Chandrawat & Partners

GUIDE TO MEDIA INDUSTRY IN INDIA

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Overview

The Indian media industry is a rapidly growing sector of the economy and is experiencing significant acceleration. Showcasing its elasticity to the world, the industry is on the way to creating a stronger phase of growth, backed by rising consumer demand and improving revenue.

Media can be defined as a tool or communication outlet that is used to store and deliver information to people. The media industry encompasses all businesses that allow information to be shared.

The industry has grown exponentially due to digitization and internet usage in the last decade. The Internet has turned out to be a conventional medium for the entertainment of most people across the globe and through various means.

The Indian Brand Equity Foundation has estimated that the Indian media industry is projected to reach US$ 43.93 billion by 2024. Since the industry is growing at such an unpredictable rate, it becomes difficult for the players to keep up with the expectations of the users. One of the most important hurdles is handling the pressure to cut expenses while improving revenue.

The government of India has increased the foreign direct investment ("FDI") limit from 74% to 100%. FDI inflows in the information and broadcasting sectors (including print media) stood at US$ 9.79 billion between April 2000 and June 2022.

Government Initiatives

- The government of India has taken various initiatives, such as digitising the cable distribution sector to attract greater institutional funding, increasing the FDI limit from 74% to 100% in cable and direct-to-home ("DTH") satellite platforms.

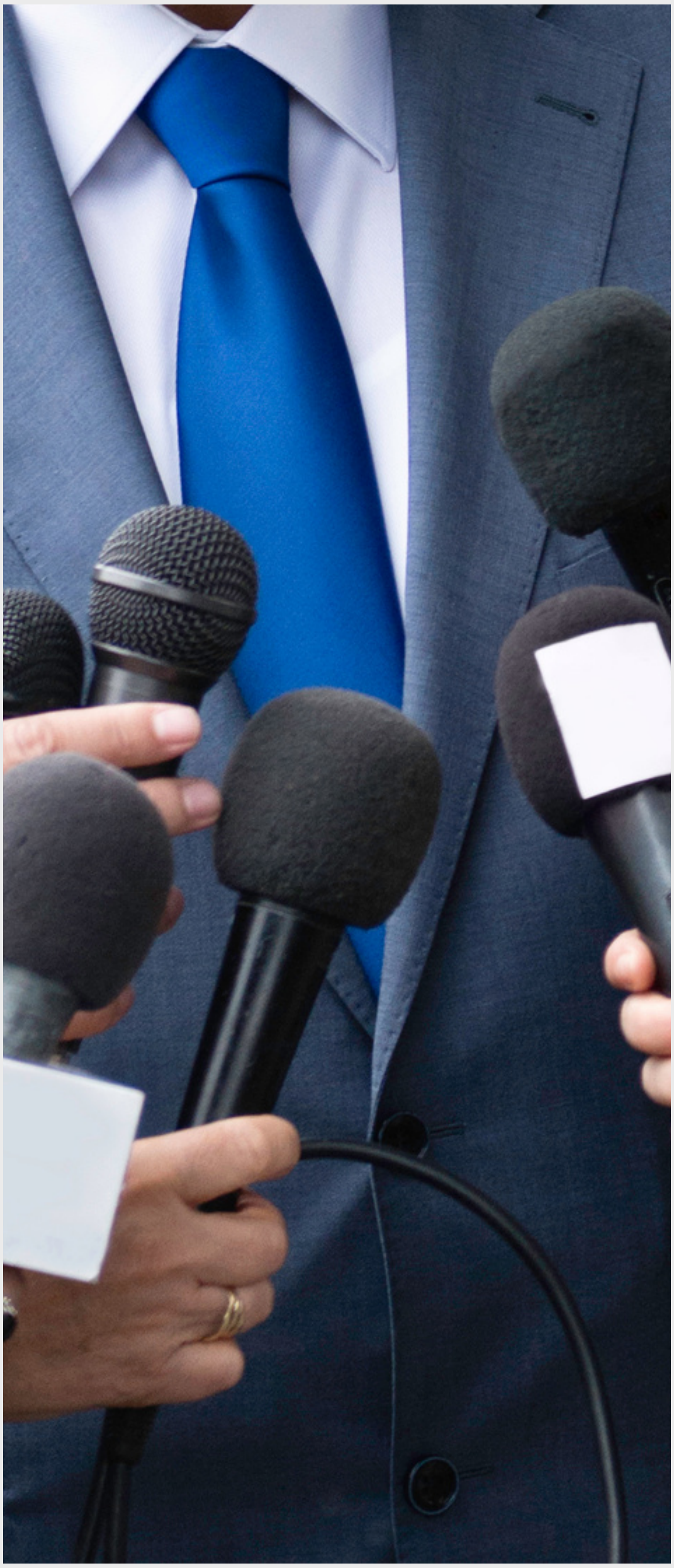
- The Film Facilitation Office (FFO), set up by the Ministry of Information & Broadcasting, Government of India, acts as a single-window clearance and facilitation point for producers and production companies with a view to assisting them in getting the requisite filming permissions.

- The merger of film media units by the Ministry of Information and Broadcasting under one corporation will lead to the convergence of activities and resources and better coordination, thereby ensuring synergy and efficiency in achieving the mandate of each media unit.

- In November 2021, the government announced that it is working towards creating a National Centre of Excellence for AVGC (animation, visual effects, gaming, and comics).

- An agreement was signed in February 2021 by Prasar Bharati (India) and PSM (the official state media of the Maldives) to facilitate collaboration and capacity building in the broadcasting industry.

Major Challenges for Indian Media



- Media integration across sectors in India. One of the major issues pertains to the taxation of segments, which is an essential tool for the media industry. By its very nature, the satellite segment usage fee paid by broadcasters to foreign satellite companies could lead to anti-competitive behavior that hurts satellite companies. Tax officials treat such payments as part of the entire value chain of the industry.

- The absence of cross-royalty income and taxing the same on a source-rule basis, though media ownership rules are affecting the industry, is inhibiting such satellite companies, which do not have any offices or presences in potential foreign investors' countries of residence. In the case of foreign television companies too, though, investment strategies for India

- TRAI, the independent India's tax authority, has been arguing that the foreign broadcasting regulator is only for television and radio. Their role has been that companies must have a permanent establishment (PE) in India restricted to providing recommendations on segment issues on account of their agents selling airtime space to the Indian government. As a result, the government has still not allowed advertisers.

- The media, especially some of the English channels, is highly biased, and the biggest problem is if any channel reports the truth, then this cabal gang runs pillar to post to paint that journalist, channel, or publication as sold out.

Print Media

Foreign investment

With prior government permission, foreign direct investment (FDI) in print media is permitted up to 26%. In the publication and printing of scientific and technical journals, periodicals, and facsimile editions of foreign newspapers, FDI is permitted up to 100% with government approval, subject to compliance with guidelines issued by the Ministry of Information and Broadcasting (MIB).

Ministry of Information and Broadcasting guidelines

The MIB has also issued "Guidelines for Publication of Indian Editions of Foreign Magazines Dealing with News and Current Affairs," which, among other things, permit only companies registered in India to publish Indian editions of foreign news/current affairs magazines.

These guidelines allow Indian companies to enter into financial arrangements (such as royalty payment arrangements, etc.) with foreign periodicals. The guidelines permit content reproduction and give Indian publishers freedom to customise their advertisements and local content.

Registration requirements

Newspapers and periodicals in India are also required to obtain registration with the Registrar of Newspapers in India under the Press and Registration of Books Act, 1867.

Broadcasting Media

Foreign investment

While FDI in uplinking of news/current affairs channels and terrestrial FM radio has been restricted to 49% with government approval, the Indian market has opened up to uplinking of non-news channels, allowing 100% FDI under the automatic route without the need to obtain government permission. Up to 100% FDI in the downlinking of all TV channels is permitted.

Ministry of Information and Broadcasting Guidelines

The regulatory framework for the setting up of TV channels in India is provided under the "Policy Guidelines for Uplinking of Television Channels from India, 2011" and "Policy Guidelines for Downlinking of Television Channels from India, 2011." The guidelines provide for permission from MIB for uplinking and downlinking and various regulatory requirements, including operations, management, and corporate governance, of entities engaged in these activities.

Self-regulation

The News Broadcasting Standards Authority is an independent body set up by the News Broadcasters Association (NBSA), an industry association for broadcasters in India. The NBSA's task is to consider and adjudicate upon complaints about broadcasts. Similarly, advertisements are subject to self-regulation under a code formulated by the Advertising Standards Council of India.

Internet Media

Foreign investment

Intuitively, one would expect there to be some parity between online news and content providers and print media. From an FDI perspective, while FDI in print is restricted, there is no such direct restriction on FDI in online content or news portals. At the time the FDI policy on print was framed, news was predominantly disseminated through the print media, which no longer holds good. As a result, the lack of parity in the FDI regime for online content and news, which have a wider reach than print media, requires reconsideration. The FDI barriers on print media appear to have passed their expiration date.

At the same time, past experiences show that the government has not been consistent in its treatment of online news media/websites, frequently treating them on par with broadcasting. In some instances, online news media have been subjected to obligations like print media, which has led to ambiguities as to the regulatory regime and intent. In contrast, the government has taken a predominantly liberal view of FDI in other media and entertainment segments.

Media laws in India – an overview

The media in India is mostly self-regulated. The existing bodies for regulation of media, such as the Press Council of India, which is a statutory body, and the News Broadcasting Standards Authority, a self-regulatory organization, issue standards that are more in the nature of guidelines.

Laws applicable to print media

Press & Registration of Books Act, 1867 & The Registration of Newspapers (Central) Rules 1956

The Press and Registration of Books Act, 1867, regulates the printing press's ability to preserve copies of works and register such works, which include news printed in India. It controls the media by conducting investigations into claims against newspapers or news organisations for violations of journalistic ethics standards or editors' or journalists' unethical behaviour.

All magazines and books printed in India are required by the Act to be readable, clearly printed, and to include information about the printer, publisher, location of the printing factory, and the intended audience.

The Newspaper (Price and Page) Act, 1956

In order to prevent unfair competition among newspapers and give them more opportunities for freedom of expression, the Act provides for the regulation of the rates charged for newspapers in regard to their pages and topics related thereto.

The Press Council Act, 1978

The law calls for the establishment of the Press Council, whose mission is to defend press freedom and uphold and raise standards for the media in India. The legislation provides for the formation of the Press Council, whose aims are to uphold freedom of the press and maintain and improve standards in India. The Press Council Act and the Press Council of India are like devices for the press to regulate its actions. The fundamental rationale behind the creation of the Act is the notion that the press ought to be independent and accountable in a democratic society.

Laws applicable to broadcasting

The Cable Television Networks Regulation Act, 1995

The Act regulates the operation of cable television networks in India by stipulating registration and licencing requirements for cable operators and prescribing a code for programme and advertisement content to be broadcast on cable television. The Act also establishes requirements that apply to broadcasters with regard to the type and cost of channels.

The Cable Television Networks (Regulation) Amendment Act, 2011

To address the issues brought up by the complainant, multiple regulatory organisations with varying authority levels have been established under the Act. Legal recognition has been granted to self-regulatory bodies like the News Broadcasters Standards Authority (NSBA) and the Broadcasting Content Complaints Council (BCCC).

Labour related legislation

The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 & The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957

The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act regulates several terms of employment for working journalists and other people employed in newspaper businesses.The Act provides that for the purpose of fixing or revising rates of wages with respect to working journalists, the Central Government shall constitute a wage board as and when necessary.

Regulatory Authorities

Ministry of Information and Broadcasting

The Government of India's Ministry of Information and Broadcasting (Ministry of I&B) is the ministerial-level organisation in charge of creating and enforcing laws and policies pertaining to information, broadcasting, the press, and film. The other significant statutory entity under this ministry is the Central Board of Film Certification, which is in charge of overseeing the broadcast of movies in India.

Press Information Bureau

The Press Information Bureau (PIB) is the nodal agency of the government to disseminate information to the print and electronic media on government policies, programmes, initiatives, and achievements. It functions as an interface between the government and the media and provides feedback to the government on people's reactions as reflected in the media.

Directorate of Advertising & Visual Publicity

The Directorate of Advertising and Visual Publicity (DAVP) is the nodal multi-media advertising agency of the Government of India. It has been offering a single-window, affordable service to nearly all central ministries and departments, autonomous bodies, and public sector enterprises (PSUs) for the past 56 years in order to meet their communication demands.

Tax compliances

Tax implemented on newspapers

As per the GST law, GST is not payable on newspapers. The GST is applicable for printing purposes; when paper or other media is supplied by the client for printing, the GST rate is 5%; when such paper or media is acquired by the printer himself for the client's order, the GST rate is 12%. However, GST is imposed on the advertisements printed in the newspaper. The government of India clarified that selling advertisement space in print media, such as newspapers, would attract 5% to 18% of GST.

Tax implemented on broadcast media

Television: GST on broadcasting services (D2H / cable TV services) is charged at 18%. 30% tax is charged on income generated from the transfer of any virtual digital asset. Under the GST, the supply of leases of film/television content rights will be a service and attract a 12% GST tax.

How we can help?

We bring a multi-disciplinary approach to one of the fastest-growing practices in legal and regulatory business in India.

We have a established team of experts for handling litigation, negotiations, queries, and concerns pertaining to the nuances of media law.

We have been actively involved in representing its clients as stakeholders in changes in legislation and practises in the industry.

Our team consult clients and assists them in the following areas:

- Compliance
- Permits and Licenses
- Contracts
- Safeguarding intellectual property rights
- Talent management
- Acquisition of content

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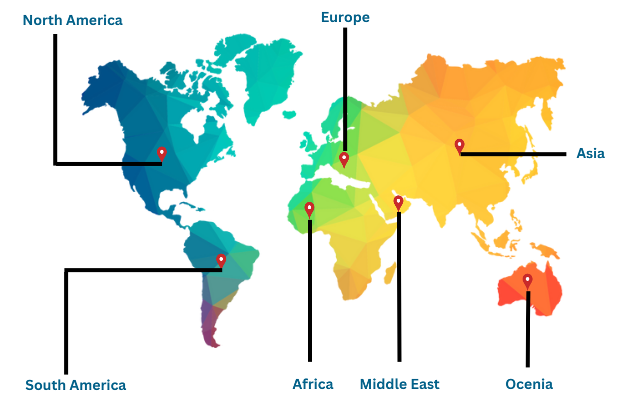
SERVING CLIENTS WORLDWIDE



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