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AUDIOVISUAL SERVICES

Background Note by the Secretariat[1]

1. This Note has been prepared at the request of the Council for Trade in Services, with a view to stimulating discussions in the Council on the sector of audiovisual services. It provides background information and updates a previous Note on trade in audiovisual services (S/C/W/40, dated 15 June 1998). This Note focuses on developments and issues considered to be most relevant to the GATS. It is not intended to provide a comprehensive account of the sector; many of the observations contained in the previous Note remain pertinent today.

I. INTRODUCTION

2. The audiovisual sector's importance stems from the fact that it has both economic components as well as social and cultural ones. Government policies often play a significant role in the sector, whether to promote domestic cultural content or ensure diversity and pluralism, protect intellectual property rights, regulate advertising practices, or to proscribe illicit content. Overall, the sector is subject to a number of trade restrictions in various countries. In the WTO, the sector does not benefit from specific commitments from many WTO Members, and has attracted many MFN exemptions.

3. The sector is skill-intensive. It is also a leading user of new technologies and therefore a driver of investments in network infrastructure. Although affected by the recession, audiovisual services have experienced dynamic economic and trade growth over the last decade.

4. The sector has undergone - and will continue to experience - significant change as a result of technological advances, which, among other things, make it easier, in terms of cost, quality and time, to transmit greater amount of content within and across borders; make it possible for content to be distributed on a variety of platforms and devices by diverse operators; and give greater control to consumers over what they want to watch or listen, when, where, and how. This naturally has consequences for economic operators as well as regulators.

5. This Note is structured as follows. Part II discusses the definition of the sector in a GATS context. Part III reviews recent trade and economic trends in the sector. Part IV analyzes GATS commitments and MFN exemptions, and Part V concludes by highlighting some regulatory issues and main trade barriers.[2]

[1] This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

[2] This Note does not address Members' offers in the ongoing negotiations nor commitments undertaken in preferential trade agreements. Neither does it discuss in any detail classification issues. These various topics have been addressed elsewhere, including in JOB(05)/192; S/C/W/40 and S/C/W/78; Roy (2008).

II. DEFINITION OF THE SECTOR

6. In the Services Sectoral Classification List (W/120), audiovisual services fall under Communication Services (Sector 2), along with postal (2.A), courier (2.B), and telecommunication services (2.C), as well as a residual category (2.E - Other). Audiovisual services essentially comprise services relating to television and radio, motion pictures, and sound recording. The W/120 definition of the sector, including corresponding CPC (prov.) categories, is summarized in Table 1.

Table 1: Summary of the Classification of Audiovisual Services according to the W/120

2.D.	Audiovisual services
2.D.a.	Motion picture and video tape production and distribution services (CPC 9611) - containing CPC 96111 (promotion or advertising services), CPC 96112 (motion picture or video tape production services), CPC 96113 (motion picture or video tape distribution services) and CPC 96114 (other services in connection with motion picture and video tape production and distribution).
2.D.b.	Motion picture projection services (CPC 9612) - containing CPC 96121 (motion picture projection services) and CPC 96122 (video tape projection services).
2.D.c.	Radio and television services (CPC 9613) - containing CPC 96131 (radio services), CPC 96132 (television services) and CPC 96133 (combined programme making and broadcasting services).
2.D.d.	Radio and television transmission services (CPC 7524) - containing CPC 75241 (television broadcast transmission services) and CPC 75242 (radio broadcast transmission services).
2.D.e.	Sound recording (no CPC correspondence indicated)
2.D.f.	Other (no CPC correspondence indicated)

7. It is interesting to note, first, that two categories have no suggested CPC definition: the residual category "other" and "sound recording". Second, a number of services that have, in the business world, a close relationship to audiovisual services are classified elsewhere under W/120. For example, performing of live concerts falls under sector 10.A - Entertainment Services (CPC 9619), rental of videotapes under 1.E.e (other - Rental/Licensing Services without Operators (CPC 83202)), or wholesale and retail of merchandise under sector 4 - Distribution Services (e.g. the wholesale of cinematographic films is covered under CPC 62263, and the wholesale and retail of video tapes under CPC 63234).

8. As regards services relating to motion pictures, 2.D.a (CPC 9611) and 2.D.b (CPC 9612) cover the production, distribution and projection, but also a variety of services auxiliary to production and distribution, such as dubbing or editing. Concerning television, the classification includes not only the production of programming, but also the transmission of television signals (CPC 7524, which

includes CPC 75241: Television broadcast transmission services). However, such other services as the provision of television programming packages via cable and direct-to-home satellite services, are not explicitly mentioned in the existing classification under 2.D.[3]

9. Having been developed more than 15 years ago, the W/120 and relevant CPC classifications, naturally, do not explicitly reflect the current market realities given the technological changes that have occurred in the sector, e.g. the fact that audiovisual content can now be transmitted through a much wider variety of means, and that networks used to carry audiovisual content nowadays are, in many cases, not dedicated exclusively to audiovisual content, but are also used to provide various other types of services (e.g. cable systems to carry television programming, telephony and Internet). That said, a specific commitment under GATS on telecommunication services (2.C.) would generally cover the transmission of signals, but would not entail a commitment on the supply of audiovisual content or, for that matter, the supply of other services, be it legal advice or financial services.

III. ECONOMIC AND TRADE PROFILE

A. TRADE STATISTICS

10. Statistics on international trade in audiovisual services have limitations, but nevertheless permit to highlight certain key trends. Balance-of-payments data show that trade in audiovisual and related services has expanded rapidly over the last years. Global exports have grown at an average annual rate of 8 per cent since 2000 to reach US$35 billion in 2007.[4]

11. BOP data also suggest that the United States (US$15 billion) and the European Communities (US$9.9 billion or US$4 billion without intra-EC trade) are the largest exporters. Other top exporters include such developing countries as China, Mexico or Argentina (see Table 2). A number of other developing countries (e.g. India, Turkey or Malaysia) do not figure in this list simply because they do not collect BOP data at this level of disaggregation.

12. Table 3 suggests that the preponderant share of US exports go to other developed countries: 60 per cent to the European Communities alone, and 80 per cent if Canada, Japan and Australia are added. In the case of the EC, while most trade is intra-European (59 per cent), the US is the main export market (17.8 per cent of total EU exports). Statistics on Hong Kong China's exports highlight the importance of regional trade in the sector, with more than a quarter of exports (28 per cent) going to Malaysia, China and Japan combined, 13 per cent to the US, and 7.6 per cent to the European Communities.

[3] DTH satellite services are explicitly excluded from the definition of CPC 75241, while television programming packages via cable are included in CPC 7530. These services are not listed explicitly elsewhere in W/120 either, although they would presumably be captured by a residual category. It can be recalled that, according to the Scheduling Guidelines, it is possible to depart from the CPC definitions included in W/120, and various Members have done so (see Part IV). See the *Guidelines for the Scheduling of Specific Commitments under the GATS* (S/L/92), para. 23-24.

[4] WTO Secretariat estimates on the basis of available data.

Table 2: Major exporters and importers of audiovisual and related services, 2007

(Million dollars and percentage)

Rank	Exporters	Value	Share in 15 economies	Annual percentage change	Rank	Importers	Value	Share in 15 economies	Annual percentage change
1	United States	15043	51.5	23	1	European Union (27)	13893	63.7	1
2	European Union (27)	9962	34.1	14		Extra-EU (27) imports	6315	29.0	-16
	Extra-EU (27) exports	4063	13.9	6	2	Canada	2001	9.2	6
3	Canada	2021	6.9	-3	3	United States	1440	6.6	32
4	China	316	1.1	130	4	Japan	1044	4.8	6
5	Mexico	308	1.1	-19	5	Australia	798	3.7	13
6	Argentina	294	1.0	21	6	Russian Federation	624	2.9	36
7	Norway	272	0.9	18	7	Brazil	456	2.1	18
8	Hong Kong, China	249	0.9	-3	8	Korea, Republic of	381	1.7	66
9	Russian Federation	196	0.7	28	9	Norway	300	1.4	-21
10	Korea, Republic of	183	0.6	8	10	Mexico	259	1.2	-21
11	Australia	139	0.5	-8	11	Argentina	212	1.0	24
12	Japan	126	0.4	22	12	China	154	0.7	27
13	Albania	61	0.2	59	13	Ecuador	126	0.6	9
14	Ecuador	44	0.1	7	14	Albania	59	0.3	83
15	Colombia	21	0.1	-24	15	Croatia	55	0.3	64
	Above 15	**29235**	**100.0**	**-**		**Above 15**	**21800**	**100.0**	**-**

Note: Based on information available to the Secretariat. As certain major traders in personal, cultural and recreational services do not report the item audiovisual and related services separately, they may not appear in the list.

Source: WTO (2009), International Trade Statistics.

13. Overall, trade in audiovisual and related services, when measured on a balance-of-payments basis, only represents a small part of total commercial services trade (approximately 1 per cent). The relative importance varies across countries, and this is due in part to statistical limitations. In the case of the US, the largest exporter, exports of audiovisual and related services represent 3.2 per cent of total exports of commercial services, and is one of the services sectors that generates the largest trade surpluses (US$13.6 billion in 2007) - behind "royalties and license fees" (US$57.6 billion), which ranks first.[5]

14. Available balance-of-payments data on audiovisual services significantly underestimates global trade in this sector. As noted earlier, not all WTO Members collect statistics at this level of disaggregation. Moreover, as for any other sector, BOP data only capture a fraction of trade in services as defined by the GATS' four modes of supply. BOP data focus on cross-border trade, thus omitting mode 3, which can be very important in the sector.

[5] United States International Trade Commission (2009).

Table 3: Exports of audiovisual and related services of selected economies by destination, 2007

(Million dollars and percentage)

	Value	Share	percentage change				Value	Share	percentage change		
	2007	**2007**	**2004**	**2006**	**2007**		**2007**	**2007**	**2004**	**2006**	**2007**
United States						European Union (27)					
World	**15043**	**100.0**	**13**	**21**	**23**	**World**	**9962**	**100.0**	**-1**	**-8**	**14**
European Union (27)	9048	60.1	...	...	...	European Union (27)	5899	59.2	4	-8	20
Canada	1218	8.1	20	25	41	United States	1769	17.8	-10	-10	4
Japan	1085	7.2	8	19	9	Japan	371	3.7	-15	-33	0
Australia	668	4.4	20	31	34	Switzerland	308	3.1	-28	-48	-2
Brazil	467	3.1	40	16	66	Norway	245	2.5	-2	-18	20
Above 5	**12486**	**83.0**	-	-	-	**Above 5**	**8592**	**86.2**	-	-	-
Mexico	384	2.6	13	0	61	Australia	228	2.3	0	-6	19
Korea, Republic of	265	1.8	40	90	79	Brazil	104	1.0	15	4	17
China	169	1.1	71	22	177	India	103	1.0	192	...	194
Norway	132	0.9	40	51	59	Korea, Republic of	74	0.7	-4	37	36
South Africa	124	0.8	4	21	19	Russian Federation	65	0.7	28	64	30
New Zealand	114	0.8	15	32	46	Singapore	64	0.6	93	16	7
Switzerland	106	0.7	43	109	58	Canada	57	0.6	0	9	0
Taipei, Chinese	89	0.6	26	176	11	South Africa	52	0.5	10	55	-6
Bolivarian Rep. of Venezuela	84	0.6	-9	-14	29	Hong Kong, China	43	0.4	31	6	5
Hong Kong, China	77	0.5	22	35	33	Turkey	31	0.3	3	56	22
Above 15	**14030**	**93.3**	-	-	-	**Above 15**	**9412**	**94.5**	-	-	-
Canada						Hong Kong, China					
World	**2021**	**100.0**	**7**	**10**	**-3**	**World**	**249**	**100.0**	**-1**	**5**	**-3**
						Malaysia	44	17.7	...	0	-8
						United States	33	13.3	...	...	...
						European Union (27)	19	7.6	...	...	...
						China	17	6.8	-4	0	31
						Japan	8	3.2	...	-17	60
						Above 5	**121**	**48.6**	-	-	-

15. Further, the definition of "audiovisual and related services" for the purpose of BOP statistics (BPM5) does not include the purchase and sale of rights to motion pictures, television and radio programmes, or recorded music.[6] In addition, fees in relation to the authorized use of music, motion pictures, television programmes (e.g. charges or licenses to reproduce and/or distribute) are excluded, as they rather pertain to the BOP category "royalties and license fees".[7] The newest edition of the IMF *Balance of Payments and International Investment Position Manual* (BPM6), from December 2008, provides for further modifications and clarifications in relation to trade statistics on audiovisual services.[8]

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[6] See IMF (1993). BPM5 provided the basis on which IMF members have collected data over the last years.

[7] Nevertheless, the category "audiovisual and related services" includes fees for distribution rights sold to the media for a limited number of showings in specified areas. See UN et al. (2002). The BOP category also diverges from the GATS classification because it covers such activities as fees to actors, directors and producers involved in live productions, which in W/120 would fall under Sector 10 - Recreational, Cultural and Sporting Services.

[8] In the BPM6, all charges in relation to the use of radio, television, motion pictures, or music are excluded from audiovisual and related services and included in "changes for the use of intellectual property" (which replaced "royalties and license fees"). Another modification in BPM6 is that the sales of original rights to such products as motion pictures, television programming or sound recordings are included under "audiovisual and related services", instead of "royalties and license fees". A further clarification is that, unlike BPM5, BPM6 specifies that mass-produced video or sound recordings that are sold outright or for perpetual use are included in the "audiovisual and related services" if downloaded, i.e., delivered electronically, while those

16. As noted above, data on trade flows under mode 3 are not captured by balance-of-payments statistics. Foreign Affiliates Trade in Services (FATS) statistics provide a good measure of mode 3 trade, but are only available for a few Members and typically not at a sufficiently disaggregated level. For example, in 2006, sales by affiliates of US multinational companies abroad in recreational, cultural and sporting activities (of which audiovisual forms a large part) totalled US$23.7 billion. Such sales totalled US$6.9 billion for foreign affiliates of Japanese companies, and US$1.5 billion in the case of Germany.[9]

B. ECONOMIC IMPORTANCE

17. The global market for the audiovisual sector was estimated at US$516 billion in 2008.[10] By way of comparison, the global market for internet access (wired and mobile), for example, was assessed at US$215 billion, that for internet advertising at US$58 billion, and that for newspaper publishing at US$182 billion in 2008. The TV segment accounts for most of the sector (68 per cent or US$352 billion), followed by film (US$84 billion or 16 per cent), radio (US$49 billion or 9.4 per cent), and music (US$31 billion or 6 per cent). These market segments differ in terms of both their relative importance and recent growth. The television segment has been most dynamic with a 27 per cent growth between 2004 and 2008, while the global market for recorded music has declined by 18 per cent over the same period (9.8 per cent between 2007 and 2008 only), and the one for film has largely been stable. Although its full effects still remain to be assessed, the economic crisis is expected to have an important impact on the audiovisual market, which was estimated to decline overall in 2009, especially the advertising revenue streams.[11]

18. In terms of geographical distribution, North America accounts for 42 per cent of the global audiovisual sector. The fastest growing markets are found in developing countries, however. For example, the average annual growth of India's television industry was 17.4 per cent between 2004 and 2008, while that of its film industry reached 15.6 per cent over the same period. Other developing countries experiencing similar growth rates over recent years include China, Turkey, and Colombia.[12]

19. Additional information on the sector's economic importance can be gleaned from a broad array of studies on the importance in national economies of copyright - or "creative" - industries, of which audiovisual forms an important part. For example, in the United States, core copyright industries were estimated to generate value-added representing 6.4 per cent of GDP and 4 per cent of total employment in 2007. Core copyright industries include audiovisual services, but also the software and press industry, however.[13]

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on physical support (e.g., DVD, CD) are included under general merchandise, not services. See IMF (2008), p. 266. The forthcoming edition of the Manual on Statistics for International Trade in Services will suggest more detailed categories in relation to audiovisual, which should better respond to users' needs in relation to the GATS.

[9] OECD (2009). The US Bureau of Economic Analysis provides a more precise account: the value of services supplied by foreign affiliates of US multinational companies are estimated at US$11.3 billion in 2006 for the movie and sound recording industries alone; sales in the US by affiliates of foreign companies amounted to US$1.3 billion.

[10] The estimation is for the audiovisual sector broadly defined, i.e., including some non-services elements. Computed on the basis of data for TV, radio, motion picture and recorded music in PWC (2009a).

[11] PCW (2009a).

[12] PWC (2009b); PWC (2009a).

[13] See Siwek (2009). Other studies using a similar methodology developed by WIPO can be found at: http://www.wipo.int/ip-development/en/creative_industry/economic_contribution.html See also: UNCTAD (2008), pp. 149-151; KEA European Affairs (2006).

C. RECENT TRENDS IN THE INDUSTRY[14]

1. Motion Pictures

(a) Market Trends

20. Available data on the production of motion pictures highlight an important role for a number of developing countries. India is the largest producer with 1,132 feature films in 2007, followed by the United States, Japan and China (528, 418 and 400 films in 2008).[15]

Table 4: Number of Motion Pictures Produced, 2008 (provisional) [16]

India	1,132	Russia	78
United States	528	Indonesia	77
Japan	418	Canada	75
China	400	Mexico	70
France	240	Switzerland	68
Spain	173	Belgium	64
Italy	155	Thailand	55
Korea (Rep.)	113	Hong Kong, China	53
Argentina	85	Turkey	50
Brazil	82	Poland	46

Source: European Audiovisual Observatory (2008).

[14] The services and companies reviewed here do not necessarily conform precisely with "Audiovisual Services" as described in the W/120, but rather aim to provide an overview of trends in the industry, in particular in relation to motion pictures and television.

[15] EAO (2009).

[16] Data for India, Thailand and Indonesia are for 2007. According to the EAO's new methodology for counting the production of feature films (which includes feature documentaries), the EC-27 has produced 1,033 films in 2007 and 1,145 in 2008.

21. In terms of value of production, however, India trails the United States, with the value of its film production 24-times lower; according to some estimates, the investments of developing countries in film production represent approximately 5 per cent of those of developed economies.[17] When video formats are taken into account, Nigeria ranks among the top producers. Indeed, a UNESCO study estimates at 872 the number of Nigerian productions in 2006. Nigeria's approach differs significantly from the European or American models of production and distribution: producers rely on video rather than film; production costs are much more limited; the videos are not viewed in cinema theatres; the production is typically domestically-owned; and the videos are distributed informally (hard copies sold or rented and private screenings in small- and medium-size businesses), including outside the country, even though piracy is important.[18]

22. While many countries experienced a decline in production from 2007 to 2008 as a consequence of the economic crisis, the trends in production were generally upwards as globally more films were produced in 2008 than in 2004.[19]

23. An important characteristic of the movie market is the dominance of US-based studios. The top companies in terms of global box office revenue are located in the United States and the level of concentration is high, with the releases of six film distribution companies typically accounting for more than 70 per cent of North American box office revenues.[20] US movies derive a significant part of their total receipts from international audiences: of the top 20 films worldwide by gross box office revenue in 2008, 19 were US-produced or co-produced.[21]

24. Even if based in Hollywood, several of the main studios are wholly or partly foreign-owned. These largest film companies are typically part of larger media groups, whose businesses can also include cable television networks, broadcast television, telecommunications, or internet-based business, with movies representing on average 25 per cent of these companies' overall revenues. For example, the Walt Disney Company owns the ABC network, as well as several cable channels (e.g. Discovery, ESPN), while Time Warner owns Time Warner Cable, American Online (AOL), HBO and CNN.[22]

25. Company size is an important asset in terms of being able to diversify risk or negotiate with TV networks or exhibitors. Indeed, motion pictures, like television, require high levels of initial investment. Since these are often high risk, investors tend to invest in a variety of productions. Advertising and distribution represent 30-40 per cent of total costs for major studios.

26. International co-productions are also an important feature of the industry, sometimes between US studios and production companies in the UK (in particular), continental Europe, Australia, New Zealand, or Japan, but also often among European-based companies. On average, between one-third and one-half of productions in the main European film-producing countries have recently been co-productions.[23]

27. Despite the quantity of productions from other countries, the demand for US movies is strong in many foreign markets, at least when measured in box office revenues. For a sample of countries reviewed by the European Audiovisual Observatory, US movies accounted for more than 50 per cent

[17] Cocq and Lévy (2006).

[18] UNESCO (2009); Cocq and Lévy (2006); Barlet (2006).

[19] EAO (2009).

[20] Standard and Poor's (2007). The six companies are: Fox Entertainment Group Inc. (20th Century Fox), NBC Universal Inc. (Universal), Sony Pictures Entertainment (Sony/Colombia), Time Warner Inc. (Warner Bros.), Viacom Inc. (Paramount), and Walt Disney Co. (Buena Vista, Miramax).

[21] EAO (2009), p. 13.

[22] OECD (2008).

[23] Ibid.

of the market share in such countries as Germany (73 per cent), Italy (71 per cent), Spain (72 per cent), UK (65 per cent), Russia (75 per cent), Canada (88 per cent) or Australia (84 per cent). Only in China (61 per cent), Japan (60 per cent), India (91 per cent), Egypt (85 per cent) and the United States (92 per cent) did domestic films account for more than 50 per cent of the market.[24] At the same time, a number of other countries, especially developing countries (e.g. India and Hong Kong, China), increasingly rely on foreign markets for earnings, often markets in the same region, as well as those hosting a large diaspora population.

28. The movie exhibition business has been subject to important pressures and transformations recently. Globally, cinema admissions have been, at best, stagnant in recent years, going from 7.4 billion visitors in 2004 to 7.1 billion in 2008. Asia-Pacific accounts for about 60 per cent of worldwide admissions, even if the region's share of box office revenues is much smaller (24 per cent in 2008) due to lower prices of admission.[25] The movie exhibition segment is much less concentrated at the global level than the production/distribution segments. In national markets, levels of concentration vary: from very fragmented markets in China or India to others such as Thailand, Malaysia or Singapore, where the top exhibitors have more than two-thirds of screens. This industry segment is also less "internationalized", even if some cinema chains, including developing country ones, have operations abroad.

29. Confronted with modest growth, piracy, and competition from other means of movie delivery and consumption (e.g. DVD sales and rentals, video-on-demand), as well as other types of entertainment activities (e.g. video games), the exhibition segment in many countries was modernized via significant investments. Such investments have been associated with the growth of multi-screen theatres, the increasing use of digital technology, and the establishment of venues that provide additional on-site entertainment activities to movie-goers (e.g. games, restoration, etc.). Multiplex cinemas, in particular, permit a better use of space for exhibitors and yields economies of scale. Such transformations have so far mostly taken place in a number of developed countries, as well as, through foreign investment, in such developing countries as Thailand, Mexico, or the Republic of Korea. Investments in these developing countries have been associated with increases in admissions, as well as with greater concentration.[26]

30. Nonetheless, overall, the number of screens per capita in developing countries is still much lower than in developed countries. Developing countries also lag behind in terms of multiplex and digital screens. For example, less than 10 per cent of screens in India were found in multiplexes in 2008, and the country had only 35 digital screens; in the US, multiplexes accounted for 74 per cent of screens in 2008, and there were more than 5,000 digital screens (representing 14 per cent of all US screens and 64 per cent of all digital screens in the world; and up from 324 digital screens in the US just three years previous, in 2005).[27]

31. Movies have initially been viewed in theatres only. These still represent an important revenue stream, but the importance of other outlets has grown over time. For one, television networks offer more opportunities given the diversity of delivery systems and skyrocketing growth in the number of channels in many markets. Second, the sale and rental of DVDs (previously videotapes) have grown sharply in the last decade and outsized box office revenue in some key markets, including the United

[24] Data are for 2008 (provisional), except in the case of India (2007): EAO (2009). Domestic films also account for a significant share in France (45 per cent) and the Republic of Korea (42 per cent).

[25] MPAA (2009).

[26] Cocq and Lévy (2006), p. 74-76: admissions increased by 265 per cent in Thailand, 36 per cent in Mexico, and 123 per cent in South Korea between 1992 and 2002.

[27] EAO (2009); MPAA (2009).

States.[28] However, after an earlier boom, sales of DVDs have declined in 2007 and 2008, in particular in the US, as Blue-Ray HD videos have not offset the decline in DVD sales.

(b) International Production

32. The production of movies involves a degree of international specialization, as production can encompass stages in different countries. The growing use of digital technologies, which permits content to be transmitted across borders efficiently and at low cost, makes it more practicable and interesting for economic actors to undertake phases of production or post-production in different parts of the world (e.g. special effects, animation, editing). A combination of specialized skills and lower costs in a number of countries induce firms to take this route. The same is true for other segments of the audiovisual sector, e.g. the production of television programmes. This greater international divisibility of production and offshoring of production-related tasks also leads to foreign investment as, for example, investors establish or form partnerships in developing countries to seize the opportunity of specialized skills and lower costs, and provide services (e.g. post-production) from these locations to studios located elsewhere in the world.[29] Decisions on whether to offshore certain services, however, may also be affected by concerns over infringements of intellectual property rights in foreign jurisdictions.

33. In addition, the shooting of movies themselves can take place in foreign sites, which often compete to attract productions, including through tax breaks or other advantages. Canada, for example, developed a role as a location for film and television production offshoring. Between 1991 and 2007, almost a third of the US$58 billion spent in Canada on movie and television production was associated with foreign location production; these are estimated to have provided 14,000 direct jobs and 23,100 indirect jobs in 2006/07, and to account for more than 85 per cent of export earnings of the Canadian film and television production industry.

34. A 2006 industry study highlights this trend. It pointed out that between 1998 and 2005, the production value of feature films in the US declined from US$3.9 billion to US$3.4 billion, while production outside the US, in contrast, more than doubled over the same period, growing from US$1.6 billion to US$3.8 billion. In other words, the proportion of total production spending occurring in the US went from 71 per cent down to 47 per cent, while that of the rest of the world rose accordingly.[30] Main destinations for such US movie production abroad include Canada, in particular, as well as the UK, Australia, and New Zealand. Africa accounted for 8 per cent of spending in 2005 (US$314 million).

35. Production companies do not only go abroad during a limited time span to shoot a movie, they also invest and establish partnerships abroad. For example, Warner Bros. signed movie deals with People Tree Films and Tandav Films, Indian companies. Developing country companies are also venturing abroad, as highlighted by Reliance ADA Group's association with Dreamwork studios, where it will hold a 50 per cent stake.[31] Another example is the Mexican multiplex operator

[28] According to Screen Digest, consumers worldwide (excepting North America) spent US$26.4 billion on video software in 2008 (videotape, DVD, and Blue-ray), of which US$18.1 billion was spent on buying DVDs: Screen Digest, Press release, 15 June 2009. In the US, sales of DVDs amounted to US$22 billion in 2009 (EAO (2009)). According to Media Control GfK International, a research firm, sales of videogames were for the first time bigger than those of DVDs in 2008: http://www.videobusiness.com/article/CA6631456.html?desc=topstory

[29] Schwender and Leet (2008).

[30] CEIDR (2006). This study looks at feature films released in the US, including foreign ones, that grossed over US$500,000 at the box office in North America. See also: Davis and Kaye (2009), and Chase (2008).

[31] *Wall Street Journal*, "Spielberg, India's Reliance to Form Studio", 20 September 2008.

Cinepolis, which has established a subsidiary in India and announced plans to open 500 movie screens over the next seven years.[32]

(c) Technological Developments

36. Many activities in the motion picture value-chain are already substantially digitised, in particular the pre- and post-production phases, e.g. production design, special effects, editing. However, this is not the case for the shooting and distribution segments, as most motion pictures are normally still shot on cinematographic film. Digital cinema facilities, which are growing rapidly, but remain a small fraction of total screen capacity, may accelerate the conversion to full digitisation of the value-chain.[33] Among other things, this would greatly reduce duplication and distribution costs for producers, and provide customers with enhanced viewing experience. However, digitisation may be more difficult to achieve in the movie business than in, say, the television segment, because exhibitors have to bear important costs to equip themselves with the new technology, while in television this is partly done with government assistance or through purchases of new equipment by final consumers.

37. Online distribution of motion pictures is growing rapidly, but remains limited in terms of its overall economic importance, even if several companies are now offering such services. This is due in part to competition from sale and rental of DVDs (including online sale or rental where the good is subsequently shipped), but also the growing use of television services. The downloading of motion pictures on the PC takes much more time than music or other types of videos, while streaming requires high bandwidth and means that content is generally not transferable to other devices. In OECD countries, various companies are active in the online distribution of motion pictures and videos (excluding online sale/rental of hard copies), mostly operated by communication and media firms although non-media companies are also involved, such as Wal-Mart in the US.[34] This still represents a small share of the overall market, but it is expected to gain steam in main markets as the major film studies and television networks now license content to such providers as Google Video, MSN video, or Yahoo Video, while Apple's i-Tunes now provides for movie downloads in several countries. Major studios also provide downloads of movies through their website. Game consoles, when connected to the Internet, offer a download service as well (e.g. Sony's PlayStation 3 and Microsoft's Xbox 360).[35] Like for other audiovisual content, online distribution of motion pictures raises risks of piracy.

2. Television and Video

38. Largely as a result of technological advances, the television market has experienced important changes over the last 10-15 years. This is exemplified by the increase in content offering due to the rise in the number of channels and the emergence of competing networks (e.g. satellite, cable), as well as consumers' greater capacity to exercise control over what they want to watch and when.

39. The global television market was estimated at US$354.4 billion in 2008, up 26 per cent from 2004. This is composed of US$186 billion for the subscription and license fee market (e.g. cable subscription, pay-per-view, video-on-demand, mobile TV, public TV license fees), and US$168.3 billion with respect to television advertising. The "subscription and license fee" segment has experienced the most rapid growth lately and is worth more than the "advertising" segment since 2007. Within "subscription and license fees", video-on-demand accounted for US$4.6 billion in 2008, more than twice as much as in 2005, but represented 2.5 per cent of that market, while mobile TV

[32] PWC (2009b).
[33] OECD (2008).
[34] OECD (2008).
[35] Standard & Poor's (2007); EAO (2009).

accounted for less than 1 per cent. In the "advertising" segment, the multi-channel market (e.g. satellite, cable, digital terrestrial) has been rising rapidly (39 per cent from 2004 to 2008) and accounts for 26 per cent of advertising spending. The terrestrial component accounts for 74 per cent.

40. North America, Europe and Japan account for more than three-quarters of the global television market - mainly attributed to the "subscription/license fees" component rather than to the "advertising" one -, even though the most dynamic market growth has occurred in developing countries such as India, China, Brazil, Argentina or South Africa.

41. In a number of developed countries, European in particular, the introduction of competition in the television market first took place through the opening of conventional free-to-air television to private operators, and was later followed by the development of subscription television (e.g. through cable, satellite). In contrast, in many developing countries, the conventional segment has evolved less, as it often continues to be dominated by monopolies or duopolies. In these countries, the introduction of new actors and the impact of competition has mostly resulted from the development of multi-channel, subscription television. In the conventional segment, in a number of countries, the market is sometimes dominated by public operators relying on advertising (e.g. China, India).[36] In other developing countries, conventional TV licenses have been granted to private operators, but without reversing the dominance of the public operator (e.g. Nigeria, Burkina Faso). That said, private operators have managed to challenge the dominant player in such developing country markets as Mexico or the Republic of Korea.[37] In both developed and developing countries, access to the conventional TV market is often subject to foreign ownership restrictions.

42. A key development in the sector has been the surge in the number of channels and, therefore, of TV programming on offer.[38] This trend, facilitated by technological developments – resulting in a shift to cable, satellite or IPTV, as well as from analogue to digital - is set to further intensify. This contrasts with the conventional free-to-air analogue broadcasting with limited spectrum. Worldwide, the proportion of households receiving television programming via cable, satellite, or DSL has increased significantly. For example, in the US, this share amounted to 87 per cent in 2005, compared with 56 per cent in 1990. Over the same period, the audience share of all traditional broadcast stations during prime time fell from 80 per cent to 53 per cent.[39] TV advertising has also followed audiences to channels dependent on satellite or cable transmission. For example, in India, the public broadcaster's share of the advertising market declined from 75 per cent in 1995 to 36 per cent in 2002.[40]

43. Despite the rapid growth of multi-channel TV, its penetration rate is still relatively low in developing countries, which suggests important potential for future growth in the sector. For instance, the penetration rate of multi-channel television was 47 per cent in India, 30 per cent in China, below 20 per cent in the Philippines, less than 5 per cent in Thailand, and 18 per cent in Latin America. Accordingly, free conventional television still attracts most of the audience in developing countries. In contrast, in developed economies, the penetration rate of multi-channel television is on average more than two-thirds of TV households.[41]

44. In developing countries in particular, the advent of cable or satellite TV transmission has permitted the arrival of new players. It also allowed public operators to launch new channels, and

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[36] Cocq and Lévy (2006), pp. 42-44.

[37] Ibid, pp. 44-46.

[38] EAO (2008) estimates that over 5000 TV channels are established in the European Union. There is an additional 400 channels originating from third countries that are available to EU consumers.

[39] Standard and Poor’s (2007)

[40] Cocq and Lévy (2006), p. 47.

[41] OECD (2007); Cocq and Lévy (2006), pp. 48-51.

provided the opportunity for new and old players to strike partnerships with foreign providers. In India, liberalization in the cable and satellite television industry from the 1990s reportedly has attracted foreign investment, spurred the growth of the television programming production industry as a result of the upsurge of channels offered, led to a general upgrade of technologies and improvement in quality across the sector, encouraged Indian exports of audiovisual services, and widened the choice available to Indian viewers.[42]

45. The expansion of delivery platforms and the increase in the number of channels offered has meant an increase in the shelf-space for content, therefore providing greater opportunities for trade in television programming. Like for motion pictures, the United States is the main exporter, sourcing more than half of broadcast fiction programming in the European Communities.[43] In EC Member States, the proportion of imported fiction (non-EC + extra-EC) appears higher in smaller countries, e.g. Denmark, Belgium, and Austria. The same seems true in terms of TV channels; larger EC countries such as France, Germany, Italy, Spain and the UK have significantly more national and regional channels than such smaller Member States as Estonia or Malta, which rely to a greater extent on international channels (almost 50 per cent of their digital terrestrial offer).[44] US programming also reaps large market shares in other English-speaking countries (e.g. Canada, Australia, and New Zealand), while it does not dominate in such other OECD countries as Japan, Mexico, Turkey or Korea.[45]

46. Although comparable data is scarce, evidence suggests that foreign programming is significant in many developing countries, especially on multi-channel platforms. However, given the still prevalent role of conventional free television, for such countries as India, China, Mexico, Korea and Thailand, the most watched programmes tend to be domestic ones - in 2003, the top 10 programmes in terms of audience were domestic in these countries. In some cases, such results may be linked to government restrictions or support programmes. According to a study covering 72 countries, 71 per cent of the most popular programmes are of domestic origin, 12 per cent are from another country in the region, and 9 per cent from the US.[46] There is much variation across countries though. In Africa (e.g. Senegal and Burkina Faso), the programming of fictions on convention television often relies on free or low cost foreign content (e.g. European, American or Latin American).[47]

47. The development of multi-channel television also incited further development of production firms and exports in a number of countries. In addition to India, Mexico is also an important producer and exporter of television programming. Many countries export television programming, mainly to regional markets, e.g. China, Japan (animation in particular), Brazil, Argentina.

48. Television transmission services have traditionally been less internationalized than programming or packaging (i.e., channels) segments. Nevertheless, foreign investment has grown strongly recently, especially in satellite and cable transmission, since conventional broadcasting is often subject to ownership restrictions. Competition between different delivery platforms is leading to increased demand for content as a way to attract consumers. Greater interest by viewers for better

[42] Mukherjee (2005).

[43] OECD (2008); EAO, "American Fiction Is Still Overwhelmingly dominant on European Television Screens But Is Giving Way to Nationally Produced Fiction", Press Release, 24 March 2009. See also EAO (2008).

[44] EAO, "DTT Comes of Age in the European TV Market", Press Release, 1 April 2009.

[45] OECD (2008), pp. 38-39.

[46] Médiamétrie, "L'année de télévision dans le monde", Paris, 2004, quoted in Cocq and Lévy (2006).

[47] Cocq and Lévy (2006), pp. 55-56; Barlet (2006).

content offering provides an incentive to improve the transmission infrastructure, which in turn permits to provide greater quantities of content.[48]

49. Another important technological development is that television programming can now be received through a variety of platforms (cable, satellite, terrestrial) and terminal devices (television set, computer, mobile phone). This has implications for regulators (see next section) and also operators, as, for example, telecom providers have also become content providers.[49] Content producers are also exploring opportunities for direct content delivery (e.g. over the Internet). This contrasts with the traditional situation, where only broadcasters using terrestrial "free-to-air" transmission could transmit television programming, and often were also the main producers of such content.

50. Further, technological developments have given greater control to consumers over what they want to watch, when, where, and how. The breadth of content offered, but also such new functions as video-on-demand or digital video recorders, mean that consumers are much less constrained by the television schedule than before. Further, a number of TV studios are allowing their TV programmes to be downloaded or streamed through Internet directly from their website, or through such other sites as Joost, Apple's iTunes Music Store, Netflix, Amazon, or YouTube.[50] Technological advances also permit various additional and interactive services to be provided in conjunction with the programming. More and more, with technological developments, the dividing line between television sets and TV monitors will become thinner, allowing consumers to view television programming on a computer monitor or to use the computer to watch programming on the television screen. The latest incarnation of these technological developments is IPTV (television delivered over Internet Protocol), which is still in its infancy in most markets however.[51]

3. Sound Recording and Radio

(a) Music

51. As is well known, the music industry has experienced a revolution in recent years, as digitization, increased bandwidth, and skyrocketing growth in sales of digital audio players – as well as piracy – impacted global sales and forced a change in business models in the industry.

52. Global sales of recorded music have dropped significantly over the last ten years. Even if digital sales have grown at a fast rate, they have failed so far to make up for the decline in sales of music in physical form (e.g. CDs). Sales of recorded music totalled US$17.6 billion in 2008 (trade value), a decline of 8.3 per cent from 2007, including a 18.6 per cent drop in the US market. Only three years prior, in 2005, they totalled US$20.7 billion. Global sales have declined year after year since 1999.[52]

53. In terms of market size, Europe represents 37 per cent of worldwide sales of recorded music (trade value, 2008), the US 28 per cent, and Asia 26 per cent. Sales of music in physical form represented 79 per cent of global sales of recorded music in 2008, and declined by 15.4 per cent from 2007 (trade value). In the US, the drop was sharpest: -31.2 per cent from the previous year. In contrast, global sales of music in digital form (or music distributed electronically, e.g. Internet downloads, mobile digital content) increased by 24 per cent from 2007 to reach US$3.8 billion (trade

[48] OECD (2007b).
[49] OECD (2007b); OECD (2004).
[50] A number of these sites also sell physical copies of the movies. OECD (2007b); EAO (2008); Roy (2008). A recent study estimated that video and audio streaming (e.g., through YouTube) accounted for about 27% of the Internet's global traffic in 2008 (*Multichannel News*, 26 October 2009).
[51] OECD (2007b), p. 6; OECD (2007c).
[52] IFPI, www.ifpi.org

value) in 2008. Digital platforms accounted for about 20 per cent of total recorded music sales in 2008, up from 15 per cent just a year before and from 2 per cent in 2004. The US is the leading digital music market, as it accounts for 47 per cent of global sales, followed by Asia (28 per cent), and Europe (20 per cent). In the US, digital sales represent 36 per cent of total sales of recorded music (2008).[53] In China and Korea, digital sales account for approximately 60 per cent of total sales.[54] In the medium term, sales of digital music are expected to overtake physical distribution.[55]

54. An additional revenue stream for record companies are performance rights, which reflect payments from collection societies for licenses granted to third parties for the use of sound recordings in music videos, broadcasting, public performance (e.g. restaurants, hotels), and certain Internet uses. These were estimated to amount to US$802 million worldwide in 2008.

55. Four large companies dominate the recorded music industry: Universal Music Group, Sony Music Entertainment, Warner Music Group and EMI, which account for more than two-thirds of worldwide sales of recorded music. Faced with declining sales in recent years, the leading companies have consolidated or attempted to do so.[56] These companies or their subsidiaries are present worldwide and account for a large proportion of production and sales in countries throughout the world. In Europe, North America, and Latin America, the "majors" have a market share above 75 per cent on average. In such countries as Japan, India and China, however, the majors do not dominate. In India, for example, domestically-owned companies are predominant, partly as a result of the importance of sales of soundtracks of domestic motion pictures, as well as due to government regulations.[57] Further, major record companies only have a limited presence on the African continent where their presence is limited to South Africa. In other countries, the production is therefore largely independent, but also small-scale and informal. Technological developments have made it less costly to record music and such countries as Mali, Nigeria, Kenya or Senegal have seen independent studios emerge, which attract recording artists from the continent.[58]

56. The music industry is facing pressure to change its ways as a result of the rise of electronic distribution. Hundreds of online distributors around the globe are now offering music, either through *à-la-carte* downloads (e.g. iTunes and AmazonMP3), subscriptions or advertising-supported streaming. iTunes, a precursor, is the leading player, with six billion downloads since its launch, and with a presence in 22 countries in 2009. It became the largest music retailer (whether in physical or digital form) in the US in 2008. Predominantly bricks-and-mortar retailers such as Wal-Mart in the US also have a large role in the digital distribution of music. In many Asian markets, the predominant way to consume digital music has been through mobile technologies; in Japan, for example, mobile digital content represented 90 per cent of the digital music delivery market in 2007, in contrast with 8 per cent for Internet downloads.[59]

57. Among the new business models used by record companies is the bundling of music with other services or devices, with a view to adding value to the latter in the eye of the consumer. For example, mobile phone manufacturers, mobile phone operators or Internet providers may offer access to music as part of the sale of their good or service. The industry expects that such partnerships between record companies and other technology companies will represent an increasing revenue stream, since they see music as a key driver in the digital economy, where content is used to attract

[53] IFPI (2009).
[54] *Wall Street Journal*, "China Sets New Rules for Music Sold Online", 5 September 2009.
[55] PCW (India, p. 82) estimates this will happen in 2012.
[56] Sony and Bertelsmann merged in 2004 after some reversals to form Sony BMG Music Entertainment. Sony acquired Bertelsmann's share in Sony BMG in 2008. Various attempted mergers between EMI and Warner Music Group failed in recent years.
[57] Cocq and Lévy (2006), pp. 77-78.
[58] UNCTAD (2008), pp. 78-79; IFPI (2009).
[59] RIAJ (2008), p. 2.

consumers to devices or networks.[60] Further, in light of the drop in physical sales, artists – and increasingly their record companies – rely to a greater extent on concerts and merchandizing as a revenue stream.

58. The technological transformation in the audiovisual sector also exposed consumers to greater quantities of musical content. While in the traditional market, dominated by hard-copy music recordings, the offer was limited by what retailers could hold in stock, the digital environment expands the "shelf-space" as readily available catalogues are almost limitless. Since on-line suppliers are no longer incited to focus on best-selling products so as to not use scarce space for products of a more limited appeal, it is more profitable to offer – and easier for consumers to come across – more specialized music, including from particular foreign countries/cultures. Since the music industry has been most affected by technological transformations, such trends have been strongest in this segment, and are likely to further intensify.

59. Although there is no extensive set of comparable data, sales of foreign music appear to account for a significant part of world sales, although in many markets domestic music still holds a dominant position. For examples, domestic music accounted for 93 per cent of sales in the United States, 92 per cent in Turkey, 91 per cent in India, 75 per cent in Japan, 70 per cent in Thailand, 68 per cent in Brazil and 63 per cent in France. Foreign music (not including "repertoire", such as classical music) represented more than 75 per cent of sales in such markets as Canada, Switzerland, or Ireland.[61]

(b) Radio

60. The global radio broadcasting sector was estimated at US$48.7 billion in 2008, down by 2.2 per cent from 2007, but up 9 per cent since 2004. A further decline was expected in 2009, given the impact of the economic crisis on advertising. Advertising contributed 67 per cent to the sector's global revenues, public radio license fees 26.5 per cent, and satellite radio subscriptions 6.6 per cent. Satellite radio subscriptions, in contrast, accounted for less than 1 per cent of revenues in 2004. North America represented 45 per cent of the global market.[62] While satellite radio, especially in the United States, has progressed, as have online radio stations, terrestrial analogue radio broadcasting (i.e., over the airwaves) remains dominant.

61. Like television, radio broadcasting has an important role in society, often with significant involvement of the public sector. In many regions of the developing world, radio is the main source of outside information and communication, ahead of television or Internet, since the proportion of the population receiving radio signals is much higher in various countries than television households.

62. In Asia, with the exception of China, Indonesia and Thailand, radio reaches more than 90 per cent of the population in an average week. In India, government reforms have led to the increase of private FM stations from almost zero to 270 stations over the last four years.[63] Further, radio broadcasting provides the most localized content (news, etc.) and is most easily accessible in poorest regions. Like television free-to-air broadcasting, radio thus plays an important role in the transfer of information to citizens, including the poorest, since receivers are relatively inexpensive and production of programming, as well as transmission, are inexpensive as well. Competition and plurality in the sector can therefore promote transparency and governance, and be an important

[60] IFPI (2009).
[61] IFPI (2007).
[62] PWC (2009a).
[63] Media, "Radio Reaffirms its Value in the Market", 26 February 2009. http://www.media.asia/Featuresarticle/2009_03/Radio-reaffirms-its-value-in-the-market/34562

development tool.[64] However, worldwide, the top five radio stations per country were on average predominantly state-owned. The same applies to television broadcasting.[65]

IV. GATS COMMITMENTS AND MFN EXEMPTIONS

63. A relatively limited number of Members has undertaken specific commitments in audiovisual services under the GATS. At the same time, the sector has attracted a large share of MFN exemptions.[66] The GATS contains neither specific provisions governing trade in audiovisual services nor specific exceptions in relation to culture or cultural policy.

64. Thirty WTO Members currently have commitments in one or more sub-sectors under Audiovisual Services, as summarized in Table 5. A large proportion of these commitments have emerged from accessions negotiations (12 Members). Almost all Members with commitments in the sector are developing countries, except Japan, New Zealand and the United States. Many important producers of audiovisual services (e.g. United States; China; India; Mexico; Japan; Hong Kong, China) have undertaken commitments.

Table 5: Summary of Specific Commitments in Audiovisual Services

Members	02.D.a.	02.D.b.	02.D.c.	02.D.d.	02.D.e.	02.D.f.	Total
Armenia	X	X	X		X		4
Cape Verde	X		X		X		3
Central African Rep.	X	X	X	X	X	X	6
China	X	X			X		3
Dominican Republic				X		X	2
El Salvador				X		X	2
Gambia	X	X	X	X			4
Georgia	X	X	X		X		4
Hong Kong, China	X				X	X	3
India	X						1
Israel	X						1
Japan	X	X			X		3
Jordan	X	X			X		3
Kenya	X	X					2
Korea RP	X				X		2
Kyrgyz Republic	X	X	X	X	X		5
Lesotho	X	X	X	X			4
Malaysia	X			X			2
Mexico	X	X					2
New Zealand	X	X	X	X		X	5
Nicaragua	X	X					2
Oman	X	X					2
Panama	X	X	X		X		4
Saudi Arabia	X		X				2
Singapore	X				X		2
Chinese Taipei	X	X	X		X		4
Thailand	X		X				2
Tonga	X	X	X		X		4

[64] Eltzroth and Kenny (2003); Locksley (2009).

[65] Djankov et al. (2003). On the basis of a survey of 97 countries. See also World Bank (2001), chapter 10, for a discussion of government ownership in the sector television and radio.

[66] For further discussion of commitments on audiovisual services, including in PTAs, see Roy (2008).

Members	02.D.a.	02.D.b.	02.D.c.	02.D.d.	02.D.e.	02.D.f.	Total
United States	X	X	X	X	X	X	6
Viet Nam	X	X			X		3
Total	28	19	14	9	16	6	

Legend:
02.D.a. Motion Picture and Video Tape Production and Distribution
02.D.b. Motion Picture Projection Service
02.D.c. Radio and Television Services
02.D.d. Radio and Television Transmission Services
02.D.e. Sound Recording
02.D.f. Other

Note: This table updates the information found in S/C/W/40 by adding the relevant acceding Members.

65. As suggested by Table 5, few of the 30 Members concerned have undertaken commitments in all sub-sectors. Services related to motion pictures have been more "popular", compared to services relating to radio and television, and sound recording. Several Members have decided not to use in full the CPC definitions suggested by W/120, electing instead to commit on part of a given sub-sector, to use different sectoral entries (with or without definitions), or sometimes to add precisions to the W/120 and corresponding CPC categories.

66. Leaving aside sectoral carve-outs, commitments scheduled are relatively free of limitations, as suggested by Table 6. It may seem that several of the relevant Members have opted not to undertake specific commitments in areas where they currently had restrictions in place, preferring not to guarantee any level of access and non-discriminatory treatment. Except for mode 4, which typically refers back to horizontal commitments, mode 3 is where most partial commitments are found, while mode 1 contains the highest share of non-bindings.

Table 6: Level of Commitment for Sub-Sectoral Entries in Audiovisual Services (Modes 1 to 3)

Percentage of entries per level of commitment (market access and national treatment columns)	**Mode 1**	**Mode 2**	**Mode 3**
Full Commitments	66.7%	87.3%	66.8%
Partial Commitments	11.1%	3.7%	22.6%
Unbound	22.2%	8.9%	10.5%

Note: updates table from Roy (2005). Does not take account of horizontal limitations, nor limitations in the sectoral column.

67. Limitations scheduled often consist of foreign equity ceilings and restrictions on the type of legal entity (including joint-venture requirements). Some content quotas are scheduled as well (e.g. Chinese Taipei and Malaysia as regards television; Mexico as regards motion pictures). While a few sector-specific limitations pertain to discriminatory subsidies, a number of Members have inscribed such limitations at the horizontal level, i.e., for all scheduled sectors.

68. It can be noted that various Members have undertaken commitments in relation to services that, while related to the audiovisual industry, are classified in other sectors in W/120, e.g. Distribution Services, rental/leasing services under Business Services, or Entertainment Services. In

particular, 12 acceding Members have included commitments on "cinema theatre operations services" under Entertainment Services (sector 10A).[67]

69. Many Members (48) have scheduled one or more MFN exemptions pertaining to audiovisual services.[68] Most of these Members have no specific commitments in the sector.[69] Overall, 114 MFN exemptions have been listed for audiovisual services, making it the sector with most exemptions. These often relate to the conferring of national treatment to works covered by co-production agreements, support programmes, or, in the case of European countries, the Council of Europe Convention on Transfrontier Television. Some MFN exemptions also reserve the right to retaliate against adverse, unfair or unreasonable trading conditions abroad. MFN exemptions in the sector are often justified by the relevant Members on the basis of cultural policy purposes.

V. GOVERNMENT MEASURES IN THE SECTOR

70. Audiovisual services are typically subject to a wide array of government regulations, due to the sector's high social, cultural and economic importance. Regulations may relate, for example, to the protection of intellectual property, competition, protection against illicit or offensive content, advertising, language requirements as regards subtitling and dubbing or, more traditionally, the management of the use of the spectrum.

71. Governments may also take measures to attain certain cultural objectives, including the protection and promotion of the diversity of cultural expressions, an issue that is the subject of a UNESCO Convention ratified by 103 countries and the European Community.[70] The Convention, among other things, recognizes the distinctive nature of cultural goods and services, highlights measures that Parties may adopt to protect and promote the diversity of cultural expressions, and encourages international and development cooperation in this area.[71]

72. Further, as noted earlier, public operators also play an essential role in television and radio transmission services, and are subject to specific regulations. These operators are often given the mandate to provide public services with a view, for example, to promoting national cohesion and integration. These objectives vary from country to country. Governments will sometimes suggest or prescribe the type of content that public operators should provide to the public.

[67] These Members are: Albania, Cambodia, Cape Verde, Croatia, Estonia, FYR of Macedonia, Latvia, Lithuania, Moldova, Nepal, Tonga, and Ukraine. China has a similar entry ("cinema theatre services"), but scheduled under Sector 2.D. Audiovisual Services. Most of the Members that took commitments on cinema theatre operations have no commitments on Audiovisual Services (Cape Verde and Tonga are the exceptions). Only Tonga has commitments on both motion picture projection services and cinema theatre operations services. See also Roy (2005).

[68] Counting EC-12 as one.

[69] As indicated in the *Scheduling Guidelines* (S/L/92), MFN exemptions only allow the Member concerned to provide more favourable (preferential) treatment to certain other Members to the extent that it has not undertaken full commitments.

[70] Ratifications as of 23 November 2009. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted by the UNESCO 33rd General Conference in October 2005 and entered into force on 18 March 2007.

[71] See the UNESCO website for greater details on the Convention, including operational guidelines: www.unesco.org

A. BARRIERS TO TRADE[72]

73. Many governments also maintain various measures to promote or protect domestic content, as well as, in many cases, domestic industry more generally. Subsidies are tools commonly used in the sector, either in the form of tax breaks, grants, or loans on preferential terms. These typically relate to the production of motion pictures, but are also used in other segments of the sector, especially television programming. Subsidies in the sector are often granted on a discriminatory basis, namely when their availability is tied to certain nationality conditions.

74. Internationally comparable statistics on subsidies are scarce. Available information suggests that subsidies are a key feature of the motion picture industry in both developed and developing countries, although their value is overall much larger in the former. Across the European Union, for example, around €1.6 billion is spent on national film support each year, of which 70 per cent targets film production. In addition, at the European level, the MEDIA programme (2007-2013) has a budget of €755 million.[73] Recent trends in EU State aid include support for segments other than film and TV production, such as film distribution and digital projection, as well as competition to attract investment from foreign film companies - mainly American - through state aid.[74]

75. A recent study on film subsidies in the EU highlights that "film producers are highly dependent upon state aid". For example, 68 per cent of film aid in the EU is awarded on a selective basis, but this proportion jumps to 87 per cent when the largest European film funding body (CNC of France) is excluded from the sample. Remaining aid is awarded automatically.[75] Within the EU, the study estimates that France grants most film subsidies (€512 million in 2004), followed by Germany (€203 million), UK (€118 million), and Italy (€90 million).[76] Various other examples of subsidy regimes for audiovisual services can be found in the WTO Trade Policy Reviews.[77] Further, a number of WTO Members require television resources to finance domestic film production.[78]

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[72] The terms "barriers to trade" or "trade restrictions" are used here to refer generally to measures that may negatively affect trade, and not to depict solely limitations on market access or national treatment as per Articles XVI and XVII of the GATS.

[73] European Commission, "State Aid: Commission consults on three year extension of film support criteria", IP/08/1580, 24th October 2008; European Commission, Press Release: "State aid: Commission prolongs film support rules until end of 2012", 28 January 2009.

[74] European Union (2009), "Communication from the Commission concerning the State aid assessment criteria of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works (Cinema Communication) of 26 September 2001", Official Journal of the European Union, 7 February 2009 (2009/C 31/01). As per Article 87(3d), the EC Treaty provides an exception to the general EU rules on State aid, providing that the Commission may consider aid to promote culture, under certain conditions. Under the 2001 Cinema Communication, the Commission set out criteria according to which aid for the production of films for cinemas or television can be approved. For example, the producer must be free to spend at least 20 per cent of the production budget in other Member States.

[75] Cambridge Econometrics (2008): Selective State aid means that criteria and procedures for granting State aid are based on conditions such as quality or originality, where experts apply this criteria to evaluate projects. Automatic State aid is where criteria and procedures are based on conditions set forth by applicable rules without involving any discretionary judgement by experts (e.g., grant of a support on basis of box office revenues).

[76] Naturally, these estimates are subject to a number of caveats. They only look at the budget - excluding tax incentives - of funding bodies with annual budgets that exceed €1 million.

[77] See S/WPGR/25 and addenda. As of the last Secretariat Note compiling subsidies mentioned in TPR reports (March 2007), subsidies in audiovisual services had been mentioned in relation to 17 WTO Members (counting the European Communities as one). These are: Argentina, Australia, Benin, Burkina Faso, Burundi, Canada, the European Communities, the Gambia, Jamaica, the Republic of Korea, Mexico, New Zealand, Paraguay, Singapore, Chinese Taipei, Tanzania, the United States. The S/WPGR/W/25 series have a number of limitations (see page 1 of S/WPGR/W/25), one of which is that TPR reports are not intended to provide a

76. Public funding of the television sector is also important. In the European Union, for example, the European Audiovisual Observatory estimates that public funding (e.g. grants, license fees) for public radio and television companies amounted to €22.9 billion in 2006. This represented 69 per cent of these companies' revenues and 26 per cent of the net revenues of all radio and television companies.[79] In Canada, the Canadian Television Fund has contributed C$2.7 billion over its 12-year history (C$242 million in 2007/08) for the development, production and broadcasting of Canadian-made programming.[80]

77. A number of countries are also re-orienting their financial support to promote the production of audiovisual content available for digital distribution and to promote digital infrastructure (cinemas, terrestrial television). Another important trend in terms of government support, for the film industry in particular, is the granting of incentives to attract foreign productions (e.g. location shooting). Competition to attract film shootings often also involves sub-central entities, for example provinces in Canada or States in the United States, as well as municipalities or regional governments.[81]

78. Another policy tool used by several governments is content quotas, whereby a proportion of television or radio broadcast time, or screen time at cinemas, are reserved to domestic content, be it music, television programming, motion pictures or advertising. Such quotas are more commonly used in the television and radio segments. Screen quotas less so, although a number of countries still apply them or at least have laws permitting their application. Domestic content obligations may also relate to television channels, as well as to advertising and dubbing. Other trade barriers in the sector are varied and include foreign equity restrictions (especially as regards TV and radio broadcasting), limits on the number of operators, discriminatory taxes, limitations on the capacity of foreign channels to use proportions of advertising time to target the local market, and restrictions on the movement of personnel, for example, requirements that foreign productions contract a proportion of local cast or crews.[82] Other measures with an effect on trade include non-discriminatory cross-ownership limits to ensure plurality of viewpoints in the media, and must-carry rules, which typically require certain national channels to be offered on cable and satellite television platforms.

B. SOME IMPLICATIONS OF TECHNOLOGICAL DEVELOPMENTS

79. The span of regulatory issues confronting governments in the sector is important, especially in light of quick changes coming about through the technological developments mentioned above. While these cannot all be listed here (e.g. fight against piracy and update of regimes to protect intellectual property), a few key challenges linked to technological developments are brought up below.

1. Foreign Content Restrictions and New Technologies

80. In a context where (i) more content can be transmitted over different networks and with the use of different devices and (ii) consumers have greater capacity to exercise control, governments may have to consider whether such traditional tools as content quotas need to be reviewed or adjusted in order to meet the relevant policy objectives. In television, for example, such policies had first come about when the number of channels was limited and the prevailing model was one where content was "pushed" towards all. Nowadays, the "pull" model is gaining in importance, where

comprehensive survey of subsidies granted and that they do not cover all service sectors. Since audiovisual services are usually not discussed in TPR reports, various Members that are not listed above may also provide subsidies in the sector.

[78] Cocq and Lévy (2006); EAO (2006); Guerrieri et al. (2005).

[79] EAO (2008).

[80] See www.ctf-fct.ca

[81] OECD (2008).

[82] Cocq and Lévy (2006) ; Roy (2005) ; Solon Consultants (1998) ; Guerrieri et al. (2005).

viewers have greater capacity to seek out their preferred content. With greater choice, it is less obvious that quotas can ensure that domestic content will be watched. Further, with the increase in the number of channels on offer on television, domestic content quotas may only cover a fraction of the total universe of content that can be carried. To meet the same policy objectives, traditional policy tools may need to be modified to support the same objectives.[83]

81. Further, in light of convergence, which implies that content can be delivered through different types of networks to various types of devices, governments will have to consider whether any content regulations, including quotas, must be extended to the new, developing, platforms and, if so, how. For example, regulators may have to consider whether content regulations on broadcasting should be extended to content delivered over the Internet.[84]

82. The EC's revision of the Television Without Frontiers Directive represents a recent example to adapt the regulatory framework to the new business and technological environment. In November 2007, the European Parliament adopted the Audiovisual Media Services Directive (AMSD), which entered into force in December 2007, and must be transposed into national law by the end of 2009. The AMSD amends and renames the Television Without Frontiers Directive (TWFD). The new Directive expands its coverage to all audiovisual media services, including online and on-demand audiovisual content, and draws a distinction between linear (with a programme schedule such as conventional television) and non-linear services (video on-demand).[85] The latter are subject to a number of rules (e.g. advertising, protection of minors, prohibition of illicit content) on the same footing as traditional linear services (e.g. as regards rules on advertising) so as to ensure similar treatment (e.g. as regards regulatory burden, but also in terms of benefiting from the single market).

83. Sometimes, the non-linear services are subject to less strict rules, recognizing that consumers have greater control and choice over non-linear services as well as the different impact these services have on society as a whole (i.e., one-to-many transmission versus one-to-one transmission). All covered services are subject to obligations relating to the promotion of domestic content, although in different ways. While the TWDF obligation to reserve a majority proportion of transmission time to European works (excluding time appointed to such matters as news, sports or advertising) applies to linear services (including IPTV or mobile TV), the AMSD stipulates that Members States shall ensure that providers of non-linear services promote, where practicable and by appropriate means, the production of and access to European works. The Directive does not mandate specific quotas or measures, but notes that "such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service".[86]

2. Other regulatory challenges associated with convergence

84. Convergence confronts governments with the challenge of reconciling previously distinct regulatory frameworks. In the past, each type of content had a dedicated network. Television content was delivered over one technology, but now, in addition to traditional broadcasters, the same content can be transmitted by cable, mobile, phone companies, or Internet access providers. While broadcasters have traditionally been subject to more regulation, including with respect to content,

[83] See: OECD (2007c); World Bank (2007).

[84] See, for example, Noam (2008).

[85] The Directive covers services that come under the editorial responsibility of a media service providing programmes, and does not cover, for example, platforms for the exchange of user-generated content such as YouTube, where there is no editorial control as regards a broadcast schedule or an on-demand catalogue. The Directive does not cover radio either. See: http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

[86] Article 1.8 of Directive 2007/65/EC.

telecommunication services tend to be regulated to a lesser extent, with a greater focus on carriage regulation and competition. Convergence and the arrival of such new systems as IPTV or mobile TV challenge regulatory frameworks based on traditional distinctions. According to the World Bank, as of 2007, 22 per cent of countries worldwide had adopted new policies to address the convergence of telecommunications, IT, and broadcasting, while 50 per cent were planning to do so in the future. Areas where regulatory frameworks may need to be revisited or updated include:

(a) authorizations and licensing, e.g. ensuring that the licensing regime is reconciled with the fact that licensees can offer different services using different networks; determining whether such services as IPTV should be licensed as broadcasting services, information services or telecommunication services;

(b) ensuring a level playing field, e.g. considering whether and to what extent asymmetrical treatment between telecom operators and broadcasters as regards rules on foreign equity participation, concentration limits, or mergers and acquisitions should remain; developing rules to ensure that transmission networks' access to content is not unduly limited by anti-competitive practices;

(c) cross-ownership limits, i.e., revisiting limits on one's ownership across different media, which aim at ensuring pluralism, in light of additional means of providing content;

(d) the application of must-carry obligations to emerging ways of delivering content;

(e) unbundling of local loop in order to allow new entrants to provide advanced services (e.g. IPTV) and increase competition in these areas;

(f) reducing obstacles that hinder the exploitation of digital content across frontiers. For example, governments may facilitate the adaptation of the collective management of rights in the digital environment (e.g. music), through collecting societies setting up new or improved schemes to address the licensing of new media exploitation and/or by streamlining their methods to facilitate multi-territory licensing of digital rights;

(g) improve regulations to ensure effective and secure payments for online transactions, including facilitation of small payments.[87]

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[87] World Bank (2007); Meisel (2007); Hernandez and De La Torre (2008); OECD (2007c); OECD (2007b); OECD (2004b); Screen Digest et al. (2006); OECD (2005).

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