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### CHINA'S FILM CENSORSHIP PROGRAM AND HOW HOLLYWOOD CAN ENTER CHINA'S FILM MARKET

Tiffany Kwong<sup>\*</sup>

*This article is based on regulations and data prior to 2015. Films that are mentioned as record-breaking may no longer be current due to newer releases. The current quota system allowing 34 films into China was signed into agreement with the World Trade Organization in 2012, and was valid for five years. In 2017–2018, China will need to renegotiate a new agreement, which may increase the number of foreign films that can be imported.<sup>1</sup> Despite the possibility of a quota increase, the trends described in this article may still apply.*

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<sup>\*</sup> B.A., Film and Media Studies, University of California, Irvine; J.D. 2015, University of San Diego, School of Law. Ms. Kwong works in the Business Affairs Department at Hollywood's United Talent Agency, where she negotiates and develops motion picture, theater, music, digital, and gaming deals.

<sup>1</sup> See Clifford Coonan, *China Film Import Quota Will Open Up in 2017, Says Top Local Producer*, THE HOLLYWOOD REPORTER (Apr. 16, 2014, 9:25 AM), <http://www.hollywoodreporter.com/news/china-film-import-quota-increase-696708>.

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## INTRODUCTION

Films are methods of storytelling, allowing audiences to transcend cultural differences, delve into imaginative realms, and appreciate the interpretation of an often-familiar story told from a unique perspective. Hollywood is globally recognized as the leading film industry for production, development, and distribution. However, the epicenter for distribution is rapidly shifting to China due to the country’s growing presence as an emerging film industry.

Current economic conditions incentivize film industries, such as Hollywood, to turn to China to maximize its box office revenues. General estimates suggest approximately 100 screens are opening per week in China, which amounts to approximately fourteen new screens a day, or about 5,200 screens a year.<sup>2</sup> China’s box office revenue jumped 34 percent in 2014 to a record-breaking \$4.8 billion, making it the first foreign market to

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<sup>2</sup> See Linda Yueh, *Is it a Golden Age for Chinese Cinema?*, BBC NEWS (Oct. 30, 2014), <http://www.bbc.com/news/business-29834530>. “In the US, there are 40,000 movie screens, or one for every 8,000 people, according to EntGroup. There are 20,000 screens in China, but that works out as one for every 70,000 people.” *Id.* See also Patrick Frater, *China Adds 5,000 Cinema Screens in 2013*, VARIETY (Jan. 17, 2014), <http://variety.com/2014/biz/asia/china-adds-5000-cinema-screens-in-2013-1201062132/>.

cross the \$4 billion threshold.<sup>3</sup> Even Hollywood films that domestically showed signs of a decline in revenue were able to receive box office success through its distribution in China.<sup>4</sup> Dan Mintz, from the China-based production company Dynamic Marketing Group Entertainment (DMG Entertainment), commented that “franchises”<sup>5</sup> and “tent-pole”<sup>6</sup> films now must consider China as a factor before “green-lighting”<sup>7</sup> films for production.<sup>8</sup> Reports indicate China has evolved to become the

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<sup>3</sup> Compare Richard Verrier, *China Fuels Record Global Box-Office Revenue in 2014*, L.A TIMES (Mar. 12, 2015), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-mpaa-report-china-global-box-office-revenue-20150312-story.html>, with *China Retains Grip on Foreign Film Quota*, BBC NEWS (Feb. 12, 2014), <http://www.bbc.com/news/entertainment-arts-26152190> [hereinafter *China Retains Grip*] (stating China's box office revenue was \$2.7 billion in 2012).

<sup>4</sup> See *Need for Speed*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/movies/?page=intl&country=CH&id=needforspeed.htm> (last visited Jan. 6, 2016); see *Night at the Museum: Secret of the Tomb*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/movies/?page=intl&country=CH&id=nightatthemuseum3.htm> (last visited Jan. 6, 2016); see also *Transformers: Age of Extinction*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/movies/?page=intl&country=CH&id=transformers4.htm> (last visited Jan. 6, 2016).

<sup>5</sup> See *Franchise*, OXFORD DICTIONARY, [http://www.oxforddictionaries.com/us/definition/american\\_english/franchise](http://www.oxforddictionaries.com/us/definition/american_english/franchise) (last visited Jan. 6, 2016) (defining ‘franchise’ as “a general title or concept used for creating or marketing a series of products, typically films or television shows: ‘the Harry Potter franchise’”).

<sup>6</sup> See *Tentpole*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/tentpole> (last visited Jan. 6, 2016) (defining ‘tentpole’ as “a big budget movie whose earnings are expected to compensate the studio for its less profitable movies”).

<sup>7</sup> See *Greenlight*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/greenlight> (last visited Jan. 6, 2016) (defining ‘greenlight’ as “to give permission to proceed with”).

<sup>8</sup> See e.g., *Talking Business with Linda Yueh*, VIMEO, <https://vimeo.com/110803849> (last visited Jan. 6, 2016) [hereinafter *Talking Business*] (BBC News Television Broadcast Jan. 11, 2014).

largest international market for Hollywood films, surpassing Japan, France, Britain, and India.<sup>9</sup>

Although foreign filmmakers are incentivized to distribute in China, Chinese authorities retain a strict quota that permits only 34 foreign films<sup>10</sup> to enter China per year. Prior to an expansion of the quota in 2012, the per-year limit was 20 foreign films.<sup>11</sup> In response to this quota, countries have unsuccessfully implored China to provide exemptions to the annual allowance. Mintz explains that while the quota system is a burdensome obstacle, it is not the key issue at play in the industry because filmmakers have started circumventing the restriction by working with Chinese companies in co-productions.<sup>12</sup> The key issue is now censorship.<sup>13</sup>

This article explores China's unique film industry, focusing on the Chinese government's strict regulation. The discussion will review how Hollywood has succeeded in the past and how filmmakers should approach projects in the future to increase the likelihood that the Chinese government will approve the films for distribution in China. In addition, the article will attempt to answer whether China's film censorship program benefits the country's artists, audiences, and film development.

Part I will introduce the Chinese censorship program, and will compare the U.S. rating system with the Chinese censorship system. Part II will introduce and explain the criteria films must satisfy in order to gain access to Chinese theaters, including the reasoning behind the criteria. This section will also discuss the entities that enforce film censorship in China, and explain the process of gaining entry into China's film industry under China's strict program. This section will proceed

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<sup>9</sup> Verrier, *supra* note 3.

<sup>10</sup> See Clifford Coonan, *Chinese Movies Need Not Fear End of Quota System, Report Says*, THE HOLLYWOOD REPORTER (Jan. 7, 2015, 8:20 AM),

<http://www.hollywoodreporter.com/news/chinese-movies-need-not-fear-761845>.

<sup>11</sup> See Ryan Nakashima, *Hollywood in China? Country's New Foreign Film Quotas Make the Industry Optimistic*, HUFFINGTON POST (Apr. 17, 2012), [http://www.huffingtonpost.com/2012/04/17/hollywood-in-china-countr\\_n\\_1431395.html](http://www.huffingtonpost.com/2012/04/17/hollywood-in-china-countr_n_1431395.html).

<sup>12</sup> *China Retains Grip*, *supra* note 3.

<sup>13</sup> *Talking Business*, *supra* note 8.

to discuss the traditional method of entering through the quota system and the alternative method of creating a co-produced film.

Part III will analyze some of the benefits and consequences of having a Chinese censorship program. Part IV will examine various foreign produced, local produced, and co-produced films that were either admitted or rejected, and will demonstrate a pattern in the government's censorship, thereby helping to hypothesize which future films may be approved for distribution in China. Part V will discuss how potential distribution to China may alter the way films are made creatively, and how surpassing the censorship regulations and distributing in China may be beneficial. The article will conclude with a few considerations that Hollywood studios should keep in mind if they seek to access China's box offices.

### **I. THE CHINESE CENSORSHIP PROGRAM**

There are two entities involved in the process of film distribution in China. The State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China (SARFT) acts as the censorship board tasked with assessing each film that hopes to distribute in China, whether it is Chinese produced or produced elsewhere.<sup>14</sup> This assessment by SARFT is required before a film may be approved for release in China.<sup>15</sup> The China Film Group Corporation (CFGC), which openly admits it is a monopoly state-run film enterprise, is tasked with distribution, control, and regulation of all imported

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<sup>14</sup> See *State Administration of Radio, Film and Television*, EMBASSY OF THE PEOPLES REPUBLIC OF CHINA IN INDIA, <http://in.china-embassy.org/eng/mt/jyjs/t61109.htm> (last visited Jan. 6, 2016). As of 2013, SARFT became the State General Administration of Press, Publication, Radio, Film and Television ("SAPPRFT"), which integrated The General Administration of Press and Publication and SARFT. But see Stephen Cremin, *SARFT Merged with Press Regulator*, FILM BUSINESS ASIA (Mar. 12, 2013, 11:00AM), <http://www.filmbiz.asia/news/sarft-merged-with-press-regulator>. The entity is most commonly referred to as SARFT. For the purposes of this article, the entity will be referred to as SARFT.

<sup>15</sup> See Cremin, *supra* note 14.

foreign films.<sup>16</sup>

This section begins with a brief overview of the U.S. film rating system as a comparative tool for understanding China's censorship program. A delineation of the process and procedures of Chinese censorship regulation follows, focusing on the roles of the CFGC and SARFT within the Chinese censorship system. The proceeding section discusses the impact and consequences of the Chinese censorship system on the film industry.

#### A. THE U.S. RATING SYSTEM

The United States applies a rating system run by an industry committee separate from government affiliation: The Motion Picture Association of America (MPAA). The MPAA serves to promote, protect, and regulate films in the United States.<sup>17</sup> The MPAA's mission is "advancing the business and art of filmmaking, protecting the creative and artistic freedoms of filmmakers, and ensuring the satisfaction of our audiences worldwide."<sup>18</sup>

In accordance with this mission, the MPAA created a rating system operated by the Classification & Ratings Administration (CARA) to inform audiences about the type of content within each film.<sup>19</sup> CARA assesses film content by electing an independent board of parents; this board of parents considers factors such as violence, sex, language, and drug use to

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<sup>16</sup> See *Company Profile*, CHINA FILM CO., LTD. (中国电影股份有限公司), <http://www.zgdygf.com/introduction/index.shtml> (last visited Jan. 6, 2016); see also *China Film Group Corporation*, WIKIPEDIA, [https://en.wikipedia.org/wiki/China\\_Film\\_Group\\_Corporation](https://en.wikipedia.org/wiki/China_Film_Group_Corporation) (last visited Jan. 6, 2016).

<sup>17</sup> See *Our Story*, MPAA.ORG, <http://www.mpa.org/our-story/> (last visited Jan. 6, 2016). Although the MPAA is an entity separate from the government, its current Chairman and CEO is former United States Senator Chris Dodd, who is recognized "for authoring or co-authoring the Family and Medical Leave Act in 1993; the Patient Protection and Affordable Care Act; the Help America Vote Act; and the Dodd-Frank Wall Street Reform and Consumer Protection Act." *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *Film Ratings*, MPAA.ORG, <http://www.mpa.org/film-ratings/> (last visited Jan. 6, 2016).

assign a rating.<sup>20</sup> A film may be rated as G (general audience), PG (parental guidance suggested), PG-13 (parents strongly cautioned), R (restricted), or NC-17 (no one 17 and under admitted).<sup>21</sup> Using votes of independent parents as the basis for the U.S. rating system ensures the ratings are current and properly indicative of the standards and perspectives of American society. Therefore, a film's rating is an indication of what (the independent board of parents believes) the majority of American parents would rate a film.<sup>22</sup> Although the government still has final authority to censor, restrict, or ban films that are considered morally offensive or obscene, this power of censorship is rarely exercised due to the First Amendment.<sup>23</sup>

#### B. CHINA'S CENSORSHIP SYSTEM: THE CFG AND SARFT

China has no rating system. Instead, the government

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<sup>20</sup> See *What: Guide To Ratings*, THE CLASSIFICATION & RATING ADMINISTRATION (CARA), <http://www.filmratings.com/what.html> (last visited Jan. 6, 2016). A board of parents assigns ratings that they believe a majority of American parents would assign to a movie. *Id.*

<sup>21</sup> See *Film Ratings*, *supra* note 19.

<sup>22</sup> *Id.*

<sup>23</sup> See Greg Daugherty, "*The Interview*" Joins the Ranks of These Banned or Restricted Movies, SMITHSONIAN.COM (DEC. 23, 2014), <http://www.smithsonianmag.com/arts-culture/interview-limited-joins-ranks-these-banned-censored-restricted-movies-180953722/?no-ist>. The most recent example of a Hollywood film being cancelled for theater release in the US is *The Interview* (2014). *Id.* Sony Pictures cancelled the film due to threats from North Korea's dictatorship, which was set to open in theaters in December. *Id.* See also Katherine Webb, *4 Movies That Were Banned In The U.S.*, MOVIES CHEAT SHEET (Dec. 2, 2015), <http://www.cheatsheet.com/entertainment/4-movies-that-were-banned-in-the-u-s.html?a=viewall>; see also Ali Jaafar & Anita Busch, *Ban of 'Child 44': Russia Distrib Files Appeal – Update*, DEADLINE (Apr. 15, 2015, 11:50 AM), <http://deadline.com/2015/04/tom-hardy-child-44-blocked-russia-day-lionsgate-gary-oldman-1201410402/>. Similar forms of censorship also occur in other countries. Hollywood's *Child 44* (2015) was banned by the Ministry of Culture in Russia only days prior to its opening because of "distortion of historic facts and willful interpretations of events . . . as well as images and characters of Soviet citizens of the period." *Id.*

reviews all films that aim to distribute in China and approves only those that are “suitable for all ages.”<sup>24</sup> This means every film essentially should be equally non-offensive, family friendly, and appropriate for Chinese audiences based on the subjective standards of the Communist Party of China (CPC) through its various government entities and lower state-run film enterprises.

### *1. China Film Group Corporation (CFG)*

Prior to reaching SARFT for approval, the government delegates the task of controlling and regulating all imported foreign films to China Film Group Corporation (CFG) which is the monopoly state-run film enterprise in China.<sup>25</sup> CFG is the central circuit that controls film and television exhibition, importation, exportation, production, advertising, etc.<sup>26</sup>

CFG also owns multiple subsidiaries including the China Film Co-Production Corporation (CFCC).<sup>27</sup> The CFCC is authorized by SARFT as the sole legal entity to administer affairs relating to film co-production, and provide coordination and services, pursuant to the Regulations on Administration of the Film and the Rules on Administration of the Sino-Foreign Film Co-Production.<sup>28</sup> The CFCC’s precise roles and functions

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<sup>24</sup> See Robert Cain, *Hey, You’ve Got to Hide Your @#!\* Away: The Rules of Film Censorship in China*, CHINA FILM BIZ (Nov. 27, 2011), <http://chinafilmbiz.com/2011/11/28/hey-youve-got-to-hide-your-away-the-rules-of-film-censorship-in-china/>. “No distinction is made between children and adults; the government [through SARFT] holds the ultimate right to decide what content is ‘appropriate’ and therefore available for viewing, irrespective of the viewer’s age.” *Id.* See also Ben Child, *Chinese Cinema Manager Invents His Own Ratings Systems*, THE GUARDIAN (Aug. 12, 2014), <http://www.theguardian.com/film/2014/aug/12/chinese-cinema-manager-film-ratings-system> (some Chinese companies have implemented their own rating systems).

<sup>25</sup> See *Company Profile*, *supra* note 16.

<sup>26</sup> See Firedeep & Robert Cain, *How China’s Movie Distribution System Works, Part 1*, CHINA FILM BIZ (Nov. 7, 2012), <http://chinafilmbiz.com/2012/11/07/how-chinas-movie-distribution-system-works-part-1/>.

<sup>27</sup> See *Company Profile*, *supra* note 16 (lists CFG as a joint enterprise of multiple subsidiaries).

<sup>28</sup> See *About*, CHINA FILM CO-PRODUCTION CORPORATION (中国电影合作制片公司), <http://www.cfcc-film.com.cn/introeg/intro.html>

are as follows:

- (1) Process applications of film co-production between Chinese domestic film studios and foreign film companies or filmmakers; execute agreement with all co-operative parties; supervise, coordinate and manage the performance of the agreements.
- (2) Introduce Chinese domestic studios to foreign parties and provide related co-production services.
- (3) Review proposed scripts of the Sino-foreign co-production projects and provide consulting services for the proposed projects.
- (4) Provide assistance in relation to entry visas for foreign crews participating in the production.
- (5) Provide assistance in relation to customs clearance for filming equipment, film stocks and materials to be used in production.
- (6) Conduct preliminary review of the completed films.
- (7) Process application and provide related hospitality services for foreign crews to conduct shooting of short films in Mainland China.
- (8) Organize forums, seminars and symposiums related to Sino-Foreign film co-production.
- (9) Administer other matters instructed by SARFT.<sup>29</sup>

Hollywood studios aiming to co-produce with Chinese companies must deal directly with these government entities in order to access China's markets.<sup>30</sup> These entities will later be

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(last visited Jan. 6, 2016); *see also* *About Co-Productions*, CHINA HOLLYWOOD SOCIETY, <http://www.chinahollywood.org/about-co-productions> (last visited Jan. 6, 2016).

<sup>29</sup> *See Guidelines*, CHINA FILM CO-PRODUCTION CORPORATION (中国电影合作制片公司), <http://www.cfcc-film.com.cn/introeg/busine.html> (last visited Jan. 6, 2016).

<sup>30</sup> *See About*, *supra* note 28.

referred to as the “Censorship Board.”

2. *State Administration of Press, Publication, Radio, Film and Television (SARFT)*

SARFT is an executive branch of the State Council of the People’s Republic of China, tasked with the administration and supervision of state-owned enterprises engaged in television, radio, and film.<sup>31</sup> Unlike the independent group of American parents used by the MPAA to determine film ratings, SARFT is government operated.<sup>32</sup> The SARFT committee consists of roughly 30 members, including representatives from government agencies and interest groups, such as the Communist Youth League and the Women’s Federation, as well as filmmakers.<sup>33</sup> Cai Fuchao, who is a member of the 18<sup>th</sup> CPC Central Committee, has been the director of SARFT since 2011.<sup>34</sup> Cai allows his reputation for being strict on regulation and enforcement of media content to be evident.<sup>35</sup> For example, in a prior municipal post in Beijing, Cai was widely reported to have policed websites for banned materials with the help of 10,000 volunteers, and to have joined in a roundup of a million illegally published books in 2004.<sup>36</sup> It comes as no surprise that the

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<sup>31</sup> See *State Administration of Press, Publication, Radio, Film and Television of the People’s Republic of China*, THE STATE COUNCIL THE PEOPLE’S REPUBLIC OF CHINA (Sep. 4, 2014, 9:42 AM), [http://english.gov.cn/state\\_council/2014/09/09/content\\_281474986284063.htm](http://english.gov.cn/state_council/2014/09/09/content_281474986284063.htm).

<sup>32</sup> See *Film Ratings*, *supra* note 19.

<sup>33</sup> See Robert Cain, *How to be Censored in China: A Brief Filmmaking Guide*, INDIEWIRE (Nov. 30, 2011, 10:00 AM), <http://www.indiewire.com/article/how-to-be-censored-in-china-a-brief-filmmaking-guide>.

<sup>34</sup> See Cai Fuchao (蔡赴朝), CHINA VITAE, [http://www.chinavitae.com/biography/Cai\\_Fuchao/bio](http://www.chinavitae.com/biography/Cai_Fuchao/bio) (last visited Nov. 30, 2015).

<sup>35</sup> See Clifford Coonan, *China Censorship, Piracy Rules in Focus at Annual Legislative Meeting*, BILLBOARD (Mar. 9, 2015), <http://www.billboard.com/articles/business/6494967/china-censorship-piracy-rules-in-focus-at-annual-legislative-meeting>.

<sup>36</sup> See Michael Cieply & Brooks Barnes, *To Get Movies into China, Hollywood Gives Censors a Preview*, N.Y. TIMES (Jan. 14, 2013), <http://www.nytimes.com/2013/01/15/business/media/in-hollywood-movies-for-china-bureaucrats-want-a-say.html>.

censorship policies carried through by SARFT under his control are equally stringent.

SARFT has the authority to issue mandatory guidelines for media content and prohibit specific genres of film from production and distribution.<sup>37</sup> Without providing extensive detail on what it tends to prefer, SARFT takes a more negative approach by advising filmmakers on what they will not tolerate. In 2008, SARFT issued a few codifications to attempt to clarify its standards. Films containing any of the following content must be cut or altered:

- (1) Distorting Chinese civilization and history, seriously departing from historical truth; distorting the history of other countries, disrespecting other civilizations and customs; disparaging the image of revolutionary leaders, heroes and important historical figures; tampering with Chinese or foreign classics and distorting the image of the important figures portrayed therein;
- (2) Disparaging the image of the people's army, armed police, public security organ or judiciary;
- (3) Showing obscene and vulgar content, exposing scenes of promiscuity, rape, prostitution, sexual acts, perversion, homosexuality, masturbation and private body parts including the male or female genitalia; containing dirty and vulgar dialogues, songs, background music and sound effects;
- (4) Showing contents of murder, violence, terror, ghosts and the supernatural; distorting value judgment between truth and lies, good and evil,

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<sup>37</sup> See People's Republic of China State Council (中华人民共和国国务院令) (No. 342) (promulgated by St. Admin. of Press, Publ'n, Radio, Film and T.V. of the P.R.C. (中华人民共和国国家新闻出版广电总局) (Dec. 25, 2001, effective Feb. 1, 2002), [http://www.sarft.gov.cn/art/2007/2/16/art\\_1602\\_26266.html](http://www.sarft.gov.cn/art/2007/2/16/art_1602_26266.html).

beauty and ugliness, righteous and unrighteous; showing deliberate expressions of remorselessness in committing crimes; showing specific details of criminal behaviours; exposing special investigation methods; showing content which evokes excitement from murder, bloodiness, violence, drug abuse and gambling; showing scenes of mistreating prisoners, torturing criminals or suspects; containing excessively horror scenes, dialogues, background music and sound effects;

- (5) Propagating passive or negative outlook on life, world view and value system; deliberately exaggerating the ignorance of ethnic groups or the dark side of society;
- (6) Advertising religious extremism, stirring up ambivalence and conflicts between different religions or sects, and between believers and non-believers, causing disharmony in the community;
- (7) Advocating harm to the ecological environment, animal cruelty, killing or consuming nationally protected animals;
- (8) Showing excessive drinking, smoking and other bad habits;
- (9) Opposing the spirit of law.<sup>38</sup>

The regulations are long and appear rather strict and constraining on filmmakers. The most daunting element of the code is the regulation “opposing the spirit of law,” which creates a broad all-encompassing element giving SARFT sweeping authority to basically disapprove anything in their discretion. SARFT also focuses its attention on disallowing unconventional storylines, such as “unpunished breaches of morality, gestures towards the supernatural, and any work ‘distorting value judgment between truth and lies, good and evil, beauty and ugliness, righteous and unrighteous.’”<sup>39</sup> In a directive issued in 2009, SARFT deemed violence, pornography, and content which

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<sup>38</sup> Cain, *supra* note 24.

<sup>39</sup> *SARFT 101: The Rules of the Censorship Game*, D GENERATE FILMS, <http://dgeneratefilms.com/critical-essays/sarft-101-the-rules-of-the-censorship-game> (last visited Dec. 1, 2015).

may “incite ethnic discrimination or undermine social stability,” as prohibited content for online media.<sup>40</sup> Additionally, with little explanation, SARFT chose to limit the number of historical dramas permitted in 2012, especially those that involved time travel back to a Chinese historical era, resulting in cancellation of many previously approved and planned films.<sup>41</sup> The restrictions may have been imposed because the CPC does not welcome assembly or resistance. The CPC is especially concerned with government opposition, and knows that films allow immediate dissemination of ideas to the public.<sup>42</sup> Unlike the United States’ liberal standard that affords citizens the freedom to create any film, regardless of the controversy, SARFT takes the opposite approach: stifling creativity in order to protect the ideals and values of the CPC.

Analyst Robert Cain posits that China’s censorship may stem from traditional Chinese ideals of Confucian morality, political stability, and social harmony.<sup>43</sup> Deeper analysis of Chinese regulations illuminates some of CPC’s principles, and may suggest that although seemingly oppressive compared to the U.S., the two sets of regulations are somewhat similar in theory. Prohibitions that are rather relatable to the US are: “(3) showing obscene and vulgar content...” and “(7) advocating harm... to animal cruelty.” In the U.S., the First Amendment affords protection to filmmakers unless the content created is obscene<sup>44</sup>; similarly, part (3) of SARFT’s guidelines also prohibits any content that is “obscene”. Similar to SARFT’s concern for animal cruelty in part (7), President Obama signed the “Animal

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<sup>40</sup> Vivian Wu, *Censors Strike at Internet Content After Hit Parody*, SOUTH CHINA MORNING POST (Apr. 3, 2009, 12:00 AM), <http://www.scmp.com/article/675609/censors-strike-internet-content-after-hit-parody>.

<sup>41</sup> See Edward Wong, *China: TV Limits May Hit the Web*, N.Y. TIMES (Jan. 6, 2012), [http://www.nytimes.com/2012/01/07/world/asia/china-tv-limits-may-hit-the-web.html?\\_r=0](http://www.nytimes.com/2012/01/07/world/asia/china-tv-limits-may-hit-the-web.html?_r=0).

<sup>42</sup> See Jaafar & Busch, *supra* note 23.

<sup>43</sup> Cain, *supra* note 24.

<sup>44</sup> See 18 U.S.C. §§ 1460-70 (2012).

Crush Video Prohibition Act of 2010,”<sup>45</sup> which prohibits interstate commerce in animal crush films to try and limit the spread of animal cruelty. The comparison suggests both the U.S. and China share similar concerns. Thus, it may be important to understand the values and cultural beliefs of the CPC, as well as the people in China, before one criticizes Chinese regulations. That being said, it is undeniable that SARFT’s code creates considerably more restrictions than U.S. regulations. This stifles filmmakers in their capacity to produce inventive and provocative films, if they wish to distribute in China.

Following the government’s recent initiatives for economic reform, SARFT relaxed its authority over censorship by delegating some responsibility to lower branches of government.<sup>46</sup> SARFT previously held the authority to deliver final approval or rejection of all films that attempted to distribute in the country, either foreign or domestic.<sup>47</sup> Since 2010, SARFT has outsourced or “released the regulation” of domestic films to local bureaus.<sup>48</sup> It continues to hold authority to approve foreign films, co-productions, or any domestic films dealing with “important revolutionary, historic themes and literature.”<sup>49</sup>

## II. GAINING ACCESS TO CHINA’S FILM MARKET

There are two ways for films produced by foreign studios to access China’s markets: (1) the traditional quota system,<sup>50</sup> and (2) the alternative co-production method.<sup>51</sup>

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<sup>45</sup> 18 U.S.C. § 48 (2010).

<sup>46</sup> Lilian Lin, *China is Decentralizing Movie Censorship. But Will it Make a Difference?*, WALL ST. J. (Mar. 17, 2014), <http://blogs.wsj.com/chinarealtime/2014/03/17/china-is-decentralizing-movie-censorship-but-will-it-make-a-difference/>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Robert Cain, *Handicapping China’s 2012 Import Quota Slot Derby*, CHINA FILM BIZ (Oct. 22, 2012), <http://chinafilmbiz.com/2012/10/22/handicapping-chinas-2012-import-quota-slot-derby/>. See also Cain, *supra* note 24.

<sup>51</sup> See Robert Cain, *How (and Why) to Qualify Your Film as an Official Chinese Co-production*, CHINA FILM BIZ (Dec. 18, 2011), <http://chinafilmbiz.com/2011/12/18/how-and-why-to-qualify-your-film-as-an-official-chinese-co-production/>. “Co-productions are the only type of film foreign producers can participate in that are not

Despite the 2012 quota increase, it is still difficult for foreign films to enter the Chinese market using the quota system. For this reason, a new trend<sup>52</sup> has emerged, and foreign production studios are now forming joint ventures with local Chinese companies and co-producing films. The joint venture business model eliminates the restriction of the 34-film quota. However, the burden of meeting China's censorship standards still remains.

On its face, the joint venture business model appears to be a simplified and mutually beneficial model for both parties. Chinese filmmakers benefit from working with Hollywood filmmakers by gaining knowledge and experience with western methods and new techniques. Hollywood films benefit by bypassing the quota system and affording a seemingly more secure chance of entering into China's market. However, this outlook may be deceptive for Hollywood filmmakers. Indeed, although co-produced films may not implicate the quota system, China's government grants this privilege in exchange for strict censorship of film content, ensuring government control over all films entering China.

#### A. THE QUOTA SYSTEM

The quota system is the traditional method by which a foreign film may enter China's film market. This method involves following the rules, completing the paperwork, and hoping the film obtains the government's approval before the quota is filled.<sup>53</sup> Filmmakers are required to submit their screenplay or finished film to the Censorship Board for review and comment, they then hope for a response within 15 days, sometimes longer. The Censorship Board may provide suggestions for altering and cutting the film, or altogether reject it at this stage. Filmmakers must then make the necessary

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subject to import quotas and that return to the foreigner a "fair" share—that is, around 40 percent—of the box office receipts." *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> See Firedeep & Cain, *supra* note 26; see also Firedeep & Robert Cain, *How China's Movie Distribution System Works, Part 2*, CHINA FILM BIZ (Nov. 9, 2012), <http://chinafilmbiz.com/2012/11/09/how-chinas-movie-distribution-system-works-part-2/>.

changes and resubmit the film. The edited version eventually reaches SARFT, which reviews the changes and makes an approval decision.<sup>54</sup>

Films not gaining Censorship Board approval are typically those films that did not consider China's "suitable for all ages" criteria. The Censorship Board is able to control the content in the approval process, sometimes severely quashing such creative liberties before the film enters China. Even if SARFT approved a film as "suitable for all audiences," if 34 films had already been admitted, the film would have no chance to enter China's film market. This traditional method of producing is not only risky, but it is also ill advised, considering how profitable it is to distribute in China.<sup>55</sup>

#### B. CO-PRODUCED CHINESE FILMS

An alternative method to enter China's film market, and one that has become increasingly popular in recent years, is to partner with a Chinese company to co-produce a "Chinese" film.<sup>56</sup> This process entails a multitude of efforts, but analysis suggests this method ultimately provides a higher chance of being rewarded with distribution throughout China. Joining in co-production with a Chinese company bypasses the quota limitation at the cost of requiring extra procedures,<sup>57</sup> to ensure the film is as equally Chinese, as it is foreign creative-wise, production-wise, and profit-wise.<sup>58</sup> Censorship oversight is arguably greater for co-productions than for a foreign film attempting to enter through the quota system, but foreign studios voluntarily welcome the guidance because of its immense benefits.

The CFCC lists certain procedures for both the Chinese company and the foreign company in creating a co-produced

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<sup>54</sup> See Cain, *supra* note 24.

<sup>55</sup> *Id.*

<sup>56</sup> Firedeep & Cain, *supra* note 53.

<sup>57</sup> See *About Co-Productions*, *supra* note 28 (explaining the procedural requirements for a Sino-Foreign Co-Production).

<sup>58</sup> *Id.* Joint productions are regarded as domestic films and can be directly released in Mainland China after it is completed and passes censorship review. *Id.* See also Cain, *supra* note 51. Joint productions are the only types exempted from import quotas. *Id.*

film.<sup>59</sup> First, the Chinese company, which is either a state-run company like CFGC or a private company with co-production credentials, and the foreign party should sign a co-production agreement or letter of intent.<sup>60</sup> The Chinese company should then serve as a liaison to validate that the film is a “Chinese” film.<sup>61</sup> Before production, the Chinese party should submit the film script to the provincial film authority, or the CFCC for preliminary comments.<sup>62</sup> After CFCC’s preliminary review, the script and necessary documents are sent to SARFT for approval and issuance of a co-production permit.<sup>63</sup> Once the film acquires the permit, the CFCC creates a signed agreement amongst all parties.<sup>64</sup> At this point, the film is green-lit for production.<sup>65</sup> However, this does not mean that the film is guaranteed distribution in China upon completion.

There are certain requirements the film must meet during production in order to justify its title as a co-production.<sup>66</sup> At least one-third of the crew must be Chinese, Chinese actors should be included in the cast in vital roles, and producers need to maintain a close relationship with CFCC throughout the entire process.<sup>67</sup> The Chinese party must also file to CFCC a list of the

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<sup>59</sup> See Sino-Foreign Cooperation in Film Production Regulations (中外合作摄制电影片管理规定) (Decree No. 31) (promulgated by the St. Admin. of Radio, Film and Television) (Jul. 6, 2004), <http://www.cfcc-film.com.cn/polic/content/id/22.html>. See also *About Co-Productions*, *supra* note 28.

<sup>60</sup> See Sino-Foreign, *supra* note 59, at Article IX. See also Cain, *supra* note 51.

<sup>61</sup> Sino-Foreign, *supra* note 59; see also Cain, *supra* note 51.

<sup>62</sup> See Sino-Foreign, *supra* note 59, at Article X; see also Cain, *supra* note 51.

<sup>63</sup> *Id.*

<sup>64</sup> See Sino-Foreign, *supra* note 59; see also Cain, *supra* note 51.

<sup>65</sup> See Cain, *supra* note 51.

<sup>66</sup> *Id.*

<sup>67</sup> See Sino-Foreign, *supra* note 59, at Article XIII. See also Cain, *supra* note 51. “This hiring provision is extremely vague—the term “major actors” is often interpreted to mean all personnel of any kind.” *Id.*

film's talent from abroad, file for entry visas for the cast and crew, and clear customs for any equipment, facilities, film negatives, or other production goods.<sup>68</sup> Members of the Censorship Board keep a close eye on every project to ensure that the filmmakers are in compliance at every step.<sup>69</sup>

Even post-production is controlled by CFCC. Once an English title has been determined, it needs to be filed with the CFCC for approval.<sup>70</sup> Moreover, if post-production and film development is to be conducted outside China, an application of such action needs to be submitted to the CFCC.<sup>71</sup> The completed film must be submitted to the provincial film authority for preliminary comments, and then submitted to the CFCC, which eventually submits their comments and the film to SARFT for final approval.<sup>72</sup>

The economic benefits of co-producing are very rewarding. According to Mathew Alderson from China Law Blog, co-productions may receive approximately 38 percent of box-office revenue, as opposed to the 13-25 percent available to imported foreign films.<sup>73</sup> China also guarantees a certain return on co-produced films because they are considered domestic, and Chinese authorities require that approximately 55 percent of total box office revenue is received by domestic films.<sup>74</sup> These numbers are an important incentive for Hollywood filmmakers to seek out Chinese companies to co-produce.

#### C. BOTH METHODS REQUIRE *GUAN-XI*

Each method carries along its risks and challenges. If foreign companies desire to do business in China, they need to

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<sup>68</sup> See WIKIPEDIA, *supra* note 16.

<sup>69</sup> See Cain, *supra* note 24. Robert Cain explains, that in 2006, after filming the scenes for the day, the film crew decided to shoot an outtake that humorously mocked the issue of illegal pirating in China. Although the shot was a joke not intended to be in the movie, the Censorship Board discovered the outtake, and the following day, immediately cancelled further production of the film. *Id.*

<sup>70</sup> See WIKIPEDIA, *supra* note 16.

<sup>71</sup> See *id.*

<sup>72</sup> See Lin, *supra* note 46.

<sup>73</sup> See Dan Harris, *Hollywood Goes China*, CHINA LAW BLOG (July 10, 2012), <http://www.chinalawblog.com/2012/07/hollywood-goes-china.html>.

<sup>74</sup> *Id.*

adapt to China's preferences in business practice. Like any international business transaction, companies should welcome and respect the customs of the country in which they hope to negotiate. As New Yorker Dan Mintz explains:

We have many Chinese elements in our company [DMG Entertainment], but most important in our collaboration [between Hollywood and China] is taking time to getting to know one another through our filmmaking, through our international language, our common points. We need to make sure that our films meet the tastes of the Chinese audience. It's not enough to have the American viewpoint. We need to have the Chinese view.<sup>75</sup>

In China, foreign companies should understand the concept of *guan-xi* in order to improve their chances of getting into China's film market. *Guan-xi* literally translates to mean "connection," and is defined by the Oxford Dictionary as "the system of social networks and influential relationships that facilitate business and other dealings."<sup>76</sup> According to the Los Angeles Chinese Learning Center, obtaining the right *guan-xi* minimizes "risks, frustration, and disappointments when doing business in China."<sup>77</sup> The concept is essentially a "you scratch my back, I'll scratch yours" type of philosophy, such that a former party's favor will be remembered and paid back for by a latter party. *Guan-xi* is a deeply rooted, yet unwritten custom in China that applies in almost all relationships and not only between business

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<sup>75</sup> Jonathan Landreth, *China Co-Producers Share Views on the Future of the Business*, THE HOLLYWOOD REPORTER (June 13, 2011), <http://www.hollywoodreporter.com/news/china-producers-share-views-future-200797>.

<sup>76</sup> *Guanxi*, OXFORD DICTIONARY, [http://www.oxforddictionaries.com/us/definition/american\\_english/guanxi](http://www.oxforddictionaries.com/us/definition/american_english/guanxi) (last visited Jan. 6, 2016).

<sup>77</sup> *Guanxi*, INVESTOPEDIA, <http://www.investopedia.com/terms/g/guanxi.asp> (last visited Jan. 6, 2016).

partners, but family members as well.<sup>78</sup> *Guan-xi* relationships should be formed between the foreign company and Chinese government in order to connect with, and gain access into the industry.

*Guan-xi* resonates with both the traditional quota method and the alternative co-production method. Choosing to go through the quota system is a daunting and nearly impossible task if studios choose to navigate independently without the aid of a Chinese representative. At the macro level, any film that tells a story in a light favorable to Chinese audiences, and that pleases the Censorship Board, is arguably “scratching China’s back” in order to gain entry into its market. It may be speculated, or assumed that there are underground relationships with government members being formed in order to strengthen the likelihood of a film being approved.<sup>79</sup>

With co-productions, *guan-xi* is much more evident. The foreign company provides the Chinese with a complete film production. By filming at least one third of the film in China, foreign studios show the Chinese how they make films, introduce new technology, and share unique techniques and dynamic styles used in the production process.<sup>80</sup> The co-production also promotes Chinese talent and topography to gain exposure and stardom in box offices outside of China. As a result of such “back scratching,” the Censorship Board provides the foreign studio with higher returns in revenue, and a greater likelihood of approval for wide distribution throughout China.<sup>81</sup> Foreign companies should familiarize themselves with the correct companies and the correct people to talk to in order to establish *guan-xi*.

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<sup>78</sup> Lee C. Simmons & James M. Munch, *Is Relationship Marketing Culturally Bound: A Look at Guanxi in China* (1996), in NA - Advances in Consumer Research Volume 23, eds. Kim P. Corfman and John G. Lynch Jr., Provo, UT: ASSOCIATION FOR CONSUMER RESEARCH, Pg. 92-96, available at <http://www.acrwebsite.org/volumes/7922/volumes/v23/NA-23>.

Although personal relationships may exist without *guanxi*, business relationships are difficult for Chinese people to express in the absence of a *guanxi* relationship.

<sup>79</sup> *Id.*

<sup>80</sup> See Sino-Foreign, *supra* note 59, at Article XIII. See also Cain, *supra* note 51.

<sup>81</sup> Harris, *supra* note 73.

#### D. HOW TO ESTABLISH *GUAN-XI*

There is an array of Chinese based companies with which foreign filmmakers may contract to create co-productions or bypass the quota system.<sup>82</sup> One trend is for Hollywood agents, managers, or business executives to relocate to China to establish an expertise in China's business practices and film industry so they can consult in assisted productions, or become the "Chinese company" that satisfies the criteria for co-productions. Robert Cain, Dan Mintz, the Huayi brothers, and Oriental Dreamworks are four such examples of the relocation trend.

##### *1. Robert Cain of Pacific Bridge Pictures*

Robert Cain is an example of an expert who consults with Hollywood studios to assist productions in China. Cain is a producer consultant at Pacific Bridge Pictures, a contributive writer for ChinaFilmBiz.com, and he guides filmmakers through China's system.<sup>83</sup> He moved to China in 1987 and has since conducted business there, including helping to finance and distribute films such as *The Usual Suspects*, *Blade 2*, and *Cabin Fever*.<sup>84</sup> He emphasizes the heightened interest in seeking out official co-productions because "they can bypass the Chinese quota system and bring their distributors a 43 percent share of ticket sales, rather than the 25 percent allotted to foreign-made films."<sup>85</sup> As a local living in China, Cain is a resource who has developed a deep understanding of the industry, and has written dozens of articles from China's perspective that help Hollywood producers navigate through the process.

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<sup>82</sup> See Anousha Sakoui, *China Has Hollywood's Attention. It Wants More*, BLOOMBERG BUSINESS (Sept. 4, 2015, 9:45 AM), <http://www.bloomberg.com/news/articles/2015-09-04/china-has-hollywood-s-attention-it-wants-more>. Such companies include: Alibaba, Oriental Dreamworks, Disney, Viacom. *Id.*

<sup>83</sup> See *About Rob Cain*, CHINAFILMBIZ, <http://chinafilmbiz.com/about/> (last visited Jan. 6, 2016).

<sup>84</sup> See *id.*

<sup>85</sup> Cieply & Barnes, *supra* note 36.

## 2. *Dan Mintz and Dynamic Marketing Group Entertainment*

Dynamic Marketing Group Entertainment (DMG Entertainment), which has been very successful in creating a liaison relationship between Hollywood and China, is a Beijing based production company established in the 1990s that is best known for co-producing *Iron Man 3* (2013), *Looper* (2012), and *Transcendence* (2014).<sup>86</sup> DMG Entertainment has also been very successful aiding in the distribution of Hollywood blockbusters, such as *Twilight* and *Resident Evil 4* in China.<sup>87</sup>

Although DMG Entertainment is a Beijing company, CEO Dan Mintz, a New York native, provides a very approachable space for Hollywood filmmakers.<sup>88</sup> Mintz has been named Mr. China by *Forbes* magazine for his expertise in China's film industry, and for his tremendous success in the China film market, despite his foreign status.<sup>89</sup> Mintz's partners at DMG Entertainment include Bing Wu,<sup>90</sup> a prominent Chinese producer, and Peter Xiao, a financial expert of China's market.<sup>91</sup>

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<sup>86</sup> See Patrick Brzeski, *DMG's Dan Mintz on How to Work With China, Remaking 'Point Break' and Johnny Depp's Next Film*, THE HOLLYWOOD REPORTER (Nov. 25, 2013, 11:00 AM), <http://www.hollywoodreporter.com/news/dmgs-dan-mintz-how-work-659132>; see also Clifford Coonan, *DMG's Dan Mintz: Hollywood's Man in China*, VARIETY (June 5, 2014), <http://variety.com/2013/film/news/dmgs-dan-mintz-hollywoods-man-in-china-1200492311/>; see also Anousha Sakoui, *China's DMG Entertainment Seeks to Expand in Hollywood*, BLOOMBERG BUSINESS (Sep. 16, 2014), <http://www.bloomberg.com/news/articles/2014-09-16/china-s-dmg-entertainment-seeks-to-expand-in-hollywood>; see also *Talking Business*, *supra* note 8.

<sup>87</sup> See *Talking Business*, *supra* note 8.

<sup>88</sup> See Simon Montlake, *Hollywood's Mr China: Dan Mintz*, DMG, FORBES (Aug. 29, 2012), <http://www.forbes.com/sites/simonmontlake/2012/08/29/hollywoods-mr-china-dan-mintz-dmg/>.

<sup>89</sup> See *id.*

<sup>90</sup> See Bing Wu, IMDB, <http://www.imdb.com/name/nm0082895/> (last visited Jan. 6, 2016).

<sup>91</sup> See Jamie Bryan, *The Mintz Dynasty*, FAST COMPANY, <http://www.fastcompany.com/56104/mintz-dynasty> (last visited Jan. 6, 2016). An agent from Creative Artist's Agency in Hollywood says, "Let's put it this way . . . the Chinese market is driven by relationships,

Xiao is not only a “financial guy,” his family is connected to the military, which provides access to those at the “highest level of relationships.”<sup>92</sup> As a resident of China for over two decades, Mintz understands Chinese culture and understands the importance of *guan-xi*.<sup>93</sup> In a statement to FastCompany.com, Mintz explains:

China has become a modern country, but we're still talking about 5,000 years of history. It's not like they go around quoting Confucius every five minutes, but the Chinese inherently think in terms of building a strong power base for the future, because if you crumble under the pressure of China, they will have helped you for nothing. So they've got to know two things: 1) that you understand how to build relationships in China, because it's done very differently than back home, and 2) that you have the juice, the strength, the contacts, and the understanding to be able to withstand the test of time.<sup>94</sup>

The second element tacks a different concept onto *guan-xi*, which Mintz calls *shi-li*.<sup>95</sup> *Shi-li* emphasizes motivation and drive to produce good work; a distinction Mintz insists is required in modern day China, as compared to old China.<sup>96</sup>

### 3. *Huayi Brothers*

According to Hollywood entertainment sources, the Huayi Brothers Media Corporation (Huayi Brothers) holds the

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and the relationships that Dan and his firm don't have are probably the only ones you don't need." *Id.*

<sup>92</sup> *Id.* Russell Flannery, *DMG's Backdoor Listing Turns Peter Xiao into China's Latest Billionaire*, FORBES (Nov. 16, 2014), <http://www.forbes.com/sites/russellflannery/2014/11/16/dmgs-backdoor-listing-turns-peter-xiao-into-chinas-latest-billionaire/>.

<sup>93</sup> See Bryan, *supra* note 91.

<sup>94</sup> *Id.*

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

record as China's largest privately held film firm to date.<sup>97</sup> The company is changing the landscape of the business by showing that Chinese companies are now more welcoming and able to promise long-term deals with foreign companies. As of April 2015, the company officially signed a deal to partner with STX Entertainment for three years, to produce 12 to 15 projects per year.<sup>98</sup> This does not mean the filmmaking process will be any easier for STX Entertainment. They will still need to ensure the Censorship Board is satisfied at every step. Nevertheless, signing a three-year business deal with the Huayi Brothers is significant enough to provide STX Entertainment with the comfort of knowing they have established *guan-xi* with a Chinese company for the long-term.<sup>99</sup>

#### 4. *Oriental DreamWorks*

Hollywood studios are also shifting their business practices to China by creating joint ventures with Chinese companies, thereby satisfying the co-production requirement. Oriental DreamWorks is a recently opened joint venture based in Shanghai, which includes DreamWorks Animation, China Media Capital, Shanghai Media Group, and Shanghai Alliance

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<sup>97</sup> See Anita Busch & Nancy Taraglione, *STX Entertainment Pacts with China's Huayi Bros For 12-15 Pics Per Year*, DEADLINE HOLLYWOOD (Apr. 1, 2015), <http://deadline.com/2015/04/stx-entertainment-china-huayi-bros-produce-12-to-15-films-per-year-1201402506/>.

<sup>98</sup> See *id.*

<sup>99</sup> See *id.* Similar deals between US and Chinese companies are starting to trend. For example, Village Roadshow made a deal with Hairun Pictures on April 20, 2015. See also Ali Jaafar, *Village Roadshow Inks Five-Picture Deal With China's Beijing Hairun Pictures*, DEADLINE HOLLYWOOD (Apr. 20, 2015), <http://deadline.com/2015/04/village-roadshow-inks-five-picture-deal-with-chinas-beijing-hairun-pictures-1201412799/>. Also, former Disney Chairman Dick Cook recently embarked on his newest venture, Dick Cook Studios, with Citic Guoan Group Co. LTD., a division of the Chinese conglomerate, Citic Group. See Ali Jaafar, *Dick Cook Launches New Company with \$150 Million Investment from China's Citic Guoan*, DEADLINE HOLLYWOOD (Apr. 20, 2015), <http://deadline.com/2015/04/dick-cook-china-citic-guoan-disney-huayi-lionsgate-hunan-1201412769/>.

Investment.<sup>100</sup> The goal of Oriental DreamWorks is “to create films that are based on Chinese stories, made by Chinese people, for the Chinese people.”<sup>101</sup> This tactic is a beneficial investment because it provides DreamWorks Animation a foot in the door with China to co-produce with its partners, and bypass the strict quota system.<sup>102</sup> For example, in April 2015, DreamWorks’ *Kung Fu Panda 3* (2016) became the first animated film to ever receive official co-production status.<sup>103</sup> They initiated the process by submitting scripts to the Censorship Board in advance, and invited representatives to be present on set to guard against deviation.<sup>104</sup> Oriental DreamWorks is the prime example of bringing foreign studios and businesses into China to create strong *guan-xi* in a mutually beneficial relationship between

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<sup>100</sup> See *Contact Information*, ORIENTAL DREAMWORKS, <http://www.oriental-dreamworks.com/contact-information> (last visited Jan. 7, 2016).

<sup>101</sup> Interview with an insider at Oriental DreamWorks, publicist, at DreamWorks Studios (Mar. 2015); see also Clarence Tsui, ‘*Kung Fu Panda 3*’ to Begin Production in August, THE HOLLYWOOD REPORTER (June 17, 2013, 9:13 AM), <http://www.hollywoodreporter.com/news/kung-fu-panda-3-begin-569896>.

<sup>102</sup> Patrick Frater, *Live-Action Features, Animated TV, Reality Shows Added, Set to Accelerate Income*, VARIETY (Sep. 16, 2013), <http://variety.com/2013/film/asia/oriental-dreamworks-rewrites-its-china-production-strategy-1200601504/>.

<sup>103</sup> See Daniel Paul, *Future American-Chinese Blockbuster Kung Fu Panda 3 Gets Same Release Date in US and China*, Jan. 29, 2016, SHANGHAIIST (Nov. 5, 2015, 2:30 PM), [http://shanghaiist.com/2015/11/05/kung\\_fu\\_panda\\_3\\_release\\_date.php](http://shanghaiist.com/2015/11/05/kung_fu_panda_3_release_date.php). *Kung Fu Panda 3* is set to be the first major American animated feature co-produced with China and is the result of collaboration between DreamWorks and its Chinese counterpart Oriental DreamWorks. See also Tsui, *supra* note 101.

<sup>104</sup> Cieply & Barnes, *supra* note 36. “[T]here is an unofficial expectation that the government’s approved version of the film will be seen both in China and elsewhere, though in practice it is not unusual for co-productions to slip through the system with differing versions, one for China, one for elsewhere in the world.” *Id.*

DreamWorks Animation and China's film industry.

Creating co-productions with companies, such as those listed above, increases the odds that a film will be approved for distribution in China, but it does not guarantee that privilege. Even with the help of such companies, producers should be as courteous and cooperative with the Censorship Board as possible. This entails submitting scripts prior to shooting, altering scripts or storylines to better suit the viewpoints of the Chinese, allowing Chinese bureaucrats on set during filming to observe the production, and inviting their critiques throughout the process. When the potential reward for a co-production is so profitable, it is wise to ensure a strong *guan-xi* relationship at every aspect of the filmmaking process to ensure the film is approved.

### III. EFFECTS AND CONSEQUENCES OF CHINA'S CENSORSHIP SYSTEM

It is difficult to pinpoint the exact motivations behind China's emphasis on censorship, but many critics have commented on the issue. Robert Cain attempts to explain:

Censorship [in China] is designed not only to protect the innocent, but even more to protect the status quo of authoritarian rule. No distinction is made between children and adults; the government holds the ultimate right to decide what content is "appropriate" and therefore available for viewing, irrespective of the viewer's age.<sup>105</sup>

By maintaining this sort of power over the content distributed in China, the government can control—or at the very least attempt to control—the attitudes of the Chinese audience.

#### A. THE 2012 FOREIGN FILM BLACKOUT AND CHINA'S URGE TO PROMOTE DOMESTIC ECONOMIC GROWTH

The Censorship Board has an interest and a desire to promote the profits of locally produced films. China, like many countries, often fears the potential for Hollywood films to swallow up the whole Chinese market to the detriment of Chinese films.<sup>106</sup> In an attempt to address this issue, SARFT

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<sup>105</sup> SARFT 101, *supra* note 39.

<sup>106</sup> See Stanley Rosen, *How Hollywood and the Chinese Film Industry are Eyeing Each Other Off*, THE SYDNEY MORNING HERALD

imposed a three-month summer “domestic film protection” period in 2012, which created a blackout of foreign films, thereby providing local Chinese films and Chinese language co-productions the opportunity to succeed in the market without competition against outside films.<sup>107</sup> Initial results appeared promising. The Chinese film *Painted Skin: Resurrection* (2012) received the highest grossing debut ever for a Chinese language film during the blackout.<sup>108</sup> However, the success did not last long. China’s box offices suffered one of the worst losses of box office revenues in history, and audience attendance diminished drastically.<sup>109</sup>

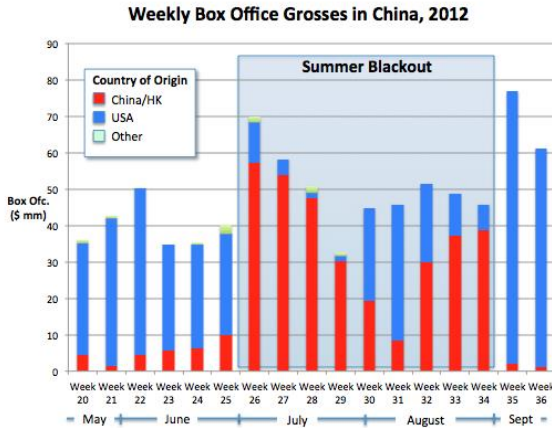
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(June 5, 2015), <http://www.smh.com.au/entertainment/how-hollywood-and-the-chinese-film-industry-are-eyeing-each-other-off-20150603-ghfly9.html#ixzz3vDBHYs3f> (explaining that despite the quota increase since 2012, the Chinese government enacts various administrative measures to try to ensure domestic films gain at least 50 percent of the market).

<sup>107</sup> Bilge Ebiri, *China’s Film Industry Is Gaining on Hollywood*, BLOOMBERG (July 30, 2015), <http://www.bloomberg.com/news/articles/2015-07-30/china-s-homegrown-film-industry-gains-on-hollywood>. There are three blackouts annually—one during the Lunar New Year, or spring festival period in February; one in mid-to-late summer, after the first wave of Hollywood summer releases open in China; and one in December. *Id.*

<sup>108</sup> Robert Cain, *6 Key Lessons from SARFT’s Foreign Film Blackout*, INA GLOBAL (Oct. 25, 2012), <http://www.inaglobal.fr/en/cinema/article/6-key-lessons-sarft-s-foreign-film-blackout> (last updated Nov. 6, 2012) [hereinafter *6 Key Lessons*].

<sup>109</sup> *See id.* (stating, “July was down by 9 percent, and August was down by 8 percent, even though China has thousands more screens operating now than it did a year ago.”).



The chart depicts the sudden increase and decline of China and Hong Kong films during the Summer Blackout. In addition, the chart depicts the non-existence of USA films, which may have contributed to China's domestic success and decline, and the resulting change upon USA film reintroduction.

SARFT insists its intention was to promote domestic films, and not necessarily to stifle the profits of Hollywood movies.<sup>110</sup> However, as a result of the blackout, tent-pole films, such as *The Amazing Spider-Man* and *The Dark Knight Rises*, which initially had different opening dates, were released simultaneously, effectively forcing the two films to compete against each other and "crush" each other's revenues.<sup>111</sup> The same event occurred with animated feature films *Ice Age: Continental Drift* and *The Lorax*, which opened in Chinese theatres jointly in the same weekend.<sup>112</sup> Nevertheless, both films produced global profits and were successful. *Ice Age* grossed over \$72 million, becoming the second-highest total ever for an animated feature film in China.<sup>113</sup> Moreover, all of these films, plus many other foreign films, are listed as among China's

<sup>110</sup> See *id.*

<sup>111</sup> See *id.* See also Ben Fritz et al., *China Blockbusters Face off on Same Days*, L.A. TIMES (Aug. 28, 2012), <http://articles.latimes.com/print/2012/aug/28/entertainment/la-et-ct-china-movies-20120828>.

<sup>112</sup> 6 *Key Lessons*, *supra* note 108.

<sup>113</sup> *Id.*

twelve top-grossing films of the year in 2012.<sup>114</sup>

Robert Cain suggests the blackout revealed several issues with China's film industry, which leaves room for improvement.<sup>115</sup> First, it revealed that Chinese films do not meet the expectations of domestic Chinese audiences as successfully as Hollywood films. Cain states, "[o]nly *Painted Skin 2* reached that level [\$75-100 million], and no other Chinese summer release earned even \$40 million. More than half the Chinese films that opened during the blackout earned less than \$1 million."<sup>116</sup> Despite SARFT's efforts, the blackout was not as successful as it hoped, due to the lack of ability by the Chinese to produce films at the same level as Hollywood. Second, the blackout deprived Chinese audiences of Hollywood films, which led to a greater demand and anticipation for their eventual release. The week that *Spider-Man* and *The Dark Knight* opened in theatres was the second-highest grossing week in China's history, with attendance nearly doubling from the week before.<sup>117</sup>

Cain predicted that blackouts would be a recurring "solution" by SARFT, and by extension, the CPC would continue to control the economy of the film industry without violating any WTO agreements.<sup>118</sup> Blackouts may be the best way for regulators to balance their desire to produce a successful local film industry, while still preserving international obligations.<sup>119</sup> Most recently, China again implemented a film

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* Cain suggests that China's films czars are determined to protect the market for local Chinese films, largely for political reasons. It's extremely irksome to the Communist Party propagandists that Chinese moviegoers strongly prefer Hollywood movies with their "corrupt" western values over censored and 'politically correct' Chinese films. Blackouts seem to be the most effective method for the party to ensure that they retain some cultural influence without breaking their WTO commitments. *Id.*

<sup>119</sup> *Id.*

industry blackout during the summer of 2015.<sup>120</sup> Because of its success, SARFT will likely make blackouts recurring to boost local film sales.<sup>121</sup>

Despite the blackouts, the Internet is a force that remains a concern for the Chinese Censorship Board. The limit on foreign films in Chinese box offices causes Chinese audiences to redirect to video-streaming sites to illegally pirate the films.<sup>122</sup> It may be speculated that the blackout encouraged more illegal piracy and streaming by Chinese audiences.<sup>123</sup>

#### IV. PATTERNS OF THE CENSORSHIP BOARD'S DECISIONS

The Censorship Board does not specify the criteria it seeks when approving films for release into China's market. An analysis of domestic and foreign films, which attempted to distribute in China, establishes a pattern to better explain the government's decisions.

##### A. FILMS NOT RELEASED IN CHINA

A review of films that were not distributed in China within the past decade suggests the Censorship Board has logical reasons for rejecting a film.<sup>124</sup> The following films did not release in China for a wide range of reasons.

##### 1. *Non Co-Produced Films*

*Farewell My Concubine* (1993) was a domestically

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<sup>120</sup> Robert Cain, *China's National Summer Blackout is a Roaring Success*, FORBES (Aug. 1, 2015), <http://www.forbes.com/sites/robccain/2015/08/01/chinas-national-summer-blackout-is-a-roaring-success/>.

<sup>121</sup> *Id.*

<sup>122</sup> See Lin, *supra* note 46.

<sup>123</sup> See Oliver Ting, *Pirates and the Orient: China, Film Piracy, and Hollywood*, 14 JEFFREY S. MOORAD SPORTS L.J. 399, 414, n. 70 (2007), <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1086&context=mslj> (last visited Dec. 1, 2015).

<sup>124</sup> See, e.g., *List of Films Banned in China, Hong Kong and Taiwan*, IMDB (Oct. 13, 2014), <http://www.imdb.com/list/ls077956148/> (last visited Jan. 11, 2016); see also, e.g., *List of Banned Films*, WIKIPEDIA, [http://en.wikipedia.org/wiki/List\\_of\\_banned\\_films#People.27s\\_Republic\\_of\\_China](http://en.wikipedia.org/wiki/List_of_banned_films#People.27s_Republic_of_China) (last visited Jan. 11, 2016).

produced Chinese film banned by the Censorship Board.<sup>125</sup> The film followed the lives of two Peking Opera actors through five turbulent decades of recent Chinese history.<sup>126</sup> Despite attaining initial approval for a censored version to distribute in China, authorities abruptly halted its distribution only weeks prior to its arranged release, without offering an explanation.<sup>127</sup> Most disheartening was the fact that the film was the first Chinese film to win the top prize at the Cannes International Film Festival, along with many other awards when it released in countries such as the U.S.<sup>128</sup> The Censorship Board appeared concerned for parts of the film that dealt with homosexuality and suicide, during the 1977 Communist period under the rule of current Chinese leaders, such as Deng Xiaoping.<sup>129</sup>

*The Departed* (2006) was a Hollywood film banned in China, despite being a remake of the Hong Kong film, *Infernal Affairs* (2002).<sup>130</sup> The Censorship Board told the Hong Kong distributors, Media Asia Entertainment, that the film was “unsuitable for Chinese audiences, though it gave no reason.”<sup>131</sup> This film is interesting for at least two reasons. First, the film was an adaptation of a Chinese film, leading some to assume the film would easily be approved. Unlike the original, however, *The Departed* included an additional subplot involving a crime

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<sup>125</sup> *Banned Mainland Films*, HKFILMS.150M.COM, <http://hkfilms.150m.com/Chinese/bannedmainlandfilms> (last visited Jan. 11, 2016).

<sup>126</sup> *Id.*

<sup>127</sup> The film was rated R in the US. See *Farewell My Concubine*, IMDB, <http://www.imdb.com/title/tt0106332/> (last visited Dec. 1, 2015).

<sup>128</sup> Nicholas D. Kristof, *China Bans One of its Own Films; Cannes Festival Gave it Top Prize*, N.Y. TIMES (Aug. 4, 1993), <http://www.nytimes.com/1993/08/04/movies/china-bans-one-of-its-own-films-cannes-festival-gave-it-top-prize.html>.

<sup>129</sup> *Id.*

<sup>130</sup> ‘*Departed*’ Banned from China Theaters, USA TODAY (Jan. 18, 2007), [http://usatoday30.usatoday.com/life/movies/news/2007-01-18-departed-china\\_x.htm](http://usatoday30.usatoday.com/life/movies/news/2007-01-18-departed-china_x.htm).

<sup>131</sup> *Id.* The film was Rated R in the US. *The Departed*, IMDB, <http://www.imdb.com/title/tt0407887/> (last visited Dec. 1, 2015).

boss who sold stolen missile-guidance microprocessors to the Chinese government.<sup>132</sup> This plot undoubtedly upset the Censorship Board. An official told reporters:

There is no chance *The Departed* will be shown in mainland [China] cinemas because the US side declined to change a plot line... That part of the plot is definitely unnecessary. The regulators just cannot understand why the movie wanted to involve China. They can talk about Iran or Iraq or whatever, but there's no reason to get China in.<sup>133</sup>

Second, the film was rejected even before it was submitted to the Censorship Board for review.<sup>134</sup> This example emphasizes the CPC's sensitivities towards corruption, and portraying China in a negative light. Despite the ban in Chinese markets, the film performed well in other box offices, earning approximately \$250 million worldwide.<sup>135</sup>

*Memoirs of a Geisha* (2005) was a Hollywood film that was banned, despite starring Chinese actresses Zhang Ziyi and Gong Li.<sup>136</sup> The Censorship Board feared that a portrayal of Chinese as Japanese courtesans was offensive to Chinese viewers, and could potentially produce Sino-Japanese tensions.<sup>137</sup> The decision to reject this film for distribution may reasonably be concluded as politically motivated due to national security concerns.

*Pirates of the Caribbean: Dead Man's Chest* (*Pirates II*) (2006) was a Hollywood film banned in China, despite the franchises' earlier success getting *Pirates of the Caribbean: The*

<sup>132</sup> Shu-Ching Jean Chen, *Scorsese's China Problem*, FORBES (Jan. 1, 2007), [http://www.forbes.com/2007/01/23/scorsese-china-movies-face-lead-cx\\_jc\\_0123autofacescan02.html](http://www.forbes.com/2007/01/23/scorsese-china-movies-face-lead-cx_jc_0123autofacescan02.html).

<sup>133</sup> *'The Departed' Banned in China?*, HOLLYWOOD.COM, <http://www.hollywood.com/news/movies/3609368/the-departed-banned-in-china?page=all> (last visited Dec. 1, 2015).

<sup>134</sup> *'Departed' Banned*, *supra* note 130.

<sup>135</sup> *Id.*

<sup>136</sup> *See Dark Knight Won't Be on Big Screen in China*, CBCNEWS (Dec. 26, 2008), <http://www.cbc.ca/news/arts/dark-knight-won-t-be-on-big-screen-in-china-1.740993>.

<sup>137</sup> *Id.*

*Curse of the Black Pearl (Pirates I)* admitted.<sup>138</sup> What is interesting about this film is that *Pirates II* was rated PG-13 in the U.S.<sup>139</sup> Although PG-13 does not equate to “suitable for all ages” in the U.S., it is a lower restriction than the R ratings of both *Farewell My Concubine* and *The Departed*. The film was still not permitted for distribution in China.<sup>140</sup> *The Shanghai Daily* reported that the ban was a result of objection to the portrayal of human cannibalism,<sup>141</sup> and ghosts that were offensive to the Chinese.<sup>142</sup> The CPC could reasonably consider the content not “suitable for all audiences,” or perhaps its implications were to the Chinese what the U.S. would consider “obscene.” However, an official from SARFT commented that the government did not ban the film; and instead, the film was never submitted to the agency for approval.<sup>143</sup>

*Pirates II* also illustrates just how risky and unpredictable it is to distribute in China. SARFT has the unequivocal power and discretion to approve or reject films without consideration to its prior decisions. SARFT follows no precedent or rule of law in exercising its decision-making authority to approve or ban films. *The Da Vinci Code* (2006), for example, was a Hollywood film initially approved for distribution in China, which SARFT abruptly overturned and

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<sup>138</sup> See *China Sinks Dead Man's Chest*, THE GUARDIAN (July 10 2006), <http://www.theguardian.com/film/2006/jul/10/news1>

<sup>139</sup> *Parents Guide for Pirates of the Caribbean: Dead Man's Chest*, IMDB, [http://www.imdb.com/title/tt0383574/parentalguide?ref\\_=tt\\_stry\\_pg#certification](http://www.imdb.com/title/tt0383574/parentalguide?ref_=tt_stry_pg#certification) (last visited Jan. 11, 2016).

<sup>140</sup> Nate Saienni, *China's Ban on Ghosts in Movies Deals Another Blow to Crimson Peak*, FILMSCHOOLREJECTS.COM (Oct. 21, 2015), <http://filmschoolrejects.com/news/crimson-peak-china-ban-ghosts.php>.

<sup>141</sup> See *China Sinks*, *supra* note 138.

<sup>142</sup> *'Pirates of the Caribbean' Banned by Chinese Censors*, JAMAICA GLEANER (July 11, 2006), <http://old.jamaica-gleaner.com/gleaner/20060711/ent/ent3.html>.

<sup>143</sup> *'Pirates of the Caribbean' Not Banned in China*, PRAVDA.RU (July 7, 2006), <http://english.pravda.ru/news/world/10-07-2006/83113-china-0/>.

forced out of cinemas only weeks after it opened.<sup>144</sup> Another example is *Django Unchained* (2013). *Django Unchained* was a unique case, where for the first time, SARFT cancelled screenings of the film on its opening day while it was being screened.<sup>145</sup> Chinese cinema-goers were watching the film in theaters, when suddenly, the broadcast stopped.<sup>146</sup> For fans of Quentin Tarantino films, it was no surprise that *Django*, like many of his other works, would be vulgar, graphic and very provocative. Apparently, this fact was overlooked by SARFT before its wide release. SARFT's authority to force an instantaneously stop of screenings throughout China quickly corrected the mistake.

## 2. Co-Produced Films

The following are examples where Hollywood studios signed co-production deals with Chinese companies, hoping to guarantee distribution in China, but still failed to gain Censorship Board approval.

For *The Mummy: Tomb of the Dragon Emperor* (*Mummy 3*) (2008), Universal Pictures Hollywood co-produced the film with Chinese company Shanghai Film Group, but approval for distribution in China was retracted and delayed.<sup>147</sup> The film was among the first projects to co-produce with a Chinese company and star Chinese superstar Jet Li.<sup>148</sup> *Mummy 3* was a historical fantasy set in 1946 about an evil Chinese emperor who is magically resurrected by the sequel's foreign

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<sup>144</sup> *Chinese Ban Da Vinci Code Movie*, BBC NEWS (June 8, 2006), <http://news.bbc.co.uk/2/hi/entertainment/5059658.stm>.

<sup>145</sup> Clarence Tsui, *Chinese Moviegoers Turn to Piracy After 'Django' Ban*, THE HOLLYWOOD REPORTER (Apr. 11, 2013), <http://www.hollywoodreporter.com/news/chinese-moviegoers-turn-piracy-django-437802>.

<sup>146</sup> *Django Unchained Opening Cancelled in China*, BBC NEWS (Apr. 11, 2013), <http://www.bbc.com/news/entertainment-arts-22105591>.

<sup>147</sup> Patrick Frater & Clifford Coonan, *China Unwraps 'The Mummy' Ban*, VARIETY (July 15, 2008), <http://variety.com/2008/film/asia/china-unwraps-the-mummy-ban-1117988983/>.

<sup>148</sup> Matt Holmes, *China Lift The Mummy 3 Ban*, WHATCULTURE.COM, <http://whatculture.com/film/china-lift-the-mummy-3-ban.php> (last visited Jan. 11, 2016).

adventurers.<sup>149</sup> The film was shot on location throughout China, and included many famous landmarks, such as The Great Wall of China and the Terracotta Army.<sup>150</sup> The Censorship Board preapproved the script with only minor changes, such as altering the name of the emperor to a fictional character that did not resemble Mao Zedong.<sup>151</sup> However, upon completion and despite initial approval, the film's release date was postponed due to its underlying plot of "White Westerners saving China."<sup>152</sup> The release delay in China caused a substantial decrease in box office profits because audiences in China resorted to pirated versions.<sup>153</sup>

*The Karate Kid* (2010) was a co-production between Sony Pictures and CFG, which was not approved by SARFT until drastic changes were made to the original version, to create a Chinese version suitable for Chinese audiences.<sup>154</sup> The film starred Chinese superstar Jackie Chan and Will Smith's son Jaden Smith, in a story about a Chinese Kung-Fu master training an African-American boy to become a martial artist in China.<sup>155</sup> The producers submitted the script to SARFT for preapproval, dutifully altered parts of the story to suit SARFT's interests, and even invited Chinese bureaucrats on set during filming to oversee its progress.<sup>156</sup> Prospects for the film's release appeared well throughout the process.<sup>157</sup> Nevertheless, upon completion,

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<sup>149</sup> Cieply & Barnes, *supra* note 36.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* Director of *The Mummy: Tomb of the Dragon Emperor* Rob Cohen states, "[a]ny movie about China made by outsiders is going to be very sensitive." *Id.*

<sup>154</sup> YIMWAN WANG, REMAKING CHINESE CINEMA: THROUGH THE PRISM OF SHANGHAI, HONG KONG, AND HOLLYWOOD 145 (2013).

<sup>155</sup> See John Horn, 'Karate Kid' Update Breaks Down Some Chinese Walls, L.A. TIMES (May 30, 2010), <http://articles.latimes.com/2010/may/30/entertainment/la-ca-karatekid-20100530>.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

the film was rejected because the film bureaucrats found the Chinese villains to be unsettling.<sup>158</sup> As a result, producers were forced to delete many scenes and severely alter the story line to better suit the preference of Chinese audiences.<sup>159</sup> First, many of the provoking school fight scenes were deleted to portray the Chinese students less violent and not as bullies.

[Lunch room of hallway fight scenes at school] were all made shorter or cut out. This drastically changed the story. In the American version, the Chinese students brutally pick on the poor foreign boy. This makes the Chinese characters look very violent and petty, viciously picking on the new guy for no apparent reason. In the edited for Chinese audiences version, the Chinese students do not fight him unless provoked . . . . Without the violence between these two fights, it makes the American look bad.<sup>160</sup>

Additionally, the Kung Fu master in the Chinese version was less of a barbaric, in-it-to-win-it coach, and more of a wise strong master.<sup>161</sup> Deleting scenes that portrayed the Kung Fu master as a bloodthirsty coach resulted in some continuity issues when dialogue of a “bad teacher” appeared.<sup>162</sup> The Chinese version placed the antagonistic Chinese in the background and altered the film to be one about self-realization, instead of a film about the rivalry between American and Chinese Kung Fu kids.<sup>163</sup> The film was not well received by Chinese audiences because of continuity issues after deleting vital scenes. Many likely flocked to illegal piracy sites to download and stream the original version.

The previously listed films suggest that simply signing a co-production deal with a Chinese company does not guarantee

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<sup>158</sup> *Id.*

<sup>159</sup> *Chinese Censoring of the Karate Kid*, SHANGDONGXIFU’S BLOG (July 24, 2010), <https://shandongxifu.wordpress.com/2010/07/24/chinese-censoring-of-the-karate-kid/> (last visited Jan. 11, 2016).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

the film will be distributed in China. Even welcoming the Censorship Board's hands-on oversight during the production process is not a guarantee. It is important to ensure the film's messages, or any subplots in the film, do not offend the Chinese people or its government, and must be from China's perspective.

## B. FILMS RELEASED IN CHINA

### 1. *Foreign Film Successfully Approved by SARFT*

*Mission: Impossible III* (2006), an American film produced by Paramount Pictures, with the assistance of CFG, chose the traditional method of entry into China through the quota system.<sup>164</sup> One-third of the film was shot in Shanghai to appease Chinese audiences.<sup>165</sup> However, it was approved for distribution only after Paramount agreed to cut parts that the Censorship Board found insulting; specifically, these were scenes of laundry hanging from washing lines and old people playing mahjong.<sup>166</sup> Although the depictions of clothes outside windows or aged game players may appear insignificant, SARFT was sensitive to the matter because they felt it painted the Chinese in a negative light.<sup>167</sup> Paramount made the correct decision to abide by SARFT's preferences, as a sign of compromise and respect to *guan-xi*. The film was very profitable.<sup>168</sup>

### 2. *Learning From Mistakes and Ensuring a China Release*

To reinforce Dan Mintz' point, whether studios choose the traditional quota method, or the alternative co-production method, it is imperative for production studios to strongly consider distribution in China to make a film more profitable. The following are two film sequels that restructured their production methods after a few failed attempts, to ensure the

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<sup>164</sup> See *China Film Co-Production Corporation [cn]*, IMDB, <http://www.imdb.com/company/co0078389/> (last visited Jan. 11, 2016) (note "with the assistance of" as opposed to "co-production").

<sup>165</sup> *China Sinks*, *supra* note 138.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

films entered the Chinese market.

*Resident Evil: Afterlife* (*Resident Evil 4*) (2010) decided to hire DMG Entertainment for distribution in China after noticing that *Resident Evil 1*, 2, and 3 were all rejected.<sup>169</sup> The producers took an additional step to tailor to Chinese audiences by shooting the film in 3D, which is very popular in China.<sup>170</sup> As a result, *Resident Evil 4* was the highest-grossing edition of the series.<sup>171</sup>

It is possible that producers for *Pirates of the Caribbean: At World's End* (*Pirates III*) may have taken notice of SARFT's ban of *Pirates II*, and took steps to try to ensure *Pirates III* would gain entry into China.<sup>172</sup> Disney contracted with CFG to co-produce the film, and thereby attempted to establish a safeguarded way into Chinese markets.<sup>173</sup> They also casted Hong Kong superstar Chow Yunfat to star as the Singapore pirate Captain Sao Feng.<sup>174</sup> Like *Karate Kid*, Disney even cut scenes from its original version to create a Chinese version with less violence and content potentially offensive to the Chinese.<sup>175</sup> Chow was featured in 20 minutes of the original version, whereas in the Chinese version his scenes were cut down to 10 minutes.<sup>176</sup> A SARFT official explains the deleted scenes were made according to China's "relevant regulations on film censorship" and "China's actual conditions."<sup>177</sup> However, although producers promised the cuts would not "impair either the continuity of plot or the image of the characters," deleting scenes like Chow's recitation of a poem in Cantonese resulted in

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<sup>169</sup> Jonathan Landreth, *Exclusive: 'Resident Evil: Afterlife' to Open on 1,000-Plus 3D Screens in China*, The Hollywood Reporter (Nov. 4, 2010), <http://www.hollywoodreporter.com/news/resident-evil-afterlife-open-1000-35918>.

<sup>170</sup> *Id.*

<sup>171</sup> See *Resident Evil*, BOX OFFICE MOJO FRANCHISES, <http://www.boxofficemojo.com/franchises/chart/?id=residentevil.htm> (last visited Dec. 1, 2015).

<sup>172</sup> See Saienni, *supra* note 140.

<sup>173</sup> *Disney's 'Pirates 3' Slashed in China*, CHINA DAILY (June 15, 2007), [http://www.chinadaily.com.cn/china/2007-06/15/content\\_895296.htm](http://www.chinadaily.com.cn/china/2007-06/15/content_895296.htm).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

inconsistent storylines and confused Chinese audiences.<sup>178</sup> For these reasons, like *Karate Kid*, the censorship likely led Chinese audiences to turn to the Internet to illegally watch the Hollywood version.

Indeed, Disney took appropriate steps to consider *guan-xi* and how not to offend Chinese audiences. However, they still failed to consider the Chinese's perspective. Even though the edited version may have satisfied the Censorship Board, Chinese audiences still highly criticized the film as offensive.<sup>179</sup> The portrayal of Chow's character as scarred, bald, with a long beard and long nails, and dressed in a Qing dynasty costume, was "demonizing" to the Chinese, and the film may have appeared to portray "the image of the Chinese in the eyes of Hollywood producers."<sup>180</sup> This issue illustrates the often-difficult task of foreign studios incorporating more Chinese elements into a film to satisfy a co-production, while also making sure they are portraying such elements as the Chinese would prefer to see it. Foreign studios must fully understand Chinese culture, as well as its people, before trying to depict them on screen.

### 3. *The Iron Man 3 Exception to Co-Production*

*Iron Man 3* (2013) is perhaps the most widely known success story regarding joint ventures between Hollywood's Walt Disney Co., Marvel Studios, and China's DMG Entertainment. The film made \$1.2 billion worldwide, raking in \$21.1 million from China alone on its opening day, making it the biggest opening day ever in Chinese history, despite being a

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<sup>178</sup> *Id.* (stating many viewers expressed similar opinions on the internet); see also *China Censors 'Cut' Pirates Film*, BBC NEWS (June 12, 2007), <http://news.bbc.co.uk/2/hi/entertainment/6744245.stm>; see also *Pirates of the Caribbean Censored by China*, CHINATOWNCONNECTION.COM (June 15, 2007), <http://www.chinatownconnection.com/pirates-caribbean-censor-china.htm>.

<sup>179</sup> *China Censors*, *supra* note 178.

<sup>180</sup> *Id.*

Wednesday.<sup>181</sup> By working closely with the Chinese government, *Iron Man 3* secured many of the benefits afforded to co-productions, such as: (1) day-and-date release that precedes the US release date, (2) year-long early promotion of the film, rather than the typical 2-3 week marketing window prior to release, and (3) a high degree of media access in China typically reserved for high-profile Chinese films.<sup>182</sup> This production did not apply for *official* co-production status, however.<sup>183</sup> Robert Cain suggests that the producers may have taken this approach in order to limit creative control by the Chinese government.<sup>184</sup> Statistically speaking, with *Pirates III* being an example, co-productions that were well received in one territory were not popular in others.<sup>185</sup> *Iron Man 3* producers wanted to ensure its success globally in all regions.<sup>186</sup>

Despite the choice not to file for co-production status, *Iron Man 3* producers did dedicate a strong level of *guan-xi* to Chinese audiences, which resulted in its profitable distribution in

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<sup>181</sup> Pamela McClintock, '*Iron Man 3* Breaks Records in China', THE HOLLYWOOD REPORTER (May 2, 2013), <http://www.hollywoodreporter.com/news/box-office-report-iron-man-450932>; Clarence Tsui, '*Iron Man 3* Smashes China's Box Office', THE HOLLYWOOD REPORTER (May 1, 2013), <http://www.hollywoodreporter.com/news/iron-man-3-smashes-chinas-450413>.

<sup>182</sup> Robert Cain, *Will 'Iron Man 3' Get China Co-Pro Status?*, CHINA FILM BIZ (Mar. 7, 2013), <http://chinafilmbiz.com/2013/03/07/will-iron-man-3-get-china-co-pro-status-and-does-it-really-matter-most-of-the-co-pro-benefits-have-come-already/> [hereinafter '*Iron Man 3* Co-Pro'].

<sup>183</sup> *Id.* The partners' strategy made it impractical to hire enough Chinese citizens to comply with the rule requiring that one-third of "major actors" be Chinese nationals, and they didn't incorporate the requisite level of Chinese cultural content to qualify the film as an official co-pro under the Chinese guidelines. *Id.*

<sup>184</sup> Cieply & Barnes, *supra* note 36.

<sup>185</sup> *Disney's 'Pirates 3' Slashed in China*, *supra* note 173.

<sup>186</sup> See Laurie Burkitt, '*Iron Man 3* Blasts China Co-Production Myth', THE WALL ST. J. (Mar. 8, 2013), <http://blogs.wsj.com/chinarealtime/2013/03/08/iron-man-3-blasts-away-at-china-co-production-myth/>; '*Iron Man 3* Co-Pro', *supra* note 182.

China.<sup>187</sup> Producers chose to film multiple scenes within China and even featured Chinese stars Wang Xueqi and Fan Bingbing.<sup>188</sup> Additionally, they invited Chinese bureaucrats to the set during filming and welcomed their advice regarding creative decisions.<sup>189</sup> *Iron Man 3* also took advantage of China's interest in 3D productions and created a 3D version targeted to that audience.<sup>190</sup> Similar to *Karate Kid* and *Pirates III*, the producers created a Chinese version of the film specifically for distribution to China.<sup>191</sup> But instead of cutting scenes from the original to be less offensive to the Chinese, producers added additional scenes to the Chinese *Ironman 3*, which included an exclusive scene near the end of the film starring Chinese actress Fan Bingbing.<sup>192</sup> In this case, instead of Chinese audiences

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<sup>187</sup> James Daniel, *Iron Man 3 Execs 'Changed Film for Chinese Audience' by Adding Four Minutes to the Film with Chinese Actors*, DailyMail.com (May 13, 2013), <http://www.dailymail.co.uk/news/article-2324077/Iron-Man-3-execs-changed-film-Chinese-audience-adding-4-minutes-Chinese-actors.html> (last updated May 17, 2013).

<sup>188</sup> *'Iron Man 3' Co-Pro*, *supra* note 182.

<sup>189</sup> William Wan, *'Iron Man 3' is Latest Hollywood Movie to Court Chinese Censors*, THE WASHINGTON POST (May 6, 2013), [https://www.washingtonpost.com/world/asia\\_pacific/iron-man-takes-heroic-efforts-to-satisfy-chinas-state-censors/2013/05/06/62d11e08-b62e-11e2-92f3-f291801936b8\\_story.html](https://www.washingtonpost.com/world/asia_pacific/iron-man-takes-heroic-efforts-to-satisfy-chinas-state-censors/2013/05/06/62d11e08-b62e-11e2-92f3-f291801936b8_story.html).

<sup>190</sup> Luke Westaway, *Iron Man 3 is Fresh, Ferrous Fun, But Should You See It in 3D?*, CNET (May 2, 2013), <http://www.cnet.com/news/iron-man-3-is-fresh-ferrous-fun-but-should-you-see-it-in-3d/>. Creating a 3D version was likely a decision made in post-production, because cinematically the 3D aspect brought little extra to the film. Thus, we can speculate the producers hoped releasing a 3D version would interest audiences that preferred 3D to 2D films.

<sup>191</sup> Clarence Tsui, *'Iron Man 3' China-Only Scenes Draw Mixed Response*, THE HOLLYWOOD REPORTER (May 5, 2013), <http://www.hollywoodreporter.com/news/iron-man-3-china-scenes-450184>. James Marsh, *China Beat: What Did China See in IRON MAN 3?*, TWITCH FILM (May 18, 2013, 9:00 AM), <http://twitchfilm.com/2013/05/china-beat-what-did-china-see-in-iron-man-3.html>.

<sup>192</sup> *Id.*

turning to the Internet to download the illegally pirated Hollywood version of the film, the reverse happened: U.S. audiences that heard about the exclusive Chinese version sought it out online.<sup>193</sup>

After discussing these examples, the message we arrive at is: there are many ways to get a film released in China, but filmmakers will be better equipped if they perform due diligence, understand *guan-xi*, and respect the sensitivities of the Chinese people from a Chinese person's perspective.

## V. DOES DISTRIBUTION IN CHINA IMPROVE PROFITS FOR HOLLYWOOD FILMS?

The argument that China is a necessary industry to focus on warrants the question: to what extent does distribution in China actually improve film profits?

### A. DISTRIBUTION IN CHINA OFTEN IMPROVES PROFITS

Indeed, the sheer population of China is an indication of its potential. Cinemas are being built in the country at an exponential rate, which means admission into China's theaters amounts to thousands more screens broadcasting the film.

Fortunately for now, Hollywood boasts as having some of the best producers and filmmakers in the world who create incredible motion pictures with advanced state-of-the-art technology, which China has not yet developed. Chinese audiences prefer large tent-pole action films, especially in IMAX and 3D; Hollywood producers have the correct technology to produce such films, which may be another reason why Hollywood films are so successful in China.<sup>194</sup> There are even cases where Hollywood films that nearly tanked in U.S. markets, were saved by its success in China.<sup>195</sup> *Night at the Museum 3*:

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<sup>193</sup> Todd Spangler, 'The Hobbit,' 'Django Unchained' and 'Fast & Furious 6' Are Most-Pirated Films of 2013, VARIETY (Dec. 13, 2013 6:19 AM), <http://variety.com/2013/digital/news/the-hobbit-django-unchained-and-fast-furious-6-are-most-pirated-films-of-2013-1201015119/>.

<sup>194</sup> Tim Walker, *Hollywood Targets Asian Audiences as US Films Enjoy Record-Breaking Run at Chinese Box Office*, THE INDEPENDENT (July 9, 2014), <http://www.independent.co.uk/arts-entertainment/films/features/hollywood-targets-asian-audiences-as-us-films-enjoy-record-breaking-run-at-chinese-box-office-9596052.html>.

<sup>195</sup> Lous Dietz-Henderson, *Hollywood Summer Slump? It's China to the Rescue*, THE WALL ST. J. BLOG (June 12, 2012),

*Secret of the Tomb* (2015) is a great example. Despite receiving very little success in the U.S.,<sup>196</sup> the film topped Chinese box office charts in its first full week, earning \$26.93 million, out of a total \$30.91 million, in only eight days.<sup>197</sup> China saved *Night at the Museum 3* from a devastating flop—even providing a profit after a \$127 million budget for production.<sup>198</sup> *The Da Vinci Code* is also an example of the profitability of distribution in China. Despite sudden cancellation after a few weeks of screening, the film grossed more than \$12.8 million in China, making it the second top-grossing foreign film.<sup>199</sup>

Hollywood films in China are so successful that local Chinese filmmakers now prefer to release their films during times when no Hollywood films are in theaters. For example, Chinese produced *The Great Magician* (2012), China's greatest domestic film success, was released during the Chinese New Year, because no Hollywood films were screening.<sup>200</sup>

#### B. NON-DISTRIBUTION IN CHINA IS STILL AN OPTION

The previous examples support Robert Cain's hypothesis, that China is simply attempting to uphold its values and cultural beliefs by controlling the content distributed to its people. Most of the films that the Censorship Board had issues with were censored because of content deemed offensive to Chinese audiences. Analyzing the Censorship Board's criticisms and issues with films brings to light the very difficult task of deciding whether to give up creative control of a film for the

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<http://blogs.wsj.com/chinarealtime/2012/06/12/hollywood-summer-slump-its-china-to-the-rescue/>.

<sup>196</sup> See *Night at the Museum*, *supra* note 4. *Night at the Museum: Secret of the Tomb* only made 31.5% of its profits domestically, earning \$113 million in the U.S. *Id.*

<sup>197</sup> Brent Lang, 'Night at the Museum 3' Tops Foreign Box Office Thanks to China Opening, *VARIETY* (Jan. 11, 2015), <http://variety.com/2015/film/news/night-at-the-museum-3-tops-foreign-box-office-thanks-to-china-opening-1201400229/>.

<sup>198</sup> *Id.*

<sup>199</sup> Shu-Ching, *supra* note 132.

<sup>200</sup> Dietz-Henderson, *supra* note 195.

benefit of pleasing the Censorship Board and distributing in China. Choosing to distribute in China's market forces producers to focus their attention on the sensitivities of Chinese audiences, regardless of whether they choose the traditional or alternative method of entering the market. This means giving up elements of creativity, downplaying scenes to be more family friendly, or even altering the story to tailor to Chinese interests.

Some producers have found the cost of entering China's film industry is not worth the loss of creative control. *The Dark Knight* (2008) was a Hollywood film that Warner Brothers chose not to release in China.<sup>201</sup> Warner Brothers cited "cultural sensitivities in some elements of the film" as its reasoning, and opted entirely not to present the film to SARFT, but there are a few other potential reasons why the studio chose this route.<sup>202</sup> First, a scene in which Batman nabs a Chinese money launderer could have potentially upset the government. It is likely producers felt the scene would have received a similar response from the Censorship Board, similar to the subplot of corruption from *The Departed*. Second, Hong Kong singer, Edison Chen, had an appearance in the film, and was recently scrutinized in China for a leak of his sexually explicit photographs.<sup>203</sup> *The Dark Knight* producers took a different route by choosing to release and distribute the film in Hong Kong, which is governed separately from mainland China.<sup>204</sup> *The Dark Knight* is a prime example of a successful record-breaking blockbuster foreign film<sup>205</sup> that retained complete creative control of the production, and dealt entirely without China, abandoning the motive to satisfy "suitable for all [Chinese] audiences."

### CONCLUSION

China's censorship criterion remains vague because the Censorship Board often provides little to no guidance for why it censored or banned a film. However, a pattern emerges showing that the government is most concerned with what is suitable for

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<sup>201</sup> *Dark Knight*, *supra* note 136.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> See *All Time Box Office Domestic Grosses*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/alltime/domestic.htm> (naming *The Dark Knight* number 6 all time domestic grossed film).

*Chinese* audiences.<sup>206</sup> For example, the Censorship Board rejected *Farewell My Concubine* for homosexuality (along with Communist turmoil and suicide),<sup>207</sup> *The Departed* for corruption,<sup>208</sup> and *Memoirs of a Geisha* for ethnic tensions.<sup>209</sup> These films had storylines that were politically controversial or unorthodox from the Chinese perspective. With this in mind, filmmakers should remember to be sensitive to the cultural and moral differences between their country and China.

Connecting with sources in China, such as Robert Cain or Dan Mintz at DMG Entertainment, make the transition into China easier because these individuals understand the nuances of the Chinese market. This may mean choosing the co-production route by casting Chinese stars for the film, shooting more of the film in China, and working jointly with a Chinese company, or it may mean choosing the traditional quota method. Regardless, producers must accept the possibility that parts of their film may be censored or altered, and that full creative control of the project will be sacrificed. The sooner filmmakers are aware of this fact, the more they can use it to their advantage. For example, *Karate Kid* and *Pirates III* had to create Chinese versions after those films were completed to meet the approval of the Censorship Board. As previously discussed, creating a Chinese version different from the Hollywood version may hurt those films, and force deprived audiences to go online and illegally stream and download the originals.<sup>210</sup> On the other hand, producers of *Ironman 3* intended to make a Chinese-friendly film, which enhanced the original version with

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<sup>206</sup> Jaafar & Busch, *supra* note 23.

<sup>207</sup> Kristof, *supra* note 128.

<sup>208</sup> 'Departed' Banned, *supra* note 130.

<sup>209</sup> *Dark Knight*, *supra* note 136.

<sup>210</sup> Alexandre M. Mateus & Jon M. Peha, *Quantifying Global Transfers of Copyrighted Content Using BitTorrent* (2011), [http://users.ece.cmu.edu/~peha/quantifying\\_global\\_P2P.pdf](http://users.ece.cmu.edu/~peha/quantifying_global_P2P.pdf) (last visited Jan. 11, 2016). See also *Oscar Nominees Fuel Chinese Movie Piracy*, USA TODAY (Feb. 17, 2015), <http://www.usatoday.com/videos/news/world/2015/02/17/23538367/> (view at 1:39).

additional scenes.<sup>211</sup> Producers were very successful with this endeavor because they were careful not to alter the story.<sup>212</sup>

China's film industry conditions will not remain unchanged. Like many other aspects of China, the film industry is emerging and growing rapidly. The initial quota system is a prime example. China began its film industry with no foreign films allowed, to permitting 20 films per year, to now allowing 34 films (14 of which should be 3D or IMAX fitted).<sup>213</sup> This shows China is slowly opening its markets.

The censorship program benefits Chinese talent by giving them opportunities to star in more foreign films. The co-production method also benefits China's film industry by incentivizing foreign film companies to work with, and train Chinese companies. This is something to take advantage of because it may not be the case for long. Foreign filmmakers have the knowledge and technology to improve China's film industry, which China should be open to receive. The landscape is now one that is mutually beneficial to both the foreign studios and Chinese studios.

Following the same argument, companies are now creating alternative ways to bypass the quota system and get films into China. This article focused on co-productions, but DMG Entertainment's work on *Iron Man 3* shows there are other ways to achieve distribution in China. We must remember that China is a flourishing country, deeply rooted in its culture and history, which recently opened its markets to the public with hopes to grow and develop. Its film industry is no different. Foreign producers must understand that China's film industry is not just a business; it is a protected Chinese asset. Films like *Night at the Museum 3* and *The Da Vinci Code* show that distributing in China can often save a film from tanking at the box office. In order to tap into the Chinese market, producers must understand the meaning of *guan-xi* and start building relationships with the Chinese so they can create films that interest Chinese audiences and its government.

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<sup>211</sup> Daniel, *supra* note 187.

<sup>212</sup> *Id.*

<sup>213</sup> *The Rise and Rise of the Film Business in China*,  
STEPHENFOLLOWS.COM (Jan. 26, 2015),  
<https://stephenfollows.com/film-business-in-china/>.

At times, the strictness of China's regulation may prove to be counter-active when studios are forced to create multiple versions of a film only to satisfy the Censorship Board.<sup>214</sup> When censorship regulation goes too far, it does not benefit Chinese audiences, who may actually prefer the original versions of films. The increased demand for illegal piracy may be a direct result.<sup>215</sup> This is a global issue that affects all film markets. The MPAA in the U.S. recently created a "Where to Watch" campaign that compiles a list of legal websites to access films and TV shows.<sup>216</sup> As a suggestion, this may be an effective option for China to combat illegal downloading and piracy.

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<sup>214</sup> See discussion *supra* pp. 41-50.

<sup>215</sup> *Oscar Nominees*, *supra* note 210. At 90 percent, piracy rates are highest in China. See *The Cost of Movie Piracy*, L.E.K. 4 (2005), <http://austg.com/include/downloads/PirateProfile.pdf> (last visited Jan. 11, 2016).

<sup>216</sup> Anthony D'Alessandro, *MPAA Chief Battles Piracy with 'WhereToWatch' Campaign – CinemaCon*, DEADLINE HOLLYWOOD (Apr. 21, 2015), <http://deadline.com/2015/04/mpaa-chief-chris-dodd-battles-piracy-with-wheretowatch-campaign-cinemacon-1201413684/>.