**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
BANGALORE**

धर्मो रक्षति रक्षितः

SYNOPSIS ON

"FDI in the Indian Entertainment and Media Industry"

**Dissertation Submitted in Partial Fulfilment of the Requirements for the Degree of LL.M (Human Right Law) Under the Guidance of
Prof. (Dr.) N.L.Mitra**

**TRIMESTER-V
2013-14**

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CERTIFICATE

This is to certify that the dissertation titled ***"FDI in Media and Entertainment"*** submitted by Deepika, (Id No 516) in partial fulfilment of the requirements for the Masters in Law **(Business Law)**, is a product of the candidate's own work carried out by her under my guidance and supervision. The matter embodied in this dissertation is original and has not been submitted for the award of any other degree in any other university.

Date: 10/6/2014

Place: Bangalore

Prof. (Dr.) N.L.Mitra

National Law School of India University

DECLARATION

I Deepika, hereby declares that this dissertation titled ***"FDI in Media and Entertainment"*** is the outcome of doctrinal research conducted by me as a part to accomplish my academic requirement for LLM programme at National Law School of India University, Bangalore under the guidance of Prof N.L.Mitra.

This work is my original work except for the help taken from such authorities as have been referred to at the respective places for which necessary acknowledgments have been tendered.

I further declare that this work has not been submitted either in part or in whole, for any degree or diploma at any other university or institution.

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I express my sincere gratitude to my guide ***Prof(Dr.) N.L.Mitra*** , for his guidance during the course of my dissertation, but more than that for the person he is. He has always taken keen interest in my topic and gone out of his way to help me with everything. It was a sheer pleasure and a great honour for being his student. I would also like to thank my dear friends who have been rock solid support to me throughout my two years at NLSIU.

This acknowledgement will remain incomplete if I don't mention the library and the ever helpful library staff. The library undoubtedly remains the "crown jewel" of NLSIU and the staff tirelessly works towards the upkeep of this treasure.

Thanking You

Yours obediently

Deepika

CONTENTS

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

- FDI – Foreign Direct Investment
- R & D – Reseacrch and Development
- IPR – Intellectual Property Rights
- GDP - Gross domestic product
- CAGR - Compound Annual Growth Rate
- M&E - media and entertainment
- UNCTAD - United Nations Conference on Trade and Development
- UKTI - UK Trade & Investment
- DIPP - The Department of Industrial Policy and Promotion
- RBI - Reserve Bank of India
- FIPB - Foreign Investment Promotion Board
- FERA - Foreign Exchange Regulation Act, 1973
- FEMA - Foreign Exchange Management Act 1999
- CBEC - Central Board of Excise and Customs
- MIB - Ministry of Information and Broadcasting
- IPTV - Internet Protocol Television
- ENIL - Entertainment Network India
- CCDs - compulsorily convertible debentures

- CBCI - Commonwealth Business Club India
- FICCI - Federation of Indian Chambers of Commerce and Industry
- CII - Confederation of Indian Industry
- FI - Foreign Investments
- AVGC - Animation, Visual Effects, Gaming and Comics
- NASSCOM - generic National Association for the Software and Services Companies
- VFX - Visual effects
- WTO - World Trade Organization's
- TRIPS - Agreement on Trade Related Aspects of Intellectual Property Rights
- CIPR - Commission on Intellectual Property Rights
- MNEs - multinational enterprises
- KBA - knowledge-based assets
- AIR - All India Radio
- TRAI - Telecom Regulatory Authority of India
- FII - foreign institutional investment
- PE - permanent establishment
- PwC – Price water house Coopers
- KMPG - Klynveld Peat Marwick Goerdeler

RESEARCH METHODOLOGY

Aims and Objectives:-

The basic Aim & objectives of this dissertation are:

• To understand the international scenario of FDI in Media & entertainment Industry.

• To understand the rationale behind the government policies of India on Foreign Investment.

• To find out the lacunas regarding to the regulatory practices of FDI in respect of Media Industry.

• To understand the rationale for investment to expand on infrastructure, production process and communication systems.

• To understand the concept of research & development and IPR protection requirements regarding the FDI.

Research Questions:-

This Dissertation will dealt with these questions:-

1. What does FDI means and what is the need for foreign investment?

2. What are the procedure need to follow to invest on India?

3. How FDI works in the media and entertainment sector, also the capital and annual industrial requirement relating to it?
4. What are the government's policies related to the foreign investment in India and the rationale behind it?
5. What is the need for research and development as future growth potential with regard to FDI?
6. What are the IPR requirements in FDI?
7. What are the barriers to investment in the entertainment and media Industry?

Hypothesis of the study:-

While keeping FDI Role in the growth of economic policies and the rationale behind the present policies while keeping in mind the IPR protection and R&D requirements in mind,few weakness exists in the investment, one of them is the inability to adhere to ethical standards in the industry which results in lawsuits. The innovation, Government policies and the marketing strategies are need to be developed to attain the systematic growth globally.

Research Methodology:-

The research methodology adopted for this research is '*Analytical*' "*Descriptive*" and '*Doctrinal*' in nature. Case analysis carried through compilation of inputs from articles, internet sources, books and journals.

Limitations:-

The scope of the present study is confined to the understanding and analysis of the FDI scenario with regard to the Media and Entertainment Industry and its impact on the growth of economy while keeping in mind the need for use of IPR pool and the FDI requirement. A study of select jurisdiction of India only will be done keeping in mind the available resources and time limit.

Mode of Citation:-

A uniform mode of citation will be followed throughout in the dissertation. The researcher will use footnoting method/style of citation throughout in the dissertation.

CHAPTER I

INTRODUCTION

The macro-economic outlook

History : India is ranked as the most populous countries in the world with over 102 billon people and also in 2012 represents around 2.98% of world GDP. It is predicted that by 2030 India will be the third largest country in terms of economy, however its also predicted that it might be the largest by that time.

But its a market which has stays largely connected to foreign media companies until comparatively in a short time when, in 1991, the progressive impact of past policies and reshaped world economic movement describes that India faced a grave foreign exchange problems. The government stepped then to curb some of the regulations regarding investment including various although not all limitations on foreign investment. The trend of foreign investment is now speed up.[1]

Notwithstanding with the recent economic down in India, we are have faith that the fundamentals remain maintained and that India will back to notable growth.

What it needs to get the efficient media and what are the conditions are necessary to enable the media to have the social influence that it carries. The answer will be short and simple, its globalization process and development in technology.

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[1]http://www.prnewswire.com/news-releases/india-media-and-entertainment-industry-2013-237299901.html, last visited on 1 April,2014

Since 1991, India's invite of foreign investment has been escort by protectionist showing in delicate sectors like media and insurance. The problem in creating the move from a mixed economy to comparatively market oriented or open economy were apparent when the government think carefully about reviewing a restriction imposed in 1955 by Jawaharlal Nehru's governmental, and accommodating the foreign press companies in 1991 to work in the country's 'mind-market'.[2]

India's part in FDI was pathetic. In 1996 India experience $2,587 million on FDI which was a noticeable increase comparatively in 1985-90 yearly average of a just $169 million. If we compare these digits with China the figure was $42,300 million in 1996 and $2,654 million was the average in 1985-90.[3] At the period of 1985 the GDP ratio was 0.5 percent and it grows by 1.9 percent only by the end of ten year.[4]

Present: The Indian media and entertainment (M&E) industry is gaining lot of attention nowadays and continue to grow at really good pace in the country. Under the folds, it consists of various segments such as advertising, film, sports, music, electronics, television, prints media and others which have experience impressive growth in the short time period. Examples like Oscar winning Resul Pokutty and A.R. Rahman for their praiseworthy work in the movie Slumdog Millionaire, the focus has been shifted on India and the enormous talent and

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[2]PRASUN SONWALKAR, Opposition to the Entry of the Foreign Press in India, The Hidden Agenda, *Centre for Mass Communication Research, University of Leicester* ,last visited on 1 April,2014.

[3] Incredible opportunities back home by ministries of overseas Indian affairs, last visited on 26th of April,2014. Available at - http://www.deloitte.com/assets/DcomIndia/Local%20Assets/Documents/Thoughtware/2014/OIFC_Incredible%20opportunities_v7_web.pdf

[4] S AMBIRAJAN, Globalization ,Media and Culture.

prospective it offers.[5] With the sanction by Indian Government regarding the Foreign Direct Investment in the industry related to Media and Entertainment, development in digital, electronic and print media has been exceptional.[6]

The Media Economy

The Indian Media and Entertainment industry, in 2011 with revenues of approx $17.2 billion , is set to extend actively over the next coming years on the back of stabled macro-economic development, increasing consuming power and positive demographic measures. By 2016 The revenues of the Media and Entertainment industry are predicted to achieve $37.6 billion , with a CAGR of approximately 17% from 2012 to 2016.Presently , with industry revenues paying about 1% of its GDP, India is one of the fourteenth largest Media and Entertainment market in the world.

With reference to the media and entertainment world youth between the age of 18-26 are more into technology. They spend most of their time on internet and other like media. It is evident that the media industry will stay in high expansion, beyond the overall economy. The factors which may be result of this growth is possibly be : Growing rate of literacy and the upgraded prosperity in the smaller cities and rural areas, above expected levels, results that the growth in the market for regional language media and newspapers carry on to be strong and

[5] http://www.cii.in/Sectors.aspx?enc=prvePUj2bdMtgTmvPwvisYH+5EnGjyGXO9hLECvTuNt7sHHy+C2vaPTaHikFe2hN

[6] Deloitte, September 2013,Media & Entertainment in India Digital Road Ahead, lAst visited on 8th of May,2014

will show development for coming years. At the same time, with the digitisation in TV, constant usage of smart phones, increase in the FM channels licenses in Radio, and broadband connectivity, the middle class people are experiencing the revolution which is coming from west in India with regard to media, but its coming in a compressed time period.

CHAPTER II

INVESTMENT POLICY AND INDIA

Today, India has adopted one of the most flexible investment scheme with regard to foreign direct investment. The media and Entertainment undoubtedly experienced growth in the Indian economy with this liberal arrangement of schemes allowing foreign direct investment.[7]

The basic aim and objection of the Indian government, while introducing the foreign direct investment (FDI) policies, was to supplement the domestic capital by attracting the FDI with the help of skills and technology for the productive economic growth in a short span of time.

It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Foreign Direct Investment, as distinguished from portfolio investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor. [8]

FDI - Investment in the capital of an Indian company by a nonresident entity/person resident outside India. under Schedule 1 of the foreign Exchange

[7] A. N. SARKAR, *Sectoral investment authorities in India,* Enhancing Global Competitiveness: Advantage India, page 393

[8] Chakraborty Chandana', "Economic Reforms, Foreign Direct Investment and its Economic Effects in India", March 2006 Kiel Working Paper No. 1272

Management (Transfer or issue of Security by a Person Resident Outside India) Regulations,2000.[9]

The policies put forword by the government with regard to the foreign direct investment are predictable, transparent and easily comprehensible. This legal framework has been updated on yearly basis to keep the pace with the changing circumstances, in the consolidate FDI policy. The Consolidated Policy is an exhaustive circular provided and updated by the government to be with the uniformity of the present regulatory changes.The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India creates plan declarations on FDI by Press Notes/ Press Announcements which are reported by the Reserve Bank of India as modifications to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000). These announcements take effect from the date of issue of Press Notes/ Press Releases, except identified otherwise therein.[10]

The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on April 16, 2014 and reflects the FDI Policy as on April 17, 2014. The Circular accordingly took effect from April 17, 2014 and will remain in force until superseded in totality or in part thereof.

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[9] Department of Industrial Policy and PromotionMinistry of Commerce and Industry Government of India Consolidated FDI Policy,2014

[10] Department of Industrial Policy and PromotionMinistry of Commerce and Industry Government of India Consolidated FDI Policy,2014

Investment regime in India[11]

India has been ranked at the second place in global foreign direct investments in 2010 and will continue to remain among the top five attractive destinations for international investors during 2010-12 period, according to United Nations Conference on Trade and Development (UNCTAD) in a report on world investment prospects titled, 'World Investment Prospects Survey 2009-2012'.[12]

The 2010 survey of the Japan Bank for International Cooperation released in December 2010, conducted among Japanese investors, continues to rank India as the second most promising country for overseas business operations.

A report released in February 2010 by Leeds University Business School, commissioned by UK Trade & Investment (UKTI), ranks India among the top three countries where British companies can do better business during 2012-14.

According to Ernst and Young's 2010 European Attractiveness Survey, India is ranked as the 4th most attractive foreign direct investment (FDI) destination in 2010. However, it is ranked the 2nd most attractive destination following China in the next three years.[13]

Moreover, according to the Asian Investment Intentions survey released by the Asia Pacific Foundation in Canada, more and more Canadian firms are now focusing on India as an investment destination. From 8 per cent in 2005, the

[11] http://www.investindia.gov.in/?q=investment-policies, last visited on 22nd April, 2014
[12] http://www.escindia.in/index.php/services/it-policies/39.html, last Visited on 22nd April, 2014
[13] Keshava Dr.S.R', "The effect of FDI on India and Chinese Economy; A comparative analysis"2010.

percentage of Canadian companies showing interest in India has gone up to 13.4 per cent in 2010.[14]

India attracted FDI equity inflows of US$ 2,014 million in December 2010. The cumulative amount of FDI equity inflows from April 2000 to December 2010 stood at US$ 186.79 billion, according to the data released by the Department of Industrial Policy and Promotion (DIPP).[15]

The services sector comprising financial and non-financial services attracted 21 per cent of the total FDI equity inflow into India, with FDI worth US$ 2,853 million during April-December 2010, while telecommunications including radio paging, cellular mobile and basic telephone services attracted second largest amount of FDI worth US$ 1,327 million during the same period. Automobile industry was the third highest sector attracting FDI worth US$ 1,066 million followed by power sector which garnered US$ 1,028 million during the financial year April-December 2010. The Housing and Real Estate sector received FDI worth US$ 1,024 million.

During April-December 2010, Mauritius has led investors into India with US$ 5,746 million worth of FDI comprising 42 per cent of the total FDI equity inflows into the country. The FDI equity inflows in Mauritius is followed by Singapore at US$ 1,449 million and the US with US$ 1,055 million, according to data released by DIPP.[16]

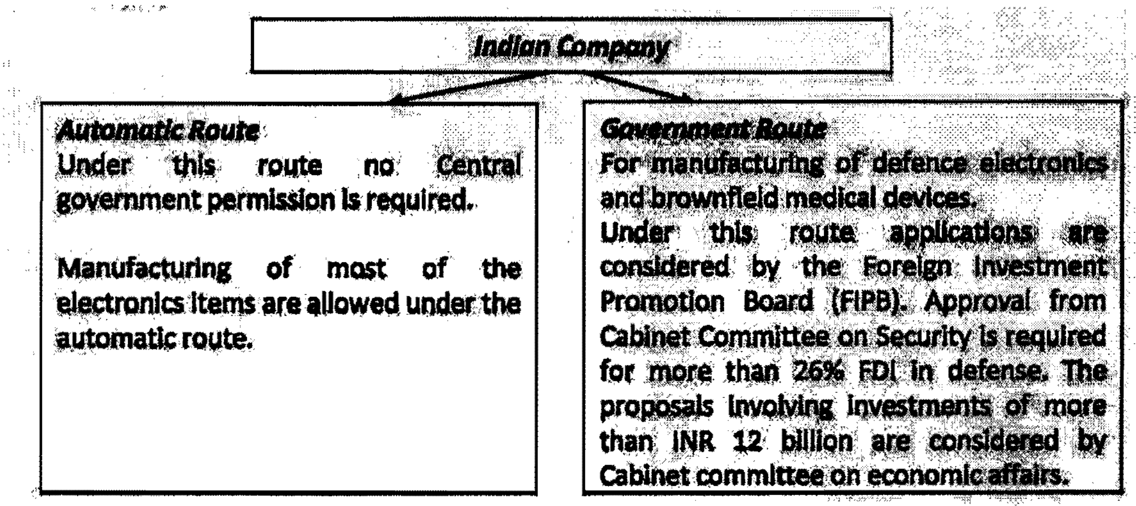
[14] ADB (Asian Development Bank) (2013). Asian Development Outlook 2013.Foreign Direct Investment in Developing Asia., last visited on 8th of May,2014

[15] *Ibid*

[16] http://dpp.nic.in/English/default.aspx, last visited on 22nd April,2014

While keeping in mind the current FDI policy and laws relating to it, any nonresident can make an investment in India except the areas with are explicitly prohibited by the government.

Foreign direct investment in an Indian company is considered under two routes:[17]



Procedure under Automatic Route

FDI in sectors/activities permitted under automatic route does not require any prior approval either by the Government or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

[17] http://www.rbi.org.in/scripts/FAQView.aspx?Id=26, last visited on 23rd, April,2014

Procedure under Government Approval

FDI in activities not covered under the automatic route require prior Government approval. Such proposals are considered by the Foreign Investment Promotion Board (FIPB), a Government body that offers single window clearance for proposals on foreign investment in the country that are not allowed access through the automatic route.[18]

Government approval is required in the following cases[19]:

- Where a foreign investor has an existing joint venture/technology transfer / trademark agreement in the same field, prior to January 12, 2005, the proposal for fresh investment / technology transfer / collaboration / trademark agreement in a new joint venture would have to be under the Government approval route through FIPB.
- In sectors with caps, including inter-alia defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval / FIPB approval would be required in all cases where:

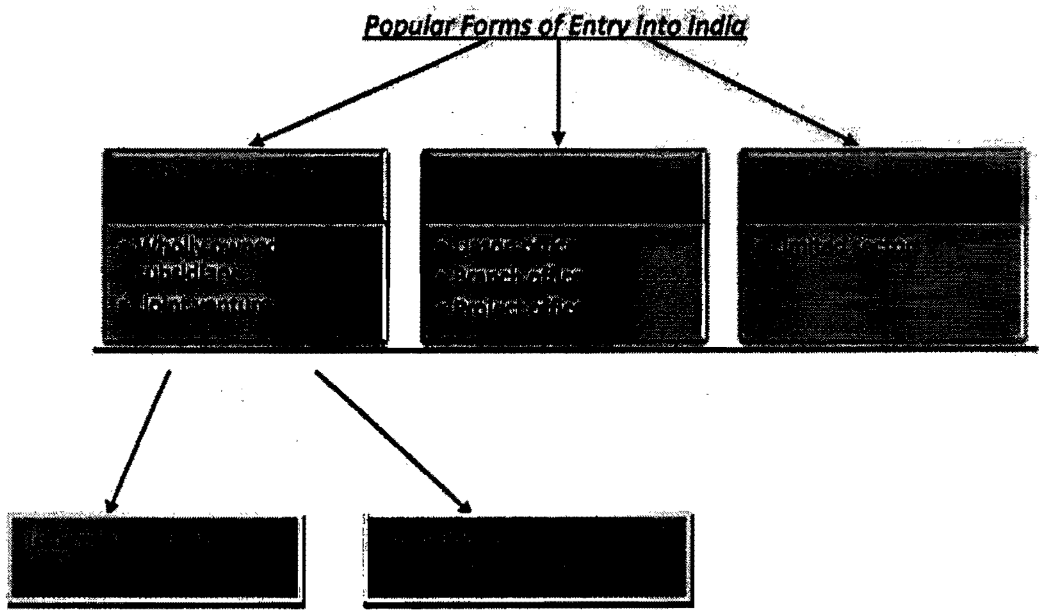
  - An Indian company is being established with foreign investment and is owned or controlled by a non-resident entity or the control or ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which

[18] http://www.indiainbusiness.nic.in/investment/for_dir_investment.htm, last visited on 23rd April,2014
[19] http://www.rbi.org.in/scripts/FAQView.aspx?Id=26, last visited on 23rd April, 2014

are owned or controlled by resident Indian citizens, is being transferred to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares.

These guidelines do not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

The popular forms of business entity that an investor can set up are given below:[20]



Setting up business in India is now very easy and is developing rapidly. Indian Government is offering many facilities to multi-national companies in every

[20] http://deity.gov.in/content/faqs-various-aspects-related-foreign-direct-investment-esdm-sector

sphere of business. Indian market is very attractive because it's growing population is largely untapped.

PROVISIONS OF DOING BUSINESS IN INDIA[21]

Foreign investors can operate business in India in the following manners:

Wholly owned Subsidiary Company

In India, a foreign company can be incorporated as a wholly owned subsidiary company. Under the provisions of the Companies Act 1956 a foreign company is only allowed to incorporate as a private limited company within the purview of the Companies Act 1956.

Branch Office

Foreign company manufacturing and trading in goods and providing services in India can open a branch office for the purpose of:[22]

- Exporting and importing goods
- Providing professional and consultancy services
- To do research on product/service in which the principal company is involved

[21] http://www.biswajitsarkar.com/setting_up_business%20in_india.html.last visited on 24th April,2014
[22] SETTING UP BUSINESS IN INDIA by Bisawjit Sarkar, http://www.biswajitsarkar.com/setting_up_business%20in_india.html, last visited on 24th April,2014

- Creating technical and financial collaboration between Indian and Foreign Companies
- To represent the foreign company in India
- Engaged in Information technology in India
- Developing software in India
- Providing technical support for the products supplied by the principal company
- Foreign Airline/Shipping Company

Generally, RBI is giving permission to the foreign companies to open a branch office in India when they are engaged with any of the above activities.

Project Office

If foreign companies wish to carry on a business for a limited period of time they may open a project office. A project office is a place of business to carry out the business of a foreign company in India excluding a Liaison Office. A Site office is an office which is built at the site of the project. It is generally considered as a sub-office of a project office.

Liaison Office

A Liaison office is a go-between Indian consumers and the Foreign Company. A liaison office cannot act as a commercial enterprise or engage itself in any profit making activity.

A liaison office is permitted to carry out the following activities:

- Representing in India the foreign company
- Promoting export/import
- Promoting collaboration between the foreign company and the Indian Company

Joint Venture

In India, for joint ventures it is better to set up a private company as it is exempt from some very strict compliance as compared to a public limited company.

Companies may be established in the following ways:

- Setting up a company in collaboration with an Indian partner.
- Setting up a company in collaboration with a publicly listed company.

Investment by way of Share Acquisition

A foreign investing company is entitled to acquire the shares of an Indian company without obtaining any prior permission of the FIPB subject to prescribed parameters/ guidelines.If the acquisition of shares directly or indirectly results in the acquisition of a company listed on the stock exchange, it would require the approval of the Security Exchange Board of India.[23]

[23] http://www.indiainbusiness.nic.in/investment/for_dir_investment.htm, last visited on 25th April,2014

New investment by an existing collaborator in India[24]

A foreign investor with an existing venture or collaboration (technical and financial) with an Indian partner in particular field proposes to invest in another area, such type of additional investment is subject to a prior approval from the FIPB.

General Permission of RBI under FEMA

Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors.The companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.[25]

Foreign direct investment in a liaison/branch/project office is considered under the routes:

There are basically two forms of foreign collaboration in India. It can be technical or financial collaboration. The Reserve Bank of India (RBI) comes into play in case of financial collaboration as approval authority, but the case is different in technical collaboration the department of Industrial Development in the Ministry of Industry, Government of India act as the approving authority.

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[24] http://deity.gov.in/content/faqs-various-aspects-related-foreign-direct-investment-esdm-sector, last visited on 25th April,2014
[25] http://madaan.com/fdiapprovals.html, last visited on 26th of April,2014

Since 1949 the approach of the government of India relating to the foreign direct investment is almost the same, which is on the priority basis. Hence more beneficial in the growth of country. Foreign Investors are considered to be same as their Indian partners. And both have to be in the conformity with the foreign Direct Investment policy released by the Department of Industrial Policy and Promotion.

The Foreign Exchange Regulation Act, 1973 (FERA) has been replaced by the Foreign Exchange Management Act 1999 (FEMA) now the foreign exchange has been regulated by this new act. Foreign collaboration can be setup with a prior approval from the government under the applicable foreign exchange laws and regulations in force and with conformity with the relevant government policies.[26]

According to the Act now a foreign investment may be formed by any foreign company without getting involved with the company in India. Government approval is necessary if the limit of the foreign collaboration has been exceeded from the limit mentioned in the automatic route.

Foreign investment promotion board has been structured by the government of India in order to encourage the foreign investment in India. The main function of the board are to speedily clear the proposals made for the investment as well as to review the cleared collaborations.

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[26] Incredible opportunities back home by ministries of overseas Indian affairs, last visited on 26th of April,2014. Available at -
http://www.deloitte.com/assets/DcomIndia/Local%20Assets/Documents/Thoughtware/2014/OIFC_Incredible%20opportunities_v7_web.pdf

CHAPTER - III

FOREIGN INVESTMENT IN MEDIA AND ENTERTAINMENT SECTOR

The Indian Media and Entertainment Industry, one of the most dynamic and interesting industries in the world, has had a enormous impact on the Indian economy and on the citizens as well. As the Media and Entertainment industry spreads its wings, it plays a important role in spreading awareness on problems affecting, distributing energy and building hope among people of India. The media and Entertainment industry through the path of entertainment update the people around and it has been a great motivation for the development of the Indian economy. If we take an example of a villager – who is illiterate and not aware of his surrounding becomes aware of his presence and realize the importance of his nearby. after watching entertainment programs on TV, his life take many turns which aspires him to live a better. This is the urge for various services and products. Media plays a very crucial part in our lives by touching our all aspects from newspaper to radio to TV to outdoor properties.[27]

Since the time of 1991, when actually the globalization has been initiated till now the situation is totally different. We are progressing day by day. With reference to the media and entertainment world youth between the age of 18-26 are more into technology. They spend most of their time on internet and other like media. The usage has been increased now which demands the supply and quality as

[27] http://www.investinindia.com/industry/entertainment-and-media/entertainment-and-media-industry, last visited on 30th Of April.

well. Here comes the role of FDI.[28] Today for the growth of economy a country need to be technologically strong which can be possible with the exchange of ideas & technologies. Globalization plays a important role in the growth of any nation.[29]

Media and entertainment industry in Indian Industry has experienced healthy development over the last few years and is one of the wildest rising segments of the economy nowadays. Experts trust that though its growth may be goes down by the economic stoppage, the segment will remain to relish considerable investment from cash-rich enterprises abroad. The Media and Entertainment industry, a mixture of creativity and trade, offers varied investment occasions in various areas such as cinema and multiplex organisation, TV, movie, animation, print media, sport and advertising.[30]

By loosening foreign direct investment (FDI) in the sector, the administration has boosted these opportunities, inspiring a flow of cash that is desirable to keep India diverted through the recession. Among 2005 and 2008, it unlocked the entries to foreign investment in abundant new areas to the industry, and hassle-free foreign ownership limitations in others.

for instance, In June 2005, the government clashed its really old strategy barring the publication from foreign newspapers in India. In addition, it made alterations that currently licence up to 26% Foreign Direct Investment in FM radio

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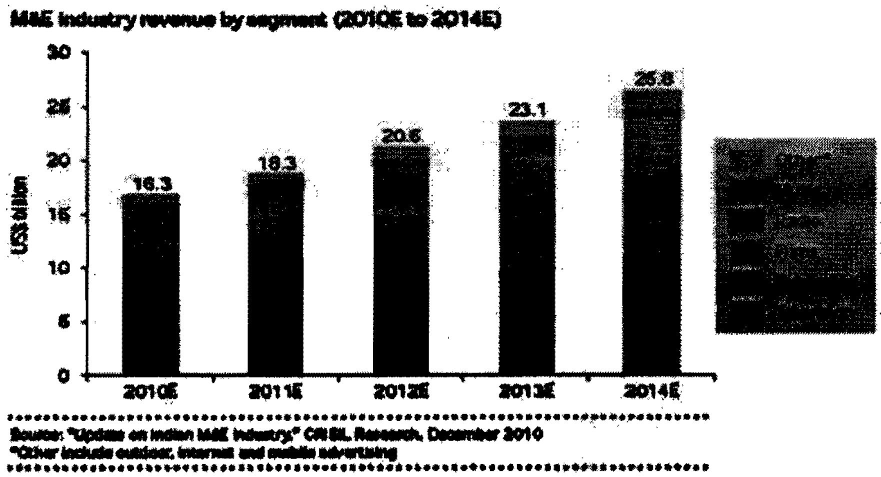
[28] http://www.biswajitsarkar.com/fdi_in_entertainment_media.html , last visited on 30th of April,2014

[29] Mamata T.', "Impact of Global Financial Crisis on FDI Flows in India – A Special Reference to Housing sector "International Journal of Trade, Economics and Finance, Vol.2, No.1, February, 2011.

[30] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

broadcasting. In addition to encouraging foreign investment, the liberalization of the media segment was commenced with the intention of growing the variety of content available in the country, and even more prominently, maintaining that domestic consumption stays high. In alike manner, the Central Board of Excise and Customs (CBEC) freshly explained that over display of movies in theatre and multiscreen cinema service tax wil not be applicable unless it sums to be a "business support service" as per the service tax system.[31]

MARKET HIGHLIGHTS



With a conducive regulatory environment and high volumes of content consumption, India holds significant potential for foreign investments across all segments of the M&E industry.

The media and entertainment industry in India has grown by 11.8 per cent in 2013, vis-à-vis 2012, and reached Rs918 billion. It is presume to reach

[31] MEDIA AND ENTERTAINMENT,Film Financing and Television Programming,A Taxation Guide,Sixth Edition,kpmg.com,last visited on 7ht of May,2014

Rs1785.8 billion by 2018, with a CAGR of 14.2 percent. By 2014 ending, the growth is expected to touch Rs1039 billion. Furthermore, digital advertising has a visible encouraging growth in 2013,[32] compared to 2012, which was about 38.7 percent, acting in the same pace gaming also shown a growth by 25.5 percent.[33]

As for the future prediction: by 2018 Digital advertising is presumed to lead the CAGR with 27.7 percent, pursued by radio with 18.1 percent. Television and Gaming are supposed to register growth in by CAGR of 16.2 percent each, followed by growth rates of films by 11.9 percent and music by 13.2 percent as expected CAGR.[34]

Print also showing growth slowly and steadily as the predicted growth can be seen with 9 percent CAGR. If we talk about TV, by 2018 the advertising revenue are expected to be three times more than the subscription revenues.[35]

Enter the regulator

In media and Entertainment sector, the authority regulates the industry is the Ministry of Information and Broadcasting (MIB). It is accountable for the preparation and supervision of rules, guidelines and laws that administer the area, as well as enabling statistics distribution around and inside the industry.[36] The MIB is also liable to look after for promoting global collaboration with regards to broadcasting, films and mass media by networking with its overseas

[32] http://www.afaqs.com/news/story/40235_FICCI-KPMG-Report-2014:-Indian-ME-industry-to-touch-Rs-1785.8-billion-by-2018

[33] http://www.rbi.org.in/scripts/FAQView.aspx?Id=26, last visited on 30th of April,2014

[34] *Ibid*

[35] http://timesofindia.indiatimes.com/business/india-business/INS-wants-higher-FDI-ceiling-in-print-media/articleshow/23327919.cms, last visited on 1st May,2014

[36] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

equivalents and act on the part of Indian government. Its procedures are separated into three chief parts - broadcasting, films and information, every one further sectioned into various units.[37]

Created on present styles in the television, film, radio, print, advertising and animation markets, predictors forecast that the Indian entertainment industry will produce sharply growing returns over the comming years. As one of the world's major TV watching marketplaces along with the US and China, Indian spectators continue to produce a stable stream of profits. Incomes in the TV sector increased expressively in 2013, sustain a progress from the earlier year. A considerable part of this progress was credited to improved audiences for reality shows and particular content like the T-20 cricket matches. From 2009 to 2014 (last five years), the sector grewed at a satisfied level overall, just behind radio and online advertising. The MIB has delivered a sequence of guidelines for up connecting and downlinking of TV stations and the government has recently permitted the introduction of Internet Protocol Television (IPTV) in India.[38]

From Bollywood to Hollywood

As one of the major film manufacturers in the world, it is conventional that the Indian film business has profited both artistically and monetarily from developments in technology, skills, content expansion, funding, presentations and advertising.[39] Filmed entertainment logged balanced progress of 14% in

[37]Consultation Paper No: 7/2013,Consultation on Foreign Direct Investment in Broadcasting Sector in India

[38] *Ibid*

[39] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

2007, and from 2004 to 2007 grew by 17% overall.The industry is suitably progressively corporatized, encouraging creators to look abroad for coproduction associates. Anil Ambani's Reliance ADAG in recent times contracted a agreement to finance US$550 million in Steven Spielberg's Hollywood scheme, DreamWorks, to break away from Viacom's Paramount Pictures and permitting the American director to introduce a fresh studio . Amid 2007 and 2008, India witnessed the admission of media and entertainment corporations Walt Disney, Viacom and NBC Universal through corporations with Network 18 Group, NDTV and UTV Software Communications, respectively. Private equity players and venture capital investors remain to demonstrate their readiness to take on the risk-reward balance associated with these .INX Media was the major recipient of FDI in 2007, receiving US$220 million from Temasek Holdings via Dunearn Investment, New Silk Routes, Kotak and SREI Group, for the expansion of its television broadcasting network. Meanwhile, American investor George Soros acquired a 3% stake in Reliance Entertainment by contributing Rs4 billion for internet development, new media, films and television broadcasting. [40]

Other media deals saw Sun Direct Television receive US$140 million from South Asian Entertainment Holdings, a group company of Astro All Asia Networks, to expand its direct-to-home broadcast reach. The company acquired a 20% stake in Sun Direct. Innovative Media, the out-of-home media subsidiary of Entertainment Network India (ENIL), meanwhile, received US$40 million to further its out-of-home media expansion, Invested by Goldman Sachs and

[40] http://www.nishithdesai.com/fileadmin/user_upload/pdfs/On_with_the_show.pdf.last visited on 1st May,2014

Lehman Brothers (Mauritius entity), each of which acquired an 8.28% stake in ENIL.[41]

These agreements, and many others like them, may be the first wave in a stream of deals that could draw Bollywood and Hollywood closer together. In addition to churning out approximately 1,000 films a year, the industry in India has gained strong impetus from the development of an attractive multiplex cinema culture, most visible in metropolitan cities such as Mumbai, Bangalore, Kolkata and Delhi. This phenomenon in contemporary urban leisure has gained tremendous popularity, especially among younger audiences.

Opening the airwaves

Private investment has also been unlocked to Radio broadcasting after periods of control by the state broadcaster, All India Radio. The administration, intense to inspire and enable overseas involvement, has applied controlling modifications to licence FDI of up to 26% in the sector. As the greatest cost operative foundation of entertainment in India, radio has developed an enormously striking sector for investment, predominantly following the subscription of up to 338 FM radio authorisations for bidding by private performers. These shelter roughly 91 cities, most of which until newly were examined only by the state broadcaster. The radio broadcasting business executed well in 2007, with profits increasing by 24% from the previous year.[42]

[41] http://www.nishithdesai.com/fileadmin/user_upload/pdfs/On_with_the_show.pdf, last visted on 1st May,2014

[42] "on with the show" by nishanth desai, last visited on 2nd of May,2014. Available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/On_with_the_show.pdf

The print media business has also acknowledged thoughtfulness from the government. Foreign investment of up to 26% is now legalised in Indian publications allocating with news and current concerns, subject to certain prerequisites. The foreign investment cap beneath the non-news class has been elevated from 74% to 100% for scientific, technical and specialty magazines. In link with its previous decision to comfort requirements for the addition of local content and advertisements, in September 2008 the government announced its fresh "Guidelines for Publication of Indian Editions of Foreign Magazines dealing with News and Current Affairs".[43]

These struggles were projected to raise development in the publication industry and deliver local readers with right of entry to foreign news magazines at cheap charges. From 2004 to 2007, the profitability of India's print media industry rose by 15% – a bigger jump than that experienced by any other country in the world.[44]

Another protruding segment is advertising and animation, which together are esteemed at approximately US$12 billion. Advertising profits heightened by a remarkable 31% in 2007 from the level of the preceding year. Internet advertising, available globally, is anticipated to post the utmost yearly development in the area, increasing above 40%.

It's showbiz time

For investment in most segments of the media and entertainment industry, the MIB needs an aspirant entity to be an Indian corporation registered under the Companies Act, 1956. The finest entry choice for a overseas investor who

[43] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014
[44] *Ibid*

wishes management control is consequently through the institution of a wholly owned subsidiary. A subsidiary of a foreign company is taken as same, in nearly all aspects, as a corporation which has local Indian shareholders.[45]

A foreign corporation can set up a wholly owned subsidiary, a liaison office or a branch office in India. A liaison office is appropriate for foreign corporations desiring to enable communication between the parent corporation and its operations and customers in India; a branch office is alike, but the actions it may commence are constrained. Launching a subsidiary in India is normally looked-for to initiate a liaison or branch office, due to the large number of actions it is allowed to involve in. The actions of a wholly owned subsidiary are administered by the terms of the investment sanction under the exchange control regulations of India, the provisions of the Companies Act and other applicable acts.

As a private limited company or a public limited company a subsidiary can be set up under the Companies Act. The Rs100,000 is least capitalization condition for private companies and for public companies its Rs500,000. Except from the least capitalization standards, the charges of setting up an Indian business are comparatively low.

The foreign corporation could finance in its Indian subsidiary by an intermediate holding corporation set up in a tax-favourable jurisdiction. Taking benefit of India's widespread treaty system and carefully selecting an suitable offshore place could result in several profits for the parent corporation, such as a reduced or zero rate of tax on capital gains profits and discount in withholding tax rates. The selection of an offshore corporation would be directed by the paybacks

[45] :guide for foreign nationals wants to do business in India,last visted on 2nd of May,2014. Available at http://www.indialegalhelp.com/files/doing_business_india_feb13.pdf

accessible under the treaties between India and the other offshore jurisdictions, and by the local tax rules of those offshore jurisdictions.[46]

A liaison workplace is not allowed to receive revenue in India. Any expenditures produced are requisite to be borne by the foreign establishment. Consequently, liaison offices are not profits tax-liable. The trade profits of a foreign corporation are taxable only if it is attributable to a stable establishment of the corporation in India. Branch office incomes are taxable at the rate of 42.23% against 33.99%, which is the rate applied to Indian companies.[47] However, foreign entities (such as the parent company of a branch office) are not taxed. For transfer pricing purposes, the branch and the head office would be considered associated

[46] http://www.capitalmarket.com/CMEdit/SFArtDis.asp?SFSNO=1588&SFESNO=91,last visited on 3rd of May,2014

[47] Taxation of Foreign Companies Investing In India

9.228 Taxation of the investment income by the foreign companies investing in India is one of the most important criteria to decide whether to invest in India. Many countries, such as Malaysia, Thailand and China have had at various times, tax rates that favoured foreign direct investment over domestic direct investment. In this scenario, our tax laws have to be attractive enough for encouraging Foreign Direct Investments. This is inevitable in view of the need for huge overseas investment in our country.

9.229 Our tax laws, however, treat all companies incorporated in India equally, irrespective of the proportion of foreign equity holding. In fact, tax rates are higher in respect of Indian branches of foreign incorporated companies - Foreign airlines and banks operating in India through such branches. The current effective rate for foreign companies is 42.23% as against 33.99% for domestic company. The rationale for this higher rate is that foreign companies neither pay DDT nor distributions made by them treated as dividends arising in India. The Report of the Steering Group on the foreign direct investment has, however, recommended that the tax rate for foreign companies should be the same as for domestic companies. The government may consider this aspect in the context as to how far this would have positive impact on attracting investment opportunities from foreign companies to benefit the country and to what extent it would be in the interest of the economy as a whole.

enterprises and any transactions between the two entities would be at arm's length.[48]

Three significant points to keep in mind when arranging an deal in this segment are the jurisdiction, investment instrument and the entity. With respect to investment instruments, separately from the issue of equity shares by the Indian company, the issue of compulsorily convertible debentures (CCDs) is alternative choice that may be used. CCDs are considered to be FDI for exchange control purposes; however, for the purposes of the Income Tax Act, 1961, they are considered to be debt. This creates a benefit in that the interest payable to the foreign CCD holder is a tax deductible expense in the books of the Indian company.

Cross-media ownership

Many companies in India have newly get into planned tie-ups and agreements in order to propose a whole spectrum of media service area. The Times Group, reflected to be the utmost vertically joined media corporation in India, with numerous cross-media possessed enterprises like Zoom TV, Radio Mirchi,and out-of-home advertising, has maintaned a fifty- fifty joint venture with BBC Worldwide Media for the publication of magazines. In the meantime, TV18 has recognised partnership with Raghav Bahl's CNBC.[49]

The rise of cross-media ownership as a means of corporate development has incited a debate on the subject, more so after a consultation paper has been

[48] http://www.nishithdesai.com/fileadmin/user_upload/pdfs/On_with_the_show.pdf,last visited on 2nd of May,2014

[49] MEDIA AND ENTERTAINMENT,Film Financing and Television Programming,A Taxation Guide,Sixth Edition,kpmg.com,last visited on 7ht of May,2014

brought by the Telecom Regulatory Authority of India enticing suggestions from stakeholders on whether cross holdings (vertical or horizontal) between media companies should be permissible. Though the importance of reassuring competition and diversity has been widely acknowledged, there is also notable disagreement to cross-media ownership, shaped on the want to avoid the creation of dominations. Competitors are alarmed that media owners could gather extreme control to progress their private and business welfares and promote their political views, while alongside thinning the platform available for players with different strategies.[50]

Business enterprises in support of cross-media proprietorship are concerned to profits such as the elevation of quality content across a diversity of platforms, and greater brand attentiveness. Advocates of this business model have faith in restrictions on proprietorship could obstruct the free flow of business synergies, capital and technologies among players.

The all-important 'happy ending'

Notwithstanding the current slowdown in world-wide economic development, the long-term image for the media and entertainment segment rests bright. Digital technology and the development of broadband internet entree will convert virtually all entertainment and media sections by inaugural of new spreading outlets. The internet has proved itself an operative companion to traditional media, rather than a competitor to be afraid of.

[50] http://www.pwc.in/en_IN/in/assets/pdfs/ficci-pwc-indian-entertainment-and-media-industry.pdf, last visited on 3rd of May,2014

Though, lawyers perform a essential part in any investment in to the field entertainment and media. Meanwhile the element of danger and risk aspects in this sector are very high, proper due diligence report is essential before investing gin any deal. In addition, investors necessitate good business and tax organizing assistance to extract the maximum profits that are obtainable, while guaranteeing full obedience to the regulations.

SPORTS

Commerce and Industry Minister Anand Sharma said the 12-day Commonwealth Games will have a positive impact on the Indian economy and help attract more foreign direct investment (FDI) into the country.[51]

"The Commonwealth Games will boost the FDI in the country. It will have a multiplier effect on Indian economy. It will help India further attract foreign direct investment," said Sharma, inaugurating Commonwealth Business Forum, organised by Commonwealth Business Club India (CBCI).[52]

"In the last three years, India has attracted foreign investment worth around $100 billion," said Sharma.

India expects foreign investments to the tune of around 30 billion in fiscal 2010-11.

[51] http://forbesindia.com/blog/business-strategy/decathalon-sets-off-with-100-fdi-in-sports-retail/.last visited on 4th of May,2014

[52] http://www.hindustantimes.com/business-news/games-will-boost-foreign-direct-investment-in-india/article1-608250.aspx

The CBCI has been launched jointly by Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII) and Organising Committee for New Delhi Commonwealth Games 2010.[53]

1. Growing Sports Sector In India[54]

The business of Sports worldwide is a rapidly growing industry. Today, the global Sports industry is a prominent player vis-à-vis the global revenue streams. And, as one of the most nascent industries, its potential for growth across sectors remains unparalleled. Sport is an inter-domain growth and synergy based industry.[55]
It exponentially benefits the state, the private sector, and the citizens. As a dynamic industry, it attracts huge levels of investment and human capital. Sports related professions today are increasingly becoming a career of choice for youth.[56]

Traditionally, sports have been predominantly the domain of the public sector, except for some independent efforts of the corporate or private sector. However, going forward, building a culture of sports & developing sporting talent in India will require increased participation, and innovations that have to be augmented by the private sector.[57]

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[53] http://www.hindustantimes.com/business-news/games-will-boost-foreign-direct-investment-in-india/article1-608250.aspx.last visited on 4th of May,2014
[54] http://www.governancenow.com/news/regular-story/more-fdi-india-post-cwg-govt.last visited on 5th of May,2014
[55] http://articles.economictimes.indiatimes.com/2010-04-26/news/27605397_1_fipb-automatic-route-induction-of-foreign-equity.last visited on 4th of May,2014
[56] http://www.ficci.com/SEdocument/20206/sports-ficci-to-govt.pdf.last visited on 5th of May,2014
[57] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

The elite corporations have been and continue to invest in different sports across the emerging sport landscape. There are numerous entrepreneurial opportunities, either startups or established. Despite it being a Greenfield area from the perspective of historical National data and statistics, the rapidity with which the sports domain becomes sophisticated makes this the right time to accept its future viability and sustainability by granting it industry status. This is a two-step approach, with both steps being addressed simultaneously.[58]

The private sector is offering its broad-based expertise and is keen to involve itself through investments in sports infrastructure, endorsements and sponsorships, organizing international sports events, broadcasting the aforementioned events, licensing & manufacturing merchandise, and other vital areas[59]

In a representation to the Ministry of Youth Affairs and Sports, FICCI has stated that the first step would be to work on a definition of sports industry and once it has been agreed to, it should be incorporated with in all legal and commercial frameworks that entail sports.[60]

The second step would be classification of sports and providing it with industry status.

Taking into account the global norms, and factoring in the unique nature of sports in India, a hybrid yet comprehensive definition for sports industry is proposed by the FICCI. This will help clarify industry's role in sports, and expand industry's role in every aspect of sports in India.

[58] http://www.ficci.com/SEdocument/20206/sports-ficci-to-govt.pdf, last visted on 5th of May,2014
[59] http://www.slideshare.net/ficciindia/ficci-demand-for-industry-status-to-the-sports-sector, last visited on 6th of May,2014
[60] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

At present, there is no direct mention of the private sector as a stakeholder in any sports-specific regulation or law, including the Draft National Sports (Development) Bill 2011 ("Sports Bill") or the National Sports Development Code of India, 2011 ("Sports Code").[61]

The definition proposed is:

'*Sports Industry means any sponsor, corporate entity, legal person, broadcaster, or any other individual or entity involved in promoting, developing, and/or investing, either directly or indirectly, in sports related activities in India.*'[62]

This definition will not include the Government of India, Ministry of Youth Affairs and Sports, Sports Association of India, National Sports Federations, an international or domestic sports federation or governing body, or any active sportsperson. This definition can and should be used in all legal or government led initiatives and documentation.[63]

According to FICCI the following benefits would accrue to the Government by giving industry status to sports:[64]

- The massive sports industry-led and centric potential for employment, (macroeconomic variables) GDP growth and export in sports-related services and products. This will expand and evolve as the industry evolves and grows.

[61] http://pib.nic.in/newsite/erelease.aspx?relid=69503, last visted on 6th of May,2014
[62] http://ficci.com/SEdocument/20206/sports-ficci-to-govt.pdf, last visted on 6th of May,2014
[63] http://www.ficci.com/PressRelease/1003/ficci-press-sep17-sports.pdf, last visted on 6th of May,2014
[64] Ficci calls for grant of industry status and FDI in sports sectorBy SportzPower Team Published: 17 Sep 2012 - 07:21 Available at http://www.slideshare.net/ficciindia/ficci-demand-for-industry-status-to-the-sports-sector, last visited on 7th of May,2014

- Revenues will directly and indirectly accrue to the state and central governments through tax revenue and incentives.
- The reverse flow of foreign exchange and investment presently witnessed by the sports domain will be stemmed and turned around to benefit India and the sports industry stakeholders. This will especially be true once the sports industry is incentivized to innovate and invest in technology, and Foreign Direct Investment norms are allowed in a regulated but steady format.
- Although we are not able to calculate the contribution of sports in the GDP of country because of absence of any data and largely unorganized nature of the sector but its cross-sector linkages are significant, and there will be positive multiplier effects on the development of various sectors.
- Increase in the contribution of a particular sport to the gross domestic product of a country. For example, Cricket in India is by far the most lucrative sport, with revenue estimates across the various formats and forums extending to approximately Rs. 15000 crore annually, as per approximations and not official estimates. As Sports grow in India across a broad-based forum, each sport will be likely to contribute to the GDP in differing yet significant ways.

On the fiscal front, such a status will facilitate the following:

- Easier borrowings overseas, ability to raise domestic funds through institutional lending, tax-free bonds, tax concessions, etc.

- Enable the government to monitor charges levied for the use of the facilities and their maintenance to ensure that these are affordable by a majority of the population.
- Manufacturing base in India shall experience huge bounds. Will facilitate the provision of fiscal incentives, insurance norms and availability of credit.
- The subsidized investment opportunities will help boost the sector may be by development of sports promotion zones.

The other benefits that will flow from such a step are:

- Investment of private sector will be improved which is not happening to its potential at present.
- By improving the quality of technology and technical skill development within the sports sector, there should be a corresponding effect leading to creation/maintaining of infrastructure and better performances by Indian athletes and teams in international competitions.
- A self-sufficient and organized sports industry with business and revenue flows will help encourage innovation, professionalization of sports boost investment and improve market access for the sporting businesses.
- Once the sports industry matures, there will automatically be significant collateral benefits to the rest of the economy through inter-industry reliance and synergies. The synergies and revenue flows should also boost sectors that traditionally have a positive correlation with sports, namely sports medicine, sports education, sports tourism, and others.

- Sports retailing is likely to boost the manufacturing industry.

FICCI has also underlined the need to formulate a FDI Policy for the sector in view of the following benefits that it will provide:[65]

- Foreign Direct Investment (FDI) besides complementing and supplementing domestic investment brings state-of-art technology and best managerial practices, thereby providing better access to foreign technology to the domestic industry.[66]
- Opening of sector for FDI and it will actually help to bridge investment gaps in sports sector.
- India giving a non-discriminatory treatment to Foreign Service providers in its bilateral agreement will provide an easier access to international markets for funding ventures in India.
- Present FDI restriction is not an entry ban, but it puts India in a defensive position in the WTO/FTAs while the foreign players are already present in India through other routes like government approved route or industrial licensing.

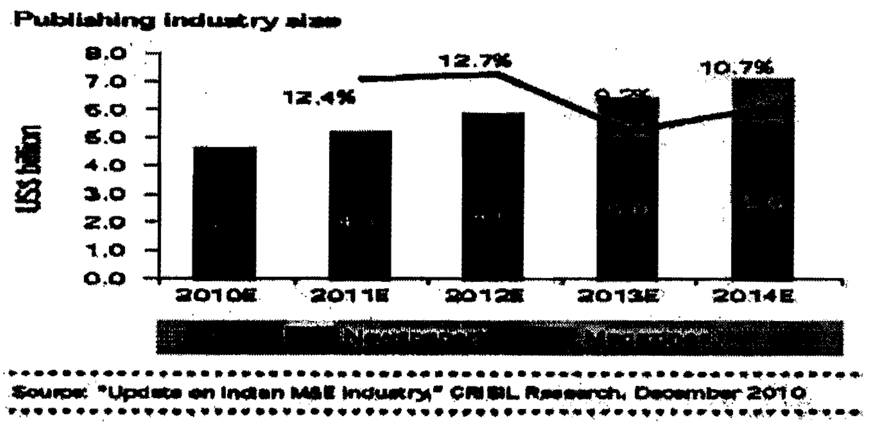
PRINT- NEWS PAPER, JOURNALS, OTHERS

Foreign Direct Investment (FDI) is allowed up to a ceiling of 26% of paid up equity capital, in Indian entities, publishing newspapers and periodicals dealing with news and current affairs subject to certain conditions Foreign investment upto 100% is allowed in Indian entities publishing scientific/technical and

[65] Annual edition of the Indian Entertainment and Media (E&M) Industry Report 2013 by FICCI
[66] http://www.eaber.org/node/23032, last visieted on 7th of May,2014

specialty periodicals. 100% investment is also allowed in case of foreign publishing houses bringing out facsimile editions of their newspapers through wholly owned subsidiaries set up in India.[67]

PUBLISHING INDUSTRY



Indian publishing industry is projected to grow at a CAGR of 11% to reach US$7.1 billion by 2014.

A low readership penetration of 30% compared with a literacy rate of 74% underscores the potential for further growth for publishing in India.

Liberalization of the Print media policy has not only attracted FDI but has also led to phenomenal increase in the availability of foreign scientific and technical magazines in our country. Availability of Indian editions of foreign scientific, technical and specialty periodicals at an affordable cost has benefited the students, professionals and the scientific/technical community greatly. After liberalization of the policy, permission has been given to 19 proposals for FDI in

[67] annual edition of the Indian Entertainment and Media (E&M) Industry Report by FICCI 2013

Indian entities in the news and current affairs sector. The Ministry has allowed publication of facsimile edition of 2 foreign newspapers whereas 3 proposals for publication of Indian edition of foreign magazine dealing with news and current affairs sector have been approved. Further, permission has been given for publication of 259 Indian editions of foreign specialty, technical and scientific magazines and journals.[68]

AUDIO AND VIDEO

Audio-visual services play a crucial and formative role in any society. These services are closely linked to the preservation of cultural identity and social values, andplay a major role in shaping public opinion, safeguarding the democratic system anddeveloping creative potential. Due to these reasons, governments of both developed anddeveloping countries not only provide direct and indirect incentives to promote the growthof the domestic industry but also impose various restrictions on trade to protect thereceiving society from foreign cultural influence.[69]

Technological developments and globalisation have changed the audio-visualscenario. On the one hand, it has given consumers access to a multitude of entertainmentand information services leading to growing commercialisation

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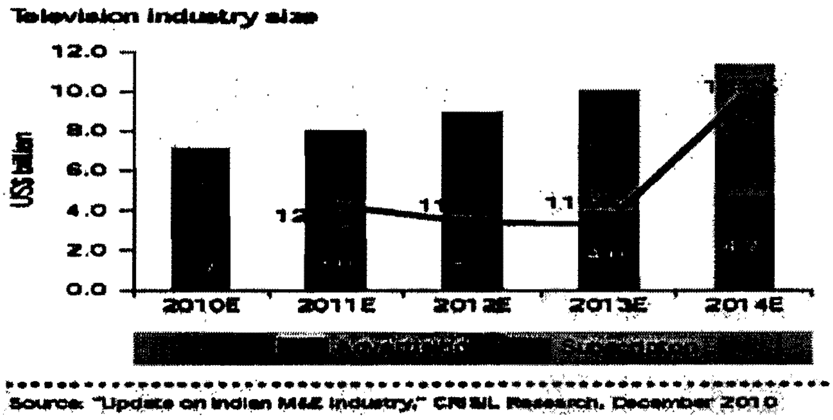
[68] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

[69] Audio-visual Policies and International Trade: The Case of India, HWWA-Report 227,Hamburgisches Welt-Wirtschafts-Archiv (HWWA),Hamburg Institute of International Economics2003

in this sector, on the other,it has made the domestic industry more prone to competition from global players.[70]

Technological progress, especially digitalisation, has reduced the government's ability to restrict the entry of foreign content into the domestic market. With increasing interactivity and internationalisation of production and delivery offered by Internet-based broadcasting services, the challenge before any government is to initiate an appropriate regulation so that the country can enhance its cultural resilience and at the same time benefit from the globalisation process.[71]

TELEVISION INDUSTRY



The industry is projected to grow at a CAGR of 12% to reach US$11.4 billion by 2014.

The continued digitization of distribution infrastructure, the demand for regional and niche content, and low TV penetration will drive growth in this segment.

[70] XII Five Year Plan (2012-17) ,Report of theWorking Group on Information & Broadcasting Sector Government of India Ministry of Information & Broadcasting

[71] *Ibid*, foot note 70.

Directorate of Advertisement and Visual Publicity (DAVP), a nodal multi-media advertising agency of the Government, carries information on policies, programmes and achievements of various Ministries and Departments to masses through various media. During the eleventh five year plan, it focused on the technological upgradation of its communication equipments and modernization of its programme designs as per the contemporary needs. The Govt also carried out amendment to the Audio Visual Policy incorporating objective criteria for empanelment of TV/Radio. As a result, large number of TV and Radio stations have been empanelled. In order to disseminate information on flagship programme of the Government, the plan period witnessed a substantial enhancement in the outlay for the scheme. DAVP, as part of Audio Visual policy implementation, has been using different media vehicles such as, print media, TV, Radio, Community Radio, digital film media.[72]

Rationalization of Foreign Investments (FI) limits in various segments of broadcasting sector has been under consideration of the Ministry for quite some time.[73]The TRAI, in its various recommendations with respect to the broadcasting sector, has been reiterating the need for a holistic review of the existing FI limits for different segments of broadcasting sector such as teleport, DTH, HITS, cable operators, FM Radio, Mobile TV, and downlinking/uplinking of TV channels in order to bring consistency in policy and the level playing field between competing technology in view of convergence of technologies of telecommunication and broadcasting services. After consulting with TRAI, the

[72] MEDIA AND ENTERTAINMENTFilm Financing and Television Programming,A Taxation Guide,Sixth Edition,kpmg.com, last visited on 8th of May,2014

[73] XII Five Year Plan (2012-17) ,Report of theWorking Group on Information & Broadcasting Sector Government of India Ministry of Information & Broadcasting

Ministry has finalized its views of the FDI limits in the broadcasting sector, which, inter-alia, include:[74]

(i) uniform FDI limit of 74% for all carriage services, including, DTH, IPTV, Mobile TV, HITS and Teleport services;

(ii) 74% FDI limit for Multi System Operators (MSOs) in the cable sector taking up digitalization with addressability operating at the National or State or District levels, and 49% FDI limit (status quo) for other MSOs and Local Cable Operators;

(iii) no restriction on foreign investment for unlinking of non-news and current affairs channels and downlinking of TV channels uplinked from aboard;

(iv) 26% for foreign investment for news and current affairs TV channels and FM Radio; and

(v) permitting FDI upto 49% though automatic route for all carriage services and no automatic route for content services such as uplinking, downlinking and FM Radio.

The Ministry, in consultation with TRAI, has also formulated certain terms and conditions to take care of security related and other concerns in view of the enhanced FDI level. These revised FDI limits will come into force after the approval of the cabinet. Further, the relevant scrotal guidelines will also be amended to incorporate the security conditions.[75]

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[74] FICCI-KPMG Indian Media and Entertainment Industry Report 2014, last visted on 8th of May,2014

[75] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

Music

Indian music industry is among the top three music industry in Asia., both in terms of volume and value. In 2003, the size of the industry was estimated at rs. 1040 crore (US$ 230 million) of which 40% is pirated. The industry is dominated by film industry which constitute 70 percent of the music sale. Non- film music constitute 20 percent while the balance is made up by international music. Unlike in the develop countries, CD penetration is low and low priced cassattes dominates the market. Retailing of music is highly fragmentated and is lagly concentrated in the unorganized sector. The RPG group's, Music World Entertainment Ltd. Started in 1997 was one of the early attempts to organised music retailing. Since then, other organized retailers such as The Times Gropu's Planate M have entered the market.

In the recent year there has been a noticeable growth in the music industry. Factors contributing towards this growth are the emergence of satellite music channel which help to promote new albums and have increased the demand for music content; development of organized retailing in music 'such as Times Group- Planet M, RPG Group – Music; demand for the music from private FM channels; growth of the internet as a powerful music distribution channel; growing demand for Indian music among NRIs and south Asians population; increasing demand for non-film music, as Indi pop and regional music; etc. the restrictions on foreign equity ownership have been relaxed in the 1990s and this has encouraged the inflow of FDI in this sector. Entry of global players, such as Sony Music and Universal , have expedited the process of growth, absorption of new technologies and export to countries with large NRI and South Asian population.[76]

Organized retailing is slowly evolving in the music segment. Many new players have entered the market while existing players such as Music World are expending their operation and consolidating their positions. For instance Music World Entertainment Limited has come up with two new stores formats – Music World Express and Music World Unplugged and has extended his operation to more than 20 cities.

The organized retailer have pointed out that indain consumers are increasingly becoming more price and quantity conscious. Indian counsumers do not have specific for music and purchase are in the nature of impulse buying. Margin in music segment is low and the market is more.[77]

In case of music, if international players are allowed to enter the market, they cannot change the business dynamics since the demand for indigenous music is much higher than international music. Even if they enter this segment they would have to stock and sell Indian product. On the other hand they would bring in technology know-how, finance , international quality standards and skills which would be benificall for the Indian players if they are allowed to enter through joint vantures.At present wholesalers have a monopoly in the market. This is likely to reduce with foreign players entering into the market. Hence, on the whole, this segment would benefit from FDI in retailing.

[76] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014
[77] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

GAMING, ANIMATION, MEDIA AND ENTERTAINMENT ('GAME')

Animation in India began about 15–20 years ago with the production of a commercial 2D cell animation. Since then, India has evolved into one of the most coveted global animation destinations.

On the path of growth, Andhra Pradesh is also giving the gaming and animation segment a new thrust, seeking to build a 'GAME City' in Hyderabad on the lines of the Dubai Media City and Media City U.K. in Manchester. It is expected to have several IT offices, academic institutions, an incubation centre and plug-and-play built-up office space for entrepreneurs. With a view to promote local animation films and content, efforts are under way not only to create a venture capital funding mechanism and extend seed capital assistance but also to provide fiscal incentives and subsidies on production cost, lease rental, stamp duty, electricity, staff cost and reimbursement of Input Value Added Tax ('VAT')/Sales tax/Central Sales Tax/Andhra Pradesh General Sales Tax for products/films/ services made in Andhra Pradesh. The companies would also get recruitment assistance for employing a minimum of 100 employees within a year of beginning commercial operations.[78]

State Governments' and other associations' initiatives for the sector

- *Animation, Visual Effects, Gaming and Comics ('AVGC') policy:*

Karnataka became the first Indian state in early 2012 to unveil a policy for the AVGC sector, recognising its growth potential. The policy's salient features

[78] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

include focussing on bridging the demand-supply gap for people in the sector, attracting global companies in the field, capturing a larger share of outsourced international AVGC work and facilitating a legal framework for IP creation and protection. In addition, the policy envisages an environment that promotes growth of indigenous digital content, education and entertainment for masses, and the setting up of a center of excellence with state-of-the-art facilities.

The policy acts as a catalyst for the industry and for developing AVGC parks similar to a special economic zone model.

Key challenges

Lack of government initiative in India versus benefits provided by other countries

Overseas animation markets such as Malaysia, China and Philippines are turning out to be more attractive destinations than India for outsourcing work due to the advantage of the many Government driven grants and incentives. For example, the Malaysian Government provides various incentives such as:

• Content funding support which includes support for documentaries and films production (local or coproductions).

• Incentives and financing – through cash rebates, entertainment tax rebates and creation of an investment arm to spur Malaysia's creative industry via strategic and innovative funding in the form of equity or debt investments.

• Market Export Support – In order to assist SMEs to expand to overseas market, the Government of Malaysia through the Market Development Grant

('MDG') provides grants to companies to partially defray the high cost of export promotion.

On similar lines, the Chinese government has announced preferential VAT and Business Tax ('BT') policies beginning retrospectively on January 1, 2013 where animation enterprises are subjected to 17 per cent VAT rate for the domestic sale of self developed and manufactured animation software. The export of animation software is VAT exempted at 3 per cent; BT rate applies to animation enterprises providing certain services.

The Indian animation industry could benefit considerably from Government support through measures such as reservation of a certain number of hours of domestically produced content on channels, tax benefits and treaties.

India needs to position itself as a key Asian co-production partner in the AVGC sector in the global market. This will need a few key policies to be implemented on a war footing, such as Co-production treaties, Strong Indian presence at global content markets, Kids Media Development Fund and Kids Public Service Broadcaster (DD-Kids). These overdue policy initiatives will also boost export earnings, generate employment and revitalise the industry.

IP Protection

Rampant piracy within the distribution channel eats into a major share of revenues for the producers and distributors. This along with slack IP laws and weak enforcement serves as a deterrent to animation players in India to produce their own IP.

Due to poor funding and the policy framework, animation companies may have to design different structures to deal with the challenges. Here the foreign players comes into picture. With no dedicated governing body, the animation and gaming industry continues to be under the generic National Association for the Software and Services Companies ('NASSCOM'). There is a lot of potential in this industry but a few fundamental problems need to be resolved first, which can go a long way in propelling the industry to the next level.

VFX - RISE OF A NEW HORIZON IN THE INDIAN MEDIA INDUSTRY

Overview

In recent years, the Indian media and entertainment industry has seen a rapid increase in the use of visual effects ('VFX') in mediums such as films, television and advertisement. The domestic market is seeing bigger budgets for VFX in films, television shows and advertisements in order to provide an enhanced visual experience to viewers.

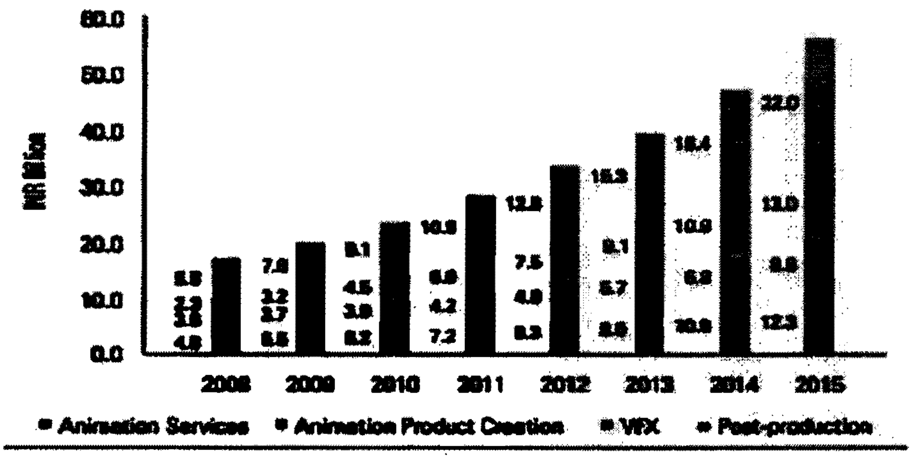
Co-production deals in India on the rise

Co-production has emerged as a popular strategy for studios in many countries as it provides flexibility while working with smaller studios and brings in new and fresh creativity from other countries. As co-production has increased, VFX studios in India have become popular partners of studios in Europe, Japan, and North America.

Improved capability and perception of the Indian studios is encouraging for the outsourcing pie of the VFX services in India. Ethyrea Films(California) has successfully concluded negotiations and announced a USD9 million dollar visual effects co-production deal with early this year.[79]

[79] www.animation-boss.com

Size of Animation and VFX Industry in India



Source: KPMG analysis and industry interviews

What the future holds

Most believe that VFX will only see growth in the Indian film industry. One of the main reasons for increasing use of VFX in Indian films is that writers, producers and directors are increasingly touching upon new genres and stories which are impossible to make without extensive involvement of VFX professionals. Here foreign investment comes into the scene and plays role.[80]

[80] FICCI-KPMG Indian Media and Entertainment Industry Report 2014, last visited on 9th of May 2014

PUBLICATION AND PUBLICITY

PUBLISHING - Sector Profile

Books have always been regarded as an important media for the development and promotion of human values. They act as catalysts for the advancement of a nation. They record new ideas, preserve and communicate knowledge, impart education and values, and aid the overall development of an individual. The publishing industry in India is counted among the top seven publishing nations in the world. With an estimated market of INR 10,000 crores, India ranks third after the US and UK in English language publishing.[81]

With the coming of the Digital age the nature of the industry has changed. The advancement in technology and Indian's skilled manpower resource, makes the country a major outsourcing hub for print and pre-publishing services in the world, be it print, design or editorial. The sector has tremendous potential, both in the domestic as well as the export markets.[82]

Currently the sector is witnessing a Compound Annual Growth Rate (CAGR) of 30%. The importance of the Indian market has been recognised the world over, to the extent that India was the market focus at the 2009 London Book Fair. From a humble start under British scrutiny, the sector presently produces 90,000 new books a year in 24 languages including English.

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[81] Athukorala Prema-chandra, "Outward Foreign Direct Investment from India" Asian Development Review, vol. 26, no. 2, pp. 125–153, last visted on 9th of May 2014

[82] http://www.ficci.com/sector/86/Project_docs/Publishing-sector-profile.pdf, last visited on 8th of May,2014

The Indian publishing market is non-homogenous and is structured according to region and language. The 24 Indian languages including English give ample scope and variety to the Indian publishing industry. More than half of the total titles published in India are in Hindi and English, with Hindi constituting about 26%, followed by English at 24%. The textbook market in India is dominated by the government. Prior to the setting up of the NCERT in 1961, the textbook market in India was domination by a handful of foreign publishers. Currently, the government (NCERT, State Text Book Boards, NBT, and Publishing Division, combined) is the largest publisher in the country.[83]

The Government allows 100 percent FDI to publishing houses across the country to make India a publishing hub, by utilising the vast English-speaking technical manpower. There is a huge scarcity of researched data on the publishing industry. Various estimates have been put forward as to the capacity of the sector. However, most fall short of providing the true potential of the sector. In view of this limitation and the fact that the knowledge sector in India is growing at a exponential rate, we can clearly opine that the Indian publishing industry in India is truly a colossus—a giant in slumber, which needs to be awakened and given its due status and identity. Keeping in view the huge importance of books and the tremendous potential of the publishing sector, FICCI will serve the needs of the industry in the following ways:

- Address key issues confronting the publishing industry, both in terms of policy and trade, and work for advocacy.
- Provide leadership in the area of publishing, both trade and policy.

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[83] FICCI-KPMG Indian Media and Entertainment Industry Report 2014, last visited on 9th of May,2014

- Represent Indian publishing community at international forums; and look for opportunities for Indian publishers abroad.
- Facilitate the creation of a robust library system in India.
- Identify gaps and create opportunities for Capacity building in publishing Industry.
- Conceptualise and develop programmes for the support and benefit of the publishing sector.

With a view to service the sector, FICCI started with organizing Publication from 2011. The programme focused on key policy / regulatory issues confronting the publishing industry. The conference also deliberated on trade related issues, National Book Promotion Policy, IPR, Digital publishing, rejuvenation of libraries, export potential of the industry, children's publications, etc.[84]

the government has announced the guidelines by allowing 100 per cent fdi in the advertising sector through the automatic route. the government also liberalised the conditions for 100 per cent fdi in the film industry. "with a view to further liberalising the fdi regime, the government has permitted upto 100 per cent fdi on the automatic route in the advertising sector," a press note issued by the department of industrial policy and promotion said here. the new guidelines follow a cabinet decision earlier this month liberalising foreign investment norms in the sector. the earlier fdi limit in advertising was 74 per cent. conditions for fdi upto 100 per cent in the film sector have also been relaxed further including waiver of a minimum foreign equity investment requirement of $2.5 million for the single largest equity shareholder and $1 million in other cases. similarly,

[84] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

other conditions such as the requirement of a minimum paid-up capital of $10 million in the case of the single largest equity shareholder and at least $5 million in other cases have also been removed. another conditionality allowing 100 per cent fdi only to companies with an established track record in films, tv, music, finance and insurance has also been removed along with a provision of dividend balancing.[85]

[85] Press Note 2 (2000 series) dated the 11th February, 2000 enclosing the sector specific guidelines for Foreign Direct Investment (FDI), *inter alia* includes the following provisions for the **Advertising and Film sectors**:

Automatic approval is available for the following:

- Up to 74% FDI in Advertising sector.

- Up to 100% FDI in Film industry (i.e., film financing, production, distribution, exhibition, marketing and associated activities relating to film industry subject to the following:

I. Companies with an established track record in films, TV, music, finance, and insurance would be permitted.

II. The company should have a minimum paid up capital of US$ 10 million if it is the single largest equity shareholder and at least US$ 5 million in other cases.

III. Minimum level of foreign equity investment would be US$ 2.5 million for the single largest equity shareholder and US$ 1 million in other cases

IV. Debt equity ratio of not more than 1:1 i.e. domestic borrowings shall not exceed equity

V. Provisions of dividend balancing would apply.

2. With a view to further liberalizing the FDI regime, the Government have permitted FDI up to 100% on the automatic route in the advertising sector. FDI up to 100% in the film sector, which is already on the automatic route, will not be subject to the conditions indicated at I to V above.

3. The provisions of Press Note No. 2 of 2000 series stand modified to the above extent.

CHAPTER 4 : R&D and IPR protection with regard to FDI

Introduction

Intellectual property rights (IPR) reform has been underway since the 1990s and actively pursued by most developing countries after the World Trade Organization's (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) came into effect on January 1, 1995 (Commission on Intellectual Property Rights [CIPR], 2002).[86] Under the terms of TRIPS, current and future members of WTO must adopt and enforce strong non-discriminatory minimum standards of intellectual property protection in each of the areas commonly associated with IPRs including patents, copyrights, trademarks, and trade secrets. Beyond strengthening of IPR, the TRIPS Agreement is the first multilateral trade accord that aims at achieving partial harmonization in an extensive area of business regulation, as it seeks to establish deep integration of domestic regulatory policies across countries.[87]

Advocates of IPR have promoted its strengthening, in part, by underscoring the incentives that IPR generate for innovation and its real world application. Obviously, the strengthening of IPR globally benefits the developed nations who own most of the intellectual property, however, developing countries are also expected to benefit in terms of FDI and technology transfer where there is an

[86] Intellectual Property Rights, Investment Climate and FDI in Developing Countries Samuel Adams Ghana Institute of Management and Public administration
[87] THE RELATIONSHIP BETWEENINTELLECTUAL PROPERTY RIGHTS AND FOREIGN DIRECT INVESTMENT by CARLOS A. PRIMO BRAGA AND CARSTEN FINK

incentive to disseminate and share in the benefits of Research and Development (R & D).[88]

IPR has therefore become part of the infrastructure supporting investments in Research and development that are important in innovation and new business development. By granting temporary exclusive rights on inventions, IPR allows the right holders to price their products above marginal cost, and hence recoup their initial research investment costs.[89]Accordingly, the creation of an effective IPR regime has an effect not only on the incentive for new knowledge creation and its dissemination, but even more importantly the business location decision of firms, prices, and the market structure. Kalande (2002), for example, noted that most multinational enterprises (MNEs) are willing to invest in non-manufacturing sectors or extractive industries rather than invest in technology intensive activities in countries with inadequate IPR protection. Similarly, Nicholson (2002) claimed that an enhanced IPR protection encourages firms to undertake overseas production due to the expanded protection of their ownership advantages.[90]

Understanding how FDI inflows are impacted by IPR is important because many studies do show that FDI plays an important role in the development process. Apparently, the flow of FDI to developing countries in the right sectors of the economy would provide these countries with the opportunity to benefit from technological change. The Global Development Finance (2005) indicates that

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[88] Does India Need a Lot More FDI?,Author(s): V. N. Balasubramanyam and David Sapsford Source: Economic and Political Weekly, Vol. 42, No. 17 (Apr. 28 - May 4, 2007), pp. 1549-1555,Published by: Economic and Political Weekly,Stable URL: http://www.jstor.org/stable/4419522. Last visited on 9th of May,2014

[89] Nunnenkamp, Peter; Spatz, Julius - Intellectual property rights and foreign direct investment : a disaggregated analysis

[90] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

FDI has become one of the stable sources of development finance in developing countries.[91]

Supporters of a strong IPR system attribute its importance to its double function of promoting innovation and FDI inflows, which are important determinants of growth. This is because strong IPR encourages holders of intellectual property to trade and invest, as adequate protection of IPR assure foreign investors that their technology will not be leaked to competitors. As a result, the smaller risk of imitation leads to a larger net demand for protected products . A country that enhances its IPR regime may attract additional knowledge intensive products, which will otherwise be unavailable on the local market or it may attract FDI; in either case, international technology transfer is likely to flow.[92]

To further understand how property rights protection affects a firm's decision to invest abroad, it is useful to appreciate the economic incentives firms have in investing abroad or becoming multinational. The most widely accepted framework in this regard is Dunning's (1981) OLI model. Dunning's (1981) OLI paradigm explains the activities of multinational enterprises (MNEs) in terms of ownership (O), Location (L), and internalization (I) advantages. The ownership advantages are generally intangible assets in the form of superior technology, organizational skills, trademark, trade secrets, patent, reputation, and innovative capacity, which other firms do not have. Such advantages confer market power and costs efficiencies that provide incentives to undertake multinational organization and operation.

[91] The role of the Intellectual Property Rights in the relation between Foreign Direct Investment and Growth by Mila Kashcheeva,Clemson University August, 2011

[92] The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer Keith E. Maskus Professor of Economics University of Colorado, Boulder Prepared for the Conference "Public-Private Initiatives After TRIPS: Designing a Global Agenda"Brussels, July 16-19, 1997

However, ownership advantages by themselves are not enough for overseas investment because many firms that possess intangible assets may choose to serve foreign markets by arm's length trade relationships (Braga and Fink, 1998). Even with ownership advantages, MNEs must still decide on where to invest. These decisions depend on the country conditions or characteristics, called the location advantages, which include factors like market size, transportation and communication infrastructure, skilled labor and favorable local government regulatory environment. Such advantages make it profitable to locate a business abroad. This means that FDI is not only "pushed" by firm specific advantages of the investor but may also be "pulled" to locations that are important sites of innovation activities.Further, it might be more profitable for the firm to internalize production rather than license or export goods on the open market. By being able to exploit their knowledge-based assets (KBA) within the confines of international operations, firms are able to overcome the high transaction costs associated with regulating and enforcing contracts and protecting quality. Thus, internalization explains why a foreign firm prefers to retain full control over the production process or try to acquire a subsidiary rather than license its intangible assets to local firms or an independent foreign firm.[93]

The discussion above shows that firms that create intellectual property are less likely to engage in foreign production in countries with an inadequate IPR regime. This is because weak IPR protection increases the probability of imitation and risk of the licensee acting in direct competition with the seller. intellectual property owners will have weak incentives to market their

[93] Intellectual Property Rights, Investment Climate and FDI in Developing Countries Samuel Adams Ghana Institute of Management and Public administration

technologies in developing regions with poor IPR regime due to risks of infringement.[94]

On the other hand, a strong IPR system could provide knowledge based firms with market power and might actually cause firms to divest and reduce their services to foreign countries . Furthermore, a strong IPR system may have a negative effect on FDI, as it might encourage MNEs to shift from local production to licensing. Also, the ways in which IPR influence FDI are multifaceted and strong IPR alone is not adequate for firms to invest in a country. If they were, large amounts of FDI would have gone to Eastern Europe and Sub-Saharan Africa. On the contrary, China, Brazil, and other high–growth, large market developing countries with weak protection have attracted most of the FDI to developing countries. The net effect of higher levels of IPR protection on FDI is thus theoretically ambiguous. The inability to make strong qualitative predictions stems from the fact that a firm's decision to invest stems not only from the efficiency of patent protection, but also the interplay of market power, free riding, contracting uncertainties, and other features of the international markets for information.[95]

Clearly, the decision to trade, undertake FDI, or license is a complex process, which is affected by many decision criteria and therefore different firms choose different modes of entry due to their relative sensitivity to protection. Firms with natural barriers to imitation tend to choose licensing, and vulnerable firms choose FDI, but stronger IPR may cause substitution between these modes.[96]

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[94] Government of India , ministry of commerce and Industry, Department of Industrial policy and Promotion, Annula Report 2012-2013, last visted on 9th of May,2014

[95] *Ibid*

[96] *Ibid*

Policy Implications

The study's results show that IPR and other social, economic, and institutional factors influence the inflow of FDI into developing countries. Also, the strengthening of IPR in most developing countries has resulted in an increase in FDI inflows. These results have important policy implications. First, developing countries are likely to benefit from the reform of their intellectual property system at the least in terms of increased FDI inflows. Nevertheless, the means by which IPR influences FDI is subtle and complex, and therefore strong IPR alone does not sufficiently generate the desired incentives for firms to invest in a foreign country. In contrast, China and other high growth, large market developing countries with weak IPR have received the bulk of FDI in recent years. Thus, from a policy perspective, IPR reform must be accompanied by proactive policies that encourage improvements in physical and institutional or governance infrastructure, and business climate to improve the chances of attracting more FDI (Dunning and Hamdani, 1997). This is especially important because MNEs are looking for locational advantages and are continuously examining how they can operate their production processes more efficiently.

Second, FDI should be seen as a means and not an end in itself. The way forward for most developing countries is not only to intensify their move toward a more efficient IPR regime, but also intensify their technological R & D to maximize their growth potential. Clearly, the bigger challenge is not just how to attract FDI, but more importantly, how to utilize it in generating the growth that is so much needed to reduce poverty. It must be noted that FDI's growth enhancing effect is possible only when it stimulates domestic capacity of the host country. Consequently, policymakers seeking to strengthen their IPR system must also emphasize FDI that generates externalities to the local economy.

Third, the review of the literature illustrates that where developing countries move to address weaknesses in their IPR system, they tend to experience enhanced access to technology through FDI and licensing. However, an important component of any program to attract high-quality FDI and promote technology transfer is the development of a competent indigenous technological capacity. developing countries can benefit from IPR reform by developing policies to promote competitive markets, but eve more importantly, enhance their capacity to use IPR. Developing countries would therefore need to invest in education and training, which will help to enhance the absorptive capacity of domestic firms to utilize technology from the developed countries to improve their productivity.

CHAPTER 5

BARRIERS TO INVESTMENT IN MEDIA AND ENTERTAINMENT INDUSTRY

A lot more investment can be drawn into the entertainment and media industry if certain sectoral policy barriers can be addressed. Some of the issues that need to be addressed which commonly impacts all segments and need to be addressed urgently include:

1. IPR Issues

The problem of piracy assumes a different proportion in a country such as India with an area of 3.3 million sq. km. and a population of over 1 billion speaking 22 different languages. It impacts all segments of the industry especially films, music and television. Most of the credible efforts today to combat piracy have been initiated by industry bodies themselves. On part of the government, lack of empowered officers for enforcement of anti-piracy laws remains the key issue that is encouraging the menace of piracy. This, coupled with the lengthy legal and arbitration process, is being viewed as a deterrent to the crusade against pirates. The current Copyrights Act too is dated in terms of technology improvements, and above all, it does not address the needs of the electronic media which has maximum instances of piracy today. The draft of the Optical Disc Law to address the need for regulating piracy at the manufacturing stage is still lying with the ministry for approval.

2. Lack of a uniform media policy for foreign investment

The sector currently lacks a consistent and uniform media policy for foreign investment. Some of the inconsistencies include different caps in foreign direct investment in various segments.

3. Level playing field with incumbents

Most sectors of the Indian E&M industry have traditionally operated under various agencies of the Indian government, which were later opened to the private players in various stages. FM radio is one such example where the incumbent All India Radio (AIR) was the sole player in the medium of both AM and FM radio broadcasting. Limited frequencies of FM broadcasting have been opened to the private players but with a licence fee, which is not currently applicable to the incumbent AIR. Similarly, in television segment, all terrestrial broadcasting rights continue to be with the incumbent Doordarshan.

4. Cross-media ownership rules

Media integration is an important tool in the hands of the media industry which by its very nature could lead to anti-competitive behaviour hurting the entire value chain of the industry. The government has been mulling over evolving cross-media ownership rules for which even a public draft has not been evolved as yet. Most E&M sectorial policy documents have an inbuilt compliance clause, which states that companies have to abide by the cross-media rules.

However, in the absence of any draft rules or an established time-frame for evolution of such rules, potential foreign investors can't evolve their long-term investment strategy for India.

5. Lack of empowered regulators

At present, the government has appointed an independent regulator – TRAI – for only television and radio. Here too, the role of the regulator has been restricted to providing recommendations on segment issues to the government, as a result the government has still not acted upon several recommendations by the regulator. Some of the key recommendations include 'issues relating to broadcasting and distribution of TV channels' of which 'addressability in distribution' forms a significant part impacting the largest segment of television.

6. Merging of the FII and FDI caps

Some industry members are of the view that converting the current cap on foreign institutional investment (FII) investment to foreign direct investment (FDI) is not a very encouraging move by the government. FII is primarily considered "hot money" and is invested by foreign funds to make quick returns unlike FDI, which is longer term in nature and is actually invested into the business. FDI in several cases is also accompanied with expertise (such as technology) being brought into the country that helps in the growth and development of the industry. An FII invests like a financial investor with the prime motive of quick appreciation of its invested capital rather than taking a longer-term view of the business, whereas an FDI investor is more in the nature of a strategic investor and is in the business for the long haul. The new policy does not recognise the need for creating an environment that encourages strategic investors in making investments in the sector.

7. Tax treatment of foreign broadcasting companies

The tax treatment of foreign companies in the broadcasting sector in India is emerging as the single most important policy issue deterring foreign investment in the country. Another issue relates to foreign telecasting companies. These foreign telecasting companies do not have any office, business presence or operations in India. Tax assessing officers have been arguing that foreign telecasting companies must have a permanent establishment (PE) in India on account of their agents selling air-time space to India advertisers.

While various bilateral conventions for the avoidance of double taxation do offer a process for re-mediation of double-taxation issues, cases in past have dragged on for five years or more. The dramatic growth in the number of foreign broadcasting companies involved in double-taxation dispute cases in India is becoming well-known, and unless it is dealt with soon, it could become a major impediment to the Indian government's attempt to attract new investors.

To get over with the problems the effective remedy is to Loosen the foreign direct investment limits to boost investment, licensing cable operators, enabling consolidation in the fragmented distribution marketplace, removing price controls on distribution of content and offering tax incentives for addressable digitisation could foster growth in the sector.

CHAPTER 6

CONCLUSION

The media and entertainment industry consists of many different segments under its folds such as television, print, and films. It also includes smaller segments like radio, music, OOH, animation, gaming and visual effects (VFX) and Internet advertising. Entertainment Industry in India has registered an explosive growth in last two decades making it one of the fastest growing industries in India. From a single state owned channel, Doordarshan in the 1990s there are more than 400 active channels in the country. Worldwide, 2010 saw the global economy begin to recover from a steep decline in 2009. Improved economic conditions in 2010 played a major role in a rebound in customer spend. Since the world economy begin to recover from the global financial crisis of 2008, improved economic conditions played a major role in rebound in consumer spend. While India was not critically impacted by the downturn in 2008 and 2009, it demonstrated one of the highest growth rates this year and continued to at a healthy pace. The rising rate of investments by the private sector and foreign media and entertainment (M&E) majors have improved India's entertainment infrastructure to a great extent. As per the recent report by PricewaterhouseCoopers (PwC), Indians are likely to spend more on entertainment in the coming years with a steady growth in their disposable income. And as per the combined survey report by KMPG and FICCI, the entertainment industry in India is expected to expand by 12.5% every year and is likely to reach US$ 20.09 billion by the year 2013. The industry pegged at INR

5808 billion in 2009 as compared to INR 3565 billion in 2005. The Indian Media & Entertainment Industry grew by US$ 12.9 billion in 2009 to US$ 14.4 billion in 2010, a growth of 11 per cent, according to a report by the Federation of Indian Chambers of Commerce and Industry (FICCI) and research firm KPMG. The report also states that backed by positive industry sentiment and growing media consumption, the industry is estimated to achieve growth of 13 per cent in 2011 to touch US$ 16.2 billion. As the industry braces for exciting times ahead, the sector is projected to grow at a CAGR of 14 percent to reach US$ 28.1 billion by 2015.

The entertainment and media industry of India is all set for a big growth trajectory. According to various estimates, India's entertainment and media industry is expected to grow by 18 per cent over the next five years and is expected to become a 1.157 trillion industry by end of this year.Similarly, on regional levels as well the entertainment and media industry of India is anticipated to grow.

The regulatory and business environment for entertainment and media industry of India is also maturing and becoming more favourable day by day. The recent Consolidated FDI Policy of India 2012 by DIPP allowed upto 49% foreign direct investment in broadcasting sector of India.[97]

Now the Indian government has raised foreign direct investment (FDI) limit from 49% to 74% in various services of the broadcast sector, except television news channels and FM radio where the existing 26% limit will continue.

Similarly, online entertainment is the next big thing for studios and broadcasters. The biggest changes are expected in the Internet, television distribution, video games and casinos sectors.

Although this growth and development is happening in many countries yet a majority of this growth is expected from India. Undoubtedly, the huge markets of India is leading that growth. However, we need to consider the legal challenges; especially intellectual property rights (IPRs) issues in India, in order to fully benefit from this growth of entertainment and media industry.

This is so because with the projected growth there are also increasing cases of disputes as well. A majority of these disputes pertain to intellectual property rights (IPRs) issues. Indian media and entertainment industry may face the legal challenges of IPRs laws and cyber law of India. IPRs laws like copyright, trademark, etc may be frequently violated and occasionally invoked to redress IPRs violations of media and entertainment industry in India.

Similarly, online IPRs issues like domain name disputes may also be agitated in the future. Similarly, media and entertainment industry must keep in mind the mandates like "cyber due diligence in India" and other provisions of Information Technology Act, 2000. The cyber due diligence for press and media industry of India is also required.

Media and entertainment industry will also face technological challenges in future. For instance, the issues pertaining to digital preservation of entertainment industry products may assume significance in future. This requires a domain specific and techno-legal expertise that India may not currently possess. This situation requires a shift in the academic and professional education in India that needs to be suitably adopted keeping in mind the contemporary needs.

In nutshell, although the entertainment and media industry growth and challenges in Indiaare imminent yet the legal Issues of entertainment and media industry in India are going to increase. The media and entertainment industry of India must be well equipped to tackle these challenges. In other words, Indian media and entertainment legal challenges must be taken very seriously.

Areas like contract management and arbitration in media industry of India, technology and IPR issues associated with entertainment, advertising and media industry in India, etc also require special attention.

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