India: Changing Trends in Media and Entertainment Industry in India

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Introduction

The growth in the digital media industry has been tremendous in the past few decades. Studies continue to predict a double-digit growth to the tune of 15 % per annum. One of the major factors contributing to this immense growth is the sustained growth in India's GDP and increased purchasing power of the people over the last several years which had led to the Media and Entertainment (M&E) industry being ruled by consumer choices of content and accessibility user experience being paramount. In India, however, unlike its global counterparts, traditional media has not been disrupted by technology although key issues including piracy continue to haunt this robust industry. Till date the Indian piracy laws are not stringent and fail to match pace with the technological advances leading to severe loss of revenue due to pirated products being readily available. For instance, recently one of the most awaited movies "Udta Punjab" was hosted over 700 websites just prior to its official release. Another recent incident was when the pirated portion of "Bahubali" was leaked just a day before its release, despite all the precautions taken by the filmmakers. Based on available statistics, the losses due to piracy are estimated to the tune of USD 50 billion in 2016- 17. This trend is indeed worrisome and unfortunately, the situation is not matched by corrective measures in the regulatory environment. Any avenues sought to address piracy in India are individually taken by the producers or makers of the films. Such an alarming situation coupled with the complete lack of an organised machinery to regulate this industry and the lack of a process on content regulation only makes one realise that this lucrative industry requires several issues to be addressed. In addition to foregoing the additional aspects of inadequate policy and guidelines on cross media ownership and the cumbersome tax structure are additional factors that hinder foreign investment in this industry.

This paper thus seeks to highlight some of the challenges, examine the emerging trends and provide insight into the policy guidelines and discuss the patterns of growth in this industry so that the potential investors have clarity on the investment prospects on one of India's largest industry.

India's Entertainment Boom

The Boston Consulting Group (BCG) and the Confederation of Indian Industry (CII) pegged the India's M&E sector at USD $18 billion (2015 estimates) and is expected to achieve the USD $100 billion mark by 2025. India is definitely on the right path. Each of the verticals of the M&E Industry has seen many major players investing and taking a chunk of the sector in their name. Newspapers are now looking at digitalisation, cinema viewing experience has also changed amazingly, and though there are states like Tamil Nadu that have a cap on the ticket prices, this has not stopped investors in setting up multiplexes with greater viewing pleasures. Leading international names including Inox, Village Roadshow have already entered or seeking to enter this space. However, what hinders the opportunities of growth in this sector is the fact that the Indian M&E industry is still fragmented with its various verticals being at different phases of development. The advent of DTH operators such as Tata Sky, Dishtv steered the market into a new era of customised television networks with every consumer being able to choose the number and category of channels to be viewed. The plethora of channels focus on different subjects from mere home entertainment to infotainment to music to news with focus on content-based products. The television sets too have undergone drastic technological revolution bringing into being a new generation of home theatre systems with sound and picture systems like 3D to provide "real" experiences. The upcoming challenge to the television industry is in the form of online or web-based digital entertainment channels targeted mainly at the younger generation. In India, the music industry is inseparably tied to the film industry, the development and profits from these industries are dependent on the film industry. In the last five years, we have seen the separation of these two industries to some extent, due to increased internet usage. Rising stars, who are traditionally not been given a chance to showcase their talents in Bollywood have taken to the new route of internet-based channels and YouTube and of course reality television to seek fame and fortune. The Indian film industry is the largest in the world in terms of volume of films being produced and released. Indian films are being showcased in international film festivals like Cannes, thereby bringing in more revenue and widening the audience base. Indian stars are increasingly becoming popular in Hollywood which has made the world sit up and take notice of the Indian film industry. The past decade was perhaps the spell of doom for single screen theatres and rise of the multiplex culture. The price of tickets has risen and so has the viewer base.

Major Laws and Regulations

The laws and regulations that are applicable to this industry are nearly hundred in numbers. Some of them archaic and some have undergone changes in recent times, the prominent and noteworthy changes being to the intellectual property laws. However, these numerous laws require one medium regulator that allows the industry to flourish in the right direction.

The Constitution of India (the "Constitution") guarantees fundamental freedom exclusively available to its citizens of which the freedom of speech and expression[1] is one. This right comes with certain reasonable restrictions on its exercise in the interest of safeguarding the sovereignty, security and integrity of India including decency or morality. This freedom is not expressly available to the Press though the Indian Supreme Court through a series of landmark cases provided that freedom of press is provided for in the guarantee of the freedom of expression under the Constitution and that the freedom of expression includes the liberty to publish and circulate the publications including the right to answer criticism levelled against published views.[3]

It is at this point the enactment of the **Indian Penal Code in 1860**, with its offences of defamation and libel is a definite mention. However, it was the enactment of the Press and Registration of Books Act that provided a specific law dealing with media, where publications and books required to be registered and processes followed by publications. However, all enactments in the British raj ranging from the **Dramatic Performances Act** to the **Vernacular Press Act** were all aimed to curtail the freedom of press. Censorship slowly crept in during the emergency rule in free India in the seventies. The Press Council of India Act, 1978 (the "Press Council Act") was enacted by the Indian Parliament to enable the establishment of a press council (the "Press Council") by the central government to preserve the freedom of press and t o maintain and improve standards of newspapers and news agencies in India[3]. It was the Press Council that urged for freedom of press and the need for an autonomous body. This body was conceptualised and in 1990s with the inception of the Prasar Bharati, the governance body was introduced. **The Prasar Bharati (Broadcasting Corporation of India) Act, 1990** (the "PB Act") has enabled the establishment of the broadcasting corporation of India (known as the Prasar Bharati). However, despite this an autonomous body to regulate content could not be demarcated even though many bills were introduced on this concept. Prasar Bharati, mainly looks into content and broadcasting through the state corporations. With respect to print media-- Press and Registration of Books Act, 1867 was enacted to create a system for keeping a record of books and newspapers published in India. As far as films are concerned the main acts that governs its making and distributions are t h e **Cinematograph Act 1952 and the Cinematograph (Certification) Rules**. These are supplemented with guidelines and policies on import of films, shooting of films and certification of films.

On the legislation that governs broadcasting the Telecom Regulatory Authority of India Act (the "TRAI Act") enabled the establishment of an independent regulatory body, the Telecom Regulatory Authority of India (the "TRAI"). In the year 2000, amendments in the Act lead to terms such as "broadcasting" and "cable services" to be included in the definition of the term "telecommunications", gave authority to TRAI to regulate these services. **The Cable Television Network (Regulation) Act, 1994** regulates registration and functioning of cable network providers and also provides the Advertising code to regulate the contents of advertisements, the violation of which is penalized, while **Telecommunications (Broadcasting and Cable Services) Interconnection Regulations** provides for fixation of tariffs and fees for television channels and cable network operator. The 2012 guidelines specify about the digitization of cable networks. However, by and large the Acts and policies are formulated to provide direction or broadcasting of content.

Scope of Investment

Recently, government agencies have taken major steps for the development of M&E industry. The FDI in cable TV and DTH has been increased to 49% through automatic route, and beyond that through government approval. For Broadcasting Terrestrial services (FM Radio), there is no automatic route available, though 49% equity can be brought in with government approval. Thus, the monopoly of government over the radio sector too has ended and it has been opened to the private sector making it a new and prospective market for investors. Films and televisions have been given the elevated status of industry and 100% FDI has been permitted to the film industry giving it a magnanimous scope of development.

Similar is the case for Up-linking of New and Non- 'News & Current Affairs' TV Channels/ Downlinking of TV Channels. Publishing of newspaper and periodicals dealing with news and current affairs and publication of Indian editions of foreign magazines dealing with news and current affairs, is capped at 26% through government approval. Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting allows for 100% foreign investment through the government route.

By opening up the industry to investment, the government has provided growth impetus to not only the conventional segments such as films and television but also to newer players such as gaming and advertising.

Conclusion

The Union Budget 2016-17 has proposed basic custom duty exemption on newsprint. The customs duty on raw materials for manufacture of paper and newsprint has been reduced to 0 % from the earlier rate of 5%. Audio-visual coproduction deals such as the one signed between India and Canada will help producers from the participating countries to pool in their resources and collaborate on their skills while also increasing the audience base in both countries. Furthermore, the Centre has given new grants for licences to 45 new news and entertainment channels in India.

The Indian media industry is therefore likely to hit trillionth mark in 2020 as per industry predictors. To keep on this growth trajectory, it is important that the funnelling of investment has to be done from the grass root level and even to the smallest segments. The industry needs to develop more of quality than quantity. Furthermore, the Intellectual property regulations have to be strengthened in order to protect the content creators from exploitation. Guidelines of censorship, for films and literature, have to be revisited and amended according to the need of the time. The regulatory bodies also need to tackle with the threat of digital piracy. A major chunk of internet users in India have access to unlicensed content which is available for free. The content, when charged, is being avoided by the users. This also leads to the problem of monetization of the industry. Users are unwilling to pay for what they use. A change towards the pay-and-use system, therefore, requires a drastic behavioural change within the people who like everything free. Once these two problems are tackled, we shall probably be in an even better and sustainable position in the development and growth of this industry.

Footnotes

1 http://www.in.kpmg.com/Securedata/FICCI/Reports/FICCI-KPMG_Report_2012.pdf

1 Article 19(1)(a) of the Constitution.

3 Romesh Thappar v. State of Madras, (1950) SCR 594.

2 Section 4(1) of the Press Council Act.

3 Preamble to the Press Council of India Act

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.