

**Entertainment Services  
with Special Reference to**

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**MUSIC, MAS, AND THE FILM AND  
VIDEO SEGMENTS**

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***Submitted to:***

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# EXECUTIVE SUMMARY

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## TERMS OF REFERENCE

This study was undertaken in November 2000. The Terms of Reference required the researchers to:

- clarify the negotiation-related dimension of entertainment services from a trade-in-services perspective by focusing on the most important segments for the Commonwealth Caribbean; and
- make proposals regarding the negotiating strategy to be adopted by the Commonwealth Caribbean.

The analysis was required to take account of the relevant features of the industry in the Caribbean in comparison with other countries including

- developmental and market access problems confronting the sector, intellectual property rights issues
- the impact on international trade regulations
- the lack of self regulation in the industry and of support policies
- modes of supply, and
- the import and export of entertainment services such as through musical compositions, sound carriers, singers, musicians, sound engineers, technical assistants, artiste managers, publicists, videos, television programmes and films.

## SCOPE OF STUDY

Five countries were specifically targeted in deriving primary data: Barbados, Dominica, Jamaica, St. Lucia and Trinidad and Tobago. A topic guide was used in the conduct of interviews among key protagonists and institutions in these countries. A small number of entertainers and other key informants were interviewed.

Secondary data derived from reports and research conducted in the region. Internet searches were conducted to derive information on the global entertainment industry, including on the regulatory framework applied in more developed countries.

The requirements established by WTO underpinned the examination of the possibilities that condition the greater participation of the Caribbean in the international industry and in its deriving greater benefit from it.

For purposes of the present exercise, the Entertainment Sector is comprised of Caribbean festivals of ‘Mas’ or Trinidad Style carnivals, Reggae, Jazz and Creole Music Festivals, Music – Reggae, Dancehall, Calypso, Soca, Chutney, Parang, Creole, Zouk and Spouge - Film and other Audio-visual Production.

The countries all have cultural institutions with varying capacity to support the development of the various art forms among the population. In more recent times, there is the recognition that commercialization can be considerably advanced through the base laid by the agencies engaged in cultural development – Ministries of Culture and Cultural Commissions.

## KEY FINDINGS

### EXPANSION OF SERVICES AT HOME AND ABROAD

The study examined the degree to which Caribbean Entertainment products and services have grown among the islands and have extended into wider international markets. The festivals in the Caribbean have enhanced the tourism product and there is a noticeable rise in the number of visitors in the respective markets as a result of these festivals.

The spread of Carnivals and Reggae Festivals have effectively widened the market of the entertainers with the increase in the number of engagements that they can secure abroad. Reggae and Dancehall artistes have been able to develop a regular circuit of concerts that now extend beyond the Caribbean Diaspora.

Caribbean Entertainers have already availed themselves of the right of natural persons to provide cross-border services. Thus, some of the benefits to Caribbean entertainers come in the form of live performances abroad.

The Carnivals in North America and Europe are one area in which the Caribbean has established its presence in a very significant way. Some of its music (Reggae and Dance Hall, in particular) has been able to enter the mainstream.

### INDUSTRIAL ORGANISATION IN MUSIC INDUSTRY

The structure of production and distribution of music in the international industry, with the heavy firm concentration in respect of the commercialisation of music, is most probably the real barrier to spread of Caribbean music into the mainstream of the larger North American and European markets. The Music Industry is dominated by just a handful of firms, including majors like Sony, and Time Warner. Thus, trade negotiations have to develop a wider remit, to address issues relating to operations of firms, even to the possibility of discussions directly with the majors and independents in the main markets, rather than with the governments. Thus, industrial policy will

need to complement the process of international trade negotiation in respect of the development of exports in the Entertainment Services of the Commonwealth Caribbean.

## COLLECTIVE MANAGEMENT

Collective management societies are of recent vintage in the region. The returns to copyright in respect of music were previously handled by PRS of the UK. In the absence of local content rules – observed by just a few countries – the Caribbean has generally paid more abroad than it has received. The collective societies abroad generally fail to monitor effectively the use of music from the Caribbean on metropolitan broadcast media, including in media serving the diasporic population.

The large Caribbean Diaspora now represents a market abroad, but, because of piracy, Caribbean entertainers earn limited income from the sale of their recorded material in the metropolitan markets. In that regard, they suffer from piracy both at home and abroad.

## SUPPORT INFRASTRUCTURE

The domestic support infrastructure has not fully grasped the respective roles that must be performed, on the one hand, by way of creating a sustainable base from which will derive the commercialized product, or, on the other hand, in terms of the investment facilitation that is necessary but which has been fully supportive of other types of industry in the Caribbean.

Industrial development agencies – JAMPRO, TIDCO – are only slowly waking up to the reality that there is an industry around Caribbean Entertainment, that it can contribute much more to the foreign exchange earnings of these countries, and, that, for once, Caribbean people can be in the driver's seat.

The study identifies the fact that widening the market further requires an aggressive stance by the official economic development and investment agencies. This may require either their establishing commercial presence abroad (which may be difficult for them as state supported agencies) or their promoting domestic private sector firms capable of presence abroad.

The focus should be radio broadcasting and the promotion of festivals in cities where there are not currently any Carnivals or Reggae Festivals, but where there is enough of a concentration of Caribbean immigrants to provide a fertile base. There are other locations where, in spite of the absence of a Caribbean Diaspora, there is still a possibility of developing a Caribbean type festival and as well, of promoting tours by Caribbean Entertainers.

## THE AMBIT OF NEGOTIATIONS

Based on the realities of the Caribbean industry, the Region's interest will be best served by its adopting the provisions relating to cultural exception in the rules of WTO. In this regard, the position adopted by Canada could be instructive for the Caribbean as a whole. Barbados, through its content rules, has also set standards that are worthy of emulation in the rest of the Caribbean.

While the Region will need to attract foreign investment into its Entertainment Sector, it must insist on levels of the participation such that its people benefit by way of training, let alone from employment. It must also ensure that in the new dispensation of liberalizing trade regimes, the cultural diversity of the Caribbean and its member countries is maintained and protected.

Meanwhile, the Region must very purposefully exploit the openings that are available in the international market for the distinctive product that it has brought to the Entertainment Sector. Moreover the industry is an important joint product with its premier industry, Resort Tourism, and allows it to differentiate itself from other parts of the world offering sun, sea and sand, but not so blessed with creative entertainers.

The Regional Negotiation Machinery is likely to be charged with guaranteeing, through trade diplomacy and negotiation, the benefits that the market place, unaided, will fail to deliver to the Region and its Entertainers. In other words, negotiation, as well as quantity and quality of output from the Entertainment Sector, will determine size of market. The Entertainers, largely on their own, have proved that the demand exists. It is the task of the negotiators to widen the market, even as they provide for concerted industrial policy. Trade and industrial policies have to be closely aligned for the Entertainment Sector.

The study recommends a multi-pronged approach for the RNM that builds on the experience of Canada and the European Union. The strategy recognises the need for building solidly in the domestic and regional market, and also in organising firm structures and institutions for marketing abroad. The RNM, therefore, has to:

- Negotiate for cultural exemption in respect of FTAA, WTO, etc and generally to import that principle in all of its discussion of the sector in negotiating with the rest of the world.
- Form a trading alliance with Canada in negotiating a new international instrument on cultural diversity which would lay out the ground rules for cultural policies and trade and allow Canada, Caribbean countries and countries in other regions to maintain policies that promote their cultural industries.
- Support industrial policy at the domestic level through organizations like JAMPRO and TIDCO and their equivalents in the respective countries.

- Adopt a regional approach to the promotion of content rules in the broadcast media, and support the free movement of entertainers and musicians and their product in a *one market* Caribbean.
- Seek penetration of markets abroad through commercial presence, especially where there is already a substantial Caribbean Diaspora in a particular location.
- Support measures aimed at protecting intellectual property rights and adopt a regional approach to ensuring that the region's IPRs are given equal treatment and protection in overseas markets.
- Support the introduction of competently regulated competition in telecommunications services.

Negotiations have to be underpinned with strong domestic and regional industrial development of the sector.

# SECTION I

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## 1.0 INTRODUCTION

This paper treats with the trade related issues that impact on the entertainment industry in the English-speaking Caribbean, with special reference to music, festivals or “mas” and film and video production. The entertainment industry has long been highly organised and regulated in many countries. Because it is closely entwined with national culture and sense of national pride, it tends to be regarded as the soul of a nation, reflective of its essence. For this reason, some countries (e.g. France, Canada and, to some extent, Australia) are resistant in liberalising the sector and insist on maintaining local content requirements. On the other hand, there is another body of opinion, in the tradition of liberal Economics thinking, which frowns on the presence of such requirements, especially in the context of new international trade regulations.

Indeed, Canada’s experience is apposite here. On the formation of the North American Free Trade Area and in its accession to WTO, there has been a demurral in the interpretation of the freeing of trade in the provision of cross-border services relating to the content of audio-visual transmission. The conflicts that have developed, especially between the United States and Canada, point to some of the key problems encountered by countries that insist on some element of protection as a sine qua non for the growth and development of their cultural industries.

It is now a hackneyed statement that the United States has become the dominant country in respect of cultural industries. Its television, film, and music industries, through the mix of advances in technology, shifts in industrial organisation and the sense of global positioning enjoyed by its major firms, in addition to the size of its domestic market and effective demand, have made this country the primary player in the Entertainment Sector, internationally.

Moreover, its far more open immigration policies, have allowed it to welcome people of many cultures from across the world. In that regard, it has become the United States of the World and, through its cultural prism, can draw on influences from across many cultures. While it clearly dominates popular culture, its influence is not unrelated to the fact that there may well be something ‘from home’ that the citizens in other countries detect in the cultural offering of the United States, with which they are bombarded from the US through the audio-visual media. Even its children’s television programmes like Sesame Street are now ‘culturally correct’ in seeking to expose American children to children in other cultures.

The Entertainment Arts are embedded in culture. However, in a rapidly expanding services sector and with the expansion and cultural homogenisation of a middle class across much of the world, in developed and developing countries, and yearning for largely similar products and services, the entertainment market as a subset of the business sector is set to grow quickly. The goods and services of the sector are highly income elastic. However, given the structure of the Entertainment Sector internationally, producers and service providers, mainly in the North Atlantic, are best placed to take advantage of the growth in the Industry.

## 1.1 OBJECTIVES OF STUDY

The main purpose of the study is to clarify the negotiation-related dimension of entertainment services from a trade-in-services perspective by focusing on the most important segments indicated, and to make proposals regarding the negotiating strategy to be adopted by the Commonwealth Caribbean. This analysis necessarily must be based on an appreciation of relevant features of the industry in the Caribbean in comparison with other countries, including developmental and market access problems confronting the sector, intellectual property rights issues, and the impact on international trade regulations, lack of self regulation in the industry and support policies, modes of supply, and the import and export of entertainment services such as through musical compositions, sound carriers, singers, musicians, sound engineers, technical assistants, artiste managers, publicists, videos, television programmes and films.

## 1.2 DELIMITATIONS AND LIMITATIONS

For purposes of the present exercise, the Entertainment Sector is comprised of Music: Reggae, Dancehall, Calypso, Soca, Chutney, Parang, Creole and Zouk mainly- Caribbean festivals of 'Mas' or Trinidad Style carnivals, Jazz Festivals, Creole Music – Film and other Audio-visual Production. Within the second category, there is already emerging a variant deriving from the East Indian influence in Southern Caribbean Culture, in the form of Mastana Bahar, and Chutney Competitions which have expanded beyond Trinidad and Tobago, Guyana and Suriname, to Chutney competitions that are staged in diasporic Indian communities in the United States, Canada and Britain. The entertainment fare in the Caribbean includes much beyond what is generated by the people of the Caribbean.

There is considerable divergence in the domestic or intra-regional provision in each of the categories. The Mas, Carnivals, and other national festivals within the Caribbean display a high Caribbean content in the music that is utilised. On the other hand, Caribbean content in the audio-visual provision through radio and television is far more limited, although there are considerable differences among Commonwealth Caribbean countries in the popular fare on radio and television.

Indeed, it has been argued (and supported by the records of its copyright organisation) that more than 80 per cent of music played on radio in Trinidad and Tobago is of non-Caribbean provenience, and surely non-domestic in content. Caribbean Film and Audio Visual material has remained very much on the fringe. Television programming is largely material from the North Atlantic and more so from the United States. The present study concentrates on the creative contribution of the people of the Region.

Resources permitted the collection of primary data from only five countries: Barbados, Dominica, Jamaica, St. Lucia, and Trinidad and Tobago. It is hoped that these countries are sufficiently representative of the situation in the Commonwealth Caribbean. The Caribbean region does produce other musical forms than those studied here. The primary information was collected from interviews with key informants and among key institutions. A topic guide was utilized, but the data were not of the type adequate for statistical analysis, and in any event, the numbers interviewed were very small. There may be biases deriving from the selection of persons interviewed, and more so from open-ended interviews. Secondary information was derived from the other studies and reports and from the Internet. The study is concerned with the trade issues. However, resources did not permit of visits to main markets.

### 1.3 OUTLINE OF STUDY

Section I examines in broad outline, the structure and operation of the key segments of the entertainment sector of relevance to the Commonwealth Caribbean, against the global context and the key trade agreements that will impact on the Caribbean Industry in the international economy. Section II explores the various stages of production of the sector, the modes of supply and the regulatory environment, including the presence of content rules. Section III will examine the issue of market access both within the region and in the main export markets of North America and Europe, and will assess the possibilities of other markets elsewhere in the world. The developmental aspects of the industry will be explored in Section IV against the backdrop of the nascent infrastructure in the Region.

Section V treats with copyright, intellectual property and related issues in the context of the present international structure of rules and the trade implications deriving therefrom. Section VI treats with the main negotiation issues that are formally on the table, and the experiences elsewhere that may be of benefit to the Caribbean in securing better opportunities for its people. A key assumption here is that trade negotiation and diplomacy are as critical as are supply and demand and the taste of the potential consumers.

## 1.4 INTELLECTUAL PROPERTY RIGHTS

The World Trade Organization has defined Intellectual Property Rights (IPRs) as rights given to persons over the creations of their minds in such a way that creators may exercise exclusive rights over the use of their creations for a limited period of time. These rights may be divided into two main areas: Copyright and rights related to copyright<sup>1</sup> and Industrial Property. Industrial Property may also be divided into two main areas: the protection of distinctive signs or trademarks which distinguish goods or services of one enterprise from another; and geographical indications or appellations of origin which identify a product as originating in a place where a given characteristic is essentially attributable to its geographical origin. Protection may last indefinitely, provided the sign or mark in question continues to be distinctive. Other types of industrial property fall under the category of protection primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs, integrated circuits and trade secrets. Protection in this instance is usually granted for a finite term (e.g. 20 years for patents).

The exclusive rights granted to the owners of IPRs are generally subject to limitations and exceptions, aimed at finding the appropriate balance that has to be found between the legitimate interests of rights owners, on the one hand, and of users, on the other.

Copyright exists from the very moment of the invention. Original creators have an exclusive right to use or to authorize the use of their work and may sell the right of use, in return for royalties. It is the tradition that the economic rights last for 50 years after the death of the creator. In some countries, the law permits an even longer period of protection to the creator and his/her heirs.

Besides the original creator, there are others who, in some jurisdictions, can enjoy neighbouring rights in respect of a work. To the extent that the original producer may require the inputs of others in bringing the work to the public place, additional ownership rights may be recognised in their contribution to the process.

Many countries have established the organizational arrangements to allow for the registration of copyright material, and to permit holders of copyright to collect earnings from the use of their material. Collective management societies and organizations discharge this function. Technological change in communications has expanded the use of copyright material and made it imperative that there be institutions to protect the property rights of owners across the world.

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<sup>1</sup> The rights of creators (authors) of literary and artistic works (literature, musical compositions and lyrics, paintings, sculpture, computer programs, films, architecture etc.) are protected by copyright, for a minimum period of 50 years after the death of the author. The rights of performers (e.g. singers, musicians, actors), producers of sound recordings and broadcasting organizations are protected through copyright and related or (“neighbouring”) rights (Intellectual Property and Trade – Trevor Spencer (former Trinidad & Tobago Ambassador to Geneva).

Given the nature of intellectual property (in particular Copyright), and given its place in the Entertainment Industry, an analysis of the Sector in the context of the freeing of trade raises four main issues. Firstly, there are the rights of natural persons to enjoy the fruits of their labour. Secondly, there is the issue of the use of intellectual property, which, from its very nature, is created by natural persons, in the first instance, even though they may cede ownership after. Thirdly, there is the issue of the distribution of the material and the returns therewith of the product of intellectual property.

Fourthly, in respect of performers like musicians and singers, there are competing notions in the treatment of immigrant labour and owners of property in cross-border movements. Natural persons as migrant labour face work-permit and other rules relating to immigration. The hirer of such labour services has to prove, in most jurisdictions, that there is not an adequate supply of the specific skill brought by the foreign worker. On the other hand, the evolving structure of rules relating to capital accords the right of establishment to owners of capital. The owner of intellectual property for which demand is already established, therefore, could theoretically, claim the need for the right of temporary establishment, since in the performance of his/her work, there is a capital asset in use, which is inseparable from the owner.

Developments in the international arena have had a direct impact on the evolution of intellectual property rights in the Commonwealth Caribbean and a brief chronology is useful to the present discussion. The Berne Convention, which formally recognised copyright dates back to the late 19<sup>th</sup> century. The convention led to the birth of the World Intellectual Property Organization (“WIPO”) which is now a specialised agency of the United Nations System, but which, like the International Labour Organisation, predates it.

The formation of the GATT at the end of the Second World War, and then of UNCTAD, meant that issues of trade and intellectual property rights straddled the agenda of these organisations. Subsequently, the establishment of the United Centre on Transnational Corporations focused attention on the role of patents in the control exercised by TNCs in dominating trade between the countries of the North and the South, and in the share of the benefits that were derived by the latter. Through the Group of 77, a loose meeting of so-called developing countries, issues relating to intellectual property passed through an ideological prism that recognized a lack of reciprocity between the North and the South.

The rise of liberal doctrine in the late 1970s and 1980s impacted on the work of these agencies. Indeed, Reaganomics, and Thatcherism were the next significant episode. The debt crisis that afflicted a number of countries, earned the IMF and the World Bank a larger role in the economic management of many of the countries of the South, which became the mechanism through which radical objectives were deleted from the agenda of the countries of the South. Fiscal and balance of payments support were contingent on the first generation reforms. It was in

such an environment that the discussion of intellectual property was initiated in the debate in the Uruguay Rounds.

It could be argued, that once the discussion of the rights to intellectual property shifted from an arena in which there is one country one vote, to an environment where there is considerable departure from this representational principle, the regulatory framework for trade was bound to be more directly nuanced by the interests of the countries of the North. Significantly, and ironically, the very establishment of WTO was delayed by the debate between the United States and the European Union on the management of trade in agricultural products rather than on the principle of free trade in and of itself.

At the beginning of the 21<sup>st</sup> century, while WIPO continues as the primary organisation with responsibility for issues relating to intellectual property, it is rather within the ambit of WTO that resides effectively the regulatory environment for settling issues relating to trade in intellectual property. It is also within this structure that trade agreements and strategies for closer economic integration among countries are discussed. At the end of the day, the issue is whether an agreement is *WTO compliant*.

The TRIPS Agreement is a new feature in the machinery for regulating the trade in goods and services and ensures its own self-development by three provisions. At Article 1 paragraph 1, it is provided that:

Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement [*minimum standards of protection*]

At Article 3, paragraph 1, it is provided that

Each Member shall accord to the national of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided... [*national treatment*]

And at Article 4, it is provided, subject to certain exemptions, that

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. [*MFN*]

These provisions, taken together, not only ensure growth in protection of intellectual property rights, but at the same time require Members of the WTO to keep in step with efforts towards the globalization of every aspect of multilateral trade; as markets become more and more liberalized, so too must the disciplines develop in the arenas of trade to give all trading nations, equal access on a level playing field (see Trevor Spencer above).

In relation to IPRs and trade in services, the rate and development of new services will to a large extent be affected by the technological capabilities of companies producing and distributing different media content, including their ability to produce, keep and gain access to intellectual property. There can be no increased trade in services until the content of those services is defined as a tradable good; intellectual property rights, which grant certain monopoly privileges to individual suppliers, do this through commercially-orientated principles for “intangible, corporeal” content.

In effect, IPRs allow economic actors to form licensing agreements of one kind or another in order to produce goods and services. The economic rationale for such rights is that they encourage investment in creative activities and prevent piracy of expressions of ideas. IPR protection represents a trade-off between restricting output of certain creative products for a limited period of time and stimulating investment that will increase the production of intellectual property over time.

## 1.5 INDUSTRIAL ORGANISATION

There is considerable concentration in many areas of the Entertainment Sector, internationally, a fact which has major implications for small countries seeking to establish a presence in the sector and to afford their nationals the opportunity to utilize their creative talents. Concentration is best documented in the music industry. The countries of the North Atlantic and Japan comprise the largest share of the market for popular music. According to Burnett (1996) in 1992, the United States held 31.0 percent of market share in respect of the sale of recorded music. While the technology has changed considerably since then, the structure of demand would not have changed much given the growth of incomes in the decade of the 1990s. Table 1.1 provides some data on sales of phonograms in 1992.

Most recent data by IFPI and RIAA suggest that in 1999, the United States continued to dominate the global market. RIAA puts the US share at 37% share of world sales. The next largest markets were Japan, followed by the United Kingdom, Germany, France, Canada, then Brazil, Spain, and Australia with equal shares followed by Mexico. (Recording Industry Association of America Inc 2000 [RIAA] <http://www.riaa.com>). RIAA estimates the music industry to have reached some US\$ 40b in 1999. IFPI's World Sales 2000 Report concluded that the global music market was worth US\$37b in 2000 with total unit sales of 3.5 billion. The US continued its dominance with a 38% share of the global market.

In spite of the fact that intellectual property starts with an individual, and musical compositions are an area most subject to individual initiative, and creativity, the production of popular music for distribution remains one of the areas of the greatest economic concentration internationally. According to Burnett (1996), there are three types of firms that can be identified in the international recording industry.

Table 1.1: World Sales of Phonograms: Ten Top Countries

Country	Percent of Sales of Phonograms
USA	31.1
Japan	15.2
Germany	9.2
United Kingdom	7.0
France	6.8
Canada	3.0
Italy	2.3
Netherlands	2.3
Spain	2.0
Australia	1.7

*Burnett (1996)*

Firstly, there are the transnationals, which dominate the market in respect of the manufacture and distribution of the product. Secondly, there is a middle tier of smaller firms, which operate by making production and distribution deals with the majors and with independent studios. Then there is a third category, producing under alternative labels, usually on short-term contracts to the second category. They represent a localised industry, and are a source of identification of new genres and nuances in music that may start with humble beginnings and make it into the mainstream.

The majors number a handful of companies. Technological advances and vertical and horizontal integration have allowed market power in one area of economic activity to be translated to other areas. The last fifteen years have witnessed mergers and take-overs that have created considerable concentration in the Entertainment Sector, generally and in the music industry in particular, in the main markets. In spite of anti-trust legislation in the United States, and now in the EU, mergers continue apace. The transformation has been aided and abetted by advances in telecommunications and information technology which have given rise to the multi-media corporation in which information communications technology, music, film, publishing, television, radio, and more are increasingly coming under one umbrella.

Time Warner now controls CNN and in January 2000 merged with America-On-Line, the world's largest online service, given the anticipated increase in the market served through the Internet. Time Warner Inc. consists of five businesses:

- Cable Networks, including Turner Entertainment, and the CNN News Group;
- Publishing of magazines, best selling books and hosting of websites;
- Music;

- Filmed Entertainment; and
- Cable Systems.

Influence over local radio and television networks assures the majors considerable footprint in respect of the popular entertainment in all its forms.

Sony Music Entertainment (SME), Universal Music Group (UMG), Warner Music Group (WMG), Bertelsmann (BMGE) and EMI complete the list of just about a handful of major players. These conglomerates have evolved from firms that were previously dominant in one sector, e.g. Sony in electronics, and Seagram in spirits and wine. Indeed, Seagram claimed on its acquisition of Polygram in 1998 to form UMG that it had become a major operator in 'two global business segments: entertainment; and spirits and wine' with the entertainment business segment producing and distributing motion picture, television and home video products, and recorded music (<http://www.umusic.com/globalnav/gnf.pl?url=http%3A//www.umusic.com/static/press/120698.htm>). There are few works that arrive at the top of the charts of popular music outside of the structure controlled by the majors. They are also the medium through which best selling novels can be transformed to film and video material.

**Table 1.2: The Market Shares of the Majors by Region (%), 1999**

	<b>BMGE</b>		<b>EMI</b>		<b>SME</b>		<b>UMG</b>		<b>WMG</b>	
Australasia	10.6	(8.5)	14.1	(17.5)	24.3	(25.0)	20.9	(22.0)	15.9	(15.0)
Europe	11.7	(11.0)	17.7	(16.5)	18.5	(17.5)	25.8	(21.5)	11.9	(11.5)
Latin America	15.8	(15.0)	13.0	(11.0)	21.8	(18.0)	20.7	(24.5)	11.9	(10.0)
North America	15.0	(12.0)	9.1	(13.0)	17.1	(18.0)	27.9	(24.5)	14.8	(19.0)
Asia (ex Japan)	8.3	(5.5)	7.7	(7.5)	12.2	(11.0)	21.7	(17.0)	5.8	(6.0)

*The figures in brackets are the market shares in 1998.*

*(Source: Music & Copyright No. 193 November 8, 2000)*

The multinationals although slow to embrace the Internet have started to tighten their grip on the world's music market by creating alliances or merging with and in some instances even taking over online companies. Late last year, Bertelsmann, the German media giant, acquired the right to buy Napster at the very time that Bertelsmann's own music division, BMG, along with the other four big record groups - EMI, Sony Music, Warner Music and Vivendi's Universal Music - was suing Napster for copyright infringement. Recently, in May this year, Vivendi Universal paid \$372m for MP3.com when only last year Vivendi was fighting the "dot.com" start-up for copyright infringement. The launches of two new subscription services are planned for this summer. Sony and Vivendi, whose roster includes Shaggy, are setting up a secure, on-demand downloading of music via a web portal such as Yahoo. AOL Time Warner, EMI and

Bertesmann, along with Realnetworks will launch their own service, called MusicNet. (*"Big Music Fights Back"* -The Economist June 16<sup>th</sup> - 22<sup>nd</sup> 2001).

The growth in home entertainment through cable television networks, radio, and video has merely served to deepen concentration. The vast material under the control of the majors allows them to satisfy market demand of various types across considerable geographic space and sub-cultural areas. Starting with the news networks, the influence extends to most parts of the world. CNN and BBC are the main filters for news across the world, in the main language groups. The Entertainment Industry mirrors a similar dominance by the North Atlantic.

Thus, corporate decisions determine which products of individual effort make it to the hit parade, a factor of no small importance to music deriving from the Caribbean. The experience of Bob Marley illustrates some of the features of the market: he was 'discovered' by one of the independents with access to the majors. Machel Montano in Trinidad, has achieved popularity in the Trinidad and Tobago market, but has had to sign with one of the labels, Atlantic Records, a division of Time Warner, to get the chance of airplay in the main-stream market. His work, while popular among the Caribbean Diaspora, is restricted to fringe radio stations in respect of airplay in the North Atlantic.

It could be argued that the increase in popularity of Latin Music in the North Atlantic reflects the considerable influence of the nature of industrial organization of the entertainment sector itself. The top stars in the Spanish-speaking world have signed up with the majors which have the marketing networks to deliver the product to Latin audiences in North America and increasingly into Latin America itself. The dominance exercised in the English-speaking world is likely to be fully repeated in the Spanish-speaking world as well. Major issues in the years ahead will be the relationship or conflicts that will develop between the majors and media giants in places like Brazil and Mexico where there are large domestic markets.

There does exist too, a number of independent labels that, from time to time, can capture significant share of particular niche markets. This may be an important consideration for industrial policy in the Caribbean in the years ahead.

The Indian Market represents the other major area of concentration in the entertainment industry internationally. Bollywood is deemed to be larger than Hollywood in respect of the number of productions of films – India makes seven times more films each year than the USA. Moreover the music recording industry in India has a potential mass market of close to a billion at home alone, let alone the Indian Disapora worldwide. Indian films have won awards at the Cannes festival, and there is bhangra music that has occasionally been on the doorstep of the mainstream popular music. Yet the Indian Industry has not really established the level of internationalism associated with the North Atlantic and American Industry, and is still restricted to India and its

diaspora, large though these may be. The North Atlantic Industry remains the dominant industry internationally, and in its structure and reach, has the capacity to influence submarkets, more than it is influenced by what emerges elsewhere.

## 1.6 MUSIC

Jamaican music has had a major impact on the global music scene in terms of commercialization as well as mass market appeal. The commercial achievements of Jamaican music surpass that of any other Caribbean sound or that of any other non-Western or World Music genre (Nurse 2000). Although there are no precise figures on the market value of Jamaican music it has been estimated that Reggae generates in the region of US\$1.2 billion per annum (Bourne & Allgrove 1995) while in 1995 the total value of Jamaican exports amounted to US\$1,400 million. The late Bob Marley was largely responsible for putting Reggae on the world map and indeed after his death in 1981 “the popularity of Jamaican music really took off internationally, breaking several records and barriers.” (Watson, 1995). His album “Exodus” was accorded the accolade of “Record of the 20<sup>th</sup> Century” by Time magazine. Nurse (2000) posits that:

The commercial success and international media exposure of artists such as Bob Marley and the Wailers, Jimmy Cliff, Peter Tosh, Steel Pulse, Black Uhuru and Third World elevated Reggae music to become one of the first musical artforms from the developing world to be fully marketed in the West and internationally.

Instrumental to the international success of Reggae music is the region’s first musical entrepreneur Chris Blackwell who founded the “Island” record label some 42 years ago. Originally headquartered in Jamaica and later in London, Island produced Jamaica’s first big international hit, Millie Small’s “My Boy Lollipop” in 1964. In the 1970’s Blackwell (born in London to a Jamaican mother and an Irish father) produced the film and soundtrack album “The Harder they Come” featuring Jimmy Cliff and launched Bob Marley and the Wailers to worldwide stardom along with other stars such as Toots & the Maytals, Burning Spear, Third World and Black Uhuru. (Chris Morris, Billboard Magazine April 17, 1999).

The mid 1980’s to mid 1990’s witnessed the commercial success of a number of “Dancehall” artistes in the international market such as: Shabba Ranks, Patra, Chaka Demus and Pliers, Inner Circle, Ini Kamoze, Diana King and Shaggy. The reputed annual incomes of these performers was reported to be in the region of US\$250,000 to US\$750,000 and an estimated US\$250,000 accruing annually to Bob Marley’s estate from royalties and merchandising (Bourne & Allgrove, (1995).

The international success of Reggae and Dancehall music has generated a large demand in US, Europe, Japan and Africa which has led to a succession of Jamaican performers touring and doing concerts and selling recorded music all over the world. There are reggae charts in many

established music industry publications such as Billboard magazine, on several occasions performers of reggae and dancehall have topped the charts in the US and the UK and Reggae is now a separate category in the American Grammy Awards.

Apart from Reggae and its Dancehall derivative, Jamaican music also includes the following types of music and the best known performers associated with them: (UNCTAD 2000)

Rock Steady:	<i>Jackie Mitoo, Lloyd Brevet, Toland Alphonso</i>
Ska:	<i>The Skatalittes</i>
Folk Music:	<i>The Jamaica Folk Singers, the University Singers; the National Dance Theatre Company</i>
Jazz:	<i>Monty Alexander, Ernie Ranglin, Sonny Bradshaw, Dean Fraser</i>
Gospel:	<i>Grace Thrillers, Glaudine Stewart, Lisa Johnson</i>
Calypso & Mento:	<i>Byron Lee &amp; the Dragonnaires, Fabulous Five</i>

From the mid 1990's dancehall artists like Buju Banton, Beenie Man and Bounty Killer emerged appealing largely to the hardcore youth in the Caribbean and Diasporic markets. Sales started to dwindle and its argued that the majors often had difficulties knowing how to market the dancehall genre given its use of Jamaican patois and risqué lyrics. Nevertheless Beenie Man was signed to Virgin Records and his album "Art and Life" won the Grammy Award in 2000 for Best Reggae Album of the Year. Furthermore, whilst international sales in Reggae music began to decline around the mid 1990's artists like Luciano, Tony Rebel, Morgan Heritage, Sizzla, Everton Blender, Beres Hammond, Ziggy Marley and the Melody Makers and Shaggy have been able to sustain some international interest in dancehall and reggae music. (Nurse 2000). As journalist Elena Oumano in a review of reggae for the year 1999 maintained:

For nearly three decades, reggae has struggled mightily to break out of the "underground." Yet it remains the musical catharsis of choice – carnal and/or spiritual – for a large and loyal fan base that held steady throughout the '90s (Billboard, December 25, 1999).

In 2000 Virgin Records released Dancehall king Beenie Man's "Art & Life" his best –selling album thus far which by the end of 2000 had sold 350,000 plus units. "But", notes Elena Oumano, "the year's biggest success belonged to Shaggy, who had been dropped by Virgin and signed to MCA. On August 8 [2000] he released "Hot Shot" his strongest effort thus far" which by year-end had sold platinum (net shipment of 1 million album units). (Billboard Magazine, December 30, 2000). Time will soon tell whether Shaggy's recent international chart-breaking success heralds the resurgence of reggae globally in spite of the "purists" who insist that his music is not reggae. However, as Oumano (Billboard, December 25, 1999) laments:

The talent and marketing strategies are coming into place. The prime obstacle remains the pirates, who steal a hefty chunk of the profits in Jamaica and everywhere else. Without the legal teams and major budgets of the majors, reggae's indies [i.e. independent record labels] have yet to marshal an effective counterattack, but plans are in the works to marshal a unified effort.

Calypso music, which originated in Trinidad and spread throughout the Eastern Caribbean, has been less successful internationally than Reggae in spite of the fact that it was one of the first artforms from a developing country to be recorded. From as early as the 1910's artistes such as Lovey's String Band, Houdini and Sam Manning were recorded in the United States by record companies such as Columbia and Victor. In the 1930's artistes like Atilla and Lion were recorded by Decca and the American Record Company. Lionel Belasco composed "Rum and Coca Cola" which was performed by Lord Invader and Decca subsequently recorded a cover version by the Andrew Sisters which sold more than 5 million units in the early 1940's. The Andrew Sisters' recording was the subject of the first reported copyright infringement law suit which was determined in favour of Lord Invader and Belasco. In the 1950's Harry Belafonte rose to stardom which his album "Calypso" which is reported to have sold 1 million units. The The Mighty Sparrow and the late Lord Kitchener dominated the calypso world in the 1960's with the export of their music being facilitated by the spread of Trinidad-type Carnivals throughout the Eastern Caribbean and the Caribbean Diaspora (Henry & Nurse 1996).

The mid 1970's witnessed the advent of soca – an upbeat derivative of calypso which grew in popularity across the Eastern Caribbean and the Caribbean Diaspora. Soca stars emerged such as the late Lord Shorty (attributed as the founder), Super Blue, Lord Nelson, Shadow, Crazy and David Rudder. However, their popularity, live performances and record sales remained confined to the regional and diasporic markets. It was Arrow from Monserrat who was able to penetrate the mainstream market with his hit "Hot, Hot, Hot", which achieved sales of over 4 million copies and which achieved wider international success with the cover version by the American singer Poindexter.

Eddy Grant, with his Ice Records and Ice Music record and music publishing companies set out to take calypso and soca music, to the heights of international success and contracted with a number of the main stars including Sparrow, Kitchener, Gabby, Superblue, Stalin, Square One to name a few. However, an ownership dispute with his former business partner which led to extensive litigation in various jurisdictions such as the US, UK and Antigua but which was eventually settled out of court in Grant's favour, no doubt caused a set back to his plans.

The late 1990's was the era of the "Bajan invasion" with soca artists like Alison Hinds and Square One, Edwin Yearwood and Krosfyah, TC and Rupee dominating Carnival in Trinidad and Trinidad-style Carnivals throughout the Caribbean Diaspora. Until the revival of Cropover, the music associated with Barbados was Spouge, but with the transformation of the annual

Cropover festival into a “Carnival-style” event, calypso and soca music became the dominant musical art forms.

In 1998, a “Macarena” style remix of the infectious “Follow de Leader” by Nigel and Marvin Lewis was licensed and released in France in 1998 and reportedly sold 200,000 copies there. This was followed by a German cover version by the Soca Boys and released by the Netherlands-based independent label Red Bullet and sold a collective 100,000 copies in Switzerland, Germany and the Netherlands, and a Spanish-language cover attained popularity in Spain, Mexico and Venezuela during the summer of 1998 (Billboard Magazine, April 8, 2000). However, it was the 2000 release of the cover version of the Anselm Douglas 1997 Carnival composition “Who Let the Dogs Out” by the Bahamian group “Baha Men” that put soca music back on the world map. The song was widely performed all over the world, was featured in the children’s movie “Rugrats in Paris” and won a 2000 Grammy Award. Following closely on the heels of the world wide success of “Who Let the Dogs Out” is the “electric” Eddy Grant himself with a “Ringbang” remix of his 1970’s hit “Electric Avenue” who is currently receiving much acclaim during his concert touring throughout Europe and with the song and album "The Greatest Hits" rising up the UK charts.

Apart from calypso and soca, Trinidad and Tobago’s repertoire of music also includes a number of other genres reflective of the multi-ethnicity of its population. Categories of such other types of music and the best known performers associated with them include the following:

Chutney:	<i>SundarPopo, Rikki Jai, “Massive” Gosein, Rooplal G, Drupatee</i>
Rapso:	<i>Brother Resistance, 3 Canal, Ataklan</i>
Steelband:	<i>Witco Desperadoes, Exodus, Neal &amp; Massy Allstars, BP Renegades, TCL Skiffle Bunch, Phase II</i>
Pan (soloists):	<i>Len “Boogise” Sharpe, Liam Teague, Ken “Professor” Philmore, Robbie Greenidge</i>
Parang:	<i>Daisy Voisin, Flores de San Jose, Lara Brothers</i>
“World Beat”:	<i>Andre Tanker, Mungal Patasar &amp; Pantar</i>
Jazz:	<i>Clive Zanda, Kysofusion, Panazz</i>
Gospel:	<i>Love Circle, Sherwin Gardner, Nicole Ballantyne, Nigel Soyer</i>
Rock/Alternative:	<i>Orange Sky, Jointpop, Insert Coin,</i>

Dominica, although small in size, has a proliferation of music bands some of which have been in existence since the 1960’s. The most successful of these bands include: WCK (creators of “Bouyon” music), Exile One, Swinging Stars (the oldest band) and First Serenade. Ophelia, the Creole-language singer is the most well-known solo artist from Dominica. The main markets for

Dominican music in the Caribbean are the French West Indian islands of Martinique and Guadeloupe and because of the French influence of Dominica's Creole-style music some of the bands frequently tour France and Francophone Africa (Cameroon, Ivory Coast, Burkina Faso, and Senegal). The Caribbean Diasporic centers of New York, Miami, Boston, Houston and Toronto are the main North American markets for live performances by Dominican artistes.

## 1.7 STREET FESTIVALS

It is mainly in the area of festivals and festival music that there has been a significant Caribbean presence internationally particularly from the Eastern and Southern Caribbean. It is in this genre that the creative talent of the Caribbean arrives and dictates the pace on its own, without much control being exercised by corporate structure of international business. It is still a business, *sui generis*.

The Trinidad style Carnival has been copied in other countries of the region and Carnivals are now annual events, contributing as well to the tourism product of the respective island nations. In most cases, traditional festivals have been adapted and modified to embrace components of the Trinidad style carnival – e.g. Crop-Over in Barbados. In some cases, the Carnival or Festival has been set to avoid competition with the Trinidad carnival and to maximize potential for increasing tourist arrivals: Jamaica has developed a Carnival to coincide with the Easter celebrations, and which helps to boost tourism at the end of the season whilst St. Lucia changed the timing of its pre-Lenten Carnival to July, also with a view to create a spike in off-season tourism.

The Mas/Carnival has been 'exported' to the North Atlantic. Notting Hill Carnival, Labour Day in Brooklyn, and Caribana are the largest Trinidad style carnivals in the world. Notting Hill is now the largest outdoor festival of its type in Europe, and there is nothing else in Canada that comes close to Caribana in terms of numbers of participants and in attendance. Wherever there are large concentrations of Caribbean people, in the metropolitan North Atlantic, the effect of more relaxed immigration policies especially in Canada and the USA, Trinidad style Carnivals have been spawned.

The increase in their number, and in their regularity, as annual events, have created a market for entertainers from the Caribbean. Thus, some calypsonians and other musicians now have a regular circuit that takes them to Carnivals in other Caribbean countries than their country of origin, and to the Carnivals in the UK and North America.

The Carnival event in Trinidad and Tobago, as the source for the majority of calypsonians and entertainers in that genre, defines a particular cycle of activity and performance. It is the first major event for the year, and preparation for releases is normally completed by November of the previous year with the taping of the master in Trinidad and then the final production in the US. The product is then re-imported in finished form for distribution during the Carnival season, at

the same time as the entertainer makes the circuit of fetes and tents before the Carnival in February or March. Following the Carnival, their income source depends largely on engagements outside of Trinidad, and with Carnivals abroad, up until October when the cycle is repeated again.

Moreover, some amount of costuming deriving from the Caribbean and from Trinidad in particular, is targeted at supplying those Carnivals as well. Thus, there is a comparable cycle of activity in costuming, with designer and manufacturers of costumes having a flurry of activity leading up to the Trinidad Carnival, after which some of the output is adjusted or exported as is to Carnivals elsewhere. There are band leaders and costume designers who engage in temporary migration to service other carnivals.

There are two strands in the emergence of Carnivals in the North Atlantic. In one variant, a festival that existed on the particular location is adapted to a Trinidad style Carnival accent – Notting Hill, and Labour Day in Brooklyn are two notable examples, but the Klondike Parade in Edmonton is following in that mode. A second variant arises out of the effort on the part of a large Caribbean community in a location to have a gala event or dance, which finally spills over into an annual street festival.

Within the Caribbean itself, data on tourism suggest that the festivals have some impact on visitor arrivals in the respective countries. Visitor spending data as a result of the Carnival are not readily available, but most Boards of Tourism regard these festivals as significant in increasing room occupancy and in increased economic activity during the period of the festival. Monthly arrivals for many Caribbean destinations now illustrate this pattern. The Appendix gives a listing of Carnivals, most of which derive from the Trinidad model. In recent times, Jazz and other Music Festivals have been added to the list of festivals of the region.

Reggae festivals and annual concerts have started to emerge with some regularity in North America, and show portents of a new market, deriving specifically from Reggae. Thus, in addition to the Trinidad-style carnival, there are now Jamaican-style Sunsplash events outside of Jamaica, providing a market for entertainers from Jamaica, and/or entertainers with Reggae/Dancehall genre of music.

## 1.8 FILM AND VIDEO

The film and video sectors of the cultural industries in the Caribbean are still in the nascent stages particularly in the Commonwealth Caribbean. In the region Cuba is undoubtedly the leader, with a thriving film industry. Shortly after the revolution, the Cuban Cinematographic Association ICAIC was established in July 1959 with the revolutionary government understanding the power of the media in promoting nationalist ideas. Cuba produces three to four high quality feature films every year even penetrating US markets with the seminal “Strawberry and Chocolate” being nominated for an Academy Award. Cuban television stations broadcast 70% local content and 30% foreign (not only US programming) Martinique as a department of France has also benefited from the French cultural protectionist measures designed to bolster French films and television programs from the omnipotence of American programming.

In the Commonwealth Caribbean film and video have great potential and essentially there are two models for development (which are not mutually exclusive): the local production model and the location model.

In relation to television, the structure and mode of operation of the television business in the Commonwealth Caribbean militates against local programming. Television operates not as a communications industry but as a wholesale/retail business with the regional broadcasters buying US programmes wholesale and then selling them retail via advertising slots. Production is minimal and in most instances confined to news, documentaries and information. Production and airing of quality local programmes such as feature films, soaps and serials, documentaries, magazine format type shows are not commercially viable for broadcasters. Production costs are much higher than purchasing cheap US programming. Consequently, whereas in the developed countries television stations purchase or license programmes for broadcast, in the Commonwealth Caribbean local production entities have to pay broadcasters for airtime or find advertising sponsors up front. Broadcasting stations do not spend the time in selling programmes to advertising agencies.

The countries that have been able to withstand the penetration of US programming and have developed local production, particularly of television programs, have adopted deliberate protectionist measures in the form of local content quotas: Canada, France and Australia. Canada's local content regulations, for example, known as “CANCON” contain intricate and detailed definitions, criteria and other stipulations enshrined in legislation that mandates radio and television broadcasters as well as cable and satellite operators to transmit a minimum percentage of programming containing Canadian content within the confines of the CANCON rules. Other measures adopted in Canada are in the form of Government funding and subsidies.

One means by which Caribbean filmmakers may be able access foreign funding is through Co-Production Agreements. Cuba recently entered into such an agreement with Canada and Jamaica is in the process of negotiating such an agreement. Under the Canadian Co-Production scheme, the Co-Producer only has to invest 15% and then both parties can access Canadian funding.

In the Caribbean various countries have tried and are still involved in the Location Model –invite overseas productions to come to the Caribbean: Jamaica<sup>2</sup>, Bahamas, Puerto Rico. Other countries are in the process of establishing local film commissions and incentives for attracting large-scale productions for location filming e.g. Barbados, OECS, Trinidad and Tobago. The Barbados Ministry of Culture advocates that the benefits to Barbados will include:

- a. Foreign exchange to be earned from being a location for international filming;
- b. Expansion of the country's export services
- c. Increased opportunities for the recording and dissemination of Barbadian culture on the international scene
- d. Growth of indigenous and underdeveloped industries;
- e. Inspiration for the creation of new services and industries;
- f. Creation of additional employment opportunities.

On the other hand, some of the disadvantages associated with the location model include:

- a. Large percentage of skilled people are foreign, the key acting roles and senior personnel such as directors and producers are foreign. Local labour employed in the location country is usually unskilled
- b. “Cultural disadvantage” – many of the films shot on location in the Caribbean are just concerned about using “an exotic backdrop” however, locals are portrayed in subservient roles.

It has been recommended that the Location Model should go hand in hand with the Local Production Model.

## 1.9 THE INTERNATIONAL TRADE IN SERVICES AGREEMENTS

### 1.9.1 WTO Agreements

The first multilateral agreement on rules for trade in services was a product of the Uruguay Round of multinational trade negotiations (1986 to 1994) which covered not only further liberalization in trade in goods but also the establishment of frameworks for liberalization in services, investments measures and trade-related intellectual property rights. The conclusion of

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<sup>2</sup> Table N in the Appendices lists some of the feature films shot on location in Jamaica.

the Round in Marrakesh in April 1994 resulted in the creation of a new World Trade Organization.

With the creation of the WTO, the countries that are members of the GATT have negotiated the revised General Agreement on Tariffs and Trade (GATT 1994) a General Agreement on Trade in Services (GATS), an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as well as additional agreements, such as the Agreement on Subsidies and Countervailing Measures and the Agreement on Trade-related Investments Measures (TRIMs), which provide further elaboration on rules governing trade in goods. For example, the Agreement on Subsidies and Countervailing Measures establishes three categories of subsidies for goods: prohibited, actionable and non-actionable. Subsidies that are provided based on export performance or on a company using domestic (rather than imported) goods are prohibited, while subsidies provided to assist in research and development or to help disadvantaged regions are excluded from the scope of the agreement. TRIMs prohibits countries from establishing certain performance requirements as a condition for foreign investment.

Prior to the Round, one of the main impediments to multilateral negotiations was a lack of clarity about how services could be traded. The definition of an internationally traded service is addressed in GATS which provides in part as follows.

Trade in services is defined as the supply of a service:

- a. from the territory of one Member into the territory of any other Member [cross border]
- b. in the territory of one Member to the service consumer of any other Member [consumption abroad]
- c. by a service supplier of one Member, through commercial presence in the territory of any other member [commercial presence]
- d. by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member [movement of natural persons]

Box 1 sets out the principles of GATS.

#### BOX 1: PRINCIPLES OF GATS

**Most Favoured Nation (MFN) status.** Countries that are partners to trade agreements to grant all their trading partners “most favoured nation” (MFN) status and treat all of them equally.

**National Treatment.** When a trading partner’s goods or services enter a country’s market, the Receiving country agrees to give them “national treatment” or treat them the same as its own national goods and services.

**Transparency/Predictability.** Countries agree to make all their trade practices “transparent” or “visible” to their trading partners, and avoid unfair or less visible practices, such as subsidizing industries or dumping products. Countries also agree to negotiate binding agreements that create a predictable trade environment, so foreign companies and investors don’t have to worry about countries suddenly throwing up arbitrary barriers to trade.

**Non-discrimination.** Members Countries must treat services and service suppliers from one Member no less favourably than those from other Members.

**Market Access.** In terms of access to the market of a Member, service and services suppliers of any other Member must be accorded the same treatment specified in its schedule of commitments.

These principles for international trade agreements are the basis for the GATT, GATS and the FTAs.

The rationale of GATS is to:

establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and a means of promoting the economic growth of all trading partners and the development of developing countries.

GATS outlines a framework of principles that apply to all Members on any measures affecting trade in services and also sets out Schedules of specific commitments made by Individual Members on how much access foreign service providers are allowed in specific services sectors and under what conditions.

The concepts of entertainment/cultural goods and entertainment/cultural services which appear clearly distinct, are sometimes difficult to dissociate. UNESCO defines “cultural goods” as those consumer goods which convey ideas, symbols and ways of life – “they inform or entertain, contribute to build collective identity and influence cultural practices”. Examples include: books, magazines, software, records, films, videos, multimedia products, paintings, drawings, sculpture and crafts.

On the other hand, UNESCO posits that: “It is traditionally understood that cultural services are those activities aimed at satisfying cultural interests or needs. Such activities do not represent material goods in themselves: they typically consist of the overall set of measures and supporting facilities for cultural practices that government, private and semi-public institutions or companies make available to the community. Examples of such services include the promotion of

performances and cultural events as well as cultural information and preservation (libraries, documentation centers and museums).’<sup>3</sup>

The only services exempted from GATS are those supplied in the exercise of governmental authority- all commercially traded services are included. For the purposes of scheduling the WTO has divided services into 12 main areas which are further subdivided into 155 subsectors. Binding commitments exist only for those services selected by each Member for scheduling. Entertainment services are covered under the two main areas entitled “Communications” and “Recreational, cultural and sporting services”. Audiovisual Services which is subsector D of the second sector “Communications” covers the following:

- a. Motion picture and video tape production and distribution services
- b. Motion picture projection service
- c. Radio and television services
- d. Radio and television transmission services
- e. Sound recording; and
- f. Other (not specified but could cover, for example the contents of multimedia products).

Entertainment services (including theatre, live bands and circus services) is sub-sector A. of the tenth sector “Recreational, cultural and sporting services (other than audiovisual services)’.

Only 19 Members have made commitments in the Audiovisual subsector (see Appendix) and 38 in the Entertainment subsector primarily due to domestic regulations and concerns about protecting national culture and heritage. During the final negotiations of the Uruguay Round, some countries expressed concerns that enforcement of the GATT principles – in particular MFN and national treatment rules – on cultural goods and services would undermine their cultural specificity in favour of their commercial aspects.

After much debate, these concerns were addressed in the Uruguay Round’s final negotiations, which did not insist on applying all GATS rules to film and audiovisual goods and services. Since then, this tacit understanding has been known as the “cultural exception”. The “cultural exception” is based on the principle that culture is not like any other merchandise because it goes beyond the commercial: “cultural goods and services convey ideas, values and ways of life which reflect the plural identities of a country and the creative diversity of its citizens”<sup>4</sup>.

In the GATS members did not agree to exempt culture from the agreement but they did allow countries to opt out of MFN obligations and to opt in to national treatment obligations. The Canadian position is captured in the following:

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<sup>3</sup> : [www.unesco.org](http://www.unesco.org) “Culture, trade and globalisation”

<sup>4</sup> see UNESCO “Culture, trade and globalisation.”

As a result, Canada took an MFN exemption for its film and television co-productions and did not include any commitments for national treatment in the cultural sector. In other words, Canada effectively withheld its cultural policies from the GATS disciplines and maintained its right to promote Canadian cultural services and suppliers. This is consistent with our cultural policy objectives and our view that cultural products are not commodities”(*New Strategies for Culture and Trade Canadian Culture in a Global World The Cultural Industries Sectoral Advisory Group on International Trade February 1999.*)

In regional and bilateral free trade agreements, such as the North American Free Trade Agreement (NAFTA), the Canada-Israel Free Trade Agreement, and the Canada-Chile Free Trade Agreement, Canada has negotiated a "cultural exemption". With that provision, Canada has the right to exempt the cultural industries from most terms of the agreement. For example, under NAFTA, Canada can continue to support its cultural industries as long as the measures it uses are otherwise consistent with the pre-existing Canada/USA Free Trade Agreement.

The cultural exemption principle has enabled the European Union to develop and implement public policy to support the audiovisual sector such as broadcasting quotas (radio and television), financial aid (for production and distribution programmes like MEDIA), regional co-production agreements (like Eurimages) and the “Television Without Frontiers” Directive.

The “cultural exception” principle was also applied in the decision to maintain Article IV of Part II of the GATT agreement. That provision permits screen quotas to require the exhibition of domestically made films for a specified minimum proportion of total screen time. Article XX.f of the GATT also maintains a general exception for measures designed “to protect national treasures of artistic, historic or archaeological value.

In future negotiations, there will be more pressure on all countries to liberalize their policies and practices. Such pressure has been evident, for example, in the negotiations on the Multilateral Agreement on Investments (MAI), which focused on establishing principles to govern the treatment of foreign investments in certain agreed-upon sectors.

Right now, the international “disciplines” governing trade in goods are more extensive than those covering trade in services. However, as we have seen in recent negotiations, disciplines are becoming more extensive for investment and trade in services and intellectual property rights.

### 1.9.2 FTAA

The effort to unite the economies of the Western Hemisphere into a single free trade arrangement was initiated at the Summit of the Americas, which was held in December of 1994 in Miami. The Heads of State of the 34 democracies in the region agreed to construct a “Free Trade Area of the Americas” or FTAA and to complete negotiations for the agreement by 2005. The leaders also made a commitment to achieve substantial progress toward building the FTAA by 2000,

examine trade related measures in its respective areas, in order to determine possible approaches to negotiations.

The ambitious goal set by the leaders of the Western Hemisphere at the 1994 Summit of the Americas in Miami to create a free trade area has been given a significant push forward by the completion of the San Jose Declaration on March 19th, 1998. This Declaration, agreed by the Trade Ministers of the 34 participating democracies in the Free Trade Area of the Americas (FTAA) process, served as the basis for the launch of the Hemispheric trade negotiations by heads of state and government in Santiago, Chile on 18-19 April, 1998.

The San Jose Declaration can be compared to the 1986 Punta Del Este Declaration which launched the Uruguay Round of multilateral trade negotiations. It represents a commitment by 34 countries to the most ambitious undertaking for trade liberalization since that time. It also represents the largest regional integration effort ever undertaken involving both developed and developing countries in a common objective to realize free trade and investment in goods and services, on a basis of strengthened trading rules and disciplines.

The breadth of the negotiations which will be set in place by the San Jose Declaration is unprecedented even by the standards of the Uruguay Round. These negotiations will encompass all of those areas previously negotiated and which fall within the World Trade Organization's ambit, with the goal of going beyond previously agreed multilateral liberalization within the Hemisphere, wherever possible. Importantly, however, the FTAA negotiations will include areas not presently under the WTO such as a common investment regime, government procurement, and competition policy, which are not yet subject to commonly agreed disciplines among a large number of trading nations.

Equally, the FTAA negotiations will examine the interrelationship which exists between certain key negotiating areas, such as agriculture and market access; services and investment; competition policy and subsidies; antidumping and countervailing duties, among others, so as to ensure that the outcome of negotiations are as efficient and liberalizing as possible.

### 1.9.3 ACP-Cotonou Agreement

The ACP-Cotonou Agreement seeks to promote and expedite the economic, cultural and social development of the ACP States, “with a view to contributing to peace and security and to promoting a stable and democratic political environment.”

Its general provisions recognise the growing importance of services in international trade and their major contribution to economic and social development. The signatory countries reaffirm their respective commitments under the General Agreement on Trade and underline the need for

special and differential treatment to ACP suppliers of services. They commit themselves to progressive liberalisation in trade and services, as provided for in Article XIX of GATS.

The EU pledged to give sympathetic consideration to the ACP States' priorities for improvement in the EU schedule, with a view to meeting their specific interests. Two groups of countries agreed on the objective of extending under the economic partnership agreements, and after they would have acquired some experience in applying the Most Favoured Nation (MFN) treatment under GATS, they would encompass the liberalisation of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements.

The EU also pledged to support the ACP States' efforts to strengthen their capacity in the supply of services. Particular attention was to be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

Article 27 of the Treaty specifically aims at:

- a. integrating the cultural dimension at all levels of development cooperation;
- b. preserving and promoting cultural values and identities to enable inter-cultural dialogue;
- c. preserving and promoting the value of cultural heritage; supporting the development of capacity in this sector; and
- d. developing cultural industries and enhancing market access opportunities for cultural goods and services.

#### 1.9.4 The Florence Agreement and its Nairobi Protocol<sup>5</sup>

The Agreement on the Importation of Educational, Scientific and Cultural Materials (known as the "Florence Agreement") and the Protocol are sponsored by the United Nations Educational, Scientific and Cultural Organization. The Agreement was initiated in accordance with one of the main constitutional objectives of UNESCO which is to facilitate 'the exchange of publications, objects of artistic and scientific interest and other materials of information' and to recommend international agreements which will promote "the free flow of ideas."

Reaffirming these principles on which the Agreement is based, the Protocol points to the accession since 1950 of many developing countries to national sovereignty and to the necessity of taking into account their needs and concerns with a view to giving them easier and less costly access to education, science, technology and culture. The major purpose of the Agreement and

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<sup>5</sup> See UNESCO website referred to above.

the Protocol, is to make it easier to import educational, scientific and cultural materials. They reduce tariff, tax, currency and trade obstacles to the international circulation of these materials, permitting organizations and individuals to obtain them from abroad with less difficulty and at less cost.

The Florence Agreement, originally reached in 1950 was updated in 1976 with the adoption of the Nairobi Protocol which broadens the scope of the Agreement, by extending the benefits it offers to additional objects, particularly those using the technologies developed at that time, such as audiovisual materials and by granting further benefits to a number of materials. As of 2000, 94 member states have ratified the Agreement.

The Florence Agreement was conceived along the lines of the GATT Agreement, which was already in operation. The provisions of the present World Trade Organization which replaced these of the GATT and which also cover international trade in objects protected under intellectual property agreements, have given new life to the Florence Agreement. The latter is still one of the most useful mechanisms for managing what has always been a very complex relationship between culture and commerce.

It is interesting to note that while the Agreement and its Protocol essentially endorse the liberalization of markets for cultural goods (and indirectly cultural services) they both contain reserve mechanisms, which allow member states to avoid importing cultural goods that may prejudice the development of national cultural products (for example, the reserve clause by the USA at its accession to the Agreement and Annex C-1 of the Nairobi Protocol with regard to commercial cinema). The result of such reserve mechanisms is in fact similar to the “cultural exception” even before this notion was developed.

## 1.10 CULTURAL DIVERSITY

The common thread running through the approaches to negotiations of the above-mentioned agreements as they relate to audiovisual and entertainment services, including the “cultural exception” principle is the recognition that culture is more than just a commercial commodity which must be preserved for future generations.

UNESCO defines the notion of cultural diversity as follows: “Cultural diversity is the positive expression of the overarching objective to prevent the development of a uniform world by promoting and supporting all world cultures.” UNESCO also notes that: “The cultural exception is just one of the possible means for achieving this objective of promoting cultural diversity. It must be acknowledged that those cultural goods and services ... are different from other goods and services, and deserve different and/or exceptional treatment that sets them apart from standardized mass consumption.”

The ethnically diverse and culturally pluralistic nature of many countries in the Commonwealth Caribbean compels that trade negotiations in the entertainment services sector advance and strengthen the notion of cultural diversity thereby ensuring that whilst such services are liberalized, the rich and complex mosaic of Caribbean culture is preserved and protected against the risks of a single homogenizing culture emanating from the North.

## SECTION II

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### 2.0 INTRODUCTION

Section II examines in greater depth the various stages of production in the sector. One of the issues in entertainment is that production is dictated not only by market considerations. The divide between market oriented production and production that has to do with the sense of self-fulfillment on the part of entertainers can be blurred. Participation in Carnival Festivals is fuelled by the demand of some for street-entertainment. They pay to play mas, while others pay to see them play mas.

The special nature of demand in the sector has to be taken into account in examining the different modes of supply in the Caribbean. These will be reviewed in the context of the influence that the Caribbean Industry has had on particular markets, and of the influence that the external industry has had on the Caribbean itself.

Industry regulation, and the globalisation of delivery modes will be examined, along with the degree to which Caribbean countries have complied and implemented a regulatory regime and/or sought to position firms and organizations to take advantage of the presumed rules of reciprocal treatment in the trade and other rules that apply to the sector.

This Section explores the production structure of the Entertainment Sector in the Commonwealth Caribbean. It can be argued that the Sector is still inchoate, although considerable evolution has occurred over the years. Some elements derive from the folk culture of the countries and receive continuing support and inspiration from that source, with production generated as part of the self-fulfillment of entertainers: this is particularly evident with regard to Music and to 'Mas'.

### 2.1 COMMERCIAL PRODUCTION

The Entertainment Sector in the Commonwealth Caribbean in its various components displays varying levels of commercialisation. Music has had perhaps the longest history, starting with balls and other social occasions of colonial high society in the mid 19<sup>th</sup> century which were supported with live orchestras. In Trinidad and Tobago, the masquerade started in halls with music played by orchestras of the time.

Cinematic presentations in cinemas took root in the interwar years, and grew as an industry up until the coming of television after which, as has happened elsewhere, the number of cinemas declined. However, the making of films is yet to take root as a major industry in the Region. This is in spite of the fact that some countries have promoted themselves as a location for the

production of film. Jamaica was the first country to enact legislation, “The Motion Picture Industry (Encouragement) Act”, to promote the making of films, and its effort can be seen in the context of the attempt at industrialization and economic diversification associated with the Lewis strategy of industrialization.

More recently there has been some increased activity in Jamaica: of the 46 feature films shot in Jamaica since 1953, eighteen were in the 1990s, suggesting that the country is gradually establishing itself in the sector. Most of the firms involved are foreign. Trinidad and Tobago is also promoting itself in the international community as a location for film production. However, there is very little by way of domestic production, except for video products. High costs and limited market size militate against the development of both film and video productions.

Theatre has remained an area of art for art’s sake. Some amount of commercialization started in the 1940s. The establishment of the University of the West Indies led to an expansion of the cadre of persons with formal tertiary education in Literature and gave birth to a Caribbean Theatre. Production followed two distinct trends. There was production of works deriving out of English Literature, put on for academic purposes, and/or for the entertainment of the then ‘polite’ society, when some exposure to the literature of the Britain was indicative of good breeding.

The other strand emerged with the decolonisation ethos as Caribbean peoples looked at themselves and saw the beauty and developed respect for themselves. There is now some amount of theatre in Jamaica, and in Trinidad and Tobago with performers earning most of their livelihood from domestic performances. There is also theatre put on by part-time professionals in Barbados, St. Lucia and to a more limited degree in Antigua. There is little performance outside the Caribbean, though. A few actors have been invited to be part of productions abroad, and within the region, and actors occasionally have visited as guest artistes in theatre companies in other islands.

## 2.2 PRODUCTION AND MODES OF SUPPLY OF MUSIC PRODUCTS AND SERVICES

At a minimum there are at least 18 separate and identifiable functions in the music business: namely songwriters/composers, singers, musicians, record producers, sound engineers, music publishers, record manufacturers, promoters, managers, disc jockeys (radio, club and sound system for events) booking agents, venue operators/proprietors, merchandise manufacturers, instrument manufacturers, entertainment attorneys, publicists, distributors and retailers. The combination of all these results in the production and provision of most of the products and services relating to the business of music (*“Becoming a Globally Competitive Player: the Case of the Music Industry in Jamaica” UNCTAD – Zeljka Kozul-Wright and Lloyd Stanbury No. 138*).

Each of the above-mentioned functions can be categorized under various phases.

1. **Creation:** The first phase is the creation of the musical composition, the song and the lyrics which essentially involves the expression of an idea. Important economic rights flow from this process namely copyright which is a bundle of exclusive rights such as reproduction, public performance, broadcasting, distribution, importation, rental and public display. Copyright arises from the moment of creation or the expression of the intangible in some material form. There is no copyright in an idea. The owner of the copyright is the author or the creator which in the case of music is the composer, songwriter or lyricist as the case may be.
2. **Music Publishing:** In order to maximize the commercial exploitation of musical compositions songwriters may enter into publishing/songwriting agreements with music publishers. Publishers seek to maximize the generation of income by the music from the following sources: print (i.e. sheet music), performance licensing (the use of music in broadcasting, cable diffusion and in public performances), mechanical licensing (the use of musical composition in recorded formats such as CDs, cassettes etc), synchronization licensing (the use of music in timed sequence with visual images e.g. films, videos, television programmes) commercial advertising, multi media and the Internet.
3. **Recording:** The next phase certainly in relation to recorded music products is the recording phase. Songwriters, singers, musicians, sound engineers and record producers render their services by assembling in a recording studio and perform their various functions in order to produce a master recording. This completes the phase of the music making process. (*UNCTAD No. 138 above*). Two right owners are involved in this process other than the creator of the music- the performer (i.e. the singer and/or musician) and the record producer. The right of the performer (in some jurisdictions falls under neighbouring or related rights as explained in Section V in others known as performers' rights) lives in the fixation of his/her live performance. The owner of the rights in the master recording is the record producer and again in some jurisdictions (e.g. US, UK, Jamaica) these rights fall under copyright whilst in others (e.g. Trinidad and Tobago, France) these rights fall under neighbouring or related rights. However, in any event these rights are essentially economic rights which when commercially exploited generate income by way of royalties. "Royalties generated from the exploitation of the recording are shared amongst the producer and the artist, while royalties from the exploitation of the song are shared among the creator (songwriter) and the publishers". The services provided by the record producer include financing the cost of the studio recording process and coordinating the activities of songwriters, singers, musicians and recording engineers in the recording studio. (*UNCTAD No. 138*)
4. **Manufacture:** Upon completion of the master recording the record producer sends the master to a manufacturing plant to produce the finished product whether in the format of vinyl records, cassettes, compact discs, mini discs or digital compact discs (DCDs). These

manufacturing plants are either CD pressing plants or a vinyl or cassette tape manufacturing facility. In the Commonwealth Caribbean there is only one CD pressing plant which is in Jamaica. Consequently most record producers export their masters to facilities in the United States and then import the finished product into their respective domestic markets. Furthermore with the relatively inexpensive cost of CD burners several producers “burn” CDs when the number of units required for the domestic market is small (ie. less than 1000). In other instances a record producer would contract with a distributor to manufacture and distribute the finished product.

5. **Marketing and Distribution:** In the Caribbean this phase is perhaps the weakest link in the chain particularly in foreign markets and is addressed in greater detail in Section III. In developed countries vast sums of money are spent by record companies in bringing the finished product to the attention and eventually in the hands of consumers. The proliferation of “one man firms” in the region who undertake all the above-mentioned processes of recording and manufacture, militates against effective marketing and distribution. They tend to suffer from a lack of available capital for the costly investment for effective advertising and promotion which is necessary to sell reasonably large quantities of product.
6. **Retailing:** This phase is closely linked with the distribution phase since the products move from the distributor to the retailer. The retailer is the final link in the chain between the product and the consumer and normally commands a high mark up for their services.
7. **Live Performances:** In some instances phases 3 to 6 above can be bypassed and from creation of the music or song, the next element of commercial exploitation is live performance. This is particularly true in the case of the calypso tents in Trinidad & Tobago, St. Lucia, Dominica and Barbados. Several calypsonians who perform “social/political commentary” calypsoes compose their own material and the first time it is made available for the public is through performances at tents during Carnival/Crop Over. In Jamaica, however, this is seldom the case, and, in fact, Jamaica has a proliferation of recording studios so that most of the music created is recorded and manufactured into finished product. However, in instances where phases 2 to 5 are undertaken, live performance is an important aspect of the music business. In developed countries artistes (i.e. singers and musicians) go on tour giving live concerts at different venues in different places or even countries. Such tours are in fact an important part of phase 5 i.e. the marketing and distribution of the particular product. Touring often increases the sales of product. The situation in the Caribbean particularly in the Eastern and Southern Caribbean is the opposite. The success of a record in the domestic market spurs the demand for live performances overseas particularly in the Diaspora. As David Rudder (a well-known Trinidadian calypsonian) stated “most artistes go on tour to promote their records but in Trinidad we make records to promote our tours.” The main reason for this phenomenon is the downturn in sales of records in the domestic markets,

which is attributable in the main to the rise in piracy. More money is made by performances on the overseas “Carnival circuit” than from record sales.

8. **Independent Service Providers:** Apart from the persons who render services in relation to the above-listed processes there are other music business activities which entail the provision of services only. “These strict service activities may be categorized as (a) creative services; (b) technical services; and (c) representational services. Creative services include the provision of concert performance services by singers, musicians and audio engineers, which are rendered both locally and internationally. Technical services include the provision of recording studio rental facilities, sound and lighting reinforcement for concerts, and concert venue rentals. The area of representational services consists of a wide variety of activities, including the functions of artiste personal manager, artiste business manager, booking agent, publicist and legal counsel...” (*UNCTAD No.138*)

## 2.3 MODES OF SUPPLY – MUSIC INDUSTRY

The Music Industry supplies goods and services to consumers in the respective countries in the following forms:

1. Sound Recordings, recorded music at retail outlets, and through hotels, restaurants and offices
2. Live Performances
3. Broadcasts through radio and television
4. Commercial jingles
5. Musical Instruments
6. Sheet Music
7. Internet

### 2.3.1 Sound Recordings and Live Performances

To the Music Industry, one could attach the Festival Industry which, in the case of Trinidad and Tobago in particular, means ‘Mas’ with the designers of costumes and the promoters of bands. Each of these areas has key actors. The sound recordings bring to the fore an entertainer or performer or a group. In the case of Calypso and Reggae Music, the performer is at centre stage and many form firms in their own right. They may hire managers and other personnel. Music bands invariably have managers. Some singers have their own bands, having started singing with a band. Bob Marley and the Wailers, Machel Montano and Xtatik, and Allison Hinds and Square One are examples of such structures.

The singers and or bands are involved in sound recordings and live performances. These may be done in the region especially at festivals like Carnival or Crop-over, and abroad as in Labour Day in Brooklyn and the Nottinghill Carnival. Behind the singers, bands and performing artistes are song writers, some of whom are dedicated to particular artistes. Songwriters have always been around. However, performers once identified with talent, may be approached by songwriters with work that seems to be consistent with the public image that they cut.

The home base is important for Musicians in these countries and their popularity in any year is dependent on their having produced material that was accepted or highly rated in the local economy in the year in question. That rating is usually decided on the basis of live performances in the local festival or main event of the year in Trinidad and Tobago and in Barbados. The Trinidad Carnival and Crop-over in Barbados allow performers to gain their imprimatur for the year.

The Jamaican experience is somewhat different in that Jamaica does not have a main event of comparable importance in its annual calendar. Yet Reggae and Dancehall artistes still find it necessary to draw inspiration for their creative endeavour in the home base. Concerts in Jamaica, and festivals like Sunfest and Sting provide for the airing of new output.

High rating at the Trinidad Carnival assures a Calypsonian or Soca artiste good billing for the rest of the year in the wider Caribbean Market and in the Metropolitan market where the presence of large numbers of West Indians has led to the institutionalization of annual Carnivals patterned after the Trinidad Carnival.

Non-Trinidadian artistes also appear at the Trinidad Carnival, after establishing themselves for the year in their own home market. Thus, the Barbadian performers who do well at Crop-over, are likely to find good market for performing at the large number of fetes held in Trinidad on the lead up to the Carnival. Their circuit takes them north following the Trinidad Carnival to performances in other parts of the Region and the North Atlantic for the rest of the year before they prepare to repeat the circuit in the following year.

It should be reiterated though, that the Jamaica music industry is unlike that of the Eastern Caribbean, in that it is built on ongoing domestic recording and performance activity and not on any single annual event. This does not mean however, that the domestic market is not important, but there are artistes who are highly popular at home but do not command much attention abroad and vice versa (Interview with Lloyd Stanbury).

Behind the live performances is the recorded material, which is targeted at radio and television through video productions. Airplay and high reception to it increases record sales, but given the high level of piracy and duplication that exists in the market, the main source of income resides

in performances at parties, fetes and other live shows. Some considerable level of sophistication is now displayed by these artistes. Video release is associated with press launch, and press kits, and some now have websites, updated on a regular basis.

Sound recording has evolved in a number of ways over the years. A key agent here has been the recording studio. Jamaica was the base for the establishment and growth of at least one company that finally relocated abroad and then was sold to one of the majors in the industry. The 1960s saw the mushrooming of recording companies. In Jamaica, the explosion in the demand for Ska and then Rock Steady Music encouraged the growth of the recording side of the industry.

However, changes in international industry, and in technology, plus the nature of internal demand in the Caribbean itself, constantly being influenced by the standards set in the metropole, have reduced the role played by the domestic recording industry in the Eastern Caribbean countries. The higher standards required of sound recordings and the fact of economies of scale in certain areas of production, have pushed the final product preparation out of Barbados and Trinidad and Tobago to metropolitan production sites.

However, Jamaica has been able to forge ahead and there is evidence of increased technological capacity in recording and mastering facilities, and there is now the first plant manufacturing CDs in the Commonwealth Caribbean (Interview with Lloyd Stanbury). Another area in which Jamaica has excelled is in the development of sound systems, that evolved in shaping outdoor discos. They represent the creative adaptation of imported technology (James, 1999). The sound systems lend a special atmosphere to Reggae Festivals.

The Music Industry Directory put out by JAMPRO in Jamaica lists over 40 recording studios and nine manufacturers. Most are however small operations. It has been suggested that many artistes in Jamaica, on achieving a capital base, would invariably see a recording studio as a natural sequel in their investment portfolio. There is a modern, well-equipped production studio in Jamaica in Port Antonio. There are at least nine other commercial multi-track recording studios in Jamaica (e.g. Dynamic Sounds, Tuff Gong, Mixing Lab, Grove Studios and Anchor Studios) with capacity to produce to international standards, and can satisfy the sophisticated needs and demand of Jamaican and foreign musicians who come to Jamaica to record their work. Likewise in Trinidad, in addition to one large recording studio of international standard – Caribbean Sound Basin – most studios are small operations using computer software, and digital equipment. The considerable level of output in Jamaica has contributed perhaps to economies of scale that permit of minimum size operations in all the critical areas.

In the Eastern Caribbean, facilities for mastering of recordings are limited and most studios would have their work sent abroad, usually to the US on DAT tapes for mastering. In the case of Jamaica, some of the studio owners have close links and may even have ownership or part

ownership rights in facilities abroad. The high migratory patterns of Caribbean people have made some degree of transnationalisation possible. The artiste may be officially resident in Jamaica but would spend much of his/her time in the US. The initial recording of work may be done in Jamaica in his/her own studio but the final mastering of the tape may be done in the US in a plant owned by the artiste or other Jamaicans. Other metropolitan locations perform the same role – UK and Canada being the more important in that regard. In other words, there is a fair level of integration of the Caribbean Music Industry with the production system in the North Atlantic, but the Jamaican artistes have greater options with production possible either at home or abroad.

### 2.3.2 Broadcasts and Commercial Jingles

In the past, the broadcast of recorded music was regarded as a secondary use with sales of recordings being the primary mode of distribution of music to the public. However, the situation has changed. Indeed in the Commonwealth Caribbean the broadcast of music is the main means of supply to the consumer. Furthermore, the traditional modes of terrestrial broadcasting have broadened to cable transmission and re-transmission and satellite broadcasts through the services of Direc TV. Live music is also broadcast particularly “Festival Music” emanating from domestic Carnival celebrations in the region. Foreign broadcasters and cable operators also transmit live music performed at international festivals and concerts e.g. Black Entertainment Television (BET) and its subsidiary BET on Jazz broadcasts the St. Lucian Jazz Festival, whilst Radio France Overseas (RFO) transmits Dominica’s World Creole Festival to the French Dependencies.

Traditional terrestrial broadcasters have also begun to take advantage of the new technologies and several stations in the Caribbean now engage in “simulcasting” or “streaming” of their broadcasts through the Internet which can be received by listeners all over the globe. “Webcasters” who transmit music and other content on the Internet have only recently joined the ranks of service providers for the music industry. Music is also supplied by means of commercial jingles for the advertising and promotion of various goods and services.

### 2.3.3 Recorded Background Music

Another means by which music is supplied to consumers is background-recorded music at retail outlets and through hotels, restaurants and offices and also music “on hold” services via the telephone.

### 2.3.4 Musical Instruments

Sales of musical instruments is another facet of supply of services in the music industry. Trinidad and Tobago sells steel pans not only for domestic consumption but also in foreign markets. Other services in connection with sale of steel pans are the manufacture and tuning of the instruments.

### 2.3.5 Sheet Music

Sales of sheet music particularly classical music were the traditional means of commercial exploitation of music. Some modern popular music and even calypso and soca music from Trinidad and Tobago are distributed in printed form by way of “song books.”

### 2.3.6 Internet

There is little doubt that the Internet is the forerunner of the global Information and Communications Technologies (ICTs) which are considered to be the world’s largest growing sectors. Business conducted over the Internet is broadly referred to as electronic commerce or E-commerce and includes goods and services delivered over the Internet as well as goods delivered in more traditional ways. The convergence of E-commerce and music offers tremendous potential for the growth and development of the music industry at lower costs than traditional channels of commercial distribution. The Internet has proven to be an efficient medium for accessing music – both by downloading music directly and indirectly, by acquisition of CDs and cassettes from on-line retailers (UNCTAD 2000). The distribution sale and purchase of music on the Internet can no longer be ignored by the music industry nor by consumers (Koranteng 2000).

The digital delivery of music takes various forms but in essence it involves a person uploading or posting the original material onto a sound file (e.g. an MP3 file) on the Internet. The technologies used aim to compress the sound file’s size to a fraction of that of the original thus increasing the speed of transmission. Once stored on a sound file, another person connected to the Internet in any part of the world can download the music from the sound file onto a computer hard drive, a blank CD-Recordable (CD-R) or a blank audio DVD. In order to listen to a digitally delivered track the consumer needs a player, a software tool which is bought and downloaded before it is stored on the computer’s hard drive. Digital delivery offers new business models for the music industry such as digital jukeboxes or kiosks (retail operations which download material and “burn” it onto CDs on behalf of the consumer) and CD compilation specialists which specialize in offering customers the opportunity to pick and mix any variety of available tracks so as to create a personalized CD album.

On-line retailing in the global music industry is conducted by the traditional “bricks-and-mortar” retailers (e.g. Tower Records, Best Buy, Musicland and Wal-Mart in the US, and Virgin Megastores and HMV Media in the U.K) and by dedicated online music retailers such as (Amazon.com, Cdnw, BOL and Boxman).

It is estimated that by 2005, the online music market will grow to be a \$5.4 billion industry and that digitally distributed products will escalate to 28% of total online sales, with subscription services accounting for the majority of it - \$980 million in 2005 (A. Sinnreich, Senior Analyst, Jupiter Media Metrix). Although the current value of developing countries share in E-commerce is relatively small (approximately .05%) relative to other types of retailing, it continues to grow at an astounding rate (ITU, 1999).<sup>6</sup> It has been estimated by Service Providers that there are approximately 80,000 internet users in Jamaica and 50,000 in Trinidad and Tobago. However, it must be noted that more than 60% of these accounts relate to multiple users so that the actual number of users would be more than twice the figure given. All of the Internet users are potential consumers of music services and products.

A 2000 UNCTAD study on e-commerce and music business development in Jamaica concluded that the Internet and e-commerce has the potential to make a positive impact in a number of areas. These findings are applicable to the music industry elsewhere in the CARICOM region:

### 2.3.7 Impact on Profitability

Electronic commerce and the deployment of information and communication technologies has the potential of significantly increasing the profitability of the [Caribbean] music industry by:

- Facilitating greater control over the distribution of the musical product that could eliminate middlemen and the expenses attendant to their role;
- Reducing the costs of marketing, promotion, advertising and distribution of the product
- Reducing costs attendant to traditional trade and commerce, e.g. transportation, shipping, storage and overheads;
- Phenomenally increasing the market size and the targeted consumer population;
- Improving the quality of the end-product: (this would relate to the improvements in portable players, such as MP3 format and technologies used for digital downloads).

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<sup>6</sup> International Telecommunications Union, Challenges to the Network Internet for Development, Chapter Three: Internet for Commerce : 1999.

### 2.3.8 Impact on Performance

Use of the Internet for Performances could for example:

- Increase the artiste's performance revenues;
- Eliminate some of the costs of travel and touring;
- Reduce the costs associated with traditional advertising (including publishing promotional brochures and posters although some of this will still be necessary)
- Reduce costs of broadcasting and cable-casting
- Most importantly, with the Internet, the artiste has the world as a potential consumer of his other product and depending on consumer taste, his or her popularity could soar without the necessity for a high advertising and promotional expenditure.

### 2.3.9 Impact on Marketing

The most important role of the Internet lies in the area of marketing. The [Caribbean] music product has suffered from inadequate marketing, due largely to prohibitive costs and lack of indigenous business exporting skills. Traditionally, promoters and artists have had to choose, owing to financial constraints, as to where and how to market. The internet significantly reduces the costs of marketing while making the product available to the massive global market.

### 2.3.10 Impact on SME's

Through the application of digital technologies and the export of the music product online, [regional] software development companies, music promoters and record companies can benefit from the following:

- Increased efficiency gained by lower costs of production and distribution and the reduction in time spent processing and fulfilling demands for the music product
- New customers due to expansion of market size, global visibility and access to a large potential customer base as well as enhanced value proposition (through new, technology-based multimedia music products and services);
- Overcoming of language barriers by multi-lingual electronic interfaces;
- Enhancing responsiveness, i.e. faster reaction times to customer needs;
- Removal of distance-related barriers. “

However, the great potential of the Internet and e-commerce it yet to be realized by the Caribbean's music industry since the majority of the Caribbean's performing artistes, record producers, labels and distributors are yet to "go on-line". One of the leading Caribbean entities to facilitate Jamaican and other Caribbean music producers and performers in their efforts to take advantage of opportunities offered by the Internet, Jamaica-based Caribbeat Entertainment Limited, has spent the past three years developing a multifunctional Internet music portal. The Caribbeat music portal located at [www.caribbeatmusic.com](http://www.caribbeatmusic.com)<sup>7</sup> provides a number of facilities for music producers, performers, the music buying public, international record labels, distributors and concert promoters. According to Caribbeat's Managing Director, Lloyd Stanbury, the project will focus on the music of the English, French and Spanish speaking countries of the Caribbean, and will be projected to the world as "The Online Source for Caribbean Music". The portal services include 24/7 online radio, featuring genres such as Reggae, Dancehall, Salsa, Merengue, Soca and Zouk. The Caribbeat Internet portal was officially launched on Tuesday, June 26 at the Le Meridien Jamaica Pegasus.

## 2.4 MODES OF SUPPLY – TRADE IN SERVICES

In the context of trade in services the following are examples of modes of supply in relation to the music industry.<sup>8</sup>

### **Mode 1: Cross-Border**

The service crosses the border independent of the supplier or consumer: Examples include services provided through the Internet, e.g. the marketing or promotion of a music band via a website.

### **Mode 2: Consumption Abroad**

The consumer crosses the border and so is a non-resident in the country where the service is consumed e.g. live music provided in a hotel or restaurant for tourists; attendance at a local music festival by overseas visitors (including returning Caribbean expatriates). Also included in this category is the movement of the consumer's property e.g. the mailing of a CD to a foreign consumer as a result of an e-commerce transaction.

### **Mode 3: Commercial Presence**

The supplier of the service is a locally established affiliate, subsidiary or representative office of a non-resident service supplier, which may employ local personnel, be incorporated under local

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<sup>7</sup> Examples of other Caribbean music websites include: <http://reggaeambassadors.org>, [www.niceup.com](http://www.niceup.com), [www.thirdworldband.com](http://www.thirdworldband.com), [www.ritualsmusic.com](http://www.ritualsmusic.com), [www.mightysparrow.com](http://www.mightysparrow.com), [www.davidrudder.co.tt](http://www.davidrudder.co.tt), [www.icerecords.com](http://www.icerecords.com), [www.krosfyah.com](http://www.krosfyah.com).

<sup>8</sup> "Business Guide to the General Agreement on Trade in Services" - International Trade Centre and Commonwealth Secretariat 1999.

laws, etc. While the actual service provision is by a “resident” the investor is of foreign origin. Examples include local representatives of a foreign-based record company.

#### **Mode 4: Movement of Natural Persons**

Here the supplier of the service is in the country on a temporary basis and so remains a non-resident. Examples include overseas touring by singers/ musicians, local record companies engaging the services of recording studios and personnel in a foreign country to record artistes contracted to the local record companies.

## **2.5 PRODUCTION AND MODES OF SUPPLY OF FESTIVAL PRODUCTS AND SERVICES**

Festivals are all about live entertainment with the main protagonists appearing before live audiences. As a location bound affair, the supply of festival products and services require visit on the part of the consumer to the festival site. Such festivals like the Trinidad Carnival, Crop Over in Barbados, and the St. Lucia Jazz Festival are now associated with the influx of visitors from abroad in addition to local residents. Most of the countries of the Region have promoted one or more festivals on an annual basis as part of the development of their tourism product.

The festivals are associated with the production of records specific to the occasion. In the case of the Trinidad Carnival, there are a number of competitions – Panorama, Calypso and Soca Competitions and the King and Queen of Carnival which are video-taped and are also the subject of live broadcast. In both respects, there is income derived from the rights to tape and/or broadcast by the organizers. International broadcast networks in the radio and audio-visual industries have shown interest in these events and have sought rights to broadcast them.

The festivals are also a period for heightened merchandising. Memorabilia on the festivals also are marketed to residents and visitors. The clothing and fashion industry receive a boost and the sale of ‘T’ shirts is especially marked with a number of the steelbands and their supporters advertising themselves through this medium.

Record sales of Calypso at the time of the Carnival in Trinidad are at their highest, and the production cycle is organized to ensure that the latest output of the calypsonians is available at that time. In the case of Barbadians, the cycle coincides with the Crop-over festival, but there are few who are paying attention to the Trinidad Carnival market by producing for that market as well. Even calypsonians who are not involved in the competitions produce their albums for sale at Carnival time, and in expectation of the influx of visitors at that time.

Costumes for the Carnival and for Crop-over are marketed to participants directly on location and increasingly on the Internet. Back of the production of music and of costumes are supply structures of services, some of which are highly specialized, and range from musicians, sound

engineers, televisions and video production crews to costume designers, seamstresses, screen printers and garment factories.

## 2.6 PRODUCTION AND MODES OF SUPPLY OF FILM AND VIDEO SERVICES

The stages of production to supply are as follows:

1. Scriptwriting
2. Acquisition of rights
3. Financing
4. Production (i.e. filming)
5. Distribution
6. Exhibition
7. Sales

There are many permutations of the process of filmmaking. The process for each project will depend on its own particular facts and circumstances and in particular the nature of the film, the costs of production and whether it is primarily intended for exhibition in the cinema or on television. The following is a simplified outline of the typical process involved in the creation and production of a film.

### 1. Acquisition of Underlying Rights

Generally, the first stage in the production of a film is the acquisition of the legal rights in the copyright works (“the underlying rights”) on which the film is to be based. Where the film is based on a work in the public domain it will be unnecessary to acquire such rights. The underlying rights generally consist of literary, dramatic, musical or artistic works. For economic reasons, the practice in the film industry is that, in general, a producer will at the outset only acquire a right to adapt the underlying literary rights into a dramatic work by way of screenplay, together with an option to purchase the film rights during the agreed option period. The option period enables the screenplay to be available to the producer whilst he seeks finance for the production of the film.

### 2. Outline; Treatment

Having acquired the right of adaptation coupled with the option to make a film based on the work, a producer will generally, either by himself or by commissioning a script writer, prepare an outline or treatment of the work on which it is proposed to base the film. An outline is a short document giving a brief guide to the proposed film, whereas a treatment comprises a summary of the plot, sample dialogue and character analyses. These documents are normally prepared for the purpose of raising finance for the development stage, or where a feature film is concerned, to attract a star name who will make it easier to obtain financing for the film.

### **3. Development**

If the producer does not finance the screenplay himself he will generally approach an exhibitor, usually a television or feature film distribution company, for the initial finance to commission the screenplay and “develop” the acquired underlying rights. “Development” entails the commissioning from a scriptwriter of a screenplay based on the underlying idea or material, and the preparation of a production schedule and budget based upon the screenplay for the film. The production schedule is essentially an analysis of the production requirements of the screenplay, such as, for example, the cast, the number of days each cast member will be required during production of the film, the details of the types of locations that will be required, accommodation, storage facilities, crew costs and transportation requirements. Only when the full analysis of all the items required by the screenplay for the production of the film and the period of that requirement exists, that a budget can be prepared of the projected costs to produce the film.

### **4. Finance**

Once the screenplay, production schedule and budget have been prepared and considered by the exhibitor and found acceptable a binding commitment to provide finance for the actual production of the film will usually be given by an exhibitor or financier.

### **5. Exercise of Option**

Once the finance has been secured the producer will normally exercise his option to acquire the right to make and exploit a film based upon the underlying rights.

### **6. Engagement of Personnel**

Where the production finance is secured the producer will formally engage the director and principal cast. The individual producer will be responsible for hiring of the crew, the facilities and equipment necessary to shoot the film, and the securing of the filming locations required by the screenplay and production schedule.

### **7. Principal Photography**

This is the stage where filming of the production takes place based upon the production schedule or script.

### **8. Post Production**

The final stage of the process is the creation of the final edited version of the film synchronized with any library or commissioned music. The director and producer are generally responsible for supervising the editing of the film but ultimately the producer, in conjunction with the financing exhibitor or television company, will make the final decision as to the version to be exhibited.

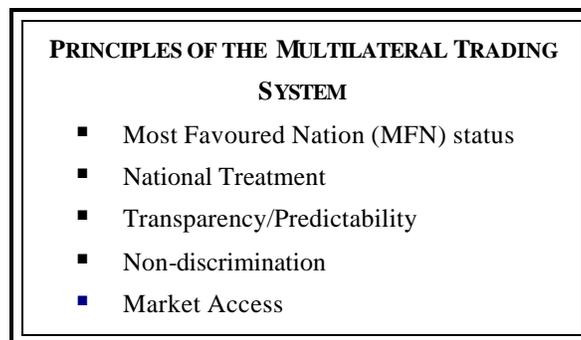
In the “location filming model” referred to in Section I only stage 7 above actually occurs in the Commonwealth Caribbean with all the other stages of film production taking place in foreign countries.

Service Providers in this sub-sector include: scriptwriters, authors of literary works, actors, choreographers, composers, record producers, music publishers, film/video producers, directors, technicians, production houses, financiers, distributors, exhibitors, broadcasters, video rentals, agents, attorneys. However, although there is the potential for the engagement of all these providers in the region due to the absence of local television programming and film production much of the potential is wasted. Even with the location filming model only a few domestic service providers are actually able to commercially exploit their services since most of the services are provided in the foreign countries of the films’ origins.

The main modes of supply are cinema exhibition, television broadcast, sales/rentals of videos & the Internet.

## 2.7 INDUSTRY REGULATION

In examining the issue of industry regulation in the context of trade in services it is worthwhile repeating the principles of the multinational trading regime:



The audio visual sector is heavily regulated in some of the world’s leading economies which regard culture as a critical tool in the task of nation building, seek to preserve and nurture cultural diversity and use cultural expression to maintain their sovereignty and sense of belonging. Consequently, it is not surprising that at the end of the Uruguay Round only 13 countries made commitments in this sector and this number has since risen to 19<sup>9</sup>. However, with the new principles and rules of the international trading system, cultural protectionist regulations are coming under closer scrutiny.

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<sup>9</sup> See Appendix

Among the six sub-categories which compose audiovisual services, the category of Motion Picture and Video Tape Production and Distribution Services has a total of 17 specific commitments, followed by Motion Picture Projection Services with 10. Only the Central African Republic and the United States have made commitments in all six sub-categories. New Zealand has commitments in five sub-categories (i.e. all except sound recording), Panama and Gambia in four, and Hong Kong and Japan in three.

The most common restrictions appearing in the schedules, other than those concerning natural persons, include limits on foreign shareholdings, restrictions on the share of screening time allotted to foreign productions, and exclusion from national treatment in respect of domestic subsidies.

In the context of the Uruguay Round negotiations, audiovisual industry representatives in a number of Member countries suggested that the cinema and broadcasting sectors should be excluded from the Agreement in order to protect national industries and cultures from being overwhelmed by foreign products (the “cultural exception” notion). An alternative approach was to suggest exemptions from certain disciplines in recognition of the cultural specificity of these industries. No agreement was reached on these approaches.

A large number of MFN exemptions have been taken in regard to audiovisual services. Counting the European Union as a single entity, a total of 33 MFN exemptions specifically mentioning the audiovisual sector are in place, with an additional 8 MFN exemptions applying to all services sectors, potentially including audiovisual. The exemptions most commonly cover co-production arrangements for film and television productions, typically granting national treatment status in respect to eligibility for financial assistance, tax benefits and simplified entry procedures for natural persons. The most wide-ranging MFN exemptions are those of the European Union and Venezuela.

It is mainly in the framework of the GATS that the European Union and its Member States have retained their policies in the audiovisual sector. By the end of the Uruguay the EU had obtained freedom of action in the area of audiovisual policy as a result of a combination of the reservations relating to MFN and the absence of commitments concerning national treatment and access to market. Consequently, what the EU achieved was preservation of room to manoeuvre. ([www.europa.eu.int](http://www.europa.eu.int))

Most countries promote domestic audio-visual content production through a variety of policy measures and institutions. But the most comprehensive policy frameworks are usually contained in legislation concerning broadcasting markets, content ownership and programming” (*Policy and Regulation Issues for Networked-Based Content Services, OECD, 1999*).

The Canadian Broadcasting Act (1991), which sets out the Broadcasting Policy for Canada, states that:

... the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada, and encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity.

... each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming ...

... It is hereby declared as the Broadcasting Policy for Canada that the programming provided by the Canadian Broadcasting System ... should be drawn from local, regional, national and international sources.

It is against this clearly defined ideological position that Canada has enacted the so-called “CANCON” regulations (referred to in Section I and explained in greater detail in Section IV).

## 2.8 LOCAL CONTENT QUOTAS

*Support for creativity as a true locomotive for cultural and economic development is inconceivable nowadays without a clear commitment in favour of creators and cultural industries. Currently the best antidote against cultural standardization is the creation, production and worldwide circulation of as many varieties of cultural goods as possible so as to ensure a pluralistic cultural offer on the part of all communications media including the information superhighways. The ultimate goal is, however, to build a better world for all: a demographic global village presided over by justice and tolerance, where technologies are at the service of human beings and where “our creative diversity” is protected, respected and recognised.<sup>10</sup>*

It is interesting to note that somewhat paradoxically the issue of local content quotas is only now being debated in the Commonwealth Caribbean with the introduction of legislation aimed at liberalizing the Telecommunications and Broadcasting sectors in compliance with WTO obligations. In this regard, Barbados has taken the lead by stipulating in its Broadcasting Regulations, 2000 S.I. 2001 No.15 a requirement of 60 per cent “Caribbean content” requirement for both radio and television broadcasting. Regulation 10 provides in part as follows:

Subject to any exemption granted by the Minister, the licensee shall ensure

- a) that at least 60 percent of broadcasting material is local and regional in content and character and that such material includes programmes

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<sup>10</sup> Milágros del Corral and Salah Abada “Cultural and Economic Development through Copyright in the Information Society” in UNESCO World Cultural Report.

- i) concerning the affairs, current and otherwise, of Barbados and the Caribbean region, and
- ii) featuring the prose and poetry, drama, music and other art of Barbados and the Caribbean region.

According to Barbados' Minister of Education, Youth Affairs and Culture, the Honourable Mia Mottley the rationale for such "Caribbean content" regulations is two-fold: (1) in anticipation of Barbados' entry into the CARICOM single market and economy; and (2) as part of domestic policy formulation and implementation to strengthen national identity and cultural values.

In Trinidad and Tobago, the Telecommunications Bill, which also contains provisions on broadcasting and seeks to repeal the archaic Wireless and Telegraphic Ordinance, is currently being debated in Parliament. In November 2000 when the Bill was first introduced in Parliament, the Recording Industry Association of Trinidad and Tobago (RIATT) commenced lobbying for the inclusion of 50 percent local content programming which culminated in the staging of a peaceful march thorough the streets of Port of Spain in which most of the artistes and stakeholders in the entertainment industry participated. On the other hand, a very powerful "anti local content" lobby has been mounted by the Trinidad and Tobago Publishers and Broadcasters Association (TTPBA), the Trinidad and Tobago Chamber of Industry and Commerce and the Advertising Agencies Association of Trinidad and Tobago (AAATT) whose main argument that mandatory requirements for a fixed quantum of local programming offends the "constitutional" right to freedom of choice.

There is no doubt that local content quotas are contrary to the trade rules particularly the principles of national treatment, most favoured nation status, non discrimination and even market access. Although to date the "cultural exception" principle has been applied by several countries it is clear that considerable pressure is being exerted on all countries to extend the rules of the multilateral trading systems to all types of services. However, CARICOM member states should adopt a cautious approach and guard against the whole scale extension of trading rules to cultural industries. In view of the rapid technological developments of the Digital Age and the resultant growth of new methods of delivery and transmission such as via the Internet, developing countries will only be able to compete on a global level by providing cultural goods and services which are unique and different.

Consequently, the principle of "cultural diversity" should be embraced as CARICOM member states (and indeed all so-called "developing" countries) work towards an open, fair participatory and transparent multilateral system. The advocates of "free trade" argue that instead of local content quotas, countries which seek to implement the principle of cultural diversity should consider other measures such as fiscal incentives for local content programming which are made available to both domestic and foreign investors.

The traditional means for restricting access to domestic markets – quotas on broadcasting of foreign-produced content, or limits on ownership of broadcasting entities has led to an increased need for domestic producers to link with foreign groups in order to gain access to specialized forms of expertise in capital, marketing and content creation and to maximize the returns on international markets when national markets are still small and immature.

## 2.9 LOCAL PROGRAMMING AND NEW MEDIA

With the liberalization of telecommunications, content will become the major concern. Large multinational enterprises that wish to play a significant role in the development of information superhighways are implementing vertical strategies aiming to control content. Developed countries are witnessing the acquisition of ‘traditional’ cultural industries (publishing houses, printed media, film productions, TV stations, cable networks, etc.) by powerful multi national consortia. The combination and interaction of telecommunications, computer technology, broadcasting (including satellite broadcasting) cable distribution is giving birth to new media products and services based on imaging, video, audio and text which are accessible through a set of interconnected and interoperable high speed networks, progressively linking all parts of the world in a single system with the virtual elimination of space and time constraints.

These technological advances and the resulting decline in costs are opening new vistas for promoting entertainment and culture in the Caribbean. Elsewhere the entertainment industry is already taking advantage of these rapid technology changes to lower costs and broaden the marketing net. Direct broadcast radio has just become a reality in Africa; Direct broadcast TV is heading to 500 channels. These advancements have not bypassed the Caribbean but the region’s entertainment sector has not yet reached critical mass and must do so in the shortest possible time, if it is not to be further swamped by the growing cultural penetration, especially the expansion of mainly North American direct to home TV (which will itself virtually wipe out traditional TV systems as we have known them for years).

The onslaught of “DirecTV” and cable television poses a major threat to Caribbean broadcasters and content providers. As outlined in Section I there is very little that regional broadcasters have done to develop their own programmes or to acquire independent productions. Due to the competition from cable and satellite TV (which transmits essentially North American programmes) local programming is beginning to make financial sense for regional broadcasters.

In terms of the challenges of producing local programming, Christopher Laird<sup>11</sup> has advocated that :

The challenges we have faced and continue to face are not:

- Lack of talent;
- Lack of ideas;
- Lack of raw material
- Lack of willing personnel;
- Nor lack of access to technology.

The only real challenges we have ever had to face, and continue to face, are:

1. Access to a larger market than the Caribbean in order to access the finance for production.
  2. The nature of Caribbean video broadcasting which has always had very little to do with television and much more to do with filling spaces between advertisements with product called “programmes”.
- ...We desperately need parochial programming, television that allows us to see ourselves, speak to ourselves, programming that is not necessarily polished but derives its interest and life from its relevancy and immediacy.

The main strength of television and its distinguishing feature is that it is “live” and has a sense of actuality. Add to that the new digital technologies such as wireless cameras, duplex cable hookups, video compressions, modems and mobile telephones which facilitate feedback and interaction and without the necessity for the studios, bulky equipment and other overheads. Laird further argues that “there is a burgeoning body of young film and video markets in the region taking advantage of the new technologies without any satisfying outlet for their productions.”

There seems to be little doubt that there is no shortage of local productions in the region and there is also a clear demand for local productions as evidenced by the popularity of regional soap operas such as “*Royal Palm Estate*” from Jamaica and “*Westwood Park*” from Trinidad & Tobago. Further, the Caribbean Broadcasting Union has envisaged the benefits of a regional approach in the form of Caribbean satellite channel, “The Caribbean Channel” with a music and news based format leading towards a prime time block with dramas, sitcoms and magazines which would offer the audience a more authentic version which relates more closely to the lives of real people in the Caribbean. And who will watch “The Caribbean Channel”? According to the CBU’s President, Steward Krohn<sup>12</sup>:

Thanks to developments in technology, particularly the satellite PAS 5 with its own reach from Los Angeles in the West to Paris in the East, Toronto in the North to Caracas in the South, we can serve a huge population in one swoop ...and earn revenue with both subscriptions and advertising not to

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<sup>11</sup>“The Challenges of Producing Local Programming” Presentation at CBU/FES/ITU/UNESCO Seminar “Challenges to Broadcasting in the Caribbean,” June 21 &22, 2000, Barbados.

<sup>12</sup> “Indigenous Content Development: Reality or Myth?” Presentation at CBU/FES/ITU/UNESCO Seminar “Challenges to Broadcasting in the Caribbean, June 21 &22, 2000, Barbados.

mention the growing body of ancillary services.....These markets are first, our own citizens in our own region. Second, our own citizens in the diaspora, primarily residing in urban centers in North America and Europe. Third the entire globe, which, already well disposed towards our music and vacation spots, should be ready to pay for an even deeper involvement in our culture.

The discussion in this section suggests that while the Entertainment Sector has grown in structure and sophistication in the Commonwealth Caribbean, it is still not well organised to fully take on the challenge of entering non-regional markets. On the other hand, in the areas of music, film, radio and television programming, the external markets have dominated the industry in the Caribbean and the trading rules of the multilateral regime are weighted in favour of this imbalance. Joint ventures and co-productions are becoming the means by which content providers are gaining entry into markets and expertise previously dominated either by national producers or foreign imports. The issue of market access will be examined in Section III.

## SECTION III

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### 3.0 INTRODUCTION

Section III examines the issue of market access both within the region and to the region's main export markets of North America and Europe. The potential of other markets and the development of South-South trade will also be considered. There will be also some focus on the regulatory environment and measures that need to be implemented to facilitate trade expansion, to encourage investment in the sector and to facilitate the establishment of commercial presence both in the domestic and foreign markets.

The music component of the Entertainment Sector has experienced some growth in the domestic market in most of these countries, and more so in the countries with a well established Tourism Industry. Barbados, Jamaica and St. Lucia are important destinations in the international tourism sector. On the other hand, the sales and consumption of recorded music has experienced serious declines over the past few years.

It is the growth in the export of services that has been responsible for the growth in earnings of Musicians. As indicated earlier, popularity in the domestic market provides the base for sales of recordings, and for engagements abroad. Sales of recordings can represent a steady source of income, but given the difficulty that Caribbean Entertainers have had in getting their music played on the “mainstream” commercial radio and television stations, Caribbean musicians and music producers are unable to achieve significant quantities of record sales. Furthermore given the practice adopted by the US copyright collecting societies of “following the dollar” the monitoring of Caribbean music on radio and television is de minimis and the tendency for it to be seen as a fringe music by the collecting societies in the main markets. Caribbean composers, songwriters and music publishers receive much less than their entitlements (see Section V). In addition, they are affected by piracy, in the domestic market, within the Caribbean Region and abroad.

Thus, live performances constitute the main market from which income is generated. Most of the engagements are related to the presence of a Caribbean market segment in the metropolitan countries. In terms of geographical distribution, markets abroad can be disaggregated as follows:

- Metropolitan countries with significant concentrations of Caribbean nationals
- Other Metropolitan countries
- Caribbean Region
- Rest of the World

### 3.1 ENGLISH SPEAKING METROPOLE AND THE CARIBBEAN PRESENCE

The Caribbean presence in the metropolitan North Atlantic has been an important factor in the growth in markets abroad. Britain, USA and Canada have been the main destinations of Caribbean migrations over the last half-century. Indeed, emigration to the North Atlantic is perhaps the most important factor in the penetration of Caribbean Music and Entertainment into the metropolitan market. Table 3.1 provides information on immigrants from the Commonwealth Caribbean into the United States since 1988. Jamaicans dominate Commonwealth Caribbean migrants.

**Table 3.1: Immigrants to the United States by Region and Country of Birth**

<b>Caribbean</b>	<b>88</b>	<b>89</b>	<b>90</b>	<b>91</b>	<b>92</b>	<b>93</b>	<b>94</b>	<b>95</b>	<b>96</b>	<b>97</b>	<b>98</b>
	112,357	88,932	115,351	140,139	97,413	99,438	103,804	96,788	116,801	105,209	75,521
Antigua Barbuda	83	97	1,319	94	61	55	43	37	40	39	29
Bahamas	1,283	86	1,378	1,062	64	68	58	58	76	64	60
Barbados	1,451	1,616	1,743	1,460	1,091	1,164	89	73	1,043	82	72
Cuba	19,558	10,046	10,645	10,349	11,791	13,666	14,727	17,937	26,466	33,587	17,375
Dominica	61	47	96	98	80	68	50	58	78	75	65
Dominican Republic	27,189	6,723	42,195	41,405	41,964	45,420	51,189	38,512	39,604	27,053	20,387
Haiti	34,806	13,658	20,324	47,527	11,002	10,044	13,333	14,021	18,386	15,057	13,449
Jamaica	20,966	24,523	25,013	23,828	18,915	17,241	14,349	16,398	19,084	17,840	15,146
St Kitts/Nevis	16	79	89	83	12	54	37	36	35	37	40
St Lucia	60	70	83	76	65	63	44	40	58	53	50
St Vincent	63	89	97	80	68	65	52	34	60	58	41
Trinidad and Tobago	3,947	5,394	6,740	8,407	7,008	6,557	6,292	5,424	7,344	6,404	4,851

The emergence of street festivals in those countries, patterned after the Trinidad and Tobago Carnival, and the Reggae Sunsplash, has been one obvious result of such flows. Labour Day in Brooklyn, Caribana, and the Nottinghill Carnival have become the biggest single outdoor celebration in the respective countries, and have been the object of study by a number of metropolitan area governments, seeking to boost tourism in their jurisdictions as well as to provide an opportunity for popular entertainment in their cities.

#### 3.1.1 USA

The United States remains the largest potential market for Caribbean music. It is home to the largest number of Caribbean migrants to the North Atlantic and is a large market in its own right. There are also Reggae festivals that have emerged in the last 10 years and there is a Reggae Sunsplash in Atlanta and a Bob Marley Day Festival in Los Angeles. A key event in its calendar

that showcases Caribbean music is the Labor Day celebrations. The Labor Day celebrations in New York has an audience in excess of 4m people. It is organized by the West Indian American Day Carnival Association, Inc. (WIADCA), a not-for-profit, which was established in 1967 to develop, promote and teach Caribbean arts and culture in the New York area.

WIADCA boasts that through the celebrations access is provided to the Caribbean American community of 5 million in the immediate states, and some 12 million across the nation.

Millions more can be touched through major and ethnic newspapers, magazines and radio, hundreds of thousands of flyers, posters, journals, brochures, New York State and City Tourism and Official Travel Guides, and the WIADCA web site

Table 3.2 lists some of the key sponsors of the organization in the celebrations of 2000. Interestingly, none of the lead sponsors is among the majors in the music industry, and those related to the music and entertainment industry are in the category of supporters, with only one of some prominence. Either the music industry majors do not deem the event critical in expanding the market for music sales, or have other more effective ways of tapping that market, to the extent that it is seen as having potential.

**Table 3.2: WIADCA Corporate Sponsors and Supporters**

<b>Lead Sponsors</b>	<b>Co-Sponsors</b>	<b>Supporters</b>
American Airlines	Angostura International	Advanced Technological Solutions (ATS)
AT&T	Budweiser	Ah Wee World Travel
Verizon (Bell Atlantic)	Brookdale Hospital	Audio Sound Techniques, New York
BWIA West Indies Airways	Keyspan Energy	Caribbean American Center of New York
Guinness Import Company	Citibank	Canal Hi Fi, Inc.
Heineken USA, Inc.	Con Edison	Charlie's Records
Johnny Walker Black	Fleet Bank	Crown International
Nutrament	Phillip Morris Company	Medgar Evers College
Schieffelin & Somerset Co.	A. Williams Construction	Sunnydale Farms
Western Union		Uniworld Group, Inc.
Hennessy VSOP		Platinum Events International, Inc.

*Source: WIADCA website.*

Alternatively, the sponsors see the participants and mass audience as having greater significance for the merchandising and advertising of other goods and services than music of the Caribbean. Thus, alcohol and beverage companies figure prominently in the list, along with airlines and travel agents. Nor does there seem to be the presence of larger retail and distribution firms involved in record sales.

Thus, while the sale of recordings would obviously figure prominently among the merchandise available for the occasion, it does not seem that there is the fullest exploitation of the opportunity for transporting into the mainstream culture the very music that drives the biggest outdoor festival of the country. The retail distributors would be comprised of fringe organizations: record stores have a reduced share in the distribution of records but still constitute the largest outlet.

This suggests the need for the promotion of retail and distribution organizations not only targeted at the Caribbean minority population but also at the mainstream society. On the other hand, the presence of Caribbean product in the major retail distribution outlets is a function of the airtime allotted to such music. At the moment, mainly fringe radio stations seem to carry such material, and the logs produced on music played in the major radio stations and networks are not fully indicative of the Caribbean presence, especially of Reggae music. The earnings of the collecting societies based on the data from these logs are picayune.

There are a number of other carnivals in the United States, some achieving considerable proportions, e.g. Miami and Washington. Music is supplied by sound systems providing a mix of mainly Calypso, Soca and Reggae music and by music bands with popular entertainers from the Caribbean. It is not clear how the issue of copyright is dealt with by the organizers of these festivals. There is indeed a very high probability that Caribbean artistes do not receive their just reward from these festivals.

Another important area of presence is in the nightlife entertainment and concert sector in major US cities. This is particularly the case for Reggae and Dancehall artistes. An examination of the entertainment columns of newspapers in major cities in the USA – Boston Globe, New York Times, Miami Herald, Atlanta Journal and Constitution, and the Los Angeles Times – reveals that top Reggae and Dancehall artistes like Shaggy, Buju Banton, Capleton, Sugar Minnot, Beres Hammond and Dennis Brown have been on the entertainment circuit of these cities. Shaggy's North American tour in June, July and August of 2001 takes him to over 20 US and Canadian cities along with television appearances (<http://www.shaggymusic.com/mdoorway>). The presence of significant concentrations of Caribbean people has undoubtedly been a contributing factor in the demand.

Market development for Caribbean music in the USA requires deeper penetration into the mainstream radio stations, complemented by a penetration on to the shelf space and display in the major record distribution network. It is a moot point whether in respect of industrial development, any Caribbean Government has contemplated market development grants to domestic firms seeking to expand their distribution in the United States. Neither would the idea have been mooted of promoting a Caribbean oriented radio station to extend its footprint beyond the Caribbean minority in particular cities where Caribbean people are concentrated.

An alternative or complementary approach is the use of the Internet. This was non-existent as a source in 1990: the Internet was something for the few in the scientific and military community. Starting with 0.3 percent of the source of supply in 1997, it had achieved a 2.4 percent share by 1999. Only a few Caribbean Entertainers have developed websites, but it is not clear how much they have been able to expand by way of sales through the Internet. The fracas over NAPSTER will have considerable importance in their being able to use this form of distribution in the market place.

Data from the Recording Industry Association of America are presented in the RIAA (Table III in the Appendices). Record sales by category for the 1990s show that Rock commands the greatest presence. Reggae is not categorized by itself but is part of RAP/Urban which includes, R&B, Blues, Dance, Disco, Funk, Fusion, Motown, Reggae, and Soul. Calypso and Soca are not even footnoted, whatever their significance in the life of the largest street festival in North America. In any event, the larger category which includes Caribbean music, is still less than half of the percentage enjoyed by Rock which accounts for one quarter of all sales.

This category has had a reduced share in the more recent past. According to industry observers in Jamaica, the international demand for Reggae and Dancehall music has suffered a decline in recent years. It should be noted, however, that Shaggy has more recently enjoyed considerable popularity, making him the most successful since Bob Marley. He has been at the top of the charts in Britain for some part of 2001.

Table III in the Appendices from RIAA shows the change in the nature of the product since the early 1990s. In 1990, CDS were only 31 percent of the marketed product. By the end of the decade, CDs had reached 83 percent of the market and approached 90 percent in 2000. The production of CDs is now a sine qua non for reach into the market place. Generally though, Caribbean entertainers seldom are able to produce the quantity of product normally associated with a reach into the wider international market place. With very small output quantity, they would be unable to enjoy economies of scale. Nor do they have the resources to break into the wider market of the United States.

### 3.1.2 Canada

In terms of destination, Canada is the second most preferred destination of Caribbean peoples migrating to the North Atlantic. The changes in its immigration laws in the 1960s led to an increase in the flow of migrants to Canada and to the establishment of an important community there. CARIBANA is its largest outdoor festival and is held in the city of Toronto, the major Canadian city. The event is hosted by the Caribbean Cultural Committee. CARIBANA started in 1967 in response to Canada's centennial celebration, and to register the contribution of the Afro-Caribbean community to Canada's diversity. The spectator audience numbers in excess of one million and is regarded as a significant contributor to the economy of Ontario.

Indeed, when doubts arose over the costs some years ago, there was enough recognition of the net benefits to the hotels and other businesses in Toronto, to maintain what was originally deemed to be the celebration of a minority group. It is now mainstream as a tourism event in Ontario and Canada as a whole. On the occasion of the 2000-year celebration, the organizers, the Caribbean Cultural Committee of Toronto, affirmed as follows:

Our continuing mission is to foster social, economic and cultural development of Caribbean and African communities through the industrialization of Caribbean culture in North America. We enter our 33rd year with a commitment to the staging of a high-quality tourism experience, in partnership with both the public and private sectors. <http://www.toronto.com/E/V/TORON/0010/65/80/3.html>

Again, there seems to be little reference to deep involvement of the music industry majors with the event, and, as in New York, the occasion is used to promote sale of merchandise and services. The organizers themselves sell merchandise that is largely memorabilia for the occasion.

### 3.1.3 Britain

The Nottinghill Carnival is too, the largest outdoor festival in Britain and in Europe. It started in 1964 as ‘a spontaneous and often chaotic celebration for London's Afro-Caribbean community, but today broadly mirrors the Carnival in Trinidad, with over 75 costumed bands, steelbands, music bands taking to the streets with soca and calypso music from 50 or more sound systems providing the accompaniment for dancing on the streets. Attendance numbers close to 2 million. According to the Times September 3, 2000:

The roots of the Notting Hill carnival go back to 1964, when a makeshift steel band and performing in an Earls Court pub was invited to play in a street party in west London.

From a few dancers and musicians, the event rapidly grew into an annual festival, drawing on the Caribbean tradition of carnival brought to Notting Hill by its immigrant West Indian community. By 1977 it was attracting crowds of 500,000, and had expanded to include colourful floats and exotic costumes. Today the carnival, which takes place on the last weekend of August, boasts more than 1.5m visitors, and has become the biggest street party in Europe.

Sponsorship comes largely from the alcohol and beverage industry. The Times notes the presence of Radio 1 DJs Tim Westwood and Trevor Nelson but it has not been possible to confirm any massive presence of the music distribution industry, and it may well be that a similar pattern as in the USA exists there as well. Interestingly, Dominic Tonner and Richard Brooks quote the Mayor of London in the Times August 27 2000 that despite the money injected by private companies:

The carnival has been disgracefully under-funded for years. I want to see more public and private support for it in the future.

The tourism potential of the event has been widely recognized against the backdrop of official ambivalence in supporting a festival having its roots among Caribbean minority that is seen as part of the underclass of British society. It has been difficult for the British to admit that the Notting Hill Carnival is the biggest outdoor festival of the society. More important for present purposes is the fact that the Caribbean presence drives the Carnival, but unfortunately, officialdom in the Caribbean has been slow to take advantage of the biggest event, to sponsor Caribbean products and services generally.

Caribbean Musicians and Entertainers participate but it is unlikely that there is an organized approach to promote their recordings, and touts and pirates of recorded music are the ones who have a field day. In other words, to the extent that there are record sales, this may be the work of firms and organizations and even of individuals on the fringes of the mainstream music distribution sector in Britain.

#### 3.1.4 Australia

While Australia is not a North Atlantic country, it has a North Atlantic orientation in terms of popular culture and mores. The country boasts an emerging Carnival in Sydney. It is a relatively new event and there has been sponsorship by the Trinidad and Tobago based group, Angostura. It was apparently established by a number of Trinidadians and Australians, who have been attending Carnivals in the Caribbean and elsewhere. According to the organizers:

**Sydney Bacchanal** is the only true "Caribbean Style" carnival party in Australia where the costumes have been designed and made in Trinidad in the West Indies, the home of carnival and the steel band.  
<http://www.sydneybacchanal.com/home.htm>.

The music consists of Salsa, Samba and Soca. There seems to be a major opportunity for the structuring the development of this Carnival, and it may well be that the Mighty Shadow's popular Calypso for the 2001 Carnival 'Stranger' in which he counsels an Australian tourist in the art of 'waving and wining', may herald the start of an increasing acquaintance of Australia with Carnival. Considerable market potential exists for Caribbean Entertainers as this new Carnival emerges.

#### 3.1.5 Other English Speaking

There are signs that there are other areas ripe for penetration by the Trinidad style Carnival. The South African cities of Johannesburg and Capetown have attracted a growing Caribbean population and can well see the emergence of a Carnival with appropriate sponsorship.

Caribbean people, Caribbean music and Caribbean Entertainers give life to all of these festivals, and while other immigrants and the domestic population have joined with the music from their own cultures, Caribbean music retains the vitality of being better adapted to street dancing.

Moreover, the spontaneity and infectiousness, as key characteristics of the Caribbean derived celebrations, continue to fill a market niche in cultures that have not had such traditions among their peoples. The festivals are an important date in the calendar of Caribbean entertainers, but now also in the countries in which these Carnivals have emerged.

### 3.1.6 Non-English Speaking Metropole

The non-English speaking Metropole represents a smaller market and while there are major festivals in countries like France, Germany and Italy, there is nothing that rivals that of Nottinghill in Britain. The Nottinghill Carnival has attracted interest in other European countries seeking to pattern one or more of their events after Nottinghill. Indeed, there is the recognition of the considerable tourism potential and it is not unlikely that the Nottinghill product will be exported to other parts of Europe in the not too distant future. Some of the bands from Nottinghill have already started appearing as guests of other festivals.

France represents an interesting niche. There is a Caribbean presence through citizens coming from Martinique and Guadeloupe whose Zouk is popular in the places like Dominica and St. Lucia and who are also influenced by the music of the English speaking Caribbean which influence they take with them to France. Thus, music from the English speaking Eastern Caribbean – Calypso and Soca – filter into the French market. Reggae enjoys a distinct market by itself and Reggae artistes have been appearing in greater frequency in such locations as Paris, Amsterdam, Rotterdam, and a number of German cities. The other non-English speaking countries provide a more limited market for Caribbean entertainers and interest in their services is driven by other factors to be discussed later.<sup>13</sup>

### 3.1.7 Caribbean Region

While the Trinidad Carnival is the largest in the Caribbean and it has a large corps of musicians, other islands have produced very good musicians and entertainers, some of whom also appear at the Carnival in Trinidad, to establish the viability of their product for the main Caribbean market in the metropole. Trinidad and Tobago Musicians also appear at the festivals of the other Caribbean countries. Thus, there is an element of reciprocity, among the island entertainers. However, in addition to appearing during the Carnivals of the respective countries, those with outstanding work in the particular year are likely to be invited for specific shows and performances.

In effect, there has developed a one-Caribbean market in respect of some genres. This applies to Calypso, Soca and Reggae; there is even some element of crossover to Zouk. The Chutney market has a subregional component with Trinidad, Guyana and Suriname being the primary

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<sup>13</sup> Interview with Lloyd Stanbury of Caribbeat Entertainment Limited.

locations in the Caribbean where there is demand for such music. Outside of the festivities, there are also concerts and special events at which Caribbean entertainers of different countries appear.

The Reggae/Dancehall artistes whose music is in vogue in Jamaica, often have major engagements elsewhere in the Caribbean, with shows promoted subject to market demand and to the popularity of particular artistes. Indeed, Reggae artistes have regular performances throughout the Caribbean with the result that their primary markets are now the regional market and the North Atlantic. Moreover, there are radio stations in the regional market whose primary fare is Reggae/Dancehall music, thus attesting to the enduring popularity of the music in the region.

It should be noted though that there is a high level of piracy with the work of these artistes. Popularity invariably means that the work is duplicated on to cassettes and sold among informal operators on the streets of the cities and towns of these islands. The Police Authorities seldom enforce the laws relating to piracy of music. Even in Trinidad, entertainers have been known to take it up on themselves to pursue the enforcement of the law.

### 3.1.8 Rest of the World

The Rest of the World is a much smaller market but is growing nevertheless. Performances in such markets have been one-off events. Occasionally, a Chutney singer from Trinidad has gone to India. The cultural enclave of Goa in India, which was once a Portuguese colony, has a tradition of the celebration of Carnival and offers some probability of a Trinidad style Carnival. Moreover, the Chutney styling in some of the music of Trinidad may allow for an easy crossover of product.

Further afield, Calypsonians and Reggae Artistes have gone to West Africa. While the market for live performance is thin, there are some sales of recorded music, even though piracy is a major problem. An interesting market has been Brazil and more so its North East. Reggae and Soca and Calypso have attracted interest, and artistes in both genres have visited the country. Japan has become an important market for Reggae artistes, and the increase in the number of Japanese Tourists visiting Jamaica has helped in introducing the Japanese to this musical genre.

## 3.2 OTHER INFLUENCES ON MARKET DEMAND

Caribbean Music has been able to make small inroads into the mainstream musical culture of the North Atlantic countries from time to time. Bob Marley's work is the most significant example. Indeed, Marley established Reggae as part of the mainstream, and since then, Jamaican Reggae Artistes have achieved popularity with their work. Other artistes in the North Atlantic have adopted elements of Reggae in their musical style. Recently, a song written by a Trinidadian singer/songwriter in the Soca tradition (Anselm Douglas) has got on to the popular charts.

Arrival in the mainstream culture beyond the festival market has allowed some Caribbean recorded music to reach wider audiences that are part of the North Atlantic pop music market. To some extent, this extends to locations like Australia and New Zealand and to Japan. A work that achieves popularity in North America, invariably finds space in the European Market, and a number of other markets, having regard to the role performed by the majors in the international music industry.

This has been the basis for some expansion in market presence of the Caribbean Industry. Appeal – some would argue that it is crossover appeal – will determine whether one of the majors would seek to promote work of a Caribbean Artiste. However, it is difficult to pinpoint specific features that result in popularity. As with fashion, while there may be broad general trends, there are nuances that cannot be predicted but which have appeal for reasons unknown.

Some Caribbean Entertainers have sought to use themes that have a wider relevance than applies in their own countries, and also have focused on adapting their music and style to a non-Caribbean audience. The success of such approaches is in no way guaranteed. The general acceptance of diversity as a working principle in North Atlantic societies has helped in encouraging a greater receptivity to exposure to music of different cultures. These trends are driven by factors outside of the control of the majors themselves, but from which they are able to profit once it is clear that populations are responding to an emerging trend.

On the other hand, and in response to what they may see as an emerging trend, the majors do take on particular artistes to promote from time to time and have gone outside the fold of North Atlantic performers. Most recently, Machel Montano of Trinidad and Tobago has signed with the Atlantic Records label. In other words, having achieved a certain popularity in the Trinidad and Tobago, regional and diasporic markets, he has caught the eye of one of the majors (i.e. Time Warner) which thinks that with appropriate organizing of the product he offers and with marketing thereof, it will be possible to get on the top charts. This has been the experience of Reggae Artistes who have signed with the Majors: Shaggy and Beenie Man are signed up with the Majors. However, in order for Caribbean artistes to sustain their contracts with the Majors their records must achieve minimum sales of at least 500,000 units. Failure to achieve the minimum level of sales results in the artiste being immediately dropped by the relevant label as is evidenced by the experience of a number of Jamaican artistes in the 1990's.

For the moment, the fortunes of Caribbean artistes are tied to the independents. Their ability to secure large-scale market penetration is contingent on the success of the independents in increasing market share. The tendency has been, however, for the independents to be absorbed by the majors, suggesting an underlying propensity to concentration in the industry, that may have a lot to do with factors in other related markets. There is nothing to suggest, however, that

the independents as a group may not have a sustainable future and could maintain and even increase their market share vis-à-vis the majors.

Another factor that brings Caribbean product to the fore has been the growth in tourism in the Region. Besides tourists from the English-speaking North Atlantic, the Caribbean has attracted visitors from the rest of Europe and increasingly from Japan. These countries coincide as the main markets for pop music and for tourists. Thus, even though the Caribbean presence in these latter countries may be miniscule, there is a growing market for music and for the services of Caribbean entertainers.

The factor that is worthy of note is the increased representation of the Caribbean at international music trade fairs like Midem and international music festivals like Womex. The trade promotion agencies of some of these countries have sponsored participation of their entertainers and music business entities and this has stimulated interest and led to contracts. A variant of this has been the Jazz Festivals that some countries have mounted as part of their tourism product. Star jazz performers attract attention to the event and create demand, but the occasion of a Jazz Festival also allows local music to be showcased along with that of the rest of the world. The St. Lucian Jazz Festival is entering its 10<sup>th</sup> Year and has changed the pattern of the tourist season, whereby May is now a peak period for tourist arrivals. In 2000 11,041 visited the island specifically for jazz (40% emanated from the Caribbean, 29% from the US and 18% from the UK and all hotels recorded 100% occupancy during the week of the main event<sup>14</sup>. The Dominica Festivals Commission (DFC) has undertaken the World Creole Festival and in 2000 this Festival celebrated its 4<sup>th</sup> consecutive year.

According to the DFC, the Festival has been able to provide Dominica with a considerable amount of international exposure resulting in “increased visitor arrivals and hotel occupancy, higher tourism generated revenue and the building of important partnerships between the tourism sector, the cultural and entertainment sectors in Dominica and elsewhere in the Creole countries.” In the case of Trinidad and Tobago, there have been intermittent pan-jazz festivals. In 2000, an international steelband competition was held, and there was participation from outside the Caribbean with a number of bands from the United States and Europe competing.

All these factors contribute to a Caribbean presence in international music and create market space for entertainers of the Region, both for services provided by natural persons and by way of product in the form of CDs and other recordings. However, vibrancy in the domestic and regional markets contributes to improved capacity to enter markets outside the region. While the contribution of the Entertainment Sector specifically, is not well defined in national income accounting, it is regarded as one of the more dynamic components of the Services Sector, which

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<sup>14</sup> “Festival Report”- St. Lucia Jazz Festival, prepared by Tracey Arnold and St. Lucia Tourist Board.

has been an area of better growth performance in the Commonwealth Caribbean. According to James (1999), the sector has been growing above the average for the economy in Jamaica, and even against the more positive growth in the oil and gas based economy of Trinidad and Tobago, has been showing respectable growth performance. Tables 3.3 and 3.4 provide some details.

**Table 3.3: Jamaica: Contribution of the Creative Service Sector to GDP 1990-1998**

Year	Growth of Real GDP	Average Annual Rate of Growth of Creative Services	Share of Creative Services in GDP
1990	5.4	8.3	0.26
1991	0.7	-3.4	0.25
1992	1.5	1.2	0.25
1993	1.5	6.5	0.26
1994	0.9	-1.0	0.26
1995	0.7	2.8	0.26
1996	-1.4	0.22	0.27
1997	-2.1	2.9	0.28
1998	-0.7	2.9	0.29

*Source: James (1999: Table 3)*

**Table 3.4: Trinidad and Tobago: Contribution of the Creative Services Sector to GDP 1990-1998**

Year	Growth of Real GDP	Average Annual Rate of Growth of Creative Services	*Share of Creative Services in GDP
1990	1.5	-10.2	10.1
1991	2.7	4.0	10.3
1992	-1.6	-1.3	10.3
1993	-1.5	6.6	11.2
1994	3.6	4.5	11.3
1995	4.0	5.7	11.4
1996	3.8	9.9	12.1
1997	3.1	7.8	12.7
1998	4.4	6.3	12.9

*\* Includes Distribution and Financial Services*

*Source: James (1999: Table 4)*

The sheer size of the Jamaican Music Industry permits of considerable product that can be marketed abroad. It is estimated that the maximum sales of a disc in Jamaica could have reached 30,000 in the early 1990s and the industry could release 200 new singles in a week. According to Watson (1995), more that 4.5 percent of the singles sold in the UK in 1994, was attributable to Jamaicans musicians or song writers. While the Trinidad and Tobago output is not as large, the Carnival Season results in considerable output of recordings, as well as of songs that may be limited to live performances. Clearly, then, while the Sector may be small in both countries, it is growing quickly and offers immense possibilities if there is the supporting industrial strategy.

St. Lucia and Dominica have succeeded in creating festivals that generate foreign exchange and have given a positive profile to the countries. The St. Lucia Jazz Festival was initiated ten years ago and has grown from strength to strength. It is held in May and visitor arrivals have been increasing as a result of the festival. A Survey of Visitors in 2000 suggested that expenditures were in excess of US\$14m. Significantly, 86 percent of the visitors claimed that they would return and were prepared to recommend the festival to friends and relatives.

Dominica's Creole Music Festival was started in 1997 as a special tourism event, and seems to be set to become Dominica's premier festival. Audited statements of the Dominica Festivals Commission show increasing income from the festival, both through sponsorship by domestic and regional companies and from ticket sales of guests, most of whom are from abroad. In 1999, over EC \$0.5m was received as net income by the Commission. This does not include the expenditure of visitors on hotel accommodation and other services that would have benefited from increased arrivals.

### 3.3 TRADE BARRIERS AND FACILITATION MEASURES

There are essentially three categories of obstacles to international trade:

- Tariff barriers (e.g. fiscal measures such the imposition of customs duties);
- Non-tariff measures (e.g. work permits); and
- Investment barriers (e.g. restriction or limitation of foreign capital or equity participation).

#### 3.3.1 Customs

The absence of consistently applied and reciprocal trading regulations in CARICOM exacerbated by problems such as the verification and certification of the country of origin negatively affects the competitiveness of sound carriers such as compact discs. As mentioned previously, and with the exception of Jamaica, the recording industry operates in a peculiar manner due to the absence of CD plants. Master recordings are exported primarily to the US and then re-imported in the format of finished product. In most CARICOM countries when the finished product is re-imported they are not certified as local product and is dutiable in other countries. Trinidad and Tobago is somewhat of an exception, because CDs which, although manufactured abroad, once embodying local content, are duty free. However, for any material, not of Trinidad and Tobago origin, but from CARICOM (e.g. one track on a compilation CD featuring a Barbadian artiste) duty is payable. In Dominica, artistes and record producers note the lack of consistency in application of customs regulations. Musical equipment and instruments are duty free. However, duty is sometimes charged on blank CDs.

Due to the absence of pressing plants (except in Jamaica), the majority of Caribbean record producers do not have to face customs requirements as far as the export of sound carriers are concerned. As explained previously the master recording is sent to the US or other metropolitan centers for mass production. However, the export of Carnival costumes and the temporary export of equipment for performances are subject to customs regulations. A mechanism for facilitating the temporary export of equipment is the ATA Carnet system, which is discussed below.

### 3.3.2 Non-Tariff Measures

#### **a) Work Permits**

None of the Caribbean entertainers and artiste managers who were interviewed for the purpose of this study complained of work permit requirements of the main North Atlantic markets for Caribbean music being an impediment for the provision of their services in such markets. Due to the frequency of travel on the “Carnival” and Reggae circuits, many artistes and management personnel have established a regular course of dealings and contacts with the foreign embassies in their home territories. Secondly, the securing of foreign work permits is a service provided by many of the booking agents (who are often of Caribbean origin) who secure overseas performance bookings for Caribbean artistes.

Ironically, it is in the regional market that entertainers often encounter problems with immigration authorities. Trinidad and Tobago's Parliament recently passed the amended Immigration (Caribbean Community Skilled Nationals) Act 1996 which includes provisions for the free movement of entertainers within the Caribbean Community.

#### **(b) Local Content Quotas**

Several countries have implemented mandatory local content quotas for radio and television broadcast and in some instances in relation to exhibition of films in domestic cinemas. Examples include: Canada, France, Australia, Italy and Norway.

The main reason for such regulations in countries other than the US is essentially to provide protectionist measures against the invasion of US culture particularly in the areas of film and both radio and television broadcasting. It is clear that Caribbean governments need to adopt like measures in order to develop the domestic and regional markets. In the absence of access to funding in the Caribbean, it is not uncommon to find Caribbean filmmakers moving to the source of funding such as Canada. The reality of the situation however, is that whilst funding and other incentives are available in Canada and the European countries foreign film producers “are not interested in our stories”<sup>15</sup>. Indeed if one considers the Caribbean themed television productions made in England they all revolve around the British colonial era e.g. “Wide Sargosso Sea” “The Orchid House” and “The Hummingbird Tree.”

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<sup>15</sup> Christopher Laird, Banyan Productions (Trinidad and Tobago).

### 3.3.3 Investment Barriers

There has been a major policy shift in the Commonwealth Caribbean towards encouraging foreign investment, consequently most of the legislation which restricted foreign ownership has been repealed (e.g. Trinidad and Tobago's Aliens Landholding Act). Most of the tourism-based economies of the region seek to attract foreign and local investment in this sector and provide for a number of incentives which, in some instances, are also applicable to the non-tourist sectors. In Barbados there are a number of fiscal incentives that are available to the business community in general and can be applied to cultural industries e.g. Small Business Development Act, Income Tax Act (50% tax exemption for royalties) International Business Companies Amendment Act and the Special Development Act. The National Cultural Foundation has contracted an accounting firm to produce an explanatory guide containing all these measures for the benefit of artistes and other persons engaged in the cultural industries. Other Caribbean countries such as Jamaica, Dominica, St. Lucia and Trinidad and Tobago also make provision for a range of incentives some of which are applicable to the entertainment sector.

Perhaps the longest established scheme of incentives in the region's entertainment sector is the Motion Picture Industry (Encouragement) Act of Jamaica of 1948 (as amended). The Act provides the following incentives for "recognized motion picture producers" who undertake to expend in Jamaica in each "production year" a prescribed sum:

- Duty free importation into Jamaica of any plant, equipment, machinery and materials for the building of studios or for use in motion picture production;
- Relief from customs duty, stamp duty and General Consumption Tax for purchase in Jamaica of any of the above-mentioned items;
- Tax-free profits from overseas release of film and video for nine years;
- Entitlement to an investment allowance tax-free profits from overseas release of film and video for nine years;
- No withholding tax on dividends paid to resident shareholders with investments in film companies (non resident shareholders earn dividends taxed according to the provisions of the Double Taxation Treaty with their respective countries, for example, USA, and UK are Treaty members thus eliminating the payment of taxes in Jamaica.)

The company seeking incentives must:

- be incorporated in Jamaica;
- complete application for Recognition Status and provide detailed business plan. Recognition Status maybe granted for upto 15 years.

Through the lobbying efforts of the Jamaica Music Industry Association a 1997 bill was drafted which seeks to repeal the above-mentioned act and to make similar provisions for both motion-picture and music production. However, the bill is yet to be laid before Parliament. Nevertheless through the initiative of the Jamaica Music Industry Association a special arrangement has been approved by the Minister of Finance to allow the importation of CDs manufactured externally which contain Jamaican produced recordings with import duties being applied on a reduced price of US\$1.90, provided that certain steps are taken by music producers. Prior to the implementation of this arrangement music producers were required to pay import duties on a price of anywhere between US\$4.00 and US\$7.50 per CD.<sup>16</sup>

### 3.4 FACILITATION MEASURES

The ATA carnet is an international customs document that allows goods to enter foreign countries for up to one year. The system was created by the World Customs Organisation (WCO) and is managed by the International Chambers of Commerce (ICC), International Bureau of Chambers of Commerce (IBCC). Today, 56 countries<sup>17</sup> accept the ATA carnet. The letters “ATA” stand for the French and English words “Admission Temporaire/Temporary Admission” and is virtually a temporary passport for the importation of goods. The normal requirement to supply a customs declaration for the temporary importation of goods is waived, the carnet is accepted as a guarantee that customs duties and other taxes will be paid if the goods listed in the carnet are not re-exported within the stipulated time limit. Consequently, there is no need to post bonds or furnish other forms of security to Customs at the place of import.

Each member country of the carnet system has a single national guaranteeing body approved by the national customs authorities and the IBCC. The guaranteeing body is usually a leading chamber of commerce or similar body, and is affiliated to the ATA international guarantee chain set up and administered by the IBCC. This guarantee chain forms a network of reciprocal guarantees, which assures customs authorities that duties and taxes due in case of default (e.g. the sale instead of re-export of the goods) will be paid. In order to obtain an ATA carnet, the user must provide a security deposit to the issuing chamber of commerce in the form of a surety bond or a certified cheque, usually worth between 40% to 50% of the value of the goods.

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<sup>16</sup> Information provided by Lloyd Stanbury, Caribbeat Entertainment Ltd.

<sup>17</sup> Countries in the ATA Carnet System: Algeria, Andorra, Australia, Austria, Belgium/Luxembourg, Bulgaria, Canada, China, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Korea, Lebanon, Macedonia, Malaysia, Malta, Mauritius, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, United States (except for fairs and exhibitions).

These instruments are used as security by the guaranteeing chambers of commerce for the payment of customs duties and taxes should the goods not be re-exported within the given time frame. The traveller using the carnet is able to make customs arrangements in advance and use a single carnet to make an unlimited number of trips during the 12 months period of its validity. The merchandise must be re-exported in the same state as when it entered the country. Seals affixed for the identification of the merchandise by customs are recognizable by the customs authority of other contracting parties where the merchandise subsequently passes.

Among the biggest users of the ATA carnet are the entertainment industry and sporting fraternity. The goods exported by the entertainment industry particularly on concert tours include props, costumes, instruments, lighting, sound and stage equipment. Proponents of the ATA carnet system argue that the countries which join the system gain a competitive edge over those which do not participate and encourage the inward flow of foreign currency as well as benefit the tourism and travel industry. They contend:

In today's global market place, demand for carnets is spreading among the business community. Even if the Internet makes it possible for companies to do business electronically, the need for entrepreneurs to travel long distances to present their wares to potential buyers has not diminished. Rather the contrary. Trade shows and fairs are proliferating. The quality, ingenuity and lavishness of individual company exhibits is rising as global competition intensifies. Small and medium-sized enterprises, encouraged by the prospect opened up by e-commerce, look to wider market horizons, and are prepared to travel long distances to clinch those deals.

No Caribbean country is a member of the ATA carnet system. For some time the Trinidad and Tobago Chamber of Commerce has been lobbying to become the national guaranteeing body for carnets. However, whilst enabling legislation has been drafted, it is yet to be debated in the Parliament of Trinidad and Tobago. The region's entertainment industry could certainly benefit from the competitive edge that membership of the international carnet system facilitates.

In relation to the regional trade in sound carriers there is a clear need for applied and reciprocal trading regulations in CARICOM permitting the free entry of sound carriers embodying Caribbean content. Similarly CARICOM governments need to enact domestic legislation permitting free movement of Caribbean artistes within the region. Moreover, beyond the region, Caribbean governments should advocate the free movement of entertainment service providers on a global and reciprocal basis within the ambit of the "movement of natural persons" in the context of trade.

### 3.5 MARKETS PROSPECTS

The markets of the English-speaking North Atlantic will continue to be the main markets for Caribbean Entertainers. The main handicap is in catapulting it into the mainstream culture. The greater acceptance of diversity in these markets and the increasing presence of Caribbean people as part of the standing populations of these countries will lead to the development of material which treats with themes of North Atlantic society with voices and with perspectives that are increasingly part of their social and cultural landscape. A key gatekeeper is radio in these countries, which, in the mainstream culture, as indicated earlier, is under the control of the majors.

There is potential in these and other markets. Reach, however, is partly a function of the work of development agencies in the countries of the Region. The individual musicians and entertainers are still nascent firms in structure. While some may achieve high incomes, they lack the resources for the sustained programme of promotion that is necessary for market entry and for constant review and reorientation especially against the backdrop of the highly oligopolistic structure of the Music Sector of the Entertainment Industry. The provision of support to the Carnivals abroad is another initiative that can be taken by the development agencies. As a rule of thumb, wherever there are concentrations of Caribbean people without a Carnival, there exists a potential market possibility.

In other countries where there are annual festivals, the development agencies may seek to send contingents of entertainers to the festival, fully supported by grants from the development agencies. This is good for Tourism as it is good for the Entertainment Industry of the Caribbean. Market development then, means research on street festivals in countries where there is no Carnival and selective penetration of the festival markets where there seems to be some promise. It is not inconceivable that in a country like India, there could be a substantial market for Chutney presented in Carnival form in street festivals of a less solemn nature that may exist in some cities in that country. West Africa, which is the ancestral root of much of the Carnival that has grown and flowered in Afro-Caribbean society should be a major market.

There is no direct income to be derived by the development agencies. Nor are the benefits likely to be immediate to the Musicians and Entertainers. However, there are already clear indications that street festivals represent a considerable long-term market. European countries look to Nottinghill for inspiration. There are also signs that there is interest in South Africa for street festivals of the type seen at Nottinghill. The Caribbean ignores these possibilities to their own disadvantage.

In relation to Caribbean music, there are export market prospects in other regions of the world such as Latin America, Africa and Asia. Brazil and Mexico are two of the world's largest markets for music in terms of sales and consumption. Historically, there are close links between

the Commonwealth Caribbean and Central America and even today descendants of Caribbean migrants may be found in places like Panama and Costa Rica. Consequently it is not surprising that for example soca music has a captive audience in Central America. Indeed, a number of Spanish versions of calypsos and soca compositions have been covered by Latin American artists. Reggae music is popular throughout Africa whilst calypso has a following in West Africa in particular. Such popularity is due in no small measure to the extensive touring of internationally famous superstars like the late Bob Marley, Peter Tosh and Bob Marley and the calypso “King of the World”, The Mighty Sparrow. Notwithstanding the high levels of piracy in Africa, because of an underlying musical affinity, it is a potentially viable market. In Asia, Japan in particular has been a main market for Reggae and Trinidad’s steelpan music. Notwithstanding the economic recession in Japan and the decreased demand for Reggae music, it remains an important market for Caribbean music. The wider Caribbean region such as the French and Dutch Antilles, Cuba, Dominican Republic and Haiti (which has largely been ignored) also offers great potential for the music of the Commonwealth Caribbean and is a market which remains to be commercially exploited. With a combined population of 35 million this market offers serious potential.

The major challenge is in organizing a commercial presence. There are areas that merit attention for investment abroad by government given the failure of the Caribbean private sector to seize the major opportunity that exists, a feature of the sociology of the production of the popular music culture of the region. The lower classes of Trinidad and Jamaican societies created the steelband, calypso and reggae, and the formal domestic private sector derives from groups with roots different from these classes and thus have generally failed to see the market potential in what is a genuine, a distinctively Caribbean product with its own market space. Thus, it is the state that needs to drive the process of the commercialization of the product abroad. Four areas can be identified as possible points of entry:

- Promotion of record shops with investment in retail distribution outlets in metropolitan centers.
- Promotion of radio and television stations that carry Caribbean music in metropolitan centers.
- Promotion of mass of output of Entertainers and Performers on the Internet.
- Promotion of Trinidad style Carnivals and reggae shows in metropolitan countries.

The development agencies set up in most Caribbean countries to promote industrial development may have to be the key agents in this thrust. Countries like Singapore have mounted commercial activities sponsored by their Governments where presence in the external market place has strategic importance for the growth of key sectors. The Caribbean has been forced to do so in respect of bananas. WIBDECO markets bananas in Britain and Europe. Its foray has been dictated by sheer necessity but was seen as a residual responsibility.

It is in the strategic interest of Trinidad and Tobago and Jamaica to have TIDCO and JAMPRO involved in the commercial promotion of recordings of the music of these two countries. This has to be a prime responsibility, as unaccustomed as such agencies are to investment abroad. Domestic firms involved in the distribution of recordings could be supported with market development grants to locate in metropolitan centers. Radio stations and television houses could be financed with clear strategies to reach beyond the Caribbean ethnic or diasporic markets.

The legal battles relating to the downloading and copying of material from the Internet are on-going. The majors recognize the threat that Napster poses: while the initial response has been the legal recourse, the strategic response has been to seek to take control of it. There are a few entertainers in the Caribbean who have already recognized the efficacy of marketing themselves through the Internet. The trade promotion agencies have to see this as an important area for market development grants as well. Given that the 'firms' are often one-man operations, there is need to sustain them by collective marketing.

Thus, TIDCO and JAMPRO and the other organizations in the Region should provide sites on which all the local entertainers can be marketed. Those with the resources to do so on their own can have hyperlinks to their own web sites. The Promotion Agency becomes an agent for all the entertainers and can represent them individually and collectively in the market place. Whatever the problems, the Internet represents the new mode of supply to the market place, and the Caribbean has to recognize the benefits of not being left out. Indeed, the Internet has the effect of leveling the playing field to some extent.

Finally, there is need to spread Carnivals to many other locations where there may be a taste for out-door festivals. The organizational structures have to be created to reach metropolitan centers where there are concentrations of Caribbean peoples to help in organizing Carnivals where they do not now exist. This will mean sending teams of people with skills for organizing among Caribbean communities abroad and skills in running festivals. The effort in any location could take two years to take root. The embassies will usually be well aware of the locations of nationals abroad, and the 'firms' to mount such Carnivals or festivals will be arms of the likes of TIDCO or JAMPRO. They can also market Caribbean entertainment as part of their tourism thrust.

In addition, in other metropolitan centers with less of a Caribbean presence, but where there are strong local festivals, there may also be room for Trinidad style Carnivals and for Reggae Festivals. Since these are major export industries of the region, the development agencies would do well to promote commercial presence. The Entertainers have already exploited the export possibilities through the movement of natural persons. The structure of markets for recorded music and for entertainment generally requires more than the movement of natural persons to realize possibilities that exist for the Caribbean product.

The existing copyright agencies are geared to the protection of musical work. However, there is the masquerade and the costume work in which there is considerable design to be protected. This area has been ignored in the Caribbean itself, let alone in the metropolitan countries, where it is copied by others with impunity. There is need for designers to be educated on the importance of protecting their work. Moreover, the relevant authorities need to create the designer friendly structures to afford protection to the array of creative personnel in these countries.

The creativity that the Caribbean has displayed in popular culture has now to be matched by creativity in the design of marketing organization to get output into the international market place within the dispensation of new trade rules and structures. Otherwise, the centuries old arrangements in which their products and services remain at the base of the value chain in which others than themselves cream off the lion's share of the benefits, will remain in place with the agreement of those responsible for negotiating market space for them. To borrow appropriately from Caribbean folklore, Anansi has to enter the negotiations on the side of the Caribbean to help it abide by the new rules but, at the same time, to find the advantages that would normally be denied to the Caribbean. The Region has to build infant industries in a period when traditional protectionist strategies invoke sanctions, under the new trade rules.

## SECTION IV

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### 4.0 INTRODUCTION

This Section explores the developmental aspects of the Entertainment Sector in the Commonwealth Caribbean. It can be argued that the Sector is still inchoate, although considerable evolution has occurred over the years. Some elements derive from the folk culture of the countries and receive continuing support and inspiration from that source, with production generated as part of the self-fulfillment of entertainers: this is particularly evident with regard to Music and to 'Mas'. There is emerging an understanding of the fact that Caribbean cultural products, whether in terms of services or goods, offer prospects for generating income and employment. However, the facilitation agencies are still grappling with the task of providing support for an industry in an embryonic stage. Moreover the sector itself and the various sub-sectors lack organization and have difficulty in advocating on behalf of the industry in a systematic and sustained manner through trade unions and industry associations.

Various studies have been commissioned by agencies such as the Caribbean Export Development Agency and the joint effort by the World Intellectual Property Organization and UNCTAD in relation to the development aspects of the music and festival sectors of the entertainment industry in the Caribbean. Consequently, to order to minimize duplication of effort this section will provide a brief overview of developmental issues affecting the industry.

The agencies involved in production of entertainment services and products can be disaggregated as follows:

- Special Interest Groups or Associations in culture
- State Agencies promotion cultural development
- State Agencies promoting trade and commercial activity in culture goods and services
- Firms/Individuals involved in entertainment for commercial purposes

The first category includes NGOs as special interest groups seeking to promote a particular genre or area of the Sector, including those with commercial intent. There are state related institutions established to promote the development of parts of the sector, in keeping with the perception of the Government of its role in the preservation of culture and art forms of the country, and requiring its support: e.g. the folk culture. There are also trade and development agencies, which may identify culture as a source for employment, income and foreign exchange generation. Finally, there are firms, some of which are self-employed individuals, seeking participation in the industry to make money and earn a livelihood.

Much of the focus here will be on the music, and festival forms that have a Caribbean distinctiveness or have characteristics that distinguish them from what is produced elsewhere. This is because this is the most evolved area of the Sector, which has its roots in the historical development of these countries. The film/video industry is largely an offshoot of the international industry, with the Caribbean merely being a location with certain attributes of scenery and of culture that may have relevance for particular types of film.

In the five countries in which information for this study has been collected, there has been a long tradition of music and entertainment by the folk for the folk. Among the African derived population, there have been retentions that immediately betray their African roots, which all the restrictions of plantation slavery had failed to suppress.

While these countries all became British colonies, there were differences among the groups that brought their traditions from Britain to the Caribbean. Likewise, there were differences among the slaves themselves and these differentials in contact would have had their effect on the evolution of speech as on music. Trinidad and Tobago has another important folk segment deriving from the descendants of Indian indentured labourers, who came in the 19<sup>th</sup> century. Their folk culture reflects Indian roots but has evolved with Caribbean characteristics that give it a certain distinctiveness.

Dominica, St. Lucia and Trinidad have had a French connection that laid the base for some of their musical traditions. Trinidad had too, the presence of a large Venezuelan settler community in the mid to late 19<sup>th</sup> century and they brought the antecedents of what is today defined as *parang*, which is a genre peculiar to Trinidad in the Commonwealth Caribbean. This plural or polyglot country supports a mixture of folk forms. The folk music of Dominica shares a similar base to 'zouk', which is native to the French Antilles.

The folk music of Tobago may have similar roots to that of Barbados, even though it would not have been immune to influences from over the water in Trinidad. While Trinidad became a pot-pourri of cultures and musical traditions, including that of India and of American Service Men serving on American Bases in the Second World War, Jamaican folk music represented a more direct lineage to Africa, given the strength of Maroon traditions in its early history.

#### 4.1 FOLK AND THE ENTERTAINMENT INFRASTRUCTURE

It is in these folk traditions from which derive the musical strains and other forms of entertainment in which people have entertained themselves in the past. Local festivals and moments of spontaneity are the occasions on which some of these traditions re-appeared.

In the last half-century, however, with the growth in the communications media – radio and television, and now more recently, cable television – Caribbean people have become more wedded to the musical culture of the North Atlantic. To some extent, the survival of their folk music has been assisted by State Agencies and Departments or Ministries of Culture, which have assumed a nationalistic posture in respect of the culture of the country.

Organisation among the proponents of folk culture varies from the loosely organized structures associated with village or community groups, to highly organized and even professional groups. For example, there are folk choirs that have become well established and have functioned and sustained themselves over the years in many of these countries. Often, such groups are headed by professionals. In addition to doing recitals or other live performances, they may even have product in the form of recorded material, as memorabilia. The intention is not so much commercial but recording for posterity, and for a wider audience, their work of art. In such cases, they may secure sponsorship, and indeed, much of such work is based on sponsorship: the voluntary efforts of the proponents provide the labour and skills needed, and corporate sponsors provide financial support.

Theatre groups in Jamaica and in Trinidad and Tobago illustrate these characteristics, as well as chorale groups. La Petite Chorale, the Trinidad Workshop, and Nitanjali in Trinidad are good examples of organizations that have operated for some time. The more loosely structured groups may rise to prominence and just as suddenly disappear: their existence is determined by the social and political climate at the level of communities and villages.

Particular genres have flourished at particular times in the history of these countries, and some have been related to other types of formal structures. Church groups have supported choirs, and the popularity in recent years of Gospel Music has much to do with the rise of evangelical churches in these countries. However, the church has often been a fertile base for certain type of folk culture.

Another example of the influence of political culture was the flowering of literary and debating societies in the immediate pre-independence period. This creative spurt was associated with the emergence of the literati in Commonwealth Caribbean societies, but also led to the involvement of groups in theatrical performances, some starting with the literary work of Britain, but increasingly engaging in experimentation with a West Indian Theatre.

In the case of Trinidad and Tobago, the most significant feature was the steelband. Pan yards emerged in the immediate post World War Two years and have become an institution in this country with many communities (sometimes, local area) having its own steelband. Indeed, the steelband has been the defining structure for many communities in the country, and excites local passion in competitions. While for some period in the 1960s, steelbands were popular in

providing music for parties and dances, the advent of the DJs have returned them largely to the non-commercial sector. Most steelband persons or pan men and women are aficionados of the instrument, learning and playing for the sheer joy of participating in the activity. A similar trend could be identified with Mento Bands in Jamaica. These folk or community type entertainment structures have been built upon or fostered by the State in the respective Caribbean countries.

## 4.2 STATE SUPPORT OF CULTURE

The Jamaica Cultural Development Commission promotes an annual festival, which was formalized and initiated immediately following political independence, and has been sustained over the years. The Commission began as the Jamaica Festival Commission, with a mandate ‘to develop and promote the creative talents and cultural expressions of Jamaica’. It was preceded by a number of institutions, which as far back as the late 19<sup>th</sup> century, organized intermittent village festivals. The first national festival was held in 1955 to mark Jamaica’s tercentenary as part of the British Empire.

Through the festival, the Commission has sought to preserve and maintain the heritage of the country for future generations. The festival attracts the participation of many of the villages of the country, and is organized around regional competitions, which lead up to the final and the crowning of the Festival Queen of the year. The festival showcases dance, speech, drama, and song, photography, literary and culinary arts of Jamaica. The Commission has also been instrumental in the development of Gospel Music in the country, and Jamaica has a strong presence in Caribbean Gospel Music.

The major event in the Commission’s calendar is the annual festival of the Performing Arts. In the months prior to the competition, the Commission supports a number of training workshops, which have served to unearth and develop raw talent. One important example is the Mento Music Seminar. Mento is the traditional music of Jamaica and is played with a range of instruments, some of European provenance and others adapted from Africa.

According to Nicky Dread (2000), it draws on the fife and drum music of **Jonkanoo**, and the **Pocomania** church music, and work songs of slave plantations, passed through generations. The Commission’s annual Festival and its work with the National and Regional Mento Yards help sustain the Mento tradition. There is also a Mento Band Competition.

The festival of the Commission showcases talent and many of the participants have gone on to become top contributors to the various art forms of Jamaica, including some Reggae artistes. Training and development are major components of the work of the Commission in addition to showcasing of cultural expression. In recent years, the festival has assumed such significance that Jamaicans resident abroad organize their annual visits home to coincide with the event.

The Commission maintains a directory of persons involved in the visual and performing arts. It now operates as a booking agent for some of the performers, although it is not paid for this task. It now regularly receives inquiries from overseas. It has had its mandate expanded to support all community-based festivals and to include the development of cultural production into economic products.

It is expected, therefore, to focus on all kinds of entertainment, and is looking for partners in this larger endeavour. In its new role, it is expected to stimulate commercial activity and to spin it off into the private sector when it would have attained a certain size and viability.

Undoubtedly, the Commission has helped in maintenance of the folk traditions in Jamaica which have served as the base for some of the music with which the country has been associated over the years. A Mento parenthood can be traced in Ska, Rock Steady, Reggae and Dance Hall.

While one cannot establish the counterfactual, without the Commission, it is debatable whether the clear distinctiveness of Jamaican Music would have been sustained. The Commission's work in the villages and communities of Jamaica has produced the foundation from which derives the commercial product that arrives in the international market place. While much of the production remains at the level of live performances, the Commission has always been sensitive to the importance of recording. In recent times, given the need for a more commercial orientation, the production of taped material has become one of its objectives. In sum, the Commission has provided the nurturing for the development of commerce.

A similar role is performed by the Ministry of Culture in Trinidad and Tobago. The Ministry of Culture provides an umbrella for a number of organizations that operate in the various traditions in music, performing arts, and culture:

- Best Village Competition – reflecting music, and dance of post-emancipated Africans and indentured Indians in their village traditions
- National Parang Association – reflecting the musical contribution of the Venezuelan peasants and workers who came to Trinidad in the late 19<sup>th</sup> century
- National Carnival Commission – reflecting the music, and masquerade of the Trinidad and Tobago Carnival
- National Chutney Foundation – reflecting the modern Trinidad adaptation of Indian music
- Sanskrit Sangram – protagonist of Indian Culture
- Trinidad Theatre Workshop – promoted as one of the oldest theatre companies in the country (founded by Derek Walcott)
- National Drama Association
- National Dance Association

The Best Village Competitions started with the move to self-government and have served a similar purpose as in Jamaica of unearthing the talent of the folk, as well as sustaining some of the cultural traditions of the past. A number of Folk Choirs have risen to prominence through the Best Village Competition and now have an existence independent of the Competition. The Malick Folk Performers are the best known in this regard. They now perform not only as a folk group but for commercial considerations. The Best Village Programme has recently been placed under the Ministry responsible for Community Development.

The National Carnival Commission, the Parang Association and the National Chutney Foundation run annual competitions which are now major commercial events in the country and while serving the purpose of promoting the particular genre, perform the additional function of bringing into the public domain, some of the major works of art of the entertainers in these fields.

The National Carnival Commission has become an umbrella organization, within which there is PAN TRINBAGO, the National Carnival Bands Association and TUCO, as the key agencies, the first, representing calypsonians, the second, bandleaders of the major bands in the country, and the last, the Calypsonians and Soca Performers. The National Carnival Commission provides a coordinating function vis-à-vis the other organizations and is responsible for much of the infrastructure across the country for the National Carnival.

The Commission was revamped in 1991 under a new act. It is empowered to:

- Regulate, coordinate and conduct all carnival activities in the country
- Identify, evaluate and promote all Carnival related industries with a view to enhancing and marketing of their cultural products and services
- Develop and implement marketing strategies for Carnival to optimize the revenue earning potential of the festival
- Establish branches in and outside of Trinidad and Tobago to work with associations seeking to enhance the Carnival in their regions or to manufacture saleable carnival products
- Encourage bilateral exchanges with foreign organizations with a view to promoting the Trinidad and Tobago Carnival.

The Commission has been the agency through which substantial subventions have been made to the Carnival over the years. The proposed expenditure for the Commission for the current year amounts to TT \$34m or just over US \$5m. While the Carnival is now heavily commercialized, the Government has had to measure up to the expectation of supporting the Carnival in the context of a public good phenomenon. The structural differentiation of the National Commission

into component parts – PAN TRINBAGO, National Carnival Bands Association, and TUCO - suggests a greater willingness to allow a commercial orientation to develop in the production of the national carnival. These latter organizations are now entitled to the income from television and broadcasting rights to the shows that are put on by them. The Commission itself is now expected to be more self-financing and, in that regard, is no longer merely a development agency.

The National Carnival Commission receives the largest single subvention from the Government, much to the chagrin of other groups. On the other hand, it is the Trinidad Carnival that has long been a distinguishing feature of Trinidad and Tobago in international tourism and in festivals around the world. The visitor arrivals and the increase in foreign exchange that the festival prompts would seem to justify the expenditure.

The Government, through the Ministry of Culture, also promotes the Steelband Movement by direct subventions to Steelbands that do not have sponsorship from any of the major corporations. This has to be seen against the considerable support that some steelbands receive from corporate sponsors. There is also the National Steelband Orchestra that is paid for and fully supported by the Government. Its members are technically public servants. The orchestra's role is to be available to perform at state functions and to act as cultural ambassadors in cultural exchanges with other countries. Additional details on these subventions can be found in the Appendix.

In Barbados, the National Cultural Foundation created by an Act of Parliament in 1983 is mandated to:

- Stimulate and facilitate the development of culture generally;
- Develop, maintain and manage theatres and other cultural facilities and equipment provided by Government;
- Organise cultural festivals; and
- Do anything necessary or desirable to assist persons interested in developing cultural expression.

Specific objectives include:

- Increasing the profitability of cultural products by strengthening domestic demand through increased accessibility;
- Creation of high quality products that will be competitive on the local, regional and international markets; and
- Maximising the role of the cultural sector in the tourism industry.

The NCF is funded by and reports to Parliament through the Ministry of Education, Youth Affairs and Culture. An annual Government Grant is the main source of funding and is supplemented by income from sponsorships, gate receipts, broadcast/video rights, equipment and facility rentals. In 1999-2000 the NCF programming expenditure included:

- BDS\$3,533,248 in: festivals, events, development and training
- BDS\$104,799 in promotion of arts
- BDS\$135,293 in promotion of music

Total expenditure for the year 1999 including emoluments, operating expenses and other charges totaled BDS\$6,592,695.00. In terms of revenue the Government subvention amounted to \$3million and revenue generated from Crop Over amounted to \$1,790,135.

As the CEO of the NCF noted in the Annual Report 1999 the Foundation has the “unique responsibility of fulfilling two apparently disparate roles simultaneously: developmental as well as commercial.” Consequently, the NCF proposes to separate its cultural training, business development and commercial roles. The establishment of a separate entity to manage and execute the Crop Over and Congaline festivals is envisaged.

St. Lucia’s Ministry of Community Development, Culture, Local Government and Co-operatives grants an annual subvention to the National Carnival Development Commission (NCDC) of EC\$250,000 of which \$160,000 is expended on prize monies and the remaining \$90,000 on infrastructure, salaries and incidentals. As in Trinidad, similar interest groups are responsible for running their particular events, the Carnival Bands Association organizes the Carnival Queen show and King and Queen of the Bands, the St. Lucia Calypso Association runs the calypso tents whilst the St Lucia Steel bands Association stages the Panorama competition. The NCDC is responsible for running the Queen Show, Parade of the Bands and “Soca Fest”. In relation to the annual St. Lucia Jazz Festival, the St. Lucia Tourist Board pays for items of expenditure that are not covered by sponsorship and ticket sales. In 2000 this amounted to EC\$2 M.

The Government of Dominica is the main financier of the World Creole Music Festival contributing a subvention to the Dominica Festivals Commission of EC\$200,000 to EC\$400,000. The Dominica Festivals Commission in turn is a subsidiary of the National Development Corporation (NDC). The NDC also subsidizes the annual Carnival celebrations in the region of EC \$250,000 to EC\$300,000.

### 4.3 CORPORATE SPONSORSHIP

Trinidad and Tobago is perhaps unique in the level of corporate sponsorship that has been institutionalized around the steelbands of the country. Moral suasion by the Government in the 1960s saw the emergence of this phenomenon. The Government at the time was seeking to curb

violence and gang warfare that involved many of the steelbands. The bands that developed in the 1940s had sprung up, mainly among the lower class youth, subject to severe unemployment. The names of the bands reflected inspiration from the Second World War. The names showed the bellicose character. There are names like ‘All Stars’, and ‘the Desperadoes’ or names of the location of famous battles or part of the theatre of the War - ‘Casablanca’ and ‘Tokyo’ – and with bands emerging from local place names like ‘Hell Yard’: all this meant that steelbandmen were geared for war. Direct employment creation in such districts by the Government, and sponsorship of bands by major corporations helped put the lid on the violence. There are few large corporate organizations that are not involved in sponsoring a steelband.

The equipping and maintenance of a steelband is a highly expensive affair. The larger orchestras will have upwards of fifty members. A band organized for most of the national competitions will have over one hundred playing members. The basic cost for the production of one steeldrum is \$2,000. The average life of an instrument is less than ten years. While it is difficult to establish the level of expenditure, with over 50 large steelbands, sponsors would spend annually, millions of dollars.

The largely African base of the steelband movement has led to complaints about equity in funding. Some sponsors have therefore adopted a few of the Chutney playing orchestras, which have more regular instruments of musical orchestras, in addition to a few special instruments that characterize Indian Music. Chutney bands are much fewer in number than steelbands.

The St. Lucian Jazz Festival now entering its tenth year has been able to attract significant sponsorship. BET (Black Entertainment Television) is the main sponsor providing airtime, commercials, production of a one-hour “made for television” show and print advertisements in some of the main jazz magazines such as “Jazziz” and “Jazz Times”.

#### 4.4 PROMOTION OF TRADE AND COMMERCE IN CULTURE AND ENTERTAINMENT

JAMPRO is Jamaica’s primary investment promotion and economic development agency. Entertainment is one aspect of business that receives promotion and within JAMPRO there has been established the Jamaica Film, Music & Entertainment Commission. The mandate of the latter is to facilitate the development of a cohesive industry supported and strengthened by education and training within short, mid and long-term development programmes. In respect of Music, JAMPRO has been responsible for the updating legislation relating to entertainment. The most recent revision has addressed the importation of equipment, which is now free, except that the law did not address the importation of CDs, which are tools of the trade for musical productions.

JAMPRO is responsible for National Industrial Policy and in that regard, has long recognized the distinctive role of Jamaican music. It has encouraged the affirmation of the country as *Reggae Country* and uses the music not only as a stand-alone product but also as defining element in promoting tourism, craft, cuisine and manufactured products of Jamaica in the international market place.

The Film Subsector has been particularly favoured with the extension of the incentives that apply to other sectors earmarked for industrial promotion. There are fiscal incentives to promote the various sections of the industry: duty free import of plant and equipment is one significant allowance. The earliest legislation relating to the Sector was the Motion Picture Industry (Encouragement) Act of 1948, which has been updated over the years and is administered by JAMPRO. There are moves afoot to include other areas of the Entertainment Sector in the incentive arrangements provided by JAMPRO.

The organization has encouraged the participation of the local industry in the Cannes Festival. JAMPRO has also been instrumental in the development of associations representing the various subsectors of the industry, all of which are now affiliated to the Jamaican Film, Music, and Entertainment Commission, facilitating the development and marketing of the Jamaican music products. The Commission has been responsible for the establishment of the *International Jameircan Film and Music Festival*. The festival has had a second year. It is designed to bring together, in the words of one of its proponents, ‘producers, directors, and stars on some of the world’s finest beaches, drinking the world’s best rum, beer and coffees, eating jerk chicken as reggae rhythms pulsate through you’. The intention is to create a joint product of sun, sand and cinema, with Jamaican distinctiveness. JAMPRO is also a sponsor of the *Caribbean Music Expo (CME)* an annual international trade fair, which brings together music producers from the Caribbean and media and music executives from around the world in a series of conferences, concerts and exhibitions. The convention is designed to enable English, Spanish and French speaking Caribbean music producers and service producers to position themselves as suppliers of music products and services for the global market. ([www.cme.com.jm](http://www.cme.com.jm)).

In the case of Trinidad and Tobago, TIDCO has expanded its mandate to include the development of the entertainment sector. It has facilitated the attendance of music producers and service providers at Midem as well as promotional materials, musical products, local concerts and overseas tours for persons engaged in the business of entertainment. TIDCO also sponsored the creation of the Entertainment Industry Development and Export Company (EIDECO). EIDECO was established in July 1997 to address the concerns of the entertainment industry sector of Trinidad and Tobago with the view of maximizing its potential for income generation and employment. To date, TIDCO has not been as successful in achieving its goals for the sector, and its attempt at an international event showcasing calypso, soca, pan, chutney and other local music alongside world ethnic music is considered to have failed so far. However, the

entertainment sector is expected to play a major role in the thrust of the country to promote the tourism sector.

In Barbados, the entertainment industry does not fall within the mandate of the Barbados Industrial Development Corporation (BIDC), although the corporation has helped to market local CDs and assisted in funding attendance of local music entrepreneurs at MIDEM, the international music trade fair. It would seem that even the trade promotion and facilitation aspects of the entertainment industry come under the purview of the National Cultural Foundation.

Dominica's NDC, apart from being the main financier of the annual World Creole Festival, plays a role in the promotion of entertainment products and services. Working closely with its subsidiary, the DFC, the NDC facilitates: overseas promotional tours of artistes, distribution of promotional material and the attendance of music business personal and artistes at trade fairs like MIDEM.

#### 4.5 INTERNAL SECTOR ORGANISATION

The following is a listing of the Trade Unions/Industry Associations in the Carnival and Music subsectors in the territories of Jamaica, Trinidad and Tobago, Barbados, St. Lucia and Dominica.

##### **Jamaica**

- Music Industry Associations: Jamaica Federation of Musicians, Jamaica Music Industry Association, Jamaica Recording Artists Association, Jamaica Association of Female Artists; Jamaica Association of Music and Affiliated Artists
- Collecting Societies: JACAP, JAMCOPY, JPAS, JAMRAS (see Section V)

##### **Trinidad & Tobago**

- Special Interest Groups: National Carnival Bands Association (NCBA), Pan Trinbago, Trinbago Unified Calypsonians Organisation (TUCO)
- Music Industry Associations: National Parang Association, National Chutney Foundation of Trinidad and Tobago, Recording Industry Association of Trinidad and Tobago (RIATT)
- Umbrella Organisation: EIDECO
- Collecting Societies: COTT & TTCO (see Section V)

##### **Barbados**

- Recording Industry Association of Barbados (RIAB)
- Barbados Association of Tent Managers (BATMAN)

- Barbados Entertainers' Association
- Collecting Societies: BAMCI & COSCAP (see Section V)

### **St. Lucia**

- Carnival Bands Association
- St. Lucia Calypso Association
- St. Lucia Steelbands Association

### **Dominica**

- Dominica Calypso Association

The main problem faced by all these organizations is the lack of adequate funding. Trade Unions and Industry Associations are normally funded in the main through dues or subscriptions paid by members. However, given that the entertainment industry is still in its nascent stage of development many of the individual entertainers are unable to make sufficient financial contributions to their representative organizations. Another problem is that many of these organizations particularly those representing calypsonians and steelbands channel a great deal of their human and financial resources in the organization and promotion of events. Consequently, little resources are available and scant attention paid to the main role of such organizations such as advocating public policy for the sector they represent, negotiating and developing standard contracts on behalf of their members, ensuring the improvement of standards and quality control and training and education of their members and management.

In sum then, the Entertainment Sector in the Commonwealth Caribbean has been supported, to some extent, by a range of institutions that provide the base from which many musicians and entertainers have emerged to create commercial product and service exports. There are varying degrees of clarity of the relationship between the development institutions in culture and the role that they must perform in creating capacity for an industry that has to gear itself for international markets. In the current rounds of negotiations, the Region has to be sensitive to the fact that this is one of the few industries in which it has a distinctive market niche. Its negotiating strategy must afford it the space and time to allow the sector to benefit from industrial policy that recognises the possibilities. Industrial policy and trade negotiating strategy have to be closely linked, therefore.

## SECTION V

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### 5.0 INTRODUCTION

This section examines the importance of intellectual property rights for Commonwealth Caribbean rights owners, particularly in the context of trade and with an emphasis on copyright. The Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) demonstrates very clearly the growing awareness of developed countries in particular, of the financial and economic significance of the movement of goods and services protected by intellectual property rights in the context of world trade. Consequently, great pressure has been exerted on developing countries to ensure compliance with TRIPS with the threat of trade sanctions in the event of failure to comply.

Historically, Caribbean countries have been greater consumers of intellectual property than creators/producers of such property. Furthermore prior to TRIPS, Caribbean governments never treated intellectual property rights protection and enforcement with much priority and utilized meager resources on grappling with pressing socio-economic issues such as health, education, job-creation and poverty eradication. Notwithstanding this, Caribbean nationals have a great legacy and tradition in creativity as is evident in our cultural endeavours such as literature, music and mas. The link between cultural creativity and diversity and copyright is clear and therefore any discourse on culture or entertainment (the latter being a by-product of culture) must treat with the importance of copyright protection.

As far as the link between cultural industries and industrial property within the context of IPRs is concerned this is primarily in relation to trademarks. In the age of globalization the economic significance and value of branding of products and services is evident. In the field of music well known trade and service marks include “Sony” “Warner” “Columbia” “Arista” to name a few. As Caribbean countries begin to develop musical products and services as well as films, videos and television programmes for export, increasing attention must be paid to brand imaging and the registration of trade and service marks.

Statistics for 1999 from the Intellectual Property Registry in Barbados show that in Class 38 for Broadcasting, Television and Radio, there were a total of 26 applications, 4 of which were from the Caribbean and that in Class 41 for Entertainment, Sports and Culture, of a total of 41 applications, 6 were local. The few cultural entrepreneurs in the region have understood the importance of branding. The Island label developed by Jamaica’s Chris Blackwell fetched a price of US\$300M when sold to Polygram in 1998 and no doubt the goodwill in the name was a key factor in the price. It is clear that Guyanese born Eddy Grant, now resident in Barbados, is trying

to market the brand name “Ring Bang” and maximize commercial exploitation in the form of concert promotions, merchandising and product labelling.

The creative community in the region has begun to realize the economic benefits of copyright protection and have begun to lobby national governments to ensure that such protection is granted and enforced and have started to establish indigenous national copyright collecting societies.

## 5.1 WHAT IS COPYRIGHT?

“Copyright is the means by which a person or business makes a living from creativity. Copyright springs from a simple notion: the people that create, produce or invest in creative work should be the ones that decide how that work should be reproduced and made available to the public...Copyright provides the economic foundation for creating and disseminating music, literature, art, films, software, and other forms of creative work. Copyright provides that the rights holders determine whether and how copying, distributing, broadcasting and other uses of their works take place.” (IFPI)

Unlike other IPRs copyright protection arises from the moment that a literary musical, or artistic work is created or expressed in some tangible form, or comes into being. There is no formality to be complied with, such as registration or deposit, as a condition of that protection. Mere ideas in themselves are not protected, only the way in which they are expressed.

Another essential requirement for copyright protection is that works must be original. The root requirement in UK law in relation to originality is that sufficient “skill, judgment and labour”, or “selection, judgment and experience” or “labour, skill and judgment” be expended by the author in creating the work.

In the case of *University of London Press v. University Tutorial Press* [1916] 2 Ch. 601 at 608 Peterson J. said:

The word ‘original’ does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of ‘literary work,’ with the expression of thought in print or writing. The originality, which is required, relates to the expression of thought. But the act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author.

Lord Atkinson in the case of *MacMillan & Co.v Cooper* [1923 ] LR 51 Ind App 109 said that:

It is the product of labour, skill and capital of one man which must not be appropriated by another, not the elements, the raw material, if we may use that expression, upon which the labour skill and capital of the first had been expended. To secure copyright for the product it is necessary that labour, skill and capital should be expended sufficiently to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material.

US case law has developed two aspects to originality: independent creation and a modest quantum of creativity. The standard of creativity is a *de minimis* one; almost any distinguishable variation of a prior creation will suffice and there is no requirement for any artistic merit or beauty.

Most copyright protection systems provide for two main categories of rights: economic rights and moral rights. Under the English common law system, economic rights are the primary rights with the protection being weighted in favour of the investor whereas in the European civil law tradition, the *droit d'auteur* was considered almost a human right and reigned supreme. The economic rights are the rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, and so on and are essentially the means of commercial exploitation of copyright works.

Economic rights are exclusive to the copyright owner. The substance of such exclusive rights is not merely that the right owner can prohibit others from exploiting the work but the real value of such [rights] is that [they guarantee] that works are exploited in a way that corresponds to the intentions and economic interests of the owner<sup>18</sup>. The moral rights include the creator's right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honour or reputation.

The general principle is that copyright protected works cannot be used without the authorization of the owner of rights. Limited exceptions to this rule, however, are contained in national copyright laws since copyright systems seeks to strike a balance between 2 competing interests: the exclusive rights of the copyright owner on the one hand, the interest of the general public to have access to information and copyright protected material. In principle, the term of copyright protection is the creator's lifetime and a minimum of 50 years after his death. However, in recent times, the duration of protection has been extended to 70 years after the death of the creator in the US and European Union.

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<sup>18</sup> WIPO- 1990 *Collective Administration of Copyright and Neighbouring Rights*.

## 5.2 WHAT ARE RELATED RIGHTS

Whereas the rights provided by copyright apply to authors, “related rights”, also known as “neighboring rights” concern other categories of owners of rights, namely, performers, the producers of phonograms and broadcasting organizations. Related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively. Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works. The link with copyright is due to the fact that the three categories of related rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the communication of the latter's works to the public. (WIPO website – collective management).

In most copyright systems the owners of related rights also have exclusive economic rights to determine the destiny and commercial exploitation of their productions and performances but in certain systems only have a right to equitable remuneration particularly with regard to the broadcasting and other communication to the public of sound recordings.

## 5.3 THE OBJECTION OF PROTECTION

The European Commission in its 1991/1992 working programme entitled “Follow-up to the Green Paper” noted that:

Copyright provides a basis for intellectual creation. To protect copyright is to ensure that creativity is sustained and developed, in the interest of authors, the cultural industries, consumers, and ultimately society as a whole. Neighbouring rights underpin these objectives in various ways, particularly by guaranteeing a proper return to performing artists and those who invest in the provision of these cultural goods and services.

In simple terms, copyright protection provides creative talent with an incentive to create original works and entrepreneurs the economic reasons to invest in them.

Although statistical data are lacking there is empirical evidence in the developed countries that copyright protection has spurred the dramatic growth of artistic, cultural and other creative industries accounting for tens of millions of jobs worldwide. The latest available government estimates in Europe and the United States value copyright-based industries respectively at 360 billion Euros and US \$430 billion, respectively representing more than 5% of GDP. Such economic indicators can no longer be ignored by Caribbean Governments which must implement strong levels of copyright protection in order to maximise the economic returns to the region's creators and entrepreneurs.

## 5.4 INTERNATIONAL PROTECTION

The legal principles and rights mentioned above are specified in international conventions to which most countries are now party. On their accession, member States are obligated to have national legislation in line with the international standards enshrined in the international conventions. National legislation in turns provides for reciprocal treatment and protection for copyright right owners who are nationals of, or resident in foreign convention member states.

At the international level, the economic and moral rights are conferred by the Berne Convention for the Protection of Literary and Artistic Works, commonly known as the “Berne Convention”. This Convention, which was adopted in 1886, has been revised several times to take into account the impact of new technology on the level of protection that it provides. It is administered by WIPO. At the international level, related rights are conferred by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, better known as the “Rome Convention”. This Convention was adopted in 1961 and has not been revised since. It is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and WIPO.

The 1994 TRIPS Agreement, which is administered by the World Trade Organization (WTO), requires adherence to the major international conventions on intellectual property rights, sets minimum standards for protection, specific enforcement measures and procedures and establishes a disputes settlement procedure. Caribbean countries which are in the process of enacting or updating copyright legislation to meet the stringent demands of the WTO should take the opportunity to ensure that whilst such legislation meets international standards particular national interests are protected. For example, Trinidad and Tobago, the first Commonwealth Caribbean country to complete the WTO’s mandatory TRIPS compliance review, introduced in its 1997 Copyright Act special provisions protecting “works of mas”(i.e. creative productions arising out of its renowned annual Carnival celebrations). Another example is India which years ago granted performers’ rights protection to snake charmers.

## 5.5 COLLECTIVE MANAGEMENT AND SERVICES

### 5.5.1 Individual Exercise of Rights

Copyright is a private property right, which confers exclusive rights on the copyright owner to exploit his/her work, authorise others to do so, or prohibit others from exploiting the work without authorisation.

An exclusive right can be enjoyed, to the fullest extent, if it may be exercised individually by the owner of the right himself. In such a case, the owner maintains his control over the dissemination of his work, he can personally take decisions on the economic conditions of its exploitation and he can also closely monitor whether his moral and economic rights are duly respected (Garnett, Rayner and Davies, 1999).

### 5.5.2 Need for Collective Management of Certain Rights

There are however, certain rights - first of all the public performance and broadcasting of non-dramatic musical works- that are difficult if not impossible to exercise individually and in respect of which right owners have joined together to exercise rights on a collective basis. According to WIPO's Copyright Collective Management Division: "An average of 60,000 musical works are broadcast on television every year so thousands of owners of rights would have to be approached for authorization. The very impracticability of managing these activities individually, both for the owner of rights and for the user, creates a need for collective management organisations, whose role is to bridge the gap between them in these key areas, among others.

Collective management has its genesis in 18<sup>th</sup> century Europe. Since then new developments in technology have made it virtually impossible or at best exceedingly expensive for the individual exercise and control of rights in new high volume markets. Apart from the performing rights in musical works, the emergence in recent times of new means of exploitation of copyright works such as reprographic reproduction (i.e. photocopying) of literary and graphic works, cable transmission and simultaneous retransmission of television programmes and films, and the use of commuter technology to digitise and store protected works in data bases and to transmit them in digital form throughout the world on the new global information infrastructure (e.g. the Internet) has made the need for collective administration even more acute. Individuals do not have the capacity or resources or monitor all those uses, to negotiate with users and to collect remuneration.

### 5.5.3 Definition

WIPO describes the system of collective management as follows:

In the framework of a collective management system, owners of rights authorise collective management organisations to administer their rights, that is to monitor the use of the works concerned, negotiate with prospective users, give them licences against appropriate fees and, under appropriate conditions, collect such fees and distribute them among the owners of rights.

In Trinidad and Tobago, s. 49 the Copyright Act, 1997 refers to the term "Licensing Body" which is defined as follows:

any society or organization which has as its main object, or one of its main objects, the negotiation or granting of general licences in respect of protected works, sound recordings or performances either as owner or prospective owner of copyright or neighbouring rights therein, or as agent for the owners or prospective owners thereof.

Similar definitions can be found in the Copyright Acts of Barbados, Jamaica and St. Lucia.

Collective management organisations are also called “collecting societies,” “copyright collectives” “copyright organisations” or in reference to the particular category of rights they administer e.g. “performing rights organisations (PRO’s), “mechanical rights societies,” “reprographic rights organisations (RRO’s).

#### 5.5.4 Advantages

“Collecting Societies are practically, economically and legally both viable and essential: practically because copyright owners cannot be in an indefinite number of places at the same time exercising individual rights, and foreign right owners would be unable to exercise their rights outside their country of origin without extreme expense and difficulty; economically, because it is cheaper to share the financial expenses of negotiation, supervision and collection among the greatest possible number of rights owners; and legally, because it is impossible for users of works to obtain permission from every individual copyright owner, both national and foreign.” ...” There is an additional advantage to the individual right owner whose personal standing or size would put them in a weak bargaining position in relation to powerful users, if they were to try to exercise their rights on an individual basis. Collective licensing increases their marketing power, putting them on the same footing as their better known or more influential colleagues.” (*Copinger and Skone James on Copyright 14<sup>th</sup> ed. Pages 1493 and 1494*)

#### 5.5.5 Disadvantages

Copyright is a private and exclusive individual right. However, in the collective management system, the individual right owner has to relinquish the right to negotiate the determination of remuneration and other terms and conditions for use of his copyright work. Similarly from the user’s perspective the user of copyright and related rights is unable to negotiate directly with the right owner for the use of the right owners work, production or performance as the case may be in situations where it would be more beneficial to the user to do so.

#### 5.5.6 Services Provided

Collective management essentially involves a struggle between two main interest groups: copyright owners on the one hand and users on the other. The persons, who create, perform and finance intellectual property demand to be paid for their creativity and investment and the consumers (so called users) want to have the use and enjoyment of such property for free. Collective management provides great support to the copyright system since it provides a service to both competing interest groups.

- a. *To Right Owners:* provides negotiating power and economies of scale in administration of rights that are usually not otherwise available through the exercise of rights on an individual basis.

- b. *To Users*: facilitates access to copyright works through a single centralised organisation to users who would otherwise be legally obligated to get permission from each individual right owner for each and every use of a copyright work. In practical terms many industries (e.g. broadcasting) could not operate legally without collective management organisations.

### 5.5.7 Operations

Collective management organisations most commonly administer the following rights:

1. The right of public performance (music played or performed in discotheques, restaurants, and other public places);
2. The right of broadcasting (live and recorded performances on radio and television);
3. The mechanical reproduction rights in musical works (the reproduction of works in CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings);
4. The performing rights in dramatic works (theatre plays);
5. The right of reprographic reproduction of literary and musical works (photocopying); and
6. Related rights (the rights of performers and producers of phonograms to obtain remuneration for broadcasting or the communication to the public of phonograms).

In relation to musical works, the collective management organization negotiates with users (such as radio stations, broadcasters, discotheques, cinemas, restaurants and the like), or groups of users and authorizes them to use copyrighted works from its repertoire against payment and on certain conditions. On the basis of its documentation (information on members and their works) and the programs submitted by users (for instance, logs of music played on the radio), the collective management organization distributes copyright royalties to its members according to established distribution rules. The fees actually paid to the copyright owners correspond to the use of the works and are accompanied by a breakdown of that use. These activities and operations are performed with the aid of computerized systems especially designed for the purpose.

In relation to related or neighbouring rights, the national legislation of some countries provide for a right of equitable remuneration payable to performers or producers of phonograms or both when commercial sound recordings are communicated to the public or used for broadcasting. The fees for such uses are collected and distributed either by joint organizations set up by performers and producers of phonograms or separate ones, depending on the relation of those involved and the legal situation within the country.

### 5.5.8 History

The first collecting societies were formed in France and fought for the recognition of authors' rights in their works. SACD (Société des auteurs et compositeurs dramatique) was created in 1777 in France for playwrights who fought against theatres which were reluctant to recognise and respect authors' economic and moral rights. In 1847 two French composers, a writer supported by their publisher bought a law suit against "Ambassadeurs" a "café-concert" in the Avenue des Champs-Elysees in Paris for the performance of their music by an orchestra at the café without any payment to them. The composers and writer won the lawsuit and the owner of the Ambassadeurs was ordered to pay a substantial amount of damages. This action opened up enormous possibilities for composers and lyricists of musical works. But that decision brought the realization that it would be difficult to control and enforce their newly identified rights individually. Consequently in 1850 a collecting society was established which was soon replaced by the still existing Société des auteurs, compositeurs et éditeurs de musique Society of Authors, Composers and Publishers of Music (SACEM).

During the rest of the 19th Century and by the beginning of the 20th Century similar authors' organizations (so called performing rights societies) were formed in nearly all European Countries and in the US.

In the United Kingdom the first collecting societies to be established were Mechanical Copyright Licences Company Limited (Mecolio), now the Mechanical Copyright Protection Society (MCPS), established by music publishers in 1911 to collect and distribute royalties from producers of sound recordings for the recording rights in music and lyrics (so called mechanical rights). The Performing Right Society (PRS) was set up in 1914 to collectively administer public performance rights of authors, composers and publishers in musical works and associated lyrics, which at the time were mainly published in the form of sheet lyrics. In the USA, the American Society of Composers Authors and Publishers (ASCAP) was also established in 1914 by composers, authors and publishers of musical works. Broadcasters established BMI in 1940 to give an alternative to writers and publishers of music not represented by ASCAP.

Collecting societies administering neighbouring rights of producers of sound recordings and performances have been slower to develop probably due to the absence of any legislative protection for such rights in many territories. The earliest, Phonographic Performance Limited (PPL) was formed in 1935 after the landmark decision of the English High Court in *Gramophone Co. Ltd. v. Cawardine* in which the rights of record producers was given recognition.

Today there are more than 200 collecting societies, which exist worldwide (some examples of which, apart from the above-mentioned are: GEMA of Germany, JASRAC of Japan, SOCAN of Canada, IPRS of India, CASH of Hong Kong, SADAIC of Argentina, SAMRO of South Africa); to monitor, license, collect and distribute royalties for literary, musical, artistic and audio-visual

works and performance rights. On the other hand there are only approximately 25 countries, which have collective management organisations for record producers and performers.

#### 5.5.9 Collective Management and International Trade

The application of national laws that establish rights in literary and artistic works and in related rights has an effect only within the boundaries of that country. According to the national treatment principle enshrined in both the Berne Convention and the Rome Convention, foreign owners of rights are treated in the same way as nationals in most respects. This principle is upheld by collective management organizations which, under reciprocal representation agreements, administer foreign repertoires in their national territory, exchange information and pay royalties to foreign owners of rights.

Most established collecting societies belong to international networks, consisting of federations of societies for example *CISAC*, *IFRRO*, *BIEM*<sup>19</sup> representing the same categories of right owners and which enter into reciprocal representation agreements thereby enabling one collecting society in any one country to represent both national and foreign right owners to license practically the entire world repertoire it represents. Such representation is reciprocated enabling a rights owner who is a member of a national society to be able to receive royalties when his work is used abroad.

#### 5.5.10 European Union v. US WTO Dispute

In its final judgement delivered on May 5, 2000, a WTO Disputes panel upheld a preliminary ruling that the US Fairness in Music Licensing Act violated international copyright law in general and in particular the Berne Convention the primary norms of which are enshrined in TRIPS. The issue to be determined was the granting of significant exemptions to selected premises in the US for the public performance of music without either the right owners' permission or payment of royalties to them. The case was brought under the WTO Disputes Procedure by the European Union (EU) following from the Irish Music Rights Organisation (IMRO- the Irish collective management organization for performing rights in musical works).

Prior to 1999, section 110 (5) of the US Copyright Act 1996 granted an exemption (known as the "homestyle exemption" or "Aiken" exemption from a 1975 US Supreme Court case (*Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151 (1975))) which covered the use of a "homestyle" radio or TV in a shop, bar, a restaurant or any other place frequented by the public. The exemption did not apply to venues playing tapes, CD's or other mechanical music. At the beginning of the ninety nineties, a coalition of business associations began a powerful lobby to extend the scope of the homesytle exemptions. In spite of opposition from the three US

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<sup>19</sup> CISAC – International Confederation of Societies of Authors and Composers., IFRRO – International Federation of Reprographic Rights Organisations, BIEM.

performing rights organizations (ASCAP, BMI and SESAC) in 1998 the US Congress passed the Fairness in Music Licensing Act which amended s.110(5) of the Copyright Act by extending the scope of exemption to cover transmission or retransmissions embodying a performance or display of a nondramatic musical work, intended to be received by the general public, originated from a radio or TV broadcast station licences as such by the Federal Communications Commission in business premises of a certain size.

The EU submitted that section 110(5) of the US Copyright Act, which deals with the exemption is incompatible with Articles 11(1) and 11bis(1) of the Berne Convention. Accordingly, the EU argued that the US “violated [its] obligations” as set out by the Convention and the TRIPS agreement. The EU asked the US government “to bring its copyright legislation into conformity with [its] obligations under the TRIPS Agreement”. The EU claimed in presenting its arguments that US and EU music copyright owners were losing as much as \$43m a year due to exemptions granted to certain categories of US business premises.

In the course of its submissions, the EU stated that the business premises to which this exemption applied included bars, restaurants, tea-rooms, snackbars, etc. and retail stores, as well as hotels, financial service outlets, estate property brokers and other types of service providers. In analyzing data presented in a 1998 Dun & Bradstreet’s “Dun’s Market Identifiers Market Profile” the EU submitted that the results of these data showed that:

approximately 70% of all drinking and eating establishments in the US and 45% of all retail establishments in the US are entitled under section 110(5) Copyright Act, without any limitation, to play music from the radio and TV on their business premises for the enjoyment of their customers without the consent of the copyright owners thus depriving the latter of a significant source of licensing income.

*Music and Copyright No.181/14 “The economic element [of the WTO ruling]”* is particularly relevant to the US. According to the recent report *Copyright Industries in the U.S. Economy*, in the period 1977-1997 the value of the US GDP taken by the core copyright industries, which includes film and music companies, grew four times as fast as the remainder of the economy, by 6.3% compared to 1.6%.... Moreover in 1997.... the value of exports and foreign sales of the core copyright industries of the US grew by 11% to \$66.85bn. As such copyright was responsible for generating more foreign revenues for the US than other leading industrial sectors, including the chemical industry (\$66.4bn), motor vehicles and parts (\$58.34bn), agriculture (\$57.3bn) and electronic equipment and components (\$54.29bn).

Although no survey has been done on the impact of the US Fairness in Music Licensing Act on Caribbean music, there is a body of opinion that the legislation has had an adverse effect on the already scant performing right royalties received by Caribbean music-rights owners given that several of the premises at which Caribbean music is played in the US are the “smaller” premises which fall within the ambit of the said Act.

## 5.6 COLLECTIVE MANAGEMENT IN THE CARIBBEAN

Historically, in the Caribbean the collective management of copyright works has been executed by the collecting societies of the region's colonisers. Independence notwithstanding, these metropolitan collecting societies continue to operate in the Caribbean region. In the English speaking Caribbean, The Performing Right Society Limited (PRS), the composers society in the UK which collectively administers the public performance, broadcasting and cable distribution rights in music, operates through agents in the English speaking Caribbean along with its French, Spanish and Dutch counterparts in the rest of the region namely: SACEM in the French Caribbean, SGAE in the Spanish Caribbean and BUMA/STEMRA in the Dutch Caribbean.

In the Caribbean, the first national collecting society to be formed was COTT, the Copyright Organisation of Trinidad and Tobago, which was incorporated in 1984 and commenced operating in 1985. Although empowered to collectively administer copyright in literary and musical works as well as neighbouring rights, COTT has concentrated on administering the performing and mechanical rights in musical works of its members and administers neighbouring rights on an ad hoc basis during Carnival. COTT developed out of a local PRS agency and continues to have close links with PRS. COTT has one international reciprocal agreement with PRS covering most territories in the world outside of Trinidad & Tobago. Due to the high costs of appropriate computer hardware and software and technical expertise PRS also handles all the international distribution of royalties for COTT.

Barbados followed suit with the establishment in 1992 of Barbados Agency for Music Culture Inc. (BAMCI), the first neighbouring rights society in the region actively engaged in licensing the rights of record producers and performers.

In recent times, with the focus on intellectual property rights and trade by the World Trade Organisation and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Governments in the region have been forced to pay greater attention to intellectual property issues including copyright. Such Government attention coupled with the growing awareness of the economic potential of copyright industries particularly the music industry, has witnessed the emergence of indigenous collecting societies in the region.

1998 heralded the incorporation of both the Jamaican Copyright Licensing Agency (JAMCOPY), a licensing agency in relation to authors and publishers of literary works and Jamaica Association of Composers, Authors and Publishers (JACAP) a performing and mechanical rights society, which commenced operations in January 1999 and as with COTT also evolved from a PRS agency. 1998 also witnessed the birth of the Barbados Association of Composers, Authors and Publishers (BACAP) which was replaced by the "Copyright Society of Composers Authors and Publishers (COSCAP) which in January 2000 commenced the collective management of performing and mechanical rights in the musical works of its members and of the

international repertoire through a reciprocal agreement with PRS. Local collecting societies have also emerged in the Eastern Caribbean in recent times namely: Hewanorra Musical Society in St. Lucia (which commenced operations in January 2000), The Copyright Organisation of Grenada (COG), although the latter has not yet started any collective licensing. Various attempts at establishing a system for collective administration have been made in Guyana and Suriname but none have taken root so far.

The year 2000 witnessed the establishment of a rival organisation to COTT called “Trinidad and Tobago Copyright Collective Management Organisation” (TTCO). Initially it claimed to represent mainly composers, publishers and artistes of East Indian origin. The copyright legislation in most of the Caribbean do not prohibit the number of collecting societies and consequently such organisations operate as de facto monopolies. The exception being in St. Lucia where the Copyright Act has been amended to make provision for only one society to administer a particular category of rights upon approval from the Registrar of Intellectual Property. Indeed it is recognised that ideally “As a rule, there should be only one organisation for any one category of rights open for membership to all rights owners for that category on reasonable terms... The existence of two or more organisations in the same field may diminish the advantages of collective administration for both rights owners and users. For the rights owners, competing societies lead to duplication of functions and reduction in scale economies in operation and thus are unlikely to bring benefits to their members.”

Jamaica has now taken the lead in terms of the number of collective management organisations and the various rights administered by such organisations. In addition to JACAP and JAMCOPY mentioned two other collecting societies have also emerged: The Jamaican Musical Rights Administration Society (JMRAS) which administers the rights of record producers in their phonograms and the Jamaica Performers Administration Society (JPAS) administers the rights of performers in their performances.

#### 5.6.1 Trade Imbalance

Although there is great potential for increased royalty collections particularly for performing and mechanical rights in musical works the sums that have been collected so far essentially for performing rights are not insignificant.

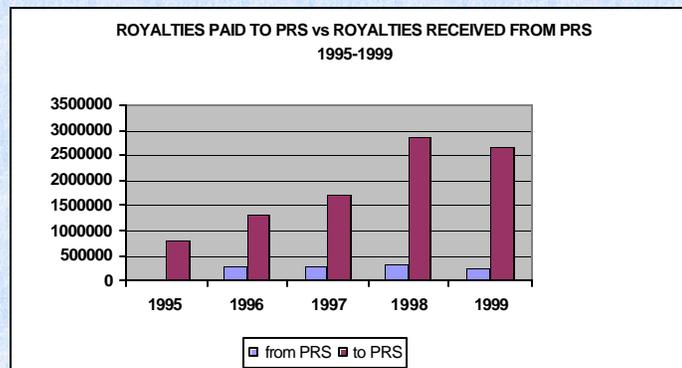
As a result of the high consumption of foreign music in the Caribbean a large proportion of royalties collected for broadcasting and public performances are remitted overseas for distribution to foreign right owners.

### ROYALTY COLLECTIONS PAID TO PRS FROM CARIBBEAN TERRITORIES 1995-1999 (US\$)

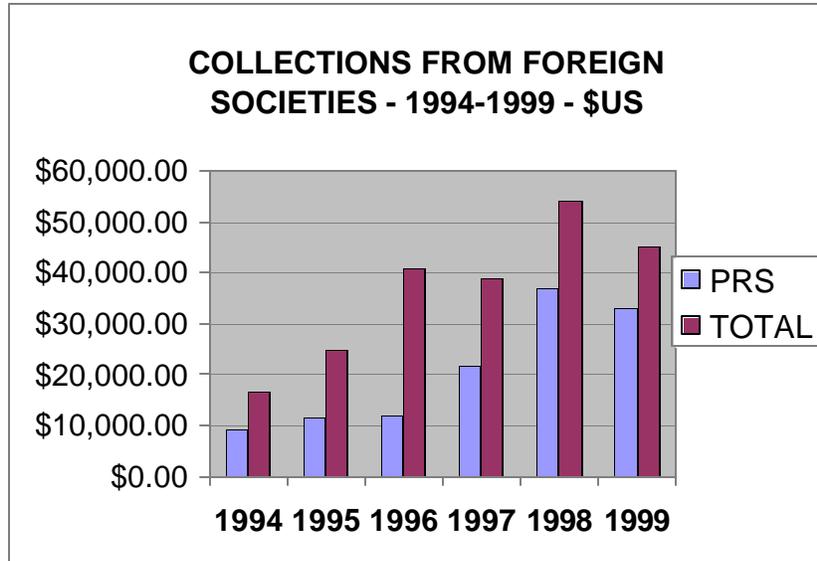
	1995	1996	1997	1998	1999
Bahamas	242,148	230,362	289,083	148,811	270,879
Barbados	202,347	231,252	219,973	165,626	182,325
Dominica	159,549	19,737	43,006	37,324	43,523
Jamaica	191,568	241,736	298,914	298,914	134,702
St. Lucia	147,389	44,820	99,376	55,887	47,060
*Trinidad & Tobago	128,205	207,345	268,675	457,650	421,420
<b>Total</b>	<b>1,071,206</b>	<b>975,252</b>	<b>1,219,027</b>	<b>1,164,212</b>	<b>1,099,909</b>

\* 70% of COTT's performing rights income

### COLLECTIONS TO AND FROM FOREIGN SOCIETIES 1995 – 1999



Source: COTT



*Source: COTT*

Two things are necessary to reverse this trend: measures need to be implemented to increase the consumption of local music in the region and collecting societies in the region need to devise mechanisms to increase their collections of royalties from both within the region and internationally. The issue of measures aimed at increasing local content in broadcasting has been examined in Section II.

### 5.6.2 Caribbean Copyright Link

At an Inter-Ministerial Meeting CARICOM Ministers with responsibility for Intellectual Property Rights at held in Montego Bay Jamaica in June 1999 The Inter-Ministerial meeting had approved a Feasibility Study conducted by the World Intellectual Property Organization (WIPO) on a regional system for collective management of copyright and related rights in the Caribbean. A Regional Committee was appointed and mandated by the Ministers to work with WIPO on the implementation of a business plan for the regional system in consultation with the Performing Right Society (PRS) and the Spanish authors' rights society, SGAE. The Regional Committee decided on the establishment of a regional center named "Caribbean Copyright Link" to be based in Trinidad.

CCL was launched at the Inter Ministerial Meeting held in St. Lucia in October 2000. The founding members of CCL are the following national copyright collecting societies in the Caribbean: COSCAP of Barbados COTT of Trinidad and Tobago, HMS of St. Lucia and JACAP of Jamaica. CCL will provide the following operations:

- Data management services to its clients which would comprise right holders of both copyright and related rights. It holds no rights, issues no licenses and collects no money. As a data processing organization it would basically:

1. provide technical assistance for the setting up of information processing operations on site;
2. maintain central databases;
3. research unidentified works and performances in cooperation with national societies;
4. monitor and maintain data standards for all incoming data;
5. export or otherwise make regional data available to all societies worldwide and to other international data centers;
6. develop and maintain data processing software;
7. maintain the integrity and functionality of the regional data network;
8. carry out royalty distribution processing operations;
9. establish and maintain a cost accounting system that will allow for allocation of operating costs among member societies according to an agreed upon cost sharing formula;
10. conduct research into the applicability of new technologies or techniques to collective management operations;
11. provide education and training in the operation of collective management software;
12. establish on line electronic document storage and retrieval filing system for paper documents of national societies.

In addition to providing data management services CCL is also intended to provide rights management services to national societies and in this latter capacity operates as the regional and international business division of the regional system. It will also provide political, legal, accounting and negotiating services to national societies as well as:

1. lobby national Caribbean governments to improve intellectual property
2. legislation.
3. deal with any foreign society on regional matters
4. establish a centralized accounting system for use by national societies
5. deal with foreign intergovernmental organizations.

The anticipated benefits of the services to be provided by CCL are as follows:

1. the start up of intellectual property licensing, royalty collection and distribution in several Caribbean countries;

2. improved intellectual property licensing, royalty collection and distribution in Caribbean countries where such operations are currently carried out;
3. increased royalty distributions to Caribbean creators and right-owners both in terms of the number of persons receiving royalty payments and the amounts each receive;
4. significantly increased royalty collections in foreign markets;
5. improved copyright and related rights licensing, royalty collection and distribution in the Caribbean;
6. reduction in costs of collective management operations;
7. transfer of collective management know-how to Caribbean nationals;
8. independence from PRS for international distribution and collections;
9. a site where market data relating to national, regional and international use of copyright and related rights originating in the Caribbean can be collected and analyzed will be established;
10. the corporate and technical infrastructure necessary for carrying out and developing collective management operations throughout the region and internationally will be established.

WIPO has agreed to provide the hardware for CCL and national societies in the Caribbean, whilst SGAE, will adapt its SGS/LAR software which is being developed for Latinautor to meet the specific needs of the Caribbean regional system. The project is expected to be completed by the end of 2001 and upon completion Caribbean national societies who subscribe to CCL will no longer be dependant on PRS or other foreign societies for royalty distribution.

One of the main markets for Caribbean music is the US. However, because of the system used by performing rights organisations in the US for monitoring the broadcast and public performance of musical works, a great deal of Caribbean music is not monitored and therefore no royalties are paid to Caribbean right owners. The principle followed by PROs in the US is that of “follow the dollar”. Consequently detailed data of music broadcast and performed in public (called “logs” or “program returns”) are only collected from the top grossing commercial radio and television broadcasters and live concerts. The majority of music played particularly at “Caribbean style” Carnivals is not monitored. The music composed for the mainstream Jamaican acts such as Shaggy<sup>20</sup> and Beenie Man however, is monitored since such music is played on the top commercial broadcast stations. For this reason most of these composers and songwriters are members of the US and UK PROs and would be very reluctant to join the local JACAP.

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<sup>20</sup> Sales of Angel.

Historically, music from Trinidad and Tobago has not enjoyed the international success of Jamaican reggae/dancehall music, consequently most of the leading local songwriters and composers are members of COTT. However, in the exceptional case where local soca music has enjoyed international success for example the original soca hit of Carnival 1998 entitled “Who Let the Dogs Out” composed by Anselm Douglas was covered by the Baha Men (based in the US of Bahamian origin) and was recently awarded a Grammy in the category of “Best Dance Music, the local composer was enticed to terminate membership with the national collecting society and join BMI of the US. The challenge therefore is for national societies to be able to compete globally with the long established foreign collecting societies.

“Collective management does a valuable service to the world of music and other creative arts. By managing their rights, the system is rewarding creators for their work, and the creators in turn are more inclined to develop and apply their talents in an environment that provides adequate copyright and related rights protection and an efficient system for the management of rights. Such a situation encourages creators to contribute to the development of the cultural sector, attracts foreign investment and generally enables the public to make the most of a broad array of works. Together, these factors have an undeniably favorable impact on national economies; cultural industries contribute up to 6% of the gross national product of some major countries, income from the collective management of copyright and related rights accounts for a substantial part of that percentage.”(WIPO)

It is therefore imperative that Caribbean right owners maximize the economic benefits to be derived from an efficient and effective collective management system.

## 5.7 PIRACY

“There are many different terms for it, but unauthorized copying and dissemination of copyrighted works is theft, pure and simple. Pirates are the enemy of creativity and all creators. Piracy is the illegal copyright of sound recording, typically for financial gain. In the music industry, piracy represents a massive US\$4.5 billion illicit enterprise, with ever-closer links to international organized crime.” (*IFPI –www.ifpi.org*)

Pirates thrive on weak copyright laws as well as on poor law enforcement. In today’s global economy, counterfeiters and other pirates are able to seek out havens of poor copyright protection and ineffective anti-piracy enforcement. The advent of the mass-produced CD has changed the face of piracy from a problem largely confined to local borders to a sophisticated international trade.

### 5.7.1 Piracy in the Caribbean

Although there are no official statistics, piracy in the Caribbean is endemic and much of the trade is conducted particularly in public places such as street vending and in record shops. Piracy must be curtailed for the following reasons:

1. the pirate never publishes a new book, or records a new song - does nothing to stimulate local creativity;
2. the pirate pays no royalties to the author, illustrator, composer, singer, musician, computer programmer, film producer or any other creative people;
3. quality of pirated product is often poor;
4. the pirate takes no financial risks whatsoever - keeps all the profits;
5. piracy causes financial loss not only to creative interests and legitimate entrepreneurs but does not pay taxes and causes Government to lose revenue from unpaid taxes;
6. piracy discourages creativity - aim of copyright is to reward creators for creative effort;
7. piracy discourages investment, both local and foreign; and
8. piracy undermines confidence in the legal system.

#### 5.7.2 Enforcement

Anti-piracy enforcement has not been considered a priority in the Caribbean. The protective services have very little knowledge (if any) about copyright or indeed intellectual property on the whole, priority tends to be given to dealing with violent crimes. Magistrates are very often sympathetic towards pirates who they perceive as “small time hustlers trying to make a living” and state prosecutors are unfamiliar with this particular area of the law. It is hoped that enforcement will improve with the introduction of new copyright legislation in compliance with TRIPS obligations and that regional Governments will engage the assistance of WIPO in organising special training courses geared towards the protective services, state attorneys as well as sensitisation of the judiciary and magistracy in order to achieve adequate enforcement of the law.

One of the recommendations of WIPO which is currently receiving the active attention of Governments in Barbados, Jamaica and Trinidad and Tobago is the introduction of anti-piracy security devices such as the banderole and/or hologram. The banderole is “an official looking piece of paper, perhaps with numbers and/or banknote looking printings, similar to those often seen around the outside of a cigarette pack, the banderole...is self-adhesive strip placed around the packaging of a sound carrier [for example a cassette case or a CD jewel box] at the manufacturing stage. Once adhered onto a surface, the banderole becomes self destructive if an attempt is made to peel it off or otherwise remove it from its destined location.” (*WIPO “Feasibility Study on the Introduction of an Antipiracy Security Device for Sound Recordings November 16, 1998*).

The main purpose of the “Banderole System” is to assist in the identification and differentiation of legitimate recordings, on the one hand, and counterfeited and pirate recordings on the other hand. Pirated products should be seized and eliminated as soon as they appear in the market place as opposed to the tedious system of detection, gathering of evidence and criminal prosecution. Authentication of underlying rights is an important component of the system. Those who are obligated under the banderole system to secure banderoles/ holograms for sound carriers intended for public distribution must be subjected to a process of examination to confirm that they are in fact legally entitled to place those soundcarriers on the market. “In other words, Banderoles should not be sold to just anybody who can pay for them.” (*WIPO Feasibility Study above*).

Some of the advantages advocated by supporters of the Banderole System are as follows:

1. Creation of reliable statistics – the system involves quantification of the number of units of any given sound carrier to be sold, the genre of music etc and enables rights owners such as songwriters, composers, publishers, artistes and producers to determine royalties directly related to sales.
2. Creation of a solid basis for formally requesting foreign reciprocity for enforcement of intellectual property rights – once the Banderole System takes positive effect by reducing piracy in domestic markets. Regional Governments will have a solid basis to make a formal request on another country which is shown not to be enforcing the intellectual property rights of nationals of Caribbean countries who implement the Banderole System (see problems referred to above regarding lack of enforcement of copyright infringement in the Diaspora).
3. Opportunity for branding the country, culture, companies or business entities involved etc.
4. Revenue enhancement for Government – not only from the purchase of banderoles/hologram, but indirectly from music industry itself by way of revenues formerly lost to pirates (VAT, sales tax etc.)
5. Long term economic growth and development of the music industry – for example: more persons and entities involved on the creative side of the industry; a larger spectrum of recorded product produced and available for sale; increased creativity from artists, songwriters, composers; larger numbers of sales of sound carrier products to the public; increased revenues to the government; and more employment.
6. Linkages with festival tourism and cross promotional opportunities – the banderole system could be linked to large scale national festival tourism events such as Reggae Sunsplash in Jamaica, Carnival in Trinidad & Tobago, Crop-over in Barbados.

7. Provide opportunity for Regional Co-operation such as reciprocity as to each territory's banderoles, lower tariffs on import/export transactions involving music products, sharing of information relative to sales, pirates, illegal shipments etc.

### 5.7.3 Education

Apart from educating enforcement agencies, the new TRIPS compliant law must be accompanied by a major public education campaign geared towards creators and other right owners and consumers or users of copyright and neighbouring rights with a view to fostering awareness of, appreciation and respect for such rights. Creators in particular must arm themselves with knowledge of their rights and ensure that they obtain the best possible return for the commercial exploitation of their rights by engaging the services of professionals such as lawyers, accountants and managers. Indeed these professionals also have to be knowledgeable about this specialised area of the law. Intellectual Property should be part of the curriculum at the Law Faculty of the University of the West Indies and at the Hugh Wooding and Norman Manley Law Schools. Post-qualification continuing education should also be encouraged if not mandated.

### 5.7.4 Trade Associations and Unions

Effectiveness of copyright law also requires the support of trade associations and unions representing the various sectors of the copyright industry. The formation of such organisations, which should be independent of Government, but with adequate support and recognition from Government, needs to be encouraged and nurtured. Indeed, in developed countries trade associations have been at the forefront of the fight against piracy e.g. International Federation of the Phonographic Industry (IFPI), Recording Industry Association of America (RIAA), British Phonographic Industry (BPI), Federation Against Software Theft (FAST), Federation Against Copyright Theft (FACT). These organisations have been established with specific responsibility for enforcing rights against pirates: they seek and collect evidence of piracy and bring legal proceedings, usually criminal prosecutions against infringers.

In the Commonwealth Caribbean, few such trade associations exist and the few that have been established are generally inactive or suffer from lack of funding. A few examples are: the Recording Industry Association of Barbados (RIAB), the Recording Industry Association of Trinidad and Tobago (RIATT). One of the few vibrant examples is the Jamaica Federation of Musicians. Apart from fighting piracy such organisations in the Caribbean should also protect the interests of their members by collectively negotiating or providing standard form agreements for the application of minimum terms and conditions with respect to the exploitation of the rights of their members.

### 5.7.5 Piracy of Caribbean Music

Apart from piracy in the Caribbean another major problem faced by Caribbean creators, artistes and phonogram producers is piracy of Caribbean music in the main markets of the Diaspora, particularly the US cities of New York and Miami. Indeed, producers of Caribbean music claim that piracy of their music takes place on a much larger scale in the US than in the Caribbean. Complaints have also been made that attempts to engage the services of US law enforcement agencies have been futile since these agencies consider the volumes of pirated goods “too small” to be worth the effort. Furthermore, the high cost associated with legal services in the US has also prevented Caribbean artistes and producers from taking private legal action.

Once the above-mentioned claims can be quantified or otherwise substantiated Caribbean governments should consider bringing this matter to the attention of the WTO. After all TRIPS mandates member states to provide detailed enforcement measures, procedures and practices and to uphold the principle of national treatment. Perhaps, in this regard, the action taken by the European Union against the US instigated by the Irish Music Rights Organisation referred to above is instructive. However, before any such action can be embarked upon, the music industry in the Caribbean needs to produce credible statistical information regarding sales and other distribution of sound recordings and the losses attributable to piracy in various markets.

### 5.7.6 Private Copying/Home Taping Levy

In spite of the fact that the international norm is that authors (composers and lyricists), as well as producers of sound recordings have the exclusive right to authorize the reproduction of their creations, the reality is that they are unable to enforce it. Consumers have been making unauthorized copies of sound recordings in their homes or in “cottage industry settings” for close to three decades now. Each year, the global sound recording industry loses substantial income from people copying sound recordings and videotapes in a domestic environment. Instead of trying to prevent private copying, which is extremely difficult so called “levy schemes” have been designed and implemented in some countries (particularly in Europe) to bring private copying under the control of rights owners, so that they may, by exercising their right of control, derive some part of their earnings from this form of use. Although the expression “levy scheme” carries the connotation of tax; it is not a tax at all; the proceeds from such schemes constitute royalties, payable under statutory provisions, for the benefit of individual right owners to remunerate them for the use of their rights.

Although the number of countries with private copyright legislation is 41 (as at 17 December 1999), there is a powerful opposition lobby principally from manufacturers and consumer interest groups, whose influence has prevailed in countries such as the UK. Furthermore, even among the countries there is no uniformity of approach. One of the fundamental differences is that some countries treat the right owner’s entitlement to share in the proceeds of schemes as a

right of copyright and on the other hand some countries regard the proceeds collected as a form of tax completely outside of the copyright system (and therefore not subject to the principle of “national treatment” thereby excluding foreign rights owners).

The first private copying scheme was introduced in Germany in its Copyright law of 1995 and Canada is perhaps the most recent country to adopt such a scheme in 1999 on blank audio recording media. The Canadian scheme covers both analog and digital recording media and CD-ROMs. Revenue from this private copying scheme will be used to compensate Canadian authors (composers and lyricists), music publishers, performers and producers for the unauthorized copying of sound recordings. Under the terms of the Copyright Act, Canada will also compensate foreign authors of musical works whose copyright subsists in Canada. However, the Minister of Industry has the discretion to offer private copying benefits to foreign producers and performers on a reciprocal basis (i.e. offer private copying benefits to creators whose countries reciprocate and offer the same benefits to Canadian creators).

The introduction and implementation of private copyright schemes is recommended for the Caribbean given the fact that a great deal of piracy activity allegedly occurs in the domestic environment or “cottage industry setting”. Such schemes could be used in tandem with the above described “Banderole System” and ensure that Caribbean rights owners are compensated for such forms of copying. Furthermore, by virtue of reciprocal arrangements Caribbean rights owners could receive benefits from foreign private copying schemes.

## 5.8 IMPACT OF NEW TECHNOLOGY

The coming of the Information Society and associated technological revolution have exacerbated the well established conflict between right owners and users. Copyright law has traditionally adapted to keep abreast with technical developments and at this point in time collecting societies are responding to the latest changes. The impact of digital technology has resulted in new methods of exploitation of rights and changing the ways in which copyright works and protected productions and performances are made available to the public at an unprecedented rate. Collecting societies are facing the challenge of monitoring and securing payments for use of their members' intellectual property in the new digital environment. “The challenge is both to secure reward for use and also to ensure that securing that reward is for the users as fast, simple and painless as possible” (C. Clark *"The Copyright Environment for the Publisher in the Digital World, International Publishers Association, March 1996*).

Copyright and related rights protections will continue to provide the economic basis for the music and recording industries as they migrate from the Industrial Age to the Information Society. These rights serve not only as an engine for the development of copyright works, sound recordings and other creative content-by protecting, rewarding and spurring investment in such creations-but also for the development of the Information Society itself. While

telecommunications and information technologies are intriguing in their own right, public acceptance and demand for advanced communications and information processing technology is driven by content-what consumers can do, learn and enjoy when they go on-line. ("Future issues for the protection of phonogram producers" *Speech by Allen N. Dixon, General Counsel and Executive Director, IFPI JSO 4th Asia-Pacific Copyright and Neighbouring Rights Seminar, Tokyo, 8 March 2000.*)

Digital technology has influenced consumers' demand for music: through new physical carriers; through new distribution outlets; or through on-line or other telecommunication services. These also are increasing consumer control over how music is enjoyed: passively or with the power to copy, adapt, transform or otherwise creatively interact with the composition, production or recording artist.

## 5.9 COPYRIGHT CHALLENGES

*The convergence of telecommunications, computer technology, broadcasting (including satellite broadcasting) cable distribution and digital compression techniques have allowed information to be communicated at high speed over a variety of wired and wireless networks practically everywhere...With the digitalisation of sounds and images, not only literary works but also musical and audiovisual creations and performances can be transmitted via electronic networks, and the creation of multimedia data banks for interactive use on demand has already been tested... And one might ask, in this changing digital environment is there still room for copyright? How best to protect creators in the era of cyberculture? Do traditional methods of production and distribution of various categories of intellectual works have any future? Will a new approach to rights management allow us to re-establish a fair balance between so many new and competing interests? How do we market, licence and enforce rights on the Internet, on CD-ROMs and on machines not yet built? (del Corral and Abada)*

The challenges for copyright in this fast changing industry are clear. Copyright must continue to provide rights holders the ability to determine whether and how their works are exploited. Traditional concepts such as the right of public communication must evolve into exclusive rights to authorise or prohibit the 'making available' of works and phonograms. Furthermore traditional exceptions that allowed, for example, individuals to make private copies of cassette tapes using relatively poor technology, must be re-examined and tightened in light of recent technological developments. Two treaties were concluded in 1996, under the auspices of WIPO, to respond to the challenges of protecting and managing copyright and related rights in the digital age.

Known as “the Internet treaties”, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WCT and WPPT respectively) deal among other things with obligations concerning technological protection measures and rights management information in the digital environment; they ensure that the owners of rights are protected when their works are disseminated on the Internet; they also contain provisions requiring national legislators to provide efficient protection for technological measures, by prohibiting the import, manufacture and distribution of illicit circumvention tools or material and also outlawing acts detrimental to rights management information systems.

Signed by more than 100 countries, the treaties require ratification by 30 signatories in order to be come into force worldwide. At the start of the year 2000, approximately 13 states had ratified the treaties, and several other countries are working on their implementing legislation. Prompt ratification and implementation of these treaties undoubtedly is the single most important task for Caribbean governments that want to make their copyright regimes suitable for the age of electronic commerce.

## 5.10 TECHNICAL PROTECTIONS

Given the increasing availability of copyright works and sound recordings and the myriad of different uses and exploitation means made possible through new computer and telecommunications technology, rights owners are increasingly looking to technological protection measures to provide a practical adjunct to, and a practical means of enforcing, the copyright and related rights guaranteed by legislation.

One such protective measure that the recording industry has worked with other industries to create is the Secure Digital Music Initiative (SDMI). SDMI includes a wide range of companies, large and small, from the consumer electronics, computer, security and recording industries. They meet regularly to develop specifications for music systems. This may well involve watermarking music files.

Initiatives are also underway in Europe, North America and Asia to devise technical systems to monitor digital utilisation of works and phonograms, to detect infringements, and to identify works, phonograms and different rights holders. Essential to the effective utilisation of information technology in licensing are internationally compatible systems of identification, ‘tattooing’ of protected materials, and electronic copyright management and control systems negotiated among hardware, content and telecommunication service providers.

## 5.11 COLLECTIVE MANAGEMENT AND THE DIGITAL ENVIRONMENT

The role of collecting societies in licensing commercial end users has already started to change. Information technology makes it easier to identify and track compensable uses, to manage revenue streams and to account to other right owners and therefore provides a very important tool for collecting societies' licensing activities.

In the online world of the Digital Age, the management of rights is taking on a new dimension. Protected works are now digitized, compressed, uploaded, downloaded, copied and distributed on the Internet to any place in the world. The expanding power of this network allows mass storage and online delivery of protected material. The possibility of downloading the contents of a book, or to listen to and record music from cyberspace is now a reality. While this presents immeasurable opportunities, there are also many challenges for owners, users and collective management organizations.

Many collecting societies have developed systems for online delivery of information relating to the licensing of works and content, the monitoring of uses and the collection and distribution of remuneration for various categories of works within the digital environment. These digital information systems, which depend on the development and use of unique numbering systems and codes that are embedded in digital carriers such as CDs, films, allow works, the rights owners, the digital carriers themselves to be properly identified and provide other relevant information. Adequate legal protection is needed to prevent acts intended to circumvent technical protection measures, and also to insure against the removal or alteration of any elements of the digital information systems or other such practices.

## 5.12 INTERNET PIRACY

### 5.12.1 Traditional Piracy

The global pirate music market topped 2 billion units, worth an estimated US\$4.5 billion, in 1998. Sales of pirate music CDs stood at 400 million units. CD piracy presents a completely different problem than cassette piracy, in that CD piracy involves higher volumes, more cross-border activity and increasingly organised criminal conspiracies. The growth in music piracy tracks an even more dramatic increase in the global manufacturing capacity of all formats of optical disc. The global manufacturing capacity of all CDs, CD-Roms and Video-CDs rose by an estimated 20% to about 16 billion units in 1998-nearly three discs per year for every man, woman and child on the face of the planet! (*Source: IFPI*)

The chain of supply of pirate CDs now almost always involves several countries. Thus we now see discs manufactured in Southeast Asian countries being shipped to certain European destinations and Latin America via third countries.

### 5.12.2 Internet Piracy

The Internet offers music lovers virtually limitless possibilities. Digital technology brings music to a wider public, affords niche artists access to their audiences, makes our vast musical heritage widely available, and distributes old, new and unusual music at affordable prices. Unfortunately, the Internet also gives music pirates a new weapon. ([www.riaa.org](http://www.riaa.org))

Despite the appealing prospects of the Internet for exciting new on-line uses, information networks and PC power can also facilitate unauthorised copying and transmission of phonograms among the 200-million Internet users worldwide. While technical limitations on the speed and quality of downloaded sounds have provided some limited defence against these sorts of infringements, the IFPI estimates that approximately one million unauthorised MP3 files reside on the Internet at the present time.

Within the Internet culture of unlicensed use, theft of intellectual property is rampant. The music business and its artists are the biggest victims, and ultimately consumers suffer also. Unauthorized Internet music archive sites (using multiple formats, such as .wav files, or MP3 files) provide illegal sound recordings online to anyone with a personal computer. Music can be downloaded and played indefinitely, without authorization of or compensation to the artists. Other music pirates use the Internet to peddle illegal CDs ([www.riaa.org](http://www.riaa.org)).

As a practical matter, the unauthorised upload, download or transmission of a sound recording is no less prejudicial to the financial incentives for production of sound recordings, and thus no less effective in drying up creativity, than its physical-piracy counterparts. As a consequence, today's unauthorised digital broadcaster or Internet service is no less piratical than their less sophisticated associates in the analogue world.

Technologies of delivery of copyright content material are changing radically, bringing tremendous benefits to producer, distributor and consumer. To secure the same sort of protections in the on-line world that the music industry enjoys in the analogue world, copyright laws need updating. The fundamental principles behind the laws, however, remain unchanged. Copyright laws must ensure that artists, composers and producers are strongly protected from Internet piracy. Rights owners also need to be able to use the technologies of the Internet to manage and control the use of their works.

## 5.13 THE ROLE OF THE GOVERNMENT

Although copyrights are private property rights governments in the Caribbean have a critical role to play in overseeing the effective operation of the copyright system. Government support needs to take several forms<sup>21</sup>:

- Enactment of legislation to grant copyright protection and constant revision of laws in keeping with changes in technology.
- Carry out ongoing programs of public information about the copyright system and its value to society.
- Taking up seats on the board of directors of national collecting societies thereby enabling to oversee on a continuing basis the functioning of the society and thus ensure that good management and proper accounting and financial systems are operated, thereby demonstrating to the public at large and users in particular that the society, and its objectives, have the approval of Government.<sup>22</sup>
- Nominating the personnel involved in the management of the rights of creators for training by WIPO.
- Ensuring that various agencies of government which come into contact with the copyright system i.e. the courts, the police, the customs and excise departments should all be provided with information, or training in appropriate cases, on the importance to society of the copyright system. For example, magistrates might be provided with information about the economic consequences of piracy and the need for suitably deterrent sentences.
- Establishing a small Copyright Unit (such a “unit” could comprise 1 person even if the official concerned has other duties) in the department of government with responsibility for intellectual property.
- Lobbying and negotiating with foreign governments to ensure adherence to copyright and equal treatment for Caribbean music in the enforcement and management of music copyrights in territories where Caribbean music is publicly performed, broadcasted and sold. (Stanbury)

This section has reviewed the domestic and international regulatory framework of copyright and related rights and the structure of its organisations involved in the collective management of such rights. The Sector has had cope with high levels of piracy both at home and abroad. New technology offers opportunities as well as challenges. It is a moot point whether the industry, as at present organised, is fully equipped for the task. Meanwhile, as the discussion above has shown, the structure of rules and regulations relating to trade in intellectual property is complex and poses challenges for countries with a nascent industrial organisation in its Entertainment Sector. A regional approach is recommended.

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<sup>21</sup> Denis de Freitas Report for Caribbean Inter-Cultural Music Institute – CARICOM-UNDP-UWI Project, 1992.

<sup>22</sup> Provision is made in the Constitutions of COSCAP, COTT, HMS & JACAP for government appointed directors. All except COTT currently have sitting government appointed directors.

## SECTION VI

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### 6.0 INTRODUCTION

The final section of this study examines the main negotiation issues that are formally on the table, or are likely to be. The experience of countries that have been able to provide the mechanisms for the promotion of niches in their domestic production system or have been able to encourage inward investment will be reviewed, to the extent that resources of a secondary nature allow. A key assumption will be that market access is as much about negotiation as it is about demand, supply and the taste of consumers.

### 6.1 WHERE ARE WE WITH THE WTO AGENDA?

There are two main components:

1. The work programme included in the Uruguay Round Agreements, which established schedules for concessions and commitments and for negotiations on different areas – new or old, which is referred to as the “built-in” agenda and focuses on trade talks on services and agriculture. In accordance with Article XIX of GATS the launch of a new round of negotiations on services have begun.
2. The large number of trade related issues that remain open to negotiation, some new, some already dealt with by GATT-WTO system, including investments, environment, subsidies, competition policies, and intellectual property etc.

According to UNESCO “Ensuring cultural diversity in a global world has become a fundamental policy principle. The goal is to continue to work towards an open, fair participatory and transparent multilateral system.....The challenge is how to establish internationally trade rules that create spaces in which citizens (more than just sheer consumers) are able to create cultural goods and services, express themselves through them, and choose the ones they wish to buy, in fair and equitable conditions. At stake is the capacity to create, to express oneself publicly and to have the ability to choose<sup>23</sup>.”

How does one ensure diversity of choice, access for everyone and fair competition. In this context it might be useful to overview the policies adopted in some of the so-called “developed” countries that have sought to tackle this burning issue.

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<sup>23</sup> [www.unesco.org](http://www.unesco.org) - “Culture, Trade and Globalisation”

### 6.1.1 Canada

The Canadian approach to the development of its cultural sector is instructive. Canada, because of its proximity to the USA, has perhaps more than any other country, experienced the cultural dominance of the American monolith. Consequently, Canada has opted for protectionism and its policies in the cultural sector have been geared toward maintaining its sovereignty and sense of identity. The Canadian government uses a combination of financial incentives, Canadian content requirements, tax measures, rules on foreign investments and intellectual property tools<sup>24</sup>.

#### **Financial and Program Incentives**

- Telefilm, Canada's Feature Film Fund and Feature Film Distribution Fund provided \$22M and \$10.3 M respectively to support the film industry in 1996-7. Telefilm also provides a Loan Guarantee Program and a Production Revenue Sharing Program that support television and film production.
- The Canadian Television Fund (CTF) provides \$200M (\$50m annually from the Telefilm Canada budget, \$50M annually from the cable television industry, and a \$100M annual contribution from the Department of Canadian Heritage) to encourage a strong Canadian presence in the Canadian broadcasting system by supporting the production and distribution of Canadian drama, children's programming, and documentary, performing arts and variety shows. The fund is available only to Canadian-owned and controlled companies for productions that meet Canadian content regulations and will be broadcast in prime time by a Canadian licensee within two years of completion. In addition the Canadian Broadcasting Corporation (CBC) can access up to 50% of the fund in partnership with independent Canadian producers.
- In 1997, the Canadian Radio-television and Telecommunications Commission (CRTC) began requiring broadcast distribution companies-including new direct-to-home services – to contribute up to 5% of their gross annual revenues to the CTF.

Financial incentives in the film and television industries in Canada have gradually evolved from a system of grants, to equity investments made by the CTF to the current more objective tax credits and license fee “top-ups”. These changes are occurring since Canadian film and television producers have been able to attract an increasing amount of foreign investments and pre-sale commitments to support their projects.

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<sup>24</sup> Much of the commentary on the Canadian approach is taken from “New Strategies for Culture and Trade, Canadian Culture in a Global World’ –The Cultural Industries Sectoral Advisory Group on International Trade February 1999]

## Canadian Content Requirements

The CRTC has regulatory responsibility for both broadcasting and telecommunications. The CRTC establishes criteria that broadcasters must be licensed and operate in Canada. To ensure that the Canadian broadcasting system creates a place for Canadian cultural products the CRTC sets requirements for Canadian content. These regulations apply to radio and television programming services that broadcast programmes and to the distribution systems (cable television, direct-to-home (DTH) satellite, and Multipoint Distribution System (MDS) systems) that deliver broadcast services to the home.

**Table 6.1 Canadian Content Requirements from “Canadian Culture in a Global World”**

<b>Canadian Content Requirements</b>	
<i>Broadcaster</i>	<i>Canadian Content</i>
Radio	Generally 30% of popular music selections* 35% in 1999
CBC/SRC television	60% overall yearly 60% from 6:00 p.m. to midnight
Private television broadcasters	60% overall yearly 50% from 6:00 p.m. to midnight
Pay and specialty television services	16% to 100%**
Pay-Per-View services	1:20 Can.: non-Can. Films 1:7 Can.: non-Can. events
* For French radio, the vocal music requirement is 65% French language content. New regulations will also require a minimum 55% French language vocal music content Monday through Friday, between 6:00 a.m. to 6:00 p.m.	
** The requirement varies, depending on the service. Most are required to offer at least 30% Canadian content.	

*Source: Canadian Culture in a Global World.*

## Tax Measures

In order to promote Canada’s cultural industries in the domestic market, the government uses tax and other measures specifically designed to help Canadian companies maintain the advertising revenues they need to sustain and to amass the financial resources required to develop Canadian programmes. As a result of US cable and television signal entering, Canada advertising revenue began to shift from Canadian stations to US stations. In order to protect Canadian advertising revenue the Canadian government drafted and implemented legislation that would stem the flow of such revenue to US border stations e.g. s.19.1 of the Income Tax Act made the cost of advertising with a Canadian broadcaster fully tax deductible, but limited the tax deduction for advertising placed with U.S. border stations.

## Foreign Investment and Ownership

Canada imposes rules on foreign ownership in selected cultural sectors. Examples are as follows:

- Under the Investment Canada Act 1985, any foreign investment in a cultural industry is reviewed.
- 1988 foreign investment guidelines designed to generate funds for the Canadian film industry that prohibit foreign takeovers of Canadian-controlled distribution firms and allow foreign-owned firms only when investors agree to invest a portion of their Canadian earnings in developing Canadian culture.
- Recognising that foreign investors can provide much needed capital and important strategic alliances for the cultural industries in 1996 the federal government instructed the CRTC to change the rule that no firm applying for a broadcast license to operate in Canada could have more than 20% foreign investment to increase the maximum allowed for foreign investments. Now up to 46.7% of a broadcasting company and 100% of its non-voting shares can be foreign owned, provided that the de facto control is not exercised by non-Canadians.

Most countries that restrict investment in cultural industries are more likely to restrict foreign ownership in their broadcast industries than in their magazine, publishing or film distribution industries. National policies vary. Some countries ban all foreign investment in the news media, broadcast and television sectors but most countries set a fixed limit on foreign investment, particularly in the television industry.

**Table 6.2: Comparison of Foreign Investment Restrictions on the Broadcasting Industry – “Canadian Culture in a Global World”**

<b>Comparison of Foreign Investment Restrictions on the Broadcasting Industry</b>	
<b>Country</b>	<b>Maximum Foreign Investment/Ownership Allowed</b>
Australia	15%
Canada	33.3% of holding company 20% at licensing level
United Kingdom	ownership restricted to EU member states
United States	20% of conventional broadcasting

A large number of institutions exist for the promotion of domestic content within OECD countries. National public broadcasters dedicated to promoting and carrying a certain quantity of domestically produced audio-visual content, while direct grants, tax write-offs and low-interest loans provided for film production, and (in some countries) the development of special digital effects. “OECD governments are increasingly relying upon policies aimed at directly stimulating

domestic content creation through tax breaks or increased contributions from the private sector or non-profit organizations, rather than direct funding measures<sup>25</sup>.”

### 6.1.2 Australia

- 1970 – Federally funded Australian Film Development Corporation (AFDC) was established.
- 1975 – AFDC was transformed to become Australian Film Commission, administering government funds to assist the development of feature and non-feature films and film-related organizations.
- 1972-78 – State funded government film agencies established in every state.
- 1981 – Introduction of a tax incentive scheme commonly known as 10B A (Division 10B A of the Income Tax Assessment Act) – designed to attract greater private investment in film and certain types of television programmes. Allowed investors to claim A\$150 deduction for every A\$100 spent on eligible production costs. In addition every \$50 earned on the investment was exempt from tax. Under these concessions producers financed more than 900 projects in eight years leading to the boom in film production which saw a virtual cottage industry grow into a production industry employing some 6000 full-time workers at its peak.”
- 1984-88 – Concern about the growing cost to Government of the 10BA scheme led to concessions being progressively reduced from 150-50 to 133-33 and then to 120-20.
- 1988 – Australian Film Finance Corporation (FFC) was established as the Government’s principal mechanism for financing Australian features, mini-series, telemovies and documentaries. Division 10B A was reduced to providing a 100% deduction for eligible production expenses. Lower level of funding, crisis at commercial television networks from servicing high interest payments on debt and 1980’s recession contributed to a reduction in production levels. In the period 1988/89 – 1994/95 Australia produced an average of 26 features, 12 mini-series, 9 telemovies and 14 series or serials per year.

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<sup>25</sup> OECD “Policy and Regulation Issues for Network-Based Content Services” DSTI/ICCP/IE(96)9/Final.

### 6.1.3 European Union

The Council adopted Directive 89/552/EEC on 3 October 1989 on television without frontiers – lays down provisions at European level ensuring the free movement in the Community of television broadcasts from the Member States so that the entire population of the EC can have access to all EC television programmes thanks to cable and satellite retransmission technology.

The MEDIA II Programme (“Measures to Encourage the Development of the Audiovisual Industry”) provide support schemes for the European film and television programme industry with the aim of making this industry more competitive and more capable of meeting the needs of an ever increasing number of television stations. The first programme MEDIA I was adopted by the Council in December 1990 and was allocated ECU200 million for a period of five years (1990-1995). The MEDIA II programme was adopted for a further five year period (1996-2000) with a financial allocation of ECU 310 million: 45 ECU million to support training initiatives; 265 million to support development of projects and companies as well as distribution. Financial support granted to companies takes the form of loans and subsidies up to a maximum of 50% of the costs of operations, although support given to training initiatives will in certain cases cover as much of 75% of costs and will in certain circumstances take the form of non-repayable grants.

Project Development – film and television drama, documentaries and animation. Producers and creators of works with commercial potential on the European market are eligible for financial and technical assistance for scriptwriting, for putting together the package and producing the business plan. Production companies are also being encouraged to improve their organizational structure, to develop medium term production plans and to seek European partners to set up new networks. This approach is particularly relevant to companies in the new technology sectors (computer graphics, special effects, multimedia), animation and audio-visual archives, which are urged to co-ordinate their efforts under the umbrella of a common sectoral development plan.

Distribution- MEDIA II aims to encourage distributors to invest in the production of promising films to add to their catalogues and to enhance their chances of world-wide distribution by increasing the number of copies available and the amount spent on promotion. Encourage multilingualism by means of dubbing and subtitling. Incentives are also being offered for the creation of networks of commercial cinemas with a policy of showing mainly European films.

Television sector – focus is on independent production companies capable of producing high quality works, which can be exhibited outside their country of origin, provided they receiving backing from the outset by national television stations in Europe. Loans will be made available for co-productions bringing together independent production companies and broadcasters who agree to show their programmes in their particular area. Measures to improve independent productions access to the market mainly through film and television markets, fairs and festivals.

Training Programme – support initiatives to improve skills in the economic and commercial management of audio-visual projects and companies, including the legal aspects. The development of courses on screenplay techniques and use of new technologies aimed at creating programmes of high artistic and commercial quality. Support co-operation and exchanges of know-how between training institutions, professionals and companies.

Funding under the MEDIA II Programme is mainly given in the form of advances on earnings and repayable loans, but subsidies are awarded for multilingualism and training. Special attention will be paid to the specific needs of countries with only a small production capacity and/or a limited language audience and to the development of SMEs. There is in place a range of national support policies for audiovisual production in Europe.

EURIMAGES programme run by the European Commission on behalf of the Council of Europe provides production finance for European co-productions. Can provide between 10-12% of production budget for qualifying films. EURIMAGES supports 16 European co-production projects.

#### 6.1.4 United States

Audio-visual production in the US has in the past been dominated by the Hollywood studios and their integrated cinema distribution networks. While the biggest studios still have relatively high shares of film and television programme production, these shares can be quite volatile from year to year. Broadcasting networks are playing an increasing role in producing, either on their own or via joint ventures: television programming and many cable networks also contract for original programming. In addition a large number of audio-visual producers, independent of the Hollywood studios, do exist.

The degree of public support for domestic content production is far lower than in other OECD countries. Individual states provide a range of incentives to attract production, and federal funds were distributed for film and video art productions by the National Endowment for the Arts (total spending on film and video was \$900 000 in 1995) significant funds were distributed through the Corporation for Public Broadcasting.

## 6.2 DOMESTIC POLICIES FOR CARIBBEAN COUNTRIES

It goes without saying that there would be no point or certainly little value of trade agreements if there were no entertainment services to be consumed domestically or exported. Consequently one can agree with UNESCO's position that "While defensive measures may still be possible in certain cases, protectionism is a limited solution from the economic point of view. Cultural policies need to adapt to globalization intelligently and provide strategic answers at the national, regional and sub-regional levels."

The following measures are recommended by UNESCO and should be implemented in the CARICOM region:

- Adoption or update of national laws on copyright and neighbouring rights in line with TRIPS – the implementation of such laws will depend heavily on the existence of collecting societies, the creation of which may need to be fostered by the government with assistance from international bodies such as WIPO and CISAC.
- Analysis and potential review of regulations on foreign investment in cultural industries.
- Access to low-interest loans and convertible currency together with cross-guarantee systems sustainable to the specific sector being promoted.
- Fiscal incentives and tax reduction programmes for the sector, specifically for the export.
- Incentives for technology renewal or improvements in facilities and infrastructure; this is typically achieved through low-interest loans.
- Specific regulations applicable to Postal and Telecommunication operators, such as preferential postal tariffs.
- Public broadcasting operators and other operators in the audiovisual sector. Support policies should include preferential advertising for domestic cultural products and services on state-owned television networks and radio stations, etc. Enforcement of Caribbean-originated screen and content quotas for radio, television and cinemas for the promotions of domestic and regional music, films or programs for broadcast, provided that there are no binding agreements for the state concerning the deregulation of the audiovisual sector.
- Institutional support for domestic cultural services can include: domestic market regulation; establishment of a legal deposit system; the preparation of reference materials to facilitate the industry's activity such as directories, integrated product catalogues, compilations of all regulations applicable to the sector.
- Other forms of institutional support may include promotional activities such as prizes, general campaigns targeting national public opinion, surveys on cultural practices, national festivals and trade shows; promotion of cultural routes and itineraries, encouraging dissemination of national entertainment services abroad (through embassies, trade promotion agencies, radio and television stations and cultural institutes); encouraging national creators and entrepreneurs to participate in international festivals and trade shows, granting subsidies to commercial missions to carry out professional updates and analysis of prospective foreign markets, etc.
- Professional training for relevant actors in the sector – based on the experience of national professionals, or undertaken in co-operation with foreign specialized organizations. Funding may be generated from mixed public and private sector

participation. Experience shows that priority must be given to marketing and copyright management skills and quality control. “Training” for judges, magistrates, lawyers, police and customs officers and other authorities responsible for the implementation of regulations concerning copyright and neighbouring rights.

- Other actions to foster creativity and innovation may also be considered: such qualities are the basis of the cultural industry chain, and they can be encouraged through education in the arts, professional training, fellowships, funding for art institutions, etc. and also through strengthening skills for commercialization such as training in marketing and marketing analysis.
- Creation and sustained development of professional and industry associations that truly represent the views of the sector in the process of policy development and reform.
- Effective use of the media to ensure visibility of the process of policy development and reform

For small countries such as CARICOM member states, the development and promotion of cultural industries requires a parallel effort at supranational level. It is of critical importance to find competitive methods of production, new audiences and to ensure the ability to distribute. According to UNESCO “This can only be accomplished through a mix of national, sub-regional and regional strategies to reach a global orientation (in terms of economies of scale and efficient distribution channels) that facilitate expansion beyond the borders of national markets”. Consequently UNESCO recommends that we should define policies that “encourage, promote and regulate the production and commercialization of cultural-industry products [which include services] beyond national markets...” Such common policies may target:

- Establishing or implementing specific agreements concerning taxes, intellectual property, foreign investment and multinationals;
- Co-ordinating investments based on specific sector research and strategic analysis of opportunities and needs in each area
- Creating mixed funding schemes through funds contributed by member states and dedicated to supporting common projects
- Defining common mechanisms to support and encourage export activities and developing new markets (by establishing permanent representative offices in preferential markets, mixed fund support agencies, promotional campaigns, etc.)
- Developing common policies, strategies and incentives for co-production and co-distribution of projects.
- Identifying and supporting the creation of alternative distribution channels (innovative strategies to enter saturated markets).

- Effective support to international initiatives concerning copyright protection, anti-piracy action, training etc.
- Defining and supporting common positions for global negotiations on trade and copyright.
- Development of antitrust regulations or competition policy to address the monopolistic practices in the context of cultural industries.

### 6.3 APPROACHES TO TRADE NEGOTIATIONS FOR CARIBBEAN COUNTRIES

How can CARICOM member states ensure the negotiation of global “rules of the game” that respect the fundamental principles of access, diversity and competition designed to foster the development of new market niches for entertainment services? Should the Caribbean follow the path of the cultural industries exemption? Will such exemption survive the new Millennium Round negotiations? What are other countries approaches to cultural trade policy?

The Canadian approach provides useful guidance for the CARICOM region. The SAGIT has suggested four possible approaches for Canada, which can be adopted by the Caribbean:

1. Negotiate a broad cultural exemption that would be available to all countries which are party to the agreement and which would be:
  - Technologically neutral, so it could apply to all current and future technologies
  - Sufficiently detailed to avoid disputes
  - Self-judging
  - Not subject to attack or retaliation
  - Not subject to any standstill or rollback obligations
  - Comprehensive enough to override all of the obligations in the agreement.
2. Make no commitment on culture – known as a country specific sectoral reservation, this approach could achieve the same result as a cultural exemption.
3. Create a new international instrument on cultural diversity which would lay out the ground rules for cultural policies and trade and allow Canada and other countries to maintain policies that promote their cultural industries. According to SAGIT: “A new cultural instrument would seek to develop an international consensus on the responsibility to encourage indigenous cultural expression and on the need for regulatory and other measures to promote cultural and linguistic diversity. The instrument would not compel any country to take measures to promote culture, but it would give countries the right to determine the measures they will use (within the limits of the agreement) to safeguard their cultural diversity.” Such a new instrument would have to:

- Be as broad as possible and provide global coverage;
  - Embrace cultural goods as well as cultural services;
  - Include all financial and tax support measures, regulations and controls over foreign investments;
  - Make references to competition policy to address market dominance problems that can adversely affect the vitality of indigenous cultural industry; and
  - Include references to copyright policy, which are not inconsistent with Canada's other intellectual property obligations.
4. Develop agreements covering specific cultural industry sectors, measures or practices – this option would allow Canada and other countries to maintain policies that promote their cultural industries, but involves negotiating acceptable measures and practices for each cultural sector, rather than for the cultural industries as a whole.

SAGIT favours a new international instrument on cultural diversity.

**Table 6.3: A New Instrument: What Would it Do?**

<p>A new international instrument on cultural diversity would:</p> <ul style="list-style-type: none"> <li>• recognize the importance of cultural diversity;</li> <li>• acknowledge that cultural goods and services are significantly different from other products;</li> <li>• acknowledge that domestic measures and policies intended to ensure access to a variety of indigenous cultural products are significantly different from other policies and measures;</li> <li>• set out rules on the kind of domestic regulatory and other measures that countries can and cannot use to enhance cultural and linguistic diversity; and</li> <li>• establish how trade disciplines would apply or not apply to cultural measures that meet the agreed upon rules.</li> </ul>
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While the Region has to anticipate WTO compliant rules in its negotiations over the FTAA and in any other fora in the present dispensation, there is need to develop fiscal measures and other incentives to grow the one industry over which the countries of the region have some degree of capacity for differentiation of the product or service that they provide to the rest of the world. In respect of the Entertainment Sector, there is need to approach the requirements of the region, sub-sector by sub-sector. Thus, the film sub-sector will need treatment entirely different from music. In addition, in this rules based trading system, the Caribbean needs to take the long view and avoid making commitments that would circumscribe the space for the development of what are still, in terms of structure, infant industries.

The Canadian model has much to recommend it in the Caribbean context, except that local content rules will need to be defined in terms of the region as a whole. The Caribbean is a

distinct cultural area. In the emerging international economic system, it has to maintain open-door policies to attract foreign investment to fulfill its needs for employment creation and the generation of exports. Foreign investors in its entertainment and audio-visual industries should be required to observe content rules that respect the cultural diversity of the area and ensure the participation of nationals in all aspects of the operations of the entering firms. Thus, training of nationals has to be one of the conditions to be observed. In the area of audio and visual broadcast, some percentage of music and film from the region should be required of broadcasters: Barbados has already adopted this approach. The imposition of such conditions may require that the Caribbean seek to have culture treated in special agreements in its bilateral and multilateral negotiations.

The Region has to be welcoming of foreign investment. At the same time, however, it has to set in place the measures required to give its own fledgling firms the possibility of putting footprints in the metropolitan markets. The four main areas of modes of supply and the five rules identified for specific discussions in trade agreements, have to be viewed in the prism of the cultural and economic reality of the region.

### **Movement of Natural Persons**

In the last quarter of the 20<sup>th</sup> century, the Caribbean has witnessed a greater involvement of its entertainers in the provision of services abroad. The right accorded to natural persons to present the work of their intellectual capital has to be jealously guarded given the concerns of metropolitan countries over migration. National Governments and the respective associations need to develop the appropriate regulatory environment to provide oversight over the various participants. Calypsonians, Soca and Reggae Artistes, Chutney Singers etc – need to be registered so that their bona fides can be established in their seeking work permits for engagements abroad.

### **Commercial Presence**

This is an area of special concern to the Region and requires considerable investment on the part of the countries. The promotion of Caribbean music and other art forms abroad beyond diasporic markets can be secured best through an organized approach to commercial presence abroad. The establishment of commercial arms by their industrial development agencies seems to be one approach. In this regard, the likes of JAMPRO and TIDCO will have to establish commercial operations in locations abroad. These latter can make strategic investments in the broadcast media with a view to increasing the airplay for Caribbean music and helping it to become mainstream in the major markets. VP Records, established with Jamaican capital, but have a presence in New York, demonstrates what is possible: VP is now one of the largest distributors of Reggae music in New York (Interview with Lloyd Stanbury).

The organized commercialization of Carnival as well, requires a commercial presence. This may take the form, as suggested before, of development teams that will go to particular cities that offer the prospect of a Carnival and provide the possibility of promoting the music and other entertainment products of the Region. There is need for the establishment of agencies to work with national collecting societies in the main foreign markets for Caribbean music to ensure that the performance and reproduction of Caribbean musical and other works are adequately monitored and licensed and that the practices of foreign collecting societies are not disadvantageous to Caribbean rights owners.

### **Cross-border Supply**

Technical change has extended the modes of supply with the advent of e-commerce and have made it possible to overcome, at least in the short term, the barriers to entry created by the concentration of power in marketing and distribution in the area of music, and possibly even in film and video. This has to be seen against the reality of the Entertainment Sector in the Commonwealth Caribbean where many 'firms' are one-person operations, and/or are very short on management. The industrial development agencies need to focus on making these firms ready for e-commerce.

One approach is for agencies like TIDCO and JAMPRO to include the works of entertainers on their websites. Those with the resources to have their own websites may still find it useful to be linked to that of the industrial promotion agency of their country. There is a considerable amount of output generated at the annual Carnival in Trinidad and Tobago. The internet offers the possibility for retrieval and increased shelf-life of such output, in a way not that has not been possible before. The new trade rules do not debar this kind of promotion and the countries have to exploit the possibilities.

Moreover, there is need to anticipate the future changes in technology and to position the institutions to undertake certain tasks. Over the next five years, it is expected that the consumer would seek access to the world repertoire in real time, by payment for access when and where needed. This will reduce the need for CD players and other equipment and the challenge posed for storage of material. In the absence of an institution championing the music and other entertainment of the Caribbean, it could well be marginalized again. The agencies need to anticipate this shift in the technology and to prepare their constituents and themselves to be able fully to take advantage of such developments. Furthermore, the monopoly ownership of telecommunications in the region needs to be broken, the supply of bandwidth and available frequencies need to be increased and an elastic rate structure introduced.

In addition the improvement of the postal infrastructure will also create opportunities for service providers in the various entertainment sub sectors to market their services cross border for example market research reports, entertainment contracts and distance training.

## **Consumption Abroad**

The staging of several music and Carnival-related festivals in the Region and the impact on the tourist industry with heightened visitor arrivals, hotel occupancy, increased gate receipts for the various events is an example of this mode of supply which is having increasing significance for Caribbean countries. The Entertainment Sector serves the purpose of a joint product with Resort Tourism – the success industry to date in the Caribbean - and affords the Region the opportunity to differentiate itself fully from other locations offering the same physical amenities of climate and fine beaches. The growth in festivals has been a knee jerk response. Much more is possible with organisation and planning.

## **6.4 THE MULTILATERAL TRADING RULES**

Given the new trading rules of MFN status, National Treatment, Transparency/Predictability, Non Discrimination and Market Access it would be very difficult if not impossible for Caribbean countries to abide by all these principles and adopt the measures that have been advocated in this study for the development of the entertainment services sector. However, to the extent that the new trade rules do not formally prevent state participation in directly productive activity, and given that the marketing and distribution of products Caribbean Entertainment Arts requires an aggressive approach to the market place, the mainstreaming of Caribbean music is not so much a problem of trade rules as it is about the Region's exploring the limits of what can be done for its people in the new dispensation.

## **6.5 CONCLUSION**

The RNM will have to charge itself with creating the space in the negotiating process for the Caribbean initiative. This requires as much entrepreneurship in institutional building and in trade diplomacy, as is entering markets and becoming significant players in them.

Caribbean states need to champion the causes of cultural sovereignty and cultural diversity whilst at the same time promoting foreign investment and maximizing the export earnings that can accrue to the region's cultural industries by encouraging the formulation of international trade policies that are culturally supporting. The aim is to ensure that the region's entertainment services are globally competitive and at the same time protect the region's culture and identity.

Caribbean governments need to find trading partners who are prepared to promote the cause of cultural diversity and are willing to negotiate a new international cultural instrument. Culture is more than a commercial commodity and justifies different treatment, for, as Arthur Lewis, the renowned Caribbean economist, writing on being a West Indian noted:

A society without the creative arts is a cultural desert.....Music, Literature and Art are as important a part of heritage of mankind as are science and morals. They differ from science in that they do not represent what is, but are products of the creative imagination. They have, therefore, infinite scope for variation. And yet they tend to be distinctively national in character.... This is the essential and most valuable sense in which West Indians must be different to other people.

This study has demonstrated that the Entertainment Sector has made strides in spite of the immense hurdles. Generally, the advances have been made without any coordinated effort on the part of the Governments of the Region. Yet the Sector is unique in its producing product and services that are distinctive of the Region. It is only recently that it has attracted the attention of the investment promotion agencies in the Caribbean. It is also an important complement to one of the most important industries in the Caribbean – Resort Tourism – and allows the latter to differentiate itself from other locations offering sun, sea, and sand.

In the ongoing trade negotiations, it behoves the negotiators to be fully seized of the importance and the potential offered by the Industry and to provide the necessary edge for the sector to develop fully such that it could contribute sustained income for the creative genius of Caribbean people in the larger international market. Negotiation, as well as quantity and quality of output will determine size of market. The Entertainers, largely on their own, have proved that the demand exists.

In sum, RNM can draw inspiration and guidance from the experiences and models of the European Union and Canada in charting the way forward. It has to engage in a multi-pronged approach in dealing with the Sector in international negotiations. It has to:

- Negotiate for cultural exemption in respect of FTAA, WTO, etc and generally to import that principle in all of its discussion of the sector in negotiating with the rest of the world.
- Form a trading alliance with Canada in negotiating a new international instrument on cultural diversity which would lay out the ground rules for cultural policies and trade and allow Canada, Caribbean countries and countries in other regions to maintain policies that promote their cultural industries.
- Support industrial policy at the domestic level through organizations like JAMPRO and TIDCO and their equivalents in the respective countries.

- Adopt a regional approach to the promotion of content rules in the broadcast media, and support the free movement of entertainers and musicians and their product in a *one market* Caribbean.
- Seek penetration of markets abroad through commercial presence, especially where there is already a substantial Caribbean Diaspora in a particular location.
- Support measures aimed at protecting intellectual property rights and adopt a regional approach to ensuring that the region's IPRs are given equal treatment and protection in overseas markets.
- Support the introduction of competently regulated competition in telecommunications services.

There is much to be emulated from Canada and the European Union. The RNM should not miss the opportunity, even as it seeks to improve on that record.

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# **APPENDICES**

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**APPENDIX I – LIST OF TABLES**

**APPENDIX II – PERSONS INTERVIEWED**

## APPENDIX I – LIST OF TABLES

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**Table I: 2001 Carnival Dates Around the World**

Bonaire	January 7 - March 6
Aruba	January 26 - March 6
Dominican Republic	January 31- February 28
San Diego, CA, USA	February 24
Curacao	February 26- 27
Dominica	February 26 - 27
Grenada: Carriacou	February 26- 27
New Orleans, LA, USA	February 26 - 27
St. Lucia	February 26 - 27
Suriname	February 26 - 27
Trinidad & Tobago	February 26 - 27
Rio De Janerio, Brazil	February 26 - March 2
Cayman Islands: Little Cayman	March 3
Guadeloupe	March 3 - 7
Martinique	March 3 - 7
St. Barthelemy	March 3 - 7
St. Martin	March 3 - 7
Virgin Gorda	March 31 - April 1
St. Maarten	April 13 - May 1
Jamaica Carnival	April 15 - 22
St. Thomas, USVI	April 20 - 28
Barbados (Congaline)	April 23 - April 30
Puerto Rico	April 26 - 29
Cayman Islands (Barabano)	April 28
Philadelphia	May 4 - 6
Barbuda	May 18 - 21
Atlanta (Peach), GA, USA	May 25 - 28

**Table I: Carnival Dates Around the World (cont'd)**

Los Angeles, CA, USA	May 25 - 28
Oakland, CA, USA	May 25 - 28
Oklahoma City, OK, USA	May 25 - 28
Orlando, FL, USA	May 25 - 28
San Francisco, CA, USA	May 25 - 28
Bermuda Day	May 30
Montreal, PQ, Canada	June 6 - 8
Syracuse, NY, USA	June 7
Galveston, TX, USA	June 8 - 10
Calgary (Carifest), AB, Canada	June 17 - 23
Washington (D.C. carnival), DC, USA	June 27 - 26
St. Vincent & The Grenadines	June 22 - July 3
St. Johns, USVI	June 29 - July 4
Chicago (Bachannal), IL, USA	July 7 - 9
St. Petersburg, FL, USA	July 10 - 16
Tortola	July 12 - 25
St. Eustatius	July 15 - 29
Vancouver, BC, Canada	July 22 - 23
York, ON, Canada	July 23
Puerto Rico (Loiza)	July 25 - 27
SABA Dutch Caribbean	July 27 - 29
Antigua	July 27 - August 6
Barbados (Cropover)	July 27 - August 6
Nevis	July 27 - August 6
Toronto (Caribana), ON, Canada	July 27 - August 6
Jersey City, NJ, USA	August 4
Anguilla	August 10 - 12

**Table I: Carnival Dates Around the World (cont'd)**

Baltimore, MD, USA	August 10 - 12
Edmonton (Cariwest), AB, Canada	August 10 - 12
Detroit, MI, USA	August 10 - 12
Winnipeg (Caripeg), MB, Canada	August 10 - 12
Grenada	August 10 - 14
East Orange, NJ, USA	August 18
Tallahassee, FL, USA	August 17 - 19
Chicago (Carifete), IL, USA	August 18 - 20
Boston, MA, USA	August 25
Dallas/Forth Worth, TX, USA	August 25 - 27
Nottinghill, United Kingdom	August 26 - 27
New York (Labour Day), NY, USA	September 3
Belize	September 6 - 10
Westchester, MA, USA	September 16
Houston, TX, USA	September 29 - October 1
Miami, FL, USA	October 4 - 8
Costa Rica	October 11 - 14
Keywest, FL, USA	October 15 - 24
Jacksonville, FL, USA	November 3 - 4
Montserrat	December 22 - January 1,2002
St. Kitts	December 24 - January 3,2002
Bahamas	December 26 - January 1,2002
St. Croix, USVI	December 26 - January 6, 2002

**Table II: Summary of Specific Commitments – Audiovisual Services**

<b>Countries</b>	<b>02.D.A</b>	<b>02.D.B</b>	<b>02.D.C</b>	<b>02.D.D</b>	<b>02.D.E</b>	<b>02.D.F</b>	<b>Total</b>
Central African Rep.	X	X	X	X	X	X	6
Dominican Republic				X		X	2
El Salvador				X		X	2
Gambia	X	X	X	X			4
Hong Kong	X				X	X	3
India	X						1
Israel	X						1
Japan	X	X			X		3
Kenya	X	X					2
Korea RP	X				X		2
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
Panama	X	X	X		X		4
Singapore	X				X		2
Thailand	X		X				2
USA	X	X	X	X	X	X	6
<b>Total</b>	<b>17</b>	<b>10</b>	<b>7</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>55</b>

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

Source: “Table 9: Summary of Specific Commitments – Audiovisual Services: WTO “Audiovisual Services” S/C/W/40 15 June 1998.

### Table III: RIAA 199 Consumer Profile

**Table IV: Estimates of Expenditure of Ministry Responsible for Culture and Creative Arts for the Republic of T&T for the years 1990-1999**

<b>Year</b>	<b>Culture/Creative Arts/\$</b>	<b>Total Gov't/\$</b>	<b>Culture as % of Total Gov't/\$</b>
1990	31,200,494	7,069,881,861	0.441
1991	39,638,881	6,089,417,788	0.651
1992	26,659,152	7,999,818,497	0.333
1993	29,298,832	8,410,769,971	0.348
1994	35,002,260	10,507,914,868	0.333
1995	74,970,325	10,564,917,450	0.710
1996	57,098,559	11,203,217,677	0.510
1997	51,257,387	12,399,058,844	0.413
1998/1999	33,222,200	13,721,300,576	0.242

**Table V: Main Government Subventions in TT\$ on  
Culture and Creative Arts for the Years 1990-1999**

<b>Year</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
<b>Personnel</b>	2,076,741	2,474,741	2,578,639	2,638,000	2,675,837	3,296,662	2,859,000	2,602,600	2,363,000	2,000,500	1,180,000
<b>Goods &amp; Services (includes NCC up to 1991)</b>	4,208,814	6,129,882	1,963,008	1,277,320	896,950	1,546,500	927,000	856,500	921,500	566,900	4,441,500
<b>Minor Equip.</b>	-	3000	48,395	60,000	-	-	-	20,000		235,000	235,000
<b>Transfers/Subsidies</b>											
Pan Trinbago	518,500	544,500	544,500	211,210	-	-	-	-			
Cultural Org.	100,500	100,500	300,000	300,000	-	-	-				2,000,000
National Steel Orch.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	2,818,200	2,818,200	1,553,000
Best Village	1,065,000	1,065,000	96,500	1,100,000	-	-	-				
Steel Bands	n/a	n/a	n/a	200,000	-	-	-				
Queen's Hall	376,950	578,128	543,987	543,838	515,566	533,448	533,448	1,078,000	933,000	1,133,000	952,000
Naparima Bowl	245,954	306,104	352,483	352,483	360,339	405,256	655,000	550,000	641,000	666,000	705,000
National Carnival Commission	n/a	n/a	5,131,851	5,032,000	4,700,000	5,143,712	8,517,075	9,094,000	11,327,000	12,041,000	27,388,000
<b>Total</b>	<b>8,592,459</b>	<b>11,201,855</b>	<b>11,559,363</b>	<b>11,714,851</b>	<b>9,148,692</b>	<b>10,925,578</b>	<b>13,491,523</b>	<b>14,201,100</b>	<b>19,003,700</b>	<b>19,460,600</b>	<b>38,454,500</b>

Table VI: Feature Films Shot in Jamaica

<u>How Stella Got Her Groove Back</u>	<u>Third World Cop</u>	<u>Instinct</u>	<u>Belly</u>
<u>The House Next Door</u>	<u>Klash</u>	<u>Legends of the Fall</u>	<u>Cool Runnings</u>
<u>Going to Extremes</u>	<u>Scam</u>	<u>Wide Sargasso Sea</u>	<u>Prelude to a Kiss</u>
<u>Sankofa</u>	<u>Marked for Death</u>	<u>The Lunatic</u>	<u>Popcorn</u>
<u>Treasure Island</u>	<u>Golden Eye</u>	<u>The Mighty Quinn</u>	<u>Lord of the Flies</u>
<u>Hammerhead</u>	<u>Passion And Paradise</u>	<u>Milk And Honey</u>	<u>Cocktail</u>
<u>Clara's Heart</u>	<u>In Like Flynn</u>	<u>Club Paradise</u>	<u>Return To Treasure Island</u>
<u>Otto - The Film</u>	<u>Countryman</u>	<u>Eureka</u>	<u>Children of Babylon</u>
<u>Papilion</u>	<u>Smile Orange</u>	<u>The Harder They Come</u>	<u>The Mercenaries</u>
<u>In Like Flint</u>	<u>A High Wind In Jamaica</u>	<u>Dr. No</u>	<u>Passionate Summer</u>
<u>Island In The Sun</u>	<u>Twenty Thousand Leagues Under The Sea</u>	<u>All The Brothers Were Valiant</u>	<u>The Man Who Knew Too Little</u>
<u>Shattered Image</u>	<u>Dancehall Queen</u>		

## APPENDIX II – PERSONS INTERVIEWED

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### JAMAICA

Mr. Desmond Moulton	Jamaica Association of Authors, Composers and Publishers
Mr. Lloyd Stanbury	Caribbeat Entertainment Limited
Ms. M. Maize Ms. D. Crooks	JAMPRO
Ms. S. King	PIOJ
Mr. Kingsley Cooper	Pulse Investments
Ms. Pat Hyman Ms. Maria Hextall	National Cultural Commission
Mr. Desmond Young Mr. C. Ayton	Musicians' Association
Mr. Tony Laing	Intellectual Property Service Centre
Dr. M. Witler	The University of the West Indies
Mr. R. Witler Ms. C. Yao	Tourist Board

### TRINIDAD AND TOBAGO

Mr. Samraj Jaimungal (aka Rikki Jai)	Chutney/Calypsonian
Ms. Hezekiah	Rituals
Mr. Selwyn Lucas	National Carnival Commission
Mr. Simon Dr. C. Noel Mr. Larry Placide	TIDCO
Mr. R. Afong	Bandleaders Association
Mr. Alvin Daniell	
Ms. Hermia Cuffie Mr. Mungal Patasar	Ministry of Culture
Mr. Christopher Laird	Banyan Productions Ltd.
Mr. Bruce Paddington	Banyan Productions & Creative Arts Centre, UWI
Mr. Anthony Maharaj	Video Associates Ltd.

**BARBADOS**

Christopher Birch	Copyright Unit
Marcia Thompson-Murray	Intellectual Property Registry
Dr. Allyson Roach	National Cultural Foundation
Trevor Anthony Knight & Victor Browne	Statistical Office
P. Antonio Rudder	Advisory Committee on Culture & Trade; Copyright Society of Composers Authors & Publishers
Hon. Mia Mottley	Ministry of Education, Youth Affairs & Culture
Michael Agard	“Krosfyah”
Cora Clarke & Henderson Clarke	Barbados Industrial Development Corporation
Patrick Cobham	“Square One”
Vaughn Renwick	Caribbean Export Development Agency
Lynette V. Eastmond	Ministry of Industry & International Business

**ST. LUCIA**

Virginia Paul & Charles Cadet	OECS Secretariat
Ian Sanchez & Steve Etienne	Hewanorra Musical Society
Carl Gustave	Record Producer
Tracey Warner-Arnold	St. Lucia Tourist Board
Kimberly Cenac-Phulgence	Intellectual Property Registry
Michael Aubertin	Ministry of Community Development & Culture
Michael Agard	“Krosfyah”

## DOMINICA

Cornell Phillip	“WCK”
McArthur Marie	PRS Agency
Gordon Henderson	“Exile One”
Raymond Lawrence	Ministry of Community Development & Culture
Bobby Frederick	Dominica Hotel & Tourism Association
Edmund A. Toulon	Dominica Festivals Commission
Sobers Espirit	Dominica National Development Corporation
Clem Johnson	Island Locations Ltd.