twofold characteristic, similarly to the main cultural industries. Its overall organisation is based on an oligopoly structure with fringes, whose degree of concentration increases from the upstream towards the downstream. The cinema activity is thus dominated by an oligopolistic centre next to which a multitude of independent companies coexist in a competitive context. This competitive fringe, as in the case of other cultural industries, is characterised by the low level of market shares captured by the companies that make up this market, by the structural fragility of the latter and by a high degree of freedom in entering the field which varies from the upstream to the downstream. Moreover, the increasing concentration of the upstream towards the downstream emphasizes the fact that companies on the fringe are essentially positioned within the production segment. Since the power of majors (domestic or foreign), making up the oligopolistic centre, asserts itself on the mastery of technical reproduction (distribution) and the distribution of the product, i.e. the segments subjected to significant economies of scale. As a result, the penetration of foreign investments (and therefore the main institutional barriers) generally concern segments in the downstream segments of the industry.

Moreover, in the production segment, the behaviour of fringe players and of the oligopolistic organisations reveals a relation based on a logic of complementarity. Huet, Ion, Lefebvre, Miege and Peron (1984) specify the workings and consequences of this relation to the way the industry operates. Small companies generally invest in areas with a high level of innovation (first films, films d'auteur, etc.) The risk thus is transferred, enabling the companies of the oligopolistic centre to concentrate their production spending on the works (and directors) whose probability of success is most likely the highest. In this context, they content themselves with their distribution organisation to take advantage of a possible success from independent filmmakers. By supporting research and development costs, companies on the fringe thus produce essential positive externalities for the sustainability of integrated groups and the industry as a whole.

On the whole, developing countries confirm these major characteristics. The production segment remains the prerogative of domestic companies. It continues to be highly fragmented and remains on a small scale. However, in certain countries (China, India, Mexico, the Philippines and South Korea), a concentration trend is becoming apparent, in particular when broadcasters penetrate the sector (Mexico, The Philippines). Internationalisation thus essentially relies on the flows generated by international co-productions. Only Mexico and China are distinguishing themselves, since a short while, by setting up organisations with foreign capital. In Mexico, Disney signed a joint venture with Spain Admira (Miravista). Similarly, the partnership between Warner and Televisa led to the creation of the company Coyoacan Films at the film production level. Finally, Sony opened a production office in Mexico in 2003. In China, Warner signed an agreement with China Film Group and Hengdian in order to create a joint venture specialised in the production of films and television films. This organisation should have production budgets ranging from 1.2 million to 6 million dollars at its disposal for cinematographic works.

Conversely, the distribution segment is highly internationalised, an internationalisation that mainly benefits American majors. This opening takes on diverse forms. In the Philippines, while Columbia, Buena Vista and Warner distribute their films via their own subsidiaries established in the country, other American majors ensure the distribution of their films through domestic companies specialised in import. The Viva group stands out as a domestic major. As it is vertically integrated, it produces the films of the ABS-CBN television group and handles the distribution activities (cinema and video). However, it is absent from the exhibition sector, a segment with relatively little concentration with respect to international standards (the four leading exhibitors owned 17.5 % of the screens in 2000). American presence also is significant in Mexico. Mexican distribution is dominated by American majors. The five leading distributors are American, mobilising more than 75 % of the revenues. As is the case with the Philippines, the main domestic distributor is Videocine, which is tied to the main domestic broadcasting group (a subsidiary of Grupo Televisa). This American presence is not only limited to the distribution of American films alone, but also includes distribution of domestic films. In 2002, among the 10 best box office successes, two were distributed by American majors, five by Videocine, which is tied to Warner, and two by domestic distributors.

3.1. Support systems for the film industry

The majority of the countries in our study benefit from support systems for their film industry. Only Thailand, El Salvador and Nigeria seem to be lacking this kind of organisation (see Table 11). However, in the case of Thailand, the government has not completely disengaged itself from the sector. According to Nielso and Taglioni (2004), the state is firmly supporting national exports by organising trade shows in the country as well as abroad (Asia-Pacific Film Festival). It also contributes to the organisation of Thai film festivals throughout the world (for example in London in 2002).

The Nigerian situation is singular, as its film industry has disappeared to the benefit of video production, which is very inexpensive, non-institutionalised, extensive and circulates via informal channels throughout most countries of the African continent.

In Senegal and in Burkina Faso, the organisations encountered compare to empty shells, according to our research. In the case of Burkina Faso, the support fund is no longer supplied financially. In the case of Senegal, the means made available are so low that their existence is almost purely symbolic. This weakness can sometimes be compensated by one-off measures and exceptional government contributions. The WAMEU (2004) considers that this practise, as opposed to an effective support fund, has the "heavy disadvantage of not falling within an economic and financial structuring process of production, whether it be by its amount or its procedure."[12] In fact, the most concrete public contribution generally consists in making available film equipment from the state film department or national television (Burkina Faso).

In this context, the financing of African production relies entirely on the specific support funds set up by Northern countries (European Union, *Agence Intergouvernementale de la Francophonie, Fonds Sud, Aide au Développement des Cinématographies du Sud*, etc.). Such a financing network includes multiple pernicious effects identified by the WAMEU (2004): administrative cumbersomeness, potential brake on the development of African production companies, risk of having dominant tastes in Northern countries prevail, risk of homogenising production in view of meeting granting criteria.

For other countries, the inventory of the various support systems reveals a great diversity. In the case of Europe, the study by Cocq and Kohler (2003) shows that, despite a certain heterogeneity among the systems analysed, common characteristics come up, thus sketching the outlines of a European standard. These convergences are not found in the case of the countries covered by our study.

Aid system in South Korea

The Korean support system meets objectives of industrial type to a great extent. The companies positioned on the distribution and exhibition segments are the main beneficiaries of Korean film policies. Half of the loans with a preferential rate are thus reserved to the exhibition sector (10 billion wons or 6.5 million euros). These loans are granted on the basis of purely industrial selection criteria: cinema renovation programmes.

On the other hand, the support granted to production essentially rests on cultural criteria. There is no automatic aid, as is the case in an increasing number of European countries (prevailing support method in France). Production aid includes a specific support programme for

12. See WAMEU (2004), p. 29.

artistic films (2 billion wons or 1.3 million euros, backing for 5 films per year), a support programme for independent production (20 million wons or 13,277 euros) and support programmes for strategic segments of Korean production (animation films, digital films where Korea detains a comparative advantage in technological know-how and mastery, but also student films: the central element of a discovery and talent renewal policy). The support system is financed by a tax on admission tickets and by public funds.

Korea also is the only country to impose a contribution of television resources for the financing of domestic film production which, does not, as is the case in France, go through the "obligation of investment based on turnover/broadcasting quota of domestic works" combination. The Korean arsenal combines a television broadcasting quota and a cinema quota. This system implies lower (financial) dependency of film production with regard to television corporations. It guarantees a relatively healthy sovereignty for cinemas with regard to the perverse effects observed in the French system, where cinema is put under the supervision of television and the risk of standardisation that results from this.

Aid system in Mexico

Two programmes coexist and are financed by government contributions and the reimbursement of granted loans. However, a tax on the ticket price came into effect in January 2003. As opposed to the Korean system, Mexican aid programmes nearly exclusively concentrate on the production segment. Support takes on the form of venture capital and secured loans. The programmes combine industrial and cultural granting criteria. Fidecine support thus essentially focuses on the commercial and financial viability of a project. Conversely, Foprocine seeks to promote quality production on the basis of artistic criteria.

Aid system in India

In India, support to the film industry rests on the action of three institutes at the federal level. Furthermore, many Indian States have also developed support measures. The Film and Television Institute of India and the Satyajit Ray Film and Television Institue have training as their main action. They provide training in film directing. The National Film Development Corporation was set up in order to support small budget

Table 11 - Support systems and entry barriers for the film industry

	Organisations providing aid to the film industry	Entry barriers
India	- Film and Television Institute of India - Satyajit Ray Film and Television Institute - National Film Development Corporation	- High level of tax on film establishments - High fixed costs (electricity) - Piracy ($77 M or €61 M, 60 % of the market) - Film shootings in India are subjected to ministerial authorisation - State of East Bengal: higher taxation on non-Bengali and foreign films - American majors can only repatriate $6 M or €4.8 M/year of their box office receipts in India (not very restrictive) pused to produce films in India - Removal of many barriers in the 1990's: cinema quotas (which are however exempt from India's WTO commitment)
Thailand	No	- FDI: 49 % - Strong concentration of distribution and exhibition (3 groups concentrate 46 % of the screens)
The Philippines	Film Development Council	High level of piracy ($33 M, or €26.2 M, 89 % of the market)
Mexico	Imcine	- Significant concentration (distribution and exhibition) - Cinema quotas: 10 % of projection time dedicated to domestic films - Obligation to broadcast any new Mexican film 6 months after its completion - High level of piracy ($50 M, or €39.7 M, 40 % of the market) - FDI 49 % (production, exhibition) - Obligation to deposit one copy of any film not produced in Mexico - Dubbing of films is prohibited except for children's films
South Korea	Kofic	- Cinema quotas - Piracy ($40 M, or €3.7 M, 20 % of the market)
China	Yes	- FDI (exhibition): 49 %-75 % (seven cities among which Shanghai and Beijing) - Establishment of foreign cinema chains is prohibited - Granting of co-production licenses (respect of content conditions) - High level of piracy ($178 M, or €141.3M, 95% of the market)
El Salvador	N/A	N/A
Costa Rica	N/A	N/A
Senegal	Symbolic value. Most aid comes from European funds	- Monopolistic structure of distribution - Low amount of cinemas - Piracy - Unfavourable fiscal context: 33 % tax on tickets, from which African films are exempt - Unfavourable customs procedure: support and equipment for audiovisual sector = highest category (20 %) - Aid network with strong geographic ties (Europe-Canada)
Burkina Faso	- Officially yes but no longer supplied - Significance of aid from EU, the Agence de la Francophonie and of the funds from the French Ministry of Foreign Affairs	- Monopolistic structure of distribution - Low amount of cinemas - Piracy - Unfavourable fiscal context: 33 % tax on tickets, from which African films are exempt - Unfavourable customs procedure: support and equipment for audiovisual sector = highest category (20 %) - Aid network with strong geographic ties (Europe-Canada)
Nigeria	N/A	N/A

Source: E. Cocq, 2005. *N/A: Not available* production and first films. In theory, this institude also manages a programme of capped loans for the construction of cinemas. However, Mukherjee (2005) believes that no loan has been granted in the past five years. On the whole, government aid in the financing of production and of the entire industry is very low.

The industry's development essentially relies on private organisations whose main brake remains the burden of financial costs. Moreover, it is in this perspective that India's Federal Bank has elaborated rules for banks and financial institutions operating in the sector. Fiscal measures are in fact the main method of state intervention. Numerous tax relief systems have been set up to reduce production costs (lowering of the VAT rate from 40 % to 25 % on filming shooting equipment, cut in customs duties on film equipment). The export incentive system is based on a tax exemption on revenues generated by the export of domestic films. In the same way, the customs duty (20 %) paid on the return of the equipment is reimbursed to the exporter-importer. Since 1998, the export results of Indian cinema have improved considerably. The export value has thus gone from $44.4 million in 1998 (198 films) to $100 million in 2000 (412 films) and $111 million in 2001. These good results reveal an offensive development of Indian businesses, which now want to take advantage of the opening of numerous markets. In fact, several countries have cinema quotas that limit the screening of Indian films in a significant way (Egypt).

Finally, the federal government and many States have developed systems to encourage investments in the exhibition segments with the clearly displayed objective of developing multiplex cinemas. To this end, domestic corporations were granted the authorisation to co-operate with foreign businesses within the scope of joint ventures. In parallel, the budget of the Indian Union (2002-2003) mentions an exemption of 50 % for the taxation affecting multiplex cinemas in areas outside of major cities. Many provinces have also developed similar measures (Uttar Pradesh, Himachal Pradesh, etc.). Exhibition remains heavily taxed in the various Indian states (with an average taxation level of 60 % in the country as a whole, compared with 3 % in Japan, 16.6 % in South Korea and 33 % in the Philippines)[13].

13. Source: Film Federation of India

Table 12 - Development of film production (1970-2002)

	Number of films produced						Variation[3] (in %)		
	1970	1980	1990	2000	2001	2202	Period I (1970 - 1990)	Period II (1990 - 2002)	Period III (1970 - 2002)
India	397	379	948	855	1013	1200	+139	+27	+202
Thailand	74	138	194	9	12	30	+162	-85	-59
The Philippines	194	173	142	103	109	97	-27	-32	-50
Mexico	N/A	108	72	29	21	14	N/A	-81	-87
South Korea	209	91	116	59	75	78	-44	-33	-63
China	2	82	134	91	82	100	+66	-25	+4900
El Salvador	N/A						N/A		
Costa Rica	N/A						N/A		
Senegal	14 over the 1992 - 2002 period, i.e. 1.3 films per year						N/A		
Burkina Faso	17 films between 1992 and 2002, among which 2 films between 1999 and 2002						N/A		
Nigeria	N/A						N/A		
USA	231	222	477	683	611	543	+106	+14	+135
Canada	46	54	42	55	42	40	-9	-5	-13
European Union	874	661	518	722	773	824	-41	+60	-6
Developed countries[1]	1754	1564	1619	1983	1916	1909	-8	+18	+9
Developing countries[2]	1758	2146	3026	1700	1738	1927	+55	-36	+0,9
Developing countries[2] (except China)	1756	2064	2092	1609	1656	1827	+48	-37	-6

Source: Screen Digest. E. Cocq's calculations, 2005. *N/A: Not available*

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*
3. *For the variation rate of developing countries, calculations were done at constant scope, as the data for some countries is not available over the entire period covered by our reference years. Thus, in period III, the developing countries for which we have information both for 1970 and 2002 amount to 21 for 1742 films produced.*

3.2. Production

Quantitative characteristics of film production

Film production in terms of volume

From a quantitative standpoint, film production in developing countries reveals certain limitations compared with film production in developed countries. The first limitation concerns production capacity. In 2002, developing countries produced on average 1.2 films per one million inhabitants, against 6.27 for developed countries. The production activity in developing countries has actually dropped (-6 %) between 1970 and 2002, whereas in developed countries it has increased by close to 10 % over the same period. That's how for the countries in our sample, excepting China and India, the last two decades translated into a major contraction of film production: -59 % for Thailand, -50 % for the Philippines, -87 % for Mexico, -63 % for South Korea (see Table 12).

This decline is entirely due to the 1990's decade. With the exception of the Philippines and South Korea, the 1970-1990 period is indeed characterised by an increase in production (+48 % on average) for most developing countries. Conversely, the 1990's correspond to a strong contraction of production (-36 %) which contrasts with the recovery of production in developed countries. The drop in production is particularly strong in the case of Mexico and Thailand. These two countries have gone from production levels higher than 100 films at the beginning of the 1980's to very low levels (30 and 14) in 2002.

All things considered, if we refer to the indicator of the number of films produced by million people, Thailand, Mexico, China, Senegal and Burkina Faso are characterised by an obvious situation of under production. For these countries, the number of films produced per million inhabitants is lower than 0.5 compared with 1.98 in the U.S.A., 2.24 on average for the countries of the European Union and 1.2 on average for developing countries (see Table 13).

In the case of Thailand, this situation seems clearly sub-optimal. The share of Thai films among films distributed on its territory thus reached 15.8 % in 2002 compared with a market share of 23 % of admissions, in other words a domestic film offer that is lower than the actual demand. We encounter here a situation which, according to Lancaster (1991), would be liable to justify recourse to protectionism. This demonstrates indeed that in an economy where consumers manifest a preference for diversity with regard to differentiated goods characterised by economies of scale[14], free trade can lead to a divergence between the objectives of domestic businesses and the consumers' expectations. Local production (horizontal diversity) would thus be desired socially but not offered for reasons of profitability[15]. This analysis would justify production support.

Table 13 - Number of films produced for one million people

	2000	2001	2002
India	0,88	1,03	1,19
Thailand	0,14	0,19	0,46
The Philippines	1,46	1,49	1,33
Mexico	0,30	0,22	0,14
South Korea	1,29	1,63	1,46
China	0,07	0,07	0,08
El Salvador	N/A	N/A	N/A
Costa Rica	N/A	N/A	N/A
Senegal	0,015	0,015	0,015
Burkina Faso	0,08	0,08	0,08
Nigeria	N/A	N/A	N/A
USA	2,54	2,23	1,98
Canada	1,82	1,37	1,29
European Union	2,51	2,12	2,24
Developed countries[1]	6,05	4,94	6,27
Developing countries[2]	0,99	1,04	1,20

Source: Screen Digest. *N/A: Not available*

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*

Production in terms of value

The level of investment in film production reveals an even stronger loss of ground in developing countries. Of course, India stands out as the world-leading producer of films in terms of volume.

14. The film activity in fact reveals important economies of scale. These essentially concern the distribution segment. As a result, the cost of making an additional print is near to nil with regard to that of the first print, as it concentrates the film's entire production cost.
15. Siroën (2000) believes that this analysis would economically justify the semantic slide from the concept of cultural exception towards that of cultural diversity, see Siroën (2000).

Nevertheless, the value of Indian film production is 24 times lower than that of the U.S.A. It is only twice as high as the value of European production, while this geographical area on average produces 22 times fewer films. All in all, the investments of all developing countries together represent the twentieth of that of developed countries. Only South Korea shows a mobilisation of resources close to the standards of developed countries.

Table 14 - Amount of investments in domestic film production

In millions of US$	2000	2001	2002	2003	% Investments in domestic production/box office receipts of the domestic production on its own market	Average budget 2003
India	478	528,3	561,2	606,8	110,5	0,5
Thailand	9,0	12,1	41,8	74,6	227	1,49
The Philippines	N/A	19,6	19,4	19,8	N/A	0,22
Mexico	34,8	31,5	20,4	54,7	38	1,52
South Korea	109,5	133,8	234	210	102	3
China	47,2	44,6	58	84,6	N/A	0,6
El Salvador	N/A	N/A	N/A	N/A	N/A	N/A
Costa Rica	N/A	N/A	N/A	N/A	N/A	N/A
Senegal	<1	<1	<1	<1	N/A	0,4
Burkina Faso	N/A	N/A	N/A	N/A	N/A	N/A
Nigeria	N/A	N/A	N/A	N/A	N/A	N/A
USA	10388	11217	14661	14607	162	24,63
Canada	170,3	148,5	133,1	236,2	819	3,42
European Union	3105	2976	3200	5073	329	5,67
Developed countries[1]	15208	16010	19611	21675	N/A	10,71
Developed countries[1] outside of U.S.A.	4820	4793	4950	7068	N/A	5,2
Developing countries[2]	904	978,2	1123	1277	N/A	0,66

Source: Screen Digest. E. Cocq's calculations, 2005. N/A: Not available

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*
3. *In view of this data, it thus seems obvious that the amount of investment in film production is sub-optimal in most developing countries. There certainly is a lot of room for manoeuvre at this level.*

Therefore, it is a matter of assessing whether these differences are in accordance with those pertaining to the size of the admissions market. The appropriate indicator to measure this aspect is the ratio between the amount of investment in domestic production and box office receipts captured by this production on its own market (see Table 14)

With the exception of India, this ratio underlines a chronic sub-financing of film production in developing countries compared with the standards displayed by developed countries.This indicator reaches a level of 819 % for Canada, 329 % for the European Union and 162 % for the U.S.A. For all developing countries with available information, the figures are substantially lower: 38 % in the case of Mexico, 102 % in the case of South Korea, 110.5 % for India and 227 % for Thailand.

These differences are interesting insofar as they inform us on the countries' capacity to establish (through market speculation or regulatory measures) financing or depreciation organisations that are complimentary to cinemas (television, export, video, government support, etc.), and this in order to reduce production risks and to drain a sizeable flow of additional investments. In the case of Europe and Canada, due to the relative low level of export of their productions, the high level of this ratio reveals the positive impact of the television sector and of support funds. As Table 14 shows, the amount of investment in cinematographic production in developing countries is below optimal levels. This leaves ample margin of manouvering in this particular area.

Qualitative aspects of production in developing countries

<u>Quality revealed by the market</u>

In the field of culture, two concepts of quality coexist. The first is linked to the audience of the work. This is a retrospective criterion observed on the market. From this standpoint, the comparison between the market share of domestic films on their own market and their weight with respect to all films distributed is a relevant measuring instrument (see Table 15).

For the countries where information is provided for both indicators (India, Mexico, South Korea and Thailand), the share of domestic films among all distributed films is in fact lower than its market share of admissions. This difference reveals a sub-optimal offer of domestic films. It could thus encourage the implementation of an incentive system aiming to increase the number of domestic films produced (and thus distributed), which market mechanisms alone cannot ensure. However, the mention of the market shares of works in the distribution on their own domestic market is an insufficient indicator. It would be necessary for the purpose of sharpness of the analysis to complement this indicator with an indicator pertaining to the release conditions and to the career of the film. Hence in the case of Mexico or South Korea, the not so little difference (+20 percentage points) can certainly be attributed in a large part to the existence of a cinema quota (positive effect on admissions).

Table 15 - Film distribution sector

	Number of previously unreleased films distributed			Share of domestic films in distribution (in %)(2002)	Share of domestic films in admissions (2002)
	2001	2002	2003		
India	1261	1150	948	79	95
Thailand	194	228	260	15,8	23
The Philippines	319	369	N/A	26,3	N/A
Mexico	250	260	267	6,5	10-15
South Korea	263	290	251	28	48,3*
China	109	110	112	80,4	N/A
El Salvador	N/A	N/A	N/A	Very low	N/A
Costa Rica	N/A	N/A	N/A	Very low	N/A
Senegal	N/A	N/A	N/A	Very low	Very low
Burkina Faso	N/A	N/A	N/A	Very low	Very low
Nigeria	n/a	n/a	n/a	n/a	n/a

Source: Screen Digest. ** (45 % in the Seoul area)*
N/A: Not available.
n/a: Not applicable. (In the case of film exhibition in Nigeria, the figures are “n/a” insofar as exhibition has disappeared to the benefit of video distribution)

However, this data is not available. The information contained in Table 16 partly fills this gap. The rich statistics pertaining to the French film industry make it possible to obtain the number of cinema admissions and the number of screenings made for each film exhibited in France (indicator of the film’s level of exposure). This statistic thus allows a relevant apprehension of the actual competitiveness of films and of the foreign cinema on a given market (in this case the French market).

From 1992 to 2003, 541 films from Asia, Africa and Latin America were shown on the French market as new releases compared with 1967 from North America, 1746 of domestic origin and 1201 from Europe. These figures confirm the low level of circulation of films coming from developing countries. Only 20 Indian films were shown in France over the past ten years, 4 Thai films, 31 Korean films, 23 Mexican films, thus an infinitesimal portion of the production initiated by these countries during the period. By comparison, African cinema benefited from a better representation with 61 films shown, thus 24 % of Burkina Faso's production and 21 % of Senegal's production initiated during the same period.

This under-exposure is even more pronounced when we consider screenings as the reference criterion. While Asian cinema represents 7.26 % of the film offer during the period, it only mobilizes 2.05 % of the screenings. This difference also concerns Latin American productions (share of screenings lower by 1.39 percentage points to that of the offer) and African films (deficit of 1.04 percentage points). Conversely, domestic films and American films have a screening share that is higher than their share of the offer (close to 20 percentage points in the case of American films).

However, if we refer to our competitiveness indicator ('number of admissions / number of screenings'), Asian and Latin American cinema have an admissions / screenings ratio that is higher than those calculated for domestic films and European films. In the case of Asia, the results are even higher to those of American films with an average of 8.24 admissions per screening, compared with 5.51 for American films. According to this criterion, African cinema seems less competitive as a whole. However, Burkinan cinema reached the best results with an average of 17 admissions per screening, followed by Thai cinema and Indian cinema.

Subjective quality: an attempt at evaluation

The second assessment of quality is that undertaken a priori. As Benzoni (2001) summarises it, a work of quality corresponds to "a certain number of criteria that we would wish the consumers to

Table 16 - Structure of foreign film offer on the French market (1992-2003 period)

Nationality of the films	Number of films	Numbers of screenings	Admissions	Ratio admissions/screenings
India	20	17895	165283	9,24
In %	0,37	0,04	0,007	-
Thailand	4	2049	24707	12,06
In %	0,07	0,005	0,01	-
Japon	149	260672	1053729	4,04
In %	2,73	0,57	0,45	-
South Korea	31	31688	62449	1,97
In %	0,57	0,07	0,03	-
Hong Kong/China	66	225302	1219164	5,41
In %	1,21	0,50	0,52	-
Asia	396	933296	7689263	8,24
In %	7,26	2,05	3,27	-
Mexico	23	16105	49220	3,06
In %	0,42	0,04	0,02	-
Latin America	84	68456	360488	5,27
In %	1,54	0,15	0,15	-
Senegal	3	281	1086	3,86
In %	0,05	0,0006	0,0005	-
Burkina Faso	4	1884	32857	17,44
In %	0,07	0	0,01	-
Africa	61	38057	98077	2,60
In %	1,12	0,08	0,04	-
USA	1845	24719812	136145227	5,51
In %	33,82	54,38	57,90	-
North America	1967	25128966	137750602	5,48
In %	36,06	55,28	58,58	-
France	1746	15064754	72276099	4,80
In %	32,01	33,14	30,74	-
Europe	1201	4222787	16965630	4,02
In %	22,02	9,29	7,22	-
Total	**5455**	**45456316**	**235140159**	**5,17**

Source: CNC (French National Film Centre). E. Cocq's calculations, 2005.
Note: The data concerns all films exhibited in France as new releases between 1992 and 2003. There were no films from Costa Rica, El Salvador, the Philippines or Nigeria exhibited in France between 1992 and 2003.

consume"[16]. In this case, quality, resulting from subjective appreciation, is in fact difficult to measure. At this level, Messerlin and Cocq (2004) provide an indicator that, despite certain biases, seems relevant. They suppose that quality cinema rests on a postulate that it should be appreciated, by virtue of a transnational recognition system, byprofessionals and critics of all nationalities. Under these conditions, a good indicator of the quality of a film would be its capacity to stand out in the list of prize-winners of main international festivals (Venice, Cannes and Berlin).

Table 17 draws up the performance of each country in our study. Seven countries (India, Thailand, the Philippines, Mexico, South Korea, China and Senegal) have produced films that are sufficiently interesting to be selected in one of the three biggest international festivals. All in all, these seven film industries represent 8.9 % of all selected films over the 2000-2003 period.

Table 17 - Performance and quality of film works

	Share of prizes awarded in the Berlin, Cannes and Venice festivals (2000-2003 period) in %	Share of films selected for the Berlin, Cannes and Venice festivals (2000-2003 period) in %	Number of films ranked in the top 20 list of films from the geographic area in Europe (1996-2003 period)
India	0,6	2,6	4 (2,4 million admissions)
Thailand	1,1	0,7	0
The Philippines	0	0,3	0
Mexico	1,7	0,3	5 (1,99 million admissions)
South Korea	3,4	2,2	0
China	4,5	2,6	1 (9,2 million admissions)
El Salvador	0	0	0
Costa Rica	0	0	0
Senegal	0,6	0,17	0
Burkina Faso	0	0	0
Nigeria	0	0	0

E. Cocq's calculations, 2005.

Aside from the special case of India, the comparison of this ratio with the share of each country's production in the world production

16. See Benzoni (2001), p. 13.

seems to confirm a strong propensity to put out a production of quality for all countries studied:

- Thai production represents 0.7 % of the films selected in festivals and 0.4 % of the world production in the 2000-2003 period
- South Korean production represents 2.2 % of selected films and 1.8 % of the world production in the 2000-2003 period
- Senegalese production represents 0.17 % of selected films and 0.03 % of the world production in the 2000-2003 period
- Chinese cinema represents 2.6 % of the selected films and 2.4 % of the world production in the 2000-2003

This characteristic is even more pronounced if we consider the awards received by the selected films. With the exception of the Philippines, all film industries mentioned above show a higher share of awards than that of selections. From this point of view, Mexico also stands out as a film industry whose propensity towards quality is high (1.7 % of granted awards, compared with 0.6 % of the world production and only 0.3 % of selected films).

3.3. Film exhibition

Film exhibition is the segment where the disparities between developed countries and developing countries are the greatest. Developed countries have on average 80 screens per million people, compared with only 27 for developing countries. This disparity has considerably increased during the last decade. The improved equipment of developed countries with cinema establishments (average gain of 21 establishments per million people between 1992 and 2002) contrasts with the loss of ground observed in developing countries (loss of 18 establishments per million people). This asymmetry has furthermore come hand in hand with an increasing difference in terms of the equipment's renewal and of the design of the establishments. In fact, the increase in number of cinemas observed in developed countries during the last decade relied on a qualitative reorganisation based on the development of multiplex cinemas. This resulted in a gain in terms of viewing quality (for the consumer) and a higher rationalisation of space management for exhibitors (optimal rotation of prints, economies of scale). However, these developments have mobilized massive investments (exhibition crisis in the U.S.A., upheaval of the balances and increased concentration on most markets).

Table 18 - Assessment of equipment with film screens

	Number of screens in 2002	Number of screens / Millions of inhabitants	
		1992	2002
India	11000	14,8	10,3
Thailand	465	15,4	6,8
The Philippines	900	21,6	11,7
Mexico	2755	18,9	25,8
South Korea	977	15,5	20,4
China	65500	114,4	50,5
El Salvador	N/A	N/A	N/A
Costa Rica	N/A	N/A	N/A
Senegal	22	N/A	2
Burkina Faso	55 (34 en activité)	N/A	4,3
Nigeria	<5	n/a	n/a
USA	35280	97,8	125,4
Canada	2753	61	86
European Union	25306	46,3	66,8
Developed countries[1]	94505	44,9	26,6
Developing countries[2]	73749	58,7	80

Source: Screen Digest. N/A: Not available n/a: Not applicable

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*

This qualitative restructuring only concerns a minority of developed countries. In fact, because of the size of the investments, such a development is conditioned by the capacity to attract foreign investments. All developing countries that are the most advanced in the modernisation of their cinemas confirm this parameter: Thailand (with the Australian group Village Roadshow, the Canadian group Onex's Loews Cineplex Group and, since the withdrawal in 2002 of Village Roadshow, the pan-Asian group Golden Harvest), Mexico (with the American group Cinemark and the Canadian group Onex's Loews Cineplex Group), Korea (with the group Onex's Loews Cineplex and the Hong Kong group Golden Harvest). Moreover, these countries show a sharp increase of their admissions between 1992 and 2002: +265 % in Thailand, +36 % in

Mexico, +123 % in South Korea, whereas admissions in all developing countries taken as a whole (aside from China) translated into a loss of ground of 52 % over the period.

Table 19 - Characteristics of cinema exhibition

	Number of admissions (millions)		Admissions per inhabitant (2002)	Ticket price in GDP per capita
	1992	2002		
India	4,8	2,5	2,7	0,04%
Thailand	7,9	28,8	0,5	0,1%
The Philippines	138	78	1,1	0,07%
Mexico	112	152	1,6	4,6%
South Korea	47,1	105,1	2,3	0,05%
China	10000	135	0,1	0,08%
El Salvador	N/A	N/A	N/A	N/A
Costa Rica	N/A	N/A	N/A	N/A
Senegal	Less than 1	0,8	0,1	N/A
Burkina Faso	3,5 - 5	1,5 - 2	0,1	N/A
Nigeria	n/a	n/a	n/a	n/a
USA	1173	1639	6,1	0,02%
Canada	73,7	127,9	4,2	0,02%
European Union	584,6	910,7	2,4	0,03%
Developed countries[1]	2108,3	3024,4	3,7	-
Developing countries[2]	17095,6	3518,4	1,06	-
Developing countries[2] (outside of China)	7095,6	3383,4	1,03	-

Source: Screen Digest. E. Cocq's calculations, 2005.
N/A: Not available n/a: Not applicable

1. *The aggregate 'Developed countries' includes Western Europe (EU-15 + Iceland and Norway), Canada, USA, Japan, Australia, New Zealand, Hong Kong and South Africa.*
2. *The aggregate 'Developing countries' covers Argentina, Brazil, Chile, Venezuela, Indonesia, Singapore, Estonia, Latvia, Russia, Bulgaria, the Czech Republic, Hungary, Poland, Rumania, Slovakia and Slovenia, in addition to the countries entered in our database.*

Cinema-going in developing countries generally is considered a relatively costly form of leisure, in any case costlier than in developed countries. On the basis of the ticket price compared with the GDP per capita, with the exception of India and South Korea, which remain at levels of expensiveness close to those observed in developed countries, all countries show an excessive cost. In the case of Thailand and China, this excessive cost is equivalent to three times the European price expressed in terms of GDP per capita. For Mexico it amounts to 153 times the European price.

Under these conditions, cinema-going can only concern the most comfortable social classes, which limits its growth potential by as much. Because of this costliness, combined with a low amount of cinema venues - which reinforces the implicit price of going to the cinema and excludes many inhabitants from the consumption of films - this implies a lower level of admissions than in developed countries. This phenomenon is particularly pronounced in the case of Thailand (0.5 admission per inhabitant compared with 3.7 for developed countries) and China (0.1 admissions per inhabitant).

4. MUSIC INDUSTRY

4.1. Music production

The world production of recorded music is dominated by the four big majors of the record industry: Sony/BMG, Universal Music, EMI and Warner Music. These four groups represent more than three quarters of the world music market. The domestic production of the countries in our sample is often dominated by subsidiaries of these majors. A recurring oligopolistic organisation thus dominates most Asian or Latin-American markets. Oligopolies with fringes are thus emerging in developing countries, in a similar way to the European and American markets. This structure only leaves a modest amount of room for independent domestic producers. The latter are pushed into a fringe whose degree of concentration varies according to the country. This structure brings together 200 businesses in Thailand, but only 37 in the Philippines. The level of the global market share of these independent producers compared with that of the majors is hard to obtain on a national basis. The IFPI publishes regional data. Thus in 2003, whereas the majors represented close to 80 % of the European and North American markets, they captured 75 % of the Latin American market shares and 62 % of the sales in Asia (excluding Japan). Of course, this rate varies according to the country.

In Asia, two countries stand out. India differentiates itself by a market dominated by four independent domestic companies, where the majors and their subsidiaries do not cover more than 20 % of the market. This originality can be explained by the specificity of a sector dominated up to 70 % by the sale of original sound tracks of domestic films and, at the same time, by a historically very constraining regulation system in terms of the participation of foreign investment in the capital of domestic companies. Chinese regulation also explains the number of Chinese players who are independent from the majors in music production and distribution.

African music production shows original market characteristics. The market is radically different from the dominant model of an oligopoly with fringes. Majors are nearly not present at all on the continent, with the exception of South Africa. Domestic productions are thus largely independent. However, organisations are for the most part informal and small-scale, so that no official evaluation is able to estimate the extent of these productions. Certain developments however reveal a desire to structure the sector. In Senegal, 16 production organisations participated in the *Cadre Interprofessionnel des Producteurs et Editeurs Phonographiques du Sénégal* (CIPES) meeting on March 3, 2003, in order to draft the statutes of the organisation. In the same way, in Senegal again, the Xippi group founded by Youssou N'Dour has developed according to a vertical integration principle (production organisation, recording studio, phonogram manufacturing organisation, distribution organisation). This development took place within strict abidance to domestic fiscal rules, "where other music industry players do not always follow the same rules of the game"[17]. According to Sow Huchard (2004), this structural asymmetry leads to multiple distortions that are little conducive to structuring the sector: "The company then finds itself in a situation where it pays a lot of social contributions and taxes… As an indirect result, its products are offered at higher prices than those of its competitors on the market"[18].

4.2. Piracy

Piracy represents a major phenomenon for the three regional areas covered. It severely preoccupies international federations and record majors. Developing countries are mainly suffering from physical piracy, that is to say the illegal copying of records or cassettes. This form of piracy is not recent, but technical innovations allow it to expand at continuously reduced marginal costs. Hence in 2003, the average cost

17. See Sow Huchard (2004), p. 68.
18. See Sow Huchard (2004), p. 68.

of a pirated record in Brazil was $1.50. Another illegal practice is based on pirate broadcasting of music on radio or television, i.e. without any authorisations or royalty payments (Senegal). While the situations are obviously heterogeneous among the various countries considered, the global level of piracy remains very high everywhere and systematically exceeds 40 % of the legal market. Hence, among the 10 priority territories in the fight against piracy under the leadership of the IPFI, we find China, Mexico and Thailand. On this point, the developments are contrasted. India has demonstrated a strong desire to establish a legal market based on the observance of intellectual property rights, thus reducing by half the levels of piracy in two decades. Conversely, the Philippines or China have experienced a high increase in piracy these last years.

Fighting piracy depends on the positive disposition of governments towards the preservation of intellectual property rights. At this level, attitudes are not homogeneous and the IFPI underlines the dishonesty of certain governments. Assessments are rare and difficult to undertake on the African market. It however seems that governments, aware of the potential represented by this market, at the national as well as international level, are attempting to establish legal CD protection systems, such as anti-piracy stickers. Consequently, even if piracy still causes a 75 % loss on the Senegalese market, this loss is only 45 % on the Nigerian market. Finally, digital piracy is only marginal in the countries considered, given the low rate of broadband Internet equipment. Only South Korea, where two thirds of its population is equipped, shows a high level of digital piracy over peer-to-peer networks (see Table 20).

4.3. Regulations and protection systems

Protection of domestic music markets

The music industry is considerably less regulated than the audiovisual sector. However, direct or indirect trade barriers are often erected (see Table 20). As a cultural industry, music production and distribution are traditionally subjected to limitations in terms of foreign investment. During the 1990's, many Asian countries have nevertheless relaxed most of these constraints (Thailand) and have demonstrated a desire to liberalise foreign investments. In most countries, limitations on the ownership of foreign property endure. They impose themselves either on content industries (India), or on radio broadcasting companies (El Salvador, Senegal). Other trade barriers protect local industries of recorded music production. For example, most countries preserve tax systems that are discouraging to imports or even strict import licence rules.

Regulation systems

A great deal of importance is generally given to the share of domestic music in national sales. Hence, cultural policies essentially base themselves on the objective to preserve market shares of domestic music. This objective often takes place through the implementation of a domestic music quota in radio broadcasting (Senegal, Nigeria or South Korea). Another aspect of regulation indirectly concerning music industries is the regulation of the radio broadcasting market (see Table 20).

4.4. Record sales

Africa

The statistics map out the image of an almost embryonic, or even non-existing, African market. The IFPI thus limits most of its statistics pertaining to the continent to the sole sales figures of South Africa, one of the rare countries together with Zimbabwe, where the recorded music business seems to have really taken off.

Music, however, plays a central role in African social and cultural life but it only circulates very marginally according to the production, distribution and sales models of Northern countries. Business practices are odd: the market is still very much dominated by cassettes and not CDs, the artist controls his stock and “flat fee” practices prevail over the “royalties” system. Moreover, the majors are barely established in Africa. For example, they closed their offices in Nigeria during the 1990’s, as they were incapable of guaranteeing the profitability of their activity on a market eaten up by piracy. Certain African countries are currently experiencing piracy rates of close to 100 %. Today the situation is changing, under the influence of the governments but the African market remains strongly characterised by its particularities and traditional practises.

Asia

The situation in Asia is clearly less unusual than the one encountered in Africa. Regional figures reveal the existence of a significant market. However, the figures need to be considered with caution because they also include Japan, the second world market in terms of record sales. If we exclude the Japanese market, there remains profound diversity in Asian markets. China is in full expansion (+36.4 %) and is opening to import, at a moment in time when most of the other countries considered are confronted with a slowdown in their sales (-20 % in India, -12.2 % in Thailand in 2003, -31.4 % in South Korea).

IFPI naturally attributes the difficulties of these markets to piracy. In 2003, piracy represented 40 % of the market in India, Thailand and the Philippines. However, the development of piracy is contrasted since it clearly diminished in India and in Thailand but practically doubled in the Philippines between 1999 and 2003. In the medium term, the development prospects are very favourable due to the expected boom of the Chinese and Indian markets. At this level, the low consumption rates per inhabitant with regard to those observed in developed countries makes it possible to see future growth there (see Table 21). In fact, China, the Philippines and, to a lesser extent, India, show among the lowest rates of record sales volume/inhabitant in the world. In 2002, a Chinese person bought on average 40 (26 in the case of India) fewer records than a person in a developed country, 7 (4 in the case of India) times less than a Thai person and 6 (4 in the case of India) times fewer than a Mexican (see Table 21).

Latin America

South America represents a market that on the whole is six times smaller than the Asian market. Mexico has for long been a major player in the world music market. It is the only country in Latin America, with Brazil, to have appeared in the lists of the most significant music markets in the world (in terms of value). It thus represented 1.7 % of the world sales in 2001 compared with only 1.08 % in 2003. Sales in Mexico have indeed diminished by half in three years and today there is no developing country in this list of the ten main music markets in the world.

Table 20 - Main barriers in the record industry

	Main entry barriers
India	- Restrictions on the property of music industries - Restrictions on investments - Limitation of royalties to 20 %. Cannot be paid by domestic companies to foreign companies or artists
Thailand	- FDI: 49 % - Restrictions on mobility of personnel: difficulty to obtain a work permit, restrictions in the hiring of foreigners
The Philippines	- Broadcasting quota (theoretical): music radios must program 4 Filipino titles per hour - Tax system - FDI: 30 % advertising agencies
Mexico	- Control of songs in Spanish for radio broadcasting - CD import tax: 18 % - VAT: 15 % - Significant concentration of the market
South Korea	- TV broadcasting quota: 60 % of broadcasted music must come under Korean pop - Imported music is subject to official censorship - No import of Japanese products - Radio advertising is restrained (control commission which amplifies costs)
China	- Significant control on content - Restrictions on on-line music distribution - Companies can only be state-owned and are subjected to the granting of a licence - Investments can only be made by a bank - Customs duty of 15 % - Domination of a domestic monopoly
El Salvador	- FDI: 49 % of the radio stations
Costa Rica	- The number of radio programmes recorded abroad and broadcasted over the radio must not represent more than 50 % of the total number of programmes broadcasted by each local radio per day
Senegal	- High taxes (particularly on concerts) - Specific tax deduction at source of 25 % for the performance of a non-resident foreign artist - Significant informal system Þ distortion of the competition, expatriation of artists - Non-observance of neighbouring rights - FDI: 50 % of the capital or of the voting rights in the entity holding a radio programme broadcasting authorisation - Non-observance of copyrights: radios do not pay royalties to the artists when using their works - Every private commercial radio must broadcast at least 20 % of African programmes, of which at least half (10 %) is dedicated to Senegalese production
Burkina Faso	N/A
Nigeria	Domestic music broadcasting quota: 80 %

Source:E. Cocq, 2005. *N/A: Not available*

Assessment of physical piracy in 2003 (millions of €)	Share of domestic production in the total sales of the country in 2000
4.8 (40 % of units sold)	N/A
20.6 (41 % of units sold)	N/A
17.5 (compared with 40 % of units sold)	N/A
61 % of units sold	46 % (trade deficit: 222 M$)
2.8 (20 % of units sold)	Trade deficit: 93 M$
227 (90% of units sold)	47% (trade deficit: 452 M$)
4 (40 % of the market)	N/A
25-50 % of units sold	N/A
CC	N/A
N/A	N/A
45 % of units sold (1995)	N/A

Moreover, this trend towards severe contraction concerns most of the countries of South and Central America and, more specifically, those affected by the economic and financial crisis. Sales have thus fallen by 14 % in value in 2003. The legal markets in Peru and Ecuador apparently have entirely disappeared for the moment. Nevertheless, Costa Rica and El Salvador show less alarming characteristics since their piracy levels are below 50 % of the market. However, the lack of statistics on these two markets does not allow us to come up with any kind of observation concerning the development of sales and a possible slowdown of these markets.

Table 21 - The music market - main structural indicators (2002)

	Record sales volume (including music DVDs) In millions of units	Volume of record sales / inhabitant	Value of record sales in millions of euros	Variation in volume 03-02
India	153 of which 137.7 cassettes	0,14	160,6	-19,7%
Thailand	38.8 of which 14.1 cassettes and 15.6 music DVDs	0,6	144,6	-12,2%
The Philippines	6.3 of which 3.2 CD and 1.3 music DVDs	0,08	31,1	+21,5%
South Korea	19.7 of which 15.6 CDsand 0.1 music DVDs	0,4	180,4	-31,4%
China	116.2 of which 41.9 cassettes and 40 music DVDs	0,09	220,3	+36,4%
Mexico	55.9 of which 53.7 CDs	0,5	385	+3,4%
El Salvador	N/A	N/A	N/A	N/A
Costa Rica	N/A	ND	N/A	N/A
Sénégal	N/A	N/A	N/A	N/A
Burkina Faso	N/A	N/A	N/A	N/A
Nigeria	8 (in 1996)	0,1 (in 1996)	10,8 (in 1996)	N/A
USA	795.9 of which 746 CDsand 17.5 music DVDs	2,7	13 164	-7,6%
Canada	59.2 of which 53.1 CDs and 4 music DVDs	1,9	751	-4,2%
Western Europe	919.8 of which 732.3 CDsand 34.2 music DVDs	2,4	12 070	-5,1%
Developed countries	3 125.7 of which 1826.7 and 80.9 music DVDs	3,6	32 463	-1,9%
Developing countries	707.7 of which 379.1 M cassettes and 297 M CD	0,2	3 105,6	+20,7

Source: IFPI (2004). *N/A: Not available*

CONCLUSION

The object of our study was to draw up a panorama of the major characteristics of the audiovisual markets (television, film and music) in developing countries by focusing more particularly on 11 countries (Burkina Faso, China, Costa Rica, India, Mexico, Nigeria, the Philippines, El Salvador, Senegal, South Korea and Thailand). Our work has thus rested on the elaboration of a statistical database of 149 indicators covering the 11 selected countries. 72 of these indicators concern the television sector, 56 the film industry and 21 relate to the music industry. These indicators are of two kinds: structural indicators (110) and regulation indicators (39).

Our database has a twofold interest. On the one hand, it provides an assessment of the availability, the quality and the degree of homogeneity of the statistics pertaining to audiovisual markets. On the other hand, it provides an outline of what could be an effective international statistical tool to analyse the activity of cultural industries. Despite important disparities between the countries covered by our database, the audiovisual markets of developing countries are seriously behind compared with those of developed countries. More specifically, these are lower equipment (television sets, VCRs, cinemas, etc.) and production levels (in terms of value as well of volume).

At this level, the analysis of the film industry is particularly enlightening. Thus in 2002, developing countries produced on average 1.2 films per million inhabitants compared with 6.27 for developed countries. Moreover, the film production activity of developing countries has dropped between 1970 and 2002 (-6 %), while at the same time it was increasing by close to 10 % on average in developed countries. The level of investment in film production reveals an even sharper break. The investments of all developing countries taken as a whole represent the twentieth of those in developed countries. Our analysis shows that film production is sub-optimal in most of the countries in our database, a situation which reveals significant development and growth margins. The development of the sector particularly depends on the implementation of an efficient government intervention process aiming at laying the foundations of a true industry. This is even more so of a wise choice as some of these countries have demonstrated a capacity to initiate a production of quality, as is clear in the area of film with the good results obtained in international festivals.

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TREATMENT OF CULTURAL GOODS AND SERVICES IN INTERNATIONAL TRADE AGREEMENTS

CRAIG VAN GRASSTEK

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1. INTRODUCTION: CULTURE, THE MARKET AND THE STATE

Trade in cultural goods and services is a perennial source of conflict at both the domestic and the international level. Culture is at once a tremendously valuable field of commercial interest with a multi-billion dollar market at stake for artists and industries, as well as a profoundly important expression of national heritage and artistic dynamism. From the perspective of those who seek to protect and nurture traditional arts, an open market in cultural goods and services is, at best, a double-edged sword. While open markets may reduce the costs of producing cultural goods and services and offer the opportunity to benefit from exports, they also permit the entry of imports which may crowd out domestic artists and creators. These concerns give rise to proposals that would offer expanded support to local culture and, under some circumstances, place limits on imported cultural goods and services. From the perspective of free-market advocates, the more extreme proposals appear to be thinly disguised arguments for protectionism. Restricting imports of culture, they argue, would be just as inefficient and as unwarranted as closing the market for other articles of trade.

The disputes between the contending sides acquire new urgency with the development of improved means for creating and distributing cultural content, as well as legal and institutional innovations. The Internet and the World Trade Organization (WTO) were born at nearly the same time, and both contribute to the "death of distance" in cultural trade. Trade in cultural goods and services may be affected by several negotiations that are currently underway. These include the Doha Round of multilateral trade negotiations in the WTO, the negotiation of bilateral and regional free trade agreements (FTAs), and the proposal for a cultural diversity instrument in the United Nations Educational, Scientific and Cultural Organization (UNESCO)*.

1.1. Purpose and Structure of this Paper

The objective of this paper is to provide an introduction to the controversies surrounding international trade in cultural goods and services, with a special emphasis on the choices that countries face in international negotiations. The paper takes a four-step approach to examining the underlying questions and policy options. This introductory section begins by looking at the political and philosophical underpinnings of the debate. The main points emphasized in the introduction are that this is an issue that has divided some of the largest countries in the

* Editor's note: The present paper examines issues surrounding the draft text of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions as of July 2004. Consequently the author has been unable to take into account the final version of the Convention as adopted by the UNESCO General Conference in October 2005.

trading system for decades, the positions held by these countries have been remarkably stable over time, and those positions can be traced to very different approaches taken by these countries towards fundamental issues of culture and politics. Section 2 examines the scope and composition of cultural trade. It presents some of the incomplete data on the composition and direction of trade in this area, drawing distinctions between goods and services, as well as between the hardware (tools) and software (content) of cultural trade. The section also stresses the point that the major industrial economies no longer monopolize the debate on this topic, with many developing countries now taking a more active role. Section 3 summarizes the existing rules that govern trade in cultural goods and services. In addition to agreements that are administered in the WTO, these rules include instruments negotiated within UNESCO and between countries on a bilateral basis. It then turns to the new commitments and rules that might be negotiated on cultural trade. These include the talks now underway in the Doha Round of WTO negotiations, as well as the proposed UNESCO instrument on cultural diversity.

1.2. Perennial Disputes over Cultural Trade

The disputes surrounding cultural trade have accelerated with the development of new technologies and the expansion of the trading system's rules, but they are not a recent phenomenon. To the contrary, as can be appreciated from the events summarized in Figure 1, they are part of a decades-long process. Ever since technologies have been developed to facilitate the production, storage and distribution of cultural products, concerns have arisen over the potential impact of cultural trade on national arts and artists. To put the issue in the terms used by Marshall McLuhan, the controversy over cultural trade can be attributed at least as much to the development of new media as it can to the message (i.e., the content) that is conveyed by that media. According to McLuhan, "the 'message' of any medium of technology is the change of scale or pace or pattern that it introduces into human affairs."[1] It has always been possible to reproduce and transport the content of foreign culture, but only with the introduction of mass media has it been possible to do so cheaply, rapidly and in vast quantities. The concerns that arise from competition in the cultural marketplace have periodically given rise both to national laws that affect the terms of trade in this field, and to international agreements concerning the protection of intellectual property rights, tariff and non-tariff barriers to cultural trade, and the preservation of cultural treasures. The latest round of national and international deliberations over cultural trade is thus part of a trend that has been underway for well over a century.

1. McLuhan (1964), page 130.

Figure 1 - Chronology of Key Developments in the Technology and Law of Cultural Trade

1877	Invention of both the phonograph and the precursor to motion pictures
1883	Adoption of the Paris Convention for the Protection of Industrial Property
1886	Adoption of the Berne Convention for the Protection of Literary and Artistic Works
1893	Creation of the United International Bureaux for the Protection of Intellectual Property (BIRPI)
1895	Invention of the motion picture
1899	Invention of recording on magnetic tape
1923	Germany imposes a quota on imported motion pictures; invention of the first television system
1927	Release of the first successful motion picture with sound
1928	First scheduled television broadcasts; France imposes a quota on imported motion pictures
1933	The League of Nations adopts the Convention for Facilitating the International Circulation of Films of an Educational Character
1945	Creation of the United Nations Organization and adoption of the Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO)
1946	UNESCO Constitution enters into force
1947	The General Agreement on Tariffs and Trade is negotiated, with 23 original contracting parties; GATT Article IV permits continued use of screen quotas; countries cut tariffs on many goods in the first (Geneva) round of GATT negotiations
1948	Invention of the transistor and the long-playing record
1949	Second (Annecy) round of GATT negotiations leads to tariff reductions and 10 new accessions, and considers the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (negotiated jointly with UNESCO)
1950	Third (Torquay) round of GATT negotiations leads to tariff reductions and four new accessions
1951	First commercial sales of computers; invention of the video tape recorder
1952	Entry into force of the GATT/UNESCO Florence Agreement on the Importation of Educational, Scientific and Cultural Materials; a UNESCO intergovernmental conference adopts the Universal Copyright Convention
1953	Invention of the transistor radio
1956	Fourth (Geneva) round of GATT negotiations leads to tariff reductions
1958	Invention of the photocopier, the integrated circuit and the computer modem
1960-62	Fifth (Dillon) round of GATT negotiations focuses primarily on issues related to the founding of the European Economic Community and its common external tariff
1962	Invention of the audio cassette
1964	The United States proposes that the GATT Article IV provisions regarding screen quotas not be applied to television programming, leading to examination of the issue but no decisions
1964-67	Sixth (Kennedy) round of GATT negotiations produces both tariff reductions and some non-tariff agreements
1965	Invention of the compact disc
1966	UNESCO adopts the Declaration of the Principles of International Cultural Co-operation
1969	Establishment of ARPANET, the precursor to the Internet
1970	The World Intellectual Property Organization replaces BIRPI; adoption of the Patent Cooperation Treaty; adoption of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

1971	Invention of the videocassette recorder
1972	Adoption of the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage; invention of the word processor; pay television on cable is introduced
1973-79	Seventh (Tokyo) round of GATT negotiations produces tariff reductions and several non-tariff agreements; the issue of intellectual property rights is broached at the end of the round
1978	Adoption of the UNESCO Recommendation for the Protection of Movable Cultural Property
1980	Invention of the Sony Walkman
1981	First sales of the IBM personal computer
1984	The United States withdraws from UNESCO citing disagreement over management and other issues (the United Kingdom and Singapore withdraw in 1985)
1986-94	Eighth (Uruguay) round of GATT negotiations produces inter alia the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights; the talks nearly collapse in the final months over a confrontation between the United States and the European Union on a cultural exception
1989	The European Community adopts the “Television without Frontiers” directive establishing (whenever feasible) that 50 per cent or “a majority” of television screening must be European; free trade agreement between the United States and Canada enters into effect, including a provision that partially excludes cultural trade (the provision is repeated in 1994 when the North American Free Trade Agreement supersedes this bilateral agreement)
1990	Invention of the protocols for the World Wide Web
1992	Creation in UNESCO of the Memory of the World programme to protect irreplaceable library treasures and archive collections
1994	Conclusion of the Uruguay Round of GATT negotiations; the US government releases control of the Internet, thus privatizing the World Wide Web
1995	The World Trade Organization comes into effect, replacing (and incorporating) GATT; invention of the digital video disc (DVD)
1995-98	Negotiations for a Multilateral Agreement on Investment in the Organization for Economic Cooperation and Development fail due to conflicts over (among other issues) a cultural exception
1996	The Information Technology Agreement is negotiated, eliminating tariffs on many electronic items for countries representing about 80 per cent of global trade; adoption of the WIPO Copyright Treaty
1997	The United Kingdom rejoins UNESCO
2000	The Committee of Ministers of the Council of Europe adopts the Declaration on Cultural Diversity
2001	The Doha Round of WTO negotiations (also known as the Doha Development Agenda) is launched; the UNESCO Universal Declaration on Cultural Diversity is adopted by the General Conference
2003	The Doha Round stalls at the failed WTO ministerial meeting in Cancún; the United States rejoins UNESCO; UNESCO General Conference adopts by consensus a resolution inviting the Director-General to submit at the 33rd session (2005) a preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions
2004	The scope of the Doha Round is narrowed in the “July Package,” with some issues laid aside (e.g., competition policy and investment), but market access for goods and services is still on the table; UNESCO holds the first Intergovernmental Meeting on the preliminary draft International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions

At the international level, the main question is whether countries should make commitments affecting the treatment that they extend to imported cultural goods and services. Is it appropriate to treat paintings, CDs and books in the same manner as goods such as steel and shoes, or to treat musical performances and motion pictures like services such as accounting and transportation? From the commercial viewpoint, cultural exchanges are economic transactions between producers and consumers. This implies a limited role for the state and few, if any, restrictions on the cross-border movement of cultural goods and services. By this logic, intellectual property is the only aspect of legitimate cultural trade that must be protected.

The cultural perspective is founded instead on the proposition that culture cannot be left to the uncertain tastes of the invisible hand. Cultural goods and services, it is argued, embody the values of a people and play a special role in the life of a community. If foreign cultural products are imported in overwhelming quantities, it is feared the market may leave little or no room for local artists and traditions. This implies a greater role for the state in the preservation and promotion of national culture, and may also entail the use of subsidies and other measures that encourage the production and dissemination of creative works by domestic artists.

Some types of cultural exchanges appear to pose a greater risk to diversity, and are inherently more controversial than others. At one end of the spectrum is trade in the hardware used to produce and disseminate cultural products, ranging from paint and pens to computers and transmission towers. Even the sharpest critics of the free market may see merit in opening the market for these goods and services, insofar as this would reduce the costs of producing arts and other creative products. At the other end of the spectrum, there is universal agreement on the need to protect antiquities and other treasures from looting and trafficking[2].

It is in the middle-ground that one finds the greatest disagreements. Those cultural products that are easily reproduced and disseminated, such as audio recordings and motion pictures, are especially controversial. Critics are concerned that overwhelming quantities of imported culture may "crowd out" other voices. The audiovisual field is notable for the very low marginal costs of reproduction:

2. Note that while there is widespread agreement on the need to prevent new looting, there is no such unanimity of opinion regarding what is to be done about cultural treasures that were removed in past generations. The classic case is the Elgin Marbles that once decorated the Parthenon and now adorn the British Museum; Britain and Greece have disputed the ownership of these priceless antiquities for generations.

it may take millions of dollars to make the first print of a film, but the film may then be broadcast or copied at an almost negligible cost. In the case of recorded music, for example, some fear that the resulting "penetration of transnational sound will choke off traditional music of the local culture and restrict employment opportunities for local artists."[3] This is an expression of what Cowen calls "cultural pessimism" (the belief "that the market economy corrupts culture")[4] and Toynbee terms "culture panic" (a "deep pessimism about the cultural future of a world turning homogeneously horrible")[5].

1.3. Distinct Perspectives on Cultural Trade

The controversies surrounding cultural trade stem from profound disagreements over whether culture should be handled primarily as a business, and hence subjected to the laws of supply and demand, or whether it should be considered a matter of national patrimony that merits special treatment. These are questions that divide people from different walks of life. The culture clash between the arts community and neo-liberal economists is especially sharp. One prominent author underlined a core difference when he stressed that while "the economic impulse is individualistic, the cultural impulse is collective."[6] These two groups are prone to take very different views of the market's role; whereas economists usually see the marketplace as an efficient mechanism through which individuals can exercise free choice in deciding what they will produce and consume, one of the more persistent themes in art and literature is an attitude towards market economics that is, at best, sceptical[7].

Even within the economic profession there is no uniformity of opinion on the proper role of the state in cultural matters, nor on the question of whether cultural goods and services should be treated differently from the more mundane objects of commerce. On the one hand, Throsby finds "plausible" the argument that "the arts manifest some characteristics of market failure, including possibilities that the arts give rise to external benefits in production and consumption."[8] Some economists argue that market failure offers a justification for

3. Clarke (1996), page 306.
4. Cowen (1998), page 9.
5. Toynbee (2000), pages 192-193.
6. Throsby (2001), page 13.
7. For two analyses that chronicle and criticize this trend, see von Mises (1956) and Pollard (2000). Regarding the market-skeptical views that are prevalent, though evolving, in media and cultural studies, see Kellner and Durham (2001).
8. Op.cit., page 140. It should be stressed that Throsby was writing here about the general case of government intervention to support the arts, not the specific issue of trade, and also that he did not present firm conclusions on the issue.

greater state involvement, but there is no consensus on this point[9]. On the other hand, Cowen takes a much more positive view of markets and transnational contacts. While acknowledging that cross-cultural exchange "will alter and disrupt each society it touches," he also argues that it "will support innovation and creative human energies."[10] In his view, trade is more likely to enhance than to reduce cultural diversity.

These academic disputes are roughly mirrored by the positions that countries take in international negotiations. The most active and persistent participants in this debate are the United States on the one side, with France and Canada on the other. The US position is principally commercial in orientation, based on the view that cultural trade - or entertainment - represents an economically significant business. The French and Canadian view, which has thus far been supported by the European Union (EU) as a whole (though not embraced with equal fervour by all of its members), stresses that cultural trade is more consequential than exchanges of ordinary commodities, and that the rules in this area need to reflect this fact. They prefer that cultural industries be exempt altogether from the rules that apply to other more prosaic articles of commerce. These sides have held remarkably consistent positions over several decades. Their consistency might be attributed either to the slow rate of change in their relative levels of competitiveness, or to the strength of national attachments to certain ideas. Even these conflicting explanations are not neutral, as each one implies siding with either the culture-as-commerce or the culture-as-patrimony views.

Distinct national political cultures embody divergent conceptions of the nation and the proper duties of the state. Some societies may be more prone to involve the state in cultural affairs for political reasons, especially in cases where there are perceived threats to a sense of national identity. Both Canada and the European Union, for example, are multilingual, multicultural entities in which the state has been assigned an affirmative role in the protection of minority cultures and the promotion of national values[11]. The political traditions of the

9. It is worth noting that issues of cultural economics have been a point of dispute ever since Paul Samuelson first advanced the concept of market failure. Just months after he first put forward the argument for public goods half a century ago (see Samuelson, 1954), he objected when his scholarship was "interpreted to imply that private goods should be produced by private enterprise and public goods should be produced by government directly" (Samuelson [1972], page 521; originally published in 1955.) The specific question at issue was whether television programming should be supplied by the state or the market.
10. Cowen (2002), page 17.
11. Not all multilingual societies are necessarily opposed to bringing cultural issues to the WTO. Switzerland was one of just four countries to propose that audiovisual services be negotiated in the new round of WTO talks.

United States, by contrast, include an assimilative tradition in nationality, a strong aversion to involving the government in matters outside of its defined sphere, and deep respect for freedom of expression.

The disparate national approaches towards the cultural role of the state can be seen in everything from constitutional law to annual budgets. EU responsibilities in this area expanded with the Treaty on the European Union which entered into force on November 1993. Article 151 of the consolidated version calls for "[a]ction by the Community … aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in … artistic and literary creation, including in the audiovisual sector." Moreover, "[t]he Community shall take cultural aspects into account in its action under other provisions of this Treaty," meaning that trade policy objectives could be subordinated to the need for cultural diversity. Similarly, the Canadian Charter of Rights and Freedoms provides for "the preservation and enhancement of the multicultural heritage of Canadians." The only provisions in the US Constitution that deal with cultural issues do so indirectly, via the principle of free speech[12] and the protection of intellectual property.[13]

Every country in the world treats at least some aspect of its domestic cultural life as a public good. The range of activities that receive government support will vary widely from one country to another - anything from the funding of museums to ambitious programmes in support of the arts - as do the budgets made available for these purposes. Among the industrialized countries, for example, government expenditures for the arts range from just US$6 per capita in the United States to US$46 in Canada and US$57 in France[14]. These figures suggest differing levels in the revealed preferences for state-supported arts programmes, but the very fact that such support exists is evidence that all societies accept the notion that the state should play some role in cultural preservation. They all recognize that, to some degree, a public good is at stake. Where they differ is in the degree to which they empower the state to provide or support this good, and in the extent to which this may mean favouring domestic over foreign artists.

12. The First Amendment to the Constitution (adopted in 1791) provides that "Congress shall make no law … abridging the freedom of speech, or of the press."
13. Article I, Section 8, Clause 8 provides that Congress has the power, "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."
14. US National Endowment for the Arts (2000).

1.4. International Agreements on Cultural Trade

The main issue at hand is not what countries choose to do at home, but what they negotiate at the international level. More specifically, should countries negotiate commitments to liberalize trade in cultural goods and services? Additionally or alternatively, should they negotiate agreements that promote the notion of cultural diversity, including provisions that might either discourage the negotiation of new commitments to liberalize trade or even override existing obligations?

Whenever a new topic is made subject to trade negotiations, what is at stake is whether states will place limits on the scope of action that they may take in their domestic laws and policies. Trade agreements, like most treaties, can be informally defined as instruments by which states agree to impose voluntary restrictions on the exercise of their sovereignty. Those restrictions used to take very simple forms, such as binding commitments on their tariffs: for example, a country might make a binding commitment not to impose a higher rate than five per cent *ad valorem* on printing presses. Trade negotiations have since grown to incorporate a much wider array of topics, which conversely means that - to the extent that governments make commitments in these new areas - the scope for national policies may be narrowed. For a liberal economist, it would be beneficial to all parties concerned if countries were to make mutual pledges to limit subsidies and reduce or eliminate tariff and non-tariff barriers on imports. Whether these pledges deal with cultural industries, agriculture, or steel, they all have the same effect of promoting efficiency, reducing drains on the national budget, and offering greater choice to consumers. Policymakers and stakeholders in other areas, however, may see the commitments that trade negotiators make as restrictions on the array of instruments that they may employ in pursuit of legitimate goals of public policy. This point is equally relevant in the fields of culture, health and education, just to name a few of the sectors that are increasingly exposed both to transnational competition and to trade negotiations. The debate over cultural trade is thus one aspect of the much larger controversy surrounding globalization.

The trade negotiations in the WTO and elsewhere could lead to the adoption of new commitments in which countries pledge to limit, reduce, or eliminate barriers to the movement of cultural goods and services across borders. The WTO's disciplines extend well beyond the rules of its predecessor, the General Agreement on Tariffs and Trade (GATT). Some of the WTO's instruments are especially significant for trade in cultural goods and services, including the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The UNESCO negotiations, on the other hand, could produce an international agreement that aims to promote the principle of cultural diversity, which has been described as “the positive expression of the overarching objective to prevent the development of a uniform world by promoting and supporting all world cultures.” It is based on the assertion that cultural goods and services “deserve different and/or exceptional treatment that sets them apart from standardized mass consumption,” which “requires a differential treatment in international trade agreements and possibly effective strong regulatory frameworks to redefine cultural policies focusing on the promotion and development of cultural industries[15]”.

Perhaps the most controversial proposal in this area concerns a “cultural exception” under which culturally significant goods and services - and especially audiovisual services - would be exempt from the rules that apply to other articles of commerce. The Uruguay Round of GATT negotiations (1986-1994) was the last time that a broader cultural exception was proposed for the trading system. On the eve of the round’s conclusion, the European Community made public a draft “cultural specificity” clause stipulating that the specific needs of member states regarding the preservation of national cultural values would be fully recognized in future service negotiations. The proposal was rejected, but not before it provoked a serious confrontation with the United States.

The most recent efforts have focused not on a cultural exception within trade agreements, but instead on a cultural diversity instrument negotiated outside the structure of these agreements. UNESCO is currently in the process of developing a draft text that would promote the principle of cultural diversity, and advance a series of steps in support of this goal. These steps could include, in certain circumstances, the use of trade policy instruments to favour domestic over foreign artists.

2. COMPOSITION, MAGNITUDE AND TRENDS IN CULTURAL TRADE

Cultural trade is a large and growing part of the global economy. This trade consists not only of cultural content in the form of books, films and so forth, but also the many goods and services that are needed to produce and disseminate such content. This section places those exchanges in context and offers an overview of their magnitude.

15. Alonso Cano et al. (2000), page 39; emphasis removed from the original.

We must offer two cautions regarding the analysis that follows. The first is that the underlying issues in this debate are not the sort that can be resolved by simple reference to statistics and other relevant facts. The differences between the cultural and commercial perspectives are ultimately rooted more in questions of societal objectives, philosophy and aesthetics than they are in hard numbers. The second caveat is that numbers are less abundant and trustworthy in this field than they are in many other trade-related topics. This is due in large part to the general paucity of data on trade in services. While figures on trade in goods are easy to come by, there are major gaps in the data on trade in audiovisual and other cultural services. Even the figures on trade in goods may be deceptive; while it is easy to measure the value of books that are exported from country A to country B, it is more difficult to know how many of the books printed in country B were written by authors in country A. For all of these reasons, many of the analyses that one finds in this field are based more on principle and anecdote rather than on detailed and comparative economic data. We attempt to fill in some of the empirical gaps here, but readers should be aware that the available data are incomplete.

2.1. Conceptual Definitions of Cultural Trade

Definitions and classifications can be approached in two different ways. One, as pursued here, is to approach the issue at a conceptual level. The other, which we will take up shortly, is to deal with the detailed taxonomies that are employed by trade negotiators. The purpose of the first approach is to clarify the broader issues and trends, as a first step towards considering the aims of national policy. The second approach is needed in order to put those aims into effect.

What is cultural trade? A pragmatist might suggest that we can go to the heart of the matter by focusing solely on audiovisual trade, especially motion pictures, television and recorded music, together with the various means by which these products are distributed through either broadcasting (e.g., television and radio) or storage (e.g., video tapes, CDs and DVDs). The audiovisual sector is by far the most politically contentious segment of the cultural sphere, and indeed it will receive closer attention in this analysis than painting, poetry and other artistic endeavours. It would nevertheless be inappropriate to ignore other types of cultural trade that, although less politically prominent, may be equally important in cultural significance and even larger in economic magnitude.

The definition of "culture" can be a very tricky undertaking[16]. For our present purposes, it is sufficient to focus on cultural *trade* and thus to adopt rough-and-ready definitions at both the conceptual and the practical levels. In conceptual terms, the tradable objects of culture can be defined to consist of those goods and services that are intended to produce or distribute material that entertains or provokes thought, principally through the fields of music, literature, drama, comedy, documentary, dance, painting, photography and sculpture. Some of these genres can be presented either as live performances (e.g., a concert or a play) or in recorded form (e.g., a compact disc or a radio broadcast). The sector also includes institutions that house and distribute cultural goods and services, whether they do so as a public service (e.g., libraries and museums), as a business (e.g., television stations and art galleries), or something in between. Cultural goods and services might be offered free, on a paid but non-profit basis, or by profit-oriented firms and individuals. This sector is to be distinguished from other industries or callings that can be entertaining and/or thought-provoking, such as politics, religion, the physical and social sciences, education and training, advertising and tourism. The definition should also exclude food, drink and clothing, even if food is sometimes cuisine and clothing is sometimes fashion, as well as others that involve elements of creativity but might more appropriately be classified under other headings (e.g., architecture, interior decorating, landscaping, industrial design, hairstyling, etc.). All of these fields can be said to have important cultural components, but they are not part of the cultural sector *per se*. Games and sports may be the greyest of the grey areas here; good arguments can be made for both their inclusion and exclusion from our definition.

The conceptual definition of cultural trade can be further elaborated to account for various types of tradables. For a trade negotiator, the main difference is between goods and services. As we shall discuss shortly, however, the line that separates goods from services is sometimes fuzzy. Moreover, this bifurcation does not allow us to draw distinctions between different types of cultural goods and services. One way of doing so is to identify the *core* cultural goods and services as something apart from those goods and services that are *related* but not at the core. According to the classification recently developed by UNESCO[17], the core cultural goods include such items

16. For a range of possible definitions, see the discussion in Throsby, op.cit., pages 3-5. See also the definition of "culture" given in Article 4.1 of the July 2004 working draft of the UNESCO Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions: culture is "the set of distinctive spiritual, material, intellectual and emotional features of society or a social group and encompasses in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs."

as recorded media, audiovisual media (i.e., videogames, exposed film, etc.), heritage goods (i.e., antiques, archives, etc.), visual arts (i.e., painting, sculpture, graphic arts, art handicrafts, etc.), newspapers and periodicals, and other printed matter (e.g., maps, pictures, designs, etc.). These core items are to be distinguished from "related cultural goods" such as equipment and support material (i.e., musical instruments, sound-playing equipment, television and radio receivers, etc.), and other goods that are only partially cultural in their content (e.g., architectural plans and drawings, and advertising material). Similarly, the classification distinguishes between core cultural services (i.e., audiovisual services and copyright royalties) and related cultural services (i.e., information services, news agency services, and advertising and architectural services).

The classification proposed here is quite similar to that employed by UNESCO, but divides along a somewhat different fault line. Whereas the UNESCO division is between the core and related goods and services, with the latter category including both ancillary and semi-cultural items, the proposed division here is based on the function of a good or service rather than its degree of cultural content. For both goods and services, we can differentiate the hardware, or the tools used to produce and disseminate cultural content, from the software, the creative content itself[18]. We can thus distinguish a painting from a paintbrush, for example, or a situation comedy from a television set. Software is essentially the same as the core goods and services, while hardware excludes those goods and services that are only partially cultural in nature; whereas items such as architectural and news agency services are included as "related" in the UNESCO definition, they are excluded here.

The taxonomy in Figure 2 defines the four resulting categories. *Cultural hardware goods* and *cultural hardware services* include everything used principally[19] to create, record, store, broadcast, or otherwise distribute cultural content. For goods, this includes such devices as musical instruments, audio recording equipment, cameras (still, motion picture, video, digital, etc.), photographic film, videotape, radio and television broadcast equipment and receivers, phonographic equipment and supplies, paint, brushes, canvas, paper, and printing presses. Cultural hardware also covers services that aid in the non-creative aspects of producing and distributing cultural content, such as

17. See UNESCO Institute for Statistics (2005) *International Flows of Selected Cultural Goods and Services 1994-2003*

18. The hardware/software distinction is borrowed from Hugill (1993), who acknowledges his terminological debt to the computer world.

photographic development, radio and television broadcasting, and talent management. *Cultural software goods* and *cultural software services* consist of the actual cultural content in the form of written word, music, dance, paintings, drama, comedy, etc.

Figure 2 - A Taxonomy of Cultural Trade

	Hardware	Software
Goods	The “tools of the trade” for the creation, reproduction and dissemination of cultural software. Examples include some items that are largely or exclusively used by cultural industries (e.g., artists’ supplies and musical instruments) and others that are used by other industries or consumers (e.g., unrecorded media, paper, computers, television sets and printing presses).This is the least controversial area of cultural trade, although many countries continue to impose tariffs on trade in these goods.	Goods that embody the creativity of artists. The scope of items falling within this definition is most clear for “old media” such as books, paintings and statuary. Some “new media” such as audio and video recordings are treated as goods, but also share some characteristics of services.Trade in cultural software goods tends to be relatively free, with tariff barriers being low or zero in many countries. The principal trade-related issue in this field concerns protection of intellectual property rights.
Services	The most important ancillary services for cultural trade are those related to the dissemination of cultural software. These include bookstores, libraries, museums, motion picture projection, and radio and television transmission. These are among the most sensitive cultural sectors, with many countries establishing — and wishing to retain — restrictions on the ownership or operation of such facilities by foreign providers.	Cultural performances — music, dance, theatre, etc. — can be divided into two general categories. Live performances are ephemeral, and can generally be traded across borders only if either the audience or the performers travel. Performances that are recorded and/or broadcast are much more easily traded.As a general rule, it is the reproducible performances that account for the greater share of both trade and controversy.

19. The term “principally” is important, as it excludes certain goods that have multiple uses. For example, personal computers and peripherals can indeed be used to produce, send, or receive cultural products (films, music, multimedia shows, etc.), but this is not the principal use to which they are put. A more difficult problem arises in the classification of magnetic and optical media (diskettes, blank compact discs, etc.) that are typically used both in computers and in other applications. We might justifiably (if somewhat arbitrarily) classify video and audio tapes as cultural hardware, but classify compact discs, diskettes, hard disks, and the like as information technology.

2.2. Practical Definitions of Cultural Trade

Moving from the conceptual to the practical, any negotiations that deal with cultural goods and services must be conducted on the basis of the classifications that are employed by trade negotiators. Here the first and most important distinction is between goods and services. Goods are classified by the harmonized system (HS) of tariff nomenclature that is now employed by all WTO members. The situation is somewhat more complicated for services, where many - but not all - members use the United Nations "Provisional Central Product Classification" (CPC). Neither the HS nor the CPC explicitly identify cultural products *per se*, but both include numerous items that can be identified as such.

The HS system is generally organized according to the physical content of goods and their degree of processing, rather than on the intended use of the goods. It therefore has no category for cultural goods; these are instead scattered across several of the 99 chapters of the HS. The most important chapters for cultural software are numbers 49 (printed books, newspapers, pictures and other products of the printing industry) and 97 (works of art, collectors' pieces and antiques). Cultural hardware can be found throughout the HS system, ranging from chapters 37 (photographic or cinematographic goods) to 92 (musical instruments).

Cultural services form parts of two general categories in the CPC. The audiovisual sector constitutes one of the sub-sectors of "communication services," and can be broken down into several sub-categories[20]. Live entertainment is included in the category of "recreational, cultural and sporting services," as are some services that fall within our definition of culture (e.g., libraries, archives and museums), a service that does not (i.e., news agency services), and one that could

20. The six sub-categories listed, and their associated listing under the CPC are as follows: a) motion picture and video tape production and distribution services (CPC 9611); b) motion picture projection services (CPC 9612); c) radio and television services (CPC 9613); d) radio and television transmission services (CPC 7524); e) sound recording (CPC n.a.); and f) other (no CPC categories specified, but could cover, for example, the contents of multimedia products). *WTO Sectoral Service Classification* MTN.GNS/W/120. 10 July 1991. Under the Provisional Central Product Classification, CPC 9611 is further divided into: promotion or advertising services (CPC 96111); motion picture or video tape production services (CPC 96112); motion picture or video tape distribution services (CPC 96113); and other services in connection with motion picture and video tape production and distribution (CPC 96114). CPC 9612 is subdivided into: motion picture projection services (CPC 96121) and video tape projection services (CPC 96122). CPC 9613 is subdivided into: radio services (CPC 96131); television services (CPC 96132); and combined programme-making and broadcasting services (CPC 96133). CPC 7524 is divided into: television broadcast transmission services (CPC 75241) and radio broadcast transmission services (CPC 75242).

be argued either way (i.e., sporting services). Other services appearing elsewhere in the CPC could also be identified as cultural.

The services categories are less precise than the HS system for goods, and countries are not required to use the CPC for the definition of services sectors. There are also some unclear boundaries in the CPC itself. In the sub-category of radio and television transmission services (CPC 7524), it sometimes becomes difficult to determine where exactly the dividing line is between services classified under telecommunications and those classified under audiovisual services. As a rule of thumb, it has become accepted that commitments involving programming content (software) are classified under audiovisual services, while those purely involving the transmission of information (hardware) are classified under telecommunications. Furthermore, ownership of cinemas falls under “recreational, cultural and sporting services,” and ownership of video rental outlets under “retailing services.”

The distinctions between goods and services can be somewhat fuzzy, as some of the software straddles the line separating a good from a service. The forms of cultural software that most clearly may be classified as services are live performances, including musical and theatrical shows. The cultural software that can most clearly be classified as goods, but which may also be associated to varying degrees with allied services, include such physical objects as antiquities, original paintings and sculptures. The most difficult items to classify are those forms of software that may sometimes be considered as goods and sometimes as services, depending on the form in which their content is stored or delivered. This disagreement relates to products such as books, films and music. Whereas a printed book delivered through conventional means is classified as a good, some WTO member governments hold the view that the digital version of the text of such a book is a service that should be covered by the GATS. Other member governments contend that such a product remains a good that is subject to customs duties and other provisions of the GATT. There are also those who think that such a product constitutes a third category of products which are neither goods nor services and for which special provisions need to be devised[21]. Similarly, the musical performance that was so clearly a service in its live form may arguably be treated as either a good or a service when it is electronically captured, depending on the means by which it is then broadcast or stored. The debate is important, as whether a product is considered a service or a good has significant consequences in terms of the applicable legal regime.

21. These issues are part of the on-going discussion in the context of the E-commerce Work Programme.

2.3. Trends in Cultural Trade

As noted above, data on trade in the cultural sector tend to be incomplete. There are nevertheless, enough available numbers to make some generalizations about the relative size, distribution and trends of trade in cultural goods and services. These generalizations are based largely on data published by UNESCO[22], supplemented by information from the Organization for Economic Cooperation and Development (OECD).

The relative magnitudes of trade in cultural goods and services

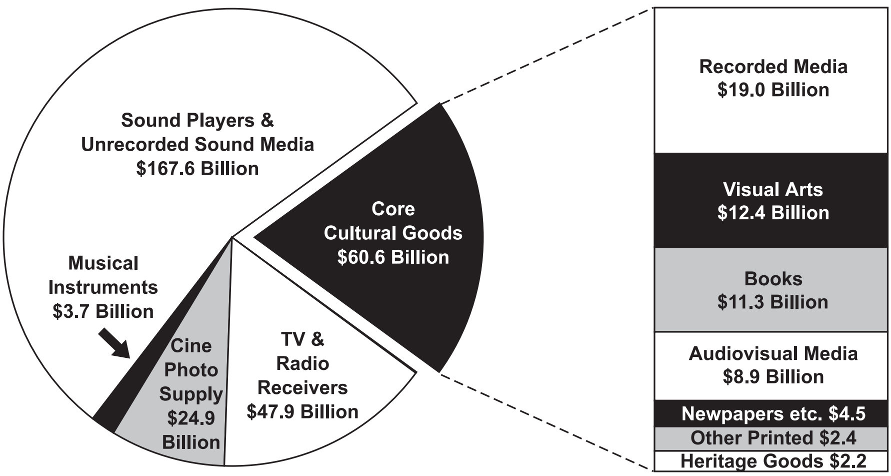
The first generalization that one may derive from these data is two-fold: trade in cultural goods is much larger than trade in cultural services, and among cultural goods there is more trade in hardware than in software. These are somewhat counterintuitive observations in two ways. First, technological developments and the great expansion in services trade might lead one to expect that audiovisual services are the dominant mode by which culture is now traded. Second, the data might be read to indicate that there is in fact an inverse relationship between the magnitude of trade and the degree of controversy. Trade in cultural services is more controversial than trade in cultural goods, and trade in cultural software goods is more protected than trade in cultural hardware goods, yet the economic stakes appear to be smallest where the political stakes are highest.

The relative magnitudes can be appreciated by comparing Figures 3 and 4. As shown in Figure 3, exports of cultural goods exceeded US$300 billion in 2002. The core cultural goods (or cultural software goods) comprised only about one-fifth of the total. While comparably complete data are not available on global exports of cultural services, the OECD data do report the exports by the largest providers (i.e., Europe and North America) in the biggest field of cultural services - audiovisual services. These countries' combined exports of audiovisual services reached US$13.3 billion in 2002[23]. Even if we were to assume (unrealistically) that these countries accounted for only half of all audiovisual services exports, and were to assume further (somewhat more realistically) that the audiovisual sector accounted for only half of cultural service exports, exports of cultural goods would still outnumber exports of cultural services by more than five-to-one (but

22. See UNESCO Institute for Statistics (2005)
23. Calculated from data in: Organization for Economic Cooperation and Development, *Services: Statistics on Value Added and Employment,* (Paris: OECD), 2000 and 2004 editions.

exports of cultural software goods and cultural software services would be approximately the same).

Figure 3 - Composition of Global Exports of Cultural Goods, 2002



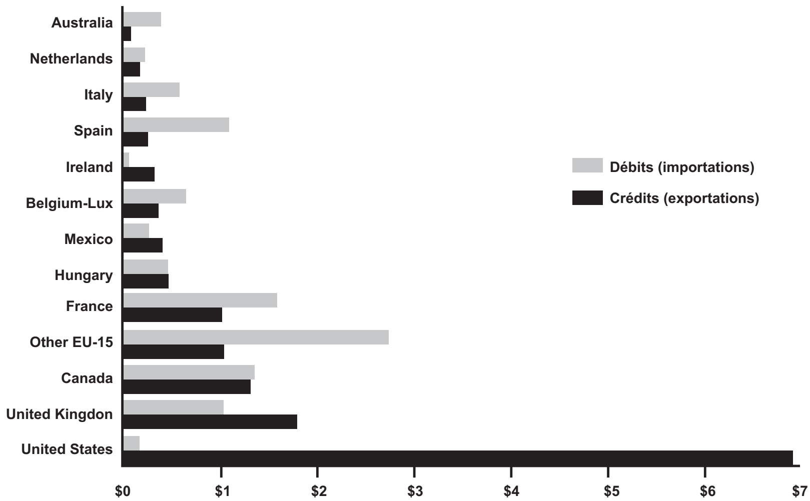
Source: Calculated from UNESCO data from the COMTRADE database UN Statistics Division, 2004.

One possible explanation for the seemingly low value of trade in cultural services vis-à-vis goods is that some of the transactions take the form of licensing, and hence would be captured by data on royalties. For example, a music CD from one country might be produced under license in another, without any actual CDs moving across borders. While global data are not available on royalty payments, we could examine the US numbers to get a sense of the potential magnitude. A quick perusal of the US data, however, suggests that this might not be a very promising line of inquiry. According to US Department of Commerce figures for 2003, transactions between unaffiliated firms produced royalty payments to the United States of US$560 million for books, records and tapes, and US$313 million for broadcasting and recording of live events[24]. The data for royalty payments from the United States showed even smaller figures: US$344 million for books, records and tapes, and US$180 million for broadcasting and recording of live events. Total turnover was thus about US$1.4 billion, or just a fraction of the US receipts on audiovisual services.

24. Calculated from data posted at http://www.bea.gov/bea/di/1001serv/1004serv/Tab4.xls.

Relative growth of trade in cultural goods and services

Figure 4 - Selected Countries' Trade in Audiovisual Services, 2002
(Billions of US Dollars)



Source: Calculated from Organisation for Economic Cooperation and Development data. 2004.

The second generalization concerning trends in cultural trade, is that trade in cultural goods has grown at a relatively slow pace in recent years, although exports of cultural services have grown somewhat faster than trade as a whole. We may use as our benchmark here WTO data, showing that during 1993-2003 total world exports of goods increased by a compound annual growth rate of 7.1 per cent[25]; similarly, WTO data show that global exports of commercial services increased by 7.1 per cent annually during 1996-2003[26]. This very consistent rate of 7.1 per cent gives us a useful standard of comparison. According to UNESCO data, during the period of 1994-2002 total global exports of core cultural goods increased from US$36.2 to US$54.7 billion. This translates into a compound annual growth rate of 5.3 per cent, notably below the 7.1 per cent average. As for cultural services, we must rely here on the limited data available for a subset of OECD member states. Data are available on the audiovisual services exports of the European Union (15), United States, Canada and Australia. While this data set excludes

25. Calculated from data posted at http://www.wto.org/english/res_e/statis_e/its2004_e/section2_e/ii02.xls.
26. Calculated from data posted at http://www.wto.org/english/res_e/statis_e/its2004_e/charts_e/chart_iv17.xls.

all developing countries and some OECD member countries (e.g., Japan), it probably represents far more than half of the global exports in audiovisual services. During 1992-2002, audiovisual services exports from these countries rose by a compound rate of growth of 9.4 per cent. That increase was not uniform across all countries in the group; while the compound rate of growth for the United States was 13.7 per cent, for the remaining OECD countries it was 6.2 per cent (i.e., below the 7.1 per cent benchmark).

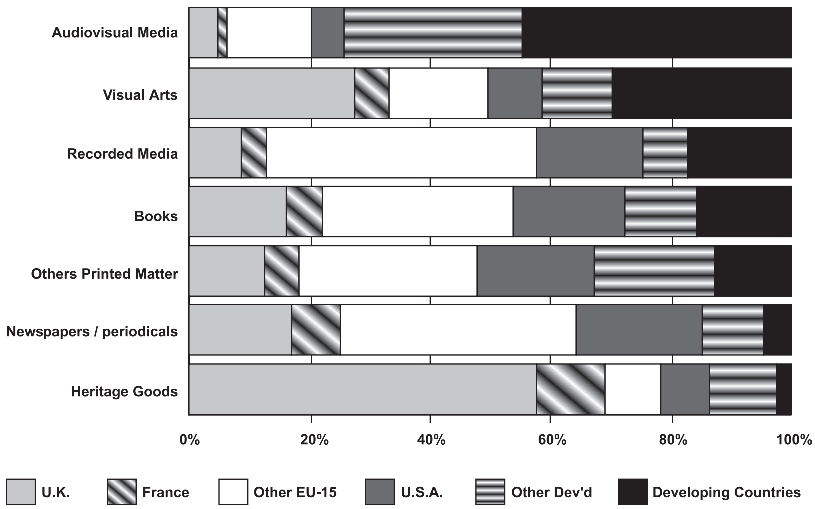
Concentration of cultural trade

That last observation leads to a third generalization: cultural trade tends to be concentrated in the hands of a few industrialized countries. In the case of motion pictures and other audiovisual services, the dominance of the United States is well-recognized. As can be seen from the data in Figure 4, the United States enjoys a very substantial trade surplus in this field. In fact, the only other OECD countries to enjoy a surplus are the United Kingdom, Ireland and Mexico. OECD data also indicate that the US position has grown even more dominant in recent years. If we take North America, the EU-15 and Australia to represent the world of audiovisual exports - which is not much of an exaggeration in this field - the US share of the export market increased from 35.7 per cent in 1992 to 52.2 per cent in 2002.

While the United States holds a commanding and growing share of the global market for audiovisual services exports, it is the EU-15 - and especially the United Kingdom - that dominates global exports of cultural goods. This is quite apparent from the data in Figure 5, which show market shares for 2002. With the exception of audiovisual media, which should arguably be classified as hardware rather than a core cultural good (i.e., software), the EU-15 dominates in every category. The United Kingdom alone exported US$8.6 billion worth of core cultural goods in 2002, accounting for 15.6 per cent of the global market. With an economy that is seven times as large as that of the United Kingdom, the United States provided a slightly smaller share (14.0 per cent) of global exports in this field. France was in third place, with 7.0 per cent of the global export market. Developing countries as a whole held 21.2 per cent of the market.

This leads to the fourth generalization, as explored in greater depth below. On the one hand, developing countries still account for a small share of cultural exports. On the other hand, both their market share and their participation in negotiations on this issue are growing.

Figure 5 - Market Shares in Global Exports of Cultural Software Goods, 2002



Source: Calculated from UNESCO data from the COMTRADE database UN Statistics Division, 2004.

2.4. The Interests of Developing Countries

For decades the debate over cultural trade was dominated by conflicts between industrialized countries. Today, however, many developing countries are taking a more prominent part in this discussion. The available data on trade in cultural goods and the anecdotal data on audiovisual services indicate that several developing countries - but certainly not all countries in this category - have substantial export interests in cultural goods and services.

As in other areas of economic development, the interests of developing countries are the subject of intense debate. The critics of globalization suggest that developing countries are especially vulnerable to economic domination, and cultural arguments figure prominently in their warnings. The United Nations Development Programme cautioned that “the global market for cultural products is becoming concentrated, driving out small and local industries… reducing cultural concerns to protecting what can be bought and sold, neglecting community, custom and tradition.”[27] Another critic deemed globalization to be a conspiracy in which “the cultural patterns that still imbue most Third World cultures

27. UNDP (1999), page 33.

and that commit them to their largely self-sufficient lifestyles must be ruthlessly destroyed and supplanted by the culture and values of Western mass-consumer society."[28] Other authors take a much more positive view of the prospects for developing countries to benefit from this trade. According to Cowen, for example, "economic growth usually leads to a reallocation of creative activity to the dynamic and growing artistic sectors, rather than the death of the arts."[29] In fact, he argues, "Western technologies… have enabled many cultural products [in poorer countries] to last and to reach wider audiences"[30].

Many developing countries have become major exporters of cultural goods. This trend is especially notable in the area of cultural hardware. Newly industrialized economies, especially in Asia, now hold dominant shares of the world market for such goods as sound equipment and television sets. While developing countries hold much lower shares of the market for cultural software, their exports are growing both in absolute and relative terms. UNESCO figures show that in 1994, developing countries exported US$4.2 billion worth of core cultural goods, and accounted for 11.5 per cent of the global market. By 2002, their exports had grown to US$11.6 billion, or 21.2 per cent of the global market. This growth was not uniform across all types of core cultural goods. It was largest for audiovisual media, which might be considered cultural hardware rather than software. Here the developing country share of global exports rose from 27.6 per cent in 1994 to 44.6 per cent in 2002. Their market share also rose sharply for recorded media (from 6.1 to 17.6 per cent) and visual arts (from 19.7 to 29.8 per cent), but less rapidly for books (from 14.2 to 15.9 per cent) and other printed matter (from 11.9 to 12.3 per cent). The developing countries' share dropped in the areas of heritage goods (from 3.1 to 2.6 per cent) and newspapers and periodicals (from 5.5 to 4.4 per cent).

Developing countries face greater obstacles in some areas of culture than in others. This depends in part on the technical sophistication and capital costs associated with an undertaking. Literature, for example, is a great equalizer. It is no more difficult to write poetry or fiction in a poor country than it is in a rich one, and much of the great literature in the past century has emerged from developing countries. This is to be contrasted with the audiovisual field, and especially motion pictures. Most developing countries lack the financial and human capital needed to produce the technically sophisticated films that do well in mass markets. That is less of a concern in television programming, however, where production costs tend to be much lower.

28. Goldsmith (1996), page 81.
29. Cowen, op.cit., page 33.
30. Ibid., page 31

Despite these difficulties, some developing countries have also done well in exports of audiovisual services, and are increasingly important participants in negotiations over trade in this field. Brazil was one of only four countries to make a proposal on audiovisual services in the current round of WTO negotiations; all the rest were industrialized countries. It is not the only developing country with interests in this area, however, as shown by the membership of the Friends of Audiovisual Services Group[31]. In addition to four members from industrialized countries (Japan, New Zealand, the United Kingdom and the United States), this group includes seven members from developing economies (Argentina, Brazil, Chinese Taipei, Egypt, Hong Kong China, India and Mexico)[32]. The members of this group have all experienced success in the exports of motion pictures and/or television programming. India produces more films than any other country, the Hong Kong movie industry has a lengthy tradition, and both Brazil and Mexico are major exporters of television programming. These countries, however, do not represent typical cases; for every developing country that has done well in the audiovisual field, there are several others that produce few or no audiovisual products for exportation.

The political economy of cultural trade turns on its head one of the main points of contention between industrialized and developing countries. The field of intellectual property rights is usually viewed as an area where developing countries bear much of the burden and receive little of the benefit. That is especially true, for example, with regard to pharmaceutical patents. In the case of cultural industries, however, lax enforcement of copyrights is a barrier to the development of national audiovisual industries. Pirates can easily flood the market with illicit, under-priced music and films, and even the fear of pirating may inhibit the establishment of local industries. Stricter enforcement of intellectual property rights would help domestic artists and labels by ensuring that the prices of both domestic and imported music incorporate the costs of production. Consumers would pay more for recorded music and films in a system that rewards all artists, but would also have a broader array of choices. Similar logic may apply to television programmes and literature.

3. RULES AND COMMITMENTS IN INTERNATIONAL AGREEMENTS

The current proposals to negotiate agreements on cultural trade do not break entirely new ground. One list of international

31. In WTO negotiations, “friends’ groups” are often established among countries with shared interests in an area. The Friends of Fish, for example, brings together countries that hope to reduce barriers to trade in fish and fish products.
32. Note that Mexico might be considered either a developing country or, due to its status as a member of the OECD, an industrialized country.

instruments that make reference to culture includes six texts that deal with cultural rights as basic rights (e.g., articles 22 and 27 of the Universal Declaration of Human Rights), 14 texts on the preservation of cultural heritage (e.g., the Convention for the Protection of Cultural Property in the Event of Armed Conflict), and 11 dealing with copyright, among many other issues and instruments[33]. The OECD has also been a negotiating forum, albeit with mixed results; it produced one agreement that deals *inter alia* with trade in motion pictures[34], but in the late 1990s the OECD negotiations over the proposed Multilateral Agreement on Investment failed due to disagreements over a cultural exception (among other issues). Our focus here is on several WTO agreements that affect aspects of cultural trade. Some discussion is also devoted to a few relevant UNESCO agreements, as well as to provisions of some bilateral and regional trade agreements. The new negotiations that are underway at the WTO and UNESCO, which are examined in the final section of this report, would build upon the precedents set by the instruments reviewed in this section.

It should be stressed from the outset that there is no “pure” international agreement on trade in cultural goods and services, that is, no agreement explicitly and exclusively aimed at dealing with cultural trade *per se*. There are instead many trade agreements administered by the WTO that affect the terms by which cultural goods and/or services are traded (together with other goods and services that are not cultural in nature), as well as some agreements administered by UNESCO that affect inter alia trade-related issues. The principal focus in this section is on those WTO agreements that have the most significant implications for trade in cultural goods and services.

Cultural trade is one of many issues that fall within the jurisdiction of both the WTO and another international organization. Disputes over “turf” have become an ever more important issue in the trading system over the past few decades, due to the expanding definition of what constitutes trade and what should be negotiated within the WTO. Often the initial negotiation between countries concerns not the substance of an agreement, but the decision on where an issue should be handled in the first place. As a general rule, countries that

33. UNESCO (2000b).
34. The OECD’s Code of Liberalisation of Current Invisible Operations was first negotiated in the 1960s, and has been periodically updated since then. Annex V to Annex A of the agreement inter alia permits countries to grant aid to the production of motion pictures “provided that they do not significantly distort international competition in export markets,” allows them to maintain screen quotas, and prohibits discriminatory duties and taxes on imported films. The significance of these commitments is limited, however, by the many reservations that individual OECD members have lodged.

favour the negotiation of substantive and enforceable commitments on free trade in a given area favour the WTO as a negotiating forum; conversely, the countries that prefer to keep a free hand for national policymakers will either oppose negotiations altogether, or seek to bring the matter to an alternative international institution. The principal reason that the *demandeurs* in a new area often prefer the WTO is that this institution's dispute-settlement and enforcement provisions are unusually strong. Whereas most international organizations have few or no powers to ensure compliance with their rules, the WTO's Dispute Settlement Body can authorize a country to take retaliatory action (e.g., impose penalty tariffs) on a country that is found to violate its WTO commitments. "Forum shopping" by both the *demandeurs* and their opponents was quite evident in the 1980s, for example, when industrialized and developing countries differed over whether intellectual property rights should be dealt with in GATT or in the World Intellectual Property Organization, and in the 1990s, when squabbles erupted over whether labour rights should be handled in the International Labour Organization or in the WTO. (The developing countries lost the fight over intellectual property rights, but were successful on labour rights.) A comparable debate is now underway regarding the proper forum in which to negotiate on issues related to cultural trade: the WTO is the preferred forum for countries that seek the reduction or elimination of barriers to cultural trade, while UNESCO is preferred by countries that favour a larger role for the state in cultural affairs.

UNESCO has dealt with issues of cultural trade since its inception. Several agreements reached under the auspices of UNESCO concern trade in cultural goods, with the subject matter ranging from hardware and reproducible software to antiquities and other irreplaceable treasures. For example, Article 3 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (signed in 1970) provides that "[t]he import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit." This agreement is consistent with the provision in WTO law regarding protection of "national treasures," as reviewed later in this section. Some UNESCO agreements and recommendations facilitate exchanges (though not necessarily of a commercial nature), such as the Recommendation for the Protection of Movable Cultural Property. This 1978 instrument calls upon states to "accelerate customs procedures and ensure the protection of cultural property during transport." UNESCO was also responsible for the negotiation of the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials. This joint UNESCO-GATT instrument is discussed below.

3.1. Agreements to Reduce or Eliminate Tariffs on Trade in Cultural Goods

The GATT system was born in the same post-World War II environment as UNESCO. The main objective of GATT was to reduce or eliminate barriers to trade in goods among the countries that signed on to this contract, a goal that was pursued primarily through the exchange of tariff concessions in a series of negotiating rounds. GATT remains a part of the WTO system, which came into being in 1995. One of the agreements negotiated during the GATT period was particularly significant for trade in cultural goods, while another WTO-era agreement is related to this topic.

The Florence Agreement on the Importation of Educational, Scientific and Cultural Materials is intended to dismantle customs barriers to cultural goods. It covers both hardware (scientific equipment and materials for the blind) and software (books, works of art and audiovisual material of an educational, scientific and cultural nature). This agreement offers a unique example of inter-institutional collaboration on matters of cultural trade. The initial proposals for the agreement were developed by UNESCO, and formed the basis for negotiations by a GATT working party. The text of the agreement was then communicated to UNESCO for sponsorship and administration, and the agreement entered into force in 1952[35]. As is examined below, however, the negotiation of this agreement did not lead to the complete elimination of tariffs in these areas.

The Information Technology Agreement (ITA)[36] also affects trade in some types of advanced cultural hardware. Negotiated in 1996, the ITA aims to expand world trade in information technology products by eliminating tariffs. Although not explicitly handled as an agreement in cultural goods, many of the items that it covers are important hardware for the producers and distributors of audiovisual and other cultural software. The declaration was adopted by 14 WTO members representing about 80 per cent of the trade in these products. Several other WTO members joined the agreement later. The first staged reduction in tariffs began in mid-1997.

35. WTO (1995), page 281.
36. The formal title of this instrument is the Ministerial Declaration on Trade in Information Technology Products.

In addition to these two agreements, the successive rounds of GATT negotiations held from the late 1940s to the early 1990s led to reductions in tariffs on many cultural goods. New negotiations under the auspices of the WTO may cut tariffs even more. The Doha Round of WTO negotiations began in 2001, and may last until 2006 or later.

The data in Table 1 show that, the Florence Agreement notwithstanding, some cultural goods remain subject to tariffs. As a general rule, most OECD countries provide low-tariff or duty-free access to their markets for cultural software goods. In the area of cultural hardware goods, however, some of these countries still impose relatively high tariffs on certain items. For example, the tariffs on artists' brushes in Japan and grand pianos in the United States are well above those two countries' average tariff rates. Canada and the European Union have even higher protective barriers for some products. As for developing countries, some of them set their tariff commitments at relatively high levels for both hardware and software, and some products are not subject to any commitments[37]. The continued imposition of these high tariffs is a tax that falls on the exporters of cultural hardware (primarily in developing countries), on artists that import their tools and export their creations, and on the consumers of both hardware and software.

3.2. The Exceptions Clauses to GATT: Articles IV and XX(f)

Two provisions of the original (1947) GATT deal directly with cultural trade[38]. One is GATT Article XX(f). Under this provision, a country is permitted (subject to certain conditions) to employ measures "imposed for the protection of national treasures of artistic, historic or archaeological value." This would appear to offer a "safe harbour" within GATT rules for countries that take action to enforce the terms of UNESCO's Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. There have been no disputes arising over countries' exercise of this authority.

The other cultural provision in GATT is Article IV, which allows for the use of "screen quotas" in cinemas. The provision is a legacy

37. The data in Table 1 show the bound tariff rates for countries (i.e., the ceilings that they pledge not to exceed for a product). In developing countries it is common to have applied tariffs (i.e., those that are actually imposed) below the bound rate. An unbound tariff is one for which the country has made no commitment, and thus can be set at any level.
38. Note also that a few other provisions of the agreement, as discussed elsewhere in this section, dealt with matters that are indirectly related to the subject (e.g., with regard to subsidies).

of cultural policies in Europe during the period between the two world wars, when several countries imposed restrictions on imported motion pictures. The GATT founders authorized the continuation of existing screen-time quotas. The special regime provided that a country may maintain or establish quantitative regulations requiring the exhibition of films of national origin during a specified minimum portion of the total screen time in the commercial exhibition of all films of whatever origin. Such screen quotas were supposed to be subject to negotiations for their limitation, liberalization, or elimination, but many of them are still in force to this day.

GATT Article IV offers a precedent for a cultural exception, even though the direct applicability of this article to other cultural services was a matter of some dispute. Television was already a well-developed technology (if not a widely distributed one) at the time that GATT was negotiated, but the negotiators failed to make any explicit reference to this new technology in the agreement. The United States sought in the early 1960s to clarify whether the exemption applied to television programming[39], and a GATT working party was established to review the matter. The French representative to the working party took the position that television programming was a service rather than a product, and hence outside the scope of GATT. The working party was unable to reach consensus on the matter. GATT Article IV remains in effect, but the principal forum in which the WTO deals with issues related to audiovisual trade - both for the big and the small screen - is now the General Agreement on Trade in Services (GATS).

3.3. The General Agreement on Trade in Services

The GATS was one of the main accomplishments of the Uruguay Round of GATT negotiations. It is predicated on the notion that secure access to markets and progressive liberalization can stimulate the growth of trade in services in the same way that the GATT has done for trade in goods. The most important rule of general application is most-favoured-nation treatment (MFN). MFN provides that the best treatment given to the supply of a service from any country, whether it is a WTO member or not, must be given to all WTO members. Certain transparency obligations are also of a general nature. This means that WTO members are under an obligation to inform each other of the policies they implement and to publish relevant regulations. Many other provisions of the GATS matter only in the context of specific commitments; these include provisions covering such topics as domestic regulation,

39. See GATT (1964) and Filipek (1992).

Table 1 - Illustrative Examples of Bound Tariff Rates on Cultural Goods

HS #	Description	Japan	United States
Cultural Hardware			
8440.10	Bookbinding machinery	Free	Free
8523.12	Unrecorded magnetic audio tape	Free	Free
8525.10	Television transmitters	Free	0-1,8%
9006.51	Single lens reflex cameras	Free	Free
9201.20	Grand pianos	Free	4,7%
9603.30	Artists' brushes	6,6%	0-2,6%
Cultural Software			
3706.10	Exposed motion picture film	Free	0-1,4%
4901.99	Printed books	Free	Free
4904.00	Sheet music	Free	Free
8524.10	Phonograph records	Free	1,8%
9701.10	Paintings and drawings	Free	Free
9703.00	Sculptures and statuary	Free	Free
Simple Average		***0,6%***	***0,7%***

Arrayed Left-to-Right in Order of Average Tariffs

Source: Countries' schedules on goods, available at http://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm.

Averages are based only on bound tariffs.

European Union	Canada	Brazil	Turkey	India
1,7%	5%	35%	Unbound	25%
3,5%	4,6 %	35%	Unbound	Unbound
0-3,8%	Free	35%	30,0-32,0 %	Unbound
4,2%	5%	35%	17,9 %	Unbound
4%	7,4 %	35%	Unbound	Unbound
3,7%	7,1 %	35%	27,1 %	Unbound
0-6,5%	0-6,5 %	Free	Unbound	40%
Free	Free	0-35,0 %	Unbound	25%
Free	Free	Free	Unbound	25%
3,5%	Free	25%	Unbound	Unbound
Free	0-5,7 %	Unbound	Unbound	Unbound
Free	Free	Unbound	Unbound	Unbound
1,5%	***2,9%***	***25,3 %***	***25,3 %***	***28,8 %***

Notes: Item descriptions are shortened here for clarity.
Where ranges of values are shown, the country has different levels of bindings for products that fall within the category (e.g., at the separate eight- or ten-digit items that comprise this six-digit product). For purposes of calculating averages, ranges were reduced to the midpoint between the two values.

monopolies and exclusive service suppliers, payments and transfers, and balance-of-payments measures. When governments schedule commitments for any service sector, they have the flexibility to make full or partial commitments, and they may continue to regulate services covered by commitments, so long as the regulation is not administered in a way that represents an unreasonable trade barrier[40].

It is important to stress that, despite the strong efforts of the European Union in the Uruguay Round, there is no cultural exception clause in the GATS. Although GATS Article XIV is comparable in wording and scope to the general exceptions clause in GATT (Article XX), it does not make mention of any culture-related measures (e.g., like the reference in GATT Article XX[f] to measures “imposed for the protection of national treasures of artistic, historic or archaeological value”). The closest it comes is in GATS Article XIV(a), allowing a general exception for measures necessary to protect public morals; this enables members to apply regulations affecting (for example) pornography.

Countries are permitted to discriminate in favour of some partners, within limits. They may do so by declaring exceptions to the application of MFN rules. Initially an MFN “carve-out” was permitted under the GATS Annex on Article II Exemptions. These MFN exemptions were in principle supposed to last only until the end of 2004 and about 70 countries listed nearly 400 measures. The scope and timeframe of MFN exemptions are not always clearly defined. Some of the MFN exemptions listed in members’ schedules are drafted as if they are intended to continue longer than ten years. An exemption has the effect of “grandfathering” a measure. MFN exemptions permit more favourable treatment to be given, in the situations specified, to selected members. They often relate to bilateral agreements between neighbouring countries or to the reciprocal recognition of qualifications, standards, and so on. No fewer than 27 states have asked to have cinema and television subsidized co-production and co-distribution agreements inscribed as MFN exemptions. These include the European Community and its member states, Canada, Israel, and many Latin American and Arab countries.

Many countries’ cultural policies and instruments fall within the meaning of market access or national treatment as defined in GATS[41]. Market access restrictions in the audiovisual field include measures that

40. See GATS Article VI (Domestic Regulation), which sets out rather elaborate requirements in this area.
41. For a review of the most frequently used policies and instruments, see Footer and Graber (2000: 122-26).

control access to film markets, including screen quotas for cinemas (as in Mexico, South Korea and Spain); prohibitions of dubbing of foreign films (Mexico); and dubbing licences (e.g., in Spain film distributors can only receive a dubbing licence for foreign films when they contract to distribute a certain number of national films). Foreign investment and ownership restrictions, including divestiture policies, are also employed in the broadcasting industry and news media in some countries (e.g., Australia, Canada, the United Kingdom and the United States).

Domestic content requirements are common in the audiovisual field, especially measures regulating radio and television broadcasting content, as are discriminatory regulatory or licensing restrictions. Furthermore, many national and regional audiovisual policies rely on discriminatory subsidies involving the provision of grants, loans and tax preferences for the production or co-production of cultural works, most notably audiovisual products. National programmes providing subsidies to the domestic film industry exist in many countries, including Canada, France, Germany, Switzerland, the United Kingdom and the United States. These measures raise the question of whether national treatment requirements are being met (i.e., whether foreign providers are treated on the same basis as domestic providers of the same service). GATS rules generally require that countries extend both MFN and national treatment, but also allow countries to schedule exceptions to these two forms of non-discrimination. These exceptions need to have been scheduled either at the time that GATS entered into force or upon the country's accession to the WTO, and generally cannot be added later. The MFN exceptions are subject to a stronger presumption that they will be eliminated than are the national treatment exceptions.

3.4. Commitments under GATS

Just as countries make commitments on the reduction of tariffs for specific goods, they also make precise commitments in service sectors. A country has no commitments regarding market access and national treatment in any service sector that is not listed in its schedule; if a country has not made a commitment in audiovisual services, for example, it has fully reserved its rights to employ measures that restrict trade in this sector. GATS commitments are further complicated by the fact that they distinguish between four different ways that a service might be exported. These four "modes" are defined as follows, together with illustrative examples from the audiovisual sector:

FOUR MODES TO PROVIDE AN INTERNATIONAL SERVICE

(1) Cross border supply covers services supplied from a supplier in one country to a consumer in another, such as the direct broadcasting of television programmes abroad.

(2) Consumption abroad occurs when the consumer travels to the point of delivery, such as when a tourist is watching a film abroad.

(3) Commercial presence is achieved by means of temporary or permanent establishment through investment abroad, as in the case of co-producing a motion picture abroad.

(4) Presence of natural persons involves the movement of people to a foreign country on a non-permanent basis to supply a service, as occurs when a foreign cameraman is hired to film a movie for a local studio.

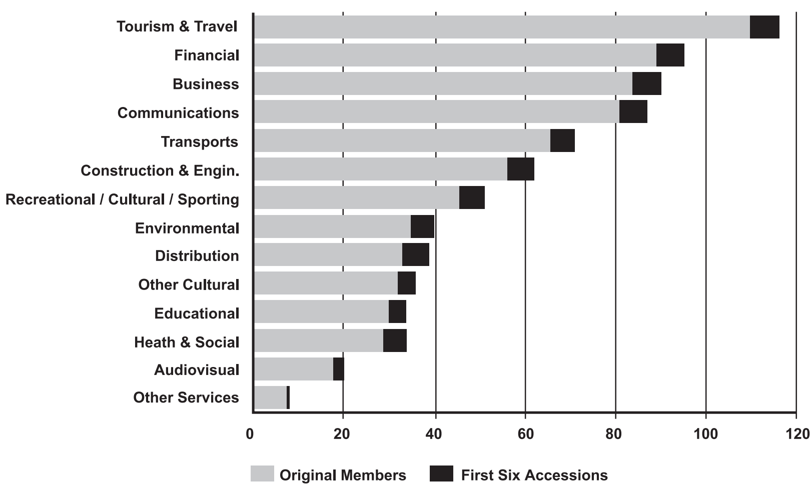
All WTO members have established specific commitments in their respective schedules under the GATS, specifying these by sector and mode. In the absence of specifications to the contrary, members guarantee both the right of market access (Article XVI) and the right to national treatment (Article XVII) in scheduled sectors. More specifically, a schedule must indicate under each mode of supply whether a member intends to grant full market access and/or national treatment, no market access and/or national treatment, or conditioned market access and/or national treatment.

The cultural sector is among the areas in which countries have been relatively less willing to make GATS commitments. We examine commitments in this area in a two-step process. First we see how many commitments have been made on cultural services compared to other types of services, and then we examine the cultural services commitments more closely. The data support the view that while there is no *de jure* cultural exception in the GATS agreement, it could nevertheless be argued that such an exception does exist for most countries on a *de facto* basis. That is to say, while a minority of WTO members have made some commitments on one or more cultural sub-sectors, the majority of the members have refused to make any commitments so far in this field. Moreover, several of them have repeatedly stated that they do not intend to make any such commitments in the future, and urge that other countries follow their example.

The frequency of cultural commitments

Figure 6 offers an overview of where cultural sectors fit within GATS commitments, comparing the number of countries making commitments here with the number making commitments in other sectors. As was discussed in Section 2, GATS does not define "cultural services" per se. The most important cultural services are instead included as sub-sectors within the broader classifications of "communications services" and "recreational, cultural and sporting services." Many WTO members have made commitments in these larger categories, especially in communications services. When one disaggregates the data at the sub-sectoral level, however, it is apparent that the cultural items within these broader categories are less committed. That is especially true for the audiovisual services sub-sector, which includes radio, television, motion pictures and sound recording. This sub-sector was at the very bottom in terms of commitments, apart from the residual category of "other services." Countries were more willing to make commitments on "other cultural services," a category that consists of entertainment services (e.g., theatre, live bands and circuses) plus libraries, archives and museums. Even here, however, there were only a few more commitments made than in the controversial area of educational, health and social services.

Figure 6 - GATS Commitments in Cultural and Other Services



Source: Sectoral data are from WTO calculations. The data on audiovisual and other cultural services are the author's calculations based on the schedules for the original WTO members and the first six acceding countries. Note that audiovisual services are part of «communications» and other cultural services are part of «recreational/cultural/ sporting.»

While most of these GATS commitments were made by original members of the WTO in the Uruguay Round of negotiations, others were made by countries that later acceded to the WTO. Accession negotiations are relatively one-sided affairs in which only the acceding countries make new commitments. Due to the greater attention and leverage that is brought to bear on these countries, they tend to make more commitments than do other countries of comparable size and levels of economic development. That point is supported by Figure 6, which shows the commitments made by the first six countries to accede to the WTO. These countries are disproportionately represented in several of the services sectors, especially motion picture and video production and distribution.

The extensiveness of cultural commitments

While the data in Figure 6 allow us to see the relative frequency of GATS commitments in these sectors, the data in Table 2 provide a more detailed examination of the extent of countries' commitments in each of the four sub-sectors. These data are also more complete than those in Figure 6, including as they do the commitments made by several more countries that have acceded to the WTO.

The classification of commitments is based upon the following method. Points were assigned to the commitments made on both market access and national treatment, with commitments under modes 3 and 4 being assigned twice the weight of those under modes 1 and 2. A member received full points for every commitment that was full (i.e., the word "None" was inscribed in its schedule without any further qualifications), zero points for commitments not made (i.e., the sector does not appear in its schedule, or the word "Unbound" was inscribed [with or without qualifying language such as "except as indicated in the horizontal section" or "due to lack of technical feasibility"]), and half-points for anything falling between these two extremes. The maximum available points for each sector was 12 (i.e., if the word "None" appeared for all four modes, both in the market access and the national treatment columns). Where the commitments in a sector were divided into sub-sectors, or further defined to exclude some types of transactions or otherwise limit the scope of the commitments, the calculations were adjusted accordingly (usually through the averaging of commitments across sub-sectors or the halving of scores). The calculations were then converted to percentages to reflect how many of the 12 available points were achieved. For example, a commitment between one-third and two-thirds meant that the member received between four and eight of the 12 possible points.

Note that the following 82 members and acceding countries made no commitments on any of these four sectors: Algeria, Argentina, Aruba, Australia, Bahrain, Bangladesh, Belize, Benin, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Egypt, Fiji, Finland, Gabon, Georgia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Latvia, Macau, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Netherlands Antilles, New Caledonia, Niger, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Philippines, Poland, Qatar, Romania, Senegal, Slovak Republic, Slovenia, Solomon Islands, South Africa, Sri Lanka, Suriname, Swaziland, Switzerland, Chinese Taipei, Tanzania, Tunisia, Turkey, United Arab Emirates, Uganda, Venezuela, Zambia, Zimbabwe and Zaire.

The first observation that can be derived from Table 2 is an extension of what we saw in Figure 6: relatively few countries make commitments in cultural services. While there are some 58 WTO members represented in the data that have made commitments in one or more cultural sub-sectors, another 82 members have made no commitments in any of these sub-sectors. Some of the larger WTO members made no commitments in any of these sectors (e.g., Australia, Brazil, Canada, Norway, Switzerland and Chinese Taipei), while other large members made commitments in just one sector (e.g., China, the European Communities, India and Mexico). Apart from the United States, the only countries to make commitments in all five sub-sectors were the Central African Republic, Gambia and the Kyrgyz Republic. Only four WTO members have made commitments in four out of five sub-sectors: Armenia, Japan, Jordan and Panama.

Table 2 - WTO Members' GATS Commitments on Selected Cultural Services

	Audiovisual Services	
	Radio/TV Production & Transmission	Motion Picture/Video Production & Distribution
Albania*		▲
Angola		
Antigua & Barbuda		
Armenia*	◘◘◘	◘◘◘
Austria		
Barbados		
Bolivia		
Bulgaria*		
Cambodia*		▲
Central African Rep.	◘◘◘	◘◘◘
China*		▲
Congo		
Djibouti		
Dominica		
Dominican Republic	◘◘◘	
Ecuador*		
El Salvador	▲	
Estonia*		▲
European Comm.-12**		
Gambia	◘◘◘	◘◘◘
Ghana		
Hong Kong, China		▲
Hungary		
Iceland		
India		▲
Indonesia		
Israel		◘◘◘
Jamaica		
Japan		◘◘◘
Jordan*		◘◘◘
Kenya		▲

Sound Recording	Other Cultural Services: Libraries, Archives, and Museums	Other Cultural Services: Entertainment Incl. Theatre, Live Bands, and Circuses
	▫▫▫	
	●●	●●
		●●
▫▫▫		●●
	▫▫▫	▫▫▫
		●●
	▫▫▫	▫▫▫
		▲
▫▫▫	▫▫▫	▫▫▫
▲		
		▫▫▫
	●●	●●
		●●
	▫▫▫	▫▫▫
	▲	▲
		▲
		▫▫▫
▫▫▫	▫▫▫	▫▫▫
		●●
▫▫▫	▲	
		▫▫▫
	●●	●●
		▫▫▫
		▫▫▫
▫▫▫	▫▫▫	▫▫▫
▫▫▫	●●	▲

	Audiovisual Services	
	Radio/TV Production & Trans-mission	Motion Picture/Video Production & Distribution
Republic of Korea		◘◘◘
Kuwait	▲	▲
Kyrgyz Republic*	◘◘◘	◘◘◘
Lesotho	▲	▲
Lithuania*		▲
F.Y.R. of Macedonia*		▲
Malaysia	▲	▲
Mexico		▲
Moldova*		▲
Nepal*		▲
New Zealand	◘◘◘	◘◘◘
Nicaragua		◘◘◘
Oman*		▲
Panama*	◘◘◘	◘◘◘
Peru		
Rwanda		
St. Kitts & Nevis		
St. Lucia		
St. Vincent & Grens.		
Sierra Leone		
Singapore		◘◘◘
Sweden		◘◘◘
Thailand	▲	▲
Togo		
Trinidad & Tobago		
United States	●●	●●
Uruguay		

▲: *Commitments of less than one-third.*
◘◘◘ :*Commitments between one-third and two-thirds.*
●● : *Commitments over two-thirds.*

	Other Cultural Services	
Sound Recording	**Libraries, Archives, and Museums**	**Entertainment Incl. Theatre, Live Bands, and Circuses**
◘◘◘		
		◘◘◘
◘◘◘	◘◘◘	◘◘◘
	▲	▲
		▲
		▲
◘◘◘		
◘◘◘		▲
		▲
	●●	●●
		●●
		●●
		●●
		●●
		◘◘◘
		◘◘◘
		◘◘◘
●●	●●	●●
		●●

Based on the Percentage of Potential Commitments Made by Members

**: Denotes a country that acceded to the WTO after 1994.*
***: Note that the commitments of the European Communities do not apply uniformly to all member states, and that specific qualifications are provided for some members.*

The data show that the largest number of commitments were in the area of entertainment. No fewer than 40 countries have made commitments here. This includes some members, such as the European Communities, that are highly reluctant to make commitments in other cultural sectors. Surprisingly, motion picture and video production and distribution was the second-most committed of the cultural sub-sectors: 29 members made commitments. This was followed by libraries, archives and museums (18 members). Twelve members each made commitments in sound recording, or in radio and television production and transmission. The fact that radio and television attracted the smallest number of commitments may be attributed in part to the issues of national security that surround control of airwaves; that same explanation would not appear to be applicable in the case of sound recording.

The data in Table 2 also allow us to consider the extensiveness of a country's commitments. The GATS allows countries to be very nuanced in their commitments; they may specify varying degrees of bindings in each of the four modes by which services are delivered, define an industry widely or narrowly, and provide for limitations both on market access and on national treatment. The data presented in Table 2 are based on an admittedly rough gauge of how far a country went towards making a complete and unconditional commitment. Commitments were quantified according to the scope of the sub-sector, the extent of the commitments, and the modes of delivery in which they were made. The least complete commitments are those that went less than one-third of the way towards full openness; the most complete are those that went more than two-thirds of the way[42].

Based on these calculations, we can see that each of the five cultural sub-sectors attracted different degrees of commitments. The commitments that countries made on entertainment were not only more common, they were also more complete. Of the 40 WTO members that made commitments in the entertainment sub-sector, 14 were relatively deep (i.e., more than two-thirds). Only nine of these countries limited their commitments to less than one-third of what was possible. This can be contrasted with the commitments that countries made for motion picture and video production and distribution. More than half of the commitments here - 16 out of 29 - were less than one-third and the United States was the only country to make a deep commitment in this sector. The same can be said for radio and television production and transmission, and for sound recording.

42. See the text below the table for a description of the methodology by which these commitments were quantified.

3.5. The Agreement on Trade-Related Intellectual Property Rights

The form of the TRIPS Agreement

The TRIPS Agreement, like the GATS, is one of the main products of the Uruguay Round's expansion in the scope of trade negotiations. Like the GATS, it covers a wide range of industries that include, but are certainly not limited to, cultural undertakings.

The most important form of intellectual property rights, from the perspective of cultural industries, is copyright protection. The main purpose of copyright and neighbouring rights protection is to encourage and reward creativity, ensuring that creators are paid for the product of their work - a key ingredient for the successful development of cultural industries. Copyright and neighbouring rights (i.e., the rights of performers, producers of sound recordings, and broadcasting organizations) thus constitute a fundamental element for cultural industries. They provide the creators, the artists and the content industry with the basic intellectual property rights allowing them to be remunerated and to invest in more creation and revenues.

The effectiveness of such protection is particularly important for audiovisual exporters who lose hundreds of millions of dollars in lost revenues to illegal reproduction. The popularization of reproduction equipment and, more recently, the advent of digital technology have largely contributed to increasing piracy (non-authorized reproduction of protected works), damaging the sales of cultural industries. Piracy is equally detrimental to authors, whose royalties on sales are diminished accordingly. The publishing industry and phonogram, audiovisual and software producers are the sectors most severely harmed by piracy.

Under the TRIPS Agreement, each WTO member is required to accord in its territory the protection required for the intellectual property of the nationals of other WTO member states. In particular, WTO members are required to extend both national treatment and MFN treatment. The agreement covers all the main areas of intellectual property rights - copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and undisclosed information or trade secrets. The agreement contains two main sets of substantive obligations. First, it lays down minimum standards of substantive protection for each category of rights that must be available under the national law of each member. The starting points are the relevant conventions of the World Intellectual Property Organization (WIPO). As some areas are not covered by these conventions and, in some cases, the standards of protection prescribed were thought to be inadequate, the TRIPS Agreement adds a significant number of new or higher standards.

Second, the agreement specifies in some detail the procedures and remedies that each member must provide under its national law so that the nationals of other members can effectively enforce their intellectual property rights. This may be done through the normal judicial process, through customs action against imports of counterfeit and pirated goods, or through criminal procedures when wilful counterfeiting and piracy on a commercial scale is involved. While developing countries enjoyed a four-year transition period, least developed countries were granted a longer transition period of a total of 11 years (until 2006), with the possibility of an extension.

Articles 3, 4 and 5 of TRIPS include the fundamental rules on national and most-favoured-nation treatment of foreign nationals, which are common to all categories of intellectual property covered by the agreement. These obligations cover not only the substantive standards of protection but also matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically addressed in the agreement. While the national treatment clause forbids discrimination between a member state's own nationals and nationals of other member states, the MFN treatment clause forbids discrimination between the nationals of other member states. In respect of the national treatment obligation, the exceptions allowed under the pre-existing intellectual property conventions of WIPO are also allowed under the TRIPS Agreement.

The TRIPS Agreement consolidates the disciplines of the Berne Convention (literary and artistic works)[43], the Geneva Convention (phonograms)[44] and the Rome Convention (neighbouring rights)[45] into a single undertaking, backed up by enforceable dispute-settlement

43. The Berne Convention is the Convention for the Protection of Literary and Artistic Works, signed in Berne, Switzerland, on 9 September 1886, and all acts, protocols and revisions thereto.
44. The Geneva Phonograms Convention is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, concluded in Geneva, Switzerland, on 29 October 1971.
45. International Convention for The Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in Rome on 26 October 1961.

measures. Member states are free to determine the appropriate method of implementing the TRIPS Agreement within their own legal system, but they must give to the nationals of other members the national treatment required in the Paris, Berne and Rome conventions, subject to the national treatment exceptions contained in these same treaties[46].

The protection accorded under TRIPS

Copyright protection grants authors the exclusive right to exploit their work freely. Copyright rules are complemented by the so-called neighbouring rights, which protect performers (e.g., actors, singers and musicians), phonogram producers (e.g., sound recordings) and broadcasting organizations[47]. The author's rights over his or her literary and artistic works - such as books and other written works, musical compositions, paintings, sculptures, computer software and cinematographic works - are generally protected under copyright for a minimum period of 50 years after death. Under neighbouring rights, performers have the exclusive right to authorize the reproduction and public communication of their performances. Phonogram producers enjoy the exclusive right to authorize the reproduction, distribution and public communication of their phonograms, and broadcasting organizations are granted the exclusive right to authorize the broadcast, satellite retransmission, recording and public communication of their own broadcasts.

The general rule contained in Article 7.1 of the Berne Convention, and incorporated into the TRIPS Agreement, provides that the term of protection is the life of the author plus 50 years. Paragraphs 2 through 4 of that article specifically allow shorter terms in certain cases. These provisions are supplemented by Article 12 of the TRIPS Agreement, which provides that whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term will be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication, within 50 years from the end of the calendar year of making.

46. For a description of the provisions of the TRIPS Agreement see Doane (1994), Reichman (1995), O'Regan (1995) and WTO (2003).
47. The personal nature of performers' rights is made clear by granting the rights to each performer for every performance he or she makes. Thus, for example, each member of a large choir has individual rights in his or her performance as part of the overall choral work and he or she has rights in each performance no matter how many times the performance may be repeated and no matter how similar those performances are.

TRIPS Article 11 requires WTO members to provide rental rights to owners of copyrighted cinematographic works. This provision is meant to ensure that authors receive a return when, for instance, videos are lent out, as this has the effect of reducing sales and provides opportunities for illegal home copying. These rental rights are not absolute, however. Member states can exempt cinematographic works from this obligation by showing that commercial rental activity has not led to widespread copying that is “materially impairing the exclusive right of reproduction ... conferred on authors.”

The provisions on the protection of performers, producers of phonograms, and broadcasting organizations are included in Article 14. According to Article 14.1, performers have the ability to prevent the unauthorized fixation of their performance on a phonogram (e.g., the recording of a live musical performance). The fixation right covers only aural, not audiovisual fixations. Performers must also be able to prevent the reproduction of such fixations. They are also to have the ability to prevent the unauthorized broadcasting by wireless means and the communication to the public of their live performance. In accordance with Article 14.2, member states have to grant producers of phonograms an exclusive reproduction right. In addition to this, they have to grant, in accordance with Article 14.4, an exclusive rental right; the provisions on rental rights may also apply to any other rights holders in phonograms as determined in national law.

Broadcasting organizations, like performers, are to have, in accordance with Article 14.3, the right to prohibit the unauthorized fixation, the reproduction of fixations and the rebroadcast by wireless means of broadcasts, as well as the communication to the public of their television broadcasts. However, it is not necessary to grant such rights to broadcasting organizations, if owners of copyright in the subject matter of broadcasts are provided with the ability to prevent these acts, subject to the provisions of the Berne Convention.

The term of protection is at least 50 years for performers and producers of phonograms, and 20 years for broadcasting organizations (Article 14.5). Article 14.6 provides that any member state may, in relation to the protection of performers, producers of phonograms, and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.

3.6. Agreements on Subsidies

One of the more controversial areas of trade negotiations concerns subsidies. The general approach taken first in the GATT and now in the WTO is that subsidies are considered to be a distortion of market forces that should, like tariffs and other import restrictions, be reduced or eliminated. That at least was the aim of provisions in GATT 1947 that allowed for the imposition of countervailing duties (CVDs) on some subsidies (Article VII) and called for the reduction or elimination of export subsidies (Article XVI). The Uruguay Round Agreement on Subsides and Countervailing Measures elaborated upon these rules, both by prohibiting export subsidies and by providing more detailed rules for the imposition of CVDs. These provisions notwithstanding, trade negotiators have also extended special treatment to certain types of subsidies. This has included a somewhat more lax approach towards subsidies that are employed by developing countries (see Article XVIII of GATT 1947, GATT Part IV and various provisions of WTO agreements), as well as the agricultural subsidies that are employed primarily by industrialized countries (see the Uruguay Round Agreement on Agriculture).

There are no special provisions in either GATT or other WTO agreements affecting subsidies to cultural goods per se. If a country were to subsidize the production or exportation of cultural goods, these would be just as subject to CVDs as any other article of commerce[48].

The issue of subsidies in cultural services is much more complicated, as subsidies are among the incomplete aspects of GATS rules. In its current form, the GATS does not prevent governments from providing subsidies to their cultural industries. The only provision of GATS specifically dealing with subsidies is Article XV. It recognizes that “in certain circumstances, subsidies may have distortive effects on trade in services,” and negotiations have begun with the aim of developing “the necessary multilateral disciplines to avoid such trade-distortive effects.” The negotiations are also supposed to address the appropriateness of countervailing procedures. If any member “considers that it is adversely affected by a subsidy” it can request consultations which “shall be accorded sympathetic consideration.” The GATS thus does permit subsidies, including subsidies contingent upon the export of services and other investment incentives. However, the MFN obligation applies to subsidies because they are covered by the definition of “measure.”

48. The author is unaware of any cases in which CVDs have been imposed on cultural goods, but there have been instances in which televisions and other consumer electronics (i.e., cultural hardware) were subject to antidumping duties.

National treatment commitments also apply, unless subsidies are specifically excluded. In the services sectors for which commitments have been taken, and subject to any conditions or qualification set out in its schedule, a member must therefore administer its subsidy schemes in a manner that accords the services and service suppliers of other member states treatment no less favourable than that accorded to its own services and service suppliers[49]. Article X of the GATS also mandates negotiations on "emergency safeguard measures" based on the principle of non-discrimination.

A permissive subsidies regime is sometimes put forward as an alternative to an outright cultural exception. Countries should not be permitted to impose barriers to the importation of cultural items, so the argument goes, but they should nonetheless have the option to discriminate by directly supporting their own cultural industries. Arguing that "[t]he maintenance of cultural identity is more important than the purity of the market," Mundy proposes that governments "[e]xempt support for cultural industries from restrictions on subsidies."[50] The argument has also been made that subsidies in this field can be justified on solid grounds of economic theory[51]. A UNESCO analysis supported the notion that cultural industries may merit subsidization. Among the many forms of support that it suggested were access to low-interest loans, fiscal incentives and tax reduction programmes, preferential postal and advertising tariffs, the acquisition of materials for schools and libraries, and the encouragement of participation in international festivals or trade shows[52].

The United States has not strongly opposed subsidies to cultural industries. US negotiators declared in 1998 that rules "need not necessarily restrict government subsidies for domestic film production and distribution,"[53] and later suggested that in negotiations on audiovisual services, "Members may also want to consider developing an understanding on subsidies that will respect each nation's need to foster its cultural identity by creating an environment to nurture local culture."[54]

49. For instance, the United States, in one of its few limitations on specific commitments in audiovisual services, has explicitly mentioned that grants from the National Endowment for the Arts are only available for individuals with US citizenship or permanent resident alien status.
50. Mundy (2001), page 116.
51. Sauvé and Steinfatt (2000).
52. Alonso Cano et al. (2000), pages 25-26.
53. WTO (1998), page 3.
54. WTO (2000c), page 3.

Proposals to permit subsidization could encounter opposition from developing countries that, by definition, would be at a disadvantage in a subsidy war. The Brazilian audiovisual services proposal nevertheless saw "merit in considering mechanisms for subsidies in the audiovisual sector aimed at achieving cultural policy objectives." The proposal stated that it would "be important to ensure that [subsidies] have the least trade-distortive effect, given the disparities in Members' capacity to subsidize," and that the "[s]pecial needs of developing countries must be appropriately addressed."[55] The proposal also suggested "the development of appropriate trade defence mechanisms (e.g., specific antidumping disciplines) for the audiovisual sector," an issue that might be pursued either through competition policy or in the safeguards negotiations.[56] Switzerland, too, has suggested that this issue be raised in GATS audiovisual negotiations. According to the Swiss proposal, "A common understanding among Members about subsidies, the policy purpose justifying them, as well as their effect on trade, would represent a positive precondition both for the negotiation of specific commitments in the audiovisual sector as well as for the elaboration of general subsidy rules"[57].

3.7. Investment Agreements

Investment agreements and competition policy offer further means of addressing cultural trade and diversity. Neither of these issues are on the table in the Doha Round of WTO negotiations, but are raised in other trade talks (e.g., in GATS Mode 3 and in the bilateral free trade agreements discussed below). Cultural industries, and especially the audiovisual sector, can be prone to competition problems. An analysis published by UNESCO suggests that competition policy should be used to advance cultural diversity in order "to address monopolistic practices in the context of cultural industries."[58] The Swiss proposal on audiovisual negotiations in GATS takes up this same line of argument, expressing a concern that vertical integration affects "not only the functioning of the audiovisual market per se, but also tends to induce a homogenization and a levelling of the supply of contents"[59].

The GATS remains the most important avenue for dealing with investment in cultural industries. GATS Mode 3 deals with commercial presence (i.e., investment) by foreign service providers.

55. WTO (2001a), page 3.
56. Ibid.
57. WTO (2001b), page 3.
58. Alonso Cano et. al (2000), page 28.
59. WTO (2001b).

Another instrument of potential importance in cultural trade is the Agreement on Trade-Related Investment Measures (the TRIMs Agreement). The TRIMs Agreement outlaws certain investment measures affecting trade in goods for enterprises operating within the territory of a member state. Article 2 of the TRIMs Agreement prohibits the application of any trade-related investment measure that is inconsistent with GATT provisions on national treatment or the elimination of quantitative restrictions. In particular, an Illustrative List annexed to the agreement identifies certain measures that are inconsistent with rules against discrimination and quantitative restrictions (i.e., GATT Articles III(4) or XI(1)). These cover measures such as trade-balancing requirements, local content rules, foreign-exchange-balancing requirements and restrictions on exportation. To the extent that such measures affect investment in the cultural sectors and create a restriction to trade, they could be challenged under the TRIMs Agreement.

3.8. Free Trade Agreements

All of the agreements reviewed above are multilateral instruments that are administered by the WTO. It is also possible for smaller groups of countries to negotiate agreements on a bilateral, regional, or limited multilateral basis. Discriminatory arrangements such as free trade agreements (FTAs) and customs unions are inconsistent with the principle of most-favoured-nation treatment, as provided under GATT Article I, but they are nonetheless permitted within the WTO system. Both GATT Article XXIV and GATS Article V allow FTAs and similar agreements, provided that they meet certain criteria. These agreements are now proliferating rapidly, with dozens of FTAs having been negotiated in recent years. Limitations of space prevent a detailed examination of the cultural trade provisions that are in (or excluded from) the many FTAs now in force, but a few of the more important agreements and trends merit observation.

Two general statements can be made about FTAs negotiated in recent years. The first is that, in contrast to the predominant pattern of South-South agreements in previous decades, many of the more significant FTAs negotiated over the past several years are North-South agreements (i.e., FTAs in which one party is industrialized and the other is developing). Second, the cultural provisions in these FTAs tend to reflect the positions of the industrialized partner. That is to say, the FTAs negotiated by Canada and the European Union will typically provide for some form of cultural exception, while such provisions are absent from the FTAs negotiated by the United States. The cultural exceptions in the Canadian and EU agreements can be explicit, with provisions that identify cultural services as exceptions;, implicit in the absence of any commitments in these areas; or both. The EU prefers to negotiate on the basis of a positive list: only those commitments that are explicitly made in the agreement are covered. The positive-list approach makes it easier to exclude a given sector. By contrast, the United States prefers the more ambitious approach of a "negative list" in which all services sectors are covered in an agreement except those that are specifically exempted by the parties.

These points can be illustrated by contrasting the FTAs that Canada, the EU and the United States have recently negotiated with Chile. In Annex O-06 of the Canada-Chile FTA, the parties explicitly state that, "Nothing in this Agreement shall be construed to apply to measures adopted or maintained by either party with respect to cultural industries except as specifically provided in… [the agreement's tariff-elimination schedule]." The EU-Chile FTA follows a similar pattern: not only are audiovisual services excluded from the schedules of commitments, but Article 95(2)(b) goes on to specify that the audiovisual sector is not covered. By contrast, there is no such blanket exclusion in the US-Chile FTA. In lieu of a broad cultural exception, the FTA establishes free trade in all services except for any measures that are specifically exempted. Chile nevertheless succeeded in lodging reservations for specific practices. For example, the partners exchanged letters specifying that Chile retains the right to employ a law by which television stations may be required to reserve up to 40 per cent of screen time to national programming. Viewed in the short term, there may be little practical difference between the provisions of the two agreements: both of them preserve an existing Chilean restriction affecting foreign competition in the audiovisual sector. Viewed in the longer term, however, they could have very different effects. If Chilean policymakers were to decide in the future that they wished to impose some new restrictions on imported audiovisual services, their plans could run afoul of a legal commitment made to the United States. The FTAs with Canada and the EU, however, would not come into play. Chile also reserved "the right to adopt or maintain any measure that accords differential treatment to countries under any existing or future bilateral or multilateral international agreement with respect to cultural industries, such as audiovisual cooperation agreements."

The same types of provisions can be found in other FTAs that the major trading powers have negotiated. For further examples of cultural exceptions, see the FTAs that Canada negotiated with Israel in 1997[60] and Costa Rica in 2002[61], and the FTA that the EU concluded with Mexico in 2000[62]. As for the FTAs of the United States, the number and type of specific reservations for cultural-related industries range widely from one FTA to another. The variations appear to depend on the types of provisions, which it wished to safeguard, that a partner country had in place at the time that the FTA was negotiated. One finds a relatively large number of these reservations in the FTAs with Australia (which entered into force in 2005), for example, while the FTA with Central American countries (concluded in 2004) has several reservations for Costa Rica but fewer for the other four countries in the region[63].

If the cultural provisions in the FTAs of Canada, the EU and the United States each tend to reflect the positions of these parties, what happens when they negotiate with one another? The answer, as shown first by the US-Canada FTA (which entered into force in 1989) and then by the North American FTA, or NAFTA (which entered into force in 1994), is that these two antagonists on cultural trade were obliged to reach a somewhat imperfect compromise. Both the US-Canada FTA and NAFTA (which supersedes the bilateral agreement) include a cultural exception clause[64]. The specific terms of the exception clause attempt to satisfy both sides: whereas it specifies that "[c]ultural industries are exempt from the provisions of this Agreement," thus preserving the Canadian insistence on an exception, the clause also provides that the United States remains free to take retaliatory action for restrictions that Canada might impose, thus preserving the US position. Moreover, the definition of "cultural industries" appears to be susceptible to erosion through technological change. The agreements enumerate, but do not actually define, cultural industries to include such specific activities as the publication, distribution, or sale of "books, magazines, periodicals or newspapers in print or machine readable form…film or video recordings… audio or video music recordings…music in print or machine readable form… radio communications in which the transmissions are intended for direct reception by the general public, all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services." This definition pre-

60. See Article 10.5.
61. See Article XIV.6.
62. See Article 2.2.a.
63. For a comparison of these reservations in the US FTAs, together with analysis of related provisions on subsidies and the treatment of digital networks, see Bernier (2004).
64. The clause in the bilateral FTA is Article 2005. In NAFTA, Article 2106 and Annex 2106 retain the provisions from the bilateral agreement.

dates some of the newer forms of cultural hardware, such as compact discs and the Internet. One analysis found that due to “rapid changes in the telecommunications field and the increased public demand for new telecommunications services, the language of the cultural exclusion will probably quickly become obsolete”[65].

4. NEGOTIATING OPTIONS

Multilateral negotiations on cultural trade are currently underway in two different institutions. Talks are underway in the Doha Round of WTO negotiations, the most significant aspect of which - from a cultural perspective - concerns the negotiation of new GATS commitments. The Doha Round may also lead to new understanding on subsidization of services, as well as further reductions in tariffs on cultural hardware and software goods. At the same time, discussions are underway within UNESCO on an international instrument to promote the principle of diversity of cultural contents and artistics expressions.

4.1. The Doha Round of WTO Negotiations

The Doha Round of WTO negotiations was launched in 2001, and was originally intended to be concluded in 2005. Lengthy disagreements among WTO members over matters such as trade in agriculture have required that the deadline be pushed back to some as-yet unspecified date.

Cultural diversity and other issues related to cultural trade per se are not explicit topics of negotiation in the Doha Round. The only aspect of the negotiations that falls within this rubric is part of Paragraph 19 of the Doha Ministerial Declaration, in which the ministers instructed the Council for Trade-Related Intellectual Property Rights “to examine, inter alia… the protection of traditional knowledge and folklore.” Issues related to cultural diversity played a fairly small role in the debates that then followed within the WTO, most of which have focused on higher profile issues such as biotechnology and the patenting of traditional medicinal or agricultural knowledge[66]. No further reference to Paragraph 19 was made in the “July Package” of 2004[67], which narrowed the scope of the Doha Round negotiations to a smaller set of issues than had been included in the 2001 Ministerial Declaration. While the

65. Cahn and Schimmel (1997) page 291.
66. For a review of the discussions within the WTO on this topic, see WTO 2002(a). Regarding the relationship to issues of agriculture and agricultural biotechnology, see WTO 2002(b).
67. WTO (2004).

negotiations still include market access for goods and services (cultural or otherwise), traditional knowledge and folklore are not a part of the revised negotiating agenda.

Although audiovisual and other cultural services are being discussed in the GATS negotiations, this does not mean that any countries will be obliged to make new or expanded commitments in these sectors. Depending on what countries wish to do, the de facto cultural exception that some countries exercise in GATS - that is, the refusal to make commitments - could go unchallenged. Those countries that wish to abstain from new market-access negotiations will still be free to do so, and in so doing they may cite the principle of cultural diversity.

The GATS negotiations have gone through three phases. The first came in the years leading up to the launch of the round, when countries made general proposals concerning the types of agreements that they wanted to see reached in the new round. As described below, four countries tabled proposals for audiovisual services in the GATS negotiations; these were Brazil, Japan, Switzerland and the United States. The next phase started in 2002, when countries made more precise requests of their trading partners (e.g., country A would submit a formal request to country B that it make new commitments on various services sectors). Under the terms of the Doha Ministerial Declaration, participants were to submit their initial requests for specific commitments by the end of June 2002. The negotiations entered a new phase in March 2003, when initial offers were due. That formally began the give-and-take between countries, although in practice many WTO members - and especially developing countries - missed the deadlines for both initial requests and initial offers. While some of those requests and offers have been made public, much of the process is confidential. Due to that confidentiality, as well as the fact that negotiations have yet to enter a truly serious stage, it is better to examine the proposals made by the four formal demandeurs in audiovisual services.

The United States seeks “negotiated commitments for the audiovisual sector that establish clear, dependable and predictable trade rules with due account taken of the sector’s specific sensitivities.”[68] Switzerland submitted a proposal that deals in greater detail with such matters as a cultural exception, subsidies and competition policy[69]. Japan included audiovisual services among the many sectors in

68. WTO (2000b), page 3.
69. WTO (2001b).

its negotiating proposal[70]. Brazil is the only developing country that submitted a proposal on audiovisual services, urging that "special attention… be given to audiovisual services in which developing countries have greater potential such as (but not exclusively) television services"[71].

Some themes emerge from these submissions[72]. The Swiss paper is of a more general nature and calls for both a "cultural diversity safeguard" and an annex to the GATS on audiovisual issues. The US paper, while arguing for the importance of proceeding with the liberalization of the sector, also recognizes the "special cultural characteristics" of audiovisual media, and acknowledges the validity of subsidies in pursuing cultural objectives. The Brazilian submission also stresses the importance of discussing subsidy issues.

Switzerland's proposal for GATS negotiations on audiovisual services implicitly portrayed cultural diversity as the successor to a cultural exemption. The proposal suggested that cultural diversity may be taken into account "by targeting the instruments put in place by Governments to preserve cultural diversity and ensuring that their implementation remains possible, subject to certain disciplines to be developed," noting that this goal might additionally or alternatively be reached "through the introduction of a general enabling clause to that same effect" with "appropriate safeguards… to avoid any abuse."[73] The proposal did not specify whether rules regarding cultural diversity should be devised narrowly for the audiovisual sector, or more broadly for cultural trade in general.

The US paper called for a review of the classification of the audiovisual sector, arguing that the existing classifications are either too general or not up to date, given continuing technological convergence and the development of new media platforms (for example, the digital supply of films directly). The issue will become increasingly important for the ability to pursue "cultural" policies beyond the traditional media sector. For instance, if a narrower definition prevails, limiting the scope of the sector to traditional and especially terrestrial broadcasting, new audiovisual services such as music-on-demand and video-on-demand could be viewed as electronic commerce and thus subjected to different, and at present more liberal, trade rules.

70. WTO (2000a), page 7.
71. WTO (2001a), page 4.
72. For a critical account of the current negotiations, see Freedman (2001).
73. WTO (2001b), page 3.

Brazil stressed the importance of elaborating rules in the areas of trade defence (antidumping), safeguard and competition in order to address issues such as the "dumping" of already cost-recovered audiovisual goods at prices that undermine domestic and regional production[74].

The subsidy and safeguard provisions of GATS are also important items of unfinished business from the Uruguay Round. In both cases the original agreement provided little more than a mandate to flesh out these matters in future talks. Safeguard provisions have been a regular feature of trade agreements since the 1940s, and some developing countries are particularly interested in filling this void for GATS. As already mentioned above, a permissive subsidies regime is sometimes put forward as an alternative to an outright cultural exception.

4.2. Cultural Diversity Instrument

Several initiatives have been undertaken in recent years to produce declarations in support of cultural diversity. In addition to regional or multilateral undertakings such as those of the Council of Europe[75], the International Network on Cultural Policies[76], the Coalition for Cultural Diversity and the Organisation Internationale de la Francophonie[77], these include the preparation in UNESCO of a draft convention on the protection of the diversity of cultural contents and artistic expressions. While still under development, the initiative has advanced far enough to be examined.

This instrument emerges from a dialogue that has been underway within UNESCO for years. In 2001 the Member States adopted the UNESCO Universal Declaration on Cultural Diversity and an accompanying action plan. The declaration recognizes cultural diversity as the "common heritage of humanity," and commits UNESCO to "pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence" (Article 12(c)). The action plan called for "consideration of the advisability of an international legal instrument on cultural diversity." At its 32nd session in October 2003, the General Conference adopted by consensus a resolution inviting the Director-

74. See UNCTAD (2002).
75. See the draft Declaration on Cultural Diversity and Council of Europe (2000).
76. See the Draft International Convention on Cultural Diversity (2003)
77. See the Déclaration de Cotonou in Organisation Internationale de la Francophonie (2001).

General to submit at the 33rd session in 2005 a preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions. The Director-General then set up a multidisciplinary, international group of 15 experts to prepare suggestions and views on the preliminary draft convention. Having held three meetings between December 2003 and May 2004, the group produced a draft text. That text was submitted on July 2004 to UNESCO Member States and was the subject of consultations between UNESCO and other international organizations such as UNCTAD, WIPO and the WTO.

The following paragraphs present an analysis of the July 2004 draft text that served as the initial basis for discussion. The text begins from the premise that while the processes of globalization “afford unprecedented conditions for enhanced interaction between cultures,” they “also constitute a threat to diversity and carry with them a risk of impoverishing cultural expressions” (Preamble). It defines cultural diversity as:

> …the manifold ways in which the cultures of social groups and societies find expression. From the diverse forms taken by culture over time and space stem the uniqueness and plurality of the identities and cultural expressions of the peoples and societies that make up humankind. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humankind is protected, augmented and transmitted to future generations, but also through the variety of cultural expressions which are borne by cultural goods and services, in all parts of the world at any given time, through diverse modes of production, dissemination, distribution and consumption.[78]

The July 2004 draft provides a series of principles and steps that are to be taken in order to safeguard cultural diversity. The draft goes on to affirm the sovereign right of states to “adopt measures to protect and promote the diversity of cultural expressions within their territory, and recognize their obligations to protect and promote it both within their territory and at the global level” (Article 5.1). Many such measures are recommended by the draft, some of which are only indirectly related to cultural trade. These include actions that aim to strengthen cultural institutions at the national and international level. For example, among the measures that states may adopt to protect and promote cultural diversity are those that “guarantee independent cultural

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78. Article 4.2.

industries effective access to the means of producing, disseminating and distributing cultural goods and services…grant public financial aid…promote the free exchange and circulation of ideas, cultural expressions, and cultural goods and services, encourage non-profit organizations, and stimulate the entrepreneurial spirit… [and] encourage and support public service institutions" (Article 6.2(b through e)). Other provisions in the agreement concern the obligations to ensure the recognition of the social status of artists and creators (Article 7.2(a)), to respect and enforce their intellectual property rights (Article 7.2(b)), to establish competent authorities in this field (Article 9), to encourage public awareness and education (Article 10), and to encourage the participation of civil society. The agreement also seeks to strengthen institutions at the international level, such as through the establishment of a Cultural Diversity Observatory within UNESCO (Article 15).

Other provisions in the July 2004 draft text could relate more directly to measures that affect trade. The draft cannot accurately be described as an "anti-trade" instrument, insofar as it does stipulate that "States Parties shall provide all individuals in their territory with opportunities … to have access to the cultural expressions, goods and services representing cultural diversity in other countries of the world" (Article 7). It nevertheless includes some provisions that imply the possibility of adopting measures that favour domestic artists over imported cultural goods and services, whether through the extension of state support or - in extremis - the imposition of restrictions.

The draft agreement provides that, "each State Party may adopt measures, especially regulatory and financial measures, aimed at protecting and promoting the diversity of cultural expressions within its territory, particularly in cases where such expressions are threatened or in a situation of vulnerability" (Article 6.1). This may include "measures which in an appropriate manner reserve a certain space for domestic cultural goods and services among all those available within the national territory" (Article 6.2(a)). Another provision states that, "If some cultural expressions are deemed to be vulnerable to or threatened by the possibility of extinction or serious curtailment … States Parties shall take appropriate measures to protect the diversity of cultural expressions within their territory" (Article 8).

From the perspective of trade law, the most significant question is how the principles, rights and obligations of this draft agreement might affect the disciplines and commitments of WTO agreements. For example, what would happen if a commitment that a country has made in the GATS on a cultural service is later found to be incompatible with that country's policies regarding the promotion of cultural diversity? Does this agreement allow for the abrogation or modification of GATS obligations? This remains an unsettled question. Article 19 of the draft provides for rules on the relationship between this agreement and other instruments of international law, but sets out two alternatives. One option would provide simply that, "Nothing in this Convention shall affect the rights and obligations of the States Parties under any other existing international instruments." The other option would provide that:

1. Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under any existing international instrument relating to intellectual property rights to which they are parties.

2. The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions.

This language would suggest that the instrument does not derogate in any way from the TRIPS Agreement, but that other WTO agreements - including commitments made on goods and services - could potentially be subject to modification or reinterpretation under extreme circumstances. It has yet to be determined which of these options will be put forward as the draft progresses.

While the legal relationship between this and other existing instruments is not yet clear, the draft aims to provide guidance on any new commitments that might be undertaken elsewhere. According to Article 13, parties to the agreement are to "bear in mind the objectives of this Convention when making any international commitments." In addition to undertaking "to promote its principles and objectives in other international fora," the States Parties will also "consult each other within UNESCO in order to develop common approaches."

Finally, the draft text also provides for the settlement of disputes that may arise over the interpretation and application of the convention. These disputes may be handled through negotiation, mediation, arbitration, or the submission of the dispute to the International Court of Justice (Article 24).

4.3. Issues for Consideration

Negotiations at the multilateral level affecting cultural trade are now underway on two separate tracks. While each of these may be considered in isolation, the most important question may be how they relate to one another. How will the proposals for a cultural diversity instrument in UNESCO affect the Doha Round of WTO negotiations, and vice versa? In what ways might the results of these separate talks affect the legal and institutional environment for trade in cultural goods and services, and the policy space that is reserved for national governments in this area? The answers to these questions are well outside the limited scope of the present note. We may nevertheless conclude this discussion by elaborating somewhat on how these questions might be approached. We do so by posing three further questions.

The first question concerns the extent to which UNESCO and the WTO - and more precisely, the member states of these two organizations - might seek to collaborate on matters relating to cultural trade. Can they identify areas of shared interest and jurisdiction, and work together effectively to develop common approaches? Given the different philosophical bases upon which these two institutions are founded, that question may at first seem quixotic. It is nevertheless worth recalling that UNESCO and GATT, the WTO's predecessor, jointly produced the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials. This exceptional example of inter-institutional co-operation has not been replicated in the ensuing half-century, but there nonetheless exist some issues on which the two organizations might be able to work together in support of cultural diversity. These include protection for intellectual property rights as well as the reduction or elimination of barriers to trade in cultural goods. That last point is especially clear for goods that can be classified as cultural hardware, but it may be subject to debate on matters affecting cultural software goods.

The second question concerns the effect that the two negotiations may have on one another. Are there irreconcilable differences between the cultural diversity instrument and GATS commitments on audiovisual or other cultural services? On the one hand, it is conceivable that UNESCO and the WTO, and their member states, could consider ways in which their respective goals might be pursued harmoniously. This may take the form of agreements that are either produced jointly or, at least, with close consultation. On the other hand, it is also conceivable that the separate drafting of new agreements will lead countries to develop more formal divisions. One can envisage a future environment in which a bloc of countries will opt to sign a cultural diversity instrument, while another bloc chooses instead to make commitments in the GATS.

The third question concerns the legal issues that may arise in the future, especially if a “conflict of laws” occurs between these different instruments. What will be the legal relationship between the UNESCO instrument and WTO agreements, especially the GATS? This question implies several others: Will the final version of the cultural diversity instrument explicitly define its effect on other agreements, and in what way? How might the instrument affect the terms of cultural trade between signatories and non-signatories? What impact will it have on the commitments that countries may already have made in the WTO, and on their willingness to make new commitments? Where and how might disputes be adjudicated? These are questions that will need to be addressed as the negotiations proceed in both UNESCO and the WTO.

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TRENDS AND PERSPECTIVES OF THE AUDIVISUAL MARKETS IN COLOMBIA, PERU AND VENEZUELA

GERMÁN REY

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1. INTRODUCTION

This paper is divided into two parts. Part one compares the situation of the audiovisual industry in Colombia, Peru and Venezuela and examines the different audiovisual subsectors[1]. It also analyzes the future prospects for the audiovisual industries in these three Andean countries attempting to link up economic realities with social and cultural challenges. Cultural industries have become not only a major element of economic growth, because of their contribution to countries' GDPs and employment generation, but have also become sectors building cultural identity and diversity, citizen participation as well as societal discussion.

The second part briefly presents the audiovisual landscape in each country, emphasizing both economic and trade policy. For this purpose, it studies current regulations, and gives an overview of for each subsector (cinema, television, video, radio and music) in terms of property, operational capacity, management of creativity and also their possibilities for export, import, protection of author's rights and other related issues.

The information available to prepare this study has not always adequately desirably organized or up-to-date. It will be necessary to maintain more rigorous, reliable information systems regarding audiovisual industries, to make serious forecasts and well-founded analyses possible for this sector.

This study would not have been possible without the groundwork done by the Economics and Culture Project of the Andrés Bello Agreement. For years, this project has promoted, along with Culture Ministries and Institutes, professional organizations and universities, systematic reporting on the status of cultural industries in several countries of Latin America, including the three countries studied.

After preparing the first version of this paper, it was read by outstanding researchers in cultural and communicational areas in the countries studied, who made adjustments and recommendations in order to achieve the greatest possible accuracy in the material presented. The final version has incorporated these comments and additional information.

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1. The term "sector" will be used to refer to the audiovisual industry in general and "subsectors" to speak specifically of cinema, video, television, radio and music.

Although there are unique features in the audiovisual landscape of each of the countries studied, there are undeniable convergences and, above all, shared challenges for the future. It can even be said that the problems identified in this study also surround the audiovisual industries of other countries in Latin America.

Progressive strengthening of private television, radio and video companies, the difficulties caused by piracy in the phonographic industry, frailties in cinema production systems, development of regulations seeking to promote national audiovisual industries, redesigning of the role and involvement of governments in this sector, tensions between transnational and national initiatives, relations between community audiovisual media and local realities, the predominance of Hollywood movies in local theaters, many of them also concentrated in capital cities, the questions opened by technological renewal, insertion of the audiovisual industry in changes entailed by free trade agreements - these are some of the trends encountered in Colombia, Peru and Venezuela, but also present to a greater or lesser degree in the audiovisual realities of other Latin American countries.

2. MAJOR TRENDS IN COLOMBIA, PERU AND VENEZUELA

Although there are differences among the audiovisual realities of Colombia, Venezuela and Peru, there are many more coincidences and trends that they have in common.

A first trend involves relationships between ***national and foreign, own and outside***, as expressed both in production processes, the industrial infrastructure of each subsector and opportunities for distribution and circulation of audiovisual products. Each of the three countries averages no more than four movies filmed a year, which places them at a huge disadvantage compared to other industries, particularly the United States', which supplies most of the region's cinema. In television, production is greater than in cinema, and there are actual possibilities even for export, especially telenovela soap operas and some miniseries. In the phonographic industry, hard-hit by piracy, which reaches extreme levels in Peru, some local companies ("indies") eke out a living, although the market is fundamentally occupied by a few transnational companies ("majors"). However, native and regional music remains important in record repertoires – salsa, ballads, boleros and in general romantic music – as confirmed by the most recent cultural consumption studies in the countries studied (Rey, 2002, Hernández, 2003).

Domestic circulation of audiovisual productions is also related to the tension between national and foreign. The domination of US movies in all three countries' theaters is complete (no lower than 95%). Movies from other countries are quite hard to find in commercial theaters, including those produced in Latin America. These other films can be seen in art or experimental theaters – which are too few – or at sporadic film festivals. Thus, cinematographic diversity is practically non-existent in terms of geographical origin and even in film genres, where Hollywood-style action films prevail.

Table 1 shows the magnitudes of cinema markets in these three countries, and compares them with other in Latin American countries.

Table 1 - Latin American Cinema Market per capita income, 2003-2004

	2003 (000)	2004 (000)	INHABITANTS (000)	PER CAPITA
MEXICO	136,000	163,668	103,000	1.59
ARGENTINA	33,768	42,914	36,260	1.18
CHILE	11,442	12,841	15,116	0.85
VENEZUELA	17,041	20,342	25,017	0.81
BRAZIL	102,958	114,733	182,866	0.63
PERU	12,283	13,543	27,544	0.49
COLOMBIA	17,086	17,121	45,000	0.38

Distribution circuits are concentrated, in all three countries, in the hands of a few companies dominating the theater market. One interesting phenomenon is distribution of videos, which still happens through local shops, although large chains such as *Blockbuster* are increasingly important. In all three countries there are major circuits for illegal distribution of videos, through street peddlers, who represent the most significant illegal market.

The situation of national television supply is explained by the development of local industries, by production cost, television consumption traditions, diversity of supply in the various modes of television and audiovisual policies implemented over these last few years. Colombia and Venezuela have managed to create stronger television industries than in Peru, with the private stations predominating that broke into the market earlier in Venezuela and Peru than in

Colombia, which for years had a “combined” system, in which private programmers bid for airtime granted by the Government on two public channels. Venezuela, in turn, configured a concentrated range of private television which, as in the case of the Cisneros Organization, has been able to consolidate not only a national presence through Venevisión, but also internationally, by producing programs, international marketing, presence on the US Hispanic market (Univisión) or participation in DTH companies such as Direct TV, which operate successfully throughout the continent (Hernández, 1996, Bisbal, 2002). Colombian television has increased its international market presence over the past decade, making major alliances with television chains operating in the US such as Telemundo. In Peru, several private television channels survive on the brink of bankruptcy.

The most important television product in all three countries is telenovelas. Venezuelan melodramas had their heyday in the 1980s, as did Colombia’s in the 1990s and early this new millennium, breaking into a market that had been heavily dominated by Mexican (Televisa) and Brazilian (O Globo) productions.

Radio, in addition to its extremely broad coverage, reaching even very remote geographical zones, has had a striking percentage of local production, especially in broadcasting music. In Peru, the radio and television law requires broadcasters to maintain at least a minimal domestic production scheduled between 5:00 a.m. and midnight (according to the weekly average). As stated by the Peruvian Law, open-signal broadcasters must ensure that at least 10% of their daily programming is folklore and national music. The Social Responsibility Law for Radio and Television in Venezuela states that radio and television service providers must broadcast, during the time slots when all viewers / listeners are tuned in, at least seven hours of domestically produced programs, of which at least four hours must be by independent national producers. During the later-night schedule, at least three hours of national productions must be aired, of which one hour must be by independent national producers.

Music from Colombia and Venezuela has done relatively well, with internally renowned performers (operating from Miami and represented by major transnational firms). Music has significantly merged among countries, and there has been social appropriation of music, with salsa and tropical music among people’s preferences. Peru takes part in this same range of musical types, although it has interesting folk and national music, which is performed and distributed in close association with local cultural events (such as “huaynos” in folk festivals). Venezuela’s Law on Radio and Television Social Responsibility requires broadcasters who play music to include Venezuelan music comprising at least 50% of daily musical programming.

In the case of radio or television services located in border states and municipalities of Venezuelan territory, and those under government agencies’ administration, the percentage of Venezuelan music must be at least 70%, and may be further increased by norms issued for this purpose. Furthermore and according to the Law, at least 50% of Venezuelan music broadcast must consist of traditional Venezuelan music.

All three countries’ audiovisual policies repeatedly insist on promoting national production and even explicitly set requirements in order to quality for consideration as “national”. The national cinema quota is one of the issues discussed during recent negotiations for free trade agreements with the US. Negotiations of this nature by the US with Chile, the Central American countries, the Dominican Republic, Colombia, Peru and Ecuador make no provision for any cultural exceptions, except for a few clauses on “cultural reservation” at best.

In television, Colombia has had specific legal provisions for years about the percentage of national production to be broadcast during regular time slots (50%) and in “prime time” (70%); they hope to maintain these requirements in their recent trade agreement with the US, which is oriented toward removing any national regulations interfering with total audiovisual market liberalization.

Cable television programming is essentially foreign, with some not-so-numerous local productions.

Countries have, in turn, different policies to encourage national audiovisual production, be they fiscal incentives such as in Venezuela, contests with financial prizes in Peru or a specific fund to promote cinema in Colombia. An evaluation of results, especially in Peru and Venezuela, shows no decisive impact on the growth of their cinematographic industries, which seldom achieve significant results by private enterprise. In Colombia, application of the fund is beginning to yield results in the field of encouragement for creators (script-writers and directors), the number of films made and the completion of movies that had been held up, unfinished. In Peru, resources for the CONACINE prizes have not been provided by the Government. Recently (September 2005), the National Assembly of Venezuela partially amended the previous cinema law, establishing a minimum quota, obligations for theaters to show national short features and also stipulations for various contributions that theaters, distributors, etc. must make to the Fund to Promote and Finance Cinema (FONPROCINE), handled by the CNAC and created fundamentally to promote national movie making and distribution.

A second trend has to do with ***participation by the Government and private enterprise in the audiovisual industry***. Although all three television systems originated as government-owned stations, there are differences in commercial and public developments of the three audiovisual realities. In all three, public television – envisioned as cultural and educational – has deteriorated, due to a lack of clarity in long-term policy, actual investment possibilities, integration of television with other social and cultural processes, involvement of television stakeholders and structuring of programming and relations with viewerships. In Venezuela, for example, there is discussion of allocation by the government to the Arch-Diocese of Caracas of the public channel currently operating as TV Vale (channel 5). Vive TV, the government UHF station, began broadcasting on 12 November 2003, with a youthful image and significant political orientation. ANTV, also government-owned, began broadcasting on 15 March 2005 and is the channel of the National Assembly (Parliament). In Colombia “Señal Colombia” has gone through various periods of successes, vague policies and failed experiments.

The laws of these three countries, for cinema and television, provide for Councils to operate, with different representatives from the respective sectors and with functions that are in some cases binding, such as the National Television Council of Colombia (CNTV), an autonomous government agency, or non-binding such as the newly created Consultative Radio and Television Council of Peru. In Venezuela, the Law on the Social Responsibility of Radio and Television has just created the Social Responsibility Directorate, with broad powers for both radio and television, with most members from the government or official entities, users’ committees, representatives of churches and university communications departments. In cinema, Peru’s legislation provides for the National Cinematography Council (CONACINE), in Colombia the National Council of Arts and Culture in Cinematography, and in Venezuela the National Autonomous Center of Cinematography (CNAC), all charged with setting and implementing policies in each of their audiovisual subsectors.

In radio these three countries have national radio stations broadcasting over FM and AM, seeking their own cultural and educational profile. A very interesting phenomenon is community radio stations and the involvement of radio in societal and citizen processes, such as ethnic affirmation, the gender perspective, grassroots sector involvement in societal processes through radio, or a youth emphasis. In Venezuela quite a number of community radio stations have appeared.

Private participation has varied in these three countries according to the legal foundation of their audiovisual context. For example, regional television is relatively stronger in Colombia and Venezuela than in Peru, although public in Colombia and private in Venezuela. Local and community television stations have developed more in Colombia, both private such as City TV or public such as TeleMedellín, as well as international experiences, such as the recent creation of Telesur or public stations targeting youth, such as the above-mentioned Vive TV in Venezuela. Telesur began formal broadcasts on 24 July 2005 with initial capital of 3 million dollars. It is a multi-governmental corporation: Venezuela (51%), Cuba (19%), Uruguay (10%), and Argentina (20%).

In cinema, private participation is still quite slim, and often the creators themselves embark in production adventures, usually losing plenty of money. No national cinematographic industries can be said to exist in these three countries, but only incipient attempts to begin industrial development. In radio there is very strong presence in all three countries of private initiative, with radio groups forming local networks, and predominance of FM stations.

Meanwhile, Colombia, Peru and Venezuela are seeking to set policies to encourage national production, creation, circulation of products in national and international theaters, participation of local efforts in international festivals, and international cooperation. In general, policies are relatively flexible about foreign investment in cinema, providing certain requirements are met regarding percentages of involvement (the laws themselves have formulas for adaptation). In television, Venezuela pioneered foreign investment in television, although several decades later (in the mid-20th century) these possibilities were greatly curtailed; the major US chains (ABC and NBC) and companies (Pepsi Cola) were heavily involved. Peru's law on radio and television states that "foreigners in corporate bodies owning authorizations and licenses cannot exceed forty percent (40%) of total participations or corporate stock, and must also own companies or stock in companies broadcasting in their countries of origin" (Article 24) and in Colombia after years of forbidding foreign investment in television the doors have been opened to foreign capital. Countries' audiovisual policies also regulate possible concentration and involvement of foreigners in management of news channels or programs.

A third trend involves ***processes of marketing audiovisual products***. Domestic markets do not have the capacity to completely absorb the amounts of investment required, for example, to make a 200-chapter telenovela, although television in these three countries is the medium receiving the highest advertising percentages. Venezuela stands out with advertising investment of over 60% in television, versus a much lower percentage in the press (20%); Peru has nearly 40% television advertising investment and Colombia reached 62.2% in 2002 according to CNTV. Profits are made from television productions by selling them on international markets. For this reason, telenovelas are the flagship product of large television stations in these three countries.

The development of international marketing has to do with strengthening the industry, serial production and economic and technical capacity to do so, increased capacity to compete with other production systems (e.g. Mexico), construction of a narrative proposal accepted by viewers in very different countries, consolidation of steps in the production process and specific trades (e.g. script writers), the volume of productions and their sustainability for international offerings, the search for strategies to promote circulation (e.g. appearance in the cast of internationally famous actors and actresses), alliances and marketing procedures abroad. Problems in some of these regards directly influence circulation of products and expansion of markets, as clearly seen in the television histories of these three Andean countries.

Unlike television, national cinema in Colombia, Peru and Venezuela is incipient both in audiences and box-office earnings. However, some national films have successfully competed with Hollywood, including "The Millionaire Taxi Driver" by Gustavo Nieto Roa or "The Snail's Strategy" y Sergio Cabrera in Colombia, "Express

Kidnapping" by Jonathan Jakubowicz in Venezuela and "Pantaleón and the Visitors" by Francisco Lombardi (based on a novel by Mario Vargas Llosa) in Peru. International distribution of national films is chancy and deficient; producers often seek recognition in international festivals as an argument to sell in other countries. And although there are policies to promote movies on television, there are no explicit percentages of the televised share or channels specializing in showing movies on cable TV. Video shops have national movies, but not much, compared to US and other countries' productions.

Two phenomena occurring in Peru are an increase in digital cinematographic production in the provinces and the development of alternative circuits for showing movies.

Live concerts are one of the strategies used by musicians in the region to overcome part of the difficulties created by piracy. National performers are included in international circuits, regional and local live concerts are included in festivities and public commemorations.

A fourth trend is ***the transformation of cultural consumption and specifically audiovisual consumption***. In Colombia, Peru and Venezuela as well as throughout Latin America (Rey, 2005) the most widely consumed cultural products are television, radio and music, which has led to discussion of "mediatization of culture" (Rey, 2002, Sunkel, 2004). Consumption of these cultural expressions does not differ according to socio-economic level, education, gender or age. By contrast, consumption of films is at low consumption levels among Colombians, Venezuelans and Peruvians, and overall for Latin Americans. Movie theaters have experienced waves of disappearance and reconversion, with a trend toward multiplex theaters showing a diverse range of movies with various schedules. Displacement of public life into the private space is a constant in these three countries, due to new composition of time use among urban residents, physical and territorial itineraries, extremely broad television reception, box-office costs, problems of insecurity and the emergency of other ways to watch movies, e.g. by renting videos. However, an analysis of film consumption data shows that viewers do not reject national cinema.

Music is one of the main expressions of cultural consumption in these three countries, mainly over the radio. Unlike television, music is consumed differentially. For example, young people are closer to rock music, whereas more educated listeners favor classical music.

Recent projects (e.g. the Economics and Culture Project of the Andrés Bello Agreement CAB) have more carefully appraised the contribution of cultural industries to these three countries' GDP, acknowledging their role in the economy and social development.

3. PROSPECTS

For the future, some prospects for audiovisual industries in the countries studied can be outlined. In cinema, a great effort will be required, both to strengthen production processes and in distribution and exhibition. Evidently, the cinematographic industries in Colombia, Peru and Venezuela are fragile and need a combination of private initiative and efficient participation by governments. Each country has a Council charged with setting and developing public film policy, although the results attained differ. Perhaps the model with the best future prospects is Colombia's, with a modern, consistent law, clear policy grounded in the Directorate of Cinematography of the Ministry of Culture, and key support from Proimágenes en Movimiento. All this is leading to actually support for cinema, growth in productions, appearance in national theaters and progressive access to the international market. Support is required for training, encouragement for young producers, directors and script-writers, fulfillment and monitoring of the investment that the government makes in cinema, and efforts to develop a sustainable national industry, among other tasks.

In the field of exhibition, creativity is required to elude the almost absolute hegemony of US films in these three countries' movie theaters. A policy constructing diversity must combine determinations regarding quotas with generation of cinematographic distribution experiences supporting the showing of movies from different parts of the world. It is also necessary to de-concentrate the supply, which is heavily concentrated in the capital cities of these three countries.

A central point regarding promotion of cinema is that sometimes it is so low in consumption surveys in all these three countries due to the cost of tickets compared to the low income of large population groups in countries where over half the inhabitants are poor. Location of quality movies and national films on television screens is a fundamental objective; most people in these three countries have access to television and films occupy a leading position in maps of television viewing. However, television channels, with only a few exceptions, tend to replicate the same scheme as predominates in theaters.

Production of documentaries and short features has a significant tradition in Colombia, Peru and Venezuela and regulations for promoting them. Access to digital technologies is enabling young creators to take part.

In television, these three countries may be able to renew over the coming years, by bringing in digital technology, and as Internet users increase. Concentration of television is likely to increase even more in private company ownership, as these companies become stronger and expand. However, viewers in these three countries face an increasingly broad, diversified supply, although there are still sectors of television with major growth potential, such as cable television and satellite television.

Private companies – independent channels and production companies – are making efforts that will surely become more intense in the coming years to consolidate their production capacity and place their products (especially telenovelas) on the international market. Colombia and Venezuela are being more proactive in this field. It will be important to explore not only markets, but approaches to genres such as melodrama, to exchanging actively the performers, directors, script writers, producers and, in some cases (not very often) to seek new, experimental ways to deal with the situations that this type of television production tends to involve.

Regional and local channels are central players in the television environment. Surrounded by economic difficulties and the industry's weaknesses, as well as by the predominance of national private channels, they have definite challenges, whether because they could interpret regional identities or because they could contribute to developing decentralized television industries.

Television by subscription in Colombia, Peru and Venezuela has not developed apace with similar arrangements elsewhere in Latin America, but can tend to grow as they diversify their supply or provide inter-media convergence services for users (e.g. broadband Internet access).

National production has an interesting future in these three countries, closely linked to strengthening production, seeking markets outside their domestic options, increasing quality and maintaining legal measures provided by growth. Free trade agreements and decisions within the WTO will be crucial. For the time being, consumption data show that, in these three countries, national productions are well accepted, and can beat US television offerings, in the case of Colombia.

Television Councils are a dimension that will contribute to television's future in these countries. In Colombia, the CNTV must become more autonomous, but above all in the coherence of its policies, since governments' attempts to amend them over the last few years have endangered it, as have the deficiencies of its own actions. There are many challenges and postponed tasks for the CNTV to face. It is to be hoped that the newly created Consultative Radio and Television Council of Peru will be set up properly, operate fully and adapt to the medium's needs and, above all, society's demands. Not having binding authority, its effectiveness must be gauged.

One important element in television within these three countries is consolidation of public television stations, still weak in identity and social outreach. Radio has played a key role in the Andean countries. With rugged terrain and large territories, radio has been one of the most-used media to circulate information or music, and to strengthen identities and social cohesion. Radio's technological transformations, such as digitization and reception over Internet, will help extend its coverage and internationalize its audiences. Community radio stations play a key role in these three countries.

Music faces several challenges for the future. First of all, to overcome the problem of piracy, which has practically finished off the phonographic industry. However, at the same time, Colombia, Venezuela and Peru have dynamic musical life grounded in the development of creativity, appearance of singers and musical groups whose productions are distributed internationally and the connection of music – e.g. folk music – with circuits of festivals, festivities and celebrations. Add to this all a very rich, diverse panorama of musical genres, some of them well accepted throughout the continent. In cultural measurements, music appears as one of the cultural expressions with which citizens of these three countries most identify. In a global industry, where the "majors" are so important, there begin to be very close linkages among musical creators, especially from Colombia and Venezuela, with the Hispanic musical market in the US.

4. THE DYNAMICS OF THE AUDIOVISUAL INDUSTRY IN PERU

4.1. Economic policy

Cinema

In effect since 1994 and with regulations since 1995, Peru's Cinematography Law outlines the main elements of the country's policy: to encourage creation and production of Peruvian cinematographic works. For this purpose, some mechanisms are proposed, especially prizes and co-production. This promotion of national cinema production is accompanied by support for new producers, national and international dissemination of Peruvian films and integration of Latin American film-making through contests, festivals and other such events.

There is no minimum share of national films to be shown in Peru's theaters, or any specific percentage of national films to be broadcast over cable or open-signal channels.

The legal framework bears in mind, moreover, preservation of the country's audiovisual heritage, promotion of cinematographic language in secondary school, promotion of co-productions "by entering into international agreements for cooperation, co-production and others", and the creation and maintenance of the national cinema registry.

Three aspects are particularly interesting: definition of national cinema, the process of awarding prizes, and the formation of the National Cine Council (CONACINE).

National cinematographic works in Peru are those produced by a Peruvian company, in which the director, script-writer, music composer or arranger are Peruvians, in which at least 80% of the workers, performers and technicians are Peruvian, and the language used is Spanish, Quechua, Aymara or other Peruvian languages. However, "The CONACINE Council may authorize, for historical, cultural, artistic or technical reasons, or reasons deriving from International Agreements and/or Contracts for cinematographic co-production, exceptions to the requirements established in subsections c, d, and e of Article 3 hereof" (Article 4, Law 26370 of 18 October 1994), which opens the door to more flexible conditions for partnerships with foreign producers.

There are three prizes, seeking to recognize the best full-length films, which can receive a financial grant (only one per company per year), as chosen by a panel of judges following a procedure set in the Law. One of the prizes is to recognize a “first effort” and thus to promote the work of new Peruvian producers. If the winning company does not carry through with its project, there are various penalties, including the impossibility of participating in the contest again. Short features are also recognized with a grant. These policies have been quite difficult to apply and keep sustainable.

The creation of CONACINE is also a meaningful element in Peruvian cinema law. This Council is responsible for enforcing the Law, officially representing Peruvian cinematography and awarding prizes. Its membership includes governmental representatives, but most represent movie-sectors stakeholders (actors, directors, technicians, producers, distributors, professors and theaters).

Television

Recent legal definitions regarding television will influence Peru’s TV panorama. In 2004, the new Radio and Television Law was enacted, after intense political and citizens’ debate, stressing the participation of the Citizens’ Ombudsman for Social Communication, an unprecedented initiative for participation and social mobilization showing that cultural industries are a good opportunity to build active citizenship, and that communicational and cultural issues are on the public agenda in present-day societies.

The Law underscores the government’s role in promoting broadcasting services along border zones, in rural areas, in society’s interests and with priority for educational broadcasting. The Ministry of Transport and Communications is responsible for administering, allocating, attributing and overseeing frequencies. Unlike, for instance, Colombia, the frequency allocation function is handled by this governmental agency and not an autonomous body. Allocations are made for no longer than ten years.

There is “undue concentration” of television when an individual or corporate body owns more than 30% of the available frequencies on a given frequency band and a given locality. Foreign investment is allowed up to a maximum of 40% of the stock in different media. Holders of licenses and authorizations must be Peruvian citizens.

The family schedule is expanded, now from 6 to 10 p.m. with specific measures for those programs containing violent or obscene scenes. A minimum national production quota is set – unlike cinema which has no such limit – of 30% from 5 a.m. to midnight. Holders of the service are also obliged to pay for the authorization or renewal, a service usage fee and the annual fees for using the radio spectrum.

Finally, the Consultative Radio and Television Council (CONCORT) is created, with governmental and civil society representatives, to oversee public bidding for broadcasting services, granting of prizes, promotion of research to improve the system, issuing non-binding opinions in administrative procedures involving penalties, proposing national and international agreements to develop broadcasting and participating in the National Frequency Allocation Plan. Although its decisions are not binding, especially in regard to such key issues as the granting of frequencies, this is a step in the right direction to involve society in managing such an important audiovisual medium. There is concern about the actual impact of the new law on changing some structural conditions of the current television system which, for example, is awash in a severe economic crisis and bankrupt.

Radio

Peruvian radio has been in existence for over 80 years. Stations are granted authorization to operate for ten years, renewable automatically for the same period, and holders must be Peruvian citizens. Foreign participation cannot exceed 40% of total stock in the company, and owners must also own companies or stock in broadcasting companies in their own countries. To operate this service, they must pay an authorization or renewal fee. Holders of educational broadcasting and border zone service licenses pay less (only 50% of the fee for commercial stations). A monopoly is when an individual or corporate body holds over 20% of the available frequencies on a given frequency band or in a given locality.

Music

Legislative Decree 822 of 23 April 1996 defines everything about author’s rights in Peru and consequently how the phonographic industry operates. Further, there is the National Institute to Defend Competition and Intellectual Property (INDECOPI), which is responsible for protecting intellectual property rights in all manifestations, the

Copyright Office and collective societies such as the Peruvian Association of Authors and Composers (APDAYC) which is responsible for collecting the corresponding rights on behalf of its members.

Settlements granted to Peruvian authors from 1998 to 1999 totaled a million US dollars. Those paid to foreign companies from 1991 to 1999 were sent mainly to the US (29%), Spain (16%), Argentina (13%) and Mexico (10%). These initial data indicate two trends in Peru's phonographic industry: the immense role of piracy and the composition of the musical landscape, at least in regard to foreign music.

The regulatory horizon, as one expression of Peru's cultural audiovisual policy, insists on national production, indicating a specific quota for television (although not cinema), proposing initiatives to promote audiovisual production and dissemination, setting percentages for foreign investment in television and specifying national participation in cinematographic works; it creates councils (more consultative than decision-making) which are still heavily centered on the State.

The status of audiovisual industries in Peru

Production by the audiovisual sector in Peru is differentiated, centering on private enterprises, with the presence of foreign companies and industrial development processes that are as yet incipient and, in almost every case, smaller than in Colombia and Venezuela. Whereas television has expanded its coverage through governmental plans and cinema is beginning to grow more strongly, the phonographic industry is clearly deteriorating due to the high rates of piracy. National television production can compete with foreign productions, but the opposite is true in cinema, as is the case in the other two countries studied. In music, there are very interesting phenomena regarding native music, such as the huayno rhythm and Lima variations, as well as promising combinations of folk music, popular shows and musical distribution circuits associated with folk festivals and celebrations. Development of national melodrama, cinema and video to address the key issues of cultural identity is doubtlessly a crucial area in view of the quantitative data showing how audiovisual production is waning.

Cinema: production and distribution

In 1898 the first scenes were filmed in the Main Square of Lima. In the 1930s, there was relative development of cinematography, which has lapsed since then, giving way to Hollywood's strong supremacy by the 1960s. As indicated in the study on "The economic impact of culture in Peru" (2005) conducted under the Economics and Culture Project of the Andrés Bello Agreement, from 1999 to 2003 the cumulative growth rate of cinematographic supply was 14.84%, and the rate of new movies opening grew at the average annual rate of 3.52%.

Data in table 2 shows that the number of films opening has grown, although there are also huge quantitative differences between Peruvian and foreign films shown in Peruvian theaters. From 155 films first shown in 1999 the number has risen to 178 in 2003. Seventy percent (70%) of movies viewed by Peruvians come from the US and only 4% from Spain. The rest of the market involves films from France, Italy, the UK and Japan, in minor proportions. In 1999, three Peruvian films were shown, i.e. 2% of total films shown, and in 2004 four were shown, i.e. 5%. National films produced during the late 1990s have averaged three a year.

Table 2 - Number of national and foreign films first shown in Peru (1999-2004)

Years	Total films opening	Foreign films	National films	Share of national films
1999	155	152	3	2%
2000	160	158	3	2%
2001	169	166	4	2%
2002	173	170	3	2%
2003	178	172	7	4%
2004	75	73	4	5%

Source: IDI-EPTH-USMP

These figures highlight the low percentage of Peruvian cinematographic production and therefore the incipient development of the national industry. The average cost of a Peruvian film, estimated by

CONACINE, is US$400,000. Obviously, some national films have cost much more. The number of movie-goers has grown, although this has had its ups and downs: in 1999 - 1,199,843, in 2002 - 813,559 and in 2003 back up to 1,964,912.

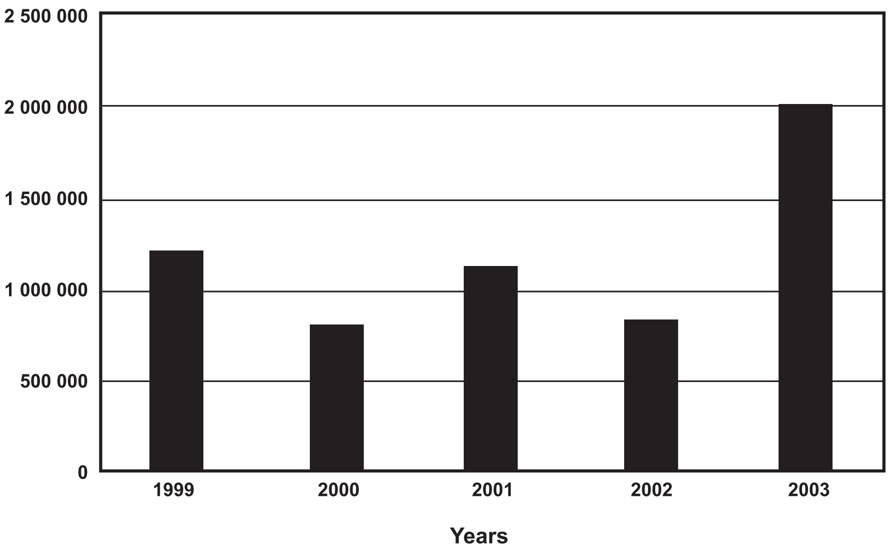
Estimates of box-office receipts for local films have varied: in 1999, 1,440,000 dollars and in 2003, 3,360,000 dollars. Low production of national films is accompanied by the cinema hegemony of the US among movies shown in Peru. The number of theater seats available has grown at an annual rate of 13.28% from 2001 to 2003; the size of the market for that period had an annual growth rate of 3.4%. The genres most offered were drama, comedy and action, (see table 3).

Table 3 - Breakdown of genres, movies first shown in Peru (1999-2003)

Genres / years	1999 (%)	2000 (%)	2001 (%)	2002 (%)	2003 (%)
Drama	26	33	27	35	33
Comedy	21	18	17	16	16
Action	11	11	17	19	16
Suspense / horror	16	11	14	16	13
Romance	8	3	11	3	6
Science fiction	6	5	7	5	3
Cartoons	3	9	5	6	5
Others	9	11	3	1	2

In the early 1980s, movie-goers averaged 16 million a year; in 1987, 10 million, and by the early 1990s, 4 million, dropping sharply. Between 1999 and 2003, this decrease stopped and bounced back, from 7,503,078 to 12,355,311 movie-goers in 2003, a 13.8% increase. This phenomenon is due, according to various analysts, to the opening of new theaters with multiple halls, and strategies to open new markets. Moreover, demand for movies in Peru may be covered (as in Colombia) by access to signals from parabolic antennas (particularly among the grassroots), movies programmed on open-signal television and video rental, both in small neighborhood shops and the more recent large multinational shops.

Figure 1 - Average movie-goers by years: Peruvian films



Source: IDI-EPTH-USMP

In 1997 each Peruvian went to the movies an average of 0.2 times a year, compared to 0.7 in Argentina, 0.6 in Brazil, 0.5 in Chile or 1.0 in Mexico. Lima concentrates over 80% of all Peru's movie theaters. In 1997 Peru had 121 screens, 105 of them in Lima; in 2003, there were 228 screens, of which 194 were located in Lima. Thus, there is alarmingly little cinema outside the capital, unlike the other countries of the region, in which movies are not so concentrated in the capital city. Moreover, movie house ownership is concentrated among three or four international companies.

Losses due to piracy are estimated at four million dollars, but it could be double that, according to the National Society of Industries The cinema sector generates 2000 direct jobs and 5000 indirect ones.

The study on “The economic impact of culture in Peru” (2005) estimates that, in the last seven years, 90 million dollars have been invested in this sector, which contributes 0.0041% of Peru’s GDP.

Television: private enterprise in the forefront

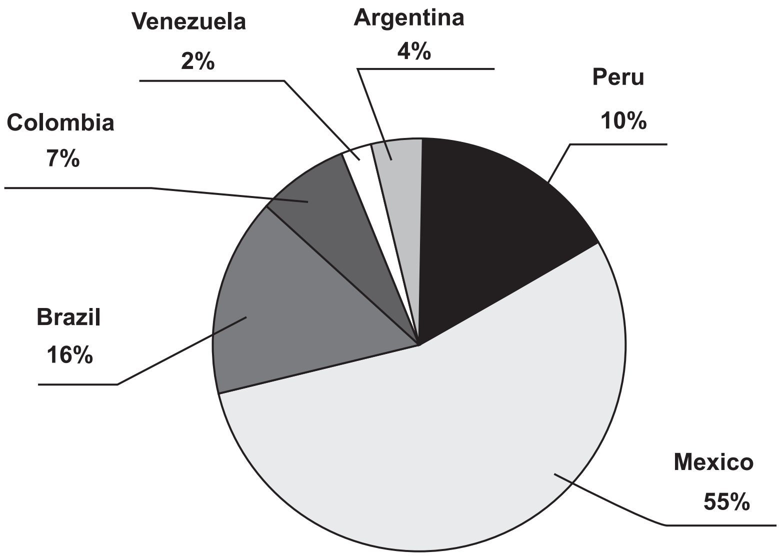
In 1958 television came to Peru. In that same year, the first private channel, Channel 4, appeared, belonging to the Peruvian Broadcasting Company, Inc. In 1971, existing channels were expropriated by the military government of Juan Velasco Alvarado and in 1980 they were returned to their former owners. On 23 June 2004 the new Radio and Television Law was enacted. There are currently 934 stations authorized for open-signal broadcasting (VHF or UHF) and nearly 73% of them are private.

These initial data show how fast private television appeared in Peru, by contrast, for example, with Colombia, where there was a single combined private and public system for almost four decades, shared by the State and private television programming companies who were allocated slots. Moreover, Peru’s private television system has developed notably, with a predominance of Peruvian capital. This situation has changed, if not structurally at least formally according to the new regulations, with the new law that facilitates foreign investment.

There are currently seven private channels with nationwide coverage and one public channel also covering the entire country. There are also 13 local private channels. Open-signal television broadcasts an average of 48,666 hours a year, mainly television formats such as films, newscasts and telenovela soap operas. This programming of movies is noteworthy, reinforcing the above hypothesis that open-signal television provides mass access to cinema. Peru produces its own telenovelas, undeniably the most important genre, in terms of creation and viewership in Latin America. Films are dominated by US products and although there are Peruvian telenovelas their international-market presence falls behind those of Mexico, Venezuela, Colombia or Brazil.

As figure 2 shows, most telenovelas broadcast over Peru’s television come from Mexico, followed by Mexico, then Peru itself, and then Colombia and Venezuela. These statistics show the hegemony of Mexico’s Televisa in the Latin American television melodrama market and the rising supply by Colombia, which has significantly overtaken Venezuela and Argentina. Peruvian production, although three times less than Mexico's, is significant, but by no means as important as their own national telenovelas are in Colombia and Venezuela. In 1990 Peru was one of the Latin American countries with the fewest television sets. However, watching television is Peru's primary cultural activity, especially for entertainment purposes, (see figure 3).

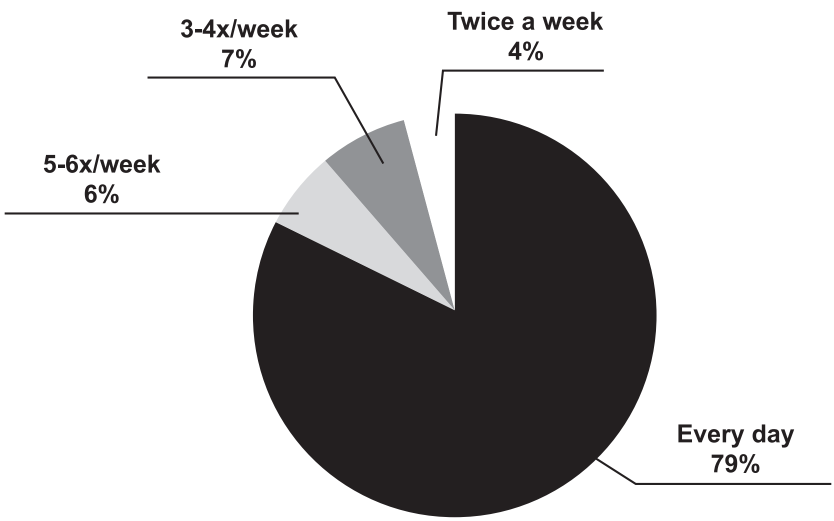
Figure 2 - Origin of soap operas broadcast in Peru, 2001



Source: IDI-EPTH-USMP

Some 26% in Peru have cable or subscription television, especially the wealthier classes. A phenomenon of recent years is significantly increased access to cable television in the middle class. As table 4 shows the highest socio-economic level is A, where as the lowest is E. According to the Private Agency to Supervise Private Investment in Telecommunications (OSIPTEL) 129 companies are registered to provide service, 117 of them are operating, and 3 dominate 85% of the market.

Figure 3 - Frequency of televisión watching in Peru



Source: Apoyo Opinion y Mercado 2001
IDI-EPTH-USMP

Table 4 - Companies providing cable TV service in Peru, 2001

Company	Total (%)	Socio-economic level			
		A (%)	B (%)	C (%)	D / E (%)
Cable magico	85	90	91	82	75
Cable express	8	0	3	12	15
Telecable	4	7	6	4	0
Not answered	3	3	0	2	10
Total	**100**	**100**	**100**	**100**	**100**

Source: Apoyo opinion y mercado

Telefónica has a decisive presence in the cable TV market, as shown in Table 5. Most content on subscription channels comes from abroad, specifically from US companies.

Interestingly, Peruvian channels figure prominently in Colombian community television stations, so much so that informal cable system users in low-income neighborhoods in Colombian cities refer to their parabolic antennas as “Perubolic”. This shows the interesting phenomenon of Colombian grassroots interest in and reception of Peruvian television. Similarly, the program “Laura en América” a very successful and also highly criticized talk show, directed and presented by a Peruvian, has been relatively successful throughout the region and with Hispanics in the United States.

National Television of Peru (TNP) is responsible for producing and broadcasting programs to encourage culture and the values of Peruvian society. Another interesting effort is the project to support community communication (PACE) which installs parabolic satellite antennas in rural communities to grant them television access. This program benefits communities in remote locations in the jungle and highlands. During 2003, 371 systems were installed, and there were 434,040 subscribers.

Table 5 - Subscribers of Telefónica Multimedia in Peru

Years	Suscribers
1993	725
1994	5.859
1995	19.060
1996	101.387
1997	252.225
1998	305.200
1999	327.344
2000	349.447
2001	341.720
2002	311.590
2003	339.739

Source: OSIPTEL

Piracy is also a problem with Peruvian television, especially in cable TV. Television's contribution to the GDP, according to the study on "The economic impact of culture on Peru" for 2001 was 0.13%, significantly higher than cinema and music. Investment in broadcast television has fluctuated. For example, in 1999 it rose to 96 million dollars, then dropped to 63 million in 2001 and recovered in 2003 to 74 million dollars. These ups and downs are due to the country's economic situation and periods of recession that have immediately affected advertising investment. In cable television, advertising investments for 2003 were estimated at 11 million dollars.

Radio: mostly FM and music

Radio appeared in Peru in 1925 with the inauguration of OAX, a station belonging to the Peruvian-British owned Peruvian Broadcasting Company consortium, which went bankrupt the next year. The government took charge and it became Radio Nacional de Peru in 1937, with much more powerful technical equipment. In the 1930s, other radio stations appeared, such as Radio Miraflores, Radio Goicochea, Radio Internacional, and others. As of the 1990s, there was a notable increase in radio, especially frequency modulation (FM) which is heard all over the country and not just in Lima. Unlike television, Peruvian radio is much more geographically widespread. By 2003, the Ministry of Transport and Communications had granted authorizations to 2118 radio stations. In that year, there were 1503 authorized FM radio stations, versus 114 short wave and 501 AM stations. Most FM stations are located in Lima, Junín, Cuzco and Ancash, all departments with over one hundred stations, specializing in broadcasting a wide range of music. Radio groups have been private enterprise's main strategy for market positioning: the RPP Group and RPP news stations cover 97% of Peru's territory, Studio 92 reaches 16 cities in the interior, and Corazón reaches four cities. Peruvian radio also includes local and community stations. Radio plays an essential role in urban areas and in rural communities and areas, becoming a means of promoting formal and informal education, encouraging and strengthening community identity and customs by preserving local languages and cultures[2]. According to Rosa María Alfaro, "radio has facilitated an intercultural dialogue among different social classes, and has got the grassroots into the mass media, through different, heterogeneous formats, bringing tradition together with modernity"[3].

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2. *Economic Impact of Culture on Peru*. Convenio Andrés Bello. 2005. p. 94
3. Rosa María Alfaro, "*La radio, un medio participativo, sin conversación and debate*", Lima. Calandria.

Radio Nacional reaches all of Peru through 29 stations, both FM and AM. The Ministry of Transport and Communications reported in 2004 that Peru had 1089 informal radio stations. The previous year, 806 had been detected, so this type of stations has increased significantly. For this reason, since 1st April 2004 the government has been pursuing its "Zero informality" plan, seeking to eradicate stations operating without authorization. A study in 2002 by Apoyo, Opinión y Mercado in metropolitan Lima found that 59% of respondents listen to the radio every day, with a sizable preference for FM. The preferred musical genre is ballads, followed by salsa and rock. Radio's contribution to the GDP in 2001 has been estimated at 0.050% and has waned since 1999 as shown in table 6.

Table 6 - Estimated radio contribution to Peru's overall GDP (constant dollars and percentage)

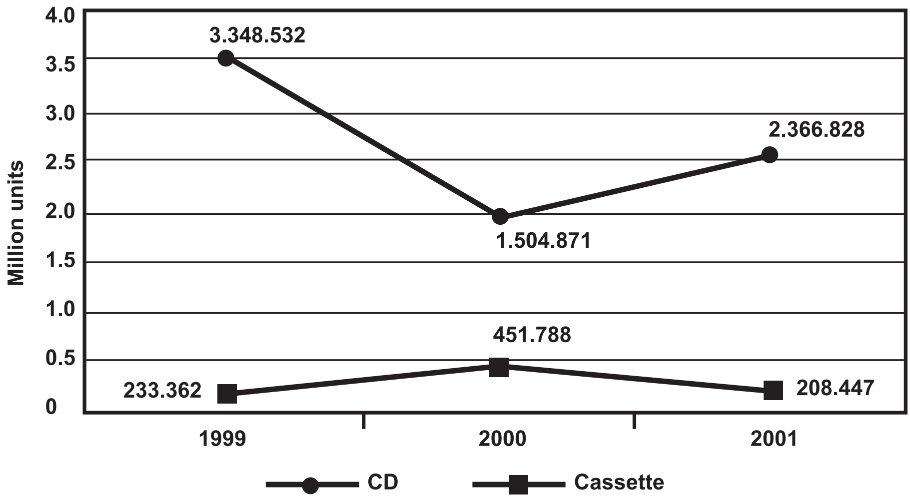
Years	P.B.I. Radial Dolores	Participacion en el P.B.I. global (%)
1999	28.000.000	0.063
2000	25.000.000	0.053
2001	24.000.000	0.050

Source: CPI *Calculations: IDIEPTH.USMP*

Phonographic Industry: the disasters of piracy

The star of the Peruvian phonographic industry is piracy. The rates are amazing and dramatically high. According to an analyst, piracy has eliminated, in just one year, 300 music points of sale, driven away ten record publishing companies, and cheated musicians of 38 million dollars. 14 million dollars in sales tax has been evaded, nearly 30 million optical disks have been imported, and 280 million dollars have circulated illegally. In 2000 sales of CDs dropped by 55.06%. In 2001 they increased by 57%. Anti-piracy measures focus on police confiscation, campaigns against piracy in the media and amendments to stiffen penalties against illegal merchants and reduce levels of impunity.

Figure 4 - Compact discs and cassettes sold on Peru's formal market, 1999-2001



Source: Gerencia de estudos economicos INDECOPI IDIEPTH.USMP

4.2. Trade and exchange policies

As seen in the previous section, there are different realities in terms of trade balance. In cinema there is a marked imbalance in cinematographic production capacity and in distribution of the movies that Peruvians see every day in their theaters. There is a heavy imbalance in terms of companies distributing movies, which are international, and in the nationality of the films available in Peru. In this area there are no differences, but rather clear convergence with the other two countries in the Andean region analyzed in this study. In Peru, art or cinema club theaters have decreased and there are few opportunities to see any other kind of movies except for festivals such as "El Cine" in Lima, which shows movies from other countries that usually fail to reach commercial screens. Market makeup features no significant cultural diversity in Peruvian cinema. Of course, exports of Peruvian films are quite limited, because the country produces so little.

In the case of television there is a higher percentage of national production on broadcast channels, with a strong presence of television productions from Latin America, the US and a few from Europe. The import / export market has expanded toward the Latin American audiovisual industry with emphasis on Mexico and specifically the Televisa media group. Independent producers are starting to appear in small numbers and are getting their products on the international market. This especially involves telenovelas, the most important fictional format in Latin American audiovisual industry exports and Peru is no exception, although there are also mini-series. As other studies have observed, for some years there has been a trend to mixing nationalities and origins of performers, directors, technicians and even producers of Latin American melodrama. One of the telenovelas with the greatest impact on development of television melodrama has been precisely a classic Peruvian production: “Simplemente María”, which was a continent-wide success. In these last few years, Peruvian performers have been featured in the region’s telenovelas, among other reasons because of the economic interests of producers in the region (e.g. Valores Bavaria, owner of the Colombian Caracol network, on América Televisión).

In the case of television by subscription – as in the other countries studied – there is a high percentage of productions by US cable companies and channels. Levels of foreign investment in the Peruvian audiovisual industry are modest, among other reasons because of the restrictions in legal regulations, particularly for television. This investment may increase with new legal provisions allowing up to 40% foreign investment. Ibermedia has played a major role in co-productions. In 2001, they supported a co-production, and in 2002 they supported two, and a film in 2003. There still remains much to be done, not only to develop Peru’s own cinematographic industry, but above all in terms of actual possibilities for strengthening cooperation agreements, for which the Cinema Law is keeping the doors open.

In the case of music, the market is totally fractured by piracy, which drains away any possibility of developing a national industry, and also inhibits and drives away foreign investment. Estimated income has dropped notably, as shown in table 7.

Table 7 - Estimated income of Peru's phonographic industry

Period	Cassettes (US$ 6,5)	CDs (US$ 16)
1999	1.516.853.00	53.576.512.00
2000	2.936.622.00	24.077.936.00
2001	1.322.405.50	37.869.248.00

Source: DIEPTH.USMP

The record industry's contribution to the GDP is estimated at 0.14%, which does not feed the legal economy, but illegal operators who have taken over these markets. Two transnationals (Warner Music and Sony Music) have given up business in Peru due to piracy, leaving only Universal and a local company, IEMPSA. "Phonographic piracy is everywhere, with peddlers hawking pirated disks on the main thoroughfares, in fixed establishments such as markets, galleries and stores in general, and even in highly concentrated marketing such as in El Hueco, Polvos Azules, and Mesa Redonda, in Lima; the same applies in provinces. Many persons engaged in marketing pirated products are minors, and these underage employees are in great demand since they cannot be penalized under criminal or administrative law"[4].

If television is experiencing copyright problems, the situation in records is pathetic. The use of parabolic or informal television broadcast systems also helps evade payment of royalties to authors. In cinema, the situation is different, and positive.

However, where Peru's possibilities for audiovisual industry trade are seriously influenced is in decisions about free market processes. Since 2004, Peru – along with Colombia and Ecuador – has been negotiating a free trade agreement with the United States with implications in certain key aspects of culture and audiovisual manifestations. The Peruvian Government's cultural position has insisted on incorporating provisions recognizing, formalizing and protecting the rights of indigenous peoples to their traditional knowledge, genetic resources, and differential treatment for typically cultural activities, industries and services, such as audiovisual services, publishing, musical production and theater. In negotiations, Peru has proposed, as non-conforming measures, national public policies and legislation

4. *The Economic Impact of Culture on Peru*. Convenio Andres Bello. 2005, p. 124-125.

geared toward promoting cultural industries, as outlined in this chapter. According to the Ministry of Foreign Trade and Tourism of Peru, this will facilitate better defense for intellectual property rights, against piracy and "production of and trade in audiovisual products". The FTA with the US will also favor lower customs duties on equipment and inputs for audiovisual activities[5].

5. THE DYNAMICS OF THE AUDIOVISUAL INDUSTRY IN VENEZUELA

Unlike Peru, Venezuela has developed a stronger audiovisual industry whether because it has well-recognized business groups in the field of communications, such as the Cisneros family, who own Venevisión and other communications investments abroad, because of their musical panorama or the tradition of the Venezuelan telenovela, which has found a place on international markets and competed with the Mexican and Brazilian models. Unlike Colombia and of course Peru, Venezuela soon saw the importance of international marketing for their television products, which began to be viewed in Latin American households. However, Venezuela also adopted an industrial television production system and made early alliances to place their products on the Latin market of the US. In Spain, and in many other countries, Venezuelan telenovelas have been quite successful.

5.1. Economic policy

Cinema

Venezuela's National Cinematography Law aims to develop, encourage, disseminate and protect national film-making. In September 2005 the National Assembly enacted a partial amendment to this Law, requiring all theaters to show Venezuelan short features and establishing a minimum variable annual screening quota for opening new movies. Cinema distributors have the obligation of distributing 20% of national movies and "in the event of insufficient national products, this may be fulfilled with foreign movies of an independent or alternative nature, with high artistic and cultural quality, certified by the National Autonomous Center of Cinematography".

The cinema law creates the Fund to Promote and Finance Cinema (FONPROCINE), reporting to and administered by the CNAC Center and seeking to promote national movies and distribute national,

5. Ministry of Foreign Trade and Tourism. *FTA Peru-US: key notions.* February 2005, p. 43.

and Latin American movies, as well as “any other quality work of universal cinematography contributing to development of the principle of cultural diversity”. Among others, theaters, broadcast and subscriber television and movie distributors must contribute to this Fund.

The Law created the National Autonomous Cinematography Center (CNAC), to design and implement the country’s cinema policy, sign agreements for production, distribution, showing or dissemination within the country and abroad for national movies, encourage development of industrial infrastructure for Venezuelan cinema, encourage diversity of foreign movies, promote quality, help create regional autonomous funds for national movie production and distribution, and assist theaters.

The cinematography law grants this Center other functions, such as importing movies of artistic and cultural quality, encouraging movie-goers to attend theaters and promoting associations to defend viewers’ rights. The Center will also “establish, pursuant to Article 34 of the Law, the figure for continuity in theaters for national movies”.

Like the other cinema laws analyzed, this Law defines “national works”. The director must be Venezuelan or a foreigner with a resident visa in Venezuela. At least 51% of production costs must be funded by Venezuelan investors. 50% of required filming must be done in the country; half the main and secondary protagonists must be Venezuelan actors and actresses or foreigners residing in the country.

However, the purposes of this norm seem not to have been fully achieved. National cinema continues to struggle between individualistic efforts to make a film, or the possibilities of the co-production system with other countries. This calls for an amendment to the current Cinematography Law, enacted in 1993, in order to give the creators and producers of movies the financial means to develop, by creating para-fiscal contributions for those whose cultural and economic lives involve the Cinematographic and Audiovisual Industry[6].

As Venezuelan Abdel Güerere (1999) explains, the 1993 Cinematography Law determines a number of fiscal incentives, such as exemptions from paying the ISLR tax on investment in movie production, for companies distributing national movies and theaters as well[7].

6. Guzmán, Medina and Quintero. *The economic dynamics of culture in Venezuela and its contribution to the GDP*. Convenio Andres Bello. 2005. p. 116.
7. Abdel Güerere. *The other face of cultural financing*. In : Comunicación, Nº 105, Centro Gumilla, Caracas, First quarter of 1999, p. 29

Television and video

Policies in this field have been strongly determined by a law enacted over 60 years ago: the Telecommunications Law of 27 July 1940. A series of subsequent decrees have covered specific issues of ownership or control of television concessions. For example, Decree 2497 of 1992 stipulates that concessions may be granted only to take part in television services for individuals or corporate bodies of Venezuelan nationality, as well as norms to attempt to forestall concentration of ownership.

The National Assembly passed the Law on Social Responsibility in Radio and Television (Law 38081 of 12 July 2004) which has generated hot polemics, in Venezuelan communications circles and international organizations concerned with the freedom of speech issues that seem related to the new norms. The Law has major provisions regarding national production quotas, obligations to broadcast educational and cultural, informative or opinion programs especially geared toward children and youth, mandatory percentages of national, Latin American and Caribbean music broadcasts, and advertising (at least 80% must be locally produced) as well as norms regarding violence and sexual contents. That Law also allows foreign capital investment in both radio and television.

The status of audiovisual industries in Venezuela

Cinema: individual efforts

Octavio Getino states that, since movies got soundtracks, Venezuela has produced 200 titles, amounting to 2% of the total Latin American films made during that period. This is twice Peru's production, but significantly lower than Mexico's 4500, Brazil's 2500 and Argentina's 1800 – the continent's three countries with the greatest cinematographic tradition.

In 1999 and 2000, 67 Venezuelan movies were produced, 28 of them co-productions. As tables 8 and 9 show, from 1990 to 2000 Venezuela averaged six films a year, with some exceptional years, such as 1995 and 1996 when 12 and 9 were made, respectively.

Table 8 - Long and short features produced in Venezuela, 1990-2000

Period	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Long Features	6	6	5	6	6	12	9	5	6	4	2
Domestic	4	1	2	4	4	8	7	3	6	3	1
Coproduced	2	5	3	2	2	4	2	2	0	1	1
Short features	25	17	17	17	30	28	26	18	33	12	25

Sources: Carlos E. Guzman Cardenas, «Industria del Cine en Venezuela 1996-1999», en en revista Communicacion. Estudios Venezdanos de Communicacion, n°112, Caracas, Venezuela, Centro Gulilla, 2000d. Centro National Autonomo de Cinematografia (CNAC). Division de Estadisticas Cinematofraficas. Anuarios Estadisticos 1991/1994 ; 1995/1997 ; 1998/2000.

Table 9 - Short and long feature films opening in Venezuela,1990-2003

Period	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
N° of long features	3	4	2	4	2	4	2	11	4	4	7	5/1	4/2	1
N° of short features	15	6	24	7	15	31	21	22	20	10	17	16	..	..

Sources: Carlos E. Guzman Cardenas, «Industria del Cine en Venezuela 1996-1999», en en revista Communicacion. Estudios Venezdanos de Communicacion, n°112, Caracas, Venezuela, Centro Gulilla, 2000d. Centro National Autonomo de Cinematografia (CNAC). Division de Estadisticas Cinematofraficas.

The data systematized by Carlos E Guzmán Cárdenas (table 10) show that 16 Venezuelan films opened in 1984 versus 336 imported ones, whereas 21 Venezuelan films were shown in 2000 versus 136 imported titles. Data on national films shown in this time series reveal a slight increase, with clear ups and downs, where the national percentage is significantly higher (e.g. in 1995 and 1996, when the most national movies were produced).

Table 10 - Venezuelan films and imported titles shown in Venezuela, 1984-2000, with percentage of Venezuelan films

Years	Number			Exhibition Venezuelan films (%)
	Venezuelan films exhibited	Imported films exhibited	Total	
1984	16	336	352	4,55
1985	18	361	279	4,75
1986	16	276	292	5,48
1987	14	350	364	3,85
1988	11	297	308	3,57
1989	55	274	329	16,72
1990	42	277	319	13,17
1991	68	248	316	21,52
1992	39	315	354	11,02
1993	33	178	211	15,64
1994	24	138	162	14,81
1995	50	111	161	31,06
1996	49	107	156	31,41
1997	35	137	172	20,35
1998	24	123 / P	147	16,33
1999	33	152 / P	185	17,84
2000	21	138 / P	159	13,21

Sources: Carlos E. Guzman Cardenas, «Industria del Cine en Venezuela 1996-1999», en revista Communicacion. Estudios Venezdanos de Communicacion, n°112, Caracas, Venezuela, Centro Gulilla, 2000d. Abigail Martinez, «Una vision estadistica del cine en Venezuela. 1980-1990», en Objeto Visual, n°1, Cuadernos de investigacion de la Cinemateca Nacional, Caracas, Venezuela, enero-abril, 1993. Centro National Autonomo de Cinematografia (CNAC). Division de Estadisticas Cinematograficas. Anuarios Estadisticos 1991/1994 ; 1995/1997 ; 1998/2000.
Note: /P: Preliminary figures

According to CNAC data, the national films with the best box-office success since 1976 have been “Manuela Sáenz” by Diego Rízquez (2000), “Borrón and cuenta nueva” by Henrique Lazo (2002) “Salserín” by Luis Alberto Lamata (1997) and “Muchacho solitario” by César Bolívar (1998), all films from the nineties. “Secuestro express” has been the most recent hit. From 1995 to 1998, Venezuelan movies have participated in 189 international festivals, winning 60 prizes and honorable mentions.

The Guzmán, Medina and Quintero study (2005) highlights three central aspects of Venezuelan cinema: First, people now watch more movies at home, changing their consumption habits. This affirmation has also been shown by Tulio Hernández' research into Venezuelan cultural consumption. Theater-going is low, reflecting among other factors the high cost of tickets.

So, there are significant similarities among the three countries studied, with an imbalance between national production and foreign supply, especially from the US, and movie viewing habits shifting from public theaters to home viewing and simply television (broadcast and by subscription, DTH) and renting videos.

The second is a radical change in investment and financing strategy for national cinema production, marketing and showing. And the third is the trend toward transnationalization of movie supply and the role of the State in terms of taking part in producing, financing and defending cinematographic works.

From 1973 to 2000 Venezuela made 15 co-productions with Spain, 8 with France, 5 with Mexico, 5 with Colombia, 3 with both Mexico and Colombia, 3 with Germany, 5 with Italy and 1 with Cuba, totaling 63 co-productions. From 1984 to 2002 there has been a huge disproportion, with imported films swamping national movies, following the constant already found in Colombia and also present in Peruvian cinematography.

The number of movie theaters has varied over these last few years. In 2001 there were 311, in 2002, 326 and in 2004, 349. As in Peru, most theaters in Venezuela and most available seats are in the capital. According to CNAC statistics, there were 70 theaters in metropolitan Caracas in 1997, and 108 in 2003, followed in number by Carabobo, Miranda, Zulia and the state of Aragua. Carabobo, Venezuela's second-highest number of movie theaters, has only 41, i.e. less than half as many as in metropolitan Caracas. The largest distribution chain is Cines Unidos, which in CNAC statistics for 2003 had 139 theaters and 27,399 seats available. There are also four foreign distributors: Disney-UIT, Columbia Pictures, Warner Brothers and Fox, with Disney leading the pack.

Table 11 - Total gross box-office sales, nationwide, in Venezuela 1984-2003 - Bolivars and dollars

Years	Recaudacion bruta (taquilla) /1 en Bs	Recaudacion bruta (taquilla) en US$
1984	394.453.712	
1985	274.000.857	17.950.644
1986	321.885.392	16.199.542
1987	454.054.830	16.286.041
1988	547.516.746	16.275.765
1989	678.747.329	17.421.646
1990	779.909.266	16.534.015
1991	1.031.787.761	18.123.797
1992	1.375.968.832	20.113.563
1993	1.928.461.445	21.157.010
1994	2.287.680.470	15.364.903
1995	3.344.305.145	18.910.405
1996	6.189.832.430	14.831.630
1997	10.928.075.640	22.366.556
1998	18.779.384.600	34.297.114
1999	23.995.368.150	39.615.929
2000	28.773.530.300	42.318.371
2001	39.457.883.800	54.524.692
2002	39.234.875.150	33.795.491
2003 / P	25.700.181.086	15.976.440

Sources: Centro National Autonomo de Cinematografia (CNAC). Division de Estadisticas Cinematofraficas 2004. Anuarios Estadisticos 1991/1994 ; 1995/1997 ; 1998/2000. Banco Central de Venezuela (BCV). 2004.
Note: average exchange rates, established by the Central Bank of Venezuela
/P: Preliminary figures, 3rd quarter 2003. /1. Only available information included.

Over two decades, theaters have decreased by 72% from 700 to 213 by mid-1996, "as a result of divestiture due to governmental regulations on ticket prices and currency exchange control governing the country"[8].

Venezuelan cinema faces several problems: the hegemony of foreign (US) films, concentration of distribution circuits, domestic market constraints and international marketing procedures, financing process blockages, low national movie production, non-observance of regulatory measures seeking to support cinema (e.g. failure to abide

8. Guzmán, Medina and Quintero. *The Dynamics of Culture in Venezuela and its contribution to the GDP*. Convenio Andres Bello. 2004, p. 128

by Decree 1612 of 4 September 1984 on “Movie marketing norms” (forcing the private sector to contribute 6.66% of movie tickets to the CNAC budget) and ambiguities and insecurity in legal regulations for the cinematographic industry.

Television and video: marketing telenovelas

On 22 November 1952, the first television station in Venezuela went on the air, State-owned YVKA-TV (channel 5); six months later, Televisa YVLV (channel 4) came out, private and commercial, with greater coverage. In 1961 this channel gave way to Venevisión (channel 4) also backed by the US network, ABC (42.95% of the capital stock) and Pepsi Cola International. This channel came to be owned and operated fundamentally by the Cisneros family. On 15 November 1953, Radio Caracas Television (channel 7) was created by the Phelps Group, with 20% ownership by NBC. These two business experiences formed the two predominant groups in Venezuelan commercial television. In 1956 and 1957 the first two private regional channels in Venezuela appeared: Televisa del Zulia S.A and Ondas del Lago Television, both in Maracaibo. During the 1980s, regional channels expanded and in 1987 the first cable television concession was granted to channel 12, Omnivisión.

In the field of public television, there are two public channels, Venezolana de Televisión (VTV channel 8) and Televisora Nacional de Venezuela (TVN, channel 5); the latter’s concession was granted to the Archbishop of Venezuela in 1998 when Valores Educativos Television (Vale TV) was created, with support from the association of the country’s three largest private channels. Television coverage has grown gradually, from 20% in 1963, to 43% in 1970, 68% in 1978 and 98% in 2000. In 1963, 30% of the public had television, in 1970 47 %, in 1991 89% and in 2000 98%[9]. In 1993 seven channels began to operate in UHF, all regional channels.

In 2005 Telesur began operating, as a Venezuelan governmental initiative, in collaboration with the governments of Cuba, Uruguay and Argentina, who seek to support integration and provide an option to understand Latin American realities differently than they are portrayed on national and international commercial networks. From other vantage points, its governmental origin and ideological interests have been criticized[10].

9. Marcelino Bisbal in Guillermo Orozco (compiler). *Historias de Television en America Latina*. 2002. Gedisa Barcelona. p. 251
10. Boris Muñoz, *Left of CNN*, Revista Gatopardo, Bogota, Nº 59, July 2005, p. 104-116

Table 12 - Number of broadcast and/or repeater television stations in Venezuela by geographic region

Region	1999	2000	2001	2002 /1	2003 /1
Andida	27	54	54	56	58
Capital	26	61	61	65	70
Central	13	43	43	44	44
Centro-Occidente	23	61	61	62	63
Guayana	24	42	42	42	43
Insular	5	10	10	10	10
Los Llanos	6	21	21	22	22
Nor-Oriental	24	52	52	52	54
Zuliana	12	24	24	24	24
Total	**160**	**368**	**368**	**377**	**388**

Source: Conatel. 1999-2003
Note: /1 Authorizations granted in each year.
Processed by: Carlos Enrique Guzman Cardenas and Yolanda Quintero Aguilar.

Venezuelan television has evolved in several ways differently from Colombian and Peruvian TV. The quick turn to private, commercial management (Capriles, 1991; Bisbal, 2002) and early appearance of networks concentrating their influence involved commercial television partners from the US from the outset. In 1974, during the first government of Rafael Caldera, foreign capital was ordered out and the various media were turned over to local capital, the so-called “Venezuelization of foreign capital”. The ownership system was called “non-authentic combined public and private”, with “an official television sector with very weak penetration and infrastructure and a very strong private commercial sector with all the capital, presence and communicational technology”[11]. Public networks were also obviously weak, private regional channels were important, local telenovela production was strongly consolidated and then faded just as markedly, multi-media groups such as the Cisneros Organization integrated, with presence on international media scenarios, and a surprising shift of advertising toward television (63% versus 20% for the press and 9% for radio, Pasquali, 1990, Bisbal, 2002). According to Venezuelan data, the two largest economic groups in the field of television directly and indirectly generate over 9000 jobs.

In 1998 broadcast television made 536 million dollars; the industry has been hard-hit by economic problems, although subscription television has grown especially fast in Venezuela. According to

11. Marcelino Bisbal in Guillermo Orozco (compiler). *Historias de Television en America Latina*. 2002. Gedisa Barcelona.

CONATEL figures, cable TV increased by 25% in 2001 with nearly a million subscribers. “So far, companies offering cable television have encountered enough unmet demand to divide up urban zones with the greatest population density, without having to compete for the same users. Meanwhile, satellite and microwave services are an option available to all, although mainly for less dense areas and even for those where broadcast television cannot be received”[12].

Cable television has become the third-place preference of audiences in cities where cable is available, with the exception of Mérida, where cable is viewers’ first choice. The number of viewers reached by cable has grown during 2000, from 36% in January and ending up with 47% in December, very much like the behavior of broadcast television, with about 60%. The audience watches 18% of the time (more weekends with cable, whereas broadcast TV viewers increased their Monday through Friday watching time compared to weekends).

Established regional channels maintain their share, whereas thematic UHF channels, basically broadcast from Caracas, have expanded their coverage through cable systems, opening regional signals, and agreements with channels in the interior. The two pioneer national channels seem to appeal to the same population segments, oriented toward social classes D and E, slightly more female than male. In age groups, RCTV was strong with adults over 25, whereas VV has affinity with people over 35 and the 8-17 group.

An analysis of regional television channels’ economic behavior, on the basis of available data, shows – according to Gustavo Hernández - that “the regional television industry is a profitable business”.

The two major communicational groups in Venezuela show several differences in ownership: whereas the Cisneros Organization has strongly concentrated in the telecommunications sector, the Phelps Group maintains diversification. The Cisneros Organization has focused on television (e.g. Venevisión, Telecentro, Univisión, Cablevisión and others), on satellite TV (Direct TV), computing, video (Blockbuster) and to a lesser degree soft drinks (Coca Cola). GPH participates in musical and show production companies, foods and beverages, marketing and three mass media (Radio Caracas Television and Radio Caracas Radio). Rodven, a record company belonging to the Cisneros Organization, has become part of transnational Polygran (Cañizales, 1997).

12. Guzmán, Medina and Quintero. *The Dynamics of Culture in Venezuela and its contribution to the GDP*. Convenio Andres Bello. 2004.

Table 13 - Number of radio stations by federal entities in Venezuela, 1998-2003

Region	1986	1987	1988	1989	1990	1991	1992	1993
Amazonas	1	1	2	2	2	3	3	1
Anzoategui	12	12	12	13	14	24	24	20
Apure	2	2	3	3	3	5	5	6
Aragua	8	8	8	8	8	9	10	10
Barinas	4	4	4	4	4	7	7	8
Bolivar	9	10	13	13	13	16	17	18
Carabobo	10	10	10	11	11	20	20	20
Cojedes	1	1	1	1	1	1	1	1
Delta Amacuro	1	1	1	1	1	1	1	1
Distrito Federal	22	22	25	23	23	44	46	45
Falcon	5	5	5	6	6	7	7	11
Guarico	7	7	7	7	8	8	10	10
Lara	12	12	12	13	13	19	20	22
Merida	7	7	7	7	7	13	13	21
Miranda	6	6	6	6	6	8	9	10
Monagas	5	5	5	5	5	7	8	9
Nueva Esparta	3	3	3	3	3	7	7	7
Portuguesa	5	5	5	5	5	7	7	8
Sucre	7	6	6	6	6	10	10	10
Tachira	11	11	11	11	11	14	15	16
Trujillo	7	7	7	7	7	8	9	9
Vargas	-	-	-	-	-	-	-	-
Yaracury	4	4	4	4	4	4	5	5
Zulia	23	22	22	23	24	34	36	39
Total	**172**	**171**	**179**	**182**	**185**	**276**	**290**	**307**

Sources: Instituo National de Estadistica (INE)
Note: /1 Including 21 FM stations authorized that year.
/2 Including 24 FM stations and 8 community stations approved that year.
/3 Including 14 FM stations and 42 community stations approved that year.
Processed by: Carlos Enrique Guzman Cardenas and Yolanda Quintero Aguilar.

1994	1995	1996	1997	1998	1999	2000	2001/1	2002/2	2003/3
4	3	3	3	3	3	9	13	13	13
32	24	28	28	28	30	45	46	46	49
10	5	5	5	5	6	12	12	12	13
13	10	11	13	13	13	22	22	23	25
13	7	9	9	10	10	19	22	24	24
37	17	27	29	29	30	54	55	57	60
33	20	27	27	28	27	39	39	40	41
4	1	4	4	4	5	10	10	11	11
3	1	1	1	2	2	5	5	5	5
50	45	44	44	46	39	42	42	43	46
24	7	14	14	14	14	34	35	38	41
15	10	10	10	10	10	20	22	23	23
32	23	27	28	29	32	38	38	39	46
21	19	16	17	17	18	30	31	35	37
22	9	13	13	13	18	25	25	29	37
12	8	9	9	9	10	25	27	28	29
11	7	10	10	10	10	20	21	23	23
15	7	11	11	11	12	28	28	30	30
17	10	11	11	12	14	21	22	22	22
31	15	20	20	21	23	37	41	42	47
15	9	12	12	12	13	20	20	20	27
-	-	-	-	-	9	14	14	16	17
9	5	8	8	8	9	14	14	15	15
51	36	40	41	41	41	66	66	67	78
474	**298**	**360**	**367**	**375**	**398**	**649**	**670**	**701**	**756**

Radio: decentralization and a vehicle for music

Radio began in Venezuela in 1926 through A.Y.R.E and grew strongly in the 1930s, as such stations appeared as Radio Caracas (initially Broadcasting Caracas), Radiodifusora Venezuela, La Voz del Táchira, La Voz de Carabobo, Ondas del Lago, Radio Barquisimeto, and many others. In the 1970s, FM radios appeared, with the first commercial concessions granted in the 1980s to La Mega 107, KYS FM 105.5 and Radiorama 103. As shown in table 13, radio growth since 1986 has been truly dazzling, and community radio stations have also increased. Music, news and opinion shows are the most popular with Venezuelan listeners (Tulio Hernández, 2003).

In 2003, the states with the most radio stations were Zulia (78), Bolívar (60), Anzoátegui (49), Táchira (47) and the Federal District (46); data show strong decentralization of Venezuelan radio. Between 1999 and 2003, few AM radio stations have been added; there were 209 in 2003, with most in Zulia (26) and the Federal District (20). In FM the situation is quite different. Since 1999, FM radios have increased greatly. There was a 100% increase just from 1999 to 2000, from 202 to 440 FM stations. In 2003 there were 497 FM stations, mostly in Zulia (44), Bolívar (42) and Anzoátegui (31).

Table 14 - Lost business estimated due to piracy, by cultural product types in Venezuela, 1996-2002

Industry	1996		1997		1998	
	Losses in millions of US$	%	Losses in millions of US$	%	Losses in millions of US$	%
Cinema	40.0	85	40.0	70	35.0	65
Sound recording/musical compositions	5.0	22	15.0	35	15.0	35
Business software applications[/2]	42.4	68	44.2	64	55.6	62
Entertainment software	54.0	70	54.3	74	53.8	73
Books	23.0	NA	20.0	NA	20.0	NA
Total	**164.4**		**174.5**		**179.4**	

Sources: International Intellectual Property Alliance. 2002 Special 301: Venezuela

Notes: [/1] The methodology used by the IIPA to calculate these piracy and loss estimates are described in IIPA's 2003 Special 301 submission, and are available on the IIPA's Website.

[/2] BSA loss and piracy estimates for 2002 are preliminary.

<u>The record industry: plummeting sales</u>

According to Guzmán, Medina and Quintero (2005), in 2000 there were 20 national record labels and five transnationals. There were also three compact disk factories with the capacity to turn out almost 120,000 CDs a day. Sales have decreased by some three million units in Venezuelan territory, and the authors estimate that some 12,000 jobs have been lost. “This reduction in national production”, they write, “has also cut back manufacturing processes, making it possible to cover operating expenses, and leading to the elimination of some 700 jobs. The shop sector is totally depressed: out of 600 retail shops that used to operate, 550 have closed, leaving some 2200 workers unemployed, and wholesalers are making great efforts to stay open.” The authors calculate that in 2002 the Venezuelan Government received 4.85 billion Bolivars less in VAT tax, not to mention other taxes such as the ISRL. While the legitimate market has decreased by nearly 15% year by year in the last few years, the illegitimate market has grown by 21%, Some five million legal copies a year are tripled by a factor of 3.3, nearly 17 million copies.

1999		2000		2001		2002	
Losses in millions of US$	%	Losses in millions of US$	%	Losses in millions of US$	%	Losses in millions of US$	%
30.0	65	25.0	65	25.0	65	25.0	65
30.0	62	30.0	62	54.0	62	29.3	75
46.4	60	16.9	58	25.7	58	27.1	52
50.9	70	47.0	78	NA	78	NA	NA
21.0	NA	21.0	NA	20.0	NA	18.0	NA
178.3		**140.9**		**124.7**		**99.1**	

Table 15 - Estimated lost business and national treasury losses due to piracy, by cultural product types in Venezuela, 2000

Industrie	Lost business (in US$ millions)	Lost national treasury losses
Phonographic	66	9.5
Publishing	12	-
Software	54	23
Video	9	2.3
Cinema	11	4
Suscription TV	9	17
Total	**161**	**40.5**

Source: AVINPRO. 2002

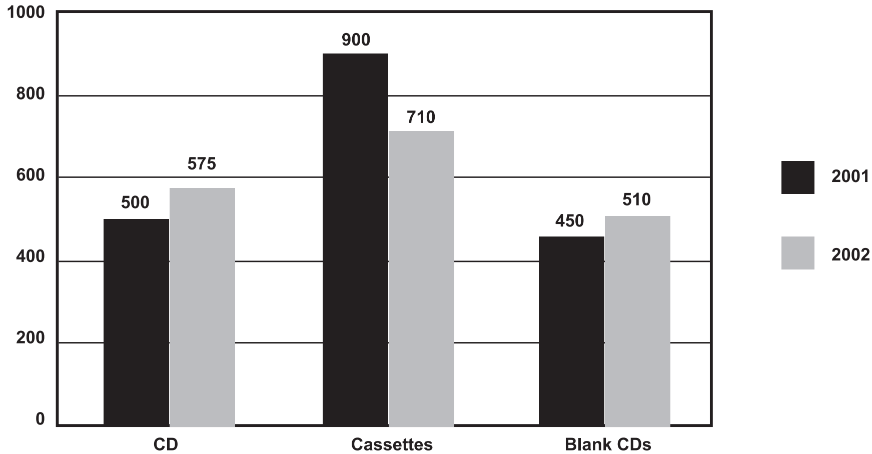
Venezuelan musical consumption is described in studies by Correa (1994), Aguirre, Bisbal et al. (1998) and Tulio Hernández (2003). Hernández found that music buyers consume less as they age, but the greatest record buyers are Venezuelans from age 35 to 49. Many buy from street hawkers (59%), whereas only 29% buy music on a monthly basis. The most popular music is salsa, followed by ballads, romantic music and boleros, and then merengue, rock and llanera music. Youth aged 18 to 24 buy the most salsa and rock. Folk music is mostly purchased by older Venezuelans. Colombian music is appreciated especially by the youngest and eldest. The most common way to listen to music is the radio, followed by CDs and cassettes.

Table 16 - Lost jobs estimated due to piracy, according to cultural product type in Venezuela, 2000

Industrie	Jobs lost	%
Phonographic	14.500	-40
Publishing	46.000	-30
Software	7.430	-23
Video	1.040	-55
Cinema	6.800	-33
Suscription TV	10.800	-33
Total	**86.570**	**-36**

Source: AVINPRO. 2002

Figure 5 - Illegal sales in Venezuela by type of format
(in million units)



Source: IFPI. The recording industry in numbers, Decima edicion, 2003.

So, there are several trends in the Venezuelan record industry: the crucial, very alarming presence of piracy, its impact on national production and sales in shops, the prominence in musical consumption of salsa and romantic music, and evident differentiation of musical tastes by age and educational levels, as in the other two countries studied.

Table 17 - Type of music people like to listen to, by socio-demographic variables in Venezuela, 2003, by percentages (%)

	Total	Gender	
		Male	Female
Genres	769	395	374
Salsa / Latin music	67	69	65
Merengue	47	46	48
Pop / Rock / Modern	35	38	33
Rap / Hip Hop	8	11	5
Romantic / Boleros	65	53	76
New Way / Heavy Metal	4	5	3
Disco / Dance	7	8	5
Venezolana / Folclorica / Llanera	35	38	32
Gaita	5	5	4
Cumbia / Vallenato / Colombian	18	15	21
Reagge	7	11	3
Jazz	4	6	1
Classic	7	5	8
New Age	1	1	*
Others	9	11	8

Table 18 - Medium on which to listen to music, by socio-demographic variables, in Venezuela, 2003

	Total	Gender	
		Male	Female
Genres	769	395	374
Radio	70	68	72
CD's, Vinyl	68	67	69
Cassettes	15	14	16
Music TV channel	3	1	5
Walkman / Discman	4	5	2
Internet	2	3	1
Others	*	*	*

Age				Socioeconomic level			Families with		
18-24	25-34	35-49	50 and +	ABC	D	E	Children	Ado	Youth
227	196	182	164	251	290	228	442	246	411
72	72	61	61	59	66	78	68	68	70
57	49	41	36	43	46	53	46	53	54
58	39	28	9	46	41	16	35	34	44
17	8	3	1	8	5	10	8	9	11
57	69	68	65	72	67	53	63	**61**	**65**
10	*	2	*	5	2	3	4	**6**	**5**
11	6	5	4	10	2	6	6	**7**	**8**
20	30	35	61	33	34	38	31	**34**	**32**
4	6	4	4	4	4	5	4	**5**	**5**
19	14	21	19	9	14	33	22	**21**	**20**
16	5	5	*	11	4	4	5	**8**	**10**
4	5	2	3	7	1	2	3	**4**	**4**
4	4	11	8	11	4	3	6	**7**	**6**
1	==	1	*	1	*	==	*	**1**	**1**
10	4	8	18	7	10	13	9	**7**	**9**

(n = 769). Multiple answers.
Source: Tulio Hermendez Cardenas.
March 2003 study. Sample size 800 interviews

Age				Socioeconomic level			Families with		
18-24	25-34	35-49	50 and +	ABC	D	E	Children	Ado	Youth
227	196	182	164	251	290	228	442	246	411
64	70	68	80	68	71	72	68	70	72
84	71	65	45	74	63	64	70	70	71
11	16	21	11	17	14	12	16	11	13
5	2	3	1	3	2	4	3	3	4
6	6	==	1	3	3	5	2	**3**	**6**
3	1	1	1	2	2	1	1	**3**	**2**
==	*	==	1	1	*	*	1	**==**	*****

5.2. Trade and exchange policy

With available data, some general judgments may be made regarding trade trends in Venezuela's various audiovisual industries.

In cinema, national film production is low, compared with extremely high rates of circulation for Hollywood productions. Venezuela also has very few films from any other countries but the US, including of course European and Latin American movies, in the country's distribution circuits.

Television is probably the most important, significant case. The television industry has tended to concentrate on producing and distributing (by broadcast TV) the offerings of the two main channels, Venevisión and RTC. Unlike Colombia, where national productions have surpassed foreign programs in ratings, Venezuela has had a high percentage of imported programming. This situation, analyzed by Antonio Pasquali in the 1970s, persists as we begin the new millennium. In "Communication and mass culture" (1972), Pasquali detected, as characteristics of Venezuelan commercial television at that time, centrifugal motion from Caracas toward the interior, service geared fundamentally toward urban areas, and a heavy loading of outside, canned programming, and consequently little production locally. Years later, Patricia Kaiser of the Global Media Observatory, one of the observatories that have recently emerged in Latin America, summarized Venezuelan television programming and found no change: Venevisión had 73.52% foreign production ("canned") and 26.48% national production, with a strong presence of imported dramas, followed by foreign varieties programs, with very little production of children's programs and an effort to produce their own newscasts.

As already observed, the recently enacted Law on the Social Responsibility of Radio and Television in Venezuela will very probably tend to change this situation, in view of specific regulations to protect and increase national programming in family and late-night scheduling.

The programming of VTV, the State channel, has a total of 147 hours of programming weekly, with foreign "canned" shows totaling 17.68% and national production at 82.65%. Over half the programming is information or opinion shows, followed by varieties and cultural programs.

Doubtlessly the most important phenomenon in terms of Venezuelan television trade has been telenovela production and sales. The 1980s were the decade of success for Venezuelan telenovelas and Venevisión and Radio Caracas Television were the two main protagonists in melodramatic production and marketing. According to María Inés Mendoza (1996), in 1988 telenovels were produced in Venezuela by CORAVEN (of RCTV) which made four to five a year, totaling 750 hours, Venevisión with nearly 520 hours a year, and Venezolana de Television, Talentos de América, Marte TV and PROGRESA, with some 200 hours. The channels also have specific companies to distribute their products. In 1986, for example, channel 2 sold 12 million dollars. "The success of Venezuelan telenovelas for export, it must be stressed, is fundamentally due to the effort made by the television industry for over three decades. From the outset, Venezuelan television strove to make good telenovelas, and therefore created an appropriate technical infrastructure, trained personnel and actors, and analyzed all manifestations of telenovelas, in order to unravel the mechanisms that made them appealing and seductive to viewers"[13].

By 1999, Daniel Mato calculated that telenovela exports accounted for 8% of total advertising sales by Radio Caracas Television and Venevisión on the local market, but also meant nearly 80% of locally produced television exports, with significant earnings (millions of dollars). Venevisión Productions has increased its installed capacity to produce telenovelas and supply, among other markets, Latins in the US. In fact, producers and marketers from Venezuela, and also from Peru, Colombia, Argentina and other Latin American countries have moved to Miami, as Daniel Mato (2001) puts it, for geographical reasons, technical facilities and services, the advantages of high concentration of Hispanics in that city, support of local authorities for audiovisual industry development and suitable conditions as a point of sale[14].

Telenovela production and above all commercial circulation on international scenarios has lost its edge and hit hard times, generating even such movements as "Save the Television" in 1997, promoting the right to produce telenovelas and other programs locally as a way to safeguard jobs for writers, producers, actors and technicians in Venezuela, in view of the avalanche of outside productions. Unlike Colombia, Venezuela has not had norms specifically oriented to regulate

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13. María Inés Mendoza, "*Venezuelan telenovelas: from hand-made to industria*l", *In: Diálogos de la Comunicación*, Felafacs, Nº 44, March 1996, Lima, p. 41.
14. Daniel Mato, *"Transnacionalization of the telenovela industry, territorial references and production of markets and representations of territorial identities"*, September 2001, LASA, Washington.

the quota of national production to be shown on the screen or even, as happened for years in Colombia, broadcast schedules.

In the record industry, as already shown above, it is practically impossible to think about any significant development, fundamentally due to damage by piracy. A suitable policy in this field would enable Venezuela's music industry to grow better, as is evident from consumption study findings. Music is indeed very high on people's cultural preference lists in these three Andean countries.

Regarding free trade, the Government of President Hugo Chávez has tried to support strengthening of a South American market and establish ever-more solid relationships with Brazil, Argentina and Uruguay in the Southern Cone. Late in 2004, trade agreements were reached between the Andean Community of Nations and MERCOSUR, whereas criticisms and disagreements with the assumptions of the FTAA and other free trade agreements with the US grow ever-more-bitter. Venezuela, in fact, is not negotiating an FTA with the US, as Colombia, Peru and Ecuador have been very actively doing.

6. THE AUDIOVISUAL INDUSTRY IN COLOMBIA

6.1. Economic policy

<u>Cinema</u>

The most important cultural policy decision in the field of Colombian cinema has been the approval of the Law of Cinematography (2003). After decades of indecision and hurdles, a broadly consensus-based law finally materialized with different sectors of the cinematographic industry, seeking to decentralize culture and cinema, democratize them and develop concrete mechanisms to encourage national cinematography. For this purpose, Law 814 of 2003 provides for "development measures geared to enable scenarios that will return the moving picture industry's component sectors to production in their common activity, encouraging investment in producing the goods and services required for this cultural industry, facilitating cinematographic management overall and calling for participation, competitiveness and protection for national cinematography" (Article 1). These four points summarize the Law's orientation, and consequently Colombia's cinematographic policy.

Creation of the Fund for Cinematographic Development, granting of tax incentives for investment and donations to film projects and securitization of cinematographic projects are three specific mechanisms that the Colombian Cinema Law includes to promote national production. The Fund is established to receive money collected through a para-fiscal fee called “Quota for cinematographic development”, to be paid by theaters, distributors and producers on their proceeds from showing movies in Colombia. Theaters contribute 8.5% of their income from foreign films, distributors pay a similar percentage for foreign films and Colombian movie producers pay 5% for their box-office earnings. Theaters can also deduct 6.25 percentage points from their contribution if they show Colombian short features, certified by the Ministry of Culture, for at least seven minutes. The operation of this Fund over the last year is shown below, to feel how dynamically this initiative is helping Colombian cinema develop.

Ministry of Culture, Bureau of Cinematography

A movie company is deemed national when its national investments are 51% or more of the total; technical personnel must be at least 51% and artistic staff at least 70%. National financial input for co-productions can be no lower than 20% and artistic input at least 70%. Theaters receive incentives when they show short and long Colombian films, pursuant to Articles 14 and 15 of the Cinema Law.

The National Council of Arts and Culture in Cinematography is responsible for directing the Fund and deciding how to allocate the resources collected. Proimágenes, in turn, is the entity responsible for administering them. The Council has members representing the Government, but above all from the different stakeholders in the cinematographic sector. 70% of resources gathered are for cinematographic production, through grants and loans, and 30% is to promote Colombian cinema as an industry overall. For this purpose, priorities are to strengthen a cinematographic information system (SIREC), inform the audience and producers in order to strengthen production systems, provide technological support to industries related to cinema (e.g. sound or photography), preserve audiovisual memory, support film distribution and market access, and contribute to administrative and oversight expenses for the Fund itself.

The Law states that the National Television Commission (CNTV), the top autonomous authority of Colombian television, must set an annual percentage of movies to be shown over broadcast television.

Television and video

For years, Colombian television had a combined system for management. This meant that the State would allocate, by public tender, slots to different private companies known as “programmers”, who had the option of placing their programs on one of the two public, nationwide channels, which comprised the range of Colombian television until the mid-1990s, when private channels appeared with national coverage. For years, television newscasts were granted to companies specializing in the news, generally representing different competing political schools of thought. Since 1982, slots have been allocated by the National Television Council, a body comprising representatives of the government and civil society, which was the top television regulatory agency for years. The 1991 Constitution opened up the possibility for private channels. Subsequent laws regulated the transformation of Colombian television, which currently has nine modes of television: public broadcast television (two channels, 1 and the institutional channel), privately operated broadcast television (two channels, Caracol Television and RCN Television), regional television, local for-profit broadcast television, local non-profit broadcast television, television by subscription, satellite television, community television and distribution of incidental signals.

Foreign investment in television concessionaires may amount to 40% of the concessionaire’s corporate stock, regardless of its territorial jurisdiction and country of origin, and the same possibility for investment must be offered to Colombian companies (reciprocity). Concessions are for ten years’ time and there are concrete percentages of national production, according to schedules. Different television modes pay for frequencies or rental of time slots, and proceeds go to the Television Development Fund, one of whose jobs is to make it possible for public channels to operate. During “prime time” 70% must be national production and the rest of the time 50%, with the exception of the schedule between midnight and 10:00 a.m., when programming is completely free of requirements. On Sundays and holidays, at least 50% must be national during prime time. These provisions, along with other conditions of Colombian audiovisual context, have enabled the television industry to develop and place national programming in high positions of viewer preference. As we will see below, this is one of the central issues of Colombia's position in the GATS vis-à-vis the WTO and in the process of negotiating the free trade agreement (FTA) with the United States.

National production is when technical and artistic personnel are Colombian. There can be no more than 10% foreign actors in leading roles, with the rest Colombian actors and actresses.

One of the most important decisions regarding television was to create the National Television Council (CNTV), an autonomous government agency with five members, two chosen by the President of Colombia and three by societal organizations and the television sector (technicians, university schools of education and communication, viewer leagues and associations, regional channels). This is the top body responsible for setting television policy, allocating frequencies, administering the television development fund, guaranteeing promotion of public television and enforcing penalties, among other functions.

Radio

The main guidelines for radio in Colombia have to do with the Colombian nationality of station concessionaires, concession time (10 years, renewable), the requirement for 75% of funds paid for concessions to be of local origin and for control and management of radio programs to be performed by Colombians. The Ministry of Communications is responsible for overseeing radio affairs, from allocating frequencies to implementing penalties. There is also a major societal and communicational presence of community radio stations in the nation's traditions.

Music

Under regulations to defend authors' rights, the Colombian phonographic industry is suffering from the impact of piracy, as a constant in the countries studied. Even so, there is vitality in national musical creativity, positioning several Colombian performers on the international scene, with successful sales and image. Most of them work abroad and are managed by major transnational companies. Miami has become an epicenter for national performers, to reach both the US Latin market and to circulate in other countries. As in the industry overall, music is associated with video production and live concerts and tours.

The status of the audiovisual industries in Colombia

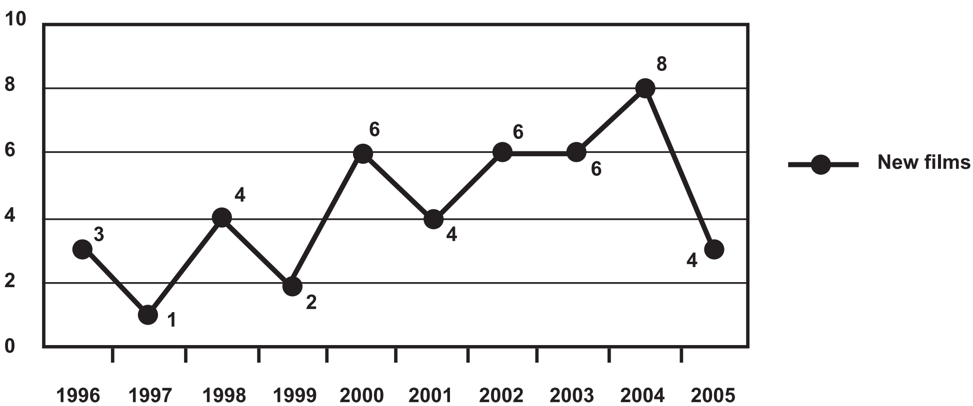
Cinema

Colombian cinema shares several aspects with the other two countries studied: fragile structures of the cinematographic industry, low percentages of production, a small domestic market, serious difficulties with distribution, box-office problems, deficient international marketing channels and a grave deficit in the diversity of movies in view of domination by foreign offerings, particularly from the US, on national screens.

In 1998 Colombia produced four movies; in 1999, 5; in 2000, 2; in 2001, 7; in 2002, 5; in 2003, 5; and in 2004, 8. So, average cinematographic production is quite low, as in Peru and Venezuela, although the Law of Cinema is having concrete, positive effects on the growth of Colombian productions. By the end of 2005, nearly 15 Colombian films are expected to come out, twice the highest figure reached any time during the past 15 years, precisely one year after the Cinematography Law was enacted.

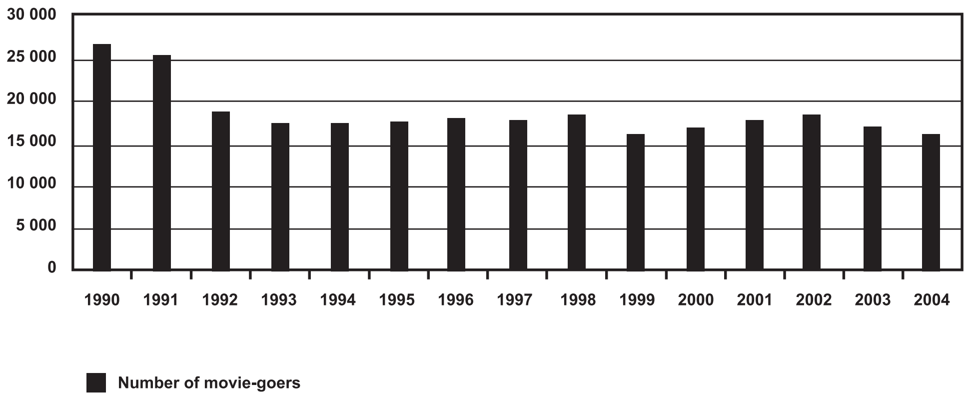
Cinematographic development policies basically concentrated, in the past, on production, generating evident deficiencies in distribution and showing. However, there is also a deficit in the number of films comprising national production.

Figure 6 - Colombian films opening from 1998 to 2005



According to a study by Fedesarrollo (CAB, 2003) of net box-office proceeds, theaters keep about 55%, foreign distributors get 30%, national distributors get 10% and national producers get 1.5%.

Figure 7 - Movie-goers in Colombia (1990-2004)



As per figure 7, movie-goers' behavior is relatively stable since 2001, with ups and downs according to the months. Some national movies have been very well received, as with “La estrategia del Caracol” (1997) and “El taxista millonario” with nearly a million and half movie-goers in Colombia; “El inmigrante latino” (1980) with 1.3 million; “Esposos en vacaciones” with 1,250,000; “El niño y el Papa” (1987) with 1,100,000 and “La vendedora de rosas” (1998) with 700,000.

Three large foreign distributors accounted for 63% of 1999 distribution of movies in Colombia: Columbia TriStar Buenavista, (37%), United Pictures International (15%) and Elephant-Time/Warner-Cine Colombia. By 2001 this ratio shifted, with Cine Colombia (28%) in first place. So, a national company is currently ahead in distributing and showing movies, with a large market share. In fact Cine Colombia (Cineco) has 149 movie screens, 36% of the total and also makes 63% of the country's box-office earnings.

Clearly, the number of movie screens has decreased, as has the number of movie-goers, although their volume has not changed greatly since the early 1990s.

Table 19 - Colombia: screens and viewers in movie theaters, growth rate, 1990-2002

Years	Screens	Viewers	Growth in number of viewers (%)
1990		26.400.000	-
1991		25.200.000	-4,76
1992	1.085	18.699.500	-34,76
1993	815	17.600.000	-6,25
1994	550	17.499.500	-0,57
1995	299	17.500.000	0
1996	280	18.050.000	3,05
1997	263	17.850.000	-1,12
1998	258	18.350.000	2,72
1999	284	15.990.000	-14,76
2000	290	17.200.000	7,03
2001	285	17.798.210	3,36
2002	302	18.399.600	3,27

Sources: Cine Colombia. Calculations: Economia y Cultura.

Tables 20 and 21 show prices and box-office takes, which show in turn the orientations of theaters toward building multiplex theaters and initially targeting the wealthier socio-economic sectors, and then seeking other market niches in the middle classes.

Movie availability is concentrated in the major cities, whereas much of the country is far from such cultural assets. In 2002, Bogotá had 122 screens in 43 theaters, whereas Popayán had a 2:2 ratio. 70% of screens are located in four major cities (Bogotá, Medellín, Cali and Barranquilla). Out of 1095 municipalities, only 51 have movie theaters. Although there are no systematic data on employment generated by the incipient cinema industry and especially production, which is by nature sporadic, some figures can be found on employment from the process of showing movies, which has grown slightly over the last few years.

Recent data offer hope about national cinema, now backed by policies grounded in the newly enacted law: encouragement for script-writers; support for cinematographic projects; promotion of completion of those films as yet unfinished; the search for marketing channels; tax benefits for those who invest in cinema, and creation of systematic, reliable cinematographic information systems.

Table 20 - Colombia: movie theater pricing (1990-2001)

Years	average prices in pesos	constant pesos (1998)	average (US $)	growth rates in current %	growth rates in constant terms 1998) %
1990	423.14	2.014.627	0.842	-	-
1991	574.43	2.156.459	0.907	35.75	7.04
1992	772.43	2.317.284	1.136	34.47	7.46
1993	1.140.71	2.791.088	1.450	47.68	20.45
1994	1.621.97	3.237.180	1.962	42.19	15.98
1995	1.918.29	3.204.755	2.102	18.27	-1
1996	2.326.53	3.195.277	2.244	21.28	-0.30
1997	3.007.86	3.510.277	2.636	29.29	9.86
1998	3.400.11	3.400.115	2.383	13.04	-3.14
1999	3.913.44	3.582.753	2.225	15.10	5.37
2000	4.404.93	3.708.162	2.110	12.56	3.50
2001	5.181.20	4.051.925	2.253	17.62	9.27
2002	6.058.98	4.428.753	2.416	16.94	9.30

Sources: Cine Colombia. Calculations: Economia y Cultura.

Table 21 - Box-office revenues in Colombia

Years	Gross take (pesos)	Gross take in constant pesos (1998)	Gross take in (US $)	Gross take growth rate in current %	Gross take growth rate in constant %
1990	11.170.950	53.186.142	22.241.36901		-
1991	14.475.545	54.342.777	22.866.35337	29.6	2.2
1992	14.444.018	43.332.054	21.238.07969	-0.2	-20.3
1993	20.076.450	49.123.150	25.520.81347	39	13.4
1994	28.383.676	56.649.038	34.339.51214	41.4	15.3
1995	33.570.050	56.083.208	36.777.67302	18.3	-1
1996	41.993.825	57.674.751	40.513.0419	25.1	2.8
1997	53.690.341	62.658.440	47.052.033	27.9	8.6
1998	62.392.110	62.392.110	43.721.29564	16.2	-0.4
1999	62.575.927	57.288.224	35.583.27097	0.3	-8.2
2000	75.764.716	63.780.382	36.295.78661	21.1	11.3
2001	92.216.041	72.117.026	40.097.94045	21.7	13.1
2002	111.482.789	81.487.310	44.451.58172	20.9	13

Sources: Cine Colombia. Calculations: Economia y Cultura.

Television and video: from the combined system to industry-building

Television and radio are surely the audiovisual media that have most consistently consolidated in the Colombian audiovisual panorama.

Findings of the Quality of Life Survey, television section, of DANE (the official entity handling the country's official statistics) and the National Television Commission (CNTV) in 2003 estimate that coverage by private national channels is 95%, public national channels cover 82%, Señal Colombia (State-owned) covers 71.3%, regional channels cover 67.5% and community channels cover 8.8%.

According to the General Media Study (EGM), the two regional channels with the greatest penetration are TelePacífico and TeleAntioquia, which are also the two channels receiving the greatest percentages of transfers from CNTV. In general, broadcast television reaches all societal sectors. In 2002, RCN and Caracol Television, the two private channels, generated 42.5% and 45.7% respectively of total income in the broadcast television sector in Colombia.

Also in 2002, national private channels concentrated 72.1% of total advertising investment in television. Of the 2.7 trillion pesos of total assets in the sector, Caracol holds $ 733.308 billion pesos and RCN $ 622.522 billion pesos, whereas the assets of regional channels totaled only $47.911 million. These figures clearly reflect differences between the two modes of television channels: private national and public regional channels. In 2002, private channels earned about $445 billion pesos; private channels obtained profits while national public channels and regional channels lost money. At that time, Colombian viewers spent 68% of their television time watching private channels. According to Ibope in 2004, 15 of the programs with the highest rating on broadcast television were broadcast over Caracol and 5 by RCN. National private channel coverage is relatively higher in urban areas than in rural zones. These data show the rapid consolidation of private channels in terms of audience, coverage and advertising investment. National public channels, which used to dominate Colombian audiovisuals, have faded in coverage, audience and profitability, with one becoming an institutional channel (basically to broadcast sessions of the National Congress). Channel 1, still languidly on the air, is tendered out to programming companies that can operate it as a channel under precise legal regulations.

The two national private channels each belong to major economic groups that, during the years of the combined public and private system (from the 1950s to the 1990s), were present very actively in television, at the time as programmers of allocated time slots. The Caracol Network belongs to the Santodomingo family, who are also currently shareholders in the SAB-Miller brewery, having sold their breweries in Colombia and in other countries of the region in 2005 to the South African multinational. In the last few months, the organization has made a sizable investment in TV Cable, the most important cable television network in Colombia, thus reinforcing their presence in the television sector. The RCN network belongs to the Ardila Lulle Organization, with interests in radio, soft drinks and other sectors of the Colombian economy.

Regional channels are public, fundamentally programmed by local television companies. They have comprised, over the years, regional television industries, which are not too well developed but have potential. However, the most important part of these channels is their insertion in the region and the search for decentralized television narratives, in tune with regional interests in a country that has been strongly centralized for centuries. City TV is a local for-profit channel that belongs to El Tiempo Publishers, which also owns the main national newspaper, regional papers, magazines and other media.

Community channels are an interesting way to link television with small neighborhoods and zones, especially poor urban areas. Initially broadcasting over parabolic antennas and cable, often “pirated”, community channels have associated and formed broader projects. Some of them have achieved formal status. Measures by CNTV have sought to reduce illegal reception and broadcasting of incidental signals by those who do not pay authors’ rights, which the Colombian authorities are continually reminded about by commercial authorities in the US.

Television by subscription has had an interesting development. According to EGM, 53.4% of the Colombian population received television by subscription in 2002. Beginning in 2000, television by subscription has garnered more viewership than national public and regional channels in daily television watching. Practically all programming on television by subscription channels is foreign, although they do transmit private national, regional and local channels. In 1997 satellite television appeared, served by two operators, Direct TV and Sky TV, each of which accounted for just 0.5% of closed Colombian television subscriptions in 2001. Eighty community television operators accounted in 2001 for 4.06% of the country's closed television subscriptions. Nearly 665 organized communities receive and distribute incidental signals. (Mauricio Reina, 2005).

Television, especially national, private broadcast television, accounts for the highest percentage of Colombian advertising investment. According to the DANE Survey, Señal Colombia, the government channel, reaches more urban population than rural. Devoted for years to educational and cultural television, this channel has gradually become an alternative for another type of television, often different from what the other private operators put out. It is supported by the Fund for Television Development handled by the National Television Council and its programming involves the Ministries of Education, Culture and Communications, as well as institutional and independent producers who apply for program allocation.

According to the quality of life television module (DANE, 2003), coverage by the Caracol channel is 94.8%, by RCN is 94.7%, by regional channels is 67.5%, and by Señal Colombia (governmental) is 71.3%.

Television is undeniably the most important medium in Colombian audiovisuals, because of the economic and technical infrastructure it has been able to develop, its broad diversity of modes, the breadth of supply and coverage reaching all sectors of society. Additionally, due to the development of genres such as telenovelas, which have successfully competed on the international market and, in the last few years, generated synergies with such channels as Telemundo, geared toward the US Hispanic population.

Radio

Since the 1930s, Colombian radio has developed significantly and been actively present in the country's life. In 1999 there were 867 radio stations, and coverage reached 98.5% in AM and 97.5% in FM. It also has had the particular feature of not being a concentrated system, but rather scattered through many zones of the country. Advertising on the radio accounts for about 17%, and is sometimes seriously affected by the economy's recession.

Two major radio networks have grown up over time: Radio Caracol and RCN. They exist alongside other groups such as Colmundo, Súper or Todelar and countless regional and local stations. Radio Caracol belonged, up until a few years ago, to Julio Mario Santodomingo, also owner of breweries, a television channel, a newspaper, a magazine and other related investments. It was purchased by the Prisa Group of Spain, interested in expanding in Latin America and the Hispanic market in the US. RCN, in turn, belongs to the Ardila Lulle Organization, which also owns RCN channel, one of the country's most important. According to Ibope, these two radio networks account for about 70% of all local radio stations.

Community radios have become a communicational and social phenomenon in Colombia, despite difficulties for many of them to stay on the air and administrative and management shortcomings. However, notwithstanding their problems, community radios have managed to establish very dynamic relations with their communities, building linkages with the needs and demands of the people they serve.

Music

The Colombian market developed greatly from 1992 to 1997, with 21% growth rates (units sold) and a real annual (average) growth rate of 48.5% in the value of sales during that period (Zuleta and Jaramillo, 2003). Since 1997, sales have lagged considerably due to problems with the recession and the direct impact of piracy greatly affecting the sector.

The few record companies are highly concentrated: in 2000, 50% of sales were made by two of them. Some of these record companies are directly associated with production companies. Two performer associations have played a leading role in Colombia's phonographic industry: Sayco, which collects copyright payments, and ACIMPRO, which does so with related intellectual property rights. Production companies are also highly concentrated. Distribution has varied significantly over the last few years, reversing the predominance of national companies till the mid-1990s. On the contrary, in 2000, national music distribution companies dropped to 37% while foreign distribution rose to 67% (Fedesarrollo, 2003). In Colombia there are compact disk producers; of course, this influences the costs of products. Legal wholesale distribution is highly concentrated: four companies corner 90% of the market. Traditional shops still make most music sales in Colombia, despite the entrance of international chains and growth of sales on large surfaces.

Table 22 - Colombia: illegal sales of recorded music (1991-2001)

Years	Units[a] (millions)		Value (millions)		
	Total	Growth (%)	Sales in US$ (millions)	Sales growth US$ (%)	Growth in pesos[b] (%)
1991	6.7	-	20.5	-	-
1992	8.5	26.9	40.9	99.5	93.3
1993	9.3	9.4	52.5	28.4	24.7
1994	10.6	14.0	82.6	57.3	53.6
1995	14.8	39.6	138.1	67.2	62.5
1996	18.8	27.0	205.7	49.0	44.8
1997	21.2	12.8	236.1	14.8	12.1
1998	16.2	-23.6	159.4	-32.5	-33.5
1999	13.9	-14.2	130.8	-17.9	-19.6
2000	13.8	-0.7	107.8	-17.6	-20.3
2001	11.0	-20.3	87.1	-19.2	-22.0

Source: Calculations Fedesarrollo based on IFPI. The recording industry in numbers. 2001. pags. 124 and 125
[a.] *Three singles are counted as an album.*
[b.] *Discounting inflation.*

Table 23 - Jobs generated by the Colombian phonographic industry (1995-2000)

	1995	1996	1997	1998	1999
Management	25	25	25	27	26
Administration	200	235	202	230	217
Operations	230	371	231	204	259
Staff	455	631	459	461	501
Total temporary	5.460	7.568	5.502	5.536	6.017
Total employment	5.915	8.199	5.961	5.997	6.518

Source: Fedesarrollo calculations based on interviewes from sector companies.

Table 22 clearly shows the industry's problems, which have not yet been completely solved. Since the mid-1990s, there have been interesting phenomena such as entry by the "majors" due to economic opening processes, the search for strategies by national companies to adapt to new competitive conditions, technological transformations with the predominance of CDs or increased investment levels. These trends have subsequently been battered by the recession and by piracy, whether through street peddling or Internet technologies. Indebtedness, waning profits and net worth have been some of the consequences of this negative growth in the sector. Data on employment are presented in table 23.

6.2. Trade and exchange policies

The panorama for trade in Colombia's audiovisual industries has been changing. This transformation has been influenced by new realities with economic opening and globalization, the presence of major transnational companies, development of a bit more consolidated industries in the sector, innovation in some formats that have found important marketing and distribution avenues internationally, changes in the regulatory framework and gradual consolidation of cinema or television development funds. The future prospects, in turn, are changing with free trade processes in which Colombia has been involved in 2005, especially with the United States and MERCOSUR.

Cinema is a good example of the above transformations. Creation of the Cinema Law and implementation of the Cinematographic Development Fund, coordinated by Proimágenes, have yielded very interesting results.

Trade in cinema, however, is still quite unequal, despite the changes. National movie production is quite low and international circulation is barely noticeable. Some recent productions, such as "María, llena eres de gracia", for which Colombian Catalina Sandino was nominated for Best Actress in the 2005 Oscar Awards, is a sample of national cinema's possibilities, with strengthening of policies for support, distribution and international marketing. Co-productions, for example, through the Ibermedia program, are an interesting prospect that has produced, to mention two recent efforts, "La Virgen de los Sicarios" and "Rosario Tijeras" (2005).

In theaters, inequalities are overwhelming. There is no exchange or diversity, but rather full hegemony for US movies in most Colombian theaters. European cinema or movies from other Latin American countries are quite limited and movies shown on television follow the same trends as in theaters. Only public channels make any effort to present movies from other continents. There are currently efforts underway to define a national cinema quote for television programming.

On television, trade has grown for at least ten years. National productions have circulated on international markets strongly and successfully for years now. Above all, telenovelas have been outpaced only by Mexican and Brazilian productions.

Private television channels and some producers, in partnership with such channels as Telemundo, are positioning Colombian telenovelas on the international market. However, there are not rigorous, systematic enough data available on variations in export flows.

In general, Colombian broadcast television has quite a lot of national productions, which are preferred by the country's viewerships. Unlike other countries in the region and others covered by this study, relatively little foreign material is imported. The largest suppliers are in the US and neighboring countries such as Mexico, Brazil, Argentina and Venezuela. Contact with European productions – even Spanish ones – is quite low.

On television by subscription and satellite TV, the phenomenon is the other way around. National production is low and foreign production predominates. In both modes, European productions can be viewed on TV 5 (France), RAI (Italy), Televisión Española, the BBC of England or the DW of Germany.

For community television stations and pirate cable stations, reception and distribution of incidental signals is very important.

In video, the importance of large transnational stores has increased, although national points of distribution and rental persist. In music, efforts have been made to decrease dependence on imports as Colombian companies produce CDs, and to increase exports to other countries, although some neighbors (as discussed in this study) are blighted by piracy. The following charts show import and export flows.

Table 24 - Colombian record industry imports (1995-2000)

Years	Units	US$	Growth rate in units (%)	Growth rate in US$ (%)
1995	5.753.070	7.897.654		
1996	12.190.575	14.872.572	114.9	87.3
1997	10.748.348	14.983.873	-12.3	0.6
1998	5.582.268	8.181.727	-46.1	-45
1999	1.405.201	2.287.999	-75	-72
2000	531.567	879.076	-257	-60.9

Source: Asincol, calculations Fedesarrollo

Table 25 - Imports of records, cassettes and videos in Colombia, 2000-2001

Countries	2000	Distrib %	2001	Distrib %	Growth rate %
USA	2.005.937	37.9	1.593.816	35.3	-20.5
Venezuela	646.767	12.2	800.643	17.7	23.8
Mexico	999.160	18.9	765.522	17	-23.4
Spain	255.059	4.8	288.923	6.4	13.3
Germany	384.717	7.3	287.698	6.4	-25.12
Panama	75.435	1.4	203.905	4.5	170.3
The Netherlands	251.290	4.8	125.450	2.8	-50.1
Denmark	64.098	1.2	97.170	2.2	51.6
Canada	58.10	1.1	72.6O2	1.6	24.9
Ecuador	84.843	1.6	44.963	1	-47
Brazil	271.205	5.1	30.826	0.7	-88.6
Malaysia		0	42.753	0.9	m.a.+
Subtotal	**5.096.621**	**96.3**	**4.354.271**	**96.4**	**-14.6**
Remaining countries [N]	193.283	3.7	161.594	3.6	-14.6
Total	**5.289.904**	**100**	**4.515.865**	**100**	**-14.6**

Note: including figures from 25 and 28 countries for 2000 and 2001, respectively.

Exports have tended to increase, whereas imports have dropped dramatically. A comparative reading of recent consumption studies (Rey, 2005) shows the great similarity in musical tastes throughout the region and therefore the potential for music to circulate, such as salsa, vallenato, romantic music and rock and pop music in the countries of Latin America. Such circulation can also be related to the importance of each country's own domestic musical repertoire among the countries of the region.

In radio, circulation and trade happen through different commercial circuits. One is the Spanish Prisa Group that has come on the scene, transmitting Colombian broadcasts to numerous other countries, through a sophisticated satellite system; but for years there have been initiatives, to facilitate the circulation of Colombian news on stations in other countries of the region. In the case of community radios, there are also interesting experiences with radio material exchanges.

Colombia does not undertake commitments under the GATS agreement to grant access to markets or national treatment to WTO countries in regard to television or broadcasting services, under any of the four modes of international market supply.

However, the agreement that will surely have a greater impact on the future development of the audiovisual industry in Colombia will be with the US. Colombia's proposal in this negotiation has focused on achieving cultural reservation to respect Colombian regulations on television insisting on national production quotas. The US position is to achieve total liberalization or at least drastic, progressive reduction of mandatory percentages for national production broadcasting. The arguments used by US negotiators in favor of liberalization are that the US does not believe that quotas are logical in countries with natural language barriers, that Colombia has numerous public channels to broadcast its national production, that the advertising pie is no longer so limited and is in fact growing, and that Colombian audiovisual industries are rapidly expanding in the US. They also express reticence about the possibility of establishing quotas for multi-channel television.

Regarding movies, as in the other cultural industries, it is very important to preserve the possibility of proposing policies to provide incentives and benefits for creation and distribution of cultural products. The US also explicitly intends to bring copyright norms closer to US standards.

TRENDS IN AUDIOVISUAL MARKETS: PERSPECTIVES FROM AFRICA BURKINA FASO, NIGERIA AND SENEGAL

COORDINATED BY OLIVIER BARLET

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The three countries studied, Senegal, Burkina Faso and Nigeria, are representative of the major trends that can be observed in Africa, yet they are radically contrasted out in the field. All across Africa, the number of cinemas and of people visiting them is plummeting (some countries no longer have any cinemas). Yet, the demand for audiovisual images is growing strongly and is being met by television and video media. Endogenous productions of low artistic quality, yet rooted in local problems are self-financed and successfully brought to the market in video or VCD/DVD format in a spectacular manner in Nigeria and to a lesser extent in Madagascar and Cameroon, as well as in Ghana, which suffers from Nigerian competition. In Senegal and Burkina Faso, as is the case in most other countries, the withdrawal of state funding under pressure from international financial bodies has left the film industry in a difficult position both in terms of production and distribution. Television is not yet sufficiently pluralistic, as the birth of a competitive private sector is slowed down by the reluctance of governments and the lack of profitability faced with a much too cramped advertising market. Satellite network packages offer an alternative that still is not accessible to the greatest majority and manifestly lacks regulation. Video clubs can be found everywhere at the fringe of the informal sector.

Everywhere, the main problem to resolve is piracy. The commitment of States as regards regulation is a matter of urgency for the entire sector and inadequate regulation is the cause of problems in the sector. While the development of digital technology could represent a genuine quantum leap, only active public policy can curb the decline of the film sector. Moreover, television is still in a position to be a driving force.

African countries take part in the debate on cultural diversity within the international community, but have not taken any specific trade commitments in the audiovisual sector. What is at stake for them is the necessary structuring of the cultural market.

1. INTRODUCTION

1.1. Methodology

The audiovisual sector in Africa is characterised by a near to total lack of statistics and official studies, except for the orientation project for a common sector-specific policy on audiovisuals in WAEMU member states in 2002. In the present study we have chosen to focus on Burkina Faso, Senegal, and Nigeria. The presence of two WAEMU states concerned by the project mentioned, made us turn our research towards trends found in the field rather than on data already available elsewhere. Up to present, the Nigerian audiovisual market has only been the subject of journalistic research and to internal reports of the French development co-operation. As it is an isolated phenomenon in Africa, the present report provides a specific study insisting on the historic background leading to this development.

The three African researchers are:

1) **Burkina Faso:** Yamlaneda A.M. Paulin Yameogo, founder in 2001 of the *Agence Nouvel Horizon*, communication consultancy, in Ouagadougou (01 BP 4299 Ouagadougou 01). He is the former Director of the weekly newspaper “San Finna” and of the monthly newspaper “Wattitingol”. He holds a masters degree in public law and is familiar with the audiovisual environment.

2) **Senegal:** Oumar Sall, President of the Groupe 30 Afrique, observatory of cultural policies and cultural operator in Dakar (BP 2801, Dakar). Moreover, he leads Africinfo (www.africinfo.org), a network of cultural information in Africa.

3) **Nigeria:** Tunde Oladunjoye, Director of the Centre for Media, Education & Networking (20, Akinremi Street, Anifowoshe - Ikeja, Lagos). He also works as a journalist in charge of film, radio and television at the daily newspaper «The Sun».

Each of the three country reports has its own structure: Contributors were free to direct their research as it best suited them, based on an initial questionnaire concerning production, employment, the market, intellectual property, the sector’s degree of organisation, foreign and domestic investment, export and import, distribution channels, competitiveness, state policies, as well as bilateral, regional and international negotiations and trade agreements. Exchanges with the coordinator made it possible to go deeper into certain topics as well as homogenise the overall direction and presentation. O. Barlet also contributed with some elements originating from his own field research. Generally, contributors insisted on the great difficulty to obtain figures and even to access information, due to the reluctance of actors in the sector to grant interviews.

1.2. Relevance of the selected countries

The three countries analyzed in this paper are good examples of the situation of the audiovisual sector in Africa:

- Burkina Faso has invested in cinema for more than 40 years and hosts the most important film festival in black Africa
- Senegal is the home of the oldest filmmaker in African cinema, Ousmane Sembène, as well as many other great filmmakers, and it is trying to renew its audiovisual public policy
- After having been a great country for cinema, Nigeria has become a model for endogenous video production, developing a real industry

Still relatively unknown, the Nigerian experience with the production of several thousands of feature-length fiction video films per year, without any foreign contribution, gives hope to a number of young amateur filmmakers all around Africa. The open perspectives of digital technology enable Africans to mass produce audiovisual materials without having to deal with long-lasting searches for financing from outside the continent. However, it is running against the near to total lack of outlets in natural distribution channels, such as television, as well as the inadequacy and decline of cinemas. Only in Nigeria is the marketing of video cassettes meeting a true success. The emergence of spontaneous video production could even have been studied in Cameroon, Ghana or Madagascar, where similar phenomena can be observed, whereas South Africa constitutes a special case with the presence of a structured industry and innovative state policy.

The audiovisual sector thus is particularly dynamic, although its structure still is not very profitable, allowing audiovisual products from elsewhere to invade a market that actually is showing more and more growth. Films that are likely to reach an international audience remain marginal in terms of number of works produced, whereas the works of video directors are not yet finding their market, except in Nigeria. Insufficient regulation of the sector does not make it possible to efficiently fight against piracy, which jeopardizes all chances of success.

1.3. Overall African trends

Based on the research made, it is possible to bring out dominant trends for black Africa.

Television

Despite pluralistic government bills, television still remains very state-controlled, sometimes a monopoly, and is increasing its coverage rate. Private television channels are still rare and have a fragile economy. They bring little competitive stimulation. However, broadcasting of foreign channels through MMDS (Multichannel Microwave Distribution Systems) or DSR (Direct Satellite Reception) is developing without any specific regulation and strongly competes with public television, without needing to contribute to the development of domestic programmes. The increase in number of subscribers to network packages shows the strong demand for audiovisual products.

Supplied free of charge by cooperating channels or through bartering (advertising in exchange for programmes such as Brazilian *telenovelas*), public televisions hardly produce or co-produce any creative programmes, except studio programmes (talk shows, remote broadcasting of cultural or sports events). Most television series have essentially been produced with European funding, without implicating public television. Some directors and producers are following this direction with the hope for rapid development.

Cinema

Strong state involvement in the 70's has given way to excessive withdrawal under pressure from international financial organisations, leaving the sector in a state of neglect. For over thirty years, the FEPACI has been calling for professional regulation, control of sales receipts in cinemas and a tax supplying a production support fund. Only Burkina Faso has such a regulatory framework, while Senegal just recently acquired one. Faced with the crisis in the sector, the state can no longer control it as much as it can try to stimulate it, by improving the economic and professional environment.

As their structure is bound to run up debts, the number of cinemas does not cease to diminish and, aside from exceptional cases, their equipment is obsolete at all levels. Admissions are plummeting to the benefit of local, comfortable and affordable alternatives, such as video clubs or home video. Aside from the Nigerian exception, African films are rare and marginalised by a very concentrated distribution network, which favours American products or those from Hong Kong or India. African films have a hard time circulating between countries and are often programmed by foreign television before being released in cinemas. However, examples show that African films can find an audience on their own market.

The number of feature films produced for theatrical release remains very low, with an average cost of about 400 million CFA Francs (600 000 euros), which is very hard to raise with various European lenders. In Nigeria, nearly 2000 feature films are shot in video each year with an extremely low budget. While the market absorbs these videos in Nigeria, it is practically non-existent in other countries. Nowhere do television channels purchase distribution rights for films.

Video

Largely dominated by an informal economy, the sector escapes all regulation and therefore does not raise any revenue that could finance creativity. Cassettes rented in video clubs are often fraudulently duplicated, while public screenings escape all regulation. There again, experiences in digital video screenings of films for theatrical release, among others in Cameroon, open the way for a new form of film distribution.

In Nigeria, as well as on a much smaller scale in Ghana and Madagascar, a significant production of feature films in video format is able to find a local market. Nigerian videos are flooding markets in neighbouring countries, sometimes even dubbed in French, and are exported by companies that sell them to the diaspora in shops and on websites. Aside from these three countries, the production of feature films in video format is essentially intended for the immigrated diaspora. Owing to the professional qualifications acquired in training institutes such as the Média Centre de Dakar, the PROFIS in Ouagadougou or the cinema classes in Yaoundé, there is an emergence of fictions and documentaries on societal problems that could supply televisions. Public screenings are also organised with success, notably during festivals. On the whole, the expansion of video production and its attractiveness for young filmmakers puts in question traditional cinema circuits and establishes an alternative that could become viable if distribution circuits open up, starting with television.

Inhibiting factors

Administrations in charge of cinema, when active, are slowly progressing from state supervision of production to a regulatory activity as well as administrative and economic regulation of the sector. Copyright legislation remains incomplete, specifically in as far as neighbouring rights, private copying and satellite or internet broadcasting are concerned. Copyright offices also lack the means required to face the extent of piracy. Moreover, cinema exhibition is subject to heavy taxation and does not benefit from any deductions for the modernisation of cinemas. Customs tariffs for imported equipment are high. Since the training centres of publicly-owned televisions have closed, private initiatives are scarce and have but little means. Courses are organised too few and far between and do not sufficiently focus on practice. The replacement of technicians is not ensured properly.

Interafrican or regional co-operation is very low in terms of production, television broadcasting and circulation of films and audiovisual products. Public television channels wait for CFI or CIRTEF to buy the rights and offer free reruns of these programs on their stations. However, despite proceeding in this manner, the rerun rate is very low. Aside from capital investment needs for publicly-owned televisions, governments rarely use the potentials of international co-operation for culture and cinema, which are not included in the national indicative programmes (NIP) established within the scope of the European Development Fund (EDF).

1.4. Outlook

Digital technology could represent a quantum leap

Digital technology not only represents an essential economy of scale at the production and post-production level, but also in film distribution and exhibition. It also provides a new way of looking at the virtuous circle that enables revenue returns for production. Piracy encouraged by the easy reproduction of works must however come under control and be combined with a revaluation of the notion of copyright.

The modernisation of legislation must be followed up with exemplary repressive action. The original quality label must be put forward as well as a marketing strategy that gets ahead of pirates. Easier access to visual production implies accompanying measures in terms of training. The number of schools must be increased according to national or regional possibilities, with support from international partners.

Only an active public policy can curb the decline of the cinema sector

An active public policy is essential for local audiovisual works to come into the world. There is no example of this without the implementation of regulatory policy and contribution to cinema funding. Revenue returns that finance production cannot be generated without any control at the box office. Senegal and Burkina Faso already take off taxes from African films. The application of zero rate VAT to cinemas as well as to video projection venues, proposed in the WAEMU report, would make it possible to reduce the exhibitors' operating charges. Cinemas can be encouraged to invest in video projection.

Support for the modernisation and creation of cinemas must take new facts into consideration: complexes of two to three cinemas of about 200 seats, including large screen video projection equipment. A specific programme to circulate African films could be tied to this action, as well as tax remission (zero rate VAT), in order to restore the profitability of venues. This consideration must take into account the difficulties encountered by the Africa Cinemas programme, which was unable to effectively support the distribution of African films.

Film promotion remains a central and difficult issue. It will have to be supported by appropriate budgets but also by training cultural journalists, which only recently organised themselves into a network and federation (www.africine.org). Promoting quality cinema implies favouring the passion for cinema and the emergence of a new visual culture, a promotion that could extend as far as into school programmes. Support to festivals and to travelling cinema goes in the same direction.

Television can still be a driving force

The African market is not yet saturated with audiovisual products from international television broadcasters. If public policies encourage the development of audiovisual production and the distribution of works through television, according to precise specifications, including a quota of programmes of African origin, then there is reason for hope. Efforts in terms of programming African films and local audiovisual products at a fair remuneration, in co-production with independent producers, would effectively support the sector. Granting free advertising spaces for African films being released would help their media coverage and success.

Interafrican co-operation between television channels could be revived, particularly within already existing economic unions. This could lead to negotiations with international development co-operation bodies on the subject of a modification of partnerships, aiming at stopping the free supply of programs in favour of support to television channels and independent production.

The administration of advertising revenues could be reconsidered and optimised, among others by redirecting the revenues related to bartering towards production. A tax like the one in Senegal (where the SONELEC pays back a part of the tax on fuel oil) is essential to finance the effort to be put in.

Necessary structuring of the cultural market

The issues of the WTO Doha Round negotiations are feeding the international debate on cultural diversity and on the treatment of cultural goods and services. It has been taken over through the mandate entrusted to the UNESCO Director-General at the General Conference in October 2003, to proceed with the elaboration of a preliminary project for an International Convention on the protection of the diversity of cultural contents and artistic expressions. This framework aims at promoting the implementation of support policies for culture and cultural industries.

In international negotiations, Francophone African countries are generally aligned with the positions of the *Agence intergouvernementale de la Francophonie*, whereas Anglophone countries turn more towards the positions of the United States. It would be possible to aim for a unification of African positions, rooted in the realities of the field and for the protection and promotion of local cultural industries, so as to clearly open the way for cultural support measures, regulation and funding. African countries have everything to gain from effectively structuring their cultural market.

2. THE AUDIOVISUAL SECTOR IN SENEGAL

2.1. Introduction

The audiovisual sector is still relatively insignificant in Senegal (about 15 million euros), but its development is remarkable. Progressive liberalization of the television (starting in 1991) and radio (starting in 1994) sectors have enabled private communications groups to enter these new markets. Taking advantage of rapid technological developments, they have experienced strong growth. The new foreign television channels and national radio stations have conquered a large part of the Senegalese public to the detriment of the Radiodiffusion Télévision Sénégalaise (RTS), which officially lost its status of government monopoly in January 2000. The lack of an institutional and regulatory environment is sorely felt in this growing sector. The High Council for Television and Radio (HCA, *Haut Conseil de l'Audiovisuel*) still only has a limited role. The shedding of the Ministry of Communication in 2001, which regulated the sector up until then, has added to the confusion around the subject.

Even if we lack reliable global figures, the audiovisual market has been in constant development since 1995, with the arrival of new means of distribution and the craze for audiovisual professions by a large segment of the population. Additionally, the lower cost of certain products, particularly linked to piracy, favours a change in consumption patterns for audiovisual products. This development, which is followed up with still somewhat shy initiatives to set up training organisations, does not conceal the obstacles, namely: lack of actor training, market tautness, government monopoly, lacking or run-down infrastructures, non-observance of questions concerning intellectual property by the players in the audiovisual sector, legal provisions not particularly in phase with the sector's development. Consequently, the penetration rate of foreign cultural products still is close to 100 %.

However, in the field of advertising, the formal consultancy, design and communication activities of advertising agencies reach a turnover estimated at about 4.5 billion CFA Francs (6.86 million euros)[1]. The market is divided among some thirty communication businesses, but the market is almost entirely controlled by no more than seven agencies. These seven large businesses are for the most part subsidiaries of major international agencies, which in turn are in charge of multinational budgets.

2.2. Cinema and video

Cinema's lack of structure and dependence

Cinema is both art and industry, since it combines creation, production and marketing. In Senegal, it participates in economic and

1. 1 Euro is worth approx. 656 CFA Francs.

social development, even if modestly, through the raising of capital and job creation. Nevertheless, the Senegalese cinema sector suffers from a chronic deficit of structuring. The lack of organisation in the sector is at the root of the lack of statistics in terms of number of jobs created and production volume, as well as for the flow of trading in the sub-region and even at the international level. The project of a national box office, which dates back to the middle of the 1990's, but only became the subject of a law in 2002, has always been brandished by the authorities as an important element for the mechanisms of revenue monitoring.

In the past five years, five 35 mm feature films have been produced in Senegal by Senegalese people, but this was done without a proper sector structure, insofar as almost the entire budget of these films came from financial backers within the scope of international co-operation and was spent outside Senegal (production and post production). Very often, key technical positions (assistant director, director of photography, sound engineer, chief editor, etc.) are held by westerners. However, it must be pointed out that a private operator, Arona Camara (state technician) has equipped himself in the last few years with material for machinery and lightning representing an investment of 300 000 euros, which today makes it possible for many films to be shot in the country without needing to get equipment elsewhere. Moreover, actors are neither provided any training on the right of publicity, nor on production contracts, as the Senegal Music Trade Association (AMS, *Association des Métiers de la Musique du Sénégal*) does for music. The audiovisual sector also lacks lawyers specialised in these issues.

The emergence of video production and its stakes

While it contributes to the democratisation of access to and production of audiovisual content, video imposes itself in total anarchy, making it impossible to document the activity in any way. After the failure of national cinematographic policy, with SIDEC's liquidation and SIMPEC's mixed results, video is used to document Senegalese life experiences and report on social problems. The quality of films and their unsuitability for broadcasting standards were not considered as obstacles in the beginning.

Purchases from the Senegalese diaspora living abroad represent a major market. We have observed a genuine picture rush, where many youth suddenly become filmmakers and technicians or even "producers". The emergence of practical training organisations, such as the Média Centre de Dakar (MCD, one-year free audiovisual training for six men and six women, financed by the Norwegian NGO Forut), supports this passion for visual arts.

Some twenty digital video films are produced each year without foreign investment. All three films by Assane Diagne *Nef, Coumba* and *Kiné* were granted local funding and a quarter of the funding came from the AIF. The screenplays had been deemed too poor by European aid commissions. The cost of all three screenplays amounted to 75 000 euros. *Kiné* has a play time of 82 minutes (CILS prize at the FESPACO), *Coumba* 64 minutes and *Nef* 47 minutes. The three films have been broadcasted without French subtitles about ten times on RTS and were also broadcasted on CFI with subtitles. For the three films, the RTS provided the editing and filming equipment after one year of negotiations: this contribution in the form of equipment constitutes its share of the co-production and relieves the RTS from having to pay for copyrights and it amounts to approximately 15% of the budget. As a result, the only purchase came from CFI: 15 000 euros for all three films. Another example: *Almodou*, by Mamadou Thior, cost 15 000 euros, half of that amount came from French co-operation in 1999 and the other half from the Senegalese state (1 000 euros from the Ministry of Communication and 500 euros from the Ministry of Culture). *Almodou* was shot in 7 days, *Cumba* in 9, *Kiné* in 14 in January 1997, *Nef* in 7 days in December 1996 – these last three films were shot consecutively within three and a half months. The Africa Productions company markets them in the form of piracy-proof cassettes that cannot be copied. The master is sold at a fixed price and not on percentage basis. Africa Productions made 1 500 copies of the three films by Assane Diagne and paid 3 000 euros. The RTS receives 25 % as co-producer and 75 % goes to production. *Almodou* was sold by itself for a fixed price of 3 000 euros.

A profession structured in the form of associations

Most professionals in the sector are organised into associations:

- Associated Senegalese Filmmakers (CINESEAS, *Cinéastes Sénégalais Associés*) grouping producers, directors and studio technicians
- National Union of Senegal's Cinema Exhibitors (UNECS, *Union Nationale des Exploitants de Cinéma du Sénégal*) grouping cinema owners and employees

- Private Television Producers Association (*Association des Producteurs Privés de Télévision*)
- Senegalese Screenwriters Association (*Association des Scénaristes du Sénégal*)

The first two entities are under the supervision of the Directorate for Cinematography (*Direction de la Cinématographie*), which in turn is an entity of the Ministry of Culture and of Classified Historical Heritage (Ministère de la Culture et du Patrimoine Historique Classé). However, it must be noted that a large number of players in this sector qualify themselves as independent and are not affiliated with any of these professional organisations.

Training focused on digital video

Today, training focuses much more on digital video. Qualifications are technical in nature (shooting, sound recording, virtual editing) and we are now even observing a perfect versatility of the players, who now master these three aspects individually, as opposed to previous generations, which almost exclusively centred their training on production and had a rather theoretical approach.

NGOs are acquiring appropriate equipment in order to boost the training sector:

- The Média Centre de Dakar trains twelve persons each year, maintaining a balance between genders: six men and six women. The Media Centre receives an annual subsidy of 1 500 euros from the Ministry of Culture to support the Neighbourhood Film Festival (*Festival du film de quartier*), but does not receive anything for the training program.
- The National Association for Literacy and Adult Education (*Association Nationale pour l'Alphabétisation et la Formation des Adultes*) has been backing up the capacities of a collective of ten professional videomakers for the last two years.

There are even private training centres such as ACT Dakar or Dakar images. However, even if great progress can be observed in terms of training, the problem remains whole, insofar as it is necessary to train proportionate amounts of producers, distributors and critics for a balanced development of the cinematographic process, in order to enable the sector to truly take off.

An expanding market that does not reach cinemas

There is no reliable study quantifying the sector as of yet. In order to obtain figures on domestic consumption, it would be necessary for local distribution companies (ASLF, SOSIFIC, Senvision, UNECS) to be willing to pass them on, which is not the case. In as far as exports are concerned, most Senegalese films on reel go through western distribution channels, but they rarely go beyond the break-even point. At the domestic level, increasing numbers of souks specialised in the sale and rental of video cassettes are developing without any possibility to gather figures.

Domestic video is the latest brainwave of Senegalese consumers and it sells well at the national level. At the international level, these can be found at stalls visited by the Senegalese diaspora throughout the world, as well as at online sale sites. This market is exclusively in the hands of three organisations: Africa Productions; Camara Productions; Africom.

These initiatives stem from the informal sector and have reached such a level of development that they were obliged to structure themselves, which represents a big step towards formalisation and the prospects of integration and can only encourage the administration's effort in terms of control and support.

Contrary to generally accepted ideas according to which video recordings are a tough competition for cinemas and lead them to bankruptcy, the problem with cinemas is structural. Since SIDEC closed down, cinemas have indeed been taken over by private operators, which lack the appropriate means to operate them. The problems concern:

- Personnel salary (low wages and almost inexistent continuing education, particularly for projectionists)
- Cinema maintenance (obsolete equipment, health hazards and security on premises). The Africa Cinémas programme (financed by the AIF, EU, MAE and French CNC) tries to bring solutions by contributing to the renewal of the infrastructures of certain cinemas in Dakar (U3, El Hadj, Médina).
- Difficulties in film supply: most film distribution companies in Senegal are affiliated with European or American majors, which supply film packages. In other words, there are only two or three films of quality and likely to appeal to the public in each lot. Yet, the nature

of the agreements that binds them to these foreign companies is such that they are forced to program all films.

- The centralisation of cinemas, most of them built during the colonial era or just after independence, according to the population's distribution in urban spaces. Today, these spaces have gone through are many changes. Since the withdrawal of the state from the commercial sector, the policy of proximity to cinemas has not been followed up. On the contrary, the vast majority of cinemas in the outskirts of cities have closed down. Senegal has thus seen its circuit drop from some seventy five cinemas in the 1970's to about fifteen today. In Dakar for example, where there are only about ten cinemas for a population of three million inhabitants, there is only one cinema in Parcelles Assainies, one of the most populated districts, and the same goes for Pikine, which only has two cinemas. The other large areas, which today are almost established as municipalities, do not have any cinemas. Aside from a few neighbourhood cinemas that were able to find subsidies for rehabilitation, only "Le Paris" offers quality programming, but it is located in the city centre. Transport problems in Dakar prevent the public to return to the city at night to see a film and the admission also is too expensive for the average Senegalese. As a result, there is a major proliferation of illicit or informal video projection venues.

All this explains the public's loss of interest in cinemas, even if these are increasingly acquiring video projection equipment to get round these problems. «Films are screened on weekends (Fridays, Saturdays, Sundays and Mondays, if it works). After three weeks, the audience begins to thin out. If we schedule them again after one month, people come back: the same and those from word-of-mouth», explains the exhibitor Khalilo Ndiaye.

Face with such a trend, the State tries to open the market by reducing customs and inland duty in order to favour the exhibition of Senegalese or African films. However, the consequence of this opening is the hegemony of blockbusters (major American and Asian productions), which are powerful vehicles of values and ideologies (American way of life, consumer society, etc.). Today, the quantity of audiovisual products consumed on different media, mostly in cities, is considerable and the essentially young consumers are not always prepared to face this onslaught of information: the educational, institutional and family systems are running out of steam, while decline of living conditions and impoverishment prevent parents from taking care of their children, an image masterfully caricatured by the filmmaker Moussa Sène Absa in a successful series of televised sketches, *Gorgorlu* («the go-getter», 13 minutes, 4 times a week).

Essentially private investors

As one can understand, it is very difficult to obtain detailed figures from private companies. Yet, today, major investors in the sector are private production companies or non governmental organisations (Forut Media Centre de Dakar, Plan International, Anafa, Cerpac, etc). They often have digital video shooting units of the Sony PD 150 and PDX 10 series as well as Avid Xpress digital editing workstations. The experience of AADA ("tradition"), a company created with American funds, is instructive: major investments were made in technical equipment for post production and mixing, but the market was too small to make them profitable and the company closed down. This failure is also attributed to competition from the informal sector, as well as to the lack of demand from customers for quality products.

Today, the Senegalese State has the ambitious project to build a National Technical Centre (*Centre Technique National*) endowed with appropriate cinematographic and video equipment for autonomous and endogenous film production in Senegal. This project, named PAICA, hopes to find financing through development co-operation.

Formal distribution for cinema and television, informal for video

Since the liberalization of the merchant sector, the public sector only concerns television with the RTS, which recently launched a second channel, announced as cultural, but in fact musical, since it only shows video clips. RTS2S is a branch of the national television and is managed by the RTS's former programming director. Recently, it has also been broadcasting sitcoms from Ivory Coast and Senegalese television films of mediocre quality, as they stem from the informal sector. The formal sector handles cinema and television distribution, whereas the informal sector handles the distribution of video recordings in markets, stands, shops, "on the ground" and now even through peddlers, which had never happened before. These go from door to door, especially in popular neighbourhoods, to sell or rent DVDs and VCDs. While it is impossible to put a figure to the informal sector, its weight is increasing day by day.

2.3. Television

Officially, the RTS lost its government monopoly in 2000, but the lack of authorisations for private channels is denounced by most players in the audiovisual sector as being one of the brakes preventing the development of trades and productions related to this medium. The Senegalese state explains its reluctance to liberalize the sector by the fact that the television service is one of the cultural properties that most effectively conveys ideas, symbolic values and lifestyles, which contribute to forge and spread a collective identity and to influence cultural practices.

Private operators are ready

The number of television sets in Senegal is estimated at around one million, which represents a penetration rate of the order of 10 %. However, this national average hides strong discrepancies between urban and rural populations (the degree of urbanisation is 45 %). In the urban area of Dakar, which houses a quarter of the Senegalese population, 50 % of households are equipped with a television set. This rate is about 40 % for other urban populations and only 3 % for rural populations. These figures justify the major visual advertising market that the RTS has monopolized. Since a second channel was launched in 2003 with national private capital (but with the RTS as major shareholder) foreshadows a future total liberalization of the market to private promoters, which are already well equipped and who are only waiting for the effective liberalization to implement their audiovisual units. This is the case for all current press groups (Wal Fadjri, Sud communication, EXCAF - *Expo Carrefour Afrique*), which already have acquired all the necessary equipment. In the mean time, most of them develop small production units for adverts or institutional films on behalf of ministries and other development organisations, such as UNICEF.

Of the million television sets in Senegal, about 250 000 are equipped with MMDS aerials. The MMDS technology, more recent and much less costly than radio band technology, was originally offered to Senegal by Canada for the broadcasting of TV5. The Senegalese group EXCAF claimed its advantages and today benefits from a quasi-monopoly on the import of MMDS aerials, sold at 90 euros including installation. As for satellite dishes, it is said that there are less than a thousand in Senegal. They are extremely rare due to their cost: about

150 euros, which does not include the price of a digital decoder (approx. 300 euros). In Senegal, these dish aerials must have a minimum diameter of 2.5 metres to allow for good reception. However, a market of handcrafted satellite dishes is getting organised.

Increasing access to satellite TV weakens the preponderance of the public channel

The major broadcasters in Senegal are the public channel RTS, Canal+ Horizons (African subsidiary of Canal+) and the Senegalese group EXCAF. The public channel RTS and the last born RTS 2S (a subsidiary of the parent company) are the only ones up to now to provide entirely unscrambled broadcasting over the radio band. These channels are by far the most watched, considering the cost of the equipment required to pick up the other available channels. The RTS, which has 120 employees (about 200 including services) and provides 92 hours of weekly programming, is financed through advertising and by a licence fee, which is the product of a tax on power consumption directly paid by the SONATEL. The RTS broadcasts 13 hours a day during the week and 6 on weekends. RTS 2S broadcasts six hours a day. These public channels have limited means at their disposal. Ordinary evening programming during the week consists of Brazilian or American television series dubbed into French, Senegalese music videos, cultural programs in the form of talk shows, such as *Ma famille* or *Faut pas fâcher*. The RTS also regularly broadcasts programmes from the CFI-PRO bank, provided free of charge by the French co-operation (in order to respond to the demand in the sector, which feared competition in the production of programs by local televisions, the CFI-TV channel open to the general public does not broadcast any longer since 1 January 2004). In October 2004, news programmes represented 76 hours, i.e. 17.65 % of all programmes. In the same month, productions in national languages represented 23 hours and 17 minutes (5.38 % of all programmes), while national productions amounted to 236 hours and 45 minutes (54.93 % of all programmes) and foreign productions to 156 hours and 27 minutes (36.25 % of all programmes).

Scrambled channels are experiencing a continuous increase in importance, notably since the beginning of the 2000's. The total number of subscribers to one or several channels reached 30 000 in 2002, compared to 13 000 in 1999. The total turnover generated by this activity now is reaching close to 6 million euros. It should however be noted that pirated access to scrambled channels can be obtained for a cost of 5 euros a month. Canal+ Horizons, a product of Canal+, broadcasts both unscrambled (2 hours a day) and scrambled programmes, by radio band and digital means. Canal+ Horizons sells its radio wave decoder for 150 euros and its digital decoder for 380 euros. The monthly subscription fee is 30 euros. Canal+ Horizons has an MMDS licence, but has postponed its investments in this sector for the time being. However, the channel markets the Francophone digital network package SAT and offers its subscribers the installation of a satellite dish for 150 euros. The channels of the SAT network package can be accessed with the decoder providing a subscription. This network package is enhanced with other channels on a regular basis. Canal+ Horizons currently has more than 20 000 subscribers in Senegal and remains the sector leader thanks to the variety of its offers.

The EXCAF group, founded in 1972, currently is the only MMDS operator in Senegal. Its 1.3 million euro capital is entirely in the hands of a private Senegalese person. EXCAF has 13 transmitters that enable it to cover nearly all regions of Senegal. The group has a pool of more than 150 000 MMDS aerials in the Dakar area alone. EXCAF broadcasts the channels TV5 (France), BBC (Britain), Deutsche Welle (Germany), RTPI (Portugal) and the Saudi Arabian Television unscrambled. Since 1999, the broadcaster also offers a satellite network package of eight scrambled channels that can be accessed through a decoder, sold for 90 euros. Since the average wage in Senegal is around 60 euros per month, the price of the decoder remains prohibitive for the large majority of Senegalese. This network package has some 12 000 subscribers.

Audience research performed by Sofres in August 2000 in Dakar-Pikine shows a very strong concentration of market shares on four channels that represent more than 90 % of the total audience (RTS 64.5 %, Canal+ Horizons 17.9 %, CFI 5.4 % and TV5 4.5 %). However, the growing number of offers from new channels over satellite or MMDS has enabled them to increase their audience from less than 2 % in 1999 (HPCI survey) to more than 7 % in 2000, among which a noteworthy breakthrough of RTL9 (1.8 % of market shares in 2000). The main victims of this break-up are the RTS, which looses 4.5 points (69 % in 1999, 64.5 % in 2000) and TV5 which looses 3.5 points (8 % in 1999, 4.5 % in 2000).

2.4. Advertising

Growing turnover

The sector's turnover can essentially be split up between advertising revenue or sponsoring and payment for scrambled channels. Progress is noticeable, particularly when related to major sports events (among which the Olympic Games in Sydney), as well as to big campaigns launching new products or services (automobile, banking sector, telephony, airlines, cosmetics). The total revenue from television advertising now exceeds 4.5 million euros. As a whole, today, the advertising market in Senegal generates an annual business volume of about 12.2 million euros, where below-the-line advertising represents close to 45 % of this market (source: McCann Eriksson communication agency). In October 2004, the RTS broadcasted 14 hours and 22 minutes of standard advertising, i.e. 3.3 % of its programmes and 23 hours and 52 minutes of sponsored programs, i.e. 5.47 %.

Senegal is still far from international standards, which place television far in front of all other media (radio, written press, poster advertising): Senegalese advertisers still do not have a "TV advert culture" and often prefer more traditional media that they believe to be less expensive, even if all cost/contact studies show the contrary. The take-off is expected to take place in the coming years. Various phenomena could accelerate it:

- A new commercial policy from the RTS that is better adapted to the market
- Increasing number of communication agencies leaning back against larger international networks (McCann Eriksson, Young & Rubicam, Ogilvy, etc.)
- Intensified competition in various sectors (banking, telephony, air transport, food, etc.)
- Increasing markets and thus increasing advertising budgets, as well as an increase in the consumers' purchasing power
- Arrival of new operators (private channels) stimulating offers and competition

It is important to note that commercial advertising is increasingly presented in Wolof, the language spoken by 80 % of the Senegalese population.

Outlook

Multichoice, an anglophone network package with some forty channels from South Africa is available in Senegal since the beginning of 2001 on the Ku-band (small satellite dishes of less than one metre). Its broadcasting by the Global Outdoor Systems company is confidential for the time being. There is talk of the network package to be enhanced with francophone channels in the near future, which would make it much more attractive. Discussions between potential partners (Portinvest, DSTV, Canal+ Horizons, etc.) are currently at a standstill, which indicates that there are major stakes involved. Multichoice will most likely be broadcasted by Canal+ Horizons in Senegal.

It is also likely that one or two private radio band channels will soon come into being in Senegal. An invitation to tender was published in the beginning of 2001 and later suspended. Many Senegalese and foreign groups are interested in this project, even if they do not all weigh up the considerable means that must be implemnted to succeed i nthis business (several tens of millions of euros in investment are required just to respond to the initial specifications).

2.5. Music: emergence of national video clip production

You will always hear the same old song: music brings in a lot of money. Yet, it is impossible to obtain detailed figures, particularly due to the lack of consultation between institutions (e.g. between the Senegalese Copyright Bureau (BSDA, *Bureau Sénégalais du Droit d'Auteur*) and the Directorate for Statistics). It appears however that the development of the music industry has favoured the introduction of new promotional media for marketed products: video clips.

Up until the end of the 1990's, the only videos broadcasted came from European or American majors, which produced Senegalese musicians: Youssou N'Dour, Baba Maal, Ismaël Lo. Enployees of the public television started freelancing in music video production and as a result the market was diversified. Yound directors are now on the market after having benefitted from training abroad. There are however enormous difficulties in the sector:

- Low profitability of investments
- Lack of qualified personnel
- Low purchasing power of self-producing musicians
- Pressure from producers to reduce costs, etc.

2.6. Radio

Radio is by far the most developed media in Senegal. It has been increasing strongly since the first private experiments in 1994 with the Groupe Sud Communication, which also publishes the daily newspaper Sud, the number of commercial or community stations broadcasting in the capital went up to 21. This does not account for the community radios that are developing in the regions, which however have a very limited audience and sometimes do not cover the entire town in which they are established.

The state-controlled RTS is relayed throughout the entire country and offers programmes in all codified languages spoken in Senegal. In urban areas it experiences fierce competition from private radio stations. The latest surveys performed by the BDA Institute classify the public station and its subsidiary DAKAR FM at the 11th and 12th places. The results of the latest survey performed (on a sample of 1 000 persons during the period from 2 to 12 July), published in September 2004, establish that:

- Walf Fadjri FM remains the radio station dakarians listen to the most, with a penetration rate 74.9 %, i.e. more than 40 points ahead of Sud FM, in second position
- The latter is just followed by Nostalgie and Radio futurs médias (RFM) tied in third place with a listener rate of 27.9 %.

These are in turn followed by the radio stations below listed by audience:

- Sokhna FM 21.1 %
- Dunya 17.5 %
- RFI 14.8 %
- Lamp Fall FM 13.2 %
- Envi FM 10.2 %
- Oxyjeune 6.2 %
- Chaîne nationale 4.8 %
- Dakar FM 3.7 %
- Africa n°1 3.1 %
- Sud Banlieue 2.8 %
- Ndef Leng FM 2.7 %
- 7FM 2.5 %
- Manoré FM 2.3 %

- BBC Afrique 1.6 %
- Excaf Allahamdoulilahi 1.6 %
- Fagaru FM and Témoin FM both at 1.5%[2]

Moreover, the latest poll from BDA reveals that compared with December 2003, most radio stations (except RFM and Sud FM which have seen their figures increase respectively by 12.1 and 3.3 points) are experiencing a drop in their listener rate. The most noteworthy decline is that registered for RFI. The French station drops from fourth down to sixth place, i.e. a 10.8-point loss of audience. As for Lamp Fall FM, it is clearly gaining ground and works its way up to eigth place with a penetration rate of 13.2 %, i.e. an increase of 2.2 points.

2.7. The piracy boom

Copyrights could have been a reliable tool to measure the growth rate of the audiovisual and cinema sector in Senegal. In the absence of statistics, factors such as an increase in transaction volume, diversification of products on the market and establishment of many production organisations in the informal sector allow us to conclude that there is net growth.

In Senegal, the rights of creators of literary or artistic works (for example, books and other written works, musical compositions, paintings, sculptures, computer programmes and feature films) are protected by copyright for a minimum duration of 50 years after the author's death. The Senegalese Copyright Bureau is a self-financed public institution. The state does not grant it any subsidies: it operates on its own capital. The first royalty payments date back to 1999. It also handles the foreign repertoire for its sister companies. While in other countries public-operated radio broadcasting organisations often pose a problem, in Senegal royalties amounts are often questioned by private radio broadcasters who contest the legitimacy of the BSDA's intervention.

A national organisation, grouping all administrations involved in the fight against piracy, has been established. The observance of trade-related intellectual property rights forces WTO member states to provide for legislation on copyright and neighbouring right (in accordance with the provisions of articles 1 to 21 of the Bern Convention and of article 9 of the agreement on trade-related intellectual property TRIPs. In Senegal, the recent law on private copies implies that as soon as

2. According to the latest information, the radio station Fagaru FM is said to have closed down.

media is introduced at the airport, the customs administration shall obtain payment for all taxes and is not allowed to authorise collection as long as the importer has not declared the number of copies concerned to the BSDA. Nevertheless, piracy is as widespread as in other countries. VCDs with pirated films can be found at any crossroads for 3 euros. At the main market, Sandaga, in the centre of Dakar, pirates benefit from the protection of the very powerful Unacois lobby (Trader's Association, most members stem from the informal sector or are still part of it).

For any production project, the text must first be registered with the BSDA, specifying, if necessary, the number of copies which is often minimised so as to avoid paying the corresponding rights. This causes so many complications that operators have a tendency to avoid this step entirely, which in the case of cinema makes them lose precious time when the shooting team or equipment has been hired.

2.8. Positive development of the legislative framework

On 15 April 2002, the National Assembly voted and adopted the Law on the rules organising cinematographic and audiovisual production and distribution activities (Law no. 2002-18). This Law has been conceived in a close collaboration between the administration and the actors in the sector, while there had been no true body of law taking care of the cinema and audiovisual sector since independence. In application of this law, five decree projects have been initiated by the Ministry of Culture and of Classified Historical Heritage and submitted to the President of the Republic, who signed them on 5 February 2004. These decrees concern:

- Filming authorisations: the filming of any cinematographic or audiovisual work is subject to an authorisation under the conditions fixed by decree. Except in case of an exemption granted by the minister, foreigners must pay a tax amounting to 600 000 CFA F (914.6 euros) for a feaure-length film and 150 000 CFA F (228.6 euros) for a short film to supply the fund for the promotion of the film created by the finance act. Any public exhibition of a film is subordinate to obtaining a visa delivered by the minister upon approval by the Control Commission. Unauthorised filming is punishable by the confiscation of the film's negatives and a fine from 3 000 000 to 10 000 000 CFA F (approx. 4 570 to 15 245 euros) for a feature-length film and from 1 000 000 to 5 000 000 CFA F (approx. 1 524 to 7 622 euros) for a short film.

- Film Promotion Fund: its aims is to support and self-finance the activities of the film industry through the modernisation of technical organisation and equipment.

- Official record of cinematography and audiovisual arts: it is intended to provide publicity for deeds and conventions arising out of the production, distribution and exhibition of Senegalese and foreing films. Registering the deeds in the record following the prior registration of works enables a transparency in contractual relations between the players in the cinema and audiovisual sector.

- National box office: it allows for a reliable control system to be set up for the receipts of cinema operators. It helps to make the exhibition sector more competitive by issuing uniform admissions tickets. The revenue generated must be hared out among rightful owners (the producer, distributor, exhibitor and local government concerned). The box office is an essential element that will provide information on the attendance rate of cinemas as well as statistics. The box office shall be administered by the Ministry in charge of Finance.

- Professional card for cinema and audiovisual professions: it shall be delivered on the basis of the experience acquired through practice and proven on film sets. Those who are to be granted this card are listed in a total of 20 branches corresponding to 30 cinema and audiovisual professions.

Subsequently, the Ministry of Culture and of Classified Historical Heritage organised a workshop seminar in Saly-Portudal (Mbour) from 26 to 28 May 2004. About a hundred persons participated in the meeting, including representatives from the National Assembly; Ministry departments concerned; Towns and local governments; Professional and union associations; Various trade associations operating in the cinema, audiovisual and press sectors.

They have reviewed the various aspects of the laws and proposed practical plans for applying the decrees, formulating the following recommendations:

- Stop converting cinemas into shopping centres
- Safeguard and modernise the symbols of national cinematography that cinemas “Le Paris” and “El Mansour” represent

- Create new types of cinemas that put forward the physical comfort and aesthetics of the members of the audience by the construction of complexes including screening venues and other multifunctional leisure facilities
- Concrete implementation of the programme « one town - one cinema", which is a project of the Ministry of Culture aiming at reviving the programme for the cinemas vicinity to the population

At present, there is a Cinema Aid Fund endowed with an annual amount of 30 000 euros to support production, distribution, training, export and the sector's structuring. However, the weakness of this aid must be acknowledged in view of the immensity of the needs for investment in the sector. Moreover, the project to set up a Cinema and Audiovisual Promotion Fund, the amount of which shall be determined later, will enable the state to contribute considerably to the production and promotion of national cinema, as well as to training for the players in the sector. Beneficiaries shall be cinema and audiovisual production, post production, distribution, training and promotion companies.

2.9. Bilateral and regional trade negotiations and agreements

As a member of the World Trade Organisation (WTO), Senegal participates in the rounds and is either included in the ACP group or the Africa group, according to the stakes at hand in relation to its economic interests. On the question of cultural goods and services, Senegal's positions are as close as possible to those of the UNESCO and WIPO. As is the case for most countries of the South that lack experts in the field, the Senegalese position on the question of copyright is driven by the considerations and consultations conducted by the UNESCO along with the WTO, WIPO and UNCTAD.

3. THE AUDIOVISUAL SECTOR IN BURKINA FASO

3.1. Introduction

According to a report of the *Agence intergouvernementale de la Francophonie*, the level of penetration of foreign cultural products on the Burkinan market is close to 100 %. This is also the case for audiovisual products. Yet, despite its weak GDP per capita, Burkina Faso is the leading country in Africa for cinema, considering the amount of films produced, the international celebrity of filmmakers like Gaston Kaboré or Idrissa Ouedraogo, the FESPACO (Panafrican Film and Television Festival of Ouagadougou), where all professionals gather receiving the corresponding media attention, and the tradition of a political aspiration for state intervention in the sector. Nevertheless, the summary diagnosis of the audiovisual sector in this country provided below is not very flattering: deficit in production and in visuals put on the market. In Burkina Faso, like elsewhere, time has come for a redefinition of cultural policies at the national level, and even more so, at the regional level.

3.2. Cinema and video

Privatisation of exhibition and distribution

Up until 2003, most cinemas in Burkina Faso were managed by a state-owned company, the Société nationale de cinéma du Burkina (SONACIB), which was also in charge of distributing a part of the films, particularly African films, even if this is not its primary activity. There are only a few private cinemas, the largest among them is Mr. Frank Alain Kaboré’s Neerwaya company, located in Ouagadougou, and which also is the largest air-conditioned cinema of the country (1 066 seats).

The number of admissions to the SONACIB’s cinemas reached its peak with 3.5 million tickets sold in 1995, for a population of 10 million at the time. Since then, the decline has only continued to confirm itself. The company’s debt reaching more than 3 million euros justified its placement under temporary administration in 1997, until the decree from 10 July 2003, which ordered its liquidation. Born out of the nationalisations in 1970, the SONACIB was supposed to transfer 15 % of its box office receipts to the Fund for the Promotion and Extension of Cinematographic Activity (*Fonds de Promotion et d’Extension de l’Activité Cinématographique*). This Fund was a true success and actually participated in the production of a number of Burkinan films. It also financed the Film production division (DIPROCI, Direction de la production cinématographique), whose shooting equipment is used for nearly all films in the sub-region. Yet, since the beginning of the 1990’s, the SONACIB was no longer able to pay money into the Fund, due to the declining audience related to the proliferation of illicit video screenings and to losses linked to fraud: money was taken at the door without any tickets or tickets were kept whole so as to be resold at the box office. A study showed that the company was thus suffering a loss of revenue of 25 %. The action of sworn inspectors since 1993 has increased receipts by 27 %.

Over a period of a few years, the process of decline and closing down of cinemas did not cease to accelerate, so that after the liquidation of the SONACIB in January 2004, the Burkinan state entrusted the management of SONACIB's cinemas, for a trial period of two years, to the Association of African Writers, Directors and Producers (*ARPA, Association des Auteurs, Réalisateurs et Producteurs Africains*), whose managing director is Idrissa Ouedraogo, the eminent Burkinan director. Created in 2001, the ARPA's goal is to favour the promotion, creation and distribution of African films, to organise workshops, meetings and conferences, as well as to define and establish new forms of partnership. The assignment entrusted to the ARPA concerns the repair of cinemas and to a larger extent the development of production, as well as the distribution and broadcasting of films. The ARPA hopes to bring the circulation of films under control, make screening facilities profitable and establish modern ticket offices. A number of renovations have already taken place, among which the Ciné Burkina, which is the second largest air-conditioned cinema in Ouagadougou. In order to remedy the poor state of the projection equipment, the purchase of digital video projectors is being considered.

Of the 55 Burkinan cinemas, 16 have fallen under the management of the ARPA. The attendance rate of these 55 venues currently is approximately 30 %. 4 are entirely covered, 15 half-covered, and 36 are open air cinemas. There are 3 exclusive venues (Ciné Burkina, Ciné Sayon and Ciné Neerwaya). Covered cinemas generally have 3 screenings a day, whereas the other venues only schedule two screenings. Popular venues essentially feature action films (B-series, thrillers, detective films, karate films, westerns) or "Hindu" films. These films have given shape to the audience's taste, which keeps asking for more.

The difficulty to make African films profitable

Burkina Faso has probably been the greatest cinema-consuming country in French-speaking Sub-Saharan Africa, but the consumption trend is declining by approximately 50 % every 5 years. Most of the films shown in Burkinan cinemas, where screened after the SONACIB purchased the screening rights and not by distribution of profits. With an average cost of 668 euros for the rights and an average number of tickets sold of 5 481 per film over the period of 1992-1999, the average cost of a film amounted to 12 euro cents per accounted ticket. Since the purchase of rights for African films is higher (an average of 1 830 euros), the break-even point for the distribution of an African film amounted to 15 000 tickets. In most cases, this figure had to be reached with a single copy. Only 12 African films have gone past this break-even point in ten years, which led the SONACIB to favour 50/50 sharing of revenues with the producers or directors, for this kind of film. This did not exclude the question of further frauds.

Thus, it is much more the cost of African films (even though remunerated at a fair price) and the lack of a well-structured ticket office rather then a lack of audience that makes it difficult to distribute African films compared to international films, negotiated at lower prices, because they already have been made profitable on other markets or by packages. This comes about in the general context of a decline in the number of cinema-goers, which dropped from 3.5 million tickets in 1995 to 1.6 million in 1999.

Lessons from the Burkinan experience

The Burkinan example shows that it is possible to find contractual programmes enabling the distribution of films under economically profitable conditions for both parties (producer and exhibitor), as well as programmes indexed on a film's admissions. However, these kind of sharing programmes rely on actual control of the number of tickets sold by both contracting parties.

Nonetheless, the sums recovered in this way remain minimal for African films, about the cost of printing one copy. The fact that theses sums are so low not only depends on the low price paid for tickets (0,30 to 1,5 euro according to cinema and type of seat), but also on the relatively small success of certain movies with the Burkinan audience. While certain Burkinan films attain noteworthy success (*Yaaba*, 1989, by Idrissa Ouedraogo totalled 84 369 spectators until the end of its distribution in 1997 after two major releases; *Buud Yam*, 1997, by Gaston Kaboré, gathered 56 152 spectators in two years; *Sia, le rêve du python*, by Dani Kouyaté, winner of the FESPACO Grand Prize in 2001, reached 40 000 admissions with only one copy in a single month; *Tasuma, le feu*, by Daniel Sanou Kollo, sold 45 309 tickets between March and September 2004, for 50 296 euros in box-office revenues, etc.), other films remain unnoticed. It all depends on the attention the various films received in the media, which in turn is influenced by their presence in international film festivals. Films from other African countries can become a great success, such as *Bal Poussière* (Ivory

Coast, Henri Duparc, 1989, 47 936 admissions) thanks to its humour, or *Yeelen* (Mali, Souleymane Cissé, 1988, 36 488 admissions) due to international recognition (the film received the Jury's Prize at the Cannes film festival), or even *Guimba* (Mali, Cheikh Oumar Sissoko, 1995), which reached 24 400 admissions after receiving the Grand Prize at the FESPACO.

Video, the realm of piracy

Today, the number of spaces dedicated to video projection is estimated at over 500. These are held by establishments that are now considered small or medium-sized businesses, even though most of them still remain underground. The Inland Revenue and the Burkinan Copyright Bureau (*BBDA, Bureau burkinabé des droits d'auteur*) both operate in this sector to collect taxes and licence fees, but regulation projects in this field never have been materialised. The part of films sold on videocassette that are pirated is estimated at 90 %. These can be found in total impunity on markets, but even in some stores as well as peddled by street vendors.

A decree was adopted on 3 May 2000, by the Council of Ministers in order to regulate the video projection sector, within the scope of the currently very strong dynamics in the area of video production in the country. In Burkina Faso, the distribution of videos started around 1980. During the 1990's the number of video cassette recorders increased to a level where it seriously competed with big screen cinemas, but the sector had not been regulated. Moreover, public projections of video cassettes with a payable admission fee developed, particularly in the countryside and in the outskirts of cities. In June 1997, there were 324 locations in which video cassettes are screened and in 2004 they amounted to more than 500. The films are generally screened using a VCR and an ordinary television. Most video cassettes used are pirated. Therefore, it is not unusual to see African and Burkinan films in such places, as theses films are simply recorded from television. The screenings run from 10 am to 11 pm, with different titles for each screening. The lack of control opens the door to the screening of pornographic and violent movies as these are particularly appreciated by the audience. The video cassettes are rented in video clubs at a rate ranging from 500 to 1000 CFA F (0.75 to 1.5 euro), for several days. The price of a ticket for one admission ranges from 50 to 200 CFA F (0.08 to 0.3 euro) depending on the film's acclaim. These financial proceeds entirely escape all forms of control. The low purchasing power keeps amateurs from going to the cinemas, which have become rare anyway, if not non-existent, in many neighbourhoods and cities. This sector is largely informal, even in the case of video clubs that have an official legal and tax situation: between 80 % and 100 % of the video cassettes offered for rental are fraudulently duplicated and rented at rates ranging from 250 to 500 CFA F (0.4 to 0.8 euro). Cassettes sold by street peddlers are all pirated.

The market for the sale of video cassettes is less important than the rental market. Video cassettes can be purchased at a video club for a price ranging from 2500 to 5000 CFA F (3.8 to 7.6 euros), but they only cost 1000 or at the most 1500 CFA F (2.3 euros) when purchased from street corner stalls or from unauthorized street hawkers, generally young children (street peddlers). VCDs and DVDs are increasingly present on the market. These are generally pirated VCDs, imported as is, since no video club has the required equipment to reproduce them in larger quantities.

Within the scope of its numerous measures aimed at the follow-up and control of video cassette import, the Burkinan Copyright Bureau, (BBDA) demands that these are stamped. It has undertaken actions against street hawking of pirated cassettes and against video operators (seizure of projection equipment), but these have been too occasional or partial to actual slow down pirating activities. The implementation of regulations (submission of films to the approval of a control commission, annual contribution of 150 euros to finance a cinematic promotion fund) meets resistance from video projection operators. In August 2002, only about twenty operators had conformed to the regulations, while the administrative departments in charge of their implementation have very little means. The legal provisions planning a national box office that is unified, centralised, reliable and controlled introduced with the technical and financial regulating agencies (cinema act) were adopted by the national assembly on 25 November 2004. Expectations are that these provisions will help to provide the entire activity with a better structure, both for film and video

Video as a solution for the future

For Toussaint Tiendrebeogo, Burkinan producer and associate director of Africa Cinémas until 31 December 2004, “in the beginning, African producers shooting in video arose from an economic constraint: the digital format makes it possible to produce a feature film for an amount ranging from 3 to 4.5 million euros." In 2003, the journalist Boubacar Diallo shot *Traque à Ouaga* on video for approximately 3 million euros, which gave him the possibility to raise the financing in record time with local sponsors, whereas proceeding through the usual European commissions would have taken much more time. In Burkina, this film gathered 124 000 spectators in five weeks of distribution, which really makes this a very profitable film with tickets sold at 1000 CFA F (1.5 euro). "With television, Toussaint Tiendrebeogo adds, I always work in video format. For *A nous la vie*, I was in relation with TV5, CFI, but also the Burkinan National Television and Africâble, a small channel that is trying to emerge. The rates offered by African televisions are very low, between 100 000 and 150 000 CFA F (150 and 230 euros), since they ask us to align with *telenovelas*. If *Tasuma*, the latest film I produced, had been shot on video, it would also have been an economic success!"

Proceeds earned in other countries, as well as proceeds from the sale of VCDs can be added to the proceeds earned Burkina: "Video is the way to our independence, he continues. At last, we are going to be able to tell our stories the way we want to, without being dependent on western commissions. A few years back, a director's calling was to go to Cannes, Berlin, or Locarno… A filmmaker's prestige was only to be increased by attending festivals in the North. Today, these same directors can get their prestige through the box office. I imagine that in the future African directors will be able to shuttle between the two. I believe that out of ten films to be produced, I will do eight on video. Of course, some projects will not find a larger public outside of Africa. We have to stop thinking that all topics are for the cinema, when in fact many quite obviously could turn out as beautiful television films."

This solution is only viable if cinemas acquire the necessary projection equipment. The directors' hope also is that television networks show more interest for their movies and purchase them for acceptable prices.

A healthy production

Despite the growing difficulties for Burkinan filmmakers to finance their films, film and audiovisual production is doing relatively well with an annual production of some ten films all categories taken into account. This places Burkina Faso at the head of producing countries in Sub-Saharan Africa. From 1997 to 2002, 150 hours of fiction have been produced by private production companies. Burkinan fiction movies represent three quarters of the African fiction scheduled on the various French-speaking television networks. However, financing problems due to the dwindling capacity of the state in this area and to the reduction of aid from European counters make this development precarious. The answer to this is the emergence of a new generation of private producers who will establish production companies that are up to regulations and on a quest for viability.

Since its founding in 1985, the Burkinan Copyright Bureau (BBDA) has registered 27 directors of audiovisual works with 75 declared works, among them 21 authors of films for the big screen (24 works) and 6 television directors (51 works). The protection provided by the BBDA concerns the collective management of rights and covers films broadcasted on television or those that are subject to piracy. The distribution of the directors' cinematic rights is generally regulated through the contracts signed with the producers.

Television's meagre investment

Burkinan television does not escape the rule, which dictates that despite the relative significance of the annual turnover of public television broadcasters (from 1.5 to 9 million euros depending on the country; 2.1 to 2.3 million euros for Burkina Faso), and of private broadcasters (from 750 000 to 10 million euros), the funding returns to the production of African stock programs (series, fictions, documentaries), in the form of co-production, pre-purchases or simple purchases (acquisition of broadcasting rights after production) is very meagre and sometimes even non-existent for an entire year. The television sitcoms made in Burkina Faso since 1999 (*Kadi jolie* by Idrissa Ouédraogo, *A nous la Vie* by Dani Kouyaté, *Vis-à-Vis* by Abdoulaye Dao, etc.) are essentially produced with private funds and with the help from western funding. Given their success, the national television channel TNB has turned into the pillars of its programming and rebroadcasts them abundantly. While *A nous la vie* provides an innovative image of the youth, *Vis-à-vis* is more rooted in a social satire aiming at an evolution of mentalities, as is the case with Kadi jolie, which presents an ironic look at the realities, an alternative to the famous French sitcom *Hélène et les garçons*, which had been censured in Burkina Faso.

The producing or co-producing state

The following table shows the evolution of the implication of the Burkinan state in film production through the Division of cinematography:

Burkina Faso: State Funding of Film and Video Productions 1982- 2004

Productions and co-productions in film and video by the Burkinan state	1982-1989	1990-1994	1995-1999	2000-2004
Feature films for theatrical release	18	20	6	3
Short films for theatrical release	15	21	8	5
Documentaries and reports for theatrical release	31	8	1	0
Feature films for video	0	0	0	2
Short films for video	2	0	3	0
Documentaries and reports for video	1	1	8	5
Total	**67**	**50**	**26**	**15**

Source : Report on the filmography in Burkina Faso (DCN), 2004.

The table indicates a lowering or concentration of aid and a still overcautious transition towards video. As Burkina Faso is the flagship of filmmaking in Africa through the FESPACO, it has a culture more rooted in great cinema than in local productions. However, today it is also getting renowned through series produced for television like A nous la vie or Kadi Jolie.

Until very recently, only the National Directorate of Cinematography (DCN, *Direction de la cinématographie nationale*), the African film production company CINAFRIC (a cinema complex equipped with production and shooting studios created in 1979 with government assistance by the businessman Martial Ouedraogo, closed down today) and the Burkinan national television (TNB, *Télévision Nationale Burkinabé*) owned the required technical equipment to meet the service delivery demands of domestic and foreign productions. Today, new private production organisations and the audiovisual departments of organisations and ministries (Ministry of Territorial Administration and Decentralisation, Ministry of Agriculture, Water and Halieutic Resources, Ministry of the Environment and Life Space, Ministry of Security, State Fund for Social Security, Archdiocese of Ouagadougou) do their best to acquire basic equipment (cameras, sound equipment, lighting, editing, etc.).

There is no technical industry for the manufacture or repair of cinema or video equipment in the area of production and distribution. The state intervenes in the financing of cinematic and audiovisual activities in different ways:

- Direct grants supporting the operation of public cinema and television organisations
- Creation of the Fund for the Promotion and Extension of Cinematographic Activity (*Fonds de promotion et d'extension de l'activité cinématographique*), which in principle was intended to be supplied by a 15 % levy on the SONACIB's gross box office sales receipts, corresponding to a 5 % stamp duty on cinema tickets and a 10 % turnover tax. The difficulties that the SONACIB has encountered and the misappropriation of funds to other uses has made it inoperative, but with the implementation of national box office it should benefit from revived activity.
- Granting of an annual budget for production and purchase of programs to TNB
- Financing of documentary and public awareness films by companies linked to ministries or institutions, within the scope of their program of activities.

Weakness of the private sector

The private sector's involvement in the financing of production remains very weak, generally limited to public awareness and promotional films. Nevertheless, there is a number of active production companies: ROS Production, CINECOM Production, Média 2000, Zama Publicité (today COSMOS MEDIA), Seydoni Production, MEDIS, Afrique Productions, Télé vie déo (private organisation / dutch NGO), etc.

Banks get involved in the production of films sporadically and according to the economic situation. Their past experiences have not been very encouraging, since loans have not been paid off in many cases due to a lack of financial return. The overcautiousness of bankers can also be explained by:

- Promoters' lack of equity
- Absence of financing documents: simplified balance sheet for the past, reliable profit budget
- Difficulty, if not inability, to control the cash flow generated by cultural works (piracy, public's expectation that African-produced cultural works are free, especially theatre)
- Legal environment unfavourable for the protection of the rights of cultural works, but also for bankers to recover their debts (very slow proceedings)
- General lack of guarantees

However, bankers can get involved when the source of debt redemption is well known, controllable and conciliatory through the pre-financing of contracts and the pre- financing in the form of bridging loans for the film

To help the development of cultural enterprises, *Agence intergouvernementale de la Francophonie* has set up the Guarantee Fund for the Financing of Cultural Industries (FGIC, *Fonds de garantie pour le financement des industries culturelles*), which should make bank financing more accessible to private companies operating in the cultural sectors. It is domiciled at the ECOWAS Bank for Investment and Development (EBID) in Lomé, Togo. The fund covers Burkina Faso, Ivory Coast, Mali, Senegal and Togo. This strictly financial mechanism is at the disposal of all banks in a given country, all placed on an equal footing, which encourages competition. The spectrum of eligible activities is very broad: cinema, audiovisual, publishing, written press, radio, theatres and shows, visual and plastic arts, fashion, handicraft and design… The guarantee fund's mechanism supports the credit institution but it does not act as a substitute for it, neither does it exempt companies from submitting a coherent and viable project from an economic and financial point of view.

Production companies tied to directors, such as Sahelis or Jovial productions, mainly act as co-producers within an international scope, handling the executive production of films shot in Burkina, but also within a domestic scope for the production of sitcoms or series for television. The direct contribution of these production companies comes in the form of technical equipment. The contribution of the DCN or the television comes in the form of technical equipment and personnel, or even in the form of support from local sponsors (State fund for social security, for Kadi jolie and Vis-à-vis).

Training meets new development

Since 1976 when it was created, the African Institute for Cinematographic Training (INAFEC, *Institut Africain d'Education Cinématographique*) has trained more than 200 professionals in the areas of journalism and cinema before it was closed down in 1986, because the partner countries (all countries participating in the project, except Burkina which hosted the head office) did not pay their share of the financing. Today, professional training has been entrusted to the DCN, which has put in place a program to boost training for picture and sound professions (PROFIS, Programme de relance de la formation aux métiers de l'image et du son) with the help of Belgian, French, Quebec and Chinese Voluntary Services Overseas.

The DCN launched a part of this program called "course cycles" in April 2000, which consists of several one-month sessions a year: film taking, editing, directing, screenwriting, animated film, sound mixing, documentary directing, production, sound pick-up, sets. Among the attending students, 125 have taken part in introductory courses and 53 in advanced courses, 44 are independent filmmakers, 15 come from the public sector, 118 come from the private sector, 9 were originally from the educational sector and 7 are students. Students are essentially from Burkina Faso; only 10 come from the sub-region. Women represent only 19 % of all participants. In 2002-2004, a specialisation cycle led to a qualifying title as superior technician according to a technical track (Picture - Sound - Editing) and an authoring track (Screenwriting - Directing - Producing). The price for the training is of 915 euros per person and per year. Even here most students come from Burkina Faso, but some come from other African countries. This project has made it possible to provide Burkina Faso with a centre for training in picture and sound professions with a regional vocation, baptised "Regional Institute for Picture and Sound" (IRIS, *Institut régional de l'image et du son*), officially opened in December 2004.

International aid for production

International aid goes through the three usual production subsidy desks:

- The Intergovernmental Agency of the Francophonie supports film and television productions in all formats through its fund called Francophone audiovisual production fund for the South (Fonds francophone de production audiovisuelle du Sud)

- The European Union (*European Development Fund* - EDF) supports feature film productions through its ACP Film Production Support Program, a component of the cultural cooperation as planned by the ACP-EC Partnership Agreement of Cotonou (June 2000)
- The French state supports film productions through the *Fonds Sud Cinéma*, linked to various ministries, entirely spent in France, and local film and television production through the Fonds Images Afrique linked to the Ministry of Foreign Affairs, the aid from the latter being geared towards African organisations. France currently is the leading financer both for the AIF and EDF (up to 25 % of the latter)

Some private foundations, among which the Dutch Hubert Bals Foundation, the Swiss MonteCinemaVerita Foundation or the French Gan Foundation for Cinema, complement these aid programs. In the same initiating spirit, various specific funds, scholarships or programs are dedicated to screenwriting or short film aid, with obviously more modest unit and global amounts compared to the aid granted by larger financial backers.

Moreover, European television channels no longer play as important a part through their pre-purchases or co-productions as they did ten years ago: while Arte is increasingly investing in films from the South, Channel 4 in Great Britain, and ZDF in Germany have taken different orientations. Pre-purchases from Canal + also are increasingly difficult to obtain.

Agreements on cinematographic cooperation

Burkina Faso has signed several bilateral agreements:

- Agreement on film co-production between Burkina Faso and France signed in 1991, which enables Burkinan directors to apply for French aid, more specifically the advance on proceeds, but also for French directors to apply for Burkinan aid
- Protocol between France and Burkina Faso signed in 1993, which complements the agreement from 1991
- Cinematographic agreement between Togo and Burkina Faso signed in 1992
- Agreement on cinematographic cooperation between Ghana and Burkina Faso reached in 1995
- Various covenants with Denmark, Germany, Sweden and the French community of Belgium to support the FESPACO and the DCN

In addition to the agreements targeting film production, Burkina Faso signed cultural cooperation agreements of a general nature where in which production is included:

- Cultural cooperation agreement signed with Algeria in 1993
- Agreement with the French community of Belgium signed in 1994, which plans the support to the establishment of a training centre for animated films and technical assistance to the DCN

The role of FESPACO

The FESPACO is a biennial event, which gathered 4075 accredited visitors from 69 countries in 2003, and also is a very large popular success: 400 000 spectators in one week, at the time when Ouagadougou still could mobilize its 14 cinemas, 270 000 today, now that there only remain seven functional screening venues. The repercussions of this festival in Africa and even throughout the world are enormous. The festive atmosphere makes it into a true attraction both for tourists and for the residents of Ouagadougou. Thanks to the event, people rush to see films that were screened in nearly empty theatres just the week before: this was for instance the case of *Moi et mon blanc* by the Burkinan Pierre Yaméogo in 2003.

The FESPACO is an inescapable springboard for African directors, who get an opportunity at each manifestation to present the productions of the last two years, to sell products on the film market, to meet and exchange ideas with film professionals from all continents. Furthermore, it strengthens the passion for cinema and generates economic and political repercussions for Burkina Faso. The audience attending the FESPACO has made it worthwhile for other festivals to establish joint relations:

- International Film Festival of Amiens (FIFA, Festival international du film d'Amiens) (1983)
- "Vues d'Afrique" Festival in Montreal, Canada (1984)
- Francophone Film Festival of Namur in Belgium (1994)

The FESPACO thus plays a role in international representation and visibility, as well as in the promotion of African cinematography in general. It also helps to emulate the Burkinan public, for whom cinema remains one of the major cultural products with wide media coverage.

3.3. Television

In addition to the public television channel, the *Télévision Nationale du Burkina* (TNB), there are two private commercial television channels (Canal 3 and SSMTV) and one denominational television (Télé Viim Koèga). All three are based in Ouagadougou and obtained their broadcasting authorisation in June 2001 from the Higher Council of Information of Burkina Faso (*Conseil supérieur de l'information du Burkina Faso*). They compete with a network package rebroadcasting a dozen international channels in MMDS, provided by the Neerwaya Multivision company. The TNB's coverage rate of the domestic territory was around 80 % in 2004 and will reach 100 % in 2005, satellite broadcasting being in a test phase, with 80 hours of weekly programming, whereof 50 % domestic production. There are some 140 000 television sets on the entire territory, which is less then 1.2 for 100 inhabitants (this indicator being 9.2 for low-income countries and 7.3 for the African continent). The TNB achieved a "leap forward" during 1995 - 1996 thorough the renovation and construction of new buildings, largely financed by France to the amount of 33 500 000 FCFA (i.e. 51 000 euros).

Low wages

The *Télévision Nationale du Burkina Faso* employs approximately one hundred incumbents (civil servants) and some 70 "freelance journalists" most of which have permanent contracts. The monthly salaries of the television's staff members range from 53 to 183 euros, whereas freelancers are paid by contract, 45 euros a month (without contribution to the social security), regardless of their qualification, except drivers who are paid 38 euros. In addition to these base salaries there are production bonuses (7.5 euros per day for travel outside of Ouagadougou, 4 euros for participation in a produced programme). This incentive system is applied equally to permanent employees and freelancers. The total budget for salaries planned for 2005 amounts to 1.37 million euros in a global budget of 3.3 million euros.

Complete coverage of territory thanks to satellite

Despite the conversion in the year 2000 of the Radio and Television into an Administrative Public Institution, the management of the Radio and Television broadcasting centres was kept apart and keeps its status as an administrative directorate. To be able to reach beyond the current network and cover the entire territory, the required investments for satellite coverage and the installation of new transmitters (both for radio and television), making it possible to link all of the country's electrified areas, were estimated at 12.2 million euros. This project is currently in its test phase and should be operational in 2005.

An organized production department

The TNB's "production department" consists of twelve directors. They are indiscriminately and alternately assigned to outdoor or control console productions. The department has produced several documentaries (*L'Etat des faits, Identités culturelles, Un enfant comme les autres, Bourgou, Habitat traditionnel, 50 et un monde, Franc-parler, Une affaire de goût*), as well as sitcoms (*Vis-à-vis*), and also is planning television films (*La Dérive des Bozos, La Colline aux oiseaux*).

The TNB gets involved at a technical and logistical level in private productions of sitcoms, such as *A nous la vie, Les jeunes branchés, Kadi Jolie, Sita, Au royaume d'Abou, Les Bobodiouf,* etc. There have also been some co-productions with other national television channels (for example, for the production of the documentary *La scarification, une identité culturelle* with the Chadian Television). The TNB mobilizes the considerable equipment to do this:

- Virtual editing equipment (since 2001, extended in 2002 and 2003)
- 5 DVCAM DSR 250 digital cameras (one is currently broken)
- 1 DVCAM DSR 570 camera
- 2 DVC Pro, without power supply (only used in cases of absolute necessity, given the poor quality of images)
- Several BETA cameras, requested from various institutions when needed (Prime Minister, National Assembly, Ombudsman)

A low level of programme purchases

The low level of programme purchases is due among others to the availability of free programmes. In order to be able to provide its 80 hours of weekly programmes, the TNB produces 50 % of the programmes and complements them with programmes provided free of charge by institutions, such as CFI, CIRTEF, Transtel, RFO, AIF, TV/OR, URTNA, and also from national television channels in neighbouring countries (Mali, Chad, Niger, Benin), as well as from private suppliers. The TNB purchases programmes from companies, such as Convergence, Côte Ouest (Ivory Coast) and Daro-films (France). CFI's share in the TNB's programming varies between 40 % and 60 % according to the period. The TNB sells certain programmes to CFI (for instance, *Vis-à-vis*). The TNB's forward budget for programme purchases was set to 200 000 euros for the year 2001, with a forward budget of 117 386 euros, a turnover of 760 000 euros and an annual revenue of approximately 2 to 2.3 million euros allocated to operation.

A decrease in revenue due to the change of status

In addition to the revenue linked to its activities, the TNB received a budget allowance from the Burkinan state that covered the salary amounts of permanent employees and freelancers (approximately 300 000 euros per year), as well as an operating grant that amounted to approximately 1.22 million euros per year up to the year 2000. Since its status was changed in May 2000, the TNB no longer receives this aid and now pays its own electric and telecommunications bills, i.e. more than 230 000 euros in additional expenses. The increase in revenue at an average rate of 150 000 euros per year and the introduction of a billing system for reports on official news are in no way sufficient to make up for the loss of revenue.

Private broadcasters still marginal

For Canal 3 which broadcasts in UHF, the penetration rate is 35 % in Ouagadougou and 65 % in Bobo-Dioulasso. More thorough studies must be conducted by its partners, CFI and Deutsche Welle. Access to the channel is entirely free of charge. The channel aims to cover the entire line on the Ouaga-Bobo axis during 2005. The SSMTV channel broadcasts in UHF bartered under the aegis of the South African channel TV Africa. A purely commercial television, its ambition is to struggle fiercely for its share of the market. The penetration rate has not yet been assessed. The Viim Koéga channel from the protestant Christian community, also broadcasts in UHF for the benefit of its faithful followers, the prospect being of course to spread the evangelical message to all. Access to the channel is free. The operator MMDS, Neerwaya Multivision, is the only broadcaster of the "Le Sat" satellite network package in Burkina Faso, as well as of Canal Horizons with five channels in Ouagadougou and eleven channels in Bobo-Dioulasso. The prospect is to be able to operate on at least ten frequencies, which would enable it to stop combining several television channels on a single frequency channel and to guarantee the broadcasting of all channels of the Francophone network package. Subscription rates are as follows:

- The decoder is sold for 115 euros and the antenna for 75 euros
- Basic package: 6 channels (Trace + Manga + Euronews + France 2 + TV5 + Planète) at 9 euros/month
- Neerwaya package: 12 channels (basic package + RTL/AB1 + Super Sport + TF1 + Tiji/info Sport + Ciné Cinémas) at 16 euros/month
- Magic package: 13 channels (Neerwaya package + “Canal + Horizons”) at 33.50 euros/month
- Canal+ Horizons only: 20 euros/month

The number of regular subscribers ranges from 1 000 to 1 500, approximately 2500 all options combined.

3.4. Advertising

Development of communication agencies

A large number of agencies have emerged in the last few years, favouring the awareness of economic operators, the mobilization of funding for the production of adverts and corporate videos, leading to a process of employment creation. However, the lack of organisation and statutory instruments has caused abusive situations and interference between communication agencies and audiovisual production companies. The lack of advertising culture among economic operators complicates the work of these professionals.

Subordination of radio

Facing the difficulties they encounter (taxation, lack of training of personnel, obsolescence of equipment, competition from denominational radios, limitation of the geographic coverage when broadcasting is not done via satellite, instability of personnel, etc.), Burkinan radios rely heavily on the revenue from adverts even if it is insufficient. Rates are very low, for instance Radio Pulsar 94.8 in Ouagadougou charges 12 euros to a local company and 38 euros to a foreign company for an advert of less than 45 seconds. To produce the advert in one language and with one voice, it charges 75 euros and 15 for each additional voice.

A rapidly growing television advertising market

A great number of advertising films are ordered from the TNB: adverts, infomercials, commissioned documentaries in 13/26 format. Various media are used for advertising: Top annonces, Promo-vision, occasional guests of midi magazine, sports magazines, etc. A close collaboration takes place with private advertising agencies, as well as with foreign agencies that have a local representation (such as Mc Cann represented by Edifice), broadcasting requests are accepted without distinction. Foreign agencies have their commercials broadcasted by way of bartering in compensation for the purchases of serials made for the TNB, particularly Brazilian *telenovelas*. The television just has to comply, given the very high cost of continuing serials (75 000 to 100 000 euros per serial). Similarly, certain Burkinan companies (LONAB, SONABEL, CAMEG, JUMBO, etc.) purchase films for the TNB and benefit from the broadcasting of their adverts in return.

The growth of the advertising market is clear: turnover has doubled in the last five years (2000 - 2004). Competition with private channels is not yet perceptible, given the lack of statistics and their embryonic state. Currently, programming is encountering difficulties to meet the demand for advert broadcasting, according to the TNB's head of promotion and advertising.

3.5. Radio

In Burkina Faso, the radio is encountering the same constraints as other media: limited geographic coverage (although it is being enlarged through satellite broadcasting), lack of training, obsolete equipment (use of tape recorders and dilapidated studios), low level of domestic productions and high level of imported programs. On top of this, the strong politicization of media diminishes its credibility and denominational radios are increasingly dynamic.

In the absence of a master plan for the development of radio, it largely depends on individual initiatives. These are made difficult by the financial constraints linked to fiscal obligations, the absence of a clear legal framework and the tautness of the advertising market (cf. 3.4).

3.6. Legal environment

Lack of legal and economic consulting agencies

As opposed to what is going on in the communication sector, law firms and legal counselling are lacking entirely in the audiovisual sector. Several reasons explain this lack:

- Film producers and directors have not yet taken the initiative to include this category of partners in their budgets, although they are necessary to establish the legal security of transactions
- Law firms and legal counselling have not encountered any profitable cases in film production ; the same applies to economic research offices and public accounting

Lack of experience as regards insurance

Companies working in the area of insurance and reinsurance (SONAR, UAB, AGF-Burkina, Générale des Assurances, etc.) have no experience so far when it comes to cinema, radio and television. Some insurance contracts, such as those concerning liability, are still unknown to cinema.Others (such as pre-production insurance, production insurance, negative film insurance) are contracted by film producers only when their productions are set up in collaboration with European, mainly French, partners. Burkinan technicians, actors and equipment are never taken into account.

3.7. Music

One prevailing company

The semblance of a Burkinan industry has difficulties to meet the demand for musical audiovisual products. The main part of marketed products comes from illicit distribution channels, at the expense of domestic artists, creators and producers. In a general manner and despite the creativity and cornucopia of the country's cultural heritage, Burkinan musical production has difficulties to really take off due to:

- Considerable significance of piracy, proliferating unconcealed
- Low share of Burkinan products marketed in other countries
- Lack of a structured market that could make exchanges more dynamic and help to structure the profession

- Bad organisation of operators and lack of an organisation to federate them
- Lack of properly trained personnel, etc.

The Burkinan private law company, Seydoni Productions, records musical works, duplicates and distributes audio cassettes as well as CDs, VCDs and DVDs (it has duplication units made up of three production lines, of which two are analogue and one digital; daily production capacity is estimated at twenty thousand audio cassettes). Moreover, it handles the management of artists and events, rents out PA systems and lighting equipment, sells musical equipment and products in its shop «Le Hall du son», and also produces and publishes musical works through either of the following:

- A licence or catalogue distribution contract (simple duplication of existing products)
- A consignment contract (distribution, sale of existing product through its distribution channel)
- A publishing and production contract (studio recording, duplication, production of video-clips, product release) with systematic release of cassettes and CDs (14 domestic and foreign artists produced in 2002/2003 and 20 artists in 2003/2004).

The current trend is leaning more towards CDs and VCDs rather then audio cassettes. This company has well developed distribution channels consisting of the main store, 15 wholesale dealers in Ouagadougou, 50 suppliers, as well as shops in its local representations in Fada, Bobo-Dioulasso and Gaoua. It employs more than sixty persons all qualifications considered (technicians, executive officers and middle managers, salespersons, unskilled workers). It also has representations in Mali, in Niger, in Ivory Coast (momentarily closed) and in France. A flat rate is often offered to artists for the production of cassettes and CDs, which is more advantageous than a percentage on sales. All works produced are registered with the BBDA and are duly stamped.

Disadvantages

Production, distribution, promotion and manufacturing companies really able to progress on the African and world markets are a minority. Often small-scale and focused on the domestic market, they are sometimes compelled to a coexistence with illicit companies. Their disadvantages remain:

- Personnel often trained on the job
- Lack of outlook for international development
- Financing difficulties
- Inappropriate protection of their rights
- Misdoings of piracy

It should however be noted that organisations and venues are emerging in Burkina Faso, such as Seydoni Productions, Espace Gambidi, ATB and various festivals (Kondé d'or, festival Warba, Wuiré, Rap, Jazz à Ouaga, etc.) as well as stages (Reem-doogo, CENASA, NAK, FITMO, FITD, etc.).

3.8. Alignment with the positions of the Francophonie in international trade negotiations

The Burkina Faso's position in international trade negotiations is in line with the common position of the Francophonie's member states. As a result, Burkina Faso did not take any commitments in the audiovisual sector in the Uruguay Round (1986-1994), aligning with the common position of abstention adopted by the Francophonie's member states. Burkina Faso thus respects the recommendation in this sense of the Hanoi summit of 1997, in view of the Doha Round of Multilateral Trade Negotiations (2001-2005). Note that Benin, who wanted to go it alone, was reprimanded for doing so.

Burkina Faso thus ensures that the cultural sector is not included in its specific commitments to the WTO, more specifically within the General Agreement on Trade in Services (GATS), as long as no international instrument for cultural diversity has been adopted. As confirmed by Mr. Ambroise Balima, Director General of the Department of Commerce, Business Promotion and Handicraft , Burkina Faso did not express any reservations on appendix 2 of the GATS.

4. TRENDS IN NIGERIA'S VIDEO AND BROADCAST INDUSTRY

4.1. Introduction

The audiovisual segment of the mass media plays a pivotal role in any given country. In Nigeria, the case is even unique, as the industry has transformed from one tradition to the other according to the critical stages of the country's evolution.

This report shall concentrate on the Nigerian broadcast industry, its phenomenal film making enterprise now put at about 4 billion $US and the modern trends, challenges and opportunities it presents for international cooperation in a localised global political and cultural economy.

4.2. From the Yoruba travelling theatre groups of the early 1950s to the now popular Idumota and Iweka home videos

The filmmaking industry, whose practitioners were initially derided as lazy, dropout, illiterate and of easy virtues, not only boasts now of well educated and extensively travelled professionals, but also stupendously rich producers, marketers, directors and much sought-after actors and actresses. The industry is now estimated to contribute around $28.6 annually to the Nigerian economy and provides about 300,000 jobs. Practitioners are increasingly finding a place of pride in the socio-cultural and economic standing of Nigeria, a country populated by about 120 million citizens and whose influence bestrides the entire West African region colossally.

Since the cultural, political and economic development of any nation is inter-mingled, the growth of the Nigerian film industry cannot be dissected from the economic, political and social reality of the country. The colonial Britain found films handy in the propagation of its objectives in the British colonies of which Nigeria was a first among equals because of its abundant mineral and agricultural resources.

Nigerian nationalists engaged in the struggle leading to independence on October 1, 1960, had also recourse to films as part of their anti-colonial campaign. These films included imported films on the liberation struggle of the Black Movements in the United States of America and other parts of the world. Locally, producers like Late Dr. Hubert Ogunde produced records and films to harp on unity and peace especially among his Yoruba tribesmen. Nigeria was experiencing *oil boom* and stability in the 1970s (despite military rule and the fact that it had just come out of a three-year civil war, 1967-70), the film industry was growing with spacious cinemas, many of them managed by Lebanese, spreading all over the major commercial cities like Lagos, Ibadan, Kano and Jos.

As the economic fortune of the country nose-dived at the end of the *oil boom* (early 1980s), coupled with indigenization and nationalization programmes (which in retrospect have turned out to be half-thought populist reforms of the military era), many foreigners were forced to pullout their investments and look elsewhere. The cost of imported materials and equipment became so high, that Nigerian filmmakers, who were unable to withstand the serious economic impact, had to look for alternative ventures.

The home video came in handy because families were already becoming reclusive as a result of mounting insecurity in the country, dwindling standard of living, which left little or no provision for such luxuries as visiting cinemas. Moreover people were already adjusting to television soap operas like *Behind the Cloud, Mirror in the Sun, Ripples, Checkmate, Mega Fortune* and so on, that were being run on television stations, especially the Nigerian Television Authority (NTA).

Therefore, when in 1992 Kenneth Nnebue assembled some TV opera stars together to shoot *Living in Bondage* it was an instant success and everybody started shooting home videos. Of course, backed with the already established electronic and VHS market at Idumota Lagos. It is this films market that later spread to Iweka Road, Onitsha and also Aba town, both in the Eastern part of Nigeria. About three years ago, some producers left the Idumota market to start a modern market that is now known as Surulere Film Market under the banner of Film Cooperatives of Nigeria.

The market has evolved despite the initial lukewarm attitude of the government. Players in the market today pride the industry as the number one image making industry for the country: “The biggest way of promoting Nigeria is now through the films. I was in Liberia two years ago to interview some rebel leaders; they took me up north into a bush. In the middle of that bush they brought out a video machine and television and behold, it was Nigeria’s films that the rebels played. In the past, when you travelled abroad your friends asked you about Nigerian food and condiments, but nowadays they ask for Nigerian films”, narrated Dr. Don Pedro Obaseki, a popular Nigerian filmmaker and former President of Filmmakers Cooperatives of Nigeria. In the border posts between Nigeria and her northern neighbour, Niger Republic, smugglers effectively use Nigerian home videos to bribe customs and border posts’ officials. Incidentally that has popularized the Nigerian home video in Niger.

4.3. Secrecy

The industry today suffers from acute lack of data. It is easier to get squeeze water out of a stone than to get reliable data on the Nigerian home video industry. Even regulatory and monitoring authorities/agencies mainly operate on estimation or conjecture. If you ask a producer what it costs to produce a particular film, or how much each of the cast is going to be paid, he/she will shoot back instantaneously: “that is a top secret! You cannot reveal secrets of your business”. This widespread attitude has negated the growth of the industry as no reliable plan could emanate from unreliable data.

Out of about 23,000 video clubs scattered all over the 36 states of Nigeria only 7,000 are registered. The video clubs, denounced by filmmakers as stumbling blocks to the fortune of the industry, rent out a video on VHS or video compact disk (VCD) for N50 (163 cents) per VCD. It takes an average of seven days to produce 100 minutes home video and the total production cost ranges from 1, 500 Euros upward.

4.4. Themes

The themes are usually monotonous. One observer maintained that if you have seen one Nigerian home video, you could as well console yourself that you have seen them all. This is what Adams Omoosun, Head of Operations at Infinity Merchant Films Lagos describes as the “bandwagon effect”. The managing director of Video Field Company, Mr. Emmanuel Isikaku corroborates: “There is a trend in the industry that is annoying. When a storyline sells, everybody jumps on it. The competition is so stiff. There was a time it was love films (that were in vogue) with some stupid titles and themes.” Muyideen Alade Aromire, one of the pioneer Yoruba home video makers, who also set up the first 24-hour Yoruba TV called “Yotomi” told *the Nigerian Tribune* that the industry is polluted because of actors and producers’ “lust for money at all cost”. In his opinion, “this should not be so. The purpose of movie should be to expose (Yoruba) value culture and not to make vulgar languages or promote nudity”.

The Chief Film and Video Censorship Officer at the National Film and Video Censors Board (NFVCB), Lagos Zonal Office, Miss Francis Abosede, put it graphically: “Most of the stories are the same and boring. Fore example, if someone comes out with a successful video titled “Genesis of Blood”, many other producers would rush to that area and start releasing “Origin of Blood”, “Beginning of Blood”, “Start of Blood”, “Birth of Blood” and so on which would just be a mere repetition of the original story of the man who released “Genesis of Blood”. The Board is concerned about the dangers of proliferation of video works in the market. However, the Board could only appeal to filmmakers not to be in a hurry to produce films as this could lead to a glut in the market, thereby send wrong signals to Nigerian viewers”.

4.5. The Censorship Board

The themes in very embarrassing cases lack creativity. They are usually woven around fears, legends, superstitions, witchcraft, occultism, violence and so on. Some of the themes and contents are usually the bone of conflict between the monitoring agencies (NFVCB) and the filmmakers. NFVCB justifies its interventions “because of the unbalanced manner in which some of the stories are packaged coupled with noticeable flaws in their presentation, especially in the prolonged exposition of negative cultural practices”, said Mrs. Roseline Odey, the director-general of the NFVCB in an interview with Tell magazine.

Odey insists that even countries where voodoo is a state religion do not have such things in their films. Dr. Ogbu maintained that film producers should portray the country in good light and project indigenous culture instead of showcasing Nigeria’s culture as violent. “The film makers should try as much as possible to present Nigeria’s image positively. It is not the best to celebrate ritual killings, just because the filmmakers want to make money as such attitude puts Nigeria in bad light. Let’s use our rich culture to project the country’s image positively. However, Obaseki believes that the NFVCB has no business regulating films: Censor is a product of dictatorship. You don’t censor an art. Its (name) should be changed to the Nigerian Film and Video Classification Board.

The first vice-chairman of the Association of Film and Video Marketers, Onitsha Branch, Mr. Rob Emeka Eze does not share Odey’s opinion : “The board always speaks about ‘’expunge, expunge’’. This request kills the creativity of the producer when you ask that certain parts of the films be deleted.”

Interestingly, the cinema culture is still alive in Kano (the hub of the Northern film industry) as compared to other parts of Nigeria;

thanks to the influence of Indian films and the activities of barely trained, but highly enthusiastic and committed practitioners.

In Kano State however, the censorship is tougher. Though there is the zonal office of the NFVCB in place, the state government established the 16-member Kano State Censorship Board on December 13, 2000 following its adoption of Sharia legal system (Islamic law). Apart from films, the board also censors cyber café operators, who were to visit “approved sites” only. The filmmakers in Kano complained that they were not contacted before censorship board was set up. All the cinema houses were initially shut down and when they were opened several months after, strict (almost impossible) conditions were laid for operators. The conditions include the redesigning of cinema halls to separate male and female audience, provision of separate toilets for men and women, provision of more water and improvement of the sanitary conditions, provision of more illumination. The film houses were also obliged to show 60 per cent local contents in their cinemas.

Of course, the cinema operators simply ignored the directives on redesigning the cinemas, but instead they blocked out women. This may not be unconnected with the dwindling economy and the attendant costs the reshaping will add to the operational bill of the cinema owners. Therefore, what you see in Kano today, especially at Maraba cinema, the biggest and most popular cinema in Kano with about 3, 000 seats, is that the halls are always one-quarter filled while hundreds of young women loitering around the food joints in the precincts of Maraba Cinema.

The Kano State Director of Arts and Culture, Alhaji Abubakar Bature agrees that monitoring compliance with these new guidelines may be difficult to be applied today. However, there are negative effects already as the total films produced in Hausa Language and from the northern part of Nigeria took a nose-dive from its number one position in 2000, before the introduction of the Sharia legal system.

4.6. Piracy

About 300, 000 people are in one way or another engaged in the piracy businesses. Unwholesome activities of the pirates seriously mitigate the profitability of the industry. The filmmakers, the censorship board and other stakeholders all over the world are unanimous on this. The responsible agents for the enforcement of anti-piracy laws are either not doing much or they and the filmmakers are both outwitted by the sophistry and secrecy of the piracy networks aided by modern and sophisticated information, dubbing copying and transfer technology. “We cannot and we are not in position to stop it. It affects us seriously”, lamented Mr. Samir, Acting Manager of Maraba Cinema Kano owned by Universal Films Distribution Company.

When film producers, under the aegis of Movie Producers Association of Nigeria (MOPAN), decided to move against pirates and illegal video club operators, they were blackmailed by relatives who insisted that fighting piracy would be putting at least 20, 000 people out of job in Kano”, recalled Alhaji Hamisu Iyantama, President of Arewa Film Producers Association; a coalition of Northern filmmakers.

The NFVCB is unable to help the producers on this issue as Mrs. Nwazeoke from its Onitsha Zonal Office explains: “we only license the video clubs to exist, not to use people’s work anyhow or illegally without permission. We told marketers to take offenders before the Nigerian Copyright Commission and with their officers they will take action.”

The Copyright Act 1988 established the Nigerian Copyright Commission (NCC). The Act, which has been amended twice (in 1992 and in 1999), governs the administration, protection and enforcement of copyright and intellectual property. As a multisectoral agency, the NCC has a mandate it to oversee film and music industries, publishing, software and ICT, broadcasting and corporate producers or consumers of copyright materials.

Mr. Adebambo Adewopo, an intellectual property lawyer and Director-General of the Nigerian Copyright Commission, believes the government cannot fight Piracy alone. “Right owners have not sufficiently invested in anti-piracy campaigns more than they have invested in the piracy business that has eventually not benefited them”, he told *The Guardian*. He believes that a “proactive combination of regulatory policies and intervention strategies as it affects manufacture, import and export, and the channel of distribution” will go a long way in reducing the menace of piracy.

Pirates, according to Adewopo, can defy any obstacle to their act of economic sabotage. This is exactly was has been happening at the Alaba international market. Gbenga Adewusi, a popular filmmaker and TV presenter in Lagos, went to the Alaba international market, the hotbed of piracy in West Africa, on September 15, 2004 to challenge people pirating his works, but he was physically assaulted. Adewusi could not understand why he doesn't have anything to show for the 12 VCDs he has so far produced. He pretended to be a buyer at Sabitex shop and discovered the pirated copies of his recently released *Fuji gyration and Americana* were on sale. He was stupefied with the discovery and decided to engage his enemies in a shouting match that later led into physical confrontation. Only the timely intervention of police and other law enforcement agents saved his life.

The Performing Musicians Employers Association of Nigeria (PMAN) has chosen the path of dialogue in engaging the pirates. After the Adewusi incident, PMAN's President, Charley Boy, led some musicians to the Alaba International Market for a meeting with the traders, which was facilitated by the Chairman of Fancy and Furniture Dealers Association, Honourable Azubuike Ekwerekwu who also informed the PMAN delegation that an enlightenment campaign has commenced among its members to ensure that pirated works are not sold in the market any longer.

President of the Gospel Musicians Association of Nigeria (GOMAN), Evangelist (Mrs) Bola Are says her association is now determined to confront pirates "that have been reaping abundantly where they do not sow at the expense of owners of the original works".

The piracy syndrome is international. Unfortunately, as a result of a lack of cooperation and international networking between Nigerian filmmakers and their counterparts abroad, huge revenue is lost annually. For instance, between 500 and 1,000 new titles of Nigerian films enter Kenya every year. These films account for about 60 per cent of the total films traded in Kenya per year, which is put at between $3 million and $6 million.

Sadly, there is no agreement between Nigerian film marketers and those of Kenya. Most Nigerian videos are pirated and smuggled into Kenya, the customs has no accurate data and anti-piracy officers usually lose out in courts because there is no official or legal backing for Nigerians whose works have been pirated.

Participants at the Abuja 2004 5th International Conference of African Broadcasters concluded that piracy is a "serious crime that has done great damage to the corporate image of African countries and robbed governments and copyright owners of vital economic resources".

Registered marketers are even engaged in piracy. A Nigerian marketer operating in Ghana under the name of Atlantis Film Productions was late last year arrested for pirating 12 films belonging to Silverline Films owned by a popular Ghanaian film producer called Hajia. Adams Omoosun, Head of Operations, Infinity Merchants Limited, suggests a device: "I believe changing of jackets and colour manipulation can help curb piracy. I have tried it and it worked in Ijora and Alaba (both in Lagos). Adams sounds a note of warning that "you must realize that the pirates may even do their job better than the authentic producer. It will be effective too if you (producer/marketer) crowd, the market with these products/films, this will limit the market reach of the pirates".

Nu Metro Entertainment company recently released *The Passion of Christ*, a Mel Gibson film from ICON Studio, USA. The movie release, according to Nu Metro anti-piracy manager, Mr. Dominion Okeleke, is to confront the pirated versions that are not only illegal but also of low quality in the market. The company has affixed its security seal on the edge of every VCD and DVD box to show its originality.

4.7. The role of Government

The views of practitioners on government intervention are as diverse and contentious, but could be grouped into three categories. One group believes that the home video industry is practically a private venture and that the government should not get involved with it. The second group supports a quasi intervention by the government where its role will be limited to infrastructural support only, while the third group strongly feels that the government must come in and take full control because of the importance of that industry to image making and the socio-cultural and political impacts of its outputs.

The Nigerian President, Chief Olusegun Obasanjo, made mention of the home video industry in his 2003 budget speech as one of the sectors that he was going to develop as a way of generating funds and employment in the country. Fred Amata, from the Amata film dynasty enjoins the government to «be careful of whom they appoint to make decision for the film industry". However, not much has been heard of that promise.

The Lagos State Chairman of Actors Guild of Nigeria (an important segment in the film industry), Chief Remmy Ohajianya, sees the government as an artful dodger: “we have not been able to reach the government. They keep dodging us. But we are very hopeful that they will still come and invest in this industry. The private sector has a lot to do too. Though they have started supporting us, the support is at its lowest.”

Unfortunately, the Nigerian National Film Corporation (NNFC) and the NFVCB, the two Federal Government Agencies that are closest to the film industry, are engaged in bitter struggle for supremacy. Recently, the NNFC organized a ramshackle Second National Films Festival (about 11 years after the first one). The festival turned out to be a case study of how a festival should not be staged. Attendance was abysmally low with many of the venues almost empty. Many of the themes were vague and irrelevant, and most of the advertised resource persons simply showed up.

The award night was of great but dashed expectations as it failed to take up more than four hours after it should have commenced. As a result, several months after the award night the list of winners could not be provided!

4.8. Outlook

The future of the film industry is very bright going by the estimation of the stakeholders. “The movie industry is a multi-billion naira industry. We release 20 films a week with a minimum of 10, 000 jackets, that’s 2.5 million copies,” says Obaseki. Stakeholders, in order to enhance rapid development of the industry, have established the Filmmakers Cooperative of Nigeria, Movies Producers Association of Nigeria (MOPAN), Independent Television Producers Association of Nigeria (ITPAN), Actors Guild, Dancers Guild, Directors Guild, Conference of Motion Pictures Practitioners of Nigeria, Nigerian Society of Cinematographers, Association of Movie Producers, National Association of Theatre Arts Practitioners, Nigerian Society of Editors, Motion Pictures Practitioners Association of Nigeria, and many other associations.

The Directors Guild of Nigeria (DGN), formed in November 1998, says it has been cooperating with ITPAN to instigate a new culture of professionalism among its members and explore less “nauseating themes". Today, DGN claims, less than five percent of all films in the market contain strong elements of ritual and violence". Perhaps, as an attempt to face the challenges, the DGN plans a video-to-celluloid training programme for Directors.

At the moment, private investors are the major players in the film industry. Opportunities like equipment sale and leasing, construction of cinema houses, capacity building, co-production, distribution, marketing, and artist/events management abound in the industry.

4.9. Regional/International Support and Funding for Nigerian films

There is need for Nigeria to seek regional and international support especially in the area of participation in international festivals, training, capacity building and co-productions. Mr. Georges Goldenstones of Cinefondation expresses the desire to see more filmmakers from Nigeria take advantage of the organisation's funding and support. "We are not for French countries alone, we have been writing to the Nigerian practitioners through the Embassy of France, we would love to see more of them apply", Goldenstones explains.

There is no recent film in celluloid by any Nigerian producer. The decayed infrastructures and lack of financial support are major stumbling blocks. Nonetheless, major international film festivals in the world place emphasis on celluloid films and 'smaller' countries like Senegal, Cameroon, Algeria, Morocco and Burkina Faso are actually standing higher than the "giant of Africa" in the international community of filmmakers.

Nigerian-born London-based filmmaker, Newton Aduaka bares his mind on this issue: "I must say that a lot of it is our fault because there are avenues where you can get money as a Nigerian filmmaker to make celluloid films. The funds of the European Commission go to Burkina Faso, Senegal, Mauritania, Chad, Niger etc. We are not applying for it. Ladi Ladebo was the last person that applied for it. If we really want to go out there and make films, we've got to apply for the money like French speaking countries do."

Some critics view international funding and support as a tool for foreign domination. It was a heated debate at the monthly reading session of the Lagos State Branch of the Association of Nigerian Authors

(ANA) in June 2004. The house was divided into two vociferous groups ; one insisted that such funding are only accessed by works that derides their society while the other group felt that artists must not shy away from the truth no matter whose ox is gored. Furthermore, writers, producers and other arts practitioners who lose their independence to corporate, government and international sponsors should have themselves to blame. “The producers and directors must be professionals and resist undue pressures... Some prominent producers like Tade Ogidan insist on doing their work professionally. You cannot dictate to Ogidan, he would not allow it,” said Omoosun.

For internationally acclaimed producer, Tunde Kelani, charity for Nigerian film industry should start from home, that is, the West African sub-region: “Rather than thinking of Cannes or the great film festivals, our producers and filmmakers should be more committed to injecting creativity in their films. We should take part in African film festivals and workshops and then improve as we go along”. Kelani, in an interview with *The Guardian*, believes that Nigeria has to be patient: the structures on ground are not supporting the industry. There is need for restructuring and reorganizing the industry; basic facilities like power supply, water and so many things that would engender movement back to the cinema, which was abandoned years ago (are unavailable). Our cinema is going to be diverse when we go back. All we need is total a restructuring and reorganization”.

4.10. Reviving the Cinema Culture

A new 5-Screen Cineplex, Silverbird Cinema, recently opened its doors in Highbrow Victoria Island, a highbrow residential area for the super-rich and expatriates in Lagos. Owned by the Bruce family ; owners of Rhythm 93.7 FM Station and Silverbird Television, the television has mainly shown American films advertised heavily through the radio and television subsidiaries of the Bruce dynasty. What we have seen with Silverbird Cinema so far is akin to film version of international dumping. Over ninety percent of the films shown are American or come from Western countries.

Nu Metro, another entrant owned by South African business interest plans to release mainly American films and build film houses in designated major cities in Nigeria.

The National Council on Culture and Tourism has already endorsed the recommendations on the establishment of the Council of Nigerian Artists (CONA) and Artists Board of Nigeria (ABON). In November 2002, the National Council on Information mandated the Nigerian Film Corporation (NFC) to set up a Motion Picture Practitioner Council, which will look after the practise of motion picture with the highest ethical commercial and artistic standard. Dr. Hyginus Ekwuazi, who is the Chief Executive Officer of the NFC, informs that the Council will ensure the regulation of all necessary mechanisms "by conferring on the practise of the motion picture, the status of a profession" "the Council will ensure the alignment of the industry to the larger industrial sub-sector of the economy and open up a wider vista for resource sourcing for industry practitioners".

Capacity building is also vital to the industry. Dr. Hyginus Ekwuazi, in his address titled "NFC: In Celebration of the Nigeria Home Video", delivered at the 2nd National Film Festival held in 27-30 November 2003 in Lagos, stated that «Professionalism would, of course, be meaningless without sustainable means for capacity». In this respect the NFC is partnering with UNESCO on a project appropriately titled *Making the transition from Video to Celluloid* which aims at raising the quality of the industry, its products and practitioners.

Zanani was the name of the film made out of the NFC/UNESCO collaboration. The film was a product of series of workshops organised by the NFC between 2001 and 2002. UNESCO's only involvement was in the funding of the pilot workshop. The fund according to Mr. Emmanuel Okezie, NFC's Head of Public Affairs, was committed to script writing, conference and workshop. The script writing conference was held at the Eko FM Hall Agidingbi-Ikeja, Lagos around June 2001.

The Conference later broke into syndicate group of directors, actors, actresses, etc. Those whose scripts were selected were then invited to the final workshop held in Jos Plateau State around November 2001.

Zanani, directed by Mr. Matthias Obayagbon was shot in Jos on 16 mm celluloid and is of 45 minutes duration. It tells the story of a conflict resolution in which a woman led to a truce among the restive communities. After a sneak review held at the screening room of the National Film Institute, Jos, it was discovered that there were some technical errors. So the film was sent back for polishing around December 2004 and is yet to remerge from the surgery room.

4.11. Broadcast Media: Radio and Television

Control

Forty radio stations and 34 television stations are owned by the State Governments (Nigeria has 36 states). The Federal Government-owned Nigerian Television Authority (NTA) has 27 old stations and 72 new stations. The Federal Radio Corporation of Nigeria, which is also owned by the Federal Government, has 5 network radio stations and 37 FM stations. There is also the Voice of Nigeria (VON) that serves for external broadcast.

In the private sector, there are 17 radio stations, 14 television stations, two direct-to home satellite TV stations, 35 cable TV and two direct broadcast stations (source : National Broadcasting Commission -NBC).

The National Broadcasting Commission (NBC) regulates the activities of the Broadcast industry. The practice of journalism (broadcasting) still faces serious hindrances in form of working environment and legislations. The qualified freedom that the Press enjoys today was not earned on the platter of gold.

Despite its criticised incapability in areas of monitoring and regulation, the NBC continues to bark and in some cases bite. Early October 2004, NBC officials led by its Head of Operations, Mr. Eddy Aina, sealed-up the office of United Tribes of African System Television Authority (UTASTAD) in Ibadan, Oyo State, South-West Nigeria. The CEO of the station, Mr. Adebowale Adedoyin, was also arrested.

NBC alleged that the owners of the company had failed to obtain license before embarking on that operation in contravention of Act 39 of 1992 and the Amendment Act 55 of 1999 Constitution, and that the company was demanding $5, 500 from applicants as a precondition for employment. Adedoyin denied the allegations, insisting that the company was only a research organisation and was not involved in broadcasting.

The NBC also has to contend with advertising on broadcast channels, especially as it has to do with tobacco and alcoholic drinks. For example, many companies in the brewery industry have been known to flout section 8.5 (4) of the NBC code which stipulates that an advertisement for an alcoholic product or other intoxicants shall not be aired between 6.00 a.m. to 8.00 p.m. on the radio and between 6.00 a.m. and 10 p.m. on the television. This code is designed to protect the children and youths from the negative effects of alcohol.

At present, only the Federal Government owned Nigerian Television Authority (NTA) and Federal Radio Corporation of Nigeria (FRCN) have the monopoly for network broadcast. Other stations, corporate, and religious bodies that intend to relay programmes in selected stations must have the programme staggered. This regulation undoubtedly negates the much talked-about deregulation and reform policies of the present Obasanjo's administration. The private and government-owned broadcast stations are subject to different licensing fees. The private owners have protested against the differential treatment as they find it "discriminatory", while the NBC authorities insist the difference is essential from the view of the public service provided by the government-owned broadcast media. Protests by media organisations like the Media Rights Agenda, Nigerian Guild of Editors and so on have fallen on deaf ears. Going by recent popularity ratings in the Lagos environs, the private broadcast media outfits are in the lead. The network restriction, though viewed by some operators as an abridgement on the constitutional freedom to receive and disseminate information without hindrance, was explained by the government as a necessary tool to checkmate the dangers inherent in giving private broadcast media (susceptible to individual, political, religious and economic manipulations, especially in a tempestuous environment) a wider reach to the greatest number possible among the citizenry.

Popularity Rating (Radio/Television)

In a recent survey of the Lagos environment (April-June 2004), it came out that three out of the most popular televisions are privately owned (Silverbird TV, African Independent Television (AIT) and Channels Television) while Nigerian Television Authority (NTA Channel 5) is owned by the Federal Government and Lagos Television (LTV 8) is owned by the Lagos State Government. The picture is similar in the Radio segment with four private stations topping the list of first five (Cool 96.9 FM, Ray Power FM, Rhythm 93.7 FM, Brila FM and Radio Lagos FM).

E-broadcasting

The Ogun State Television (OGTV) was recently hooked on onto the Information Super Highway via the www.Gateway.com. The same applies to Ogun Radio whose services are now available on the net anywhere around the world. At the recently concluded 5th International Conference of African Broadcasters, it was observed that communication process is changing at a fast rate because it is driven by technology, where broadcast technology-internet and webcasting has emerged as a veritable platform for communication and content distribution. The acceptability by UNDP, the World Bank and Human Rights Organisation for Community Broadcasting as the most effective instrument of poverty reduction was applauded and recommended.

International Cooperation

Many Nigerian radio and television stations are cooperating with other international stations for broadcasting or rebroadcasting of news and programmes. Among this stations are British Broadcasting Commission (BBC), Radio France International (RFI), and Canal France International (CFI).

But, in reality, there is a very strong resistance of the nigerian authorities against the foreign medias. RFI, which had obtained a licence via a local partner to broadcast in FM in Lagos, encountered many difficulties and ended up renouncing in 2003. The BBC, whose news were picked up by the radio station Ray Power on its second frequency, is not present anymore since the National Broadcasting Commission prohibited on April 1st 2004, any repeat on Nigerian media of informations diffused in foreign countries (this disposition already existed in a text of law, but the article was not being implemented). Following this decision, Ray Power stopped broadcasting on its 2nd frequency. The American society AllAfrica (website) tries to start programmes in french on a nigerian radio. She has had many difficulties with Radio Nigeria, that signed the diffusion contract, encashed the money, before coming back on its commitments.

Cosmo FM, based in Enugu, Eastern Nigeria has a working agreement with Radio Express based in Burbank California. Cosmo FM, with its subscription access, downloads and plays music from the website of Radio Express. It later sends the compact disks of this music as back-up for Cosmo FM's Library.

Jika Attoh, the General Manager of Cosmo FM says the arrangement and kind of music played via this arrangement has nothing to do with the regulations of the National Broadcasting Commission (NBC): “NBC directive has to do with live news only. We have similar arrangements with RFI and other organisations and they are not affected by the NBC order. ”

Trumpet Internet Television (TITV) was officially unveiled in October 2004 in Lagos to provide “affordable services to television viewers in the West African sub-region. The scope of the new entrant is significant, even as the Managing director of the parent company, African Trumpet Telecommunications Limited, Mr. Nathaon Garner, said the facility would bring quality programming to viewers in Nigerian and West Africa. “Our mission is to create through television programming, an understanding among African people for them to have better relationship with each other”.

The director informs that the station would use information, dissemination and music to show the bond of brotherhood among Africans around the globe: “our vision is to become the voice and image of black people world wide by being the first and only black African television and internet-distribution company with an Afro-centric focus”. In this regard, the TITV entered into agreement with other networks for signal transmission to more television viewers around the globe. The partnering networks include Fox news, Bloomberg, Hollywood, Zee Cinema, Love world, OGTV, MBI, DITV, DBN, and Aljazeera, the popular Arab television network. Subscribers to the network have to pay a monthly subscription fee of about 40 Euros.

Nu Metro Entertainment in Lagos recently acquired licenses from international entertainment organisations like Warner Bros, Fox, MGM, New Line Cinema, and Disney to make legitimate copies of the original works available “in this part of the world”.

It is incumbent, however, on the Nigerian Government and practitioners to critically examine the implications of agreements like that of Nu Metro on the nation’s cultural heritage and development in a competitive and highly digitalised world order.

4.12. Promotion of International Cooperation

The Federal government on its part has been trying to promote investment opportunities in the country. The President, Chief Olusegun Obasanjo has attributed his frequent overseas trips to investment drive. In October, the Nigerian President endorsed a Compendium on the African Growth and Opportunity Act (AGOA) published with the objectives of enabling investors, particularly Africans, to invest in their motherland.

The Government must be ready to actively promote its own culture, develop the capacity of its institution and generously induce and encourage practitioners of arts and culture (tax rebates, import duty exemptions, discounts, scholarships, etc.).

*Africast 200*4, annual conference organized by the National Broadcasting Commission of Nigeria of broadcasting industry operators from the public and private sectors in Africa, which runs simultaneously with the exhibition of broadcast equipment, resolved that: “the standardisation of broadcast equipment will save the African continent from being turned into a dumping ground for obsolete and substandard equipment”. A standing committee was therefore recommended to comprise seasoned engineers and broadcasters who would oversee the establishment of the much needed broadcast industries in Africa. The governments were also urged to fund research into such innovations.

Bearing in mind the cost of modern equipment, participants at *Africast 2004* would like that appropriate, robust and tropicalised equipment would be imported into Africa, and more importantly, that manufacturers of broadcast equipment assist African broadcast operators with equipment leasing or hire purchase.

While the leasing/hire purchase arrangement is workable, equipment manufacturers may require government guarantees for such transactions. The guarantees may not be forthcoming except the operators are able to convince the government on the multiplier effects of such an arrangement on the economy.

4.13. GSM

The introduction of GSM telephone in year 2000 was a major boost to the telecommunication industry. It opened access to numerous multinational companies to invest in Nigeria as service providers, accessories manufacturers, vendors, marketing and technical services experts. Operators of GSM services have also not been immune from the official graft in the system. Services have been plagued by inefficiency and high and hidden charges, which have placed Nigeria among the countries with the highest rates or tariffs for telephone calls.

4.14. International Conventions and policy on Culture and cultural Diversity, GATT

The challenges facing Nigeria are in the area of observance of international cooperation, conventions and protocols. The problems stem from lack of will, inconsistencies in policy formulation and implementation, political manipulations and bureaucratic bottlenecks.

While Nigeria is a signatory to several international conventions, many of the conventions are observed in their breaches or partially. The UN Universal Declaration on Human Rights (1948), African Charter on Human and People's Rights, International Convention on the Rights of Children are examples of these international conventions. Other socio-economic and cultural rights (like the right to leisure or recreation) are seen as novel ideas to be reserved for future generations.

Sadly enough, Nigeria as of today has no policy on Culture. With this scenario, it is very difficult for the government to gauge, protect and institute mechanisms for the promotion of its cultural values, endowments and practitioners. The consequence of the foregoing is that Nigeria as a country would be handicapped in promoting its cultural heritage and thereby earning the international cooperation, benefits, and so on within and beyond the African continent. The country therefore is not in a strong position to even protect its cultural heritage and intellectual property. The citizens would not be able to defend the citizenry in the face of cultural onslaught from other nations especially in the age of Information and Communication Technology.

According to Mr. Abdul Amin, Officer in charge of WTO Desk, Ministry of Commerce in Abuja, Nigeria is a dynamic player in the WTO, and it signed the agreement on January 18, 1995. Nigeria was in Doha and is preparing to go to 6th Ministerial Conference holding in Hong Kong, China in December 2005. The country has fully supported the ideas and activities of GATT right from inception.

The concept of cultural diversity is considered with sympathy but does not seem to be the subject of a deep reflection. Nigeria has voted, during the UNESCO's General Conference held in October 2003, the resolution asking for the elaboration of an International Convention on the protection of the diversity of cultural contents and artistic expressions. Could the adherence be a matter of principle, as Nigeria is a country strongly influenced by the United States? In the perspective of the preparation of the Convention, it is however not indifferent that the President of the UNESCO's General Conference happens to be a Nigerian, Professor Michael Abiola Omolewa. Moreover, a conference on the UNESCO Convention was organised in September 2004 in Calabar with the support of UNESCO and under the presidency of the nigerian minister of Culture and Tourism.

4.15. Urgent environmental changes

Lack of data/information

Lack of information or easily accessible data not only militates against effective planning but also impedes the necessary education, information and enlightenment measures for practitioners, investors and the general public.

Infrastructure

Although the country has made efforts, Nigeria is still today challenged by regularity of power supply, general availability of pipe borne water and telecommunications. Electricity supply by the Federal Government-owned National Electric Power Authority (NEPA) is unstable. Therefore, setting up of businesses is not seen as complete without the provision of electric power generator. Some investors sarcastically refer to NEPA as Never Expect Power Again!

The advent of the present Olusegun Obasanjo administration has brought the GSM telephone providers, but three years after, services are still riddled with inefficiencies, high and hidden charges and inadequate monitoring by the regulatory agencies especially the National Communication Commission (NCC).

Security

Despite the return of the civilian administration, Nigeria still faces the dangers of insecurity as violent protests reign in volatile parts of the area, especially the Niger Delta. This development has made various embassies to issue Travel Advisory to their nationals at various times. This definitely does not augur well for international trade and cooperation. The political terrain has also become so charged with regular occurrence of political assassinations and unresolved murders. Three years after the assassination of Chief Bola Ige, former Minister of Justice and Attorney General of the federation, the police has not found yet his killers.

4.16. A perspective: The Nigerian Image Project

The Nigeria Image Project launched on July 22, 2004 in Lagos is as a brain child of the Minister for Information and National Orientation, Chief Chukwuemeka Chikelu. Chikelu disclosed that the project, which would involve both the private and the public sectors, has been divided into two strategic parts, namely informational agenda and orientation agenda. The print and electronic media, public relations practitioners and advertising agencies would also be engaged.

He said that, to ensure that Nigeria's image abroad got improved, a strong campaign against certain activities such as the Advance Fee Fraud which has battered Nigeria image abroad, would be embarked upon while positive aspects of the nation would be highlighted. Information about Nigeria's potentials would be made readily available at locations like airports and other entry points in identified countries. Countries like the United States of America, Jamaica, Egypt, United Kingdom, South Africa, France and China are classified as primary centres. Also, countries like Canada, Belgium and Japan are grouped as secondary centres, while Brazil has been classified as tertiary.

Oustanding Nigerians that have made the country proud in various fields of endeavour would be given recognition and promoted as role models.The National Orientation Agency (NOA) would also be actively involved in that project, that would include the promotion of the nation's values, resources and cultural heritage.

Chikelu expressed confidence that the project would outlive the Obasanjo government since it would be packaged not as a governmental initiative, but as a Nigerian plan. President Olusegun Obasanjo, during a presidential forum for captains of Industries and Commerce, disclosed that the government has approved the inclusion of over N600 million in 2004's budget for promoting the nation's image.

TRENDS IN THE AUDIOVISUAL MARKETS: PERSPECTIVES FROM ASIA INDIA, THE PHILIPPINES, THAILAND

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1. INTRODUCTION

India, Thailand and the Philippines possess some of the most creative and prolific audiovisual markets in Asia, each presenting unique challenges and assets for the evolving media landscape of the 21st century. This paper identifies key trends in the three Asian markets in terms of market dynamics, revenue share, regulatory climate, trade, competitiveness and global prospects. Specific topics include audiovisual infrastructure diffusion, financial investments and new media forms. In this first section, key findings from the three individual countries and notable future trends are profiled.

1.1. Research methodology

In mid-2004, three key researchers highly regarded in their domestic environments were identified in India, Thailand and the Philippines. The researchers had all previously been involved in research projects by the Asian Media Information and Communication Centre (AMIC) on media economics in the region. They were sent a suggested outline for each country profile based on project specifications sent by UNESCO to AMIC. They were then given three months to come up with a first draft of the profile; after editorial feedback they were given another month to submit the final version. Subsequent feedback from UNESCO led to two more rounds of edits and revisions in early 2005. The researcher from the Philippines, unfortunately passed away in March 2005, but the rest of her research team pulled together the remaining required material.

Special attention was paid to selection and citation of authoritative sources of market statistics, and to the scope of the various regulatory bodies involved. Care was taken to ensure that the material was compiled in such a way as to identify overall trends and long-term impacts, and not just immediate developments. Some of the core references used in the project are cited in footnotes; it is recommended that an online companion also be created to host updates and new resources on these topical matters.

1.2. Profile: India

The Indian entertainment industry is on the verge of emerging as an important market internationally, with an expected growth rate of close to 20 per cent per year from now until 2007. The entertainment industry in India is rapidly growing and regulatory and legal mechanisms are evolving to keep pace. Indian television content producers have already made inroads in Asian-Pacific markets and there is a growing interest among broadcasters and distributors in the US and UK in India-specific content (films and television shows). India has significant potential for expanding exports to countries with large non-resident Indian (NRI) and South Asian populations.

The Indian entertainment industry has not only withstood the liberalization of import norms but is also trying to adopt Hollywood strategies in the marketing and distribution of its products and services. The industry is on verge of metamorphic transformation from an industry run by enthusiasts and individuals, to an organized one that runs like any other industry. The granting of official industry status by the Indian government in 2001 was instrumental to this transformation, helping the sector adopt more organized and business-like approaches to financing, production and other allied activities.

Television broadcasting is the fastest growing sector in the Indian entertainment industry, currently reaching over 80 million Indian households. Around 16,000 operators are formally registered under the Cable Television Network Regulation Act of 1995. The Indian cable industry began its existence in the absence of a formal legal structure and mushroomed thanks to the energy and vision of local entrepreneurs who put up the entire infrastructure and expanded the market to what it is today. The film sector, meanwhile, is a source of government revenue, through the entertainment tax, the major tax payable by the sector. More multiplexes continue to be built in urban areas. In the radio sector the major initiative has been the opening up of FM broadcasting to the private sector.

The music industry derives its income mainly from the sale of cassettes, which represent nearly 95 per cent of sales; CDs still have a long way in the catch-up game. The most promising sign for the music industry is the rapid growth of purchases of consumer electronics products in India, especially CD/VCD/DVD players and car audio systems.

Piracy is one of the biggest problems facing the entertainment industry. Although the Copyright Act of 1957 contains stringent regulations, the implementation of the act is not strongly enforced. The government has brought the broadcasting industry under an autonomous regulator, the Telecom Regulatory Authority of India (TRAI) to facilitate policy making and dispute resolution.

The rules regarding foreign direct investment (FDI) vary across the different sectors of the entertainment industry. For instance, FDI is prohibited in the FM radio sector, but foreign investments of up to 20 per cent and 49 per cent are permitted in the direct-to-home (DTH) broadcasting sector and in the cable industry respectively. While theoretically, foreign news broadcasters (e.g., CNN, BBC) can beam their signals into India, regulations do not allow them to up-link news from India unless local ownership norms are met, thus limiting their ability to provide India-specific news in a timely manner. This has led to certain anomalies in entertainment policy – viewers can watch foreign news channels broadcast from overseas, but FDI is not permitted even for pure entertainment FM radio. It is therefore necessary for the government to review its investment policies in a holistic manner to attain a greater degree of consistency in the rules for various sectors in the entertainment industry.

1.3. Profile: Thailand

Thailand has passed two important acts: the Telecommunications Act of 2001 and Broadcasting Act which came into force in March 2000. The limitation of foreign ownership to a maximum of 25 per cent caused considerable controversy. After public pressure, the government announced that the foreign ownership limit would be increased to 49 per cent, but formal amendment of the act has yet to be effected.

The Thai film industry is advancing toward long-term growth as Thai films increasingly find audiences abroad. On the domestic front, there are currently approximately 300 cinema screens in the country. Up until recently, the film industry drew relatively little attention from the government compared with other entertainment industry sectors which were supported through tax incentives and other kinds of support. The current Thaksin government however, has ambitions to establish Thailand as a regional hub for film production and post-production, and the government's two newly established ministries - the Ministry for Tourism and Sport and the Ministry of Culture - are working together with representatives from the film industry as well as other relevant ministries to establish a central Motion Pictures Council to oversee the development of the industry.

Thailand was the first country in Southeast Asia to begin regular television transmissions, but analysts complain that the quality of the content on Thailand's free television stations is declining because of the absence of a broadcasting regulatory body. On the news front, independent operators like ITV are adopting a more investigative style of reporting. Key challenges for the television sector will be to transform the Thai market from a purely price-driven market to a value-driven market, as well as to counter piracy. Thailand in the 1980s was identified as one of the countries with the highest incidence of piracy, but since the 1990s the Thai government has made a number of commitments to crack down on audiovisual pirates.

The music industry in Thailand is run by two major companies: GMM Grammy and RS Promotion. Thailand has 524 local and national radio stations, 211 of them are on AM while the rest are on FM. The biggest operators are the Public Relations Department (PRD) with 147 radio stations, followed by the Royal Thai Army with 127 stations and the Mass Communication Organization of Thailand with 62 stations.

1.4. Profile: The Philippines

The most significant development in the communication sector after the EDSA Revolution[1] was the adoption of the 1987 Constitution. In the constitution, mass media assume primary importance, and the more recent Medium-Term Philippine Development Plan (MTPDP), 2005-2010, has several media-related themes including capacity-building, the development of a network of digital infrastructure to interconnect the entire country, and the creation of an enabling legal and regulatory environment.

The audiovisual media landscape in the Philippines consists of contrasts today. The revenues of film companies are measly compared with those of the television networks; this has led the movie producers to limit their film outputs. The decline in the film industry can be attributed to high taxes, censorship and competition from the US and Hong Kong, from television and video, and even from the lottery. Despite this slump, the Philippine film industry ranks ninth in feature film production worldwide.

There is 39 per cent cinema attendance in Metro Manila and 27 per cent in urban areas as a whole. The cinema industry however

1. The EDSA Revolution of 1986 is also known as the People Power Revolution or the Philippine Revolution of 1986 and resulted in downfall of the Ferdinand Marcos regime.

faces serious challenges in the form of piracy. Television ownership stands at 88 per cent for the country as a whole; however, ownership is nearing saturation levels in Metro Manila (95 per cent), Region 4 (93 per cent), and Region 3 (90 per cent). Cable ownership is at 20 per cent, with ownership being highest in Metro Manila (31 per cent).

In 2004, the Philippines had a total of 695 radio stations operating in the county, of which 289 were AM stations and 406 FM stations. Although geographically the Philippines is located in the East, its music has been heavily influenced by the West due to 333 years of Spanish rule and 45 years of American domination. Filipino composers are prolific and talented; many of them have won awards in foreign competitions. Mobile data services may represent an important new revenue stream for the music industry thanks to ring tone downloads and an avid user base.

1.5. Similarities and differences

The three countries profiled obviously demonstrate significant differences in terms of overall population, media penetration, cultural habits, audiovisual trade, and global prospects for local media industries. None of the three has a completely optimal policy environment for the audiovisual industries: for instance, the Philippines is ambiguous in its treatment of foreign film-makers who want to shoot in the country, Thailand still places significant limitations on the level of foreign investment allowed in the media sector, and India has a stunted FM radio market due to restrictive policies that have only recently been relaxed.

Piracy is widespread in all three markets. Piracy of audiovisual material adversely affects revenues and growth prospects of the local audiovisual industry in the Philippines, whilst the level of piracy in Thailand has led to severe condemnation from the International Intellectual Property Alliance. India has a low penetration of optical media (cassette tapes dominate over audio CDs), but piracy is nonetheless present in the cassette tapes segment.

Local entertainment industries in countries like India are successfully showing how it is possible to move up the value chain with increasingly sophisticated production and editing, in keeping with international benchmarks set by popular Hollywood movies. This kind of development of course calls for continuous capacity-building and learning within the creative communities.

Overt government support and intervention in audiovisual production in sectors like film has not been widespread among these countries. Thailand presents an exception due to the fact that Prime Minister Thaksin Shinawatra has a significant stake in a number of media groups.

1.6. Future trends

Trends that will continue to affect the audiovisual markets in these countries include increasing use of the Internet and mobile phones, new digital film technologies, outsourcing of media work from the West, regulatory changes, and the growth of Asian diaspora markets around the world.

The Internet, Intranet and Mobile Media

Trends in Asian countries like Japan and South Korea show that the Internet and mobile communications can have significant disruptive effects by creating new revenue streams, destroying old ones, and opening up new users and channels for audiovisual content players. Internet penetration in relative terms is not high in India, Thailand or the Philippines, and “Napster-like” phenomena of unbridled person-to-person web-based sharing of copyrighted digital content have not threatened the local creative industries as much as in countries such as the US.

The Internet is being increasingly used, however, for business-to-business collaboration (e.g., in media buying) and international marketing via web sites and e-mail newsletters. Intranet-based operational techniques like collaborative product development and knowledge management have a huge potential for increasing the productivity and scale of operations of audiovisual content providers.

The explosion of mobile phone use in these countries is quite notable: subscribers in the Philippines are the world’s heaviest users of SMS, and India is the fastest growing cellular phone market in the world. Both open up new revenue opportunities in the form of musical ring tone downloads and movie-based screensavers.

New Digital Film Technologies

New techniques of digital production as well as digital projection in cinema halls are having end-to-end impacts along the audiovisual content value chain. The growth of multiplexes with sophisticated digital projection technologies are changing the viewing habits of cinema-goers across Asia, and are also opening up the market for niche productions. The proliferation of increasingly affordable digital recording and editing cameras is sparking off a new wave of cottage industries in the audiovisual sector.

Diaspora Markets

All three Asian countries have significant diaspora populations in the US, and to some extent in Europe. These have been useful target markets for the local audiovisual industries of each country. The Asian diaspora have in some cases also integrated successfully in cultural industries in their new home countries, thus opening up new mainstream audiences whilst also paving the way for new kinds of fusion entertainment and cultural fare.

Media Outsourcing

As with earlier waves of outsourcing of manufacturing and software work to Asia, we are now witnessing an increase in the outsourcing of audiovisual work processes and projects to Asia from the US and Europe. These range from computer graphics and animation to editing and dubbing; the Philippines and India are especially concerned.

In sum, the prospects for the audiovisual industries in all three countries look promising, provided that the regulatory environment becomes more supportive and that the creative communities remain innovative. With proper planning and execution, the local creative industries will continue to succeed in their respective markets; and whilst challenging established players like Hollywood on the global scale may be a distant dream, these industries will certainly be able to find and exploit significant niches abroad, especially in regions with a strong diaspora presence.

2. INDIA

The Indian entertainment industry has very good growth prospects; the Confederation of Indian Industry (CII) has projected an expected growth rate for the industry of close to 20 per cent per year until 2007. Apart from increasing their sales in their local market, Indian television content producers have also made inroads into Asian-Pacific markets. Furthermore, there is a growing interest from broadcasters and distributors in the US and UK in India-specific content (films and television shows).

The industry had a turnover of 166 billion Indian Rupees (Rs) (US$3.8 billion)[2] in 2002, which grew to Rs 190 billion (US$4.4 billion) in 2003. The industry recorded a 15 per cent growth rate for the year 2002-3.

Table 1 - Growth of the Indian Entertainment Sector

Year	2000	2001	2002	2003
Sales (billion Rs)	100	130	166	190
Annual growth		30 %	27,7 %	14,5 %

Sources: ValueNotes Research and CII

2.1. Regulatory and policy overview

Entertainment in India is evolving into a substantial business and the regulatory and legal mechanisms are evolving rapidly to keep pace. The government strategy to develop the industry focuses on the use of regional and national tax incentives to improve production and exhibition infrastructure, and on increasing the flow of investment to the industry, especially in the domains of content creation and human capital. The Indian government has opened up the entertainment industry to external investment, but FDI is restricted to certain specific sectors and there is still no uniform policy for investments (see table 2).

Central Board of Film Certification

The Central Board of Film Certification (CBFC), also known simply as the Censor Board is the main certifying and censoring body in India, but each state also has its own censor board. The censor boards preview the films that are to be released in cinemas and suggest what changes, if any, are to be incorporated. The Censor Board's main role is to rate the film's suitability for various viewing audiences, ranging from common viewing to adult movie (Adult, Universal, Parental Guidance).

The censor boards are empowered to ban a film or shut down a cinema if the recommended changes are not effected. The censorship practices and particularly the functioning of the CBFC have drawn considerable protests from liberal and creative sectors of society.

2. Exchange rate (as of May 2005) : 1 US $ = 43.6 Rs

Table 2 - Sectoral Restrictions of FDI

Sector / Category	Foreign Equity	Comments
Film production, exhibition and distribution	100 %	Venture capital is also allowed to participate. FDI up to 100 per cent allowed on the automatic route with no entry-level conditions.
Multiplexes	49 %	
Broadcasting	100 %	
News broadcasting (24-hour news channels)	26 %	
Music / Record companies	100 %	
Cable operations	49 %	Inclusive of both FDI and portfolio investment
DTH	49 %	Of the foreign equity, the FDI component cannot exceed 20 per cent.
TV software production	100 %	
Setting up hardware facilities, such as up-linking, HUB, etc.	49 %	Private companies incorporated in India with permissible FII/NRI/OCB/PIO equity within the limits (as in the case of the telecommunications sector FDI limit up to 49 per cent inclusive of both FDI and portfolio investment) to set up up-linking hub (teleports) for leasing or hiring out their facilities to broadcasters.
FM radio	20 %	Only wholly Indian-owned companies can obtain licenses. Foreign investment of up to 20 per cent of the portfolio investment is permitted. As of now FDI is not allowed.
Terrestrial telecast	0 %	No private operator is allowed in terrestrial TV / radio transmission.

Sources: TRAI and ValueNotes Research

While theoretically, foreign news broadcasters (CNN, BBC, etc.) can beam their signals into India, regulations do not allow them to up-link news from India unless local ownership norms are met. This limits their capability to provide India-specific news in a timely manner.

The Ministry of Information and Broadcasting is the highest body dealing with the formulation and administration of laws and regulations relating to information, broadcasting, press media and film. The ministry is responsible for international co-operation in the field of mass media, films and broadcasting and interacts with its foreign counterparts on behalf of the Indian government. The Telecom Regulatory Authority of India (TRAI) is the regulator and adjudicator of rules and disputes in the telecommunications industry. In addition TRAI also administers the television, cable & satellite and FM radio industries.

Major Regulatory Issues

Piracy is one of the biggest problems facing the entertainment industry. Although the Copyright Act of 1957 contains stringent regulations, the implementation of the act is not strongly enforced. This has led to continuous losses of sales revenue in the film and music sectors. The estimates range from 25 to 60 per cent of revenue lost due to piracy.

On the cable front, the Indian cable industry developed in the absence of a formal legal structure and mushroomed thanks to the energy and vision of local entrepreneurs who put up the entire infrastructure and expanded the market to what it is today. In 1995 the Indian government belatedly issued the Cable Television Network Regulation Act, and in 2003 the Conditional Access System or CAS was introduced. The CAS was expected to solve the long-standing dispute over revenue-sharing between the broadcasters and cable operators. Although presently the system is implemented only in Chennai (formerly Madras) in Tamil Nadu, it is expected to be implemented in a phased manner after resolving issues like compatible set top boxes from one local cable operator or multi system operator to the other.

Television channels in India must comply with the broadcasting (programme and advertising) code, which restricts the broadcast of pornography. Apart from the ban on pornographic or sexually explicit material, the code contains few other restrictions. There is however, a prohibition on cigarette and alcoholic advertisements before 9.00 pm, and these advertisements are totally banned on the state-owned broadcaster, Doordarshan.

Recent Government Policy Initiatives

The Indian government began undertaking reforms in the entertainment sector in the mid-nineties, and since then there has been significant liberalization especially within the film sector. In 2001 the film industry was given industry status. This was an extremely significant move as it enabled the industry to access funds from the formal banking sector (which is largely government controlled). The reforms also opened up the film sector to greater foreign involvement: 100 per cent FDI is now allowed in activities involving film production, exhibition and distribution, and 49 per cent is permitted in multiplexes. Meanwhile, the entertainment tax has been capped at 60 per cent (see table 2).

The television and cable industry has also seen a number of policy changes since 1990. The government has not placed any restriction on the number of DTH operators in India, however only Indian-owned companies with no more than 49 per cent foreign equity can obtain DTH licenses. The FDI component in the foreign equity part must not exceed 20 per cent. The license fee has been set at Rs 100 million (US$ 2.3 million). In addition to this fee, the licensee is also required to pay an annual revenue share license fee of 10 per cent of gross revenue and a royalty for the use of spectrum.

The government has recently decided to rework the policy regarding DTH telecast, including a review of the norms on FDI, cross-media holding and content-sharing by companies, and a review of government regulation of content. The major items on the agenda are content regulation following complaints that viewers are accessing pornographic material through DTH services, and addressing the refusal by some companies to offer their channels to the country's sole private DTH operator, Subhash Chandra (Zee) promoted by the Essel group.

The TRAI has been created in order to facilitate policy making and dispute resolution in the telecommunications sector. In the radio sector, the major initiative concerned opening FM broadcasting to the private sector. In the tenth five-year plan (2002-2007), the government's targets include increasing the reach of FM stations from 30 per cent of the population to reach 60 per cent of the population, as well as efforts to consolidate the MW transmission network.

The Indian government does not record foreign private equity or venture capital investments as FDI. Neither does it include the retained earnings from foreign subsidiaries as FDI. This leads to massive under accounting of FDI, illustrated, for example, by the fact that Rupert Murdoch's Star TV's investment of approximately US$200 million in its Indian cable television operations are not included in the Indian FDI statistics, yet this investment is as much as the entire FDI recorded in 2002 for the entertainment sector. An Economic Times Intelligence Group study estimated that between 1999 and 2001, US$35 million was invested by foreign venture capital in Indian media firms.

2.2. GATS and India

India's Commitments in Audiovisual Services

Under the Uruguay Round, India's commitments only included motion picture and videotape distribution services and excluded all other sub-categories of audiovisual services. Within this sub-category, India scheduled partial commitments in commercial presence and left all other modes unbound.

India imposed both quantitative and qualitative restrictions on film imports: the import of foreign films was restricted to 100 titles per year. The national treatment limitation stipulated that foreign films should be certified before being displayed in Indian cinemas, and certain conditions had to be met before such certification was received. The film had to win an award, participate in any international film festival recognized by the Ministry of Information and Broadcasting, or receive good reviews in prestigious film journals. The determination of the relevant film festivals and journals was left at the discretion of the Ministry.

Foreign distributors in India were only allowed to set up representative offices to function as branches of companies incorporated outside India. India had listed a most-favoured-nation (MFN) exemption that allowed it to accord preferential treatment to motion pictures and television programmes from countries with which it has co-production agreements. This exemption was undertaken to promote cultural exchange and was applicable for an unspecified period of time.

On the whole, India's commitments in the audiovisual services sector are very limited (See tables 3 and 4 showing India's schedule of commitments). However, the Indian government today has gone much further than the commitments it made under GATS. Currently India is one of the countries with the least restrictive policies and foreign players are allowed to operate in many sectors of the audiovisual industry. The Indian industry is also largely concentrated in private hands and the government primarily acts as a facilitator, not providing significant subsidies or support programmes that several European governments provide to their film industries. The restrictions that India does impose on trade in audiovisual services are presented below.

Table 3 - India's Commitments under GATS for Audiovisual Services

Sector or Sub-sector	D. Audiovisual Services (a) Motion picture or video tape distribution services (CPC 96113)
Limitations on Market Access	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
Limitations on National Treatment	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 recognized by the Ministry of Information and Broadcasting,; or (b) participated in any of the official sections of the recognized international film festivals; or (c) received good reviews in prestigious film journals recognized by the Ministry of Information and Broadcasting, 4) Unbound except as indicated in the horizontal section
Additional Commitments	

Source: World Trade Organization

Modes of supply: 1) Cross-border supply 2) Consumption abroad
3) Commercial presence 4) Presence of natural persons

Table 4 - India - Final list of article II (MFN) exemptions

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

Restrictions on Trade in Audiovisual Services

Films

Quantitative restrictions on film imports that existed in the past have now been removed and qualitative restrictions have been relaxed. In 2002, the government dictated the following guidelines regarding imports:

- No license is necessary for the import of cinematographic feature films and other films (including film on videotape, compact video disc, laser video or digital video disc).
- Film importers must comply with all applicable Indian laws governing the distribution and exhibition of films and must obtain a certificate for public exhibition from the Central Board of Film Certification that was set up under the Cinematographic Act of 1952.
- The import of any unauthorized or pirated film is prohibited.
- Import of foreign reprints of Indian films is not permitted without the prior permission in writing from the Ministry of Information and Broadcasting.
- The Ministry of Information and Broadcasting may waive or relax the above regulations if it judges it necessary for the public interest.

Although foreign players have welcomed the liberalization measures, they still face certain barriers:

- The Motion Picture Association of America has pointed out that its member companies have to pay a custom duty on remittances.
- They have also pointed out that although import licenses are no longer required, Indian Customs often imposes various restrictions. For example, the film importing company has to provide a declaration on stamped paper that the film imported does not contain any illegal or pornographic material together with a synopsis of the film.
- All foreign films imported and exhibited in India have to pay a “scrutiny” fee of Rs 5,000 (US$115).
- There are some restrictions on co-productions. These include the requirement to get the script approved by the Ministry of Information and Broadcasting so as to ensure that the project does not hurt the sentiment of any segment of the society and is not against national security interests.

There are also restrictions on the import of publicity materials, posters, sample T-shirts, and electronic press kits that are required for the promotion of the foreign films in India. These items face penalising import tariffs of 100 per cent.

Every year India imports about 25 to 30 independently produced films - that is films produced by non-Hollywood studio majors. It is estimated that Indian importers pay between US$25,000 to US$150,000 in royalties for each film sourced from Hollywood or Europe.

As for foreign participation in the film sector, the range of activities where up to 100 per cent FDI is allowed go from film financing to production, distribution, exhibition, marketing and associated activities through the automatic route.

Broadcasting

India does not have any major restrictions on television broadcasting (except for news channels) but FDI is not allowed in private FM channels. Private players are not allowed to enter the terrestrial broadcasting sector, since the government has allowed foreign satellite channels to operate in the country and has significantly liberalized its broadcasting policies.

Music

India has opened up sound recording services to foreign investment. India can offer liberal commitments under Mode 1 (cross-border supply). There are no FDI restrictions in the music sector and no tariffs are imposed on imports.

Restrictions Faced by the Indian Audiovisual Industry

Some countries have imposed restrictions specific to content of Indian origin. For instance, Pakistan has imposed a ban on Indian films and Egypt has fixed a quota for Indian films, but has not imposed a similar quota on Hollywood films.

Countries such as Brazil prohibit the importation of colour prints for television and theatrical display. Many countries of export interest to India such as the EU and Canada have imposed various restrictions on broadcasting, such as broadcasting quotas and local content requirements. Since India has not imposed similar restrictions, India should negotiate with these countries for removal of such restrictions.

Although there are no major restrictions on the movement of persons involved in shooting a film abroad, Indian technicians (cameramen, editors, music directors, etc.) sometimes find it difficult to take up temporary employment in industrialized countries, such as the US and the UK, due to strong union pressures. Workforces in the audiovisual sector of these countries are members of unions that insist on using local skills.

2.3. The film industry

The Indian film industry is highly unorganized and fragmented, consisting of over 6,000 producers and employing over 3 million men and women. Films constitute the major output of the Indian entertainment industry, capturing the lion's share of audiences' attention and money. India is the largest producer of films in the world: with cumulative film production tallying at close to 70,000 movies, the Indian film industry produces over 1,000 commercial movies every year. Low cinema entrance fees (Rs 5 or US$ 0.10), easy access to cinemas and an established movie-going culture ensure a ready market for films and a promising future for the industry.

Table 5 - Films Produced in India

Language	1999	2000	2001	2002	2003
Hindi	166	243	230	222	245
Teleugu	132	143	206	167	95
Tamil	153	157	196	100	97
Malayalam	65	87	135	107	76
Kannada[1]	87	76	93	113	100
Bengali[1]	51	43	48	47	40
Others[1]	110	106	105	300[2]	347
Total[1]	**764**	**855**	**1,013**	**1,056**	**1**

Sources: FICCI Report - Indian Entertainment Sector in the Spotlight; ValueNotes Research
[1.] *N°. of films for 2003 are estimates.*
[2.] *Estimates.*

Within the film industry in India, Bollywood (colloquial term for Hindi movies made in Mumbai) dominates the national market due to its extensive reach and large budgets. However, regional movies have their own vibrant and growing markets. The major regional film producing states are Andhra Pradesh (Telugu), Tamil Nadu (Tamil), Kerala (Malayalam) and West Bengal (Bengali).

Structure of the Industry

Formerly all the production was done by unincorporated entities like partnership firms or individuals. These entities were typically small, financially weak and had little or no access to formal finance.

However, since the early 1990's, the Indian entertainment industry has undergone a lot of structural changes. The most important and vital change is the incorporation of film production companies. This has been facilitated by formal lending to the sector by banks, as well as by the availability of venture capital and private equity. In 2001, the government granted industry status to the film sector, which has helped the industry to adopt more organized and business-like approach to financing, production and other allied activities. Producers are now able to borrow at reasonable rates of interest and to get insurance cover for the risks involved in production. Other significant changes include:

- An increased business focus. Corporations and modern producers are increasingly viewing filmmaking as a business, leading to increased focus on benchmarks like profitability and return on capital. This has resulted in better planning of resources and improved implementation of projects, which is helping to reduce wastages, avoidable costs, shooting delays, etc.
- Gains from scale economies. Production companies now work on two or three movies simultaneously, as this helps to reduce equipment charges, food expenses and film processing charges, and allows for the recycling of sets. The savings are estimated to be between 10 and 15 per cent.
- The arrival of multiplex theatres in the Indian entertainment scene.

In the last few years the film industry has been forced to restructure itself. A bad year for film (2002) combined with several policy initiatives from the government as well as the entry of new investors has forced some permanent changes in the industry.

Filmmaking, distribution and exhibition are now increasingly controlled by a smaller number of companies merging to form bigger companies. Of the 600-odd films released in 2003 (January-November 2003), about half were made, released and exhibited by organized film companies. The result is a more efficient and profitable industry. For instance, average costs are down to Rs 20 - 50 million (US$459,000 - 1.14 million) from Rs 100 - 150 million (US$2.3 - 3.4 million) thanks to a range of cost-cutting measures across the production, distribution and exhibition chain.

Furthermore, better revenue declaration by organized multiplex and distribution firms and new revenue streams like in-film advertising, are helping make filmmaking an increasingly profitable industry. A larger number of films now make money - about 70 per cent compared to the 50 per cent or so earlier.

Revenue

The film industry derives income from box office sales, music rights, television and satellite rights, video rights and overseas rights. Domestic box office income was the major source of revenues in the 1990s constituting nearly 80 per cent of total industry income. In 2002, the share of box office revenues decreased to 63 per cent, as the contribution from music rights, export income and satellite rights has grown substantially. Box office collections for the last three years have fluctuated wildly. In 2002, the industry produced more flops than hits and this resulted in a reduction of gross collections by 13.3 per cent.

Table 6 - Revenue Break-down for Films

Source	1999 (in %)	2002 (in %)	2002 (in US $ millions)
Box office – Indian	79.5	65	897.5
Box office - Overseas	7	11	151.8
Music	8	6	41.4
DVD / VCD	1	2	27.6
Satellite	4	14	322.2
In-film ads	0.5	2	27.6
Total	**100**	**100**	**1.4**

Sources: KPMG and FICCI Report - Indian Entertainment Sector in the Spotlight; ValueNotes Research

Films are sold in India mostly on outright basis and the cinemas are owned by individual businessmen. There is no central agency that monitors box office earnings, so there are no authoritative figures available on the collection made by cinemas. The figures presented for box office sales are thus the industry's best estimations. In 2003 the total box office revenue of the Indian film industry was estimated at Rs 45 billion (US$1.03 billion). The CII expects box office revenues to grow at a compounded annual growth rate of 18 per cent to pass Rs 101 billion (US$2.3 billion) by 2008.

Music Rights

The arrival of multinational and large-scale national music distribution companies has helped the film industry to exploit new streams of income. Even when a film has poor box office sales, the film's music and songs may generate significant income. Furthermore, music rights can generate revenues for several years in the future, even after the film is no longer playing in cinemas. The rights are generally sold for a specific number of years and at the end of the contract period, the producer can resell them.

Music rights typically cover 15 to 20 per cent of the cost of the movie. A few years ago, music rights were being sold at astronomical sums, but the market has settled down now. The rights are sold on the domestic and on the export market, with exports composing almost 40 per cent of revenues from music rights.

Overseas Rights

Other overseas rights include theatrical and video rights. The main markets are the US, the UK, Canada, the Gulf states, New Zealand, Australia, Sri Lanka (and other South Asian countries), Mauritius, Thailand, Kenya and Singapore. Today the exports are reaching new shores and small markets have opened up in countries like China, Japan and South Korea, as well as countries in Africa and the Americas.

To exploit these new opportunities, Indian producers have started distribution operations in the US, the UK, the EU and the Far East. The companies are now increasingly opting for shared revenue models, as opposed to the old outright sale model. Export earnings have increased from Rs 4 billion (US$91.8 million) in 1999 to Rs 12 billion

(US$275.4 million) in 2003, which makes for an estimated compounded annual growth rate of 30 per cent.

Television and Satellite Rights

Films form an important part of Indian television entertainment on weekends, festival days and national holidays. This helps the films recover 10 to 15 per cent of their costs, as all the major films are bought by the television channels for such screenings. The rights are given to the channels typically with a restriction on the number of times the film can be played. At the end of the contract, the rights can be re-sold.

Trade in Films

Despite a former limit of 100 films as per India's commitment under GATS (see table 5), India has typically allowed far higher imports. In 2001, India imported 248 films, including 189 from the United States and 18 from Hong Kong. In addition, since the liberalization of import policies, India has accepted far more foreign films than China, which still maintains a strict quota system, even after joining the World Trade Organization (WTO).

In addition to Hollywood's breakthrough with films dubbed in Indian languages, there has been a significant increase in the success of Hollywood films in English in recent years. For example, English-language import value has grown by more than 900 per cent, from US$840,000 in 1992 to US$81 million in 2000 and attendance at these films has shot up more than ten times since 1992. Cinemas often prefer to run Hollywood films for economic reasons: the average length of a Hollywood film is 90 minutes to two hours, compared with Hindi films which typically run for more than three hours. Hollywood films can thus be screened five to six times a day as opposed to only three times for Indian films.

Despite the large increase in the number of imported films, imports capture only 10 per cent of cinema entries. However, there are signs that this is changing, particularly as more multiplexes continue to be built. Recent Hollywood successes in India - including *Spider Man, Ocean's Eleven, The Mummy Returns, Shrek, Lord of the Rings, Harry Potter, and Men in Black II* - have encouraged Indian filmmakers to begin to make local movies in English, to cater to a growing middle class of urban viewers that is also Hollywood's demographic target. This trend has led to new genre of Hinglish films (films in a mixture of Hindi and English). The development of multiplexes has helped increase the success of offbeat movies and full-length Indian films in English, like Joggers Park for example. Movie producers today are increasingly making movies to cater to special interest niches like horror movies. This trend of English-language and niche films is here to stay and is likely to intensify.

After the recent success of *Bend It Like Beckham* – which was made by an Indian filmmaker based in London and was India's second biggest hit, after Devdas in 2002 – one can expect more Indian English-language films. India has a large English-speaking population and therefore there is a ready market for such films; this is less true of other Asian countries however, and it is not sure whether English-language films would export well to these markets.

Legal and Regulatory Issues

Allowing of FDI of up to 49 per cent in multiplexes is helping consumers and the industry by bringing in much needed capital and greater transparency. The current policy of providing five-year tax holidays to multiplexes has provoked much controversy and resentment from the traditional single-screen cinema owners, as they fear that the modern multiplexes (usually coupled with malls, food courts, or other entertainment) will drive them out of the business.

Entertainment tax is the major tax payable by the film industry. In 2002, the government capped the entertainment tax at 60 per cent. Most states now understand the benefit of lower tax rates and are reducing the tax rates from highs of 110 per cent to levels between 40 and 60 per cent. However, even these rates are very high, and India is still one of the most highly taxed countries, with respect to entertainment.

2.4. Television and cable & satellite industry

Television broadcasting is the fastest growing sector in the Indian entertainment industry, reaching out to over 80 million Indian households. Television is perhaps the cheapest and most popular entertainment in the country. Cable television reaches more than 44 million households, and there are more than 100 satellite channels. India's cable penetration rate stands at 51 per cent, the fifth highest amongst the global media markets. Revenue from the television industry is expected to grow at a compounded annual growth rate of 17 per cent over the next five years and exceed Rs 28.85 billion (US$66.2 million) by 2008. A significant portion of the growth is expected to come from subscriptions.

Presently, India is one of the fastest growing markets for the cable and satellite industry. From a subscriber base of 31 million households in 2000, it reached 44 million households in March 2003. India is the third largest producer of original entertainment software with over 40,000 hours of original programming (as of early 2001).

Cable television in India was introduced in the late seventies. At that time, cable services offered by small entrepreneurs showing movies, pirated versions of western comedies, music, game shows, etc. emerged as the only alternative to the state-owned Doordarshan. The transmissions however were restricted to major urban centres and more affluent members of Indian society.

Today, the Indian cable industry is extremely fragmented and enjoys few economies of scale. India is estimated to have upwards of 30,000 cable operators who together control approximately 6,800 head-ends. The number of operators who are formally registered under the Cable Television Network Regulation Act of 1995 is about 16,000. Today, cable television consumers typically have access to up to 100 diverse channels and pay an average of Rs 157 (US$3.60) per month. There are two main types of players: local cable operators (LCOs) and multi-system operators (MSOs). The LCOs own the last mile and control subscriber distribution and management and typically provide a bouquet of channels in a package at a uniform flat rate of subscription.

A key problem faced by the broadcasters is that of under-reporting of connected households by the LCOs. As the cable operators have to pay the channels per connection, they tend to under-report the number of subscribers, even while collecting subscriptions from customers. This has led to numerous disputes between LCOs, MSOs and broadcasters.

At the end of March 2003, cable operators retained in excess of Rs 73 billion (US$1.5 billion) in subscription revenue, the bulk of which was retained by LCOs, with only Rs7 billion (US$ 161 million) remitted to broadcasters. This effectively meant that broadcasters had only a

9 per cent share of the total Rs 80 billion (US$1.8 billion) subscription market, while cable operators commanded 91 per cent.

Table 7 - India Cable Television - Industry Data

Year (April - March)		2000	2001	2002	2003
Total Households (HH)	(M)	184	188	192	195
Total TV Households (TVHH)	(M)	70	79	82	87
TVHH Penetration of HH	(%)	38	42	43	45
Rural Cable TV Subscribers	(M)	9	13	14	15
Urban Cable TV Subscribers	(M)	22	25	27	29
Total Cable TV Subscribers	**(M)**	**31**	**38**	**41**	**44**
Cable TV Penetration of TVHH	(%)	44	48	50	51
Average Total Cable TV Subscribers	(M)	28	35	40	43
Average Monthly Cable TV Subscription Fee	(Rs)	105	116	132	157
Change	(%)		10	14	19
Total Cable TV Subscription Revenue	**(M Rs)**	**35,28**	**48,024**	**62,568**	**80,07**
Change	(%)		36	30	28
Total Cable TV Advertising Revenue	**(M Rs)**	**13,95**	**20,61**	**24,150**	**26,680**
Change	(%)		48	17	10
Total Cable Industry Revenue	**(M Rs)**	**49,23**	**68,634**	**86,718**	**106,75**
Change	(%)		39	26	23

Sources: Media Partners Asia; Goldman Sachs Research; Economic Times, ValueNotes Research

Advertising is also an important source of revenue for broadcasters. Revenues from television advertising stood at Rs 39 billion (US$894 million) in 2002, are estimated at Rs 43 billion (US$986 million) today and industry estimates expect advertising revenues to rise to Rs 65 billion (US$1.5 billion) by 2007. Due to the fragmentation of the industry, there is likely to be intense competition for a share of the advertising pie. It is interesting to note that subscription revenues are growing faster than advertising revenues thanks to better compliance from cable operators and higher charges. According to industry estimates, by 2007 revenues from subscribers will account for 69 per cent of the revenues for the television sector and the broadcasters' dependence on advertisements is likely to be reduced gradually. Of course, this depends on the pace of adoption of conditional access systems (CAS), as this is the only way to ensure compliance by cable operators.

Table 8 - List of Top Cable Broadcasters

Broadcaster	Revenues, 2002 - 2003 (Rs billions)	Nationality
Star	12	US / Australia
Zee	11,99	India
Sony	8	E-U
Sun	5	India
Eenadu	4	India
ESPN	4	US
Doordarshan	3,5	India
Sahara	1,27	India
TV Today	1,09	India
Asianet	0,5	India
TV 18 - CNBC	0,4	India and US
Maa TV	0,1	India
SS Music	8	India

Source: Business World and ValueNotes Research

There are around 212 channels in India, and more are being added on a regular basis. Of the 212 channels, 161 are operated by organized players and rest of the channels are operated by LCOs in their operating regions. Table 8 provides information on the revenues and the countries of origin of the major cable companies, whilst Table 9 shows the revenues of major television software producers.

Table 9 - Major Television Programme Producers

Company	2002 - 2003 Revenue (in Rs bn)	2002-2003 Revenue (in USD million)
Balaji Telefilms	1,86	42,68
Padmaja Telefilms	0,88	20,19
UTV	0,65	14,92
TV 18 – CNBC	0,40	9,18
In-house Productions*	0,35	8,03
Contiloe Films	0,30	6,85
Radaan	0,25	5,74
Hansa Vision	0,23	5,28
Optymystix	0,20	4,59
Cinevistas	0,19	4,36

Source: Business World

Direct-to-home (DTH)

As an alternative to existing distribution systems, DTH service distributes multi-channel television programmes on Ku-Band by using a satellite system that transmits the programmes and provides television signals directly to subscribers.

Taxes

The cable industry is subjected to an entertainment and a service tax. The rate of the entertainment tax differs from state to state. Generally the entertainment tax structure is either a fixed rate, a tax per connection, or a combination of both. Cable operators are demanding a standardization of tax rates throughout the country. Service tax is 10 per cent of the cable charges.

2.5. The music industry

Until 1990 Indian music lovers were limited to music from All India Radio (AIR) or from a sparse selection of cassettes available in the market. However, this has changed with the entry of international music companies in India and with the liberalization of the FM radio sector. Based on listening preferences, music in India can broadly be classified according to the following interest groups - Hindi film music, Indipop, international music, classical music, devotional music and regional film music. Hindi film music has the dominant share of the market (a 67 per cent share) followed by Indipop (15 per cent share).

Music companies that had acquired rights for big banner films at astronomical costs in earlier years are under enormous pressure, as sales have fallen and the film music business is currently undergoing rationalization. In line with the general outlook for the global music industry and as a result of increasing digital piracy that is difficult to police, no dramatic turnarounds are expected in the short term.

Revenue

The music industry derives its income mainly from the sale of cassettes that constitute nearly 95 per cent of sales; CDs still occupy only a minimal part of the market. The price for a cassette ranges from Rs 65 to 95 (US$1.49 to US$2.17), while CD prices can be from Rs 150 to 350 (US$3.44 to US$8.03). The prices differ based on the genre and popularity of the content.

The Indian music industry, whose fortunes are closely interlinked with those of the film industry, suffered heavy losses in 2002 which was a bad year for Indian film. The music industry depends significantly on film music, and major record companies vie with each other for film rights. This is a high risk gamble, as music sales depend on the success of the film, and not more than four per cent of movies become hits in any given year. Total revenues in the music industry fell from Rs 12.6 billion to Rs 10.04 billion (US$289.16 million to US$230.4 million), while piracy continued to increase. The legitimate revenues of music companies were Rs 6.20 billion (US$142.3 million), or 60 per cent of total revenues. The music industry has been in decline over the last three years, with revenue losses estimated at Rs 18 billion (US$413 million). These losses result not only from piracy, but also from bad business decisions, especially that of overpaying for film music rights.

The arrival of FM radio stations in India has further complicated the music industry's fortune. The FM channels play film music round the clock and this has negatively affected the sale of cassettes and CDs. One estimate puts the loss in sales between 15 to 20 per cent. Furthermore, the music sector is very liberalized; there are no restrictions on foreign firms in the music business, nor on imports and distribution of music. India made no commitments under GATS for the music sector.

However, certain key shifts like a reduction in piracy levels and increased music CD penetration are taking place, and the positive impact on the music industry will be felt in the medium term. CDs promise to bring in more revenues for the industry than cassettes as they are generally priced higher, despite lower manufacturing costs. Another promising sign, perhaps the most promising sign, for the music industry is the rapid growth in purchases of consumer electronic products in India – especially CD/VCD/DVD players and car audio systems. This is being fuelled by falling product prices and easier access to finance. These factors lead the industry to estimate a growth in revenues to reach Rs 16.4 billion (US$376.4 million) by 2007.

Furthermore, after burning their fingers, the record industry has learnt its lessons and has become more reasonable when bidding prices for film music rights. Also, to improve profitability, companies in the industry are focusing on evolving new mechanisms to avoid huge losses, by partnering with producers, and developing Internet sales, new talent scouting, re-mixes and organized retail.

Table 10 - Major Music Companies

Record Company	Market Share
T-Series	22%
Tips	11%
Saregama	15%
Universal Music	7%
Sony	7%
Others	38%
Total	**100%**

Source: Ernst & Young – FICCI Entertainment Report 2002

2.6. Radio

Until recently radio in India was synonymous with All India Radio (AIR). Since its first broadcast in 1952, AIR has expanded geographically and has attained a reach of 99 per cent of the population. More recently the radio sector has opened up to other players and there has been a mushrooming of FM stations. There are however, restrictions on FDI in the FM sector, and India has not made any international commitments for the radio sector.

Revenues

Advertisement is the main source of income for the radio industry. However due to poor programming and a shrinking listener base, the Indian radio market only manages to attract 4 to 5 per cent of the total advertising takings as compared to Sri Lanka, where the radio sector attracts 20 per cent of advertising revenues, or to other mature radio markets which typically capture 10 to 15 per cent of total advertising in mass media. In 2003, private FM radio managed to attract only Rs 1.16 billion (US$26.6 million) in advertising revenues.

Currently FM channels can only broadcast entertainment programmes. Given the small number of channels, they all tend to cater to the mass market, playing largely Hindi film songs. It is expected that over time more niche channels will serve the different segments of the market. Industry players are also lobbying to be allowed to broadcast current affairs and news programmes.

FM Radio Licensing

In May 2000, FM radio licenses for 108 frequencies for 40 cities were auctioned by the government. The licenses were issued for 10 years. In the initial euphoria, players bid exorbitant amounts for licenses that also contained annual escalating clauses (the fee for year one was X, in year two, it was 1.15X, and so on). This has rendered the industry unviable. The industry has appealed to TRAI and to the government to switch the license fee system from the current fixed, albeit escalating, fee to a revenue-sharing model. TRAI in its recent consultation paper (August 2004) has made a few suggestions for development of the FM radio sector, such as revenue-sharing, multiple licensing, increased FDI and longer license terms.

Technology

The US-based WorldSpace Corporation recently launched DTH digital satellite radio in India, through which hi-fi radio programming is broadcast through satellite directly to small, portable audio receivers. Though current numbers are small, this sector is likely to grow rapidly in the near future.

The reach of FM radio is also increasing, with FM radio now being available on mobile phones. Cable operators are also joining hands with radio companies in offering hi-fi digital music in their cables. International broadcasters like BBC World Service have joined hands with cable operators in providing real time news. Not to be left behind, AIR launched a digital radio service in 2000.

2.7. Conclusion

The Indian entertainment industry is on the verge of metamorphic change, developing from an industry run by enthusiasts and individuals, to one that is more structured and professional and that can be compared to mainstream industries. The new strategy of the Indian media and entertainment industry is to capture audiences by focusing attention on new and emerging niches created by rising aspirations and changing lifestyles among young Indians. This is a big change from the “one-size-fits-all” attitude, whereby the filmmakers aimed to satisfy the largest number of people at the same time, which led to a formulaic approach to filmmaking.

More importantly, the explosion of television channels, coupled with the more recent mushrooming of multiplexes across urban India has meant new audiences, revenue streams and opportunities for the industry.

Under the Uruguay Round, India's commitments were limited and included only motion picture and videotape distribution services and excluded all other sub-categories of audiovisual services. The import of foreign films was restricted to 100 titles per year, and these were subject to certification.

However, India has gone much further than the commitments made under GATS. In actual practice, today India is one of the least restrictive countries. The domestic entertainment industry is largely concentrated in private hands, and the government does not provide any major subsidies, unlike several European governments.

Despite committing to only 100 imported films per year, in 2002 the government removed all qualitative and quantitative restriction on film imports, subject to certification. However, foreign players still face some barriers, primarily due to petty bureaucracy and administrative hurdles on the ground.

The government however, needs to further advance the transition to seamless and transparent regulations for the industry. The rules regarding FDI vary from sector to sector in the entertainment industry: FDI is not allowed in FM Radio, it is allowed up to 20 per cent in DTH and 49 per cent in the cable industry. This has led to anomalies in entertainment policy - viewers can watch foreign news channels broadcast from overseas, but FDI is not permitted even for pure entertainment FM radio. It is therefore necessary for the government to review the policy in a holistic manner and bring about a greater degree of consistency in the rules for the various entertainment sectors.

3. THAILAND

3.1. Regulatory and policy overview

Thailand is a member of the World Trade Organization and by virtue of its WTO obligations, has to liberalize its telecommunications industry by 2006. To this effect, Thailand has passed two important acts: the Telecommunications Act in October 2001 and the Broadcasting Act which came into force in March 2000. These acts are compatible with GATS and will continue to be in force after 2006.

The Telecommunications Act

The Telecommunications Act covers five issues ranging from telecommunications business and regulation to license processing and application. The act sets out the following general criteria for license applicants:

a) The applicant may not be a foreigner, as defined in the Foreign Business Act (i.e. the applicant should not be a foreign individual or company).
b) Thai nationals must own at least 75 per cent of the capital of the applicant company. Thai companies with more than 25 per cent foreign ownership are thus not eligible.
c) Three-quarters of the applicant's directors must be Thai nationals.
d) The applicant's authorized director(s) who have power to bind the company must be Thai nationals.

The limitation on foreign ownership to a maximum of 25 per cent caused considerable controversy. After public pressure, the government announced that the foreign ownership limit would be increased to 49 per cent, but formal amendment of the act has yet to be effected.

The Broadcasting Act

The Broadcasting Act which came into force in March 2000 sets up two regulatory committees:

a) The National Broadcasting Committee (NBC)

The NBC will formulate policy and a national plan with regard to broadcasting, television and radio frequencies. It will prescribe the nature and types of broadcasting activities. It will grant licenses for the use of radio and television frequencies. An office will be set up for the committee to deal with claims arising from broadcasting activities. Practically no progress has been made toward media reform since the Thaksin Shinawatra government was elected in early 2001 despite the provision under the 1997 Constitution for the establishment of the NBC to pave the way for change.

b) The National Telecommunication Committee (NTC)

The NTC will formulate and set policy, prepare the model plan for telecommunications and radio frequencies, and prescribe the nature of telecommunications activities.

Two committees will be established to assess the activities of the NBC and the NTC. The members of the NBC and the NTC have not yet been appointed. Thus, the power to grant any new licenses currently lies with the Ministry of Information and Technology (MICT).

Rules for Foreign Direct Investment

The Thai government passed a Foreign Business Act in 1999 which places restrictions on foreign participation in 43 categories of business activities, grouped into three schedules. The restrictions that apply depend on which schedule the business falls under. Newspaper publishing, and radio and television broadcasting are listed under Schedule 1. This means that foreign involvement in such businesses is limited to minority ownership only, with no possibility of applying for majority foreign ownership.

Restrictions

The new Alien Business Law, announced in December 1999 and effective in March 2000, prohibits «aliens» from participating in the Thai telecommunications, radio and television sectors. However, the law has a grandfather clause which makes exceptions for those who previously had no limitation on foreign ownership.

Major Regulatory Issues

a) WTO Obligations:

As mentioned above, Thailand is obligated to liberalize its telecommunications industry by 2006, in accordance with the agreements it has signed at the WTO. To this effect, a government committee set up in 1997, approved the draft Telecommunications Master Plan prepared by the MICT and established a committee with members selected from the private and public sectors to oversee the plan’s implementation.

b) The Telecommunications Master Plan:

A Telecommunications Master Plan was formulated and approved by the cabinet in 1997. This is to be a guide to liberalization and privatization of the industry. The Master Plan deals with four areas of concern: liberalization of the industry; establishment of an independent regulatory body called the National Communications Committee; privatization of the Communication Authority of Thailand and the Telephone Organization of Thailand; and conversion of the revenue-sharing agreements between concessionaires and state enterprises.

c) Relevant Laws:

Thailand has several laws, in addition to the Broadcasting Act of 2000, designed to regulate all businesses that engage in telecommunications.

Foreign Business Act (1999)

The Foreign Business Act has already been described above. The act essentially prohibits majority foreign-ownership in the newspaper publishing, radio and television broadcasting sectors.

Trade Competition Act (1999)

The Trade Competition Act came into force on 30 April 1999. It contains provisions regarding monopolies and unfair competition, restricting business operators with a dominant market position from abusing their market positions. The act aims at inhibiting collusion between dominant market leaders and preventing mergers and acquisitions that would lead to the creation of monopolies.

Price of Goods and Services Act (1999)

This act came into force on 1 April 1999. It is intended to protect consumers and enable them to obtain fair prices for goods and services, and to prevent excessive increases in the price of goods and services. The act establishes a committee to enforce its provisions. The categories of goods and services which are subject to regulation are to be formulated in ministerial regulations.

3.2. GATT and GATS in Thailand

The International Intellectual Property Alliance (IIPA) first identified Thailand as one of the world's worst pirate countries in 1985. In June 1987, IIPA filed a petition to deny preferential trade benefits under the Generalized System of Preferences (GSP) programme to Thailand for its failure to provide «adequate and effective» copyright protection and enforcement. In April 1992, Thailand was named a Priority Foreign Country under the Special 301 Report. On 1 February 1993, IIPA again sought immediate retaliation for Thailand's continuing unwillingness to take effective action: no prosecution against a pirate manufacturer or wholesaler had been completed, no major pirate had ever gone to jail, and the copyright industries had lost US$560 million since 1984.

After lengthy negotiations, the Thai government signed letters on 24 and 25 August 1993 reiterating its commitment to continue aggressive raiding that had begun in earnest earlier that year, to amend the copyright law to bring it up to Berne and TRIPS standards, to create an Intellectual Property Right (IPR) Court and authorize it to use strict measures, and to reduce Thailand's tariff rate on film prints. On the basis of these letters and continued enforcement, the United States Trade Representative (USTR) removed Thailand from the Priority Foreign Country list and placed it on the Priority Watch list on 21 September 1993. On 1 August 1995, the USTR partially restored Thailand's GSP benefits, citing the «considerable progress» that had been made in protecting intellectual property rights[3].

Back in 1992, Thailand proposed the creation of the ASEAN Free Trade Area (AFTA) which was officially launched in 1993. The decision was taken in response to significant developments in the world at the time, including the enlargement of the European Union and the launching of the North American Free Trade Agreement (NAFTA). Thirteen years after its creation, AFTA has contributed significantly to ASEAN integration.

Thailand has also been pushing for various free trade agreements (FTAs) outside of AFTA with major trading partners such as Japan, China, Australia, New Zealand and India. Two-way trade between Thailand and the US stood at US$21 billion (YEAR?) and is projected to continue to grow in the future with substantial growth likely to come from the implementation of the FTAs. But the key stumbling block for Thailand and the US in the negotiations is likely to be IPRs.

3. Excerpt from the IIPA *Special 301 Recommendations*, 20 February 1996.

In the 11th Asia-Pacific Economic Cooperation (APEC) Economic Leaders' meeting held in October 2003 in Bangkok, Thailand declared that it considered the Doha Development Agenda (DDA) that promotes trade and investment liberalization, as offering real opportunities for all economies, and particularly for developing countries. To advance the DDA and the Bogor Goals of free and open trade and investment, Thailand agreed to instruct concerned ministries to take concrete steps to make APEC's trade agenda more supportive of the work of the WTO and report on their progress in 2004. The country also committed to advancing all pathfinder initiatives, including the APEC Sectoral Food Mutual Recognition Agreement and the Digital Economy Statement (for instance, to stop optical disk piracy and allow technology choice for business), and to pursuing anti-corruption and transparency measures.

As for GATS, the Thai government views it as a framework to set guidelines for service transactions amongst WTO member states so as to achieve transparency and progressive liberalization. A study by W. Sumalee, a lecturer at Ramkhamhaeng University, on the readiness of Thailand to adjust its policy to conform to GATS, reveals that the GATS rules on the liberalization of trade in services are likely to impact negatively on Thailand. Sumalee makes special mention of telecommunications services which require high cash investment and specialized professionals, and could thus have monopolistic tendencies, as smaller firms are unable to compete in the sector leaving large well-established companies to dominate and monopolize the sector. This is especially a risk as Thailand has not yet undertaken any measures to confront such a likely monopolistic situation.

3.3. The film industry

The Thai film industry has good prospects for long-term growth as Thai films are increasingly gaining acceptance abroad. Among the most successful films of the year was *Sud Pralad (Tropical Malady)*, directed by Apichatpong Weerasethakul, which won the Jury Prize at the 57th Cannes Film Festival and was the first Thai film to receive global recognition.

Up until recently, the Thai film industry has drawn relatively little attention from the government compared to other sectors, which had received support through tax incentives and other favourable measures. Following the ambitions of the Thaksin government to transform Thailand into a regional hub for film production and post-production, two newly established ministries - the Ministry for Tourism and Sport and the Ministry of Culture - are working together with representatives from the film industry, as well as with other relevant ministries, to establish a central Motion Pictures Council to oversee the development of the Thai film industry.

The council's main tasks are to ensure sustainable growth for the industry, provide financial assistance to producers, facilitate content exports and help deal with copyright violation problems. The 74 year-old law governing the movie industry is also to be revised.

Structure of the Film Industry

Previously, Thai films have been made exclusively by local producers. However, in 2004 three film production houses - GMM Grammy Plc, Tai Entertainment Company, and Hub Ho Hin Bangkok Company - decided to form a joint venture, GMM Tai Hub Company (GTH), to produce 10 films a year.

Kantana Group Plc, the country's leading entertainment group, meanwhile, is preparing to be listed on the Thai stock exchange. Early in 2004, the company also announced its first big budget animated film, *Khan Kluay*, in collaboration with the MICT and some Hollywood talent, with a budget of more than 100 million baht (US$2.43 million). The film is scheduled to debut locally and in other markets in Asia in 2005.

Kantana is currently constructing its Movie Town that will comprise an outdoor sound stage, pre- and post-production studios and Kantana University which will offer courses such as film production and broadcasting.

Revenue

The film industry generates revenues from box office sales and advertising. The industry is expected to collect US$96.6 million from box office sales in 2004, an 11 per cent rise from the US$88.7 million collected in 2003. This rise in revenues occurs despite a negative economic environment, and energy-saving measures implemented by the Thai government in September 2004 that imposed early closing on cinemas. In 2004, 244 films are scheduled to be screened, up from 225 the previous year. About 50 of these are Thai films - the same number as in 2003. Total ticket sales in the first three quarters of 2004 reached US$67.9 million, already higher than the US$65.3 million attained in 2003.

The average drop in ticket sales from the first week of showing to the second week is 56 per cent. Typically, the first two weeks account for 85 per cent of total ticket sales for a particular film.

Table 11 - Revenues from Cinema Advertising (1993-2004)

	Cinema Ad (US$)	Change	% Change
1993	491,517		
1994	473,223	-18,294	-4
1995	503,069	29,846	6
1996	2,130,570	1,627,501	324
1997	4,580,811	2,450,241	115
1998	4,218,777	-362,034	-8
1999	5,208,289	989,512	23
2000	5,859,352	651,063	13
2001	9,985,596	4,126,244	70
2002	13,375,592	3,389,996	34
2003	21,652,972	8,277,380	62
2004	31,464,475	9,811,503	45

Source: Media Industry spending report

Legal and Regulatory Issues

Despite the enactment of the new copyright legislation, and despite sporadic efforts to enforce this legislation, the motion picture piracy problem in Thailand is getting worse. Trade losses for 1995 were estimated at US$29 million, up by more than 10 per cent from 1994.

The most serious video piracy problem in Thailand continues to be back-to-back copying of video products. Pirate vendors can be found in all of the major markets in Bangkok and video outlets keep supplies of pirated products. Thailand has a number of «night markets» which cater to both foreign tourists and Thais, where vendors openly sell pirated products. Although sales are now primarily from catalogues or photo spreads and pirated videos are not displayed openly, pirated products remain readily available. Prices are low (150-200baht or US$6-8) and are getting lower. Disturbingly, Thai video pirates have begun to export their products to European countries, such as Switzerland, where there are large populations of Thai nationals, and to other Asian markets.

When the new copyright law first went into effect in March 1995, some pirates began to package their products as counterfeits, hoping to pass off their ware as legitimate and seeking to hide the fact that the product was pirated. When it became clear that there would be little sustained enforcement of the law, pirates realized there was no need to hide the fact of piracy, and went back to their old product lines. Thus, the decline in the incidence of counterfeit videos is an indicator of weakness, not strength, in Thailand's enforcement efforts.

Public performance piracy remains a serious problem in Thailand. Many of the major hotels still use unauthorized products for in-house movie systems and the majority of the bars in the major cities use illegal products for public performances. In addition, recently a growing number of bars and restaurants have been adding private rooms to illegally screen Motion Picture of America Association (MPA) member company products. There have also been unauthorized transmissions of US motion pictures on cable television systems outside Bangkok.

Compared with the aggressive enforcement programmes the Thais initiated under US pressure in 1993, the current level of enforcement activity is sluggish and sporadic. But on a more positive note, in 1995, the American Film Marketing Association (AFMA) succeeded in establishing a relationship with the Thai Department of Intellectual Property (DIP), under which the DIP is able to use AFMA's Rights Verification Service to check licenses for distribution of foreign motion pictures in Thailand. This system is now operational, and if backed up by tough enforcement, should help detect and prevent distribution of movies in Thailand under fraudulent licenses.

During the Uruguay Round tariff negotiations Thailand undertook a bound commitment to reduce its import duty on film by one baht per meter for the next five years, dropping the tariff from 10 baht to five baht per metre by January 1999. By failing to implement the scheduled reductions in January 1995 and again in January 1996, Thailand is in direct violation of its GATT tariff obligations. This violation should be corrected immediately[4].

Infrastructure

Cinemas

Currently Thailand has approximately 300 cinema screens. Industry experts expect the number of screens to rise to between 700

4. Excerpt from the IIPA *Special 301 Recommendations*, 20 February 1996)

and 800 screens in the next three years. The total market value will increase to 10 billion baht (US$ 243 million) from approximately 4 billion baht (US$ 97 million) in 2004. Major Cineplex Group is the country's largest cinema operator. Currently it has 135 screens in 16 locations, with 34,200 seats. The group plans to spend about 1 billion baht (US$ 24 million) to open 80 more new screens. Recently, Major has merged with EGV, another movie entrepreneur, and this will give the combined entity an estimated 70 per cent share of the local cinema market. EGV, which will continue to operate under its own brand, has 99 screens in 11 locations, with 21,059 seats. Its total sales in 2004 are projected to reach 1.5 billion baht (US$36.5 million).

Production Proposal

The government's ambitions to promote the film industry have resulted in positive developments. The Thai Board of Investment backed a production proposal worth US$200 million by RGM Holdings from Austria by offering tax incentives to produce 22 movies in Thailand over the next seven years. Most of the films are financed by the companies involved in the production themselves; none are government-financed.

3.4. The television industry

Background

In 1955, a government enterprise opened Thailand's first television station and the country became the first in Southeast Asia to begin regular television transmissions. There are now six free television stations in Bangkok, namely Channels 3, 5, 7, 9, 11 and ITV. All of them are government-owned and have affiliated stations in the provinces. However, the private sector is provided concessions by the government to run Channels 3, 7 and ITV.

By the 1980s, television had become the dominant news medium among urban Thai. Household television set ownership (about 3.3 million sets in 1984) was as high as radio ownership in all urban areas of the country. As of 1984, television ownership exceeded radio ownership in the provinces in the Centre and the South and was about even with radio ownership in the North and Northeast provinces. Nine out of ten Bangkok households owned at least one television set. Ownership of colour television was also widespread among urban Thai in the South (58 per cent), Bangkok (54 per cent), the Northeast (49 per cent), the Centre (47 per cent) and the North (43 per cent).

The Public Relations Department handles the National Broadcasting Services of Thailand which operates TV Channel 11 with its broadcast programmes emphasizing education and public services. Channel 11 serves as the parent station of eight television station networks in the provinces across the country.

In addition, there are 86 cable television companies operating throughout Thailand. Two major networks which operate on a 24-hour basis in Bangkok are UBC (United Broadcasting Corporation) and Thaistar TV. They feature popular UBC-licensed programmes such as HBO, Discovery, MTV, CNN and CNBC. Television in Thailand is mostly commercialized and generally appeals to popular taste. Each free television channel produces its own programmes ranging from news to soap operas. Entertainment broadcasts may be of Chinese, Japanese, British or American origin but are usually dubbed in Thai. Foreign viewers can tune into the original soundtracks on FM radios.

Regulatory Organizations

The Mass Communications Organization of Thailand (MCOT)

The MCOT operates mass media business both internally and externally of the Kingdom of Thailand. It is responsible for licensing free-to-air, multiple multi-point distribution service (MMDS) and pay television. Currently the MCOT owns Channel 9, a free–to-air terrestrial service. Other roles of the MCOT include:

a) Regulate and monitor pay television business activities, e.g. pricing of programming bouquets, advertising on channels
b) Granting, renewal and termination of licenses known as BTO (Build Transfer Operate) concessions to allow operation of pay television business
c) Other decisions, e.g. changes in the interpretation of existing regulations by courts or regulators

The Public Relations Department of Thailand (PRD)

The PRD is controlled by the Prime Minister’s offices. It has similar responsibilities to the MCOT, including the responsibility of licensing pay television stations. Currently the PRD owns Channel 11 - a centre for disseminating news and information for the government, national institutions and state enterprises. Its roles can be summarized as follows:

a) Issue licenses. PRD's license fee structure differs from MCOT's but licenses normally run on annual cycles
b) Run the National Broadcasting Committee of Thailand (NBC).
c) Issued Thailand's first UHF license to Independent Television (ITV).
d) Promote democratic government under the leadership of the King as the Head of State, and contribute to the maintenance of national security.
e) Present news about Thailand to the world to promote a good image of the country.
f) Assist other government agencies in public relations programmes and provide non-formal education through radio and television broadcasting.
g) Operate national radio and television networks, Radio Thailand and Television Thailand. These two national networks are collectively referred to as National Broadcasting Services of Thailand or NBT.

The National Broadcasting Committee of Thailand (NBC)

The NBC is responsible for monitoring terrestrial stations as well as the following:

a) Issue licenses for new commercial free-to-air and satellite stations.
b) Permit the operation of radio and television broadcasting stations, both cable and non-cable.
c) Regulate and monitor compliance of technical license conditions.

The formation of the NBC is still in progress, and as of yet, nobody has been appointed to work for the committee.

Table 12 - Television Operators in Thailand

Station	Owners/Responsible Agency	Status
Channel 3	Mass Communication Organization of Thailand	Operated by concessionaire
Channel 5	Royal Thai Army	Army-managed commercial TV station
Channel 7	Royal Thai Army	Operated by concessionaire
Channel 9	Mass Communication Organization of Thailand	Used to be state enterprise but in November 2004 became a public company listed on the Thai stock exchange
Channel 11	Public Relations Department	Non-commercial
ITV	ITV Public Company Limited	Operated by concessionaire
UBC	United Broadcasting Corporation Plc.	Subscription TV

Quality of Free Television Content

Somkiat Tangkitvanich of the Thailand Development Research Institute recently released an in-depth study of Thai broadcast media which reveals that while most of the free television stations are airing more entertainment and have introduced some new technology, little has been done to improve programme quality. He further notes that the quality of the content on these stations is declining due to the absence of a broadcasting regulatory body (as the long-delayed National Broadcasting Committee is not yet operational).

Interactive Television

As the number of broadband Internet subscribers has dramatically increased, rising from some 12,000 users in 2003 to an estimated 250,000 by the end of 2004, the interactive and on-demand services that content providers and telecom operators are introducing will drive the growth of the market.

Recently Shin, a stakeholder in CS Loxinfo and iPSTAR satellite services delivering high-speed Internet connections, introduced interactive television via its IPTV channel at http://www.ip-tv.tv.

ITV

Due to the delays in establishing the National Broadcasting Committee, ITV which developed out of the Black May struggle in Thailand in 1992, is now said to be under the control of the existing government.

The failure of Thai government-controlled television stations to report fairly on the street demonstrations and brutal suppression of May 1992 eventually led to the creation of a non-governmental broadcaster known as Independent TV, or ITV, in 1997. For a period of time, ITV led other channels in adopting a more investigative style of reporting. ITV hidden cameras, for instance, exposed corrupt traffic police activities. Its hard-hitting approach to political reporting had substantial influence on the other channels.

But the station created specifically to contest political interference fell apart financially. Quality news production notwithstanding, ITV bled heavily and fought for its life. To the rescue came Shin Corporation Plc, the telecommunications empire owned by members of Thaksin's family, which bought a controlling stake in ITV and became the major shareholder.

Channel 11

Television of Thailand (TVT.CH.11) is a state-run television network under the administration of the Public Relations Department in the Prime Minister's Office. It was established by cabinet approval on 15 January 1985; its mandate as a national television station was to present programmes on education, information and general knowledge, news and current affairs, government policies, art and culture plus entertainment to the general public.

Although TVT.CH.11 had only a limited budget allocated by the government, it was necessary to construct a fully equipped station so that broadcasting could be carried out successfully and so that the channel could cover most of the country. The construction and the installation of equipment took nine months to complete (July 1987 - March 1988). The experimental broadcast commenced on 1 May 1988 with morning and evening news programmes and documentaries. Previously programmes had reached viewers all over the country through the nationwide network television stations.

UBC: The major subscription television network

In April 1989, the MCOT and UBC (formerly International Broadcasting Corporation Public Company Limited or IBC) entered into a joint venture agreement for the provision of subscription television service. The agreement was subsequently amended on 19 May 1994 and on 17 April 1998 under the UBC Concession, which permits UBC to operate subscription television on behalf of MCOT until 30 September 2014.

UBC launched Southeast Asia's first subscriber-based television network in Bangkok in October 1989 using a MMDS transmission platform. UBC was listed on the Thai stock exchange in February 1994 with a registered share capital of 180 million baht (US$4.4 million). UBC began serving viewers in major cities in all areas of Thailand in 1994 by transmitting programmes using the Thaicom 1 satellite. The satellite was used to relay signals to MMDS transmitters in the provinces. In 1995, UBC launched its direct satellite television (DSTV) service using Ku-band transmission and MPEGII video compression.

Until October 1996 the MMDS service was offered on an unencrypted basis, with attempts to limit unauthorized access to the service focused on controlling the distribution of MMDS reception equipment. After encryption of MMDS was introduced, it nonetheless became apparent in late 1997 that despite the full encryption, pirate decoders were being imported in significant quantities and MMDS piracy had escalated. This is why UBC proceeded to shut down in March 1999 the analogue MMDS service.

In October 2003 UBC launched a digital cable product in the market. Subscribers making use of digital cable decoders to receive their services receive exactly the same services, features and functions as a digital satellite subscriber.

Subscription Rates

Subscription rates in Thailand remain relatively low compared to other markets in the region. One of the key reasons for this has been the unruly competitive techniques employed, resulting in sales being price- rather than product-focused, and also resulting in the quality programming being split across two companies. As Thailand recovers from the impacts of the recession and consumer confidence returns, the UBC Group is optimistic that consumer discretionary spending will be directed towards its products and services.

Market Entry Considerations

In order to provide high quality services, a pay television platform requires significant investment in infrastructure, e.g. transmission platforms, encryption technology, decoder hardware, programming, marketing, and customer care hardware and systems. UBC has made these investments and can offer the opportunity to creators of quality content to utilize its platform for transmission of services if the relationship is mutually beneficial. The Thai pay television market is probably not large enough to sustain multiple operators. This has been the case in most smaller international markets. This phenomenon is directly related to the question of critical mass of subscribers discussed above.

Direct Competition

Presently, UBC is the only nationwide provider of pay television services in Thailand. Its position as the sole provider of pay television services, however, is not secured through a regulatory dispensation and UBC will continue to face threats by new entrants. For example, World Star Television has announced plans to launch a three-channel MMDS service in Thailand. Another pay television service previously operated by Thai Sky discontinued operations in 1997. The MCOT granted pay television licenses to two other companies in 1996, but those companies have not launched, or announced any intention to launch, pay television services. The PRD grants annual operating licenses, and has licensed several regional cable pay television operators, of which 78 are presently operating.

Indirect Competition

UBC views itself as a provider of entertainment services, and the company therefore faces competition from many entertainment alternatives such as cinemas, video and music. In addition, UBC competes indirectly with the national free-to-air television stations in Thailand. Nonetheless, UBC believes that its unique programming, including popular first-run movies and sporting events, gives it a distinct advantage over its free-to-air television competitors. The national free-to-air television stations are linked to the same satellite used by its service and consequently form part of the bouquet available to UBC subscribers.

The Market from Price-driven to Value-driven

A further challenge will be to transform the Thai market from purely a price-driven market to a value-driven market. Pre-merger, uncontrolled competition pushed consumers and service providers to focus merely on price rather than the comparative value brought into the home. One of the positive developments of the merger is that the UBC group is now more focused on defining and identifying the value UBC brings into the home.

There are many factors involved in a decision to subscribe to pay television services. The most important include interest, product awareness, income level and lifestyle. UBC's strategies for future growth are focused on those households whose total income exceeds 20,000 baht (US$490) per month. It is important to note that UBC's focus is on household rather than individual incomes, as the service appeals to the household as a whole, given the extensive variety and depth of programming.

Table 13 - Television Advertising Revenues (in US$)

	TV Ad (US$)	Change	% Change
1993	321,906,935		
1994	401,261,333	79,354,398	25
1995	447,306,379	46,045,046	11
1996	496,408,119	49,101,740	11
1997	591,900,048	95,491,929	19
1998	613,814,040	21,913,992	4
1999	650,547,027	36,732,987	6
2000	780,526,582	129,979,555	20
2001	824,478,298	43,951,716	6
2002	1,005,258,965	180,780,667	22
2003	1,159,450,362	154,191,397	15
2004	1,139,971,000	-19,479,362	-2

3.5. The music industry

Introduction

The music industry in Thailand is run by two major companies, GMM Grammy and RS Promotion, both of which are local Thai companies. GMM Grammy's business line includes music recording, artist management and television production. Recently it decided to shift its overseas headquarters from Taiwan to Hong Kong - a move the company hopes will provide it with a gateway into the lucrative Chinese market. The move was also prompted by the high number of pirated goods in Taiwan, and a culture of illegal music downloading amongst Taiwanese youth.

Legal Issues

Over the years, enforcement efforts have succeeded in dramatically reducing the levels of audio piracy of international repertoire from 90 per cent to about 7 to 10 per cent for audiocassettes and 10 to 15 per cent for compact discs. US trade losses due to piracy have also declined, to an estimated US$5 million in 1995. The Recording Industry Association of America has acknowledged the extraordinary efforts undertaken by the Thai government, whilst continuing to push for further improvements[5].

3.6. Radio

Introduction

Thailand has 524 local and national radio stations, 211 of them are on AM while the rest are on FM. The biggest operators are the PRD with 147 radio stations, followed by the Royal Thai Army with 127 stations and the MCOT with 62 stations. AM radio tends to appeal to popular taste, especially with rural listeners, featuring mostly Thai local songs on themes of rural life. FM radio on the other hand offers more upmarket programming, such as jazz and classical music, English-language newscasts, and original soundtracks of certain foreign films shown on local television. Thai pop music on the FM stations consists of songs whose style and tone of music are similar to Western pop, with lyrics about urban life, sung by musicians generally clad in trendy urban fashions.

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5. Except from the IIPA *Special 301 Recommendations*, 20 February 1996.

Public service programmes are broadcast by the National Broadcasting Services of Thailand (NBT). The NBT broadcasts news twice daily, at 7.00-7.30 am and at 6.00-6.30 pm. These news features include news on the royal families, government news, weather forecast and the like.

All radio stations, with the exception of a small number of specialist stations such as those dedicated to traffic reports, link up with Radio Thailand, the national radio service under the PRD, for official newscasts which are transmitted daily at 7.00 am and at 8.00 pm. Outside these news slots, radio stations enjoy the freedom to produce their own news programmes for independent broadcasting.

Table 14 - Broadcast Penetration in Thailand

	2003 TV Viewers & Radio Listeners		
	No. of Household	%	% of total Households in Thailand
Bangkok	2 071,6	12,6	12,3
Central of Thailand	3 742,5	22,7	22,2
Nord of Thailand	3187,6	19,4	18,9
South of Thailand	5299,3	32,2	31,4
Sud	2169,0	13,2	12,9
Total	**16 470,0**	**100**	**97,6**

Source: National Statistics of Thailand *Unit: ‘000 households*

The National Broadcasting Services of Thailand (NBT)

The National Broadcasting Services of Thailand, operating under the supervision of the PRD, has served as an official channel of communication between the government and the general public. News and information on government policies and administration are disseminated by means of the NBT’s television and AM/FM radio stations which are located in every region of Thailand.

Apart from NBT’s official newscasts, the other broadcast programmes are designed to impart information, general education and entertainment, as well as to provide vocational guidelines to the public. In addition to the domestic service, the NBT operates an external service, offering overseas listeners news, current affairs and entertainment programmes.

Table 15 - Top ten Radio Operators

Operator	AM stations	FM stations	Total
1. The Public Relations Department (PRD)	60	87	147
2. Royal Thai Army	78	49	127
3. Mass Communication Organization of Thailand (MCOT)	2	60	62
4. Police Department	7	37	44
5. Royal Thai Air Force	18	18	36
6. Royal Thai Navy	7	14	21
7. Ministry of University Affairs	5	7	12
8. Post and Telegraph Department	6	6	12
9. Meteorological Department	1	5	6
10. Fisheries Department	1	3	4
11. Office of the Permanent Secretary, Ministry of Defence	2	1	3
12. Ministry of Education	1	2	3

The NBT began its external service in 1938 in only French and English. Today, Radio Thailand's World Service is broadcast in 12 languages, namely English, French, German, Lao, Mandarin, Vietnamese, Khmer, Malay, Indonesian, Japanese, Burmese and Thai. The total transmission time in each language is 10 to15 minutes a day, except for English: English-language programmes are offered for 4.15 hours a day.

Table 16 - Radio Advertising Revenues (in US$)

	Radio Ads (US$)	Difference from previous year	
		US$	%
1993	39,425		
1994	55,918	16,494	41,8
1995	74,294	18,376	32,9
1996	77,438	3,144	4,2
1997	89,519	12,081	15,6
1998	88,313	1,206	-1,3
1999	93,500	5,187	5,9
2000	122,008	28,508	30,5
2001	120,945	1,063	-0,9
2002	133,246	12,301	10,2
2003	173,822	40,575	30,5
2004	175,935	2,113	1,2

4. THE PHILIPPINES

The audiovisual media landscape in the Philippines is made up of contrasts. Revenues of the film companies are meagre compared with those of the television networks, and these low returns have led film producers to limit their output. Despite this slump, the Philippine film industry ranks ninth worldwide in feature film production, according to Newsweek magazine[6].

4.1. The policy environment

The most significant development in the communication sector after the EDSA revolution was the adoption of the 1987 Constitution. In the constitution, "mass media assume primary importance, mass media being among the major means by which the flow of information between government and governed may be realized[7]."

According to the flagship provision in Section 24, Article II: "The State recognizes the vital role of communication and information in nation-building." The 1987 Constitution retains the provision on 100 per cent ownership of mass media by Filipinos but allows foreign equity in advertising entities through its 70:30 provision.

There are laws that apply specifically to the audiovisual media. One of these is Presidential Decree (PD) N° 1986. The PD created the Movie and Television Review and Classification Board (MTRCB) on 5 October 1985. As mandated, the board's task is to safeguard the moral values and character of the Filipino public without negating the services that motion picture and television render to the community.

Meanwhile, a further decree, PD N° 1987, created the Videogram Regulatory Board (VRB) at the same time. The rationale was that the unregulated showing of obscene videogram features (videotapes, discs and cassettes) constituted a clear and present danger to the moral and spiritual well-being of the youth. These features also impaired the realization of stated aims in the constitution to support the rearing of the youth for civil efficiency and development of moral character.

On 10 February 2004, RA N° 9239 or the Optical Media Act was passed. It changed the VRB into the Optical Media Board (OMB), and declared that the policy of the State was to ensure the protection

6. Newsweek, December 2003.
7. Teodoro & Kabatay, *Mass Media Laws and Regulation in the Philippines*, AMIC, Singapore,1998.

and promotion of intellectual property rights. RA N° 9171 is known as the Muslim Radio Act. Issued on 22 July 2002, it granted the Muslim Development Multipurpose Cooperative the right to construct, install, establish, operate, and maintain radio broadcasting stations in the Philippines.

The MTPDP: Mobilizing Knowledge for Development

The Medium-Term Philippine Development Plan (MTPDP), 2005-2010, has several themes. The policies of the plan relevant to media, such as audiovisual media, include capacity-building, development of a network of digital infrastructure to interconnect the entire country, and the creation of an enabling legal and regulatory environment to promote knowledge creation and sharing, innovation, investment and entrepreneurship.

Regulatory Agencies

Department of Transportation and Communication (DOTC)

The DOTC is mandated to promote, develop and maintain integrated and strategic transportation and communication systems that will ensure reliable, responsive and viable services to enhance socio-political integration and to help accelerate the economic development of the country. The department is to develop an integrated plan for a nationwide transmission system in accordance with national and international telecommunications service requirements including, among others, radio and television broadcast relaying, leased channel services and data transmission.

Department of Science and Technology (DOST)

The DOST is mandated to provide, formulate and adopt a comprehensive National Science and Technology Plan, and to monitor and coordinate its funding and implementation.

National Telecommunications Commission (NTC)

The NTC is the sole body that exercises jurisdiction over the supervision, adjudication, and control of all telecommunications services throughout the country. It remains under the administrative supervision of the DOTC. However, in its quasi-judicial functions, NTC's decisions can only be appealed in the Supreme Court.

Optical Media Board (OMB)

The OMB's powers and functions are to evaluate the qualifications of any individual, establishment, or other entity engaging in the mastering, manufacture, or replication of optical media.

Movie and Television Review and Classification Board (MTRCB)

One of the powers of the MTRCB is to decide on the appropriateness of motion pictures, television programmes and publicity materials for the Filipino public. The board can approve or disapprove of material, delete objectionable portions, or outright prohibit the importation, exportation, production, copying, distribution, sale, lease exhibition and/or television broadcast of motion pictures, television programmes, and publicity materials. The board uses contemporary Philippine cultural values to determine what is objectionable, or more specifically what is deemed as being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Philippines or its people, or material with a dangerous tendency to encourage the commission of violence or crime.

National Computer Centre (NCC)

The NCC is mandated to formulate policies, policy guidelines, and standards for the development, direction, and control of computer technology as a national resource, as well as to develop, disseminate, and interpret the policies and guidelines on ICT applications, procurement, and programmes.

Industry Organizations: Watchdogs and Stakeholders

Kapisanan ng mga Brodkaster ng Pilipinas (KBP) was established in April 1973 as a private association of broadcast operators; it has developed industry codes for the broadcast industry. It has a Radio Code for radio stations and a Television Code for television stations.

The Association of Accredited Advertising Agencies (4 A's) was set up in 1977 and has been a moving force in the setting up of the Advertising Board of the Philippines and the development of the Advertising Code.

The Advertising Board of the Philippines (AdBoard) adopted in 1975 a Code of Ethics, Rules and Regulations of Advertising and Sales Promotion.

The Philippine Association of the Record Industry (PARI) was set up in 1976 to protect its members from record piracy and to encourage local talents by producing more local music.

4.2. Audiovisual media: ownership and use

This section presents five audiovisual media sectors in the Philippines: cinema, television, radio, music and Internet.

Cinema: Struggling but Surviving

The first full length feature film was presented to Filipino audiences in 1908. In a country which delights in entertainment, the motion picture soon overshadowed the *zarzuela*, the popular theatre form of the 1930s. By 1939, the Filipino film industry ranked fifth in the world in the number of talkies produced.

During World War II, the Japanese thought that films were too American-oriented, and so undertook efforts to revive the *zarzuela* and discouraged film production. After the war, the first company to resume operations was Sampaguita, which formally opened in June - 1945. Another company, LVN released the first popular picture in 1945 *Orasang Ginto*.

Today, there is 39 per cent cinema attendance in Metro Manila, and 27 per cent for urban Philippines. Films, local and foreign, are shown in 936 cinema houses with a total seating capacity of 539,777. One of the major challenges that the film industry faces is piracy. While an original VCD or DVD of a new film costs between 350 and 400 pesos (US$6.23 and US$7.19), a pirated copy usually costs only 35 pesos (US$0.63). To compete, movie houses, especially in Metro Manila, have installed new and improved equipment and facilities. Likewise, film schedules can now be accessed on the Internet and on mobile phones, and moviegoers can even reserve cinema seats on the website sureseats.com.

In a study on the Filipino film industry, del Mundo notes that by the 1990s, it was clear that three major companies were dominating the industry - Regal, Viva, and Seiko. From 1990 to 1995, the average number of active production companies fell from 68 companies in the preceding decade to only 38. Moreover, from a peak output of 134 films in 1990, the output of the industry declined to 111 films in 1994. The industry, however, rebounded to 129 movies in the following year[8]. The decline can be attributed to high taxes, censorship and competition from US and Hong Kong films, from television and video and even from the lottery.

The industry is currently still experiencing a slump. According to the Internet Movie Database, of the 344 films shown in the Philippines in 2003, only 55 were produced locally. Thus, the market share of the Philippine film industry in its own country is only about 15 per cent. There has been little effort by the government to help the industry. One of the few tangible actions was undertaken by the Marcos government more than two decades ago and involved the setting up of a Film Ratings Board. Recently, this was transformed into the Cinema Evaluation Board.

Television: Steadily Increasing in Popularity

The first television station in the Philippines was DZAQ-TV3 in Manila which started its operations in 1953. It catered primarily to high income groups, as few people at the time could afford a television set (sets cost about US$600 due to high import duties). It was not until 1960 that locally assembled sets were made available. By that time, there were already four television stations in the country. The first provincial television stations were established in 1968 in Cebu, Bacolod and Dagupan.

Table 17 - Viewing "Shape of the Day,"
Manila, top three channels, January-September 2003

TIME	TOTAL HOUSEHOLDS	CHANNEL RATINGS (%)		
		Channel 2	Channel 7	Channel 13
12:00-2:00 p.m.	44,7	15,1	19,2	**0,5**
2:00-6:00 p.m.	36,3	15	12,8	**0,9**
6:00-10:30 p.m.	57,6	25,7	17,6	**2,9**
10:30 p.m. +	34,8	12,5	11,9	**1,1**
All day	29,1	**11,6**	**9,8**	**0,9**

8. Del Mundo, Clodovaldo, *Philippine Cinema: An Historical Overview. Asian Cinema*. Spring / Summer 1999

Table 18 - Television Satellite Transmissions Received

COUNTRY	SOURCE	LANGUAGE	HOURS PER MONTH	% SHARE OF TOTAL PROGRAMMING
USA	CNN	English	480	6
USA	ESPN	English	480	6
USA	HBO	English	480	6
USA	Cinemax	English	480	6
USA	Discovery	English	480	6
USA	Disney Channel	English	480	6
USA	Hallmark	English	480	6
USA	National Geographic	English	480	6
USA	Cartoon Network	English	480	6
USA	Fox News	English	480	6
USA	Entertainment Channel	English	480	6
UK	BBC	English	480	6
France	Monde	French	240	3
Australia	ABC	English	240	3
Australia	AXN	English	240	3
Singapore	MTV	English	240	3
Singapore	ABN	English	240	3
Japan	NHK	Niponggo/ English	240	3
China	CCTV 4	Chinese	240	3
Hong Kong	Channel V	Chinese/English	480	6
Hong Kong	Star Sports	English	480	6
Hong Kong	Star World	English	480	6
Hong Kong	Star Movies	English	480	6
Taiwan		Chinese	240	3
Indonesia	RCTI	Bahasa Indonesia	480	6
India	Sahara	bengali	240	3
Korea	CN TV	coréen	240	3
Korea	Arirang	Korean/English	240	3
Italy	RAI	Italian	240	3
Germany	DW	German	240	3
Spain		Spanish	240	3

Source: Community Cable TV Programming, 2002 cited by Flor and Flor, 2003.

Canned programmes from the US were cheaper than producing local live shows, which were moreover perceived as inferior in quality. In 1960, only 10 per cent of the television programmes were local productions. The situation has since changed, and currently only three out of the top 25 programmes on television are foreign shows.

Today there are seven VHF national channels and seven UHF channels. The leaders are ABS-CBN and GMA-7 (VHF) and ST 23 (UHF). Television ownership is 88 per cent in the country; however, ownership is nearing saturation levels in Metro Manila (95 per cent), Region 4 (93 per cent), and Region 3 (90 per cent). Most households (76 per cent) in the country still own only one television set; only 19 per cent own two sets; and five per cent possess three sets.

Cable ownership in the Philippines is steadily increasing and currently stands at 20 per cent. Ownership is highest in Metro Manila (31 per cent) and in Region 1 (29 per cent). It is lowest in Region 11 (8 per cent) and Region 4 (12 per cent). The Philippine Information Agency reports that cable television evolved from the Community Antenna Television (CATV): the first CATV in the country, and in Asia, was established in 1969 in Baguio City[9].

Table 18 shows the television satellite transmissions received by the cable stations. The data show that most of the transmissions, 11 out of 31 sources, come from the US. Eight sources are Asian countries.

Radio: Mobile Medium

Radio broadcasting was introduced in 1922 when three radio stations were established by an American national. When World War II broke out in 1941, there were only four radio stations in the country. The first radio stations were either owned by department stores or were part of a newspaper-radio chain. In 1929, KZRC, the first provincial radio station was established in Cebu City. However, it merely relayed programmes originally aired by KZRM in Manila.

The 4A's Media Fact book of 2004 reports that there are a total of 695 radio stations in the Philippines. 644, or about 90 per cent, of these are commercial stations; and 289 are AM stations whilst 406 are FM stations. There are 5.8 million households in the country that own radios, which translates into 82 per cent of the Filipino population. Out of the total, 2.1 million households can be found in Metro Manila.

9. Philippine Information Agency (PIA), 2000, p. 13.

Music: World Class Quality

Dioquino notes that although geographically, the Philippines belongs to the East, its music has been heavily influenced by the West following 333 years of Spanish rule and 45 years of American domination. Music in the highland and lowland hamlets, where indigenous culture continues to thrive, has strong Asian elements, however Spanish and American influences are highly evident in the music from the urban areas. Dioquino organizes Filipino music into three main categories: (1) old Asian-influenced music referred to as indigenous music; (2) religious and secular music influenced by Spanish and other European forms; (3) American/European-inspired classical, semi-classical and popular music[10].

The Philippine recording industry marked its 91st year in 2004: the industry started in 1913 when Major William Anderson started to record Filipino talent in a makeshift studio located on the second floor of Manila Hotel. In the 1920s, kundiman (love songs) and jazz were the favourite materials for recording, in the 1930s to 1940s, songs from the movies became the more popular repertoire for recording, and in the late 1940s to the early 1950s, danceable tunes like rumba and cha-cha performed by orchestras and combos were in vogue.

The major international recording companies present in the Philippines today are BMG Records, MCA Universal, Inc., EMI Philippines, Inc., Sony Music Entertainment Philippines, Inc., and Warner Music Philippines, Inc. The independent recording companies are Alpha Music Corporation, Dyna Music Products, Ivory Records, Star Recording, Inc., Universal Records, Vicor Music Corporation, Viva Records and GMA Records.

Filipino composers are prolific and talented, many having won prizes in foreign competitions. In 1989 and in 1990, for instance, the grand prize winners in the Asian Children Song Festival were Filipinos. Filipino composers have also won prizes at the Seoul Songfest, the Asia Song Festival, the Shanghai Music Festival, and the ASEAN Songfest, among others.

Internet

1.5 million Filipinos have access to the Internet: half of these live in Metro Manila, 410,000 in Mindanao, 200,000 in Visayas, and

10. Dioquino, Corazón, "*Philippines", Garland Encyclopedia of World Music*. Vol 4. NY. 1998, Garland Publishing.

150,000 in the rest of Luzon. The Internet may partially displace print as an information medium.

Advertising: Media Options and Expenditures

According to the AdBoard (2004), the estimated income from advertising rose from 7,649 million pesos (US$137.47 million) in 1993 to 31,300 million pesos (US$562.54 million) in 2002. In 2002, 59 per cent of advertising expenditure was in the television sector, 16 per cent in radio, 19 per cent in print media, and 6 per cent in other media. The biggest percentage change took place in the print media sector which shows its share of advertising revenues fall from 25 per cent in 1993 to 19 per cent in 2002. The print media sector includes 105 newspapers (15 national, 5 Chinese, and 85 provincial) and 104 magazines (75 general interest, 25 comics and 4 vernacular).

The top advertising spenders in 2001, according to the Nielsen Media Research Monitoring Group, were: producers of hair shampoos, rinses and treatment products; communications/telecommunications companies; and producers of detergents and laundry preparations. The top two spenders in 2002 were the same as those in 2001; however, government agencies and public utilities displaced detergent producers in third place position. Meanwhile, the data for the first six months of 2003 show that communications/telecommunications companies are now the biggest spenders. One probable reason for this is the fact that mobile phones are now the latest craze in the country: with 210 million messages sent daily nationwide by about 15 million subscribers, the Philippines is rightly known as the text capital of the world.

4.3. Trade and industry: a three-fold strategy

The audiovisual media industry in the country is affected by the trade and industry policies adopted by the government. Under the Arroyo administration, the Department of Trade and Industry has adopted a three-fold strategy: diversifying products and markets and increasing aid to investors; intensifying and coordinating aid to small- and medium-sized enterprises (SMEs); and developing local capacities.

External Focus: Changing Product and Market Mixes

The country's export mix has dramatically changed over the last decade, and non-traditional manufactured products have come to dominate Filipino exports. This transformation has been facilitated by the fact that Filipinos speak good English and that the country is well connected to major cities in Asia. Local companies are boosting electronics production under the ASEAN Priority Integration Programme, and the Filipino government is encouraging information technology-enabled services; there are an estimated 40,000 seats of contact/call centres, as well as numerous hubs for cartoon animation and software development.

Pressing Issues: Piracy, Protectionism and Morality

The International Intellectual Property Alliance (IIPA), in its Special 301 Report, estimated that losses due to copyright violations of motion pictures in the Philippines in 2002 amounted to US$30 million, which represented a seven per cent increase from 2001 when losses totalled US $28 million. For both years, the level of piracy stood at 80 per cent. This means that four out of five film discs sold in the Philippines in these years were pirated copies.

Losses in the music industry amounted to US$20 million in 2002, following a 16 per cent decrease in losses from the previous year, which stood at almost US$24 million. Despite this decrease, piracy levels increased from 36 per cent to 40 per cent over the same period.

In an interview with The Manila Times, Richard O'Neill, Director of the Motion Picture Association International, portrayed the local film industry as collapsing, and blamed its downfall on the influx of pirated materials. He added that the slowdown has led to foregone tax revenues of 1.7 billion pesos (US$30.5 million) and 110,000 lost jobs.

Meanwhile, the Executive Director of the Association of Video Distribution of the Philippines stated that the government would lose 400 million pesos in tax revenues if the video industry (which includes the video rental business) collapsed. He added that the film distribution industry stands to lose over 1 billion pesos (US$17.9 million).

Piracy also afflicts the software industry. The *Global Piracy Study* undertaken by the Business Software Alliance (BSA) in 2004 said that the software piracy rate in the Philippines currently stands at 72 per cent with losses to the industry amounting to more than 3 billion pesos (US$53.7 million).

In the same report, it is stressed that IPR violations in the Philippines have largely been confined to trademark or copyright infringement and piracy. Violations involve mostly the sale of pirated CDs, VCDs, DVDs, and other optical media.

In October 2002, the IIPA released its findings on the Philippines, which listed four primary complaints:

- Intellectual piracy in the Philippines has exploded due to:
  - The entry of criminal syndicates that have established production facilities of pirated optical discs for the local and export markets.
  - The smuggling of pirated software, audiovisual materials, sound recordings, and books into the country.
  - Continuing end-user piracy due to weak border controls.

- The Philippines has failed to pass an optical disc law. Legislation should ensure licensing and control over optical media production, including control of equipment and raw materials.
- The country has failed to amend its Intellectual Property Code to include measures against on-line piracy.

- The judicial system needs reform, so that it can be more effective in dealing with IPR cases.

The IIPA also stressed that Philippine exports, amounting to about US$700 million annually, benefit from GSP privileges in the US market, meaning that Philippine goods, amongst other privileges, enjoy lower or free tariffs. The IIPA urged the USTR to reconsider these trade privileges for the Philippines. If the USTR does decide to reduce or eliminate Philippine preferences, the country's exports will be adversely affected. Furthermore, such a decision could bestow upon the Philippines a reputation for being an importer and exporter of counterfeit products, discouraging investors in knowledge-intensive industries.

Since the IIPA 2002 report, however, several measures have been taken and a new legal framework for IPR protection is now in place. The Optical Media Act has been approved and industry groups are also doing their part to help stop piracy. For instance, Tarun Sawney, Business Software Alliance Asia Director, said that the alliance will start an anti-Internet piracy campaign in the Philippines.

On the other hand, on 26 August 2004, the Bureau of Immigration's Director Alipio Fernandez, Jr. signed an agreement with the Film Academy of the Philippines (FAP) which will not give work permits to foreign film companies or actors unless they have received a favourable endorsement from the FAP. Instead of encouraging international film directors to use the Philippines as a film location (certain cities, like New York and San Francisco, have fully-staffed offices that sell their cities to directors and scriptwriters), the Philippines through its immigration policies is placing obstacles in the path of foreign filmmakers.

In another worrying development, the management of Shoemart (SM) has decided to ban R-rated or R-18 films in its cinema houses. SM is one of the largest networks, if not the largest, of movie houses in the country. The movie houses are situated in SM mega malls in Metro Manila and in most of the cities in the country. Senator Ramon Revilla, Jr. said that the sweeping ban could end the life of the country's already dying film industry.

Liberalization Commitments

According to a Department of Trade report, the impact of the Philippines' membership to the WTO has been assessed as being positive in economic terms[11]. The report states:

> "The membership of the Philippines in the World Trade Organization can be stated to have qualitatively contributed to overall economic reforms, which in turn have had consequential profound effects on Philippine trade and industrial structure and performance. On balance, the impact of the WTO treaty on the Philippine economy can be assessed as being positive as it has largely introduced, and will continue based on momentum, to foster, a more open, predictable and competitive environment."

Although they incite much placard-bearing in street protests, the Filipino commitments under the WTO are in the public domain and transparent. However, there is a need for everyone to do serious analytical work to be able to agree on definitions of winners and losers.

11. http://www.dti.gov.ph/contentment/9/62/127/467.jsp

The Philippine Congress, since 1995, has put in place several laws concerning the shift in customs valuation to the transaction value system, trade defence measures (anti-dumping, countervail and safe-guards), and intellectual property rights protection.

The government has also requested amendatory legislation and asked for legislation on the protection of layout designs of integrated circuits. In addition, the Philippine Congress has also ratified the Patent Cooperation Treaty and deposited its instrument of ratification with the World Intellectual Property Organization in Geneva in June 2001. However, more remains to be done: the Congress has yet to conclude work on the protection of plant varieties, and to ratify the WTO/GATS protocols on telecommunications and financial services[12].

The Philippines has signed 38 bilateral trade agreements and three memoranda of understanding to develop and strengthen direct trade and economic agreements with other countries. Of the 38 trade agreements, two are agreements on trade and economic co-operation. As stated by the Department of Trade, the agreements take into consideration respective development and trade needs and objectives and are made on an equitable and mutually beneficial basis. The agreements bind the parties concerned to undertake measures that will promote and expand bilateral and economic relations. The agreements therefore serve as the framework for the conduct of trade relations between the Philippines and other countries.

As part of ASEAN Vision 2020, which ASEAN heads of state signed in Kuala Lumpur on 15 December 1997, the Philippines demonstrated its adherence to ASEAN principles, which aim to create a stable and highly competitive region in which there is a “free flow of goods, services and investments, a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities[13].

ASEAN Vision 2020 ambitions include the integration of telecommunication networks through greater interconnectivity, the coordination of frequencies, the mutual recognition of equipment-type approval procedures, and the provision of infrastructure for ongoing coordination to develop cross-border electronic commerce in ASEAN. To eliminate technical barriers to trade, a Framework Agreement on Mutual Recognition Arrangements or MRAs was signed in December 1998. MRAs allow countries to recognize one another’s product standards or regula-

12. http://www.dti.gov.ph/contentment/9/62/127/467.jsp
13. http://www.dti.gov.ph/contentment/9/62/129/594.jsp

tions and thus facilitate cross-country trade. Efforts are currently under way to formulate specific MRAs in three important areas - telecommunications equipment, pharmaceutical products and cosmetics[14].

In joining these agreements and trade liberalization efforts, the Philippines recognizes that such agreements may be seen as two-edged swords. The government focuses on the positive sides of the agreements, without however, discounting any potential negative effects. For example, the Philippines signed into law in January 1998 the Intellectual Property Code (RA N° 8293), two years of the transitory period for compliance with the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The law generally improves the legal framework for IPR protection in the Philippines. It provides enhanced copyright, patent and trademark protection, and increased penalties for infringement and counterfeiting, and relaxes provisions requiring the registration of licensing agreements.

Despite the passing of the law, some observers have noted certain shortcomings: the law considers the decompilation of software programs as fair use; there is a lack of clear provisions on search and seizure action *(inaudita altera parte)* in civil cases; there are ambiguous provisions on the rights of copyright holders over broadcast transmissions; and finally, there are burdensome restrictions affecting licensing contracts. On top of these shortcomings, resource and personnel limitations plague the proper implementation of the law[15].

The government is keeping strict watch to ensure compliance with the law, however efforts still need to undertaken to fully implement the law, especially in terms of allocation of resources to fund the operations of concerned government authorities in both the executive and judicial branches of government.

Direction: Opportunities and Challenges

Current trends to watch in the Philippines include media convergence (for instance, GMA-Channel 7 and Philippine Daily Inquirer have joined forces to create the online venture INQ7.net), home shopping via television, mergers and acquisitions, and overseas expansion of local channels. An example of overseas expansion is ABS-CBN Channel 2, which broadcasts internationally through The Filipino Chan-

14. http://www.dti.gov.ph/contentment/9/62/129/594.jsp
15. http://www.dti.gov.ph/contentment/9/62/127/588.jsp

nel (TFC) in mainland US, Hawaii, and Guam. Aside from the US, it also broadcasts in other countries and the latest country covered by the network is Turkey.

The challenge for the Philippines is to think globally in order to be competitive, but to also support local content and culture. The local television stations may find it cheaper to import chinovelas (literally, Chinese novels) and dub these in Filipino. Yet these stations should continue to produce local shows to give the audiences a wider choice of media fare.

Meanwhile, after the May 2004 elections, there are a lot of uncertainties in the Philippines. Will the government be able to attain its Medium-Term Philippine Development Plan? Will it be able to honour its commitment to pursuing the Millennium Development Goals? Can the government rally to its side the various sectors of society?

In this context, the demand and, indeed the need, for a free and responsible media remains strong. Media organizations must temper their profit motivation with social responsibility. Thus, work in media is both value-added and value-laden.

ABBREVIATIONS AND ACRONYMS

ABON	Artists Board of Nigeria
AIF	Agence Intergouvernementale de la Francophonie
AFMA	American Film Marketing Association
AFTA	ASEAN Free Trade Agreement
AMIC	Asian Media Information and Communication Centre
AMS	Association des Métiers de la Musique du Sénégal
ANA	Association of Nigerian Authors
APEC	Asian-Pacific Economic Integration
ARPA	Association des Auteurs, Réalisateurs et Producteurs Africains
ASEAN	Association of Southeast Asian Nations
BBDA	Bureau Burkinabé des Droits d'Auteur
BSDA	Bureau Sénégalais des Droits d'Auteur
CET	Common External Tariff
CFI	Canal France International
CFIPRO	Canal France International Professionnel
CII	Confederation of Indian Industry
CIPES	Cadre interprofessionnel des producteurs et éditeurs phonographiques du Sénégal
CIRTEF	Conseil International des Radios et Télévisions d'Expression Française
CNC	Centre National de la Cinématographie (France)
CPC	Provisional Central Product Classification

CONA	Council of Nigerian Artists
CVDs	Countervailing duties
DCN	Direction de la Cinématographie Nationale (Burkina Faso)
DGN	Directors Guild of Nigeria
DSR	Direct Satellite Reception
DVD	Digital Versatile Disc
EU	European Union
FAP	Film Academy of the Philippines
FDI	Foreign Direct Investment
FEMIS	Ecole Nationale Supérieure des Métiers de l'Image et du Son (France)
FEPACI	Fédération Panafricaine des Cinéastes
FESPACO	Festival Panafricain du Cinéma de Ouagadougou
FLAPF	Fédération de producteurs phonographiques d'Amérique latine
FTA	Free trade agreement
FRCN	Federal Radio Corporation of Nigeria
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GOMAN	Gospel Musicians Association of Nigeria

GSP	Generalized System of Preferences
HCA	Haut Conseil de l'Audiovisuel (Senegal)
HS	Harmonized system of tariff nomenclature
IFPI	International Federation of the Phonographic Industry
IIPA	International Intellectual Property Alliance
IMI	Indian Music Industry
ITA	Information Technology Agreement
ITPAN	Independent Television Producers Association of Nigeria
KBC	Korean Broadcasting Commission
LCOs	Local Cable Operators
MAE	Ministère des Affaires étrangères (France)
MAI	Multilateral agreement on investment
MCD	Média Centre de Dakar
MCOs	Multi-system Operators
MCOT	Mass Communications Organization of Thailand
MFN	Most-favoured-nation
MMDS	Microwave Multipoint Distribution System
MOPAN	Movie Producers Association of Nigeria
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
NBC	National Broadcasting Commission

NBT	National Broadcasting Services of Thailand
NFC	Nigerian Film Corporation
NFVCB	National Film and Video Censors Board
NGO	Non-Governmental Organisation
NNFC	Nigerian National Film Corporation
NRI	Non Resident Indian
NTA	Nigerian Television Authority
OECD	Organization for Economic Cooperation and Development
PIA	Philippines Information Agency
PMAN	Performing Musicians Employers Association of Nigeria
PSIC	Programme de Soutien aux Initiatives Culturelles
PROFIS	Programme Formation Image et Son
RTS	Radiodiffusion Télévision Sénégalaise
SIMPEC	Société d'Importation et d'Exploitation Cinématographique (Senegal)
SIDEC	Société d'Importation, de Distribution et d'Exploitation Cinématographique (Sénégal)
SNEP	Syndicat national de l'édition phonographique (France)
SONACIB	Société Nationale de Distribution et d'Exploitation Cinématographique du Burkina
SONELEC	Société Nationale d'Electricité (Sénégal)
TNB	Télévision Nationale du Burkina

TPRM	Trade Policy Review Mechanism
TPRB	Trade Policy Review Body
TRAI	Telecom Regulatory Authority of India
TRIMs	Trade-related Investment Measures
TRIPS	Trade-related Aspects of Intellectual Property Rights
EU	European Union
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECS	Union Nationale des Exploitants de Cinéma du Sénégal
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
USTR	United States trade representative
VAT	Value Added Tax
VCD	Video Compact Disc
VHS	Video Home System
WAEMU	West African Economic and Monetary Union
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation

Countries are facing crucial decisions affecting the broadcasting and audio-visual industry, the pillar of modern societies for information and cultural exchange. Policy and decision makers may sometimes lack the necessary tools to adequately inform their choices and strategies. This book provides a comprehensive overview of the main trends in the ICT-enhanced broadcasting and audiovisual industry in developing countries, with a focus on patterns of production, consumption and trade. It also offers a reflection on the mid- and long-term effects that current policies may have on local cultural expression and communication.

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